RESOLUTION NO. 2010-660

Adopted by the Sacramento City Council

November 16, 2010

CITY/COUNTY/BLT IN-REGION DISPOSAL AGREEMENTS

BACKGROUND

A. In 1998, the City entered into an agreement with BLT Enterprises of Sacramento, Inc. ("BLT") for Municipal Solid Waste Transfer, Transport, Disposal, Processing and Recovered Materials Diversion (Service Agreement). The current term of the Service Agreement will expire in 2019. Related to the Service Agreement and in conjunction with the Service Agreement is a disposal subcontract entered into between BLT and the Lockwood Nevada Landfill for disposal of City MSW delivered by the City to BLT.

B. In 2005 the City and BLT entered into Amendment No. 1 to the Service Agreement. Pursuant to Amendment No. 1, the City was authorized to deliver up to an annual amount of 25,000 tons of MSW to the Sacramento County North Area Recovery Station ("NARS") for a two year period. In 2008, the City and BLT entered into Amendment No. 2 to the Service Agreement. Pursuant to Amendment No. 2, the time period for diversion of the 25,000 was extended for an additional two year period until July 15, 2010.

C. In addition, pursuant to Council Resolution 2008-393, the City Council directed staff "to take the necessary steps to secure the long term disposal of all city-generated solid waste collected by the Department of Utilities, BLT and its customers to an in-region facility within 12 to 24 months"; and Section 3.01 of Amendment No.2 reads: "City and Contractor shall negotiate in good faith between themselves and the County of Sacramento toward arrangements relating to the transfer and disposal of City Waste generated within the City, including that generated north of the American River; the transfer and disposal of County waste generated in unincorporated area south of the American River; and the disposal of City and County waste, and commercial waste transferred at BLTs south area facility at the Keifer Landfill and/or a Waste-to-Energy Facility approved by the City Council.".

D. Pursuant to the March 24, 2009 Amendment No. 3 to the Service Agreement, the City and BLT added the Kiefer Landfill as an alternative disposal facility for MSW delivered by the City to the BLT Sacramento Transfer and Recovery Station ("SRTS").

E. The City, County of Sacramento and BLT have been negotiating a proposed three-way deal involving several separate agreements including 1) an Amended Service Agreement between the City and BLT; 2) a transfer agreement between the City and County for transfer of Disposal of City MSW generated

north of the American River to NARS for ultimate disposal at Kiefer; 3) an amendment to the Recyclable Agreement between the City and BLT; 4) an agreement between the County and BLT for disposal of MSW from SRTS at the Kiefer Landfill; and 5) an agreement between the County and BLT for transfer of certain County MSW to SRTS and ultimate disposal at Kiefer.

F. The proposed agreements will allow the City to continue to use NARS saving both fuel and labor cost by avoiding driving from north of American River to Sacramento Recycling and Transfer Station. The total fuel, labor and O&M savings is estimated to be upwards of $500,000 per year.

G. Disposal of MSW at the Kiefer Landfill and use of NARS will reduce the City's carbon footprint by 85% reducing the total number of miles driven from 308 miles roundtrip to 28 miles roundtrip to dispose of the waste, and minimizing driving distances for City collection trucks.

H. The City claims BLT owes it money for overpayment and an assignment fee. BLT claims the City owes it money for costs associated with the potential siting of a transfer station in the north area of the City, and fuel costs. The parties wish to resolve these competing claims.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. (a) It is in the best interest of the City to suspend competitive bidding and competitive bidding for the Amended Service Agreement with BLT Enterprises of Sacramento, LLC for the transfer of Municipal Solid Waste (MSW) to the Sacramento Recycling and Transfer Station (SRTS) is hereby suspended ("Amended Service Agreement"); and (b) the City Manager is authorized to execute the Amended Service Agreement attached hereto as Exhibit A.

Section 2. (a) It is in the best interest of the City to suspend competitive bidding and competitive bidding for the attached Agreement with the County of Sacramento for transfer of municipal solid waste at the North Area Recovery Station (NARS) is hereby suspended; and (b) the City Manager is authorized to execute the Agreement with the County of Sacramento for transfer of municipal solid waste at NARS (Agreement for North Area Recovery Station) attached hereto as Exhibit B.

Section 3. The City Manager is authorized to execute the Amended Agreement for Purchase of Recyclables between the City of Sacramento and BLT Enterprises of Sacramento, LLC attached hereto as Exhibit C.

Section 4. The City Manager is authorized to execute the Agreement Concerning Settlement and Release of Outstanding Amounts Owed or Claimed between the City of Sacramento and BLT Enterprises of Sacramento, LLC, to pay $323,706.58 for settlement of EIR costs and claimed overpayments by the City attached hereto as Exhibit D.

Section 5. Exhibits A through D, inclusive, and all Exhibits attached thereto, are part of this resolution.

Table of Contents:

Exhibit A	Amended Service Agreement with BLT Enterprises of Sacramento, LLC for the transfer of Municipal Solid Waste (MSW) to the Sacramento Recycling and Transfer Station
Exhibit B	Agreement for North Area Recovery Station
Exhibit C	Amended Agreement for Purchase of Recyclables Between the City of Sacramento and BLT Enterprises of Sacramento, LLC
Exhibit D	Agreement Concerning Settlement and Release of Outstanding Amounts Owed or Claimed Between the City of Sacramento and BLT Enterprises of Sacramento, LLC

Adopted by the City of Sacramento City Council on November 16, 2010 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.

Mayor Kevin Johnson

Attest:

for Shirley Concolino, City Clerk

AMENDED SERVICE AGREEMENT

BETWEEN

THE CITY OF SACRAMENTO
AND
BLT ENTERPRISES OF SACRAMENTO, LLC.

FOR

MUNICIPAL SOLID WASTE TRANSFER, TRANSPORT, DISPOSAL, PROCESSING

AND

RECOVERED MATERIALS DIVERSION

This Amended Service Agreement (the "Amended Agreement") is made and entered into by and between the **CITY OF SACRAMENTO** (the "**City**"), a municipal corporation of the State of California, and **BLT ENTERPRISES OF SACRAMENTO, LLC ("Contractor"),** a California corporation, as of the later of the date of execution by the City or the Contractor, as the case may be.

WITNESSETH:

WHEREAS, the City provides municipal solid waste collection services for single family residences in the City and a portion of apartments and commercial and industrial establishments; and

WHEREAS, pursuant to the California Integrated Waste Management Act of 1989 (hereinafter the "Act" or "AB 939")the State directed the City to promote recycling and to maximize the use of feasible source reduction, recycling and composting options in order to reduce the amount of solid waste that must be disposed of by land disposal and reach 50% diversion by 2000; the City and Sacramento County (the "County") consequently formed the Sacramento Regional County Solid Waste Authority, which adopted ordinances requiring, among other things, 30% diversion of waste collected by permitted commercial waste haulers (including the City) and by non-permitted persons (including Selfhaulers, defined herein); and the City, by Resolution, has set diversion goals in excess of AB 939; and

WHEREAS, Contractor's compliance with its obligations to divert Commercial Waste (defined herein) hereunder are key components of the City's Source Reduction and Recycling Element of its solid waste plan, necessary to comply with the diversion mandates of AB 939; and

WHEREAS, the City operated a household hazardous waste collection program and wishes to establish a permanent household hazardous, waste drop-off location for convenience of its residents; and

WHEREAS, on August 13, 1996, the City issued a Request for Proposal for Transfer and Disposal seeking proposals to design, permit, construct, equip, and operate a facility for priority transfer and processing of the City's solid waste (the "Facility", as defined in Exhibit 1.01); to market the recovered materials and divert them from disposal; and to transfer waste and residue to a designated landfill for disposal; and

WHEREAS, on April 10, 1997, the City Council directed City staff to solicit and evaluate best and final offers from three proposers, and the City staff and its professional consultants evaluated such offers; and

WHEREAS, on December 9, 1997, the City Council selected Contractor as the sole potential vendor for the City's Solid Waste Transfer, Transport, Disposal, Processing and Recovered Materials Diversion Service Agreement with whom the City was to negotiate further; and,

WHEREAS, the CEQA process having been completed on September 1, 1998, the City Council authorized the City Manager to execute the Service Agreement between the City of Sacramento and BLT Enterprises, Inc., to provide for Municipal Solid Waste Transfer, Transport, Disposal, Processing and Recovered Materials Diversion ("Service Agreement"); and

WHEREAS, the Facility was designed and permitted with capacity to handle merchant waste from entities in addition to City Waste (defined herein); Contractor acknowledged that City does not have the authority to direct delivery of such additional volume of waste to the Facility other than as provided herein; and Contractor accepted the business risk that such additional waste may not be delivered to the Facility; and

WHEREAS, the Commercial Waste that the City collects contains largely putrescible waste that may be difficult to divert from disposal, but in entering into the Service Agreement, City relied on Contractor's record of successfully meeting its diversion commitments, and Contractor acknowledged that in order to meet its Commercial Waste Diversion Guaranty (defined herein) it had to develop recovery and processing programs, including possibly food waste composting programs, in order to achieve 30% diversion from Commercial Waste handled at the Facility; and

WHEREAS, in order to provide the Contractor with additional financial incentives to increase diversion, City determined to allow Contractor to retain all revenues derived from the sale of recovered materials, and Contractor correspondingly bore the risk of recycling market fluctuation; and

WHEREAS, one of the City's primary purposes in entering into the Service Agreement was to secure long-term disposal commitments at an environmentally sound disposal facility for City Waste and City helped Contractor identify potential disposal sites; but at such time Contractor chose and the City approved the Lockwood Landfill as the Primary Disposal Facility (defined herein) and negotiated with the owner thereof for Disposal (defined herein) thereat, after performing Contractor's own evaluation thereof, including environmental assessments; and

WHEREAS, the City determined that the Contractor submitted proposals to provide services in a manner and on terms that are in the best interests of City and its residents, taking into account the technical and financial qualifications and transfer, recovery, processing, and marketing experience of Contractor, Contractor's acceptance of the terms and provisions of the Service Agreement and the cost of providing such services; and

WHEREAS, Contractor acknowledged that it developed this Facility to provide priority service to the City hereunder; and

WHEREAS, the City intended that the Service Agreement would contribute to providing the most cost-efficient, best solid waste management services to its citizens; and

WHEREAS, since execution of the Service Agreement and construction of the Facility, the parties have operated in accordance with the terms and conditions of the Service Agreement and, when agreed to by the City and Contractor, all subsequent amendments to the Service Agreement; and

WHEREAS, subsequent to execution of the Service Agreement, in November 2005 the City and Contractor executed Amendment Number One to the Service Agreement (the "First Amendment") providing for 1) development of a north area municipal solid waste transfer station; 2) diversion by the City of 25,000 tons of City Waste to the Sacramento County North Area Recovery Station ("NARS"), a County-owned transfer facility, for a period of two years unless Contractor agreed to extend the time; and 3) delivery of 5,000 tons of Green Waste by the City to Contractor; and

WHEREAS, subsequent to execution of the Service Agreement and the First Amendment, in July 2008 the City and Contractor executed Amendment Number Two to the Service Agreement (the "Second Amendment") providing 1) for a separate fuel component to the contractor's service fee component; 2) a new Section 12.03 concerning in-region disposal; and 3) a provision allowing the City to continue to divert City Waste to NARS until July 15, 2010; and

WHEREAS, subsequent to the execution of the Service Agreement, the First Amendment, and the Second Amendment, the City has determined that an in-region solution for disposal of City Waste and cooperation with the County of Sacramento in the transfer of City Waste generated in the north area of the City through NARS, will be in the best interests of the citizens and businesses in the City; and

WHEREAS, subsequent to execution of the Service Agreement, the First Amendment and the Second Amendment, the City and Contractor executed Amendment Number Three to the Service Agreement in March 2009 (the "Third Amendment") adding Kiefer Landfill as an Alternate Disposal Facility (defined herein); and

WHEREAS, the City, Contractor and the County of Sacramento have entered into negotiations to provide for an in-region solution for disposal of City Waste and other municipal solid waste generated in region at the County owned Kiefer Landfill; and

WHEREAS, in furtherance of the goal of in region disposal of City Waste and other municipal solid waste generated in-region at the County-owned Kiefer Landfill the Parties have agreed to supersede and replace the Service Agreement, the First Amendment, the Second Amendment, and the Third Amendment with this Amended Agreement.

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

DIVISION I: AGREEMENT CONSTRUCTION

ARTICLE 1. DEFINITIONS AND CONTRACT INTERPRETATION

1.01 Definitions. As used herein, capitalized words shall have the meanings set forth in Exhibit 1.01, or as otherwise provided herein, which shall control in the event of any conflict with the definitions used in the recitals hereto.

1.02 Interpretation.

a. **Gender and Plurality.** Words of the masculine gender mean and include correlative words of the feminine and neuter genders, and vice versa. Words importing the singular number mean and include the plural number, and vice versa, unless the context demands otherwise.

b. **Headings.** Any captions or headings following the Exhibit, Section, subsection, paragraph and Article numbers and preceding the operative text hereof shall be for convenience of reference only and shall not in any way control or affect the scope, intent, meaning, construction, interpretation, or effect hereof.

c. **"Including"** and **"include"** or variations thereof, when used in this Amended Agreement, shall mean "including, without limitation", "including, but not limited to" and "including, at a minimum".

d. **"Prompt"** or **"promptly"** means as soon as practicable, but in no event less than two days, unless otherwise specified.

e. **"Day"** or **"days"** means calendar day or days.

f. **"Herein", "hereof", "hereunder"** and the like shall mean "in this Amended Agreement", "of this Amended Agreement", "under this Amended Agreement", etc.; **"hereinbefore"** and **"hereinafter"** shall mean before and after the date of this Amended Agreement, respectively.

g. **"the date hereof"** means the date this Amended Agreement is made and entered into as provided in the preamble hereof.

h. **References.** References to Sections and Articles refer to Sections and Articles hereof, unless specified otherwise. References to Exhibits refer to Exhibits attached hereto.

i. **Examples.** Uses of examples are for purpose of illustration only. In the event of any ambiguity or conflict between the examples and the provisions that they illustrate, the provisions shall govern.

j. **Exercise of Options.** Except as otherwise provided, the Parties' exercise of any approval, disapproval, consent, option, discretion, election, opinion or choice hereunder or interpretation pursuant hereto shall be deemed reasonable in accordance with law unless this Amended Agreement specifically provides that such exercise is in each respective Party's independent, sole, exclusive and/or absolute discretion, control, or judgment. City's exercise of any rights or remedies hereunder shall be deemed exercised in City's independent, sole, exclusive and/or absolute discretion, control and judgment.

1.03 Integration.

This Amended Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby. Upon the "Effective Date" (as defined below), this Amended Agreement shall completely and fully supersede and replace all prior understandings and agreements between the Parties with respect to such transactions, including those contained in the Request for Proposals and Contractor's Proposal, the Service Agreement, the First Amendment, the Second Amendment, and the Third Amendment. Notwithstanding the provisions of this Section 1.03, that certain City Agreement No. 2007-1285, entitled Agreement for the Purchase of Recyclables and dated November 27, 2007, as amended, (collectively, the "**Recycling Agreement**"), or any successor agreement thereto, shall remain in full force and effect in accordance with their respective terms.

1.04 Governing Law. This Amended Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State, without giving effect to the State's principles of conflict of laws.

1.05 Execution in Counterparts. This Amended Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Amended Agreement.

1.06 Severability. If any clause, provision, paragraph, subsection, Section, or Article hereof or Exhibit hereto (an **"Agreement Provision")** shall be ruled invalid by any court of competent jurisdiction, then the Parties shall:

(1) promptly meet and negotiate a substitute for such Agreement Provision that shall, to the greatest extent legally permissible, effect the intent of the Parties therein;

(2) if necessary or desirable to accomplish preceding item (1) above, apply to the court having declared such invalidity for a judicial construction of the substituted portion of this Amended Agreement; and

(3) negotiate such changes in, substitutions, or additions to the remaining provisions hereof as may be necessary in addition to and in conjunction with preceding items (1) and (2) above to effect the intent of the Parties in the invalid Agreement Provision.

The invalidity of such Agreement Provision shall not affect any of the remaining provisions hereof, and this Amended Agreement shall be construed and enforced as if such invalid Agreement Provision did not exist; provided, however, that if any Agreement Provision with respect to City approval (or disapproval) of the Primary Disposal Facility shall be ruled invalid by any court of competent jurisdiction in litigation instituted by Contractor or any Contractor-Related Person, then the City shall have the right in its sole discretion to terminate this Amended Agreement in accordance with Section 20.01 a(6).

1.07 Effective Date.

a. Effective Date. This Amended Agreement shall not be effective unless and until all of the following conditions have either been satisfied or waived:

1. Contractor enters into an agreement with the County of Sacramento (the "County") for disposal services for City Waste, at the County's Kiefer Landfill in substantially the same form as the agreement attached to Exhibit 1.07a#1 (the "Kiefer Disposal Agreement");

2. Contractor enters into an agreement with the County for the delivery to the Facility by the County of Permitted Waste in substantially the same form as the agreement attached to Exhibit 1.07a#2 (the "Contractor/County Transfer Agreement");

3. City enters into an agreement with the County for use of NARS for transfer of up to 40,000 tons of City Waste per Contract Year in substantially the same form as the agreement attached to Exhibit 1.07a#3 (the "City/County Transfer Agreement");

4. City and Contractor enter into an amended Recycling Agreement in substantially the same form as the agreement attached to Exhibit 1.07a#4 (the "Amended Recycling Agreement"); and

5. Contractor gives written notice of termination to the subcontractor of the current Primary Disposal Subcontract (as defined below in Section 12.02b(3)) in compliance with the terms of the Primary Disposal Subcontract, with a copy of such written notice forwarded to the City.

The last date that all of the foregoing conditions are satisfied or waived shall be known as the "Effective Date."

b. Exhibits. All agreements described in this Section 1.07 shall, upon execution, be attached hereto as Exhibits.

c. Waiver. Notwithstanding the above, any of the conditions precedent to the effectiveness of this Amended Agreement, as described above in Section 1.07.a, may be waived by written instrument signed by both parties.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

2.01 Of Contractor. The Contractor represents and warrants as of the date hereof, as provided in Exhibit 2.01. Contractor acknowledges and agrees that all representations and warranties in Exhibit 2.01 are material.

2.02 Of City. The City represents and warrants as of the date hereof, as provided in Exhibit 2.02. City acknowledges and agrees that all representations and warranties in Exhibit 2.02 are material.

ARTICLE 3. TERM OF AGREEMENT

3.01 Term. The term of this Amended Agreement shall commence on the Effective Date, and shall end on such date that is twenty (20) years after the date that the County's Kiefer Landfill becomes the Primary Disposal Facility in accordance with Section 12.02.b.(3) below, unless terminated earlier in accordance with Sections 20.01 or 20.02 (the "**Term**").

3.02 Survival of Certain Provisions. All representations and warranties of the Parties herein, all indemnifications provided for herein, and any other rights and obligations of the Parties expressly stated to survive the termination of this Amended Agreement, shall survive such termination, including those listed for convenience of the Parties in Exhibit 3.02.

DIVISION II: FACILITY DEVELOPMENT AND OPERATION

ARTICLE 4. FACILITY DEVELOPMENT

The parties agree that as of the execution of this Amended Agreement, the obligations of the Contractor described in this Article 4 have been completed or satisfied.

4.01 Development Benchmarks.

a. Development events and dates. Contractor shall achieve or cause to be achieved the following events on or before the expiration of the corresponding time periods listed below. Those time periods shall commence after issuance of the special use permit for the Facility, and on the later of either: a) the end of the applicable appeals period following the date the environmental impact report required by Applicable Law, including CEQA, is certified, if no appeal is filed; or, b) the date of final settlement of any appeal or action by a third party challenging the CEQA process or certification, as such periods may be extended to reflect Uncontrollable Circumstances in accordance with Section 24.01. The date described in this subsection 4.01.a shall be known as the **"Commencement Date".** In the event that the Commencement Date shall not have

occurred by the first anniversary of the date of filing of an appeal or action challenging the CEQA certification, then the City may terminate this Amended Agreement unless the parties have agreed to extend the time period for the Commencement Date beyond that first anniversary.

(1) **Site acquisition:** Contractor acquisition of title or lease interest in the Site which provides Contractor sufficient right to use and possess the Site in the manner and for the period of time necessary to meet its Performance Obligations for the Term plus any extensions thereof, satisfactory to City and evidenced by a copy of the recorded deed or lease therefor certified as a true copy by the County Recorder, within one month;

(2) **Financing:** Contractor securing a source of debt and/or equity funds in aggregate principal amount available for timely disbursement sufficient to finance Facility Development and to meet the construction and operation deadlines described in this Section, within one hundred twenty days. If necessary, Contractor may obtain an interim source of such funds before bond or other permanent financing can be secured. Such interim financing shall not be outstanding for more than one hundred eighty (180) days from the date of the first draw upon the interim funds, by which time Contractor shall have in full force and effect Contractor's permanent financing.

(3) **Commercial Waste/Neighborhood Cleanup Waste Processing:** Contractor demonstrates to satisfaction of City that it is timely developing its plan for Recovery and Processing Commercial Waste and Neighborhood Cleanup Waste in accordance with its Performance Obligations (including the Commercial Waste Diversion Guaranty) as contemplated by Contractor's processing protocol attached as Exhibit 8.01, within eight months which plan may include acquisition of a processing site, execution of processing subcontract, execution of processing facility construction agreement, securing financing and securing permits, as the case may be.

(4) **Construction Commencement:** Contractor commencing Construction and Equipping of the Facility upon satisfaction or waiver of each and every one of the conditions listed in Exhibit 4.01a(4) as acknowledged by the City (the **"Construction Commencement Date"),** within one hundred twenty days (the "**Scheduled Construction Commencement Date");**

(5) **Construction Completion:** Contractor completing Construction (the **"Construction Completion Date")** upon the latest to occur of

(i) the issuance of a temporary certificate of occupancy of the Facility, or

(ii) installation of electrical power sufficient to run the Facility's equipment in accordance with the Equipment manufacturer's specifications;

within fifteen months;

(6) **Operations Date:** achieving Operations of the Facility within sixty days after the Construction Completion Date, or within seventeen months following the Commencement Date (the **"Scheduled Operations Date"),** whichever is earlier. Operations shall occur following agreement of the City with the report of the Contractor submitted in accordance with Section 4.05c (or binding determination of the Independent Engineer in accordance with Section 21.01c(1)(i)) that the Facility has been completed in accordance with Facility Design Requirements and passed its Compliance Tests, on the date the last of the following conditions are satisfied **("Operations Date"):**

(i) Contractor warrants to City that the Facility has been completed in accordance with Facility Design Requirements and in such manner that Contractor can comply with all its Performance Obligations with respect to Facility Operation, including all Performance Guaranties, which warranty Contractor acknowledges and agrees is material;

(ii) the Contractor submits evidence satisfactory to the City that all bonds and insurance required to be in place on and after the Operations Date in accordance with Article 16 are in place; and

(iii) Contractor submits evidence satisfactory to the City that all Permits required by Applicable Law have been secured and are in effect.

b. Failure to meet development dates.

(1) Extensions.

(i) ***60 Day Extension For Any Reason.*** Upon Notice to the City, Contractor shall have the right to extend the time periods or dates, as the case may be, listed in subsection a above, as follows:

(x) any or all of the time periods listed in subsection a(1) - (7) above for a total of up to sixty days; and

(y) the Scheduled Operations Date listed in subsection a(7) above,

(A) for up to sixty days with respect to the **Throughput Component Test,** provided that as a precondition of such extension the City may require Contractor to deliver to City a standby letter of credit to secure the payment of liquidated delay damages in the amount up to $240,000, which the City may unilaterally draw upon in the amount of $4,000 per each day of Scheduled Operations Date extension without Contractor consent or counter-signature, as such damages become due from Contractor to City pursuant to subsection (2) below, in form and substance satisfactory to City; and

(B) for up to sixty days with respect to the **Diversion Component Test,** without payment of liquidated damages;

provided that such cumulative extensions for all the time periods or dates listed in subsection a(1) - (6) above shall not extend the Scheduled Operations Date more than sixty days.

(2) **Delay Damages.** If Operations do not occur on or before the Scheduled Operations Date because of failure to pass the Throughput Component Test, then the Contractor shall pay City on or before the first day of each succeeding month liquidated damages equal to four thousand dollars ($4,000) for each day on and after the Scheduled Operations Date up to and including the Operations Date, which amount represents City's best estimated costs of Delivering City Waste to Kiefer Landfill rather than the Facility. The Parties acknowledge that if the City is unable to timely and fully utilize Contractor's services at the Facility hereunder, City incurs significant excess direct haul costs to the Kiefer landfill. Contractor further acknowledges that the City has considered and relied on Contractor's representations as to its record of timely project development in entering into this Amended Agreement. The Parties recognize that if Contractor fails to timely achieve Operations, the City and its residents will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of such damages. Therefore, the Parties agree that the above stated liquidated-damages represent a reasonable estimate of the amount of such damages, considering all of the circumstances existing on the date hereto, including the relationship of the sums to the range of harm that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. In signing this Amended Agreement, each Party specifically confirms the accuracy of the statements made above and the fact that each Party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Amended Agreement was made.

_____
Contractor

_____
City

(i) Notwithstanding the provisions of subsection 4.01.b(2) above, the Contractor shall give notice to the City of its readiness for Start-Up as provided in subsection 4.05 and the City shall deliver the amount of City Waste requested by Contractor pursuant thereto. No liquidated damages shall be due from Contractor as provided in subsection 4.01.b(2) above for any day on which the Contractor is able to, and does transfer all City Waste (up to 600 tons per day) delivered to the Facility and disposed of pursuant to Section 12.02.

(ii) In the event that Contractor can accept and transfer at least fifty percent of the City's Waste as provided in subsection (i) above, but less than all that would otherwise have been delivered on any day, the amount of liquidated damages owed by Contractor

pursuant to subsection 4.01.b.(2) above shall be reduced by fifty percent for each day the Contractor accepts and transfers all of the City Waste delivered to the Facility if the amount delivered equals at least fifty percent of City Waste, and by seventy five percent if the amount delivered equals at least seventy five percent of all City Waste that would otherwise have been delivered.

(3) **City's Remedies.** If any event itemized in subsection a above does not occur on or before the times provided therein, as extended in accordance with subsection b(1) above, City may exercise any remedies in accordance with Articles 19 and 20, including seeking specific performance of the Contractor's Facility Development Performance Obligations in accordance with Section 19.03a, collecting buy-out amounts from Contractor with respect to processing in accordance with Section 4.05e, and/or terminating this Amended Agreement in accordance with Section 20.01a(5), but excluding compensatory damages in accordance with Section 19.01 b(1) if City has collected liquidated damages described in preceding paragraph (2).

c. **Design Cost Reimbursement.** In the event that Contractor in good faith commences design of the Facility prior to completion of the CEQA process, and through no fault of Contractor (and assuming Contractor is not in default hereunder) the Commencement Date does not occur due to a CEQA challenge or action, City agrees to reimburse Contractor for one half of Contractor's Direct Cost for design up to a total maximum reimbursement amount of $100,000.00. In determining the reimbursement amount owed, City reserves the right to review in detail all of Contractor's claimed expenses, and City shall have the right to access to all information and detail supporting Contractor's claimed design expenses.

4.02 CEQA. The Parties acknowledge and agree that City, as lead agency shall, in full and unrestricted exercise of its authority, diligently proceed to commence and complete the environmental review process in accordance with the requirements of CEQA. City shall bear all costs it incurs in conducting and completing such environmental review and Contractor shall bear its own costs of environmental review. If significant environmental impacts are identified in such environmental review process, City may do any one or more of the following:

(1) City may refuse to adopt and approve the Facility Development, in which instance the Parties shall be released from any liabilities and obligations hereunder upon Notice of either Party to the other Party;

(2) City may make appropriate findings and adopt a statement of overriding considerations, and approve the Facility Development as proposed;

(3) As a condition of Facility Development, City may require mitigation measures which reduce the significant environmental impacts of the Facility and Performance Obligations to a less than significant level. If such mitigation measures are identified and adopted as project conditions, and are reasonable and economically

feasible, Contractor shall incorporate them into Facility design. Contractor shall bear the costs of such mitigation at its sole expense.

4.03 Facility Design Features. Contractor shall design the Facility to include the features contained in Exhibit 4.03 **("Facility Design Requirements").** However Contractor is solely responsible for the adequacy, safety and suitability of its final design, plans and specifications.

4.04 Construction and Equipping. Contractor shall Construct and Equip the Facility substantially in accordance with the Facility Design Requirements and Applicable Law, within the times provided in Section 4.01 a. The Contractor shall remain liable for the full and complete performance of its Performance Obligations, regardless of its use of subcontractors for all or any portion of such Construction and Equipping.

City shall have the right, but not the obligation, to observe and inspect Construction and Equipping. In connection therewith, City and its representatives shall have the right to enter the Site and Facility upon one Working Day's notice and speak to any of Contractor's employees, subcontractors or other Persons providing Construction and Equipping services; provided that they shall comply with the Contractor's reasonable safety and security rules and shall not interfere with the work of the Contractor or its subcontractors. Upon City request, Contractor shall make specified Persons available to accompany City employees on inspections. Contractor shall ensure that its employees, subcontractors and such other Persons cooperate with the City and respond to the City's inquiries.

4.05 Start-up and Shakedown; Compliance Testing.

a. **Notice.** On or after the Construction Completion Date and prior to Contractor's commencing Start-up and Compliance Testing, Contractor shall certify to City that the Facility has been Constructed and Equipped in accordance with Facility Design Requirements and in such manner that Contractor can conduct Start-up and then Compliance Testing. The Contractor will give the City at least fourteen days Notice of expected commencement of Start-up, including the volume and/or type of City Waste needed therefor. During Startup, the Contractor will give the City at least three Working Days Notice of the date of commencement of Compliance Testing.

b. **Protocol.** Contractor shall perform the Compliance Test in accordance with the protocol in Exhibit 4.05b. The Contractor shall provide the City, including its representatives, with access to observe and monitor the Compliance Test and make independent tests during the Compliance Test Period.

c. **Compliance Test Reports.**

(1) Submission by Contractor. Within fifteen Working Days following the end of the Throughput Component Test Period and Materials Diversion Component Test Period, respectively, Contractor shall submit to the City a written report thereof in the

form prescribed in the Compliance Test protocol together with all raw data detailing test results. In each such report Contractor shall state whether in its judgment the Facility passed or failed its Throughput Component Test and Diversion Component Test, as the case may be. If in judgment of Contractor the Facility passes the Throughput Component Test, Contractor shall so certify in writing to City. If in judgment of Contractor the Facility passes both the Throughput Component Test and Diversion Component Test, respectively and the Compliance Test as a whole, it shall so certify to City and further warrant to City that the Facility has been completed in accordance with Facility Design Requirements and in such manner that Contractor can comply with all its Performance Obligations, including Performance Guaranties, which warranty Contractor acknowledges and agrees is material. In the event that the Facility does not pass the Compliance Test, the Contractor will take actions necessary to pass such Test, including adding additional supervisors, sorting crews and equipment; providing increased training to employees; and/or following recommendations of the Independent Engineer. Contractor shall pay the costs of such actions without adjustment of the Service Fee therefor.

(2) **City Review.** The City may review the Contractor's reports to determine, among other things, whether the City agrees with Contractor's certification and conclusion. If the City does not agree or disagree within fifteen Working Days of receiving either of the Contractor's reports, then the Scheduled Operations Date shall be extended one Working Day for each day the City does not respond. If City does not agree or disagree within thirty Working Days of receiving either of the Contractor's reports, the Parties shall submit the matter to the Independent Engineer for binding determination in accordance with Section 21.01 c(1)(i).

(3) **Disputes.** If the City disagrees and Contractor and City cannot reach subsequent agreement during a fifteen Working Day period following City's providing Contractor Notice of its disagreement, the Parties shall submit the matter to the Independent Engineer for binding determination in accordance with Section 21.01 c(1)(i).

d. Service Fee for Interim Service.

(1) **Following Completion of Throughput Component.** Test Only. During the period following completion of the Throughput Component Test and prior to Operations, Contractor shall have the right to render Transfer, Transport and Disposal Services on an interim basis if Contractor asserts that it has passed the Throughput Component Test; provided that such services shall not be interpreted to be Operations. During such period, City shall pay the Transfer/Transport/Disposal portion of Contractor's Service Fee Component listed in item (4) of Exhibit 18.02d and in accordance with Section 18.02, the Regulatory Fee Component of the Service Fee in accordance with Section 18.03 and any reimbursable costs in accordance with Section 18.05 as compensation for Contractor's performance of its Performance Obligations other than Recovery, Processing, Marketing and Diversion; provided that if the Facility does not in fact pass the Throughput Component Test as asserted, within thirty days of

the determination by the Independent Engineer or otherwise of such failure, Contractor shall pay the City compensatory damages, if any, suffered by the City during such period in accordance with Section 19.01.

(2) **Following Completion of Diversion Component Test.** During the period following completion of both the Throughput Component Test and Diversion Component Test, and prior to Operations, City shall pay Contractor the Service Fee as compensation for Contractor's performance of its Performance Obligations if Contractor asserts that it has passed both the Throughput Component Test and Diversion Component Test, respectively, and Compliance Test as a whole; provided operation of the Facility shall not be interpreted to be Operations, and provided further, that if the Facility does not in fact pass the Compliance Test as asserted, within thirty days of the determination by the Independent Engineer or otherwise of such failure, Contractor shall pay the City compensatory damages, if any, suffered by the City during such period in accordance with Section 19.01.

e. **Buy-out for Failure to Meet Diversion Component Test.**

If Facility meets the Throughput Component Test but not the Diversion Component Test on or before the Scheduled Operations Date, Contractor shall pay City the damages provided in Exhibit 4.05e to compensate City for its loss of bargain with respect to Recovery, Processing, Marketing, Diversion and Residue Transport and Disposal of Commercial Waste and Neighborhood Cleanup Waste, in a lump sum amount on or before sixty days following the City's written submission to Contractor of a demand therefor. Upon payment of such damages, City's right to terminate the Amended Agreement for failure to timely and fully achieve Operations (with respect to Recovery, Processing, Marketing, Diversion and Residue Transport and Disposal) and meet Diversion Guaranties shall cease.

f. **Bonus for Early Completion.**

Following Operations, Contractor shall commence Facility Operation and the City shall pay the Service Fee in accordance with Article 18 plus a bonus for early completion, as applicable, equal to four thousand dollars ($4,000) for any day on and after the date Contractor successfully completes the Compliance Test, including both the Throughput Component and Diversion Component thereof, up to and including the Scheduled Operations Date as described in Section 4.01a(6) without accounting for any extension thereof, which amount approximately represents the City's best estimated savings for Delivering City Waste to the Facility rather than Kiefer Landfill. Any amount due hereunder shall be invoiced by Contractor on the first service fee invoice for Operations.

4.06 Development Progress Reports. Within one month following execution hereof, Contractor shall submit to City a Facility Development schedule listing CEQA, Permitting, design, Construction and Equipping, start up and Compliance Testing activities, and their inter-dependencies, duration, and starting and completion dates (the **"Facility Development Schedule").** Promptly upon City request, Contractor shall

inform the City of Facility Development status and meet with the City to discuss Facility Development status. On the first day of every second month thereafter and within ten days of City request, Contractor shall update such schedule; provide a written progress report describing commenced, on-going and completed Facility Development activities since any previous report; and compare such progress with such schedule. Contractor acknowledges that the City assumes no obligation contrary to law to issue or expedite Permits within the City's jurisdiction.

ARTICLE 5. FACILITY OPERATION AND MAINTENANCE

5.01 Operation and Maintenance Standards. Beginning on the Effective Date, Contractor covenants to comply with all Performance Guaranties throughout the Term and to perform its Performance Obligations with respect to Facility Operation hereunder in accordance with sound management and operations practice, its operations and maintenance manual, the Facility Design Requirements, its plans and specifications, Applicable Law, the provisions hereof (including Exhibit 5.01), and covenants, conditions, and restrictions pertaining to the Site.

5.02 City Right to Enter and Inspect Facility. City shall have the right, but not the obligation, to observe and inspect Facility Operations during Receiving Hours and Transport and Disposal during hours they are being conducted, upon one Working Day's notice to Contractor at a mutually agreeable time. In connection therewith, City and its representatives shall have the right to speak to any of Contractor's employees regarding official City business; provided that they shall comply with the Contractor's reasonable safety and security rules and shall not interfere with the work of the Contractor or its subcontractors. Upon City request, Contractor shall make specified personnel available to accompany City employees on inspections. Contractor shall ensure that such personnel cooperate with the City and respond to the City's inquiries.

5.03 Other Facility Users. The City acknowledges that Contractor anticipates accepting and handling substantial quantities of Merchant Waste at the Facility. However, Contractor shall nevertheless ensure the following:

(1) Contractor timely meets its Performance Obligations hereunder, including the Vehicle Turnaround Guaranty;

(2) Contractor demonstrates, to satisfaction of City expressed by City's written consent, that Contractor can and will either segregate City Waste or deliver all waste to the Primary Disposal Facility and/or Alternate Disposal Facility in accordance with Article 12 below and use best efforts to establish operating procedures and administrative records to accurately provide weight and any other data necessary to measure compliance with Performance Guaranties hereunder, Diversion of Commercial Waste and Neighborhood Cleanup Waste, and computation of the Service Fee.

(3) City is a most favored customer as provided in Section 18.04, unless City in its sole discretion consents otherwise.

ARTICLE 6. WASTE DELIVERY AND ACCEPTANCE

6.01 Delivery and Acceptance of Permitted Waste.

a. **Delivery and Acceptance.** City shall deliver, or cause to be delivered pursuant hereto, all City Waste to the Facility. Contractor shall accept at the Facility Selfhauler Waste and Permitted Waste, and, on a first priority basis, all City Waste, subject to rejection rights in subsection b; provided that Contractor shall allow Persons identified in Exhibit 7.03 to enter the Site and deliver Household Hazardous Waste to the Household Hazardous Waste Center in accordance with Article 7. Contractor acknowledges that City entered into this Amended Agreement with Contractor for reasons including securing City protection from environmental liability for disposal, and City is concerned that if City Waste is mixed with other waste that is disposed of at facilities other than Disposal Facilities designated pursuant to Article 12, City may be exposed to liability for which it is not indemnified under a Disposal Subcontract. Consequently, Contractor agrees to either accept and Transfer, Transport, and Dispose of City Waste and Residue separately and apart from Merchant Waste and Selfhaulers Waste, or Contractor shall also dispose of Merchant Waste and Selfhaulers Waste at Disposal Facilities designated pursuant to Article 12. Contractor shall not discriminate in the use of the Facility on account of race, color, national origin, ancestry, religion, sex, marital status, or disability.

b. **Rejection.** Notwithstanding the foregoing subsection a, the Contractor may refuse to accept:

(1) Unpermitted Waste, and also

(2) City Waste that is:

(i) **Outside Receiving Hours:** delivered at times other than Receiving Hours or at any other mutually agreed upon times;

(ii) **Above Throughput Guaranty:** comprised of City Waste delivered in excess of the amount provided in the Throughput Guaranty;

(iii) **Due to Uncontrollable Circumstances:** delivered if the Facility is partially or completely closed due to Uncontrollable Circumstances;

provided Contractor shall use Reasonable Business Efforts to accept City Waste outside receiving hours or above the Throughput Guaranty in accordance with Sections 6.03c and 6.04.

If the Contractor wrongfully rejects such waste delivered in accordance with subsection a above, it shall pay damages in accordance with Section 19.01b.

c. **Screening and Removal of Unpermitted Waste.** The Contractor shall not accept Unpermitted Waste at the Facility or Site or store Hazardous Waste at the Facility or Site except for storage in the manner and for the time permitted by Applicable Law pending pickup, transportation, and disposal thereof in accordance with Applicable Law and except for Household Hazardous Waste Delivered to the Household Hazardous Waste Center. Contractor shall implement its Unpermitted Waste exclusion program attached as Exhibit 6.01c in accordance with Applicable Law, including video camera filming of disposal on the tipping floor with record of the date and time thereof and film resolution sufficient to read identification markings on vehicles, in order to attempt to prevent acceptance of Unpermitted Waste at the Facility.

The Contractor shall inspect all vehicles in accordance with such exclusion program. Contractor shall reject any Unpermitted Waste discovered in vehicles or during tipping thereof and require that all Persons remove such Unpermitted Waste from the Facility. If the Contractor reasonably determines that it is impracticable to remove such items, then the Contractor may deem the entire load to comprise Unpermitted Waste and shall have the right to refuse to accept the entire load.

d. **Inadvertently Accepted Unpermitted Waste.**

(1) **Delivery.** If the Contractor inadvertently accepts delivery of Unpermitted Waste that the Household Hazardous Waste Center is permitted to accept and handle, Contractor shall deliver such Unpermitted Waste to the Household Hazardous Waste Center and pay the charges from time to time in effect therefor **("Unpermitted Waste Handling Fees"),** except as provided in subsection (2) below. If the Contractor inadvertently accepts delivery of Unpermitted Waste that the Household Hazardous Waste Center is not permitted to or does not accept and handle, Contractor shall deliver such Unpermitted Waste to a third party which is permitted to accept and handle such Unpermitted Waste in accordance with Applicable Law and Contractor shall pay such party the charges in effect therefor **("Third Party Unpermitted Waste Handling Fees").**

(2) **Unpermitted Waste Handling Fees.** Contractor shall use Reasonable Business Efforts to determine who delivered such Unpermitted Waste to the Facility and to collect payment from such Person for the Unpermitted Waste Handling Fees.

(i) ***City-Delivered Unpermitted Waste.*** If Contractor determines that City delivered such Unpermitted Waste and City reasonably agrees, Contractor shall not be obligated to pay to City the Unpermitted Waste Handling Fees therefor and City shall pay the appropriate third party any Third Party Unpermitted Waste Handling Fees therefor or reimburse Contractor therefor.

(ii) ***Undetermined-Delivered Unpermitted Waste.*** If Contractor cannot so determine who delivered such Unpermitted Waste or City and Contractor cannot mutually agree that City delivered such Unpermitted Waste, City shall pay for the first thirty-five thousand dollars ($35,000) of Unpermitted Waste Handling Fees incurred therefor, including:

(A) Unpermitted Waste Handling Fees incurred by the Contractor in each Contract Year over and above any Unpermitted Waste Handling Fees City may incur with respect to Unpermitted Waste delivered by the City, and

(B) Third Party Unpermitted Waste Handling Fees paid by the City in each Contract Year over and above any Third Party Unpermitted Waste Handling Fees City may incur with respect to Unpermitted Waste delivered by the City, but Contractor shall thereafter be obligated to pay to City all Unpermitted Waste Handling Fees in excess of such thirty-five thousand dollars ($35,000).

e. Privatization of City Collection.

If subsequent to the date hereof City no longer municipally collects all or a portion of City Waste with City employees, City shall cause to be delivered such City Waste to the Facility by requiring private haulers with which City may contract to deliver such City Waste to the Facility. Upon request, the Contractor shall defend the City at Contractor's expense against any claims of third parties challenging the right of the City to direct such City Waste to the Facility as described above. If such private haulers bill, charge, and/or collect fees directly from former City customers, upon City direction Contractor shall charge and collect from such haulers tip fees equal to the Service Fee and upon delivery of such City Waste Contractor shall credit all tonnage of City Waste delivered by such haulers for purposes of calculation of the Minimum Contractor's Service Fee Component. City shall not be liable to Contractor for payment of such hauler tip fee amounts and Contractor shall have the right to enforce payment of such amounts directly from such private haulers. Notwithstanding the foregoing, the Contractor shall have the right to refuse deliveries from such private haulers for violation of Contractor's rules governing deliveries to the Facility or for failure to pay the tip fees charged to such private hauler by Contractor in a timely manner, pursuant to Contractor's payment and credit policies. The Contractor shall give written notice to City of all such refusals within two business days of such refusal.

f. During any Contract Year or portion thereof until the date the County's Kiefer Landfill becomes the Primary Disposal Facility, the City may divert up to twenty-five thousand (25,000) tons per year of City Waste that would otherwise be delivered to the Facility pursuant hereto to the County's NARS facility, provided the County is delivering at least an equivalent amount of Permitted Waste to the Facility. If Kiefer Landfill becomes the Primary Disposal Facility in the middle of a Contract Year, allowed deliveries to NARS will be prorated based on the number of months during such Contract Year that Lockwood is the Primary Disposal Facility. After Kiefer Landfill becomes the Primary Disposal Facility, the City may divert up to forty thousand (40,000) tons as provided in

this subsection f, prorated for any partial Contract Years based on the number of months during such Contract Year that Kiefer Landfill is the Primary Disposal Facility, provided the County is delivering at least an equivalent amount of Permitted Waste to the Facility.

(1) Other than for reasons of Contractor breach or default of the above referenced Contractor/County Transfer Agreement, if such deliveries by the County to the Facility during a Contract Year are less than the amount of City Waste delivered by the City to NARS during the same Contract Year, subsequent to the end of the Contract Year, Contractor shall so notify City in writing including sufficient documentation to establish such shortfall. Within sixty (60) days of notification by Contractor, City shall pay Contractor an amount equal to the number of tons of City Waste so delivered during the prior Contract Year minus the number of tons of County Waste delivered to the Facility during the prior Contract Year pursuant to the Contractor/County Transfer Agreement multiplied by $15.00 per ton, which amount shall be increased at the end of each year by the percentage by which the Service Fee has been escalated pursuant hereto for the most recent Contract Year.

(2) If during any Contract Year, Contractor reasonably believes that County deliveries to the Facility otherwise required hereunder are, or are likely to amount to, a shortfall of 5,000 tons or more for that Contract Year, it shall notify the City and the County.

6.02 Vehicle Turnaround Guaranty. Contractor shall ensure that no vehicles queue on the public streets. Contractor further guarantees (the **"Vehicle Turnaround Guaranty")** that each City Vehicle is able to unload and exit the Facility within fifteen minutes of entering the Site, absent City Vehicle breakdown or driver negligence or lack of cooperation; provided that Contractor shall provide a parking area for City Vehicles adjacent to the Site exit where Contractor will permit City drivers to park City Vehicles and use bathroom facilities or make telephone calls on telephones that Contractor shall make available to City drivers, in which event the time that such City drivers are parked in such area shall not be included in the measurement of the Vehicle Turnaround Guaranty. Contractor shall allow City drivers to call their supervisors without charge. From time to time and upon City request, Contractor shall keep and maintain a log of the time it takes for City Vehicles to unload, including manually observing and logging entrance and exit times, in order to determine compliance with the Vehicle Turnaround Guaranty, and City may do so itself. If either Party disputes any such determination, it may retain the Independent Engineer at its own cost and expense to review such logs and/or to keep its own log for no less than one week and make a binding determination with respect thereto in accordance with Section 21.01.c(1)(iii).

The Parties acknowledge that consistent, efficient Facility Operation is of utmost importance to the City; City Vehicles' delays in unloading at the Facility increase hauling costs; and the City has considered and relied on Contractor's representations as to its quality of service commitment in entering into this Amended Agreement. The Parties

further recognize that quantified standards of performance are necessary and appropriate to ensure consistent and reliable service. The Parties further recognize that if Contractor fails to meet the Vehicle Turnaround Guaranty, City and its residents will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of such damages. Therefore, the Parties agree that the following liquidated damages represent a reasonable estimate of the amount of such damages, considering all of the circumstances existing on the date hereto, including the relationship of the sums to the range of harm that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. In signing this Amended Agreement, each Party specifically confirms the accuracy of the statements made above and the fact that each Party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Amended Agreement was made.

If upon Notice from the City that Contractor has breached the Vehicle Turnaround Guaranty, Contractor agrees to pay (as liquidated damages and not as a penalty) fifty dollars ($50.00) for each breach up to thirty minutes, one hundred dollars ($100.00) for each breach lasting thirty or more minutes but less than one hour, and two hundred fifty dollars ($250.00) for each breach lasting one hour or more; provided Contractor shall not be obligated to pay such liquidated damages for the first five breaches of the Vehicle Turnaround Guaranty in each calendar month. Contractor further agrees that these amounts may be offset by City from payments to Contractor by City in accordance with Section 18.07.

_____

Contractor

_____

City

6.03 Receiving Hours.

a. **Delivery.** Contractor shall accept City Waste Delivered to the Facility from 5:00 a.m. to 5:00 p.m. Monday through Friday and from 8:00 A.M. to 5:00 p.m. Saturday, and Selfhaulers Waste no less than from 5:00 a.m. to 5:00 p.m. Monday through Friday and 8:00 a.m. to 5:00 p.m. Saturday, or such other times as the Parties may mutually agree **("Receiving Hours")** and weigh it in accordance with Section 6.05.

b. **Visitor Education Center.** Beginning on the Effective Date, Contractor shall provide the City access to the Visitor Education Center for use by the City during Receiving Hours, at mutually agreeable times, upon advance Notice of at least one Working Day. Upon request of the City and reasonable notice (three Working Days, if possible) Contractor shall deliver visitor presentations on source reduction, recycling and solid waste management and provide tours of the Facility. A City representative may accompany the tour and provide additional commentary.

c. **Overtime.** Upon request of the City no less than one day in advance or any other mutually agreed time period, or in event of Emergencies, as soon as possible using Reasonable Business Efforts, Contractor shall accept City Waste and Selfhaulers Waste at times other than Receiving Hours. Contractor may charge City for the Direct Costs of Incremental Overtime Wages in accordance with Section 18.05.

6.04 Throughput Guaranty. Beginning on the Operations Date, Contractor shall accept, Transfer, Transport, Dispose, Recover and Process, as the case may be, delivered (1) City Waste in amounts at a minimum equal to 600 Tons per weekday, Monday through Friday and 60 Tons each Saturday, and (2) all Selfhaulers Waste (the **"Throughput Guaranty"**), subject to the maximum permitted capacity of the Facility and Contractor's obligation to accept City Waste. As part of such Throughput Guaranty, Contractor agrees to transfer all City Waste (other than Recovered Materials), including Selfhaulers Waste, and Residue, off the Facility tipping floor at the close of each day's operations, off-Site within forty-eight (48) hours' receipt thereof, and in accordance with Applicable Law (including the Report of Station Identification). Contractor will use Reasonable Business Efforts to transfer all such waste off-Site within twenty-four (24) hours and to accept, Transfer, Transport, Dispose, Recover and Process, as the case may be, delivered City Waste and Selfhaulers Waste in amounts in excess of the Throughput Guaranty, including all peaks in such delivery during certain hours of the day, days of the week and seasons and during Emergencies, at a cost no greater than the Service Fee, but if it cannot do so using Reasonable Business Efforts, it may charge the City the Direct Costs of Incremental Overtime Wages incurred handling such City Waste and Selfhaulers Waste in excess of 110% of the Throughput Guaranty in accordance with Section 18.05. Contractor shall increase the Throughput Guaranty annually as of the first day of each Contract Year in accordance with Exhibit 6.04.

6.05 Weighing.

a. **Installation, Operation and Maintenance.** The Contractor shall install and maintain State certified motor vehicle scales in accordance with Applicable Law and acceptable to the City and establish tare weights for City Vehicles so that such City Vehicles do not have to be weighed each time they exit the Facility; provided, that roll-off container trucks may be weighed each time they exit the Facility. From time to time and upon City request, such information, including weight and outgoing destination, as applicable, shall be downloaded daily and transmitted electronically to the City computer system and recorded in form satisfactory to the City. Contractor shall check and confirm tare weights within two Working Days of City request therefor.

In the event of dispute over tare weights, either Party may request binding determination thereof by the Independent Engineer in accordance with Section 21.01 c(1)(iv). City Vehicles shall be assigned a number by City for weighing purposes.

Upon commencement of Start-up, Contractor's licensed weigh master shall weigh at the Facility scalehouse all materials entering and exiting the Facility, any time of the day or

night. City may observe such weighing operations. The City and its representatives shall have reasonable access to the Facility scalehouse at all times it is open or in use.

b. **Substitute scales.** To the extent practicable, if any scale is inoperable, being tested or otherwise unavailable, Contractor shall weigh all vehicles on the remaining operating scales. Contractor shall exercise due diligence in replacing or repairing the inoperable scales. To the extent that all the scales are inoperable, being tested, or otherwise unavailable, the Contractor shall substitute portable scales until the permanent scales are replaced or repaired.

c. **Estimates.** Pending substitution of portable scales or during power outages, the Contractor shall estimate the quantity of Permitted Waste being delivered to the Facility and Permitted Waste (including residue) being transported from the Facility, on the basis of delivery truck and transfer trailer volumes, tare weight, landfill and/or processing and composting facility weight records, and data obtained through historical information. These estimates shall take the place of actual weighing and shall be the basis for records while scales are inoperable. Contractor shall not estimate the weights of Recovered Materials.

d. **Testing.** The Contractor shall test and calibrate all scales in accordance with Applicable Law. Contractor shall promptly provide the City with copies of all test results upon conclusion thereof. The Contractor shall further test and calibrate any or all scales upon written request therefor by the City, within three days of such request. If such test results indicate that the scale or scales complied with Applicable Law, the City will reimburse the Contractor the Direct Costs of such tests. If such test results indicate that the scale or scales did not comply with Applicable Law, the Contractor will bear the costs thereof and Contractor shall at its own cost adjust and correct, consistent with the results of such test, all weight measurements recorded and Service Fees calculated, charged and paid, as the case may be, from the date of such request.

e. **Records.** Contractor shall maintain weigh records in accordance with Section 14.01a and its protocol attached as Exhibit 6.05e, including Permitted Waste accepted and handled at the Facility generally and categories of Residential Waste, Commercial Waste, Neighborhood Cleanup Waste, Selfhaulers Waste, White Goods, Brown Goods, Yard Waste, and Construction and Demolition Waste specifically.

6.06 Selfhaulers.

a. **Fees.** Contractor acknowledges that in entering into this Amended Agreement the City intends to continue the County's long-standing commitment to providing inexpensive and low cost disposal options for Selfhaulers for reasons including discouraging illegal dumping. In accordance with such acknowledgment and understanding Contractor agrees to charge Selfhaulers no more than reasonable fees in the amounts described in Exhibit 6.06a, which Contractor shall update by Notice to City promptly upon any changes thereto. For the purposes of this paragraph, while the Contractor may set and adjust such fees in its sole reasonable discretion, the parties

agree that such fees will be deemed "reasonable" if the annual percentage increase in such fees from the date of this Amended Agreement is no greater than the corresponding annual percentage increase in the Service Fee otherwise determined hereby.

b. **Litter.** Contractor shall establish programs to encourage Selfhaulers to prevent litter while delivering Selfhaulers Waste. By way of illustration, such program might include rate rebates for Selfhaulers who deliver Selfhaulers Waste in vehicles covered with tarps and sale of tarps to Selfhaulers at prices no greater than Contractor's Direct Costs. Such programs shall be designed to achieve substantially litter-free Deliveries within six months of the Effective Date, but Contractor shall be obligated only to use Reasonable Business Efforts to implement such programs.

c. **Traffic.** Contractor shall segregate commercial vehicles from Selfhaulers' vehicles (including users of the Household Hazardous Waste Center and Buyback/Dropoff Center) while tipping Selfhaulers Waste. Contractor will provide maps to Selfhaulers indicating public Site entrances and delivery routes preferred by City.

DIVISION III. MATERIALS DIVERSION

ARTICLE 7. HOUSEHOLD HAZARDOUS WASTE CENTER

7.01 Obligations of the Parties. The Parties agree to implement the provisions of Exhibit 7.01, which sets forth their agreement relating to the Household Hazardous Waste Center.

ARTICLE 8. MRF OPERATIONS

8.01 Recovery and Processing Protocol. Contractor shall Recover and Process Neighborhood Cleanup Waste, Commercial Waste and White Goods Delivered to the Facility, and use Reasonable Business Efforts to Recover and Process Brown Goods, Construction and Demolition Waste and Yard Waste Delivered to the Facility, substantially in accordance with the protocol attached as Exhibit 8.01 and in amounts sufficient, at a minimum, to meet Diversion Guaranties.

8.02 Diversion Guaranties. City states and Contractor acknowledges that City entered into this Amended Agreement with Contractor in order to achieve compliance with AB 939 and implementing Ordinances No. 1 and No. 2, and acknowledges that Contractor's meeting the following Diversion Guaranties are critical in achieving such compliance. The provisions of this Section 8.02 shall apply unless the Contractor has paid the liquidated damages for failure to pass the Diversion Component Test as provided in section 4.05(e) and Exhibit 4.05(e)(1).

Contractor further acknowledges that City's Commercial Waste contains high relative percentages of garbage and putrescible materials. Contractor hereby assumes the risk of Recyclable Materials content with respect to Neighborhood Cleanup Waste and Commercial Waste. Compliance with Diversion Guaranties shall not be preconditioned on waste characterization or the relative presence or absence of Recyclable Materials in Neighborhood Cleanup Waste and Commercial Waste, or cleanliness or contamination thereof. Except as otherwise provided in Section 8.02.b, Contractor shall not seek amendment of such Diversion Guaranties, excuse from noncompliance therewith, or adjustment of the Service Fee for failure to meet such Recovery Guaranties due to composition of any Permitted Wastes.

a. **Neighborhood Cleanup Waste Diversion Guaranty.** Beginning on the Effective Date, Contractor guaranties to Divert Neighborhood Cleanup Waste Delivered to the Facility in amounts at least equal to fifty percent (50%) by weight of such Neighborhood Cleanup Waste (the **"Neighborhood Cleanup Waste Diversion Guaranty"**).

b. **Commercial Waste Diversion Guaranty.** Beginning on the Effective Date, Contractor guaranties to Divert Commercial Waste Delivered to the Facility in amounts at least equal to thirty percent (30%) by weight of such Commercial Waste (the **"Commercial Waste Diversion Guaranty"**).

The Parties agree that if the delivery of Commercial Waste tons to the Facility materially increases for reasons described in Section 6.01.e or for any other reason, the Contractor's current facilities and operations may not allow it to meet the Commercial Waste Diversion Guaranty given the materially increased tonnage. In such event, the Contractor shall have the right to request a modification of the Commercial Waste Diversion Guaranty. Upon such request, the parties shall meet and confer on a reasonable basis to consider such modification including the need for new facilities, equipment or personnel, if any, to handle the increased tonnage and Diversion requirements. If the parties fail to agree on such modification, the matter shall be submitted to the Independent Engineer for binding dispute resolution pursuant to Article 21 hereof, limited to the extent of modifying the percentage of diversion applicable to the Commercial Waste Diversion Guaranty.

c. **Calculation of Guaranties.** Contractor will calculate and measure compliance with the Neighborhood Cleanup Waste Diversion Guaranty and Commercial Waste Diversion Guaranty in accordance with Exhibit 8.02c monthly and report thereon in accordance with Exhibit 14.01b. As permitted by Applicable Law, including as of the date hereof Section 2-18(f) of Ordinance No. 2, for purposes of calculating compliance with the Commercial Diversion Guaranty Contractor may aggregate Tons of Commercial Waste and Residue therefrom with commercial Merchant Waste and residue therefrom. Contractor may further take into account the aggregate Tons of Commercial Waste disposed of at transformation facilities to the extent allowed in accordance with Section 9.01.b and commercial Recyclable Materials covered under other agreements between the City and the Contractor, including, without limitation, under the Amended Recycling Agreement.

d. **"Divert".** For purposes of this Amended Agreement, "Divert" means to divert from landfill disposal through recycling and composting activities within the meaning of Section 41780 of the California Public Resources Code, including to the extent allowed by Applicable Law incineration, pyrolysis, distillation, gasification or biological conversion in addition to composting. "Recycling" means the process of sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products that meet the quality standards necessary to be used in the marketplace.

8.03 Additional Materials Recovery.

a. **White Goods.** Contractor shall accept delivered used appliances including refrigerators, freezers, dishwashers, washers, and driers, commonly referred to as white goods **("White Goods").** Contractor shall handle, Recover, Process and Market (or may sub-contract with a third Person to do so) such White Goods in accordance with Applicable Law and the protocol attached as Exhibit 8.01. Contractor may seek reimbursement from the City for Contractor's Direct Costs of up to fifteen dollars ($15.00) per refrigerator or freezer (1) for up to one refrigerator or freezer delivered by a Selfhauler in any vehicle in a single delivery, and (2) for all refrigerators or freezers delivered by the City as part of Neighborhood Cleanup Waste. In the event that a third party is collecting such White Goods under agreement with the City, the City shall cause said third party to report the diversion of such materials to the City and the City shall credit such diversion to Contractor under the then in effect Commercial Waste Diversion Guaranty.

b. **Brown Goods, Construction and Demolition Debris, Yard Waste.** Contractor shall use Reasonable Business Efforts to Recover from City Waste, Process and Market audio equipment, microwave ovens, etc., commonly called brown goods **("Brown Goods"),** Construction and Demolition Debris, and Yard Waste.

c. **Other Recyclable Materials.** Contractor shall use Reasonable Business Efforts to operate the Facility for Recovery and Processing of additional materials as new recycling markets, processes, and technologies develop.

8.04 Removal of Residue. Contractor shall transfer Residue from the Facility to transfer trucks or otherwise provide for the timely removal of Residue in accordance with the Throughput Guaranty.

8.05 Processing Source Separated Recyclable Materials from City Residential Waste. Contractor and City are parties to the Amended Recycling Agreement for the sorting, recovery, processing, and marketing services for, among other things, source separated Recyclable Materials collected by the City at curbside or other designated set-out place as part of its Residential Waste collection program. Recovery of such additional source separated Recyclable Materials from Residential Waste shall not be

accounted for in calculating Contractor's compliance with its Diversion Guaranties with respect to Commercial Waste and Neighborhood Cleanup Waste hereunder.

8.06 Buyback/Dropoff Center. Beginning on the Effective Date the Contractor shall accept Recyclable Materials Delivered to the Buyback/Dropoff by Selfhaulers during Receiving Hours and Recover, Process, Market and Divert such materials. Contractor shall also so accept all White Goods and Brown Goods in accordance with Section 8.03. Contractor shall establish and post at the Buyback/Dropoff Center prices, if any, to be paid for the Recyclable Materials, and shall pay such prices to haulers upon Delivery thereof.

ARTICLE 9. RECOVERED MATERIALS MARKETING.

9.01 Marketing.

a. **Obligations.** Commencing on the Effective Date, Contractor shall Market Recovered Materials; provided, however, that as long as Contractor is in compliance with its Diversion Guaranty hereunder, it shall only be required to use Reasonable Business Efforts to Market additional Recovered Material.

b. **Certificate of End Use; "Transformation".** To the extent practicable, Contractor shall obtain a certification of end use from the purchaser of Recovered Materials establishing that the Recovered Materials have been, in fact, recycled, re-used or otherwise diverted from disposal. Contractor shall not permit Recovered Materials to be incinerated, pyrolized, distilled, gasified, biologically converted other than being composted, or otherwise subjected to transformation as defined in Section 40201 of the California Public Resources Code except to the extent permitted by Applicable Law with respect to waste diversion. However, in the event that the Act is amended to allow greater credits for transformation of Recovered materials, and if then-current City policy so provides, Contractor may engage in transformation activity to the extent allowable by the Act and City policy.

c. **Maintaining Records.** Contractor shall maintain complete, accurate and detailed Marketing records, including Tonnage, in accordance with Section 14.01.

9.02 No Warranties. Contractor shall not make any warranties or representations regarding Recovered Materials unless specifically authorized by the City; provided, Contractor may make warranties required by Applicable Law, such as the warranty as to removal of Freon and PCBs. If directed to do so by City, Contractor shall include in all sales contracts a disclaimer of warranties, including warranties of merchantability and fitness. The Contractor shall indemnify the City for damages in connection with Marketing in accordance with Section 16.02.a(5).

9.03 Marketing Incentives.

a. **Avoided Disposal Costs.** As an incentive to exceed its Diversion Guaranties, Contractor may retain any costs of providing for Disposal of City Waste and Residue that are avoided through Contractor's Recovery, Processing, Marketing, and Diversion of Recovered Materials.

b. **No Revenue Sharing with City.** Furthermore, Contractor shall not be obligated to share any revenues it receives from the sale of Recovered Materials with the City but may keep one hundred percent (100%) of such revenues for its own account; provided, that if City proposes to collect new and/or additional Recyclable Material and identifies or develops a market therefor, it may propose to Contractor a revenue sharing option with respect to revenues received from the sale of such Recyclable Material, including additional marketing information to be kept in accordance with Section 14.01.a and reports thereof in accordance with Section 14.01.b.

DIVISION IV. WASTE AND RESIDUE TRANSFER AND TRANSPORTATION

ARTICLE 10. CITY WASTE TRANSFER

10.01 Transfer.

a. **Containers**. Contractor shall make ready and available Containers at the Facility (or stored off-Site at Contractor's expense) at the times and in the amounts necessary to load all City Waste Delivered to the Facility and Residue for Transfer in accordance with the Vehicle Turnaround Guaranty and Throughput Guaranty (the "Transfer Guaranty"). Contractor shall acquire, supply, operate, maintain, repair, and replace Containers at its own cost and expense.

b. **Transfer Protocol.** Contractor shall transfer such City Waste substantially in accordance with the protocol attached as Exhibit 10.01b.

ARTICLE 11. CITY WASTE AND RESIDUE TRANSPORTATION

11.01 Transportation.

a. **Transport Guaranty.** Contractor shall Transport Containers loaded in accordance with Section 10.01 from the Facility to the Disposal Facility designated pursuant to Section 12.02, and return such unloaded Containers to the Facility with sufficient regularity and frequency to maintain Container availability in accordance with Section 10.01 and comply with Applicable Law, including limitations on the storage of Permitted Waste (the "Transport Guaranty"). Contractor shall minimize storage of Permitted Waste at the Transfer Station and avoid creation of any nuisance.

b. **Means.** The Parties acknowledge that Contractor intends to provide such transportation services by means of truck (**"Primary Transportation"**), but if the

Primary Disposal Facility (or Alternate Disposal Facility if such Alternate Disposal Facility is then in use) is not located within 150 miles of the Facility, and Contractor is unable for any reason to transport Containers with such regularity and frequency using Primary Transportation, then Contractor shall provide such transportation services at no extra cost or expense to the City by means of rail (**"Back-up Transportation"**). In such event, Contractor shall notify the City orally, followed by Notice, of the reasons for using Back-up Transportation and the expected duration thereof. Provided that the Primary Disposal Facility is available for use as provided in Section 12 hereof, nothing in this Amended Agreement shall excuse Contractor's obligation to transport Containers from the Transfer Station to the Primary Disposal Facility except for Uncontrollable Circumstances that render both Primary Transportation and Back-up Transportation unavailable. Contractor shall comply with the transportation protocol contained in Exhibit 11.01b, including manifest documentation systems, bills of lading, and routes.

c. **Scheduling.** In order to minimize traffic mitigation costs identified and adopted as project conditions in accordance with Section 4.02, Contractor will schedule truck Transport outside the prevailing peak commuter travel times within the City, which Parties agree shall be 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., Monday through Friday or other times aggregating no greater than four hours as directed by the City, if such Transport is routed on streets or through intersections identified by the City at City's sole discretion for reasons related to traffic congestion. After Kiefer Landfill becomes the Primary Disposal Facility, the Company shall use Reasonable Business Efforts to comply with the requirements of this subsection c.

d. **Routing.** City may reasonably direct the Contractor's route within a two mile radius of the Site.

11.02 Litter Prevention. Contractor shall enclose, cover, and/or seal all Containers as necessary to contain all Permitted Waste, Residue and residue from Merchant Waste and to prevent spilling or scattering during Transportation thereof. If any material is spilled or scattered, whether on private or public property, Contractor shall clean it up within twenty-four (24) hours. Contractor shall remove all litter on streets, sidewalks, and all public property within 1200 feet of the Site along each adjoining street at a minimum at the close of Receiving Hours daily or as frequently as necessary to comply with this Section. If Contractor does not clean up spilled or scatter materials, litter and debris, City will notify Contractor by telephone, followed by Notice, and if Contractor does not clean up such spilled or scattered materials, litter, and debris within twenty-four hours following such telephonic Notice, City may do so and City may offset City's Direct Costs therefor in accordance with Section 18.07.

11.03 Vehicle Parking, Fueling and Maintenance. Contractor may park, fuel, maintain and repair vehicles for Transportation in the parking area on Site; provided Contractor shall ensure that such vehicles do not interfere with or pose any hazard to City Vehicles or Selfhauler's vehicles.

11.04 Contractor Transport Permits. Contractor shall secure and maintain all Permits required for Transport by Applicable Law. Contractor shall supply the City with copies of any such Permits (including prior Permits, current Permits or renewals thereof) promptly upon request.

DIVISION V. CITY WASTE AND RESIDUE DISPOSAL

ARTICLE 12. DISPOSAL SERVICES

12.01 Disposal Guaranty. Contractor shall unload Containers Transported from the Facility and dispose of the contents thereof at disposal facilities designated pursuant to this Article 12 (a **"Disposal Facility"**) with sufficient regularity and frequency to return Containers to the Facility and maintain Container availability in accordance with the Transfer Guaranty (the **"Disposal Guaranty"**) and Section 12.03.

12.02 Primary Disposal Facility.

a. **Designation.** It is expressly the intention that, except as otherwise specifically and expressly stated herein, the designation of a Disposal Facility shall be made by Contractor, and City shall have no legal or other responsibility for the designation or selection thereof, and that nothing in this Amended Agreement shall be construed to mean otherwise.

(1) **Primary Subcontractor.** Parties acknowledge that in order to meet the Disposal Guaranty and meet its Performance Obligations with respect to disposal, Contractor has negotiated and entered into a subcontract in substantially the same form as the agreement attached to Exhibit 12.02 to provide for disposal services at Lockwood Landfill, Sparks, Nevada, which was previously approved by the Sacramento City Council (the **"Primary Disposal Facility"**). Such subcontract and any future contracts or subcontracts for use of a new Primary Disposal Facility designated pursuant to this Article 12 shall be termed the **"Primary Disposal Subcontract"** and any agreement to use either the Primary Disposal Facility or an Alternate Disposal Facility shall be termed a **"Disposal Subcontract."** Contractor shall be and remain solely responsible hereunder and liable for complying with its Disposal Guaranty and meeting its Performance Obligations.

(i) **Capacity.** Contractor acknowledges that City has entered into this Amended Agreement with Contractor for reasons including securing disposal services at the lowest possible cost consistent with public health and safety. Consequently, Contractor warrants that the Primary Disposal Subcontract in effect as of the execution of this Amended Agreement provides capacity currently permitted in accordance with Applicable Law sufficient, at a minimum, to meet Contractor's Disposal Performance Obligations under this Amended Agreement, in no event less than the sum of the aggregate Throughput Guaranty Tonnage for weekdays and Saturdays during each Contract Year remaining prior to the expiration of the Term of the Amended Agreement

as of any given date, plus disposal of all other Permitted Waste transferred from the Facility in the event that Contractor does not segregate the handling of City Waste in accordance with Article 6 of this Amended Agreement. In any future Primary Disposal Subcontract, Contractor shall obtain such a warranty from the owner and/or operator of the Disposal Facility unless such new Primary Disposal Subcontractor shall be the County of Sacramento. Notwithstanding the provisions of this subsection, if the City shall direct the Contractor to use a different Disposal Facility as provided in Section 12.03 hereof, the Contractor is released from any warranties and guarantees described in this subsection 12.02.a(1)(i).

(ii) **Subcontract Enforcement.** Contractor will use best efforts to enforce the terms and provisions of any Disposal Subcontract. It agrees that it shall not waive any breaches or defaults that may cause a threat to health and safety or arising from a failure by the subcontractor to operate pursuant to Applicable Law without City consent, given in City's sole discretion. Other than in cases where the Contractor is allowed pursuant to this subsection (ii) to waive and has waived a breach or default by subcontractor, in the event that Contractor and City disagree on enforcement of the Disposal Subcontract they shall abide by the enforcement provisions specified in the Disposal Subcontract.

(2) **Contractor Designation of Alternate Disposal Facilities.** Contractor has designated alternate disposal facilities ("**Alternate Disposal Facilities**") that are named in Exhibit 12.02.b and may, from time to time, by Notice to City, add subject to City approval exercised in good faith and not unreasonably withheld, or delete given in City's sole discretion, such Alternate Disposal Facilities. Upon termination of the Primary Disposal Subcontract for any reason including but not limited to default thereunder, Uncontrollable Circumstances, or otherwise, or closure of the Primary Disposal Facility, the Contractor shall dispose of City Waste at the Alternate Disposal Facilities of its choice as further provided in subsection 12.02.b below.

b. Change in Designation.

(1) **Use of the County's Kiefer Landfill as the Primary Disposal Facility.** The Parties intend that the County's Kiefer Landfill shall, upon termination of the Primary Disposal Subcontract with Lockwood Landfill, become the Primary Disposal Facility. The Parties acknowledge that deliveries of City Waste pursuant to the Primary Disposal Subcontract with Lockwood Landfill cannot be terminated voluntarily by Contractor until the date that is two (2) years (the "Lockwood Termination Date") from the date that the Primary Disposal Subcontractor receives written notice from Contractor of Contractor's intent to so terminate pursuant to the terms of the Primary Disposal Subcontract. The Contractor shall give such termination notice within ten (10) business days after satisfaction or waiver of conditions precedent 1 through 4 set forth in Section 1.07.a of this Amended Agreement. Upon the Lockwood Termination Date, Kiefer Landfill shall become the Primary Disposal Facility. In no event shall this subsection be construed so as to cause or require the Contractor to: (i) breach any term of the

Primary Disposal Subcontract in effect as of the execution hereof with the Lockwood Landfill (provided, however, that nothing in this subsection 12.02.b(1) shall prevent the Contractor and the City from negotiating with the Lockwood Landfill for the termination of the Primary Disposal Subcontract prior to the Lockwood Termination Date, or other arrangements satisfactory to the parties, for use of the Kiefer Landfill before the Lockwood Termination Date); or (ii) enter into the Contractor/County Transfer Agreement and/or the Kiefer Disposal Agreement. If Contractor does not provide notice to the Lockwood Landfill of its intent to terminate the Primary Disposal Subcontract within ten (10) business days after satisfaction or waiver of conditions precedent 1 through 4 set forth in Section 1.07(a) of this Amended Agreement, this Amended Agreement shall be void and the parties shall operate in accordance with the terms of the Service Agreement, as amended by the First Amendment, Second Amendment, and Third Amendment.

(2) **Contractor Voluntary Designation of New Primary Disposal Facility.**
If the Primary Disposal Facility is not Sacramento County's Kiefer Landfill, Contractor may indicate its desire to designate an Alternate Disposal Facility as the Primary Disposal Facility by Notice to City for any reason, including in order to reduce the Service Fee either due to a decreased Disposal tipping fee and/or shorter Transport distance. Upon City approval of a new Primary Disposal Contract with the former Alternate Disposal Facility, the Contractor shall execute such new Primary Disposal Contract and thereafter such Alternate Disposal Facility shall become the Primary Disposal Facility.

If the Primary Disposal Facility is Sacramento County's Kiefer Landfill, Contractor shall obtain City approval, in the City's sole discretion, prior to designating an Alternate Disposal Facility as the Primary Disposal Facility.

(3) **Contractor Use and Designation of Alternate Disposal Facility.**

(i) Contractor shall use one or more of the Alternate Disposal Facilities (A) if the Primary Disposal Facility is unavailable for any reason, including an event of Uncontrollable Circumstances or Default by the Primary Subcontractor, or (B) if despite use of Reasonable Business Efforts, Contractor is unable to meet its Performance Obligations. Except as otherwise set forth in subsections (ii), (iii) below, and Section 25.05, such use of Alternative Disposal Facilities shall not result in an increase in the Service Fee.

(ii) In the event of the permanent unavailability of the Primary Disposal Facility, including termination for any reason of the Kiefer Disposal Agreement, the Contractor shall present (A) capacity and pricing information for all Alternate Disposal Facilities, if available, (B) proposed changes to the Contractor's Service Fee Component to reflect the proposed tip fees to be charged and the differences in location of the Alternate Disposal Facilities, including without limitation, any changes that will occur to distance

traveled, transport operations, route changes and drivers required, and (C) proposed changes to the Contractor's Service Fee Component to reflect changes in transfer operations, if any, as a result of the proposed use of the Alternate Disposal Facilities, within sixty (60) days to the City for one to be approved as the new Primary Disposal Facility. The discretion over approval by each party shall be exercised in good faith and approval shall not be unreasonably withheld. In the event of a dispute as to the changes to the Contractor's Service Fee Component despite good faith negotiations of the Parties, the dispute as to the proposed change to the Contractor's Service Fee Component shall be submitted to the Independent Engineer for resolution pursuant to Article 21, which resolution shall be binding.

(iii) If approval of a new Primary Disposal Facility due to such permanent unavailability is not approved by the City within thirty (30) days of that presentation of the initial capacity and pricing information, and such delay in approval is not caused by the breach or default of Contractor, then, upon Contractor request, City shall reimburse Contractor for any additional costs paid or incurred (with reasonable documentation thereof) resulting from the use of the Alternate Disposal Facility for more than thirty (30) days through a one-time payment or an adjustment in the Service Fee. In the event of a dispute as to the amount of such additional costs despite good faith negotiations of the Parties, the matter shall be submitted to the Independent Engineer for resolution pursuant to Article 21, which resolution shall be binding. If the reason for the designation of a new Primary Disposal Facility was default by Contractor or the Primary Subcontractor (unless the new Primary Subcontractor is the County of Sacramento or another new Primary Subcontractor chosen through the provisions of Section 12.03), the Contractor shall not be entitled to recover any such increased costs above those that would have been incurred by City if there had been no new designation of a Primary Disposal Facility as described herein.

c. Unavailability of Alternate Site.

In the event that the Alternate Disposal Facilities designated by Contractor in Exhibit 12.02.b become unavailable, it shall designate one or more additional Alternate Disposal Facilities and present them to the City for approval, which shall be given or refused in its sole reasonable discretion. In the event that the City does not approve at least one new Alternate Disposal Facility within thirty days of such designation by Contractor (or by the date when Contractor must use an Alternate Disposal Facility due to Uncontrollable Circumstances or default by the Primary Subcontractor), then the Contractor shall be free to use any lawful disposal site until such approval is given and shall not be in default hereunder for such use. Costs associated with the use of such lawful disposal site that has not yet been approved by the City as an Alternate Site, shall be determined in accordance with subsections a and b above.

12.03 Waste-to-Energy Facilities.

The City shall have the sole discretion to direct Contractor to deliver City Waste to any Primary Disposal Facility or Facilities, Alternate Disposal Facilities or Waste-to-Energy Facilities (as defined in this section).

Pursuant to Section 12.02a(2) and Exhibit 12.02b of this Amended Agreement, City and Contractor shall add to the list of Alternate Disposal Facilities local, in-region landfills as may be approved by the Sacramento City Council and Contractor. The discretion over approval by each party shall be exercised in good faith and approval shall not be unreasonably withheld.

In addition, the City and Contractor shall add to the list of Alternate Disposal Facilities such facility or facilities that dispose of solid waste by converting such waste to energy and other byproducts, including, without limitation, a facility or facilities utilizing any conversion technology (such facilities generically referred to herein as "**Waste-to-Energy Facilities**"), upon approval of such facility or facilities by the Sacramento City Council Upon receiving the City's direction, Contractor shall deliver City Waste to the new Primary Disposal Facilities in a manner consistent with this Amended Agreement and in a manner permitted by Contractor's contract with the then-current Primary Disposal Facility or Primary Disposal Facilities. Any termination for convenience payments due under Contractor's contract with the then current Primary Disposal Facility or Primary Disposal Facilities, including without limitation, under the Kiefer Disposal Agreement, shall be paid by City.

If City directs Contractor to deliver City Waste to a Waste-to-Energy Facility under this section 12.03, Contractor shall exercise good faith and Reasonable Business Efforts to obtain an a disposal subcontract reasonably acceptable to both City and Contractor. If, despite such good faith and Reasonable Business Efforts, such agreement is not reasonably acceptable to Contactor with respect to the indemnity, financial assurances, and/or environmental risk, at the City's election the determination of reasonable acceptability shall be submitted to arbitration pursuant to the procedures set forth in Section 21.02, provided, however, that the arbitration shall be binding. If the arbitrator rules in favor of City, Contractor shall accept the agreement with the Waste-to-Energy Facility. If the arbitrator rules in favor of Contractor, or if City agrees with Contractor's initial determination of acceptability, City may still direct Contractor to the Waste-to-Energy Facility, subject the City providing indemnification to Contactor for the disposition of City Waste at the Waste-to-Energy Facility.

If Contractor's costs increase or decrease as a result of any such change in designation, then the Contractor's Service Fee Component shall be adjusted in accordance with Article 18. If changes to the Primary Disposal Subcontract pursuant to this Section 12.03 cause an inability of the Contractor to meet its Performance Obligations hereunder, the parties shall negotiate in good faith any changes necessary thereto.

12.04 City's Interest in Future Value of City Waste

(a) If City directs Contractor to a Waste-to-Energy Facility pursuant to Section 12.03, the City shall receive, as a credit to the Service Fee or as a payment to the City, the actual amount received from the Waste-to-Energy Facility, if any, for the tons of City Waste delivered, and the Contractor's Service Fee Component shall be adjusted in accordance with Article 18.

(b) As between Contractor and the City, the right to claim credits related to emissions from transportation of City Waste attributable to a change from one Primary Disposal Facility to another (e.g., from Lockwood to Kiefer), including, without limitation, carbon credits, carbon offsets, carbon trading value, or similar carbon or environmental credit or value (collectively "environmental credits"), in whatever form they may take, shall belong exclusively to the City. Additionally, as between Contractor and the City, the right to claim any environmental credits as a result of the delivery of City Waste to a Waste-to-Energy Facility shall belong exclusively to the City and the right to claim any environmental credits as a result of the processing of City Waste at a Waste-to-Energy Facility shall belong exclusively to the Contractor. All other environmental credits shall belong exclusively to Contractor.

DIVISION VI. GENERAL SERVICE PROVISIONS

ARTICLE 13. GENERAL SERVICE PROVISIONS

13.01 City Right to Secure Substitute Services.

a. **Events.** City reserves the right, which it may exercise in its sole discretion, to secure replacement services as substitutes for any or all of Contractor's Performance Obligations in either of the following events:

(1) Due to Uncontrollable Circumstances or for any reason whatsoever, Contractor fails, refuses or is unable for a period of 48 hours to accept, Recover, Process, Transfer, Transport and/or Dispose of City Waste, Selfhaulers Waste, and/or Residue, as the case may be; or

(2) The City gives Notice of suspension of any portion of Contractor's Performance Obligations or of termination of this Amended Agreement in accordance with Article 20.

City has no obligation to continue to secure such substitute services and may at any time, in its reasonable discretion, cease to so secure them. However, City's right to secure such substitute services shall continue until termination of the Amended Agreement becomes effective, or upon Contractor's demonstration to the City's

reasonable satisfaction that Contractor is ready, willing, and able to resume timely and full performance; provided City's securing substitute services shall not preclude it from exercising any other rights and remedies hereunder. Any dispute as to the reasonableness of the City's action shall be subject to the dispute resolution provisions of Article 21 of this Amended Agreement.

b. **Notice.** The City may give Contractor oral notice that City is exercising its right to secure substitute services, which notice shall be effective immediately, and shall confirm such oral notice with a written Notice within twenty-four hours thereafter.

c. **Reimbursement.** In events other than Uncontrollable Circumstances or City breach or default, Contractor shall pay applicable compensatory damages under Section 19.01, which amounts City can offset from the Service Fee in accordance with Section 18.07. CONTRACTOR'S LIABILITY FOR SUCH PAYMENTS SHALL SURVIVE THE TERMINATION HEREOF IN ACCORDANCE WITH SECTION 3.02. In the event of Contractor Default, City may also make claim against any performance bond or other instruments securing Performance Obligations.

13.02 Personnel and Subcontractors.

a. **Personnel.**

(1) **Qualifications and Performance.** The Contractor shall engage and train qualified and competent employees, including managerial, supervisory, clerical, maintenance, and operating personnel, in numbers necessary and sufficient for Facility Operation and to efficiently, fully and timely perform Contractor's Performance Obligations. Contractor shall maintain a current schedule of all its personnel by job description and/or category in Exhibit 13.02.a(1). The Contractor shall train such staff to perform their work in a competent, safe and efficient manner and ensure that each staff person treats the City's employees and other representatives, Selfhaulers and other members of the public with courtesy. If City, at any time during the Term, desires the removal of any person or persons assigned by Contractor to perform specific Performance Obligations because City, in its reasonable discretion, determines that such person(s) is not performing in accordance with the standards required herein, Contractor shall remove such person(s) immediately from such position upon receiving Notice thereof from the City describing the reasons for such determination; provided that Contractor need not terminate the employment of such person(s) but may re-assign such person(s) to another position.

(2) **Commuting.** Contractor shall use Reasonable Business Efforts to ensure that thirty-five percent of its employees who report to work at the Facility commute (i) by public transportation or pooling or ride sharing arrangements, or (ii) outside the hours of 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m., as evidenced by employee survey conducted as of the last month of each Contract Year and reported to the City annually during the first month of each Contract Year. No later than the Effective Date, Contractor shall submit to City its program or plan for achieving this level of employee participation.

(3) **Alternative and Neighborhood Work force.** Contractor shall maintain a separate log of all hours worked by its employees in performing Performance Obligations related to Facility Operation and Transport, and use Reasonable Business Efforts to provide that (i) twenty percent of all such hours represent labor by an alternative workforce, such as the Sacramento Local Conservation Corps; California Conservation Corps; Pride Industries; homeless laborers who as of the date of hire have no permanent address upon date of employment as evidenced by documentation such as certification and referrals by City-recognized programs, including the Sacramento Education and Training Agency (SETA); welfare-to-work programs; and other programs that Contractor demonstrates to the satisfaction of the City meet the policy goals of the City attached as Exhibit 13.02.a(3); and (ii) that thirty percent of all such hours represent labor by residents who as of the date of hire are living within a three mile radius of the Site; provided that labor that qualifies under both categories (i) and (ii) may be counted towards both percentage requirements. Contractor shall update such log monthly in form acceptable to City, showing clearly Contractor's level of compliance herewith.

(4) **Equal Employment Opportunity.** Contractor shall comply with the equal employment opportunity requirements contained in Exhibit 13.02.a(4).

(5) **Visitors Education Center Manager.** Contractor will employ a manager of the Visitors Education Center, who may either be employed part-time or function in other Facility related capacities, to promote good waste management and recycling practices in the City, including publicizing, scheduling and conducting tours of the Facility for the City, schools and community, neighborhood and public service groups and other interested organizations; organizing workshops, presentations and seminars; publicizing the Receiving Hours and services available at the Facility and the costs therefor, including Selfhaulers Waste disposal services, White Goods, Brown Goods, Construction and Demolition Debris and Yard Waste recycling, the Buyback/Dropoff Center, and the Household Hazardous Waste Center; creating and maintaining displays and exhibits at the Visitors Education Center; and providing for distribution of City-provided educational materials.

b. **Subcontractors.** Contractor shall Notify City of any subcontractors or other service providers which it is engaging for (1) Transport or Disposal of City Waste and Residue and (2) for Recovery or Processing of Commercial Waste and Neighborhood Cleanup Waste, promptly upon such engagement. City may submit comments to Contractor with respect to any such engagements, and Contractor shall use Reasonable Business Efforts to expeditiously address City's comments. Contractor shall list such approved subcontractors on Exhibit 13.02b and attach copies of any subcontracts therewith to this Amended Agreement. Contractor shall amend such list to reflect substitutions or additions promptly upon such substitution or addition. All subcontractors shall be licensed as required under Applicable Law to perform their subcontracted work. The Contractor shall remain liable for the full and complete performance of its obligations

hereunder. Any reference to Performance Obligations of Contractor hereunder shall be deemed to include any subcontractor performing such Performance Obligations, whether or not the language hereof provides that Contractor shall perform, or cause to be performed, such Performance Obligations. References to Contractor causing performance of any Performance Obligations by a subcontractor or another Person shall not create the inference that Contractor is not primarily obligated to City to meet such Performance Obligations.

13.03 Patents, Trademarks, Licenses. The Contractor shall hold or possess a right to use all patents, rights to patents, trademarks, copyrights and licenses, as the case may be **("Proprietary Property")** of any equipment or software necessary for the performance by the Contractor of its Performance Obligations and the transactions contemplated by this Amended Agreement. As of the date hereof, the Contractor represents that it does not know any material conflict with the rights of others regarding Proprietary Property. Contractor acknowledges and agrees that such representation is material.

13.04 Complaints. Contractor shall promptly and politely respond to complaints, including complaints from City's drivers, Selfhaulers, City staff and the public at large, related to Contractor's performance or nonperformance of Performance Obligations, and use Reasonable Business Efforts to resolve such complaints within thirty days receipt thereof.

ARTICLE 14. RECORDS AND REPORTING

14.01 Records and Reporting Requirements.

a. Records Maintenance. Contractor shall keep daily accurate and complete records of Facility Operations with respect to the items listed in Exhibit 14.01a, in paper, electronic, magnetic, or other media with sufficient detail to allow the Contractor to calculate and City to corroborate the Service Fee, any damages and other dollar amounts hereunder and to determine compliance with the provisions hereof, including Performance Guaranties and Diversion attributable to City Waste. Upon City request therefor, Contractor shall supply City with any or all computations, records, files, correspondence, reports (including reports to the Sacramento Regional County Solid Waste Authority required under Ordinances No. 1 and 2 or similar successor or replacement regulatory diversion mandates), and data prepared by or possessed by Contractor relating to Performance Obligations, including in any Contract Year in which the City may exercise a renewal option hereunder, records of Contractor's Direct Costs of salary for Performance Obligations and reimbursable costs, no later than ten days after request therefor. Contractor shall preserve such records and other materials for eight years; provided, it shall keep Disposal records throughout the Term and any other records throughout the Term upon City request. EXCEPT FOR THOSE RECORDS THAT ARE MARKED "TRADE SECRET" OR "CONFIDENTIAL," UPON TERMINATION

OF THIS AMENDED AGREEMENT CONTRACTOR SHALL DELIVER ALL SUCH RECORDS AND OTHER MATERIALS TO THE CITY, WHICH OBLIGATION SHALL SURVIVE THE TERMINATION HEREOF IN ACCORDANCE WITH SECTION 3.02.

For purposes relating to this Amended Agreement and the Performance Obligations hereunder, City shall have full ownership and control of all reports specifically produced by Contractor for the City pursuant to this Amended Agreement. With regard to other records that Contractor is obligated to provide hereunder, such records shall remain in the ownership of Contractor, and Contractor shall have full control over such records. City shall be provided full access to and use thereof. "Records" for purposes of this Article includes documents, writings, handwriting, typewriting, printing, photostating, photographing, computer models, and any other computerized data and every other means of recording any form of information, communication or representation, including letter, works, pictures, drawings, sounds or symbols, or any combination thereof.

All proprietary and other information received from Contractor by City, whether received in connection with Contractor's proposal to City or in connection with any services performed by Contractor hereunder, may be disclosed upon receipt of a request for disclosure, pursuant to the California Public Records Act; provided that if any information is set apart and clearly marked "trade secret" or "confidential" when it is provided to City, City shall give notice to Contractor of any request for the disclosure of such information. The Contractor will then have five days from the date it receives such notice to enter into an agreement with the City, satisfactory to the City Attorney, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees), incurred by City in any legal action to compel the disclosure of such information under the California Public Records Act. The Contractor shall have sole responsibility for defense of the actual "trade secret" or "confidential" designation of such information. Parties understand and agree that any failure by Contractor to respond to the notice provided by City and/or to enter into an agreement with City in accordance with this paragraph, shall constitute a complete waiver by Contractor of any rights regarding the information designated "trade secret" or "confidential" by Contractor, and such information will be disclosed by City pursuant to applicable procedures required by the California Public Records Act.

At Contractor's request, in lieu of providing or producing to City any information deemed by Contractor to be information that qualifies as "trade secret" or "confidential," Contractor and City shall develop and implement an alternate form of disclosure such that City shall have access to records marked "trade secret" or "confidential" pursuant hereto, such that City shall have access to such records without custody or control thereof.

Contractor shall keep records of additional information, in different media or alternative formats as Contractor and City may mutually agree.

b. Reports. On each Service Fee Invoice Date, Contractor shall submit to the City a monthly Facility Operations report as well as the report described in Section 6.01.f, and

on the first Service Fee Invoice Date occurring after the end of each Contract Year (including the final Contract Year of the Term), Contractor shall submit to the City an annual Facility Operations report containing the information listed in Exhibit 14.01b, WHICH OBLIGATION SHALL SURVIVE THE TERMINATION HEREOF IN ACCORDANCE WITH SECTION 3.02. The Contractor shall supply the City with additional information and documentation within thirty days of City's request therefor describing the information requested with reasonable specificity. City shall notify Contractor within twenty-five (25) Working Days after receipt of such report or within twenty–five (25) Working Days after receipt of any additional requested information, of any dispute as to the accuracy of the report. The City or Contractor may request binding resolution of any such dispute by the Independent Engineer in accordance with Section 21.01.c(1)(ii).

Contractor shall submit and/or format additional or amended reports as Contractor and City may agree.

c. **City Records and Reporting.** As long as the City is delivering City Waste to the NARS Facility pursuant to Section 6.01(f), the City shall keep accurate records and shall also cause the County, through the City/County Transfer Agreement, to keep accurate records of all City Waste delivered to the NARS Facility sufficient to allow the Contractor to determine and confirm the amounts of City Waste that were delivered to and accepted by the County at the NARS Facility. City shall prepare such records on a monthly basis and shall transmit those records to the Contractor no later than the 20th day after the end of each month during any such month in which the City has delivered any materials described above to the NARS Facility.

14.02 Financial Reports. Contractor shall maintain financial records of all Facility operations, including a supplemental schedule segregating revenues and expenses directly attributable to Facility Operations specifically related to City Waste from revenues and expenses related to any other Facility operations. Contractor shall annually cause to be prepared financial statements and footnotes for the preceding Contract Year in accordance with Generally Accepted Accounting Principles (GAAP) and audited in accordance with Generally Accepted Auditing Standards (GAAS) by an independent certified public accountant (CPA) licensed and in good standing to practice public accounting in the State as determined by the State Department of Consumer Affairs. Contractor shall make such financial records of all Facility operations and audited financial statements available to the City and its consultants at the Facility or other location mutually agreeable to City and Contractor upon five Working Days Notice. Contractor shall deliver such financial records related to City Waste and audited financial statements to the City promptly upon City request therefor in connection with any adjustment of the Contractor's Service Fee Component in accordance with Section 18.02.c. Contractor may request City to keep such reports confidential in accordance with Section 14.01.a.

If Contractor enters into any financial transactions with a Contractor-Related Person for the provision of labor, equipment, supplies, capital, etc., related to Performance

Obligations, Contractor shall disclose such relationship to the City, including in the financial reports submitted to City. In such event, City's right to review and receipt of records and reports shall extend to such Contractor-Related Person.

14.03 Internal Systems Control Review. Upon City request not more than once each Contract Year, Contractor shall at its own cost cause an independent certified public accountant to perform a special procedures review of internal systems control, including all weigh records with respect to Performance Obligations (including Recovery, Processing, Marketing, Transfer, Transport and Disposal), City Waste, Selfhaulers Waste and Merchant Waste during each Contract Year. On or before July 1 of each year Contractor shall provide the City with a copy of such review, including such accountant's opinion as to whether Contractor is in compliance with recommended internal control procedures, identifying weaknesses, and suggesting improvements. City may observe such review procedures and confer with such accountant. Contractor shall use Reasonable Business Efforts to remedy any identified weaknesses and implement any suggested improvements. Contractor shall make the report of such review available to the City and its consultants at the Facility or other location mutually agreeable to City and Contractor upon five Working Days Notice and deliver those portions of the review relating to City Waste to the City promptly upon City request therefor. Contractor may request City to keep such reports confidential in accordance with Section 14.01.a.

ARTICLE 15. COMPLIANCE WITH APPLICABLE LAW

15.01 Compliance with Applicable Law. The Contractor shall perform all its Performance Obligations and shall cause its subcontractors to perform Performance Obligations in accordance with Applicable Law whether or not referenced specifically in the text hereof and regardless of whether specified Performance Obligations may be stated less stringently than Applicable Law. Reference herein to any specific law shall not be construed to imply lack of obligation to comply with Applicable Law not referred to herein.

ARTICLE 16. INSURANCE, INDEMNITY, BONDS, FURTHER ASSURANCES

16.01 Insurance.

a. **Types and amounts.** Contractor shall secure and maintain, and enter into agreements to cause its subcontractors to secure and maintain, in full force and effect the types and amounts of insurance coverage, together with related specified deductibles, listed in Exhibit 16.01 or required by Applicable Law, whichever is greater; provided that Contractor may substitute self-insurance therefor upon City consent thereto, which consent (including approving the manner and amounts of such self-insurance) shall be in City's sole discretion.

Contractor shall further secure and maintain, and enter into agreements to cause its subcontractors to secure and maintain, insurance policies that are always primary with respect to the Contractor's Performance Obligations, subcontractors' obligations, and the Facility. Insurance coverage written specifically for the City shall be considered to be excess and not contributory. The Facility, the City, and the City's employees, Council members, officers, officials, agents, assigns, and volunteers shall be included as insured under all policies, except with respect to applicable professional liability policies specified in Exhibit 16.01. All insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. All polices should include waivers of subrogation. Any failure to comply with reporting or other provisions of policies, including breaches or warranties, shall not affect coverage provided to City.

b. **Insurers.** Contractor shall procure such insurance from insurers approved by the City Risk Manager, licensed in California, rated not less than "A minus, VII" or better by A.M. Best Company, Inc.; provided, that the City may waive such requirements.

c. **Notices to City.** Policies must bear endorsements providing the City with sixty days prior written notice to the City Risk Manager of any cancellation, non-renewal, change, or other modification and name the City as an additional insured. Such endorsements shall not contain mere "best effort" modifiers or relieve the insurer from its responsibility to give the City such notice.

d. **Evidence of coverage.** On or before the dates when Contractor is required to procure insurance policies hereunder Contractor shall file with the City Risk Manager at the address provided below evidence of coverage in force, including endorsements, in accordance with the provision hereof, together with a certificate of insurance, on a City approved form, signed or counter-signed by an authorized officer of the insurer, certifying that the coverage has not lapsed and shall remain in effect at all times required hereunder:

City of Sacramento
Risk Manager Contract No. [xxx]
915 I Street
Sacramento, CA 95814

or such other address as the City may provide. Upon request of the City Risk Manager, the Contractor shall cause its subcontractors to provide proper evidence of insurance coverage required hereunder, satisfactory to the City Risk Manager. Contractor shall institute a comprehensive accounting system to assure the City it is monitoring all insurance requirements hereunder, including those of its subcontractors.

16.02 Contractor Defense and Indemnification.

a. General.

(1) **Defense.** Upon City's request, Contractor shall defend with legal counsel acceptable to the City at Contractor's sole cost, any action, claim or suit that asserts or alleges any liabilities (defined in subsection d below), whether well founded or not, arising or resulting from, in whole or in part, directly or indirectly, any wrongful or negligent act, error or omission of Contractor and/or Contractor's related parties (defined in subsection d below) or of City and/or City's related parties (defined in subsection d below), performed or occurring under or in connection with the Amended Agreement, including:

(1) personal injuries including wrongful death, and property damage of any kind, nature or sort;

(2) penalties, fines and charges arising from Contractor's violation of Applicable Law;

(3) any condition of the Facility, Containers (including transfer trucks, rail cars or other vehicles transporting such Containers), or associated with the operation, maintenance or transport thereof relating to hazardous or toxic substances and other environmental damage or liability, including any one or more release or threatened release of any materials (including Hazardous Waste) and water or ground water contamination therefrom;

(4) any allegation of infringement, violation or conversion of any patent, licenses, proprietary right, trade secret or other similar interest, in connection with Facility Development, Facility Operation, and the Facility, including Facility technology, processes, machinery, or equipment; or

(5) any claims made by, or payments made to, purchasers or users of Recovered Materials for alleged breaches of warranties of fitness in connection with the beneficiation of contaminated Recovered Materials but not in connection with product liability for re-use of Recovered Materials in new products.

Notwithstanding the foregoing, the Contractor shall have no defense obligations as described in this subsection if the claim giving rise to the obligation shall arise from, in whole or in part, directly or indirectly, any wrongful or negligent act, error or omission of City and/or City's related parties and the Contractor is not also named as a defendant in any such claim or cause of action.

(2) **Indemnification.** Contractor shall indemnify and hold harmless City and City's related parties (defined in subsection d below) and each and every one of them, from and against all liabilities (defined in subsection d below) to which any of them may be subjected by reason of, or resulting directly or indirectly from, any wrongful or negligent act, error, or omission of Contractor and/or Contractor's related parties (defined in subsection d below), whether or not such liabilities are litigated, settled, or reduced to judgment and whether or not such liabilities are caused in part by any

wrongful or negligent act, error or omission of any party indemnified hereunder; provided that if a final decision or judgment allocates liability by determining that any portion of damages awarded is attributable to a wrongful or negligent act, error or omission of the City and/or City's related parties, the City shall pay such portion of damages.

b. **Hazardous Waste.** Subject to the provisions of Article 7 hereof, Contractor shall be liable to City in accordance with Applicable Law for releases occurring in connection with its Performance Obligations of any materials (including Hazardous Waste) into the environment (including from the Facility or the Containers), including any repair, cleanup, or detoxification thereof, or preparation and implementation of any removal, remedial, response, closure or other plan with respect thereto (regardless of whether undertaken due to governmental action); provided that Contractor shall not be obligated to pay Unpermitted Waste handling fees to the extend to provided in Section 6.01.d.

c. **Defense of Patent Infringement Suits.** Upon request by the City, the Contractor shall defend any lawsuit or proceeding that is brought against the City insofar as such lawsuit or proceeding is based upon an allegation of infringement, violation, or conversion of any patent, licenses, proprietary right, trade secret, or other similar interest, in connection with Facility Development and any technology, processes, machinery, or equipment supplied by the Contractor. The Contractor shall pay all liabilities awarded in any such lawsuit or proceeding it defends, in accordance with subsection a. If as a result of any such lawsuit or proceeding it defends, the Facility, or any portion thereof, is held to constitute an infringement or use by the City is enjoined; then the Contractor shall, at its option, either (1) acquire the right of continued use under the infringed patent, license, proprietary right, trade secret, or other similar interest on behalf of the City or (2) to the satisfaction of the City, modify or replace the infringing equipment with equipment that is equivalent in quality, performance, useful life, and technical characteristics, that meets Performance Guaranties.

d. **"City and City's related parties;" "liabilities;" "Contractor and Contractor's related parties."** For purposes of this Section, **"City and City's related parties"** includes City and City's Council members, officers, officials, employees, contractors, subcontractors, consultants, agents, assigns, and volunteers and each and every one of them; **"liabilities"** means liabilities, lawsuits, claims, judgments, demands, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs, expenses, loss, penalties, and other detriments of every nature and description whatsoever, including all costs and expenses of litigation or arbitration, attorneys fees (whether City's staff attorneys or outside attorneys), and court costs, whether under State or federal law; and **"Contractor and Contractor's related parties"** includes Contractor and its officers, directors, shareholders, partners, agents, employees, contractors, subcontractors, consultants, licensees, or invitees.

e. **Survival.** THE TERMS OF THIS SECTION SHALL SURVIVE TERMINATION OF THIS AMENDED AGREEMENT IN ACCORDANCE WITH SECTION 3.02.

16.03 City Indemnification.

a. **General.** City shall indemnify and hold harmless Contractor and Contractor's related parties (defined in Section 16.02d) and each and every one of them, from and against all liabilities (defined in Section 16.03c) to which any of them may be subjected by reason of, or resulting directly or indirectly from, any wrongful or negligent act, error or omission of City and/or City's related parties (defined in Section 16.02d) performed or occurring out of or in connection with this Amended Agreement; provided that a final decision or judgment determines such liabilities are attributable to a wrongful or negligent act, error or omission of the City and/or City's related parties.

b. **"Contractor and Contractor's related parties;" "liabilities;" "City and City's related parties."** For purposes of this Section, **"Contractor and Contractor's related parties," "liabilities," and "City and City's related parties"** shall have the meaning defined in Section 16.02.d.

c. **"Liabilities".** For purposes of this Section, **"liabilities"** means liabilities, lawsuits, claims, judgments, demands, damages (whether in contract or tort, including personal injury, death at any time or property damage), costs, expenses, loss, penalties, and other detriments of every nature and description whatsoever, whether under State or federal law, including personal injuries, wrongful death, and property damage of any kind resulting from Delivering City Waste and penalties, fines and charges arising from City's violation of Applicable Law in connection with Delivering City Waste; provided, that as used in this Section **"liabilities"** shall not include any costs and expenses incurred by Contractor to defend City and/or City's related parties, in including costs and expenses of litigation or arbitration, attorneys fees (whether of Contractor's staff attorneys or outside attorneys), and court costs, which costs, expenses and fees shall be solely the responsibility of Contractor in accordance with Section 16.02.a(1).

d. **Survival.** THE TERMS OF THIS SECTION SHALL SURVIVE TERMINATION OF THIS AMENDED AGREEMENT IN ACCORDANCE WITH SECTION 3.02.

16.04 Bonds. Contractor shall procure bonds from underwriters approved by the City Finance Director, licensed in California, rated not less than "A minus, VII" by A.M. Best Company, Inc.; or an irrevocable standby letter of credit, by a financial institution rated at least A- (or equivalent by one of the major nation debt rating services (i.e., Standard & Poors, Moodys, Fitch or their successors) provided that the City may waive such requirements. Bonds or irrevocable standby letters of credit shall name the City as beneficiary or obligee, as applicable and provide at least thirty days prior notice of any cancellation. On or before the commencement of Startup, Contractor shall secure and throughout the Term hereof maintain in full force and effect a Bond or irrevocable standby letter of credit in an amount no less than one year's Service Fee based on Delivery of (1) 70,000 Tons during the first Contract Year (or pro-rated portion thereof) following the Operations Date and (2) fifty percent of the actual Tons of City Waste during each succeeding Contract Year, to guaranty and assure the timely and complete performance of Performance Obligations, fully prepaid for each Contract Year; provided

that Contractor may alternatively procure an alternative form of security, including lines of credit and pledges of securities in favor of the City upon approval of the City Treasurer in his or her sole discretion. The condition of the performance bond shall be such that if Contractor shall well and truly perform its Performance Obligations, including all covenants, promises, undertakings and obligations contracted by Contractor to be performed under this Amended Agreement, then upon termination hereof the obligation of the Bond may cease; otherwise it shall remain in full force and effect. Said Bond shall terminate and be canceled upon the completion of all of Contractor's Performance Obligations. City shall execute and deliver to Contractor or Contractor's surety company or financial institution upon Contractors completion of all Performance Obligations such certificates or other documents as either of them may reasonably request for the purpose of terminating and canceling such surety Instrument. Such bond shall be in substantially the form of commercial blanket bond form attached in Exhibit 16.04, as approved by the City.

16.05 Guaranty Agreement. As of the date hereof and throughout the Term, Contractor shall ensure that Guarantor or its successors or assigns acceptable to the City, shall execute and maintain a legal, valid, and binding Guaranty Agreement appended hereto as Exhibit 16.05.

ARTICLE 17. CRIMINAL ACTIVITY OF CONTRACTOR.

17.01 Criminal Activity of Contractor.

a. Contractor shall promptly notify City if (i) Contractor or any of its fiscal or management employees, owners, officers or directors (where "fiscal" means an employee not otherwise described in this subsection and whose duties relate to the Service Fee, tipping fees and financial matters generally, and when applied to employees includes scale operators, book keepers, accountants, billing and accounts payables/receivables clerks and assistants), or (ii) any Contractor Related Person or any of its management employees, owners, officers or directors directly or indirectly responsible for management, direction and control of Contractor, have a criminal conviction, mandatory or prohibitory injunction or fine from a court of competent jurisdiction or fine from a public entity, municipality, or regulatory agency, with respect to the following events, or make an admission of guilt or plead *nolo contendere* with respect thereto:

(i) fraud or a criminal offense in connection with obtaining, attempting to obtain, procuring or performing a public or private agreement, including this Amended Agreement; or

(ii) bribery or attempting to bribe a public officer or employee of a local, state, or federal agency in that officer or director's or Contractor's employee's official capacity; or

(iii) extortion, embezzlement, racketeering, false claims, false statements, forgery, falsification or destruction of records, obstruction of justice, receiving stolen property, or theft; or

(iv) any other crime indicating a lack of business integrity or business honesty.

b. Except as provided in this subsection (b) upon occurrence of such events or circumstances described in subsection (a) (whether the underlying facts predate or postdate this Amended Agreement), other than with respect to fiscal employees, City may terminate the Amended Agreement in accordance with Section 20.01.a(3) or impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it shall deem proper. Upon occurrence of such events or circumstances with respect to fiscal employees described in subsection (a) above, the City may terminate this Amended Agreement in accordance with Section 20.01 a(3) or impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it shall deem proper if Contractor does not remove the applicable fiscal employee from his or her employment with Contractor and with any Contractor Related Person within thirty days following the first occurrence of such events or circumstances.

ARTICLE 18. SERVICE FEE

18.01 Service Fee. Beginning on the Effective Date, the City shall pay Contractor at the time and in the manner described in Section 18.08, as compensation for performing Contractor's Performance Obligations, a fee (the **"Service Fee")** or portion thereof in accordance with Section 20.01.d, calculated as follows:

Service Fee = CSFC + RFC + RC - O where:

CSFC = Contractor's Service Fee Component
RFC = Regulatory Fee Component
RC = Reimbursable Costs
O = Offsets

18.02 Contractor's Service Fee Component.

a. Minimum City Payments. The City shall pay Contractor a fee (the "**Contractor's Service Fee Component**") per each Ton of City Waste weighed upon delivery thereof, for timely and fully performing its Performance Obligations in the amounts described in Exhibit 18.02, which is hereby incorporated hereto, as escalated pursuant to Article 25 hereof, provided that City shall pay Contractor a minimum aggregate Contractor's Service Fee Component for (i) One Hundred Seventeen Thousand (117,000) Tons of City Waste per Contract Year (prorated over twelve equal monthly installments) until

June, 30, 2019, and (ii) One Hundred Thousand (100,000) Tons of City Waste per each Contract Year thereafter ("Minimum Contractor's Service Fee Tonnage Amount"), prorated as described above, in accordance with Section 18.08.d, whether or not City delivers, or causes to be delivered, such City Waste ("**Minimum Contractor's Service Fee Component**"); provided, that if Contractor pays City lump sum damages in accordance with Section 4.05.e for failure to meet the Diversion Component Test, City shall so pay Contractor a Minimum Contractor's Service Fee Component for 101,000 Tons of City Waste per Contract Year; and provided further, that if Contractor pays City lump sum damages in accordance with Section 19.01.d for failure to meet the Commercial Waste Diversion Guaranty, City shall so pay Contractor a Minimum Contractor's Service Fee Component for 107,000 Tons of City Waste per Contract Year.

The Minimum Contractor's Service Fee Tonnage Amount shall be increased by an amount equal to the average annual volume of Commercial Waste delivered to the Facility by City employees or City contractors for the twenty four (24) month period immediately preceding the institution of the City's regulation of the collection of Commercial Waste through a franchise system or other means unless such Commercial Waste is directed by the City to be delivered to the Facility subsequent to the regulation by the City through a franchise system or other means. For example purposes only, if the average volume for such 24 month period is 20,000 tons per annum, then the Minimum Contractor's Service Fee Tonnage Amount as determined in Section 18.02 shall be increased by 20,000 tons.

b. **All-inclusive.** The Contractor's Service Fee Component includes all Contractor's Direct Costs and indirect costs, overhead, plus profit, of timely and fully complying with its Performance Obligations, including capital recovery, labor (including fringe benefits); administration, telephone/telefax, equipment and Containers repair and maintenance, building and grounds maintenance and repair, materials, supplies; subcontractors' fees (including Disposal and any Commercial Waste processing); insurance and bonds; taxes (including income and property); principal repayment and interest expense; closure and post-closure costs; but excludes those reimbursable costs listed in Section 18.05. Contractor will not solicit or accept any money or other compensation, including gratuities but excluding grants from nonprofit or governmental Persons, from any other Person with respect to its Performance Obligations. Contractor acknowledges that the Service Fee compensates Contractor for any liability with respect to costs of closure and post-closure obligations with respect to the Primary Disposal Facility allocable to City Waste and Residue.

c. **Cost Adjustment.** Contractor's Service Fee Component shall be adjusted consequent upon any of the following events, as soon as practicable following such events and retroactively effective (unless otherwise provided) on the occurrence of such events to the extent allowed by Applicable Law:

(1) **Service Changes:** pursuant to a Service Change requiring a Service Fee adjustment in accordance with Article 26;

(2) **Adjustments:** for adjustments in accordance with Article 25; and

(3) **Change in Tipping Fee or Primary Disposal Facility:** for an increase or reduction of the Disposal tipping fees at the Primary Disposal Facility for any reason and/or for an increase or reduction in Contractor's costs due to the designation of a new Primary Disposal Facility in accordance with Article 12 hereof, Contractor will submit a proposal to reflect (a) the tip fee charged and the difference in location of the new Primary Disposal Facility (including Waste-to-Energy Facilities), including without limitation, any changes that will occur to distance traveled, transport operations, route changes, and drivers required, and (b) changes in transfer operations, if any, as a result of the proposed use of the new Primary Disposal Facility (including Waste-to-Energy Facilites), in accordance with Section 18.02.d. In the event of a dispute as to the changes to the Contractor's Service Fee Component despite good faith negotiations of the Parties, the matter shall be submitted to the Independent Engineer for resolution pursuant to Article 21, which resolution shall be binding.

d. Contractor's Service Fee Components Description

The Contractor's Service Fee Component shall be comprised of the components as described in Exhibit 18.02d.

18.03 Regulatory Fee Component. The City shall pay Contractor a fee (the **"Regulatory Fee Component"**) per each Ton of City Waste weighed upon delivery thereof, as compensation for all federal, State, and local assessments, taxes or fees (including permit fees) that apply only to solid waste facilities or solid waste management activities, imposed upon and paid by Contractor in connection with its Performance Obligations. The Regulatory Fee Component as of the Effective Date equals the amount listed in Exhibit 18.03 hereto. Contractor's list of such fees together with its method for allocating such fees to the Service Fee on a per Ton basis, is attached as Exhibit 18.03. The Regulatory Fee Component shall be adjusted in amounts consequent upon changes in such taxes or fees, as soon as practicable following Contractor's payment of such changed taxes or fees, retroactively effective (unless otherwise provided) to the payment date, to the extent allowed by Applicable Law. The Regulatory Fee Component shall not be escalated in accordance with Article 25.

18.04 City is Most Favored Customer. Contractor represents and warrants that the City is a most favored customer. Contractor acknowledges and agrees that such representation and warranty is material. Contractor shall not charge any Person fees on a per-ton basis for mixed waste transfer, Recovery, Processing, Transport, and Disposal services as inclusive and substantially similar to those provided to the City that are less than the per-ton Service Fee then charged for City Waste, unless the Service Fee for City Waste is reduced to the level of the service fee charged that Person. If the Service Fee otherwise determined pursuant to this Amended Agreement is reduced a result of the provisions of this Section 18.04, such reduction shall be in effect only for the period of any agreement between the Contractor and any other Person that gave

rise to the reduction after which the Service Fee shall revert to the level at which it was immediately before the reduction, as adjusted pursuant to Article 25. For the purposes of this Section 18.04, no Person shall be considered to be receiving "substantially similar" services as the City unless, among other things, final disposal of Permitted Materials delivered by such Person to the Facility shall be at the Primary Disposal Facility then in use for City Waste and at a disposal fee no less than that charged for City Waste at such Primary Disposal Facility. Any dispute as to whether such other persons are subscribing to service that is as inclusive and substantially similar as that provided the City shall be subject to resolution pursuant to Section 21.01.c.

18.05 Reimbursable Costs. As part of the Service Fee, City shall reimburse Contractor for Direct Costs of the following:

(1) specified allowed costs for complying with Section 8.03.a, and

(2) Direct Costs of Incremental Overtime Wages incurred in handling City Waste in excess of the Throughput Guaranty in accordance with Section 6.04 and in City directed overtime in accordance with Section 6.03.c.

18.06 Payment of Taxes. Contractor shall pay, when and as due, any and all federal, State, and local fees, assessments, or taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments promptly upon request. Contractor agrees to indemnify City for any claims, losses, costs, fees, liabilities, damages or injuries suffered by City arising out of Contractor's breach of this tax payment obligation.

18.07 Offsets. The City after giving Contractor five (5) days notice, may offset against current Service Fee, any amounts due and owing by Contractor to City if Contractor has not paid City such amounts by the Service Fee Payment Date and if Contractor does not dispute such offset, including:

(1) **Litter Clean up costs:** the City's Direct Costs of cleaning up materials in accordance with Section 11.02;

(2) **Damages:** any unpaid damages, including in accordance with Section 19.01;

(3) **Reimbursements:** unpaid reimbursements in accordance with Section 18.05; and

(4) **Monitoring:** following Contractor's breach of commitment to Dispose of City Waste in accordance with Section 12.02, the costs of monitoring Contractor's renewed compliance with such commitment in accordance with Section 12.02.a.

Any dispute as to the City's right to offset shall be resolved pursuant to the provisions of Section 18.08c. If following any dispute resolution with respect to such offsets in

accordance with Section 18.08c the dispute is determined by the Independent Engineer, Independent Arbitrator, a court, mediator or other dispute resolver in the City's favor, Contractor shall pay City the disputed amounts with interest accruing from the date when the disputed amount should have been paid until the date of payment, at the Overdue Rate. In the event that Contractor fails to pay such amount within thirty (30) days from the date of the decision resolving the dispute, City shall have the right to offset the disputed amount from any current Service Fee payments until the full amount is paid.

18.08 Payment Procedure.

a. Service Fee Invoice Date. On or before the tenth day of each month following the month during which services are rendered hereunder **("Service Fee Invoice Date")**, Contractor shall submit an itemized invoice for payment of the previous month's Service Fee in the following amounts:

(1) **Contractor's Service Fee Component** in accordance with Section 18.02; plus

(2) **Regulatory Fee Component** in accordance with Section 18.03; plus

(3) **Reimbursable Costs**, if any, in accordance with Section 18.05. Such

invoice shall contain the following information:

(1) the title of this Amended Agreement
(2) description of services billed under the invoice, and Facility Operations status
(3) date of invoice issuance
(4) sequential invoice number
(5) City's purchase order number (if provided)
(6) amount of invoice, including itemized reimbursable costs
(7) total amount of invoices billed each Contract Year-to-date.

b. Service Fee Payment Date. City shall pay Contractor such invoice on or before the thirtieth (30th) day of each month following the month during which services are rendered hereunder(the **"Service Fee Payment Date"**) (net any offsets in accordance with Section 18.07) unless it disputes such amounts in accordance with subsection c. If City pays such invoice after the Service Fee Payment Date, City shall therewith pay Contractor interest thereon from such Service Fee Payment Date until paid at the Overdue Rate.

c. Disputes.

(1) **Notice of Dispute.** If City disputes any amount calculated by Contractor in accordance with subsection a, it shall pay the disputed invoice on the Service Fee payment Date and give Contractor Notice of such dispute within fifteen days of receipt of the itemized invoice, together with any request for additional information, identified with reasonable specificity, with respect thereto. If Contractor disputes any offsets proposed by City in accordance with subsection b, it shall give City Notice of such dispute within five (5) days of receipt of payment of the disputed invoice, together with any request for additional information, identified with reasonable specificity, with respect thereto.

(2) **Response.** Within ten days of receiving the disputing Party's Notice, the Noticed Party shall respond to the dispute and supply any such information. If the Noticed Party does not respond within such time, it will be deemed to concur with disputing Party. If the Contractor concurs or is deemed to concur with a City dispute, it shall promptly amend the disputed invoice. If the City concurs or is deemed to concur with a Contractor dispute, it shall pay the disputed amount within thirty days of written or deemed concurrence.

(3) **Dispute Resolution.** If the disputing Party disagrees with the Noticed Party's response and Parties cannot reach agreement during an ensuing fifteen Working Day period following the Noticed Party's response, either Party may request advice and mediation by the Independent Arbitrator in accordance with Section 21.02.

d. **Annual Service Fee Reconciliation.**

(1) **Minimum Contractor's Service Fee Component.** On or before the first Service Fee Payment Date of each Contract Year, Contractor shall calculate the aggregate amount of the Contractor's Service Fee Component ("CSFC") of the Service Fee paid by the City during the preceding Contract Year and compare such aggregate to the Minimum Contractor's Service Fee Component ("MCSFC"). City shall pay Contractor the excess, if any, of the MCSFC over the aggregate CSFC so paid, on or before the next Service Fee Payment Date, as follows: MCSFC-CSFC = payment.

(2) **Tonnage Credits.**

(i) Tonnage Not Delivered Due to Contractor Breach. Contractor shall credit towards calculation of such MCSFC the Tonnages of any City Waste that City did not deliver or cause to be delivered to the Facility but direct hauled to an alternative or substitute transfer station and/or materials recovery facility during the period of time that Contractor failed to meet any of its Performance Guaranties.

(ii) Tonnage Delivered by Franchised Haulers. Upon request of City, Contractor shall credit towards calculation of such MCSFC the Tonnages of any Permitted Waste that the City directs to be delivered to the Facility and that is

Accepted in accordance with the terms of this Agreement, through collection franchise agreements to which the City is a party.

(iii) **Tonnage Delivered through Amended Recycling Agreement.** Contractor shall credit towards calculation of such MCSFC the Tonnages delivered through the Amended Recycling Agreement in excess of 37,137 tons per year.

e. **Credit for County Waste Delivered to the Facility.**

Contractor shall credit towards calculation of such MCSFC the Tonnage of Permitted Waste delivered by the County to the Facility during each Contract Year, in an amount equal to the tons delivered by the City to NARS pursuant to section 6.01f, up to 25,000 tons per year or 40,000 tons per year, as applicable pursuant to section 6.01.f.

If the aggregate Tonnage of Permitted Waste delivered by the County to the Facility for the prior Contract Year is greater than the aggregate tonnage of City Waste delivered by the City to NARS for prior Contract Year, then on the first Service Fee Invoice Date following the end of each Contract Year, Contractor shall credit the City one dollar ($1.00) per ton for the difference between the aggregate tonnage of Permitted Waste delivered by the County to the Facility during the prior Contract Year and the aggregate tonnage of City Waste delivered by the City to NARS during the prior Contract Year.

18.09 Rate Covenant. The City shall establish, maintain and collect rates, fees and charges for municipal solid waste management services that provide amounts sufficient to pay the current operating expenses thereof, including the Service Fee, in accordance with applicable law..

18.10 Payment Implications. Contractor agrees that payment by City to Contractor shall not constitute nor be deemed a release of the responsibility and liability of Contractor, its employees, subcontractors, agents and consultants for the services performed hereunder nor shall such payment be deemed to be an assumption of responsibility or liability by City for any defect or error in such services.

18.11 Equal Benefits.

Contractor shall comply with the provisions in City Code Chapter 3.54 "Non-Discrimination in Employee Benefits by City Contractors."

DIVISION VII. AGREEMENT ENFORCEMENT

ARTICLE 19. BREACHES, DEFAULTS AND REMEDIES

19.01 Compensatory Damages for Contractor Failure to Meet Certain Guaranties.

a. Annual Compliance Certification; Annual Reconciliation.

Following the Effective Date, Contractor shall certify to City on or before the first Service Fee Invoice Date following the end of each Contract Year that Contractor has met its Performance Guaranties for the previous Contract Year and shall deliver to the City supporting documentation and calculations. If Contractor cannot so certify with respect to its Throughput Guaranty for each day in the previous Contract Year or Diversion Guaranties for the previous Contract Year, Contractor shall pay compensatory damages provided in subsection b by the next Service Fee Payment Date.

b. Compensatory Damages. Compensatory damages shall equal (i) the net increased Direct Costs incurred by the City to haul, transfer, transport, process, market, divert, and/or dispose City Waste, as compared to the City costs it would have otherwise incurred under this Amended Agreement, and (ii) any consequential fines and penalties assessed on the City, including by the California Integrated Waste Management Board, directly resulting from Contractor's failure to meet each Throughput Guaranty and Diversion Guaranties. In any administrative proceeding before the California Integrated Waste Management Board, the City will notify the Contractor of the date and time of such proceeding and provide Contractor the opportunity to attend and make a presentation; provided, that City shall calculate compensatory damages under this subsection b to include not only the incrementally greater City's Direct Costs, but the entire City's Direct Costs described in this subsection b for Tonnages of any City Waste that City direct hauls to an alternative or substitute transfer station and/or materials recovery facility upon Contractor's failure to meet its Performance Guaranties in accordance with this Section above, if City has previously paid Contractor the Minimum Contractor's Service Fee Payments for such Tonnages.

City shall use Reasonable Business Efforts to mitigate such damages consistent with securing services substantially similar to Contractor's Performance Obligations hereunder.

If Contractor does not pay any such damages to City by the first day of each month, the City may (i) offset such amounts from monthly Service Fee payments thereafter in accordance with Section 18.07, or (ii) declare a Contractor Default in accordance with Section 19.02.a(6). Either Party may request advice and mediation by the Independent Engineer in accordance with Section 21.01.d.

Notwithstanding the provisions of this subsection b, no Compensatory Damages will be due from Contractor to City in the event of a failure to meet the Performance Guarantees if such failure is due to a strike, work stoppage, or other labor dispute for a period of no longer than thirty (30) days from the commencement of such strike, work stoppage, or other labor dispute. Following expiration of the thirty (30) day period,

Contractor shall pay Compensatory Damages in accordance with this Amended Agreement, and City shall have all of its rights and remedies hereunder.

c. **Survival.** IF CONTRACTOR OWES CITY ANY DAMAGES UPON TERMINATION OF THE AMENDED AGREEMENT BY THE CITY, CONTRACTOR'S LIABILITY SHALL SURVIVE THE TERMINATION HEREOF IN ACCORDANCE WITH SECTION 3.02.

d. **Buy-out for Failure to Meet Commercial Waste Diversion Guaranty.** If Contractor does not meet the Commercial Waste Diversion Guaranty in any month, Contractor may pay City the damages provided in Exhibit 4.05.e to compensate City for its loss of bargain with respect to Recovery, Processing, Marketing, Diversion and Residue Transport and Disposal of Commercial Waste in a lump sum amount. Upon payment of such damages, City's right to collect damages under this Section 19.01 and City's right to terminate the Amended Agreement (including under Section 19.02.a(4)) for Contractor's failure to timely and fully meet Performance Obligations with respect to Recovery, Processing, Marketing, Diversion and Residue Transport and Disposal of Commercial Waste, including the Commercial Waste Diversion Guaranty, shall cease.

19.02 Events of Default.

a. **Contractor Default.** Each of the following shall constitute an event of default by the Contractor **("Contractor Default")** hereunder unless the event, act, or omission giving rise to the Contractor Default was a result of Uncontrollable Circumstances:

(1) **Breach of Agreement.** Contractor fails to perform any of its obligations hereunder, other than those specifically described in this subsection a, and fails to cure such breach within forty-five (45) days of receiving Notice from City specifying the breach, provided that if the nature of the breach is such that it will reasonably require more than forty-five (45) days to cure, Contractor shall promptly provide City Notice explaining why Contractor believes it needs additional time to effectuate a cure together with a schedule therefor and shall diligently proceed to cure the breach within such schedule, whereupon City, in its sole discretion, may (i) make a written demand that Contractor cure the default within such time period or any alternative time period set by City, or (ii) terminate this Amended Agreement at the end of the ninety (90) day cure period.

(2) **Equipment Attached.** Any Service Asset is seized, attached, or levied upon and Contractor does not recover or replace such Service Asset within forty-five days; provided that Contractor may promptly provide City Notice explaining why such Service Asset was seized, attached, or levied upon and why Contractor believes it needs additional time to recover or replace such Service Asset (or alternatively does not need to recover or replace such Service Asset), together with a schedule therefor, and provided further, if Contractor shall diligently and in good faith proceed to recover or replace such Service Asset within such schedule, such forty-five (45) day period shall be extended in accordance therewith.

(3) **Failure to Accept City Waste.** Contractor fails to meet the Throughput, Transfer, Transport, and/or Disposal Guaranty for more than (i) four consecutive days or (ii) an aggregate of fifteen days in any Contract Year; provided that City's Notice of termination for a failure described in clause (i) shall be subject to cancellation as provided in Section 20.01.c(1). Provided, however, that City shall not exercise its termination rights hereunder where the failure to meet the Throughput, Transfer, Transport, and/or Disposal Guaranty is due to an act or omission of Contractor that caused damage or destruction of all or part of the Facility, if all of the following conditions are met: (1) Contractor shall certify in writing to City that insurance proceeds or other funds are available to repair or reconstruct the Facility, and City to its reasonable satisfaction is in agreement with such certification; (2) Contractor shall diligently pursue such repair or reconstruction; (3) Contractor shall pay compensatory damages pursuant to Section 19.01 hereof; and (4) Contractor shall again be able to meet the Throughput, Transfer, Transport and Disposal Guaranty within a reasonable time but in no event later than the date no more than nine (9) months after the original breach causing damage or destruction.

(4) **Failure to Divert.** Contractor fails to Recover, Process, Market and Divert Recovered Materials in amounts equal to at least fifty percent of the Commercial Diversion Guaranty measured over the preceding six-month period, except as provided in Section 19.01.d hereof.

(5) **Bankruptcy, Insolvency, Liquidation.**

(i) **Voluntary proceeding.** Contractor or Guarantor files a voluntary claim for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, custodian, administrator (or similar official) of Contractor or Guarantor or any part of Contractor's or Guarantor's operating assets or any substantial part of Contractor's or Guarantor's property, or shall make any general assignment for the benefit of Contractor's or Guarantor's creditors, or shall fail generally to pay Contractor's or Guarantor's debts as they become due or shall take any action in furtherance of any of the foregoing; provided, that Contractor may propose to City that City substitute a substitute Guarantor, in which event the City may, at its sole discretion, effect such substitution, in which event it shall not terminate this Amended Agreement in accordance with this paragraph.

(ii) **Involuntary proceeding.** With respect to Contractor, a court having jurisdiction, with Contractor's consent or where Contractor fails to oppose the proceeding: (a) enters a decree or order for relief in respect of the Amended Agreement, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect; or (b) any such court enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Contractor or for any part of the Contractor's operating equipment or assets; or (c) orders the winding up or liquidation of the affairs of the Contractor.

(6) **Failure to Pay Compensatory Damages; Provide Assurances of Performance.** Contractor fails to pay City compensatory damages suffered by the City by the applicable Service Fee Payment Date in accordance with Section 19.01.b and the City has not offset such damages in accordance with Section 18.08.b, or fails to provide assurances of performance in accordance with Section 16.06.

(7) **Breach of Representations or Warranties.** Any representation or warranty of Contractor is untrue in any material respect as of the date or re-affirmation thereof.

(8) **Failure to Dispose of City Waste and Residue at Disposal Facility.** Contractor fails to dispose of City Waste or Residue as required by Article 12.

(9) If Contractor is

(i) the subject of any labor unrest (including work stoppage or slowdown, sick-out, picketing, lock-out or other concerted job action in excess of thirty days);

(ii) appears in the judgment of City to be unable to regularly pay its bills as they become due, including non-payment of bills for over sixty days; or

(iii) is the subject of a civil or criminal judgment or order entered by a federal, state, regional or local agency for violation of an environmental or tax law, which judgment is in excess of $250,000 or requires estimated expenditure by Contractor in excess of $250,000,

and the City believes in good faith that Contractor's ability to timely and fully perform Performance Obligations has thereby been placed in substantial jeopardy, the City may, at its option and in addition to all other remedies it may have, demand from Contractor reasonable assurances of timely and full performance hereunder. If Contractor fails or refuses to provide such reasonable assurances by the date required by the City such failure or refusal shall constitute a Contractor Default.

(10) Breach of County-Contractor Agreement. A breach by the Contactor of the County-Contractor Agreement if such breach shall directly or indirectly cause an inability of either party to perform its obligations hereunder or otherwise shall have a material adverse effect on the City.

b. **City Default.** Each of the following shall constitute an event of default (**"City Default"**) hereunder, unless the event, act or omission giving rise to the City Default was a result of Uncontrollable Circumstances:

(1) **Payment.** Failure of the City to pay the Service Fee in accordance with Article 18 or any other amounts due and payable hereunder within sixty (60) days after such amounts become due and payable.

(2) **Bankruptcy, Insolvency, Liquidation.**

(i) **Voluntary proceeding.** City files a voluntary claim for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, custodian, administrator (or similar official) of City for any part of City's operating assets or any substantial part of City's property, or shall make any general assignment for the benefit of City's creditors, or shall fail generally to pay City's debts as they become due or shall take any action in furtherance of any of the foregoing.

(ii) **Involuntary proceeding.** With respect to City, a court having jurisdiction, with City's consent or where City fails to oppose the proceeding: (a) enters a decree or order for relief in respect of the Amended Agreement, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect; or (b) any such court enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the City or for any part of the City's operating equipment or assets; or (c) orders the winding up or liquidation of the affairs of the City.

(3) **Breach of Representations or Warranties.** Any representation or warranty of the City is untrue in any material respect as of the date or reaffirmation thereof.

(4) **Breach by City of City-County Agreement**. A breach by the City of that certain Agreement for Tipping Fees at North Area Recovery Station between the City and the County of Sacramento if such breach shall directly or indirectly cause a material adverse effect on the operations, revenues, or expenses at the Facility.

(5) **Breach of Agreement**. City fails to perform any of its obligations hereunder, other than those specifically described in this subsection b, and fails to cure such breach within forty-five (45) days of receiving Notice from Contractor specifying the breach, provided that if the nature of the breach is such that it will reasonably require more than forty-five (45) days to cure, City shall promptly provide Contractor Notice explaining why City believes it needs additional time to effectuate a cure together with a schedule therefor and shall diligently proceed to cure the breach within such schedule, whereupon Contractor, in its sole discretion, may (i) make a written demand that City cure the default within such time period or any alternative time period set by Contractor, or (ii) terminate this Amended Agreement at the end of the ninety (90) day cure period.

(6) **Failure to Delivery City Waste**. City fails to deliver all City Waste to the Facility and fails to cure such breach within thirty (30) days of receiving Notice from Contractor specifying the breach.

19.03 Remedies Upon Default.

a. **City's Remedies.** Upon occurrence of a Contractor Default, City shall have the following rights:

(1) **Termination:** subject to the provisions of subsection 20.01.c, to terminate the Amended Agreement or any portion of the Contractor's Performance Obligations in accordance with Section 20.01.a and, at the City's option, secure substitute services in accordance with Section 13.01; provided, that in the event of Contractor Default for bankruptcy, insolvency or liquidation of Contractor under Section 19.02.a(5), termination shall be automatic as of the date of filing, consent, assignment or failure described therein to the extent authorized by Applicable Law; and provided further, that in any event of Contractor Default during the continuance of strikes, work stoppages or other labor disputes or disturbances of Contractor, City may not so terminate the Amended Agreement or any portion of the Contractor's Performance Obligations for a period of thirty days from commencement of such Contractor Default if Contractor pays City compensatory damages incurred by the City in accordance with and if required by Section 19.01.b.

(2) **Suspension:** to suspend the Amended Agreement in accordance with Section 20.01.b and, at the City's option, obtain substitute services in accordance with Section 13.01; and

(3) **All Other Available Remedies:** to assess and collect compensatory damages described in Section 19.01 and exercise all other available remedies at law and in equity, including specific performance and non-binding advice and mediation by the Independent Engineer in accordance with Section 21.01.d or non-binding dispute resolution by the Independent Arbitrator in accordance with Sections 21.02.

Contractor acknowledges that City's remedy of damages for a breach hereof by Contractor may be inadequate for reasons including:

(i) the urgency of timely, continuous, and high-quality waste management service hereunder, including (a) Transfer, Transport and Disposal of City Waste and/or transfer for disposal of Residue, which may be putrescible and constitute a threat to public health, and (b) Recovery and Processing in accordance with Applicable Law;

(ii) the long time and significant investment of money and personnel (both City staff and private consultants, including engineers, financial advisors and procurement counsel) required to request and evaluate proposals for substitute service comparable to the service provided hereunder for the price provided hereunder, and to negotiate new agreements therefor;

(iii) the City's reliance on Contractor's technical waste management expertise; and

(iv) City's reliance on Contractor's (or its subcontractors') established relationships with disposal facility owner/operators and recovered materials brokers and purchasers.

Consequently, City shall be entitled to all available equitable remedies, including injunctive relief.

b. Contractor's Remedies.

(1) Upon occurrence of a City Default, Contractor shall have the right to exercise any and all available remedies at law or, as applicable, equity, and non-binding advice and mediation by the Independent Engineer in accordance with Section 21.01.d or non-binding dispute resolution by the Independent Arbitrator in accordance with Section 21.02.

(2) Notwithstanding timely cure of a breach under Section 19.02.b(6), City shall pay Contractor the Service Fee for each ton of City Waste the City failed to deliver to the Facility prior to such cure.

19.04 Remedies not Exclusive. Each Party's rights and remedies in event of the other Party's breach and default hereunder are not exclusive. A Party's exercise of one such remedy is not an election of remedies.

19.05 Waiver. Either Party's waiver of any breach or default shall not be deemed to be a waiver of any other breach or default, including ones with respect to the same obligations hereunder. The subsequent acceptance by either Party of any damages or other money paid by the other Party shall not be deemed to be a waiver by such Party of any pre-existing or concurrent breach or default.

19.06 Jurisdiction; Venue. The Parties shall bring any lawsuits arising out of this Amended Agreement in courts of the County in the State, which shall have exclusive jurisdiction over such lawsuits. The Parties agree that venue is made in and will be performed in courts sitting in the County. Parties further agree that the site of any other hearing or action, whether arbitration or non-judicial, of whatever nature of kind regarding this Amended Agreement, shall be conducted in the County. Parties agree that a prevailing Party's reasonable costs, attorneys' fees (including the reasonable value of the services rendered by the City Attorney's Office) and expenses, including investigation fees and expert witness fees, shall be paid by the non-prevailing party in any dispute involving the terms and conditions hereof, unless otherwise specifically provided herein. The Parties consent to jurisdiction over their person and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

ARTICLE 20. SUSPENSION OR TERMINATION

20.01 City Right to Suspend or Terminate.

a. **Termination Events.** City shall have the right to terminate this Amended Agreement or direct Contractor to cease performing any portion of its Performance Obligations hereunder in the following events:

(1) **Contractor Default:** the occurrence of a Contractor Default,

(2) **Uncontrollable Circumstances:** upon the occurrence and continuance of an Uncontrollable Circumstance for one hundred eighty (180) consecutive days.

City shall have the right to terminate this Amended Agreement in the following additional events:

(3) **Criminal Activity of Contractor:** the occurrence of any behavior described in Article 17.

(4) **Convenience:**

(i) The City shall have the one-time right to terminate this Amended Agreement for convenience at the end of the tenth (10th) calendar year after the date Kiefer Landfill becomes the Primary Disposal Facility (such date being the "**First Early Termination Date**") upon (a) delivery of written notice (the "**First Early Termination Notice**") to Contractor of its election to terminate this Amended Agreement in accordance with this Section 20.01.a(4)(i) no later than twelve (12) months prior to the First Early Termination Date, and (b) a non-refundable payment to Contractor concurrently with the delivery of the First Early Termination Notice in an amount equal to the sum of (I) Twenty Two Million Five Hundred Thousand Dollars ($22,500,000.00), and (II) all termination for convenience payments due under the Kiefer Disposal Agreement (collectively, the "**First Early Termination Payment**"). If the City timely delivers the First Early Termination Notice and the First Early Termination Payment, this Amended Agreement shall terminate as of the First Early Termination Date. The City's obligation to pay the First Early Termination Payment is in addition to and not in lieu of the City's obligation to pay all other amounts due under this Amended Agreement through and including the First Early Termination Date. Time is of the essence with respect to the delivery of the First Early Termination Notice and First Early Termination Payment.

(ii) In addition to the one-time termination for convenience right set forth in Section 20.01a.(4), the City shall have the one-time right to terminate this Amended Agreement for convenience at the end of the fifteenth (15th) calendar year after the date Kiefer Landfill becomes the Primary Disposal Facility (such date being the "**Second Early Termination Date**") upon (a) delivery of written notice (the "**Second Early Termination Notice**") to Contractor of its election to terminate this Amended Agreement in accordance with this Section 20.01.a(4)(ii) no later than twelve (12) months prior to the Second Early Termination Date, and (b) a non-refundable payment to Contractor concurrently with the delivery of the Second Early Termination Notice in an amount equal to the sum of (A) Twelve Million Five Hundred Thousand Dollars ($12,500,000.000), and (B) all termination for convenience payments due under the

Kiefer Disposal Agreement (collectively, the "**Second Early Termination Payment**"). If the City timely delivers the Second Early Termination Notice and the Second Early Termination Payment, this Amended Agreement shall terminate as of the Second Early Termination Date. The City's obligation to pay the Second Early Termination Payment is in addition to and not in lieu of the City's obligation to pay all other amounts due under this Amended Agreement through and including the Second Early Termination Date. Time is of the essence with respect to the delivery of the Second Early Termination Notice and Second Early Termination Payment.

(5) **Failure to Meet Facility Development Time Line:** if the events listed in Section 4.01 do not occur within the times, as may be extended, provided therein, or if the City fails to adopt and approve Facility Development in accordance with Section 4.02(1) regarding CEQA; provided that the City may not terminate the Amended Agreement during any period the Independent Engineer is determining whether the Compliance Test has been passed in accordance with Section 21.01.c(1)(i).

(6) **Invalidity of Designation Clause:** a ruling of invalidity by any court of competent jurisdiction with respect to the provisions regarding the Primary Disposal Facility in accordance with Section 1.06.

(7) Contractor (including its officers, directors, or agents under the direction of any officer or director) knowingly uses or has used any fraud, wrongful or criminal influence, including any activity that results in a violation of Title 2 of the Sacramento City Code, California Government Code (Section 1090), or the California Political Reform Act (excepting violations that are the sole fault of City officers or employees), to obtain City's approval of this Amended Agreement. This specifically excludes all prior lawful contributions. The City's election to terminate under this subsection shall take effect ninety (90) days after City provides notice to the Contractor, during which time Contractor may pursue declaratory, injunctive and/or other extraordinary relief in Sacramento Superior Court. City's right to terminate under this subsection expires 4 years from the Effective Date.

b. **Suspension Events.** In addition to its termination rights in subsection a, City shall have the right to suspend this Amended Agreement, in whole in or in part, upon the occurrence of a Contractor Default described in Section 19.02.a(3) regarding failure to meet the Throughput, Transfer, Transport, and/or Disposal Guaranty or the occurrence of any other Contractor Default that endangers public health, welfare or safety; provided such suspension is for no longer than forty-five days, during which period the Contractor shall have the opportunity to demonstrate to the reasonable satisfaction of the City that Contractor can once again fully perform its Performance Obligations in accordance with Section 13.01, in which case City may waive such default and Contractor shall continue its Performance Obligations. If City is not so satisfied, it may exercise any or all remedies, including under subsection a.

c. **Notice.**

(1) **Termination.** City shall give Contractor Notice of termination and to the lender which Contractor identified in its last monthly report to City in accordance with Section 14.01.b, or which Contractor has otherwise identified to City, a courtesy copy thereof mailed (certified mail; return receipt requested) to the address Contractor provided in such last monthly report, which Notice shall be effective thirty days thereafter; provided that such termination shall be effective fifteen days thereafter prior to the Operations Date and immediately in the event described in Section 20.01.a(5) if the Scheduled Operations Date does not timely occur. In the event of a Contractor Default described in Section 19.02.a(3) regarding failure to meet the Throughput, Transfer, Transport, and/or Disposal Guaranty, if during the Notice period described in this subsection Contractor demonstrates to the satisfaction of City in accordance with Section 13.01 that it has resumed meeting all such Guaranties and will continue to meet such Guaranties for the remaining Term, City shall cancel such Notice of termination. Subject to the provisions of subsection (2), failure of City to provide such courtesy copy to Contractor's identified lender shall not render ineffective such Notice of termination. It shall be the affirmative duty of Contractor to at all times keep City informed of the name and address of Contractor's lender. In the case of a change in the identity of the lender, or of a change in address of the identified lender, Contractor shall (and the lender may) provide written notice to City of the said change, specifying the full name of the lender; the effective date of any change; and the address of the lender. City's sole obligation with respect to notification of the lender shall be to send the Notice to the lender last identified by Contractor and/or such lender, at the specified address.

(2) **Lender Right to Perform.**. The provisions of this subsection (2) are subject to the provisions of subsection (1) relating to identification of the name and address of Contractor's lender. No termination pursuant to Section 20.01 c(1) shall be effective unless and until the lender shall have been given the Notice described in that section, and the applicable cure period shall have expired. Once the lender has been given notice, it shall have the right, but not the obligation, to perform any term, covenant, condition or agreement of Contractor under this Amended Agreement and to remedy any default by Contractor hereunder, and the City shall accept performance by the lender with the same force and effect as if furnished by Contractor. The City's right to terminate the Agreement during the pendency of any cure attempted by the lender shall be limited, but only as provided herein, and only to the extent that the lender is in full compliance with all provisions hereof; provided, however, that it is specifically the intention of the Parties that nothing in this Amended Agreement shall be construed to create any right in a lender greater than the rights of Contractor hereunder.

(i) **No extra cure period; Lender compliance with Amended Agreement.** If the lender chooses to cure or attempt to cure a breach hereunder, it shall pay any Compensatory Damages as and when they become due hereunder; shall comply in all respects with the terms and conditions of this Amended Agreement in the same manner as Contractor is obligated to do; shall commence to cure the default within the applicable cure period hereunder; shall diligently prosecute the cure; and shall in any event promptly complete the cure within a reasonable time but in no event

shall this section be construed so as to extend or otherwise give the lender a period for such cure longer than that given the Contractor hereunder.

(ii) **Cure of defaults requiring possession of the Facility.** In case of a default by Contractor that cannot practicably be cured by the lender without taking possession of the Facility, City shall not take action to terminate this Amended Agreement so long as: (a) the lender delivers to City prior to the expiration of the Notice period, an agreement approved as to form by the City Attorney to cure such default; (b) the lender promptly proceeds to obtain possession of the Facility, as mortgagee (through the appointment of a receiver or otherwise), diligently pursues judicial or non-judicial foreclosure proceedings or assignment in lieu of foreclosure, as appropriate, and upon obtaining possession, promptly commences and diligently prosecutes to completion such action as may be necessary to cure such default; and (c) the lender pays and continues to pay all Compensatory Damages payable under this Amended Agreement throughout the entire period during which the lender is attempting to effect a cure and/or obtain possession of the Facility, and otherwise performs all of the obligations of Contractor hereunder during the said period.

(iii) **Lender's right to cease cure.** The lender shall not be required to continue to attempt to effect a cure; provided, however, that if such lender shall have commenced to cure or attempt to cure the Contractor Default, the lender shall give Notice to City of any decision to cease to cure or attempt to cure such Contractor Default, and shall pay all Compensatory Damages through the date of such Notice; and provided further, that effective on the date of such Notice, lender shall have no further rights or obligations whatsoever hereunder. Once the lender has cured the Contractor Default, the lender shall not be required to continue to proceed to obtain possession or to continue in possession as mortgagee of the Facility pursuant to subsection (ii) above, or to continue to prosecute foreclosure proceedings pursuant thereto.

(iv) **Lender's assignment rights where Contractor Default cured.** Where the lender has effected a cure of the Contractor Default pursuant to this Section 20.01, the lender shall have the right to assign its rights under this Amended Agreement to a third party operator, subject to all of the provisions of Article 23 of this Amended Agreement. Upon approval by City of the assignment pursuant to Article 23, lender shall from the effective date of the assignment be relieved of all liability under this Amended Agreement, provided that lender shall have paid all Compensatory Damages and otherwise shall have complied with the terms and conditions of this Amended Agreement through such effective date.

(v) **Lender's Right to a New Agreement**. In addition to the rights of the lender set forth above, if this Amended Agreement terminates for any reason, including, without limitation, a default by Contractor hereunder or rejection of this Amended Agreement in any bankruptcy proceeding, and within thirty days after such termination the lender, by written notice, requests City to enter into a new Agreement up to and including the effective date of such assignment. Unless the parties otherwise agree, such new Agreement shall continue for the period that would have constituted

the remainder of the term of this Amended Agreement, and shall otherwise have the exact same terms, conditions and language as this Amended Agreement.

(vi) **Rights and remedies not exclusive.** The lender rights and remedies pursuant to this section 20.01.c are not exclusive. The lender's exercise of one such remedy is not an election of remedies. Contractor may delegate irrevocably to the lender the authority to exercise any and all of Contractor's rights under this Amended Agreement in the event of a default by Contractor hereunder.

(vii) **Service fee increase to lender.** Notwithstanding any other provision of this Amended Agreement, in the event of the exercise of the lender's rights pursuant to the provisions of this Section 20.01, City shall not be required to set rates in excess of those otherwise required hereunder nor shall the lender have the right to increase the Service Fees beyond the level at which they would have been set pursuant to this Amended Agreement in the absence of such exercise of such lender's rights.

(2) **Suspension.** City shall give Contractor Notice of suspension, which shall be effective immediately or on such other date named by the City in such Notice.

d. Suspension, Termination of a Portion of Performance Obligations: Reduction in Service Fee. In the event the City suspends a portion of this Amended Agreement or terminates a portion of Contractor's Performance Obligations, Contractor shall continue to fully perform its obligations under the remaining portions hereof that are not suspended or terminated, and the Service Fee shall be adjusted by City to reflect actual reductions in Contractor's Direct Costs.

20.02 Contractor's Right to Terminate.

Contractor shall have the right to terminate this Amended Agreement upon the occurrence of any City Default. Contractor shall give City Notice of termination, which shall be effective thirty days thereafter unless City remedies such City Default during such period.

20.03 Contractor's Obligations Upon City Termination.

a. Pay Outstanding Damages. Contractor shall pay City any damages, including damages in accordance with Section 19.01.b, accrued and payable during the then current Contract Year or portion thereof that would have otherwise become payable. CONTRACTOR'S LIABILITY FOR SUCH PAYMENTS SHALL SURVIVE THE TERMINATION HEREOF.

b. Records. Upon City request, Contractor shall promptly provide City with any or all records kept in accordance with Section 14.01. CONTRACTOR'S LIABILITY TO PROVIDE SUCH RECORDS SHALL SURVIVE THE TERMINATION HEREOF.

ARTICLE 21. DISPUTE RESOLUTION.

21.01 Independent Engineer.

a. **Selection.** In the event either Party wishes to select an Independent Engineer or in the event that the dispute is to be resolved by the Independent Engineer as provided herein, the Party who disputes a term or obligation hereof or claims a right to resolution pursuant to this Article, shall provide the other Party Notice thereof and each Party shall promptly prepare a separate list of five independent engineers having experience in the design, construction, acceptance, and operation of transfer stations, material recovery facilities and yard waste processing facilities, in numerical order with the first preference at the top, and exchange and compare lists. The independent engineer ranking highest on the two lists by having the lowest total rank order position on the two lists shall be the Independent Engineer. In case of a tie in scores, the Independent Engineer having the smallest difference between the rankings of the two parties shall be selected; other ties shall be determined by a coin toss. If no independent engineer appears on both lists, this procedure shall be repeated. If selection is not completed after the exchange of three lists or sixty (60) days, whichever comes first, then each Party shall select one independent engineer having experience described above and the two engineers so selected shall together select an Independent Engineer, and if such engineers cannot together select an Independent Engineer within five (5) days, the Independent Engineer shall be selected by a coin toss between such two engineers.

b. **Costs.** Parties shall pay the costs of the Independent Engineer in accordance with the provisions hereof; provided, that if no provision is specifically made, the Parties shall share the costs of the Independent Engineer equally for the first three arbitrations or mediations brought in any Contract Year, and thereafter shall be borne by the loser, as determined by the Independent Engineer.

c. **Binding Arbitration for Certain Disputes.**

(1) **Notices.** Following the Parties mutual good faith efforts to resolve disputes listed in this paragraph below for a period of no less than twenty (20) Working Days (or other period provided herein), the Parties shall each give the Independent Engineer Notice detailing the dispute together with a written statement of each Party's position thereon. Parties shall simultaneously exchange copies thereof. The determination of the Independent Engineer with respect to these specific disputes shall be binding:

(i) inaction or disagreement with respect to the Compliance Test in accordance with Sections 4.01.a(7), 4.05.c(2) and (3);

(ii) disputes as to adequacy or accuracy of any reports in accordance with Section 14.01.b; and

(iii) determination of breaches with respect to the Vehicle Turnaround Guaranty in accordance with Section 6.02;

(iv) determination of tare weights in accordance with Section 6.05.a;

(v) any other disputes that both Parties have agreed to submit to the Independent Engineer for binding determination under this Amended Agreement.

The Independent Engineer may establish protocol for Parties to provide information and documentation. Both Parties shall, in good faith and in writing, provide the Independent Engineer with any and all information and documentation the Independent Engineer requires or requests in order to make its determination, within five (5) Working Days or such longer time period as the Independent Engineer may specify. Each Party shall simultaneously provide the other Party with copies thereof. Neither Party shall communicate orally with the Independent Engineer unless the other Party is privy thereto. Neither Party shall communicate in writing with the Independent Engineer unless it simultaneously sends copies of such communication to the other Party, in the same manner that it sends such communication to the Independent Engineer.

(2) **Determination.** The Independent Engineer 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. Such determination shall be made within forty-five (45) days following conclusion of the last to occur of Independent Engineer's receipt of requested submissions or any hearing with the Parties. Such determination shall be binding.

d. **Mediation**. Either Party may give the other Notice requesting advice and mediation by the Independent Engineer of any disputes between the Parties involving Facility Operations and technical solid waste management issues, including damages in accordance with Section 19.01.b, and Service Changes in accordance with Section 26.02.b. If the Party receiving the Notice agrees to mediation, it will give Notice specifying a date and location for a meeting of the Parties together with the Independent Engineer. The Parties shall not be bound by such mediation. Parties shall follow the same protocol as provided in the last paragraph of subsection c(1) above.

e. **Studies and Surveys.** The Parties may request the Independent Engineer to conduct studies and surveys with respect to breaches or disputes hereunder, including Vehicle Turnaround Guaranty in accordance with Section 6.02. Cost of such surveys and studies shall be paid as provided herein or as the Parties may otherwise agree.

21.02 Non-binding Arbitration by Independent Arbitrator.

a. **Selection.** If either Party wishes to select an arbitrator with respect to disputes between the Parties regarding construction of this Amended Agreement and other legal issues, it shall give the other Party Notice thereof. Within fifteen (15) Working Days of receiving such Notice, each Party shall select an Independent Arbitrator having experience in the design, construction, acceptance and operation of transfer stations, material recovery facilities and yard waste processing facilities; provided, that if either

Party fails or refuses to select an Independent Arbitrator, the other party's selected Independent Arbitrator may select a second one. Such two arbitrators shall select a third independent Arbitrator with similar experience; provided that if they do not select such third arbitrator within fifteen (15) Working Days, then either Party may request a list from the American Arbitration Association of five arbitrators residing in the State and the Parties shall alternately (starting with the Party who requested arbitration) strike names from the list until only one name remains, who shall be the chairperson of the arbitration panel.

b. **Costs.** Parties shall pay the costs of the Independent Arbitrators in accordance with the provisions hereof; provided, that if no provision is specifically made, the Parties shall share the costs of the Independent Arbitrators equally for the first three dispute resolutions brought in any Contract Year, and thereafter shall be borne by the loser, as determined by the Independent Arbitrators.

c. **Notices.** Following the Parties mutual good faith efforts to resolve disputes, which may be by mediation by the Independent Engineer, for a period of no less than twenty (20) Working Days, the Parties shall each give the Independent Arbitrators Notice detailing the dispute together with a written statement of each Party's position thereon. Parties shall simultaneously exchange copies thereof. Upon mutual consent of the Parties given in each Party's sole discretion, the determination of the Independent Arbitrators shall be binding.

Both Parties shall, in good faith and in writing, promptly provide the Independent Arbitrators with any and all information and documentation the Independent Arbitrators require or request in order to make their determination. Each Party shall simultaneously provide the other Party with copies thereof. Neither Party shall communicate orally with the Independent Arbitrators unless the other Party is privy thereto. Neither Party shall communicate in writing with the Independent Arbitrators unless it simultaneously sends copies of such communication to the other Party, in the same manner that it sends such communication to the Independent Arbitrators. The Independent Arbitrators shall hold the arbitration hearing in accordance with the most current version of the Commercial Arbitration rules provided by the American Arbitration Association.

d. **Determination.** The Independent Arbitrators shall make their determination based on the submissions of the Parties, the provisions hereof, and other factual determinations they may make regarding the matter in dispute. If the Parties have not previously agreed that the determination of the Independent Arbitrators is binding, either Party may exercise any and all other remedies in accordance with Section 19.03.a and b, respectively. The award of a majority of the Independent Arbitrators shall be in writing with reasons included, rendered within thirty days of the arbitration hearing. The Independent Arbitrators shall not have the power and authority to amend, modify, alter, or delete any term, condition of provision hereof or require the Parties to make any such amendment, modification, alteration, or deletion.

21.03 Parties' Obligations During Pendency of Dispute. During the pendency of any dispute hereunder, the Parties shall perform their respective obligations hereunder.

ARTICLE 22. THE PARTIES.

22.01 Contractor Is Independent Contractor. The Parties intend that Contractor shall perform Performance Obligations as an independent Contractor engaged by City and neither as an officer or employee of City nor as a partner of or joint venturer with City, and no relationship of employer-employee exists between the Parties for any purpose whatsoever. Neither Contractor nor its officers, employees, subcontractors, and agents shall obtain any rights to retirement benefits, workers compensation benefits, or any other benefits that accrue to City employees.

No agents, employees, contractors, subcontractors, consultants, licensees, or invitees of Contractor shall be deemed to be an employee or agent of the City. Such Persons shall be entirely and exclusively under the direction, supervision, and control of Contractor. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging or any other terms of employment of requirements of Applicable Law, shall be determined by Contractor. Contractor shall issue W-2 or 1099 Forms for income and employment tax purposes for all such Persons.

It is further understood and agreed by the Parties that Contractor, in the performance of its Performance Obligations, is subject to the control or direction of City as to the Performance Obligations to be performed and the results to be accomplished by the services agreed to be rendered and performed hereunder, but not as to the means, methods or sequence of performing Performance Obligations results. Contractor shall be solely responsible for the acts and omissions of its officers, employees, subcontractors, and agents.

Except as City may specify in writing, Contractor and Contractor's personnel shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor and Contractor's personnel shall have no authority, express or implied, to bind City to any obligation whatsoever.

City is not required to make any deductions or withholdings from the compensation payable to Contractor hereunder. As an independent contractor, Contractor agrees to indemnify and hold City harmless from any and all claims that may be made against City based upon any contention by any of Contractor's employees or by any third party, including any State or federal agency and employees making workers compensation claims, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Amended Agreement or by reason of the nature and/or performance of Performance Obligations.

To the extent that Contractor obtains permission to, and does, use City facilities, space, equipment, or support services in the performance hereof, this use shall be at the

Contractor's sole discretion based on Contractor's determination that such use will promote Contractor's efficiency and effectiveness. The City does not require that Contractor use City facilities, equipment, or support services or work in City locations in the performance hereof.

22.02 Parties in Interest. Subject to the provisions of Section 20.01 relating to lender's rights (to the extent such rights are specified therein), nothing in this Amended Agreement, whether express or implied, is intended to confer any rights on any Persons other than the Parties and their representatives, successors, and permitted assigns.

22.03 Binding on Successors. The provisions of this Amended Agreement shall inure to the benefit of and be binding on the successors and permitted assigns of the Parties.

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

22.05 Actions of the City in Its Governmental Capacity. Nothing herein shall be interpreted as limiting the rights and obligations of the City in its governmental or regulatory capacity, including land use and permitting actions.

22.06 Contractor's Obligations Performed at Its Sole Expense. As compensation for performing its Performance Obligations, Contractor shall perform its Performance Obligations for the compensation expressly provided for herein.

22.07 City Representative Authorization. Authority to act on behalf of the City in the administration of this Amended Agreement is hereby delegated to the City Manager or his or her designee.

22.08 Confidentiality of City Information. During performance of this Amended Agreement, Contractor may gain access to and use City information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, customer lists, product design, copyright, date, and other vital information (hereafter collectively referred to as "**City Information**") that are valuable, special and unique assets of the City. Contractor agrees to protect all City Information and treat it as strictly confidential and further agrees that Contractor will not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any City Information to any third party without the prior written consent of City, or unless compelled to do so by a written order of a court of competent jurisdiction. In the event that such an order is sought by any third party in an action wherein Contractor is a party or in a separate action where Contractor is not a party and discovery is sought of Contractor or of its records, Contractor shall immediately give notice to City so that City may determine whether to defend against any such efforts to obtain City Information. A violation by Contractor of this Section shall justify legal and/or equitable relief.

ARTICLE 23. ASSIGNMENT, AMENDMENTS AND RIGHT OF FIRST REFUSAL

23.01 Assignment.

a. **City Assignment.** The City may assign this Amended Agreement to a sanitation district or other public entity succeeding to the major portion of the City's solid waste management rights and obligations if such assignee is financially capable of meeting the City's obligations hereunder. Any dispute as to the financial capability of the successor entity shall be subject to the dispute resolution provisions of Article 21 of this Amended Agreement. However, no such assignment by the City shall be valid unless the assignee shall have agreed in writing to comply with all of the provisions of this Amended Agreement and shall have certified that the representations and warranties of the City in Exhibit 2.02 are in full force and effect as to it.

b. **Contractor Assignment.** Contractor may assign its rights or delegate or otherwise transfer its obligations hereunder to another Person only with City express written consent given or withheld in City's reasonable discretion, including but not limited to consistency with City policy (subject to the provisions of subsection c(5) below relating to the rights of a lender). Any such assignment without City consent shall be void. However, City hereby consents to Contractor assigning its rights for the purposes of security to Contractor's lender. Provided, however, that nothing in this Amended Agreement shall be construed to create any right in a lender that is greater than those rights accruing to Contractor hereunder.

c. **Assign.** For the purpose of this Section, **"Assign"** (or **"Assignment"**) includes:

(1) selling, exchanging or otherwise transferring to a third party effective control of Contractor management (through sale, exchange or other transfer or outstanding common stock of Contractor or otherwise) or any of Contractor's assets dedicated to Performance Obligations, unless such assets are promptly replaced with assets of greater or equal value and equivalent function;

(2) issuing new stock or selling, exchanging or otherwise transferring ten percent or more of the then outstanding common stock of Contractor to a Person other than the shareholders owning said stock as of the date hereof;

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

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

(5) an assignment by a lender in accordance with the provisions of Section 21.01, to a third party operator. In such a case, the City shall exercise reasonable business judgment in determining whether or not to consent to the assignment, taking into account such factors as the City in its judgment deems appropriate, including but not limited to financial strength of the proposed assignee, the proposed assignee's qualifications, the proposed assignee's litigation history, the criminal history of the proposed assignee and/or its officers, owners, principal shareholders, partners, board members and other principals, and the proposed assignee's performance in other contractual arrangements.

(6) any combination of the foregoing (whether or not in related or contemporaneous transactions) that has the effect or any such transfer or change of Ownership or change or control of Contractor.

(7) Notwithstanding the provisions of this subsection 23.01.c, Assignment shall not include a sale, exchange, or transfer so as to require City approval if such sale, exchange, or transfer is to a Person which directly or indirectly controls, is controlled by, or is under common control with Contractor, Bernard Huberman and/or Daniel Rosenthal (the "Original Principals"), or siblings, children, parents or heirs of the Original Principals (the "Related Persons"). Any such transfer shall not be valid until 1) the City receives an executed Guaranty Agreement from BLT Enterprises in substantially the same form as the Guaranty Agreement included as Exhibit 16.05 and such Guaranty Agreement is approved as to form by the City Attorney, and 2) the City receives a bond, irrevocable standby letter of credit, or other security pursuant to Section 16.04 above. For purposes of this definition, a "Person" who is an individual includes the Related Persons and includes any trust of which such Person or his or her relatives is the trustee or a beneficiary. For purposes of this definition, the "control" of a Person is shown by the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of a majority of voting securities or membership interests, as trustee, by contract, or otherwise.

Subject to the provisions of Section 21.01 relating to lender's rights, City shall not be obligated to consider any proposed Assignment if Contractor is in breach of this Amended Agreement at any time during the period of such consideration. Contractor shall make any request for consent to Assignment in the form and manner prescribed by the City and shall compensate City in the minimum, non-refundable amount of a ten thousand dollars ($10,000) assignment fee therefor plus any additional City's Direct Costs incurred in excess thereof for considering such request, including time spent by consultants, attorneys, and City staff. Contractor shall further pay City attorneys' fees and costs necessary to enjoin or otherwise enforce this provision within thirty days of City's request therefor.

23.02 Amendments. The Parties may change, modify, supplement, or amend this Amended Agreement only upon mutual written agreement duly authorized and executed by both Parties.

23.03 Right of First Refusal. If Contractor proposes to sell, exchange, or otherwise transfer to a third party the Site, the Facility (including the building and the equipment), both the Site and the Facility, or its Service Assets, Contractor shall first offer to sell such assets to City at a price no greater than that offered to such third party. The City shall have sixty (60) days to accept or reject such offer, and failure to notify Contractor in writing of the City's acceptance or rejection shall constitute City's rejection thereof.

ARTICLE 24. Uncontrollable Circumstances.

24.01 Uncontrollable Circumstances.

a. **Performance Excused.** Neither Party shall be deemed in breach or default of its duties, obligations (other than a payment obligation), responsibilities, commitments, or, with respect to the Contractor, Performance Guaranties, hereunder to the extent that such breach or default is due to an Uncontrollable Circumstance, provided such Party exerted Reasonable Business Efforts to prevent the occurrence and mitigate the effects of such Uncontrollable Circumstance.

(1) **Payment obligation.** Neither Party shall be excused from a payment obligation in the event of an Uncontrollable Circumstance except that upon the occurrence of any Uncontrollable Circumstance that directly prevents the City from delivering or causing to be delivered City Waste that would otherwise be delivered to the Facility (calculated on a daily basis), the Contractor agrees to use its Reasonable Business Efforts to reduce costs and expenses related to such Uncontrollable Circumstance and credit such reduction in costs and expenses, if any, against the Minimum Contractor's Service Fee Component payable during the occurrence of any Uncontrollable Circumstance that directly prevents the City from delivering or causing to be delivered City Waste that would otherwise be delivered to the Facility.

(2) **Exception where Facility damaged or destroyed.** In the event of damage to or destruction of the Facility due to an event of Uncontrollable Circumstances, City shall not exercise its right to terminate this Amended Agreement provided that: (a) Contractor has procured and paid the cost of business interruption insurance in the amount of $2,500,000.00, has provided City with a certificate evidencing such coverage, which insurance (when combined with any other insurance actually covering the loss) actually covers the loss including but not limited to the expense of City specified in this subsection (2); (b) Contractor has made substantial progress during the one hundred eighty (180) day period following the damage or destruction date toward rebuilding the Facility, including having entered into a construction contract for all required construction; and (c) under the construction contract, the schedule is such that construction is scheduled to be complete no later than three hundred sixty (360) days following the date that the damage or destruction occurred. In the event that Contractor complies with all of the above criteria, City will, in addition to not exercising its termination rights, make minimum payments to Contractor for the first one hundred

eighty (180) days following the date of the damage or destruction. Such minimum payments shall consist of the amount required for purposes of Contractor's current debt service payment obligation. Such minimum payments shall be reduced by any proceeds (whether paid to Contractor, or to City) from the business interruption insurance (combined with any other insurance actually covering the loss) required under this subsection.

b. **Notice.** The Party experiencing an Uncontrollable Circumstance and relying thereon shall give immediate Notice thereof to the other Party, including describing all or a portion of performance hereunder for which it seeks to be excused; the expected duration of the Uncontrollable Circumstance; the extent deliveries of Permitted Waste may be curtailed; any requests or suggestions to mitigate the adverse effects of such Uncontrollable Circumstance; any extension of one or more Facility Development benchmark periods described in Section 4.01; any Service Change; any adjustment of the Service Fee; or any modification of Performance Guaranties.

c. **Parties' Rights.** If the Parties dispute whether an Uncontrollable Circumstance has occurred, either Party may submit such dispute to the Independent Arbitrator in accordance with Section 21.02. Notwithstanding that Contractor's failure to timely and fully perform its Performance Obligations due to Uncontrollable Circumstances does not constitute a Contractor Default, following the continuance of such failure and resolution by the Independent Arbitrator, City shall nevertheless retain the rights, exercised in its sole discretion, to secure substitute service in accordance with Section 13.01, and to suspend or terminate the Amended Agreement as provided in Section 20.01.

DIVISION VIII. AGREEMENT ADMINISTRATION

ARTICLE 25. ESCALATION

25.01 Adjustment. All stated monetary amounts in this Amended Agreement (including, without limitation, Unpermitted Waste Handling Fee cost allocation in accordance with Section 6.01.d, liquidated damages for failure to meet the Vehicle Turnaround Guaranty in accordance with Section 6.02, reimbursement amounts with respect to White Goods in accordance with Section 8.03.a, insurance and bonding limits and deductible amounts in accordance with Article 16, and City's incremental haul costs in accordance with Section 19.01.b(1), but excluding the tonnage amounts used to determine the Minimum Contractor's Service Fee Component in accordance with Section 18.02.a, and the Contractor's Service Fee Component that shall be adjusted as provided in Sections 25.02 and 25.03), shall be subject to adjustment commencing on July 1 following the Effective Date of this Amended Agreement if and when such amounts are due and payable except for amounts that are not stated numerically as of the date hereof but are measured by actual or Direct Costs, delay damages in accordance with Section 4.02.b(2), bonus for early completion in accordance with Section 4.05.f, and Regulatory Fee Component.

Such adjustment shall be calculated by computing the percentage change in the CPI on each April 1 following the Effective Date of this Amended Agreement, from the CPI level as of the previous April 1, and multiplying the amount to be adjusted by one plus such percentage change; provided that the maximum increase in any Contract Year shall be six percent (6%).

25.02 Adjustments of Contractor's Service Fee Component Before Kiefer Landfill is Primary Disposal Facility. From the Effective Date of this Amended Agreement until the date on which the Kiefer Landfill becomes the Primary Disposal Facility pursuant to the terms of this Amended Agreement, the Contractor's Service Fee Component shall be adjusted (i.e., escalated or decreased, as the case may be) pursuant to this Section 25.02.

a. For purposes of this Section 25.02 only, the Contractor's Service Fee Component shall be separated into the following two parts: a Fuel Component and a Non-Fuel Component. As of July 1, 2010, the Fuel Component shall be Seven Dollars and Nineteen cents per Ton ($7.19/Ton) and the Non-Fuel Component shall be Thirty-six Dollars and Seventy cents per Ton ($36.70/Ton). The Fuel Component shall reflect the Contractor's diesel fuel costs attributable to the Transport of City Waste from the Facility to the Primary Disposal Facility ("Fuel Costs") of the Contractor under this Amended Agreement. The Non-Fuel Component shall be an all-inclusive amount pursuant to Section 18.02.b, but shall exclude Fuel Costs. The Fuel Component shall be adjusted (i.e. escalated or decreased, as the case may be) annually pursuant to Section 25.02b. The Non-Fuel Component shall be adjusted annually pursuant to Section 25.02c. The first adjustment of the Fuel Component and Non-Fuel Component shall be calculated to be applied and effective as of July 1, 2011.

b. The adjustment of the Fuel Component shall be calculated for each Contract Year to be effective July 1 of each such Contract Year, by computing the percentage change in the EIA Diesel Retail Price for the month of April prior to the commencement of each Contract Year from the same value for the month of April of the prior year, and multiplying the Fuel Component then in effect by one plus such percentage change. The adjustment may result in an increase or decrease in the Fuel Component, as the case may be.

c. The adjustment of the Non-Fuel Component shall be calculated for each Contract Year to be effective July 1 of each Contract Year, by computing the percentage change in the CPI (defined below) on each April 1 prior to the commencement of each Contract Year, from the CPI level as of the previous April 1, and multiplying the Non-Fuel Component Then In Effect by one plus such percentage change. The adjustment may result in an increase or decrease in the Non-Fuel Component, as the case may be. In no event shall the adjustment of the Non-Fuel Component of the Contractor's Service Fee Component (i.e., the adjusted amount for the Non-Fuel Component) result in an increase of over six percent (6%) for any Contract Year, except as provided for in Section 25.02.d.

d. In the event the calculation of the adjustment of the Non-Fuel Component results in an escalation of the Non-Fuel Component of greater than six percent (6%) in any Contract Year, the following subsections (1), (2), and (3) shall apply:

(1) If the escalation of the Non-Fuel Component of the Contractor's Service Fee Component exceeds six percent (6%) in any Contract Year, on or before June 1 or as soon thereafter as data are available of any Contract Year, Contractor may request City to allow for increases in excess of six percent (6%) for the next succeeding Contract Year, which request shall include the documentation reasonably required to support such request, provided that such documentation concerns Non-Fuel Component items only and excludes Fuel Costs items. The City may grant and adjust the Non-Fuel Component of the Contractor's Service Fee Component or it may deny the request or modify the increase sought by Contractor. It shall notify Contractor of its decision in writing, together with a written explanation to Contractor if the Contractor's request is modified or denied sufficient to allow Contractor to understand the data and assumptions used, and reasons for the City's decision within sixty (60) days after Contractor requests such increase.

(2) In the event the City denies or modifies Contractor's request, Contractor may either accept such denial or modification or may submit the matter to the Independent Engineer for binding decision in accordance with Section 21.01. The Independent Engineer's decision shall determine whether and at what level the Contractor's non-fuel costs have, or are likely to increase over the next Contract Year and if the Contractor's incurrence or projection of those costs is reasonable, given the then-existing economic situation. If the Independent Engineer determines that the Contractor's additional non-fuel costs were not reasonably incurred or would not be reasonably incurred in the future, it may deny the Contractor's request and any escalation shall be limited as provided in this Section 25.02. If it determines that Contractor has, or will reasonably incur costs, other than Fuel Costs, in excess of a level that would cause the Non-Fuel Component of the Contractor's Service Fee Component to be escalated above the level determined in subsection 25.02.c above, it shall determine the actual amount of such costs reasonably incurred or to be incurred by Contractor. Upon such determination, the actual reasonable costs so determined shall be added to the Non-Fuel Component of the Contractor's Service Fee Component for the next Contract Year. Provided, however, that in no event shall Contractor be entitled to an increase of the Non-Fuel Component pursuant to this Section 25.02 in a total amount (including the six percent (6%) maximum per Contract Year specified above) greater than ten percent (10%) from the prior Contract Year.

(3) In the event that the City denies any increase above the levels described in this Section 25.02 and Contractor either accepts such denial or, following Contractor's submission of the matter to the Independent Engineer, the Independent Engineer determines that the Contractor's request is unjustified in whole or in part as provided in subsection (2) above, the Contractor shall pay the costs of the Independent Engineer. If the Independent Engineer determines that an increase above the level approved by the City (if any) is justified, the cost of the Independent Engineer shall be paid by City.

e. Following the annual adjustments of the Fuel Component and Non-Fuel Component pursuant to subsections b and c (and, if applicable, subsection d) of this Section 25.02, the adjusted amounts of the Fuel Component and Non-Fuel Component shall be added together resulting in the Contractor's Service Fee Component for the applicable Contract Year. The adjustments to the Fuel Component and Non-Fuel Component pursuant to this Section 25.02 may result in an increase or decrease in the Contractor's Service Fee Component, as the case may be. In no event shall the Contractor's Service Fee Component be escalated pursuant to this Section 25.02 over the Contractor's Service Fee Component then in effect by ten percent (10%) or more.

25.03 Adjustments of Contractor's Service Fee Component After Kiefer Landfill Becomes Primary Disposal Facility. On July 1 following the date on which Kiefer Landfill become the Primary Disposal Facility pursuant to the terms of this Amended Agreement, and on each July 1 thereafter or as otherwise required hereby, the Contractor's Service Fee Component shall be adjusted (i.e., escalated or decreased, as the case may be) pursuant to this Section 25.03; provided, however, that if Kiefer Landfill has not become the Primary Disposal Facility as of July 1, 2012, City shall continue to pay the Contractor's Service Fee Component under Section 25.02, but the first adjustment to the Contractor's Service Fee Component for Kiefer Landfill shall occur on July 1, 2012, pursuant to this Section 25.03, though this rate would not be effective until Keifer Landfill becomes the Primary Disposal Facility.

a. For purposes of this Section 25.03 only, the Contractor's Service Fee Component shall be separated into the following four parts: a Fuel Component, a Labor Component, a Disposal Component, and an "Other Costs" Component. As of the Effective Date of this Amended Agreement, the dollar amount of each of the four Components is described in Exhibit 18.02 and Exhibit 18.02d hereto. The Fuel Component shall be adjusted (i.e., escalated or decreased, as the case may be) annually pursuant to Section 25.03.b. The Labor Component shall be escalated annually pursuant to Section 25.03.c. The Disposal Component shall be increased in accordance with Section 25.03.d. The Other Costs Component shall be adjusted annually pursuant to Section 25.03.e. The first adjustment of the Fuel Component, the Labor Component, the Disposal Component and the Other Costs Component shall be calculated to be applied and effective as of July 1, 2012. Notwithstanding the foregoing, in addition to any adjustments required under Section 18.02.c, should the Primary Disposal Contract require adjustment before July 1 of any Contract Year, the Disposal Component shall be adjusted effective upon the date of that adjustment.

b. The adjustment of the Fuel Component shall be calculated for the Contract Year commencing July 1, 2012, and for each Contract Year thereafter, to be effective July 1 of each such Contract Year, by computing the percentage change in the EIA Diesel Retail Price for the month of April prior to the commencement of each Contract Year from the same value for the month of April of the prior year, and multiplying the Fuel Component Then In Effect by one plus such percentage change; provided, however that the adjustment on July 1, 2012 shall be calculated by computing the percentage

change in the EIA Diesel Retail Price for the month of April 2012 from the same value for the month of April 2010, and multiplying the Fuel Component then in effect by one plus such percentage change, subject to the limitations of 25.03.g. The adjustment may result in an increase or decrease in the Fuel Component, as the case may be.

c. The parties agree that Section 3.58.030 of the Sacramento City Code (or successor thereto) (the "**Living Wage Ordinance**") shall apply to Contractor's "covered employees" as that term is defined in the Living Wage Ordinance, which covered employees include all of Contractor's employees engaged in duties relating to acceptance, processing and transfer of City Waste pursuant thereto. Pursuant to Sacramento City Code Section 3.58.080, violation of City Code Chapter 3.58 "Living Wage" constitutes a material breach and authorizes the City to terminate this Amended Agreement and pursue all available legal and equitable remedies. For the year commencing July 1, 2012, and for each Contract Year thereafter, to be effective July 1 of each Contract Year, the Labor Component shall adjusted in an amount equal to the higher of:

(1) the annual percentage change in the rates paid to covered employees pursuant to the Living Wage Ordinance (if the Living Wage Ordinance shall have been repealed, then the escalation shall be in accordance with paragraph c(2) below). For the year commencing July 1, 2012, the percentage change in the rates calculated pursuant to the Living Wage Ordinance for the calendar year ending the preceding December 31, 2011, as compared to the year ending December 31, 2010. For each succeeding Contract Year, the Labor Component shall be adjusted by the same percentage as the percentage change in the rates calculated pursuant to the Living Wage Ordinance for the most recent year ending December 31 as compared to the previous calendar year's rates; or,

(2) the same percentage as the increase in the Employment Cost Index (NAICS) for Private Industry Workers, service-providing industries, seasonally adjusted total compensation, published by the Bureau of Labor Statistics, US Department of Labor, Series ID cis201s000000000i, for the first quarter of each calendar year as compared to the first quarter of the preceding year. In the event that such Index is no longer published, the parties shall reasonably agree on a new index that approximates as closely as possible the discontinued index.

d. The Disposal Component shall be adjusted in the same amount and in the same manner and time as changes in the tip fee charged to Contractor by the Primary Disposal Contractor pursuant to the Primary Disposal Contract then in effect. If the Primary Disposal Facility shall be changed in any year, the Disposal Component (and the Contractor's Service Fee) shall be adjusted upon the effective date of such change pursuant to Section 12.04 and annual adjustments shall thereafter be made in the same amount as the tip fee is escalated pursuant to the new Primary Disposal Contract.

e. The adjustment of the Other Costs Component shall be calculated for the Contract Year commencing July 1, 2012, and for each Contract Year thereafter, to be effective

July 1 of each such Contract Year, by computing the percentage change in the CPI (defined below) on each April 1 prior to the commencement of each Contract Year, from the CPI level as of the previous April 1, and multiplying the Other Costs Component then in effect by one plus such percentage change. The adjustment may result in an increase or decrease in the Other Costs Component, as the case may be. In no event shall the adjustment of the Other Costs Component of the Contractor's Service Fee Component pursuant to this Section 25.03 result in an increase of over six percent (6%) from the prior Contract Year, except as provided for in Section 25.03.f.

f. In the event the calculation of the adjustment of the Other Costs Component results in an escalation of the Other Costs Component of greater than six percent (6%) in any Contract Year, the following subsections (1), (2), and (3) shall apply:

(1) If the escalation of the Other Costs Component of the Contractor's Service Fee Component exceeds six percent (6%) in any Contract Year, on or before June 1 or as soon thereafter as data are available of any Contract Year, Contractor may request City to allow for increases in excess of six percent (6%) for the next succeeding Contract Year, which request shall include the documentation reasonably necessary to support such request, provided that such documentation concerns Other Costs Component items only and excludes Fuel, Disposal, and Labor Costs items. The City may grant and adjust the Other Costs Component of the Contractor's Service Fee Component or it may deny the request or modify the increase sought by Contractor. It shall notify Contractor of its decision in writing, together with a written explanation to Contractor if the Contractor's request is modified or denied sufficient to allow Contractor to understand the data and assumptions used, and reasons for the City's decision, within sixty (60) days after Contractor requests such increase.

(2) In the event the City denies or modifies Contractor's request, Contractor may either accept such denial or modification or may submit the matter to the Independent Engineer for binding decision in accordance with Section 21.01. The Independent Engineer's decision shall determine whether and at what level the Contractor's Other Costs have, or are likely to increase over the next Contract Year and if the Contractor's incurrence or projection of those costs is reasonable, given the then existing economic situation. If the Independent Engineer determines that the Contractor's additional Other Costs were not reasonably incurred or would not be reasonably incurred in the future, it may deny the Contractor's request and any escalation shall be limited as provided in this Section 25.03. If it determines that Contractor has, or will reasonably incur costs, other than Fuel, Labor and Disposal Costs, in excess of a level that would cause the Other Costs Component of the Contractor's Service Fee Component to be escalated above the level determined in subsection 25.03.c above, it shall determine the actual amount of such costs reasonably incurred or to be incurred by Contractor. Upon such determination, the actual reasonable costs so determined shall be added to the Other Costs Component of the Contractor's Service Fee Component for the next Contract Year. Provided, however, that in no event shall Contractor be entitled to an increase of the Other Costs Component pursuant to this Section 25.03 in a total amount (including

the six percent (6%) maximum per Contract Year specified above) greater than ten percent (10%) from the prior Contract Year.

(3) In the event that the City denies any increase above the levels described in this Section 25.03 and Contractor either accepts such denial or, following Contractor's submission of the matter to the Independent Engineer, the Independent Engineer determines that the Contractor's request is unjustified in whole or in part as provided in subsection (2) above, the Contractor shall pay the costs of the cost of the Independent Engineer. If the Independent Engineer determines that an increase above the level approved by the City (if any) is justified, the cost of the Independent Engineer shall be paid by City.

g. Following the annual adjustments of the Fuel Component, Disposal Component, Labor Component and Other Costs Component pursuant to subsections b, c, d and e of this Section 25.03, the adjusted amounts of the Fuel Component, Disposal Component, Labor Component, and Other Costs Component shall be added together resulting in the Contractor's Service Fee Component for the applicable Contract Year. The adjustments to the Fuel Component, Disposal Component, Labor Component, and Other Costs Component pursuant to this Section 25.03 may result in an increase or decrease in the Contractor's Service Fee Component, as the case may be. In no event shall the adjustments to the sum of the Fuel Component, Labor Component and Other Costs Component pursuant to this Section 25.03 result in an increase of over ten percent (10%) from the prior Contract Year, unless such increase is caused by a change in designation of the Primary Disposal Facility (other than such change caused by a default by Contractor).

h. The allocation of the Fuel Component as compared to the other Components of the Contractor's Service Fee Component shall be adjusted in the event of a change in the Primary Disposal Facility based on the gallons of fuel per ton of transported City Waste required to Transport City Waste to such new Primary Disposal Facility or Facilities.

25.04 Definitions. The following definitions shall apply to Article 25.

a. "CPI" means the Consumer Price Index, CPI-U, (San Francisco---Oakland---San Jose) compiled and published by the United States Department of Labor, Bureau of Labor Statistics.

b. "EIA Diesel Retail Price" means the Energy Information Administration Diesel Retail Price Value for California No. 2 Diesel Retail Sales by All Sellers (measured in cents per gallon) published by the United States Department of Energy, Energy Information Administration.

c. In the event any of the indexes or data sets described in subsections a or b of this Section 25.04 ceases to exist, or it its calculation methodology is significantly changed, then the parties shall mutually agree upon a substitute index or data set, as the case may be, that most closely resembles the index or data set being replaced. If the parties

are unable to agree upon a substitute index or data set, then the matter shall be submitted to the dispute resolution process pursuant to Article 21 of this Agreement.

25.05 Additional Adjustments of Contractor's Service Fee Component

a. **Definition, Limitation.** If any act, event, or condition as identified in subsections (1) through (4) of the definition of Uncontrollable Circumstance(s) occurs that causes Contractor's actual costs to increase or decrease by more than $50,000 in any twelve (12) month period, resulting from a Permanent Adjustment and such cost increase or decrease are not otherwise covered through annual escalation under Section 25.02 or Section 25.03; or $100,000 in any twelve (12) month period, resulting from a Temporary Adjustment and such cost increase or decrease are not otherwise covered through annual escalation under Section 25.02 or Section 25.03, then there shall be an additional adjustment to Contractor's Service Fee Component as provided herein. This additional adjustment shall not exceed $650,000 in any Contract Year.

b. **Initiation.** Additional Adjustments of Contractor's Service Fee Component may be initiated by either Party.

c. **Exclusions.** The following items are specifically not eligible as initiating factors for an Additional Adjustment of Contractor's Service Fee Component:

(1) **Variations in City Waste.** Variations or fluctuations in the weight, volume or composition of City Waste Delivered to the Facility, unless caused by Change in Law or change in City's collection practices.

(2) **Contractor Error.** Equipment failure or failure to accept City Waste due to Contractor error(s) in planning, failure to maintain proper Permits; regulatory actions against Contractor based on its negligence or willful misconduct that prohibit or curtail Facility Operations; underestimation of Facility Development and Operating costs; and/or problems related to internal company Operations of the Contractor, its subcontractors, its vendors, or its agents.

(3) **Contractor's Costs.** Costs incurred by the Contractor in fulfillment of Contractor's Obligations for fines, judgments, and settlements levied against Contractor by third parties.

(4) **Loss(es) Covered by Insurance.** Costs incurred by Contractor that Contractor reasonably expects to recover from any insurers or from another party.

(5) **Loss(es) from previous Contract Year.** Costs or losses incurred by the Contractor from a Contract Year prior to the Contract Year that the Notice is sent are not eligible for an Additional Adjustments of Contractor's Service Fee Component unless such notice is sent within sixty (60) days after the end of such prior Contract Year.

d. Process. A request for an Additional Adjustment of Contractor's Service Fee Component shall be made as provided in this Section 25.05.

(1) **Noticing.** The Party shall initiate a request for an Additional Adjustment of Contractor's Service Fee Component by sending a Notice to the other Party: (i) citing the applicable provisions of this Article; (ii) providing a complete written summary of the reason(s) for the request for an Additional Adjustment of Contractor's Service Fee Component; (iii) providing documentation that substantiates the increased or decreased costs; and (iv) providing a general description of the scope of the financial impact endured and/or expected, and its impact on Contractor's Service Fee Components, other than the Disposal Component. Each Party may only send up to one Notice per Contract Year.

(2) **Proposal.** The party issuing a Notice of Additional Adjustment of Contractor's Service Fee Component shall, within thirty (30) calendar days of sending the Notice, provide to the other Party a written Proposal in accordance with the Proposal Format specified in Section 25.05d(3) (the "Proposal"). Such Proposal shall be deemed the City or Contractor's offer with regard to changes in Contractor's Service Fee Component, as appropriate, in accordance with the terms of such Proposal, and shall be binding for one hundred and eighty (180) calendar days unless the request for Additional Adjustment of Contractor's Service Fee Component is withdrawn subject to subsection 25.05.d.(8).

(i) A request for an Additional Adjustment of Contractor's Service Fee Component to compensate for costs or losses incurred prior to the date the Notice is sent shall be either a request for lump sum payable at the beginning of the following Contract Year or a request for a temporary adjustment in the Contractor's Service Fee Component commencing on July 1 following delivery of such Notice.

(ii) A request for an Additional Adjustment of Contractor's Service Fee Component to compensate for anticipated costs or losses incurred subsequent to the date the Notice is sent may be a request for lump sum payable at the beginning of the following Contract Year, a request for a temporary adjustment in the Contractor's Service Fee Component commencing on July 1 following delivery of such Notice or a request for a permanent adjustment in the Contractor's Service Fee Component commencing on July 1 following the delivery of such Notice. For purposes of this Section "permanent adjustment" means an adjustment in the Contractor's Service Fee Component of twenty-four (24) months or longer.

(3) **Proposal Format.** For any Proposal submitted under this Section 25.05,City or Contractor shall:

(i) Describe the circumstance warranting an Additional Adjustment of Contractor's Service Fee Component.

(ii) Describe the financial impact of the item(s) to be reviewed regarding the Contractor's compensation for the Contractor's Service Fee Component.

(iii) Submit documentation justifying the temporary or permanent nature of the changes requested; and, if temporary, the expected end-date of the Additional Adjustment of Contractor's Service Fee Component.

(iv) Specify the amount of the additional adjustment; whether the additional adjustment is for losses incurred prior to the Notice, subsequent to the Notice, or both; how the Additional Adjustment will be paid (lump sum, temporary adjustment or permanent adjustment) in compliance with this Section including the time period (if any) for payment of the Additional Adjustment.

(4) **Review.** Provided that all conditions on items 25.05.d.(1) through 25.05.d.(3) above have been fulfilled, the Party receiving the Proposal shall review and comment on, and approve, disapprove or modify such Additional Adjustment of Contractor's Service Fee Component request within ninety (90) calendar days of receiving the Proposal. The City and the Contractor may mutually agree to extend the time periods necessary for review due to the complexity of a specific Additional Adjustment of Contractor's Service Fee Component request, the time needed for review or approval, or for other reasonable reasons.

Either Party may request the assistance of an independent third party to review the Proposal. The first $17,500 of reasonable costs shall be paid by the Contractor if the Additional Adjustment of Contractor's Service Fee Component is initiated by the Contractor or by the City if the Additional Adjustment of Contractor's Service Fee Component is initiated by City. Any additional reasonable costs above $17,500 shall be shared equally by City and Contractor. The cost of such review shall be estimated in advance of the work, and provided to the Contractor or City. Contractor refusal to pay its share of the reasonable cost of review of a Contractor-initiated proposal shall be grounds for City rejection of such Proposal. City's refusal to pay its share of the reasonable cost of review of a City-initiated proposal shall be grounds for Contractor rejection of such Proposal.

The City may request from the Contractor operating and business records reasonably required to verify the reasonableness and accuracy of the impacts associated with an Additional Adjustment of Contractor's Service Fee Component. Contractor shall fully cooperate with the City's request and provide City and its agent(s) copies of or access to Contractor's records.

(5) **Approval, Modification or Rejection of Additional Adjustment of Contractor's Service Fee Component.**

(i) The City or Contractor, as the case may be, shall send a Notice approving, modifying or rejecting the Proposal. For the City, such approval, rejection or modification shall be made by the Sacramento City Council unless otherwise authorized by the Sacramento

City Code. For the purposes of this Section, "modify or modification" means to reduce the amount or time of the proposed Additional Adjustment of Contractor's Service Fee Component. If the Proposal is approved, it shall be effective from the date the Notice is sent.

(ii) If the Notice modifies or rejects the Proposal, the other Party shall have thirty (30) days to proceed as authorized below in subsection (6).

(6) **Resolution of Disputes.** A dispute regarding the amount or duration of any change in Contractor's Service Fee Component, whether or not an Uncontrollable Circumstance(s) caused an increase or decrease in Contractor's costs and/or regarding whether or not the cost increase exceeds $50,000, shall be resolved by binding arbitration by the Independent Engineer in accordance with the provisions of Article 21. If a claimed increase or decrease under this subsection would exceed $650,000 in any Contract Year, either Party may request non-binding arbitration pursuant to Section 21.02. Additionally, the City Council, in its sole discretion, may allow the increase cap to be exceeded.

(7) **Withdrawal of Notice for Additional Adjustment of Contractor's Service Fee Component.** The Party that initiated the Additional Adjustment of Contractor's Service Fee Component may withdraw its Notice and its request for an Additional Adjustment of Contractor's Service Fee Component at any time, although it would remain obligated to share in the costs of a third party reviewer as outlined in section 25.05.d.(5) if that process had already begun at the time of the withdrawal of the Notice.

e. **Change in Service Fee Component.** Upon approval of the Proposal or determination pursuant to Article 21 such change or payment shall be implemented as follows:

(1) The payment may be be paid through a temporary adjustment to Contractor's Service Fee Component or a lump sum payment, in either case effective and/or due on the later of (A) July 1 of the Contract Year following the delivery of the Notice initiating a request of an Additional Adjustment, or (B) within ninety (90) days of approval of the Proposal or determination pursuant to Article 21.

(2) A permanent adjustment in any or all of the Contractor's Service Fee Components shall be implemented on the later of (A) July 1 of the Contract Year following the delivery by Contractor of the Notice initiating a request of an Additional Adjustment, or (B) within ninety (90) days of approval of the Proposal or determination pursuant to Article 21.

(3) Any permanent adjustment in any or all of the components of the Contractor's Service Fee Component shall replace the then existing component(s) and shall be the new component(s) on a going forward basis.

ARTICLE 26. Service Changes

26.01 Service Changes.

a. **Upon City Request.** The City may request a Service Change to the scope of Facility Operations, at any time, for any reason whatsoever, subject to adjustments, if any, of the Scheduled Construction Commencement Date, Scheduled Operations Date, Performance Guaranties, and/or Service Fee.

b. **Upon Contractor Proposal.** The Contractor may propose to the City in writing a Service Change, changing the scope of Facility Operations for any reason, including Uncontrollable Circumstance, subject to adjustments, if any, of the Scheduled Construction Commencement Date, Scheduled Operations Date, Performance Guaranties, and/or Service Fee.

26.02 Review and Comment.

a. **Proposals.**

(1) **City's Request for Proposal.** The City shall submit a Service Change request for proposal to the Contractor, including plans and specifications, as applicable. The City may withdraw such request for proposal at any time, for any reason, including receipt of a proposal from Contractor unsatisfactory to the City.

(2) **Contractor's Proposal.** Within ten (10) Working Days of receiving the City's request for proposal (or such longer period as may be reasonably necessary to respond in light of the complexity or magnitude of the Service Change requested by the City) or in conjunction with its own proposal, the Contractor may comment on a City proposal and shall submit its plan to implement such changes or improvements, including an implementation schedule and the impacts, if any, on the Scheduled Construction Commencement Date, Scheduled Operations Date, Performance Guaranties and/or Service Fee. Contractor shall include documentation supporting its cost proposal, including cost substantiation required with respect to Direct Costs and cost of capital, if any. Such proposal shall be deemed the Contractor's offer to the City to implement the Service Change in accordance with the terms of such proposal. Such proposal shall be irrevocable for thirty (30) days. City may accept or reject Contractor's proposal at City's sole discretion.

b. **City's Review of Proposal.** If the City does not respond within thirty (30) days, its approval will be deemed not given

c. **Issuance of Service Change**. No Service Change shall occur without the written mutual agreement of the Parties. Implementation of the Service Change shall be as stated in the written mutual agreement of the parties.

26.03 Contractor's Implementation of Service Change.

Upon issuance of a Service Change pursuant to Section 26.02.c, the Contractor shall diligently perform such work in accordance with the schedule in its proposal and for the price agreed upon by the Parties. The Contractor shall not be entitled to any compensation for implementing Service Changes occasioned by its failure to perform its Performance Obligations unless due to an Uncontrollable Circumstance, but otherwise shall be entitled to the compensation determined by agreement of the Parties.

ARTICLE 27. NOTICES, CONSENTS, APPROVALS, ETC.

27.01 Notices, etc. All demands, directions, selections, option exercises, orders, requests, proposals, comments, acknowledgments, approvals, consents, warranties, certifications, and other communications made hereunder 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 (certified mail, return receipt requested), addressed as follows:

If to City: City Manager
915 "I" Street, Rm. 101
Sacramento, CA 95814

Contractor: BLT Enterprises of Sacramento, LLC
501 Spectrum Circle
Oxnard, CA 93030

The address to which communications may be delivered may be changed from time to time by a Notice given in accordance with this Section and, in the case of Contractor, included in its monthly report to City in accordance with Section 14.01.b.

27.02 Due Diligence. Parties acknowledge that the City may be subject to statutory fines for failure to achieve mandated diversion levels and that waste management is a public health and safety concern. Parties agree that each shall exercise due diligence in the performance of any of the terms and conditions of this Amended Agreement.

27.03 Working Days. Any amount due and payable, report to be filed or any other Performance Obligation to be performed as of a stated day that is not a Working Day may be paid, filed, or otherwise performed on the next occurring Working Day.

27.04 City to Execute. City warrants that the City Manager, City Clerk, and City Attorney (or designees) are duly authorized to execute this Amended Agreement on behalf of the City. Contractor warrants that the person executing this Amended Agreement has been duly authorized by Contractor to do so on behalf of Contractor. Parties each respectively acknowledge and agree that such warranties are material.

Executed as of the day and year first stated above.

CITY OF SACRAMENTO, a
Charter municipal corporation,

By:_____
Gus Vina
Interim City Manager

APPROVED AS TO FORM.

_____
City Attorney

ATTEST:

_____
City Clerk

BLT ENTERPRISES OF SACRAMENTO, LLC.
a California limited liability company

By:_____
Authorized Signatory

EXHIBIT 1.01

DEFINITIONS

AB 939 or **Act** means the California Integrated Waste Management Act of 1989, Section 40000 *et seq.* of the California Public Resources Code, and its implementing regulations and guidelines, including future amendments to or recodification thereof.

Agreement means this Agreement, including all exhibits and attachments which are incorporated herein by reference, as this Agreement may be changed, modified, amended and supplemented pursuant to Section 23.02.

Applicable Law means all law, statutes, rules, regulations, guidelines, Permits, actions, determinations, orders, or requirements as most recently amended of the United States, State, County, City, regional or local government authorities, agencies, boards, commissions, courts or other bodies having applicable jurisdiction, that from time to time apply to or govern the Facility, the Disposal Facility, Performance Obligations or the performance of any other of the Parties' respective obligations hereunder, including AB 939, CEQA and any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, zoning, non-discrimination, the payment of minimum wages and the County Integrated Waste Management Plan.

Brown Goods is defined in Section 8.03b.

Buyback/Dropoff Center is described in Exhibit 4.03 and operated in accordance with Section 8.06.

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

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

(1) the adoption, promulgation, modification, or change in judicial or administrative interpretation occurring after the date hereof which adoption, promulgation, codification, or change in judicial or administrative interpretation relates to any Applicable Law, *other than* laws with respect to taxes based on or measured by net income, or any unincorporated business, payroll, franchise taxes levied by any tax board (other than any franchise fees which might be levied by the City) or employment taxes; or

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

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

(ii) the Party relying thereon, unless excused in writing from so doing by the other Party, shall make or have made, or shall cause or have caused to be made, Reasonable Business Efforts in good faith to contest such order or judgment (it being understood that the contesting in good faith of such an order or judgment shall not constitute or be construed as a willful misconduct or negligent action of such Party); or

(3) the imposition by a governmental authority or agency of any new or different material conditions in connection with the issuance, renewal, or modification of any Permit after the date hereof; or

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

Change in Law shall include the payment of prevailing wages if required under Applicable Law on or after the date hereof or other similar laws relating to the operation of the Facility.

City means the City of Sacramento or any governmental entity which may hereinafter assume waste management obligations of the City, including any public entity with which the City participates or contracts with to provide solid waste management services.

City Default is defined in Section 19.02b.

City's Reimbursement Costs means City's Direct Costs plus thirty-five percent thereof.

City Vehicle means a vehicle drive by City personnel Delivering City Waste.

City Waste means, except as provided below, Permitted Waste municipally collected by (i) City employees; or, (ii) where City has elected to have all or some portion of such Permitted Waste collected by one or more private parties, City contractors.

City Waste does not include Commercial Waste that is collected by private contractors,

franchisees or other third parties, unless the collection of such Commercial Waste is regulated by the City through a franchise system, business district or other means, and the City specifically directs such Commercial Waste to the Facility. Such Commercial Waste so directed to the Facility shall be City Waste for the length of such franchise or other agreement entered into between the City and the hauler(s) of such Commercial Waste. It is in the City's sole discretion to direct, from any location or any route, any amount of such Commercial Waste described herein to the Facility.

City Waste does not include Green Waste except as follows:

A) food scraps or food waste collected from restaurants are City Waste.

B) residential food scraps or food waste that is collected in a bin separate from other green waste is City Waste unless the separate collection for residential food waste is part of a pilot program not exceeding twelve months.

City Waste does not include Code Enforcement Waste.

City Waste does not include Construction and Demolition Debris created as a result of construction, repair, or demolition of buildings, facilities, infrastructure, or other improvements owned, leased, or otherwise controlled by the City unless (1) collected by the City's Solid Waste Services (or portion of the City replacing Solid Waste Services' collection services) and (2) Contractor is certified to comply with the City's C&D Diversion Ordinance.

In addition, City Waste does not include all other Construction and Demolition Debris unless (1) it is collected by the City's Solid Waste Services (or portion of the City replacing Solid Waste Services' collection services) and (2) Contractor is certified to comply with the City's C&D Diversion Ordinance
City Waste does not include Recyclable Materials source separated by the generator and placed for collection in a bin separate from other Permitted Waste.

City Waste does not include any Permitted Waste or Unpermitted Waste collected from the Old Sacramento Collection District.

City Waste does not include Sludge.

Code Enforcement Waste means wastes collected by City employees or City contractors as a means to remedy violations of any law or ordinance concerning nuisance abatement or illegal dumping or to enforce any court order concerning nuisance abatement or illegal dumping.

Commercial Waste means Permitted Waste collected from business or industrial generators of solid waste and multi-family residences of five or more units.

Commercial Waste Diversion Guaranty is defined in Section 8.02b and measured in accordance with Section and Exhibit 8.02c.

Compliance Test (or **Compliance Testing**) means the Compliance Test described in Exhibit 4.05b.

Compliance Test Period means the Compliance Test Period described in Exhibit 4.05b.

Construction and Equipping (or "Construct and Equip") means construction and equipping of the Facility and Site development in accordance with Section 4.04.

Construction and Demolition Debris means Permitted Waste comprised of concrete, brick, wood, plaster, asphalt, metal, soil and any other rubble or debris resulting from construction, repair or demolition of any buildings, facilities, infrastructure, or other improvements.

Construction Commencement Date is defined in Section 4.01a(4).

Construction Completion Date is defined in Section 4.01a(5).

Containers means transfer trailers, rail cars or other containers for Transporting waste.

Contractor means BLT Enterprises of Sacramento, LLC..

Contractor Default is defined in Section 19.02a.

Contractor-Related Person means all Persons which are directly related to Contractor by virtue of direct Ownership interests and common management and control.

Contractor's Proposal means the proposals submitted by the Contractor on October 9, 1996 and September 26, 1997, as clarified by memorandum dated October 24, 1997.

Contractor's Reimbursement Costs means Contractor's Direct Costs plus three percent thereof.

Contractor's Service Fee Component is defined in Section 18.02.

Contract Year means each year commencing July 1 and ending June 30.

County means Sacramento County.

Direct Costs means the sum of:

(1) payroll costs directly related to the performance, or management or supervision of any obligation pursuant to the provisions hereof, comprised of compensation and fringe benefits, including vacation, sick leave, holidays, retirement, Workers Compensation Insurance, federal and State unemployment taxes and all medical and health insurance benefits, plus

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

(3) the reasonable costs of any payments to subcontractors necessary to and in connection with the performance hereunder; plus

(4) any other cost or expense which is directly or normally associated with the task performed, including allocated overhead costs not to exceed nine percent (9%);

which Direct Costs are substantiated by (i) a certificate signed by the principal financial officer of the Contractor or the authorized representative of the City or his or her designee, as the case may be, setting forth the amount of such cost and the reason why such cost is properly chargeable to the City or the Contractor, as the case may be, and stating that such cost is an arm's length and competitive price, if there are competitive prices, for the service or materials supplied; and (ii) if the City or the Contractor requests, as the case may be, such additional back-up documentation as may be available to reasonably substantiate any such Direct Cost, including invoices from suppliers and subcontractors.

Disposal means disposal of City Waste and Residue in accordance with Article 12.

Disposal Facility is defined in Article 12

Disposal Subcontract is defined in Section 12.02a and attached hereto as Exhibit 12.02.

Disposal Guaranty is defined in Section 12.01.

Diversion Guaranties are the Commercial Waste Diversion Guaranty and Neighborhood Cleanup Waste Diversion Guaranty.

Diversion Component Test is defined in Exhibit 4.05b.

Diversion Component Test Period is defined in Exhibit 4.05b.

Divert (or "Diversion" or other variation thereof) is defined in Section 8.02d.

Emergencies mean natural disasters, explosions, civil disturbances and similar unexpected and disruptive events.

Facility means the transfer station, scalehouse, visitors' education center and processing facility, together with administrative offices and ancillary support facilities, furnishings and Equipment, and parking, signs, fencing, and landscaping located at 8491 Fruitridge Road, Sacramento, CA 95826.

Facility Design Requirements are defined in Section 4.03 and included in Exhibit 4.03.

Facility Development means all Contractor's Performance Obligations before the Operations Date, including the design, engineering, permitting, Construction and Equipping, Start-up and shakedown, and Compliance Testing of the Facility by the Contractor or its subcontractors in accordance with the provisions hereof, and procuring and maintaining insurance and bonds with respect thereto.

Facility Development Schedule is defined in Section 4.06.

Facility Operation means all Contractor's Performance Obligations on and after the Operations Date, including operation and maintenance of the Facility in accordance with the provisions hereof, together with acceptance and weighing of Permitted Waste types, as the case may be; Recovery, Processing, Transferring and/or Transporting and Disposing thereof and of Residue to the Contractor Designated Disposal Site; marketing Recovered Materials, and procuring and maintaining insurance and bonds.

Green Waste means:

A) trees, tree trunks, tree limbs, branches, leaves, cut grass, garden and tree trimmings, shrubbery, weeds, roots or other organic debris such as food scraps or food waste that are segregated from other Permitted Waste by the generator thereof upon placement for collection and are suitable for composting; or

B) trees, tree trunks, tree limbs, branches, leaves, cut grass, garden and tree trimmings, shrubbery, weeds, roots or other organic debris located on public or private property that are cut, maintained, pruned or collected by City employees or City contractors.

Guarantor means BLT Enterprises, a California Corporation.

Guaranty Agreement is attached as Exhibit 16.05.

Hazardous Waste is a type of Unpermitted Waste which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious illness or pose a substantial threat or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise mismanaged; or any waste which is defined or regulated as a hazardous waste, toxic waste, hazardous chemical substance or mixture, or asbestos under Applicable Law, including:

(1) "Hazardous Waste" pursuant to Section 40141 of the California Public Resources Code; materials regulated under Chapter 8 (commencing with Section 114960) Part 9, of Division 104 of the California Health and Safety Code (Radiation Control Law); all substances defined or listed under the California Hazardous Waste Control Act (California Health and Safety Code, Division 20, Chapter 6.5 beginning with Section 25100 et seq.,) and regulations promulgated thereunder, including future amendments to or recodification thereof as hazardous waste, acutely hazardous waste, or extremely hazardous waste including those substances defined by Sections 25110.02, 25115, and 25117 as hazardous waste, acutely hazardous waste or extremely hazardous waste and those substances defined or listed as hazardous waste under 22 California Code of Regulations Section 66261.3 and 23 California Code of Regulations Section 2521; all substances defined or listed under California Heatlh and Safety Code, Division 20, Chapter 6.7 including but not limited to Section 25281; those substances defined as biohazardous waste under California Health and Safety Code Section 117635 and

(2) materials regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended (including, but not limited to, amendments thereto made by the Solid Waste Disposal Act Amendments of 1980), and related federal, State and local laws and regulations, including future amendments to or recodification thereof;

(3) materials regulated under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., and related federal, State of California, and local laws and regulations, including the California Toxic Substances Account Act, California Health and Safety Code Section 25300 et seq., including future amendments to or recodification thereof;

(4) materials regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq., and regulations promulgated thereunder, including future amendments to or recodification thereof;

(5) materials regulated under 40 Code of Federal Regulations parts 260 to 279 (Solid Waste Regulations) including any future amendments or recodification

thereof; and

(6) 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 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 law applicable to the location of the collection, transportation, processing and/or disposal shall govern.

Household Hazardous Waste means automobile batteries, motor oils, anti-freeze, oil filters and water-based paints, together with additional household hazardous waste designated by the City from time to time.

Household Hazardous Waste Center is developed and operated by the City in accordance with Article 7.

Incremental Direct Haul Costs are defined in Section 19.01b(1).

Incremental Disposal Costs are defined in Section 19.01b(5).

Incremental Overtime Wages means employer's costs, if any, incurred for overtime and holiday work.

Incremental Processing Costs are defined in Section 19.01b(4).

Incremental Transfer Costs are defined in Section 19.01b(2).

Incremental Transport Costs are defined in Section 19.01b(3).

Independent Arbitrator is the Person chosen in accordance with such Section 21.02a.

Independent Engineer is the engineer or other independent consultant chosen in accordance with such Section 21.01a.

Market or **Marketing** means providing for sale or placement of Recovered Materials, including all Performance Obligations of the Contractor listed in Section 9.01 with respect to marketing Recovered Materials.

Merchant Waste means all Permitted Waste Contractor accepts and handles at the Facility other than City Waste or Selfhaulers Waste.

Minimum Contractor's Service Fee Component is defined in Section 18.02a.

NARS Facility shall mean Sacramento County's (the "County") North Area Recovery Station ("NARS").

Neighborhood Cleanup Waste means City Waste comprised of bulky wastes collected by the City as part of its Neighborhood Clean-up Programs.

Neighborhood Cleanup Waste Diversion Guaranty is defined in Section 8.02a and measured in accordance with Section and Exhibit 8.02c.

Notice (or **Notify** or other variation thereof) means notice given in accordance with Section 27.01.

Old Sacramento Collection District consists of the area described as follows:

Beginning at the intersection of the center line of I Street and the center line of 2nd Street; thence easterly along the center line of I Street to the westerly right-of-way line of Interstate 5 Freeway; thence southerly along said right-of-way line to the point of intersection with the northerly right-of-way line of Neasham Circle; thence westerly along said northerly right-of-way line of Neasham Circle to the center line of Front Street (formerly The Embarcadero); thence northerly along the center line of Front Street to the intersection of the center line of J Street; thence easterly along the center line of J Street to the intersection of the center line of the alley in the block bounded by I, J, 2nd, Front Streets; thence northerly along the center line of said alley to the intersection of the center line of I Street; thence easterly along the center line of I Street to the point of beginning.

Operations (or other variation thereof) means City concurrence with and acceptance of the results of the Compliance Tests as defined in and accordance with Sections 4.01a(6) and 4.05c.

Operations Date is defined in Section 4.01a(6).

Ordinance No. 1 means Sacramento Regional County Solid Waste Authority Ordinance No. 1 adopted pursuant to resolution 96 - 01.

Ordinance No. 2 means Sacramento Regional County Solid Waste Authority Ordinance No. 2, AN ORDINANCE ESTABLISHING REGULATORY REQUIREMENTS FOR THE COLLECTION, REMOVAL AND TRANSPORTATION OF COMMERCIAL SOLID WASTE WITHIN THE CITY OF SACRAMENTO AND THE UNINCORPORATED AREA OF THE COUNTY OF SACRAMENTO AND IMPOSING RELATED DIVERSION REQUIREMENTS ON COMMERCIAL SOLID WASTE HAULERS AND REPORTING REQUIREMENTS ON RECYCLING FACILITIES.

Overdue Rate means 12 percent per annum.

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

Party and **Parties** refers to the City and the Contractor, individually and together, respectively.

Performance Guaranties means the guaranties made by the Contractor hereunder, including:

-Throughput Guaranty,
-Vehicle Turnaround Guaranty,
-Diversion Guaranties,
-Transfer Guaranty,
-Transport Guaranty, and
-Disposal Guaranty.

Performance Obligations means each and every obligation and liability of the Contractor hereunder, including Facility Development and Facility Operation.

Permitted Waste means waste which the Facility may receive under Applicable Law.

Permits or "**Permitting**" means all federal, State, County, City, regional or local governmental authorities, agencies, boards, commissions, courts or other bodies' permits, orders, licenses, approvals, authorizations, consents and entitlements of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Facility, the Site or Performance Obligations or any matters covered hereby, including those to be listed by Contractor on the Facility Development Schedule in accordance with Section 4.06, as renewed or amended from time to time.

Person includes any individual, firm, association, organization, general or limited partnership, corporation, trust, sole proprietorship, joint venture, the United States, the State, a county, a municipality or special purpose district or any other entity whatsoever.

Process (or **Processing**, or any other variation thereof) means baling, crushing, shredding, chipping, grinding, extracting, composting, digesting or any other method of processing Recovered Materials by Contractor after Recovery and before Marketing thereof.

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

Receiving Hours are defined in Section 6.03a.

Recovered Materials means Recyclable Materials Recovered from City Waste.

Recovery (or **Recover** or **Recovered**, or other variations thereof) means the picking, pulling, sorting, separating, classifying and recovery of Recyclable Materials from Permitted Waste, whether by manual or mechanical means, by the Contractor at the Facility, after Delivery and before Processing and Marketing thereof.

Recyclable Materials means old corrugated cardboard, old newspaper, office paper, mixed paper, clear glass, colored glass, flat glass, ferrous metals, non-ferrous metals, white goods, HDPE, PET, film plastic, wood, textiles, tires and such other materials collected in recycling programs in the State and designated from time to time by the City.

Regulatory Fees Component is defined in Section 18.03.

Request for Proposal means the Request for Proposal for Transfer and Disposal dated August 13, 1996, and Request for Proposal for Transfer and Disposal - Criteria for Evaluation dated September 3, 1997, together with all supplements, amendments and requests for clarification or pricing with respect thereto.

Residential Waste means waste described as residential waste in the City of Sacramento Solid Waste Generation Study (October 1992), including single family residences and multi-family residences of four or less units.

Residue means Commercial Waste and Neighborhood Cleanup Waste remaining after Recovery and Processing thereof, other than Recovered Materials.

Scheduled Construction Commencement Date is defined in Section 4.01a(4), as such Date may be extended in accordance with such Section 4.01.

Scheduled Operations Date is defined in Section 4.01a(6), as such Date may be extended in accordance with such Section 4.01.

Selfhaulers means residents of the County as evidenced by the addresses on their driver's license Delivering Selfhaulers Waste on their own behalf, and not as a commercial waste hauling enterprise, including residences, businesses and other Persons not required to obtain a solid waste hauling permit under Ordinances No. 1 and/or 2, and any other Persons designated by the City.

Selfhaulers Waste means Permitted Waste generated and Delivered by Selfhaulers.

Service Assets are the Site, the Facility (including the building and the equipment) and all furnishings, equipment, spare parts, patents, licenses and all personalty that are essential to meet Performance Obligations and any obligations under agreements between Contractor and Persons delivering Merchant Waste.

Service Changes means the changes in scope of Facility Operations agreed to by the Parties in accordance with Article 26.

Service Fee is defined in Section 18.01, as adjusted, escalated or offset.

Service Fee Invoice Date is defined in Section 18.08a.

Service Fee Payment Date is defined in Section 18.08b.

Site means the parcel of land on which the Facility is to be constructed, of which a legal description is attached as to Exhibit 4.03b

Sludge means sediment deposited during the treatment of potable water and sewage, as well as sediment and other residue collected from sewer and stormwater facilities.

Start-up means Facility Development following the Construction Completion Date, before commencement of Compliance Testing, as referenced in Section 4.05a.

State means the State of California.

Term of this Agreement has the meaning set forth in Section 3.01.

Throughput Component Test is defined in Exhibit 4.05b.

Throughput Component Test Period is defined in Exhibit 4.05b.

Throughput Guaranty is defined in Section 6.04.

Ton (or Tonnage) means a short ton of 2,000 pounds avoirdupois.

Transfer means Contractor's Performance obligations in accordance with Section 10.01.

Transfer Guaranty is defined in Section 10.01.

Transport or Transportation is means Contractor's Performance obligations in accordance with Article 11.

Transport Guaranty is defined in Section 11.01.

Uncontrollable Circumstance(s) means any act, event or condition, whether affecting the Facility, Performance Obligations or either Party beyond the reasonable control of such Party and not the result of willful or negligent action or inaction of such Party (other than the contesting in good faith or the failure in good faith to contest such action or inaction), which materially and adversely affects the ability of either Party to perform any obligation hereunder, comprised of the following:

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

(2) the failure of any appropriate federal, State, City, or local public agency or private utility having operational jurisdiction in the area in which the Facility is located, to provide and maintain utilities, services, water, sewer or power transmission lines to the Facility which are required for Facility Development or Facility Operation;

(3) a Change in Law <u>other</u> than Changes in Law excluded in items (ii) and (vi) below; and

(4) the failure of any subcontractor (other than any subcontractor providing Processing, Transfer, or Transportation services hereunder) or supplier to furnish labor, services, materials or equipment on the dates agreed to if the affected Party has used Reasonable Business Efforts to obtain substitute labor, services, materials, or equipment on the agreed upon dates;

but <u>excluding</u>:

(i) either Party's own breach of its obligations hereunder;

(ii) adverse changes in the financial condition of either Party or in Recovered

Materials markets, or any Change in Law with respect to any taxes based on or measured by net income, or any unincorporated business, payroll, franchise taxes (not related to solid waste franchises) or employment taxes;

(iii) the consequences of errors in Facility Development or Facility Operation on the part of the Contractor, its employees, agents, subcontractor or affiliates, including errors in Facility Design Requirements;

(iv) the failure of the Contractor to secure patents, licenses, trademarks, and the like necessary for Facility Development or Facility Operation;

(v) with respect to the Contractor, the failure of any Facility technology to perform in accordance with Performance Guaranties, unless caused by Uncontrollable Circumstances;

(vi) with respect to the City, any Change in Law adopted by the City other than in compliance with mandate of State, federal or other governmental agency law, regulation or directive;

(vii) strikes, work stoppages or other labor disputes or disturbances other than failures of subcontractors or suppliers described in paragraph (4) above.

Unpermitted Waste means wastes that the Facility may not receive under its Permits, including:

(1) agricultural wastes comprised of animal manures;

(2) asbestos, including friable materials that can be crumbled with pressure and are therefore likely to emit fibers, being a naturally occurring family of carcinogenic fibrous mineral substances, which may be a Hazardous Waste if it contains more than one percent asbestos;

(3) ash residue from the incineration of solid wastes, including municipal waste, infectious waste described in item (8) below, wood waste, sludge, and agricultural wastes described in item (1) above;

(4) auto shredder "fluff" consisting of upholstery, paint, plastics, and other non-metallic substances which remains after the shredding of automobiles;

(5) dead animals weighing more than thirty-five pounds;

(6) Hazardous Wastes, explosives, ordnance, highly flammable substances and noxious materials;

(7) Cement kiln dust, ore process residues and grit or screenings removed from waste water treatment facility;

(8) infectious wastes which have disease transmission potential and are classified as Hazardous Wastes by the State Department of Health Services, including pathological and surgical wastes, medical clinic wastes, wastes from biological laboratories, syringes, needles, blades, tubings, bottles, drugs, patient care items such as linen or personal or food service items from contaminated areas, chemicals, personal hygiene wastes, and carcasses used for medical purposes or with known infectious diseases;

(9) liquid wastes which are not spadeable, usually containing less than fifty percent solids, including cannery and food processing wastes, landfill leachate and gas condensate, boiler blowdown water, grease trap pumpings, oil and geothermal field wastes, septic tank pumpings, rendering plant byproducts, sewage sludge, and those liquid wastes which may be Hazardous Wastes;

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

(11) sewage sludge comprised of human (not industrial) residue, excluding grit or screenings, removed from a waste water treatment facility or septic tank, whether in a dry or semi dry form;

(12) special wastes designated from time to time by the California Integrated Waste Management Board, including contaminated soil;

(13) bulky items which cannot in Contractor's judgment fit within standard roll-off containers or municipal refuse collection vehicles.

Upon receipt of Permits, the Parties shall promptly conform this definition of "Unpermitted Waste" to the provisions thereof to the extent necessary to comply with Applicable Law, and shall thereafter promptly conform this definition to reflect any changes in Permits, subject to the provisions hereof with respect to Change in Law and potential changes in scope of service. "Unpermitted Waste" does not include Household Hazardous Waste.

Vehicle Turnaround Guaranty is defined in Section 6.02.

Visitors Education Center is described on Exhibit 4.03.

White Goods are defined in Section 8.03a.

Working Day means a day on which City offices are open to do business with the public.

Yard Waste means yard, green and other organic materials, including grass, leaves, brush, weeds and other vegetative debris, which may be Delivered in loads of City Waste and Selfhaulers Waste.

EXHIBIT 2.01

CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

a. Status. Contractor is a limited liability company duly organized, validly existing and in good standing under the laws of the State and is qualified to do business in the State.

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

c. Statements and Information. To the Contractor's knowledge, all documents City has requested and received from Contractor with respect to the negotiations of this Amended Agreement are correct and complete in all material respects at the time of delivery to the City.

d. No conflicts. Neither the execution nor delivery by the Contractor of this Amended Agreement, the performance by the Contractor of its Performance Obligations, nor the fulfillment by the Contractor of the terms and conditions hereof: (1) conflicts with, violates or results in a breach of any Applicable Law; (2) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which the Contractor is a party or by which the Contractor or any of its properties or assets are bound, or constitutes a default thereunder; or (3) will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Contractor, other than as specifically permitted hereunder.

e. No approvals required. No approval, authorization, license, permit, order or consent of, or declaration, registration or filing with any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution and delivery of this Amended Agreement by the Contractor, except such as have been duly obtained from its Board of Directors. Contractor has all licenses, permits, City Business Operations Tax Certificate, qualifications and approvals of whatsoever nature which are legally required for Contractor to provide services hereunder and meet its Performance Obligations, and Contractor further warrants that it shall, at its sole cost and expense, keep in effect or obtain at all times during the Term any licenses, permits and approvals which are legally required for Contractor to provide such services and meet its Performance Obligations.

f. No litigation. There is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality pending or, to the actual knowledge of the Contractor, threatened, against the Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by the Contractor of its Performance Obligations or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Amended Agreement or any other agreement or instrument entered into by the Contractor in connection with the transactions contemplated hereby.

g. Site use control. The Contractor has title or lease interest in the Site which provides Contractor sufficient right to use and possess the Site in the manner and for the period of time necessary to meet its Performance Obligations for the Term plus any extensions thereof, or the legal, valid and binding option to obtain such title or right, as evidenced by the documentation attached to this Exhibit satisfactory to City.

h. Intentionally Omitted.Financing commitment. The Contractor has adequate financial resource to meet its Performance Obligations.

i. Insurance and performance bonds. Contractor has secured and maintained insurance (if any) in accordance with Section 16.01 and procured a bond or other instrument of performance assurance (if any) in accordance with Section 16.04 required as of the date hereof, and such insurance policies, bond or instruments are in full force and effect.

j. Economic feasibility. Contractor acknowledges that it projects Merchant Waste will comprise a substantial portion of the designed and permitted capacity of the Facility, and that prior to entering into this Amended Agreement it has conducted market studies with respect to attracting and securing such Merchant Waste. Such studies demonstrated to Contractor's satisfaction that development of the Facility within such parameters is economically feasible. Contractor further acknowledges that it has no right hereunder to adjust the Service Fee in event that Contractor does not attract and secure such additional waste.

k. Diversion Guaranties. Contractor acknowledges that Commercial Waste contains largely putrescible waste, but warrants that Contractor hereby assumes the risk of Recyclable Materials content with respect to Neighborhood Cleanup Waste and Commercial Waste and of Recovered Materials sales revenues. Contractor further covenants that it shall not seek amendment of Diversion Guaranties, excuse from noncompliance therewith or adjustment of the Service Fee for failure to meet such Diversion Guaranties due to composition of Permitted Wastes or changes in Recovered Materials markets.

I. Disposal. Contractor represents that it chose Lockwood landfill as the Primary Disposal Facility and negotiated with the owner thereof for Disposal thereat after performing Contractor's own evaluation thereof, including environmental assessments, without reliance on City judgment or direction. Contractor covenants that it will not seek to hold City responsible for any liabilities with respect to Lockwood Landfill as the Primary Disposal Facility.

ATTACHMENT 2.01g

SITE USE CONTROL

Attached hereto is documentation evidencing Contractor's Site use control as of the date hereof.

STEWART TITLE OF SACRAMENTO
P.O. BOX 15836
SACRAMENTO, CA 95852-0836

LENDERS SUPPLEMENTAL REPORT

YOUR NUMBER:
OUR NUMBER: 05-001861 SW

The above numbered report (including any supplements or amendments thereto) is hereby modified and/or supplemented to reflect the following additional items relating to the issuance of an American Land Title Association Loan Form Policy:

NONE

Neither the items shown in our report, nor the items contained herein will affect our ability to attach CLTA Endorsements Nos. 100 and 116 to our ALTA Policy when issued.

Said land is also known as

5200 FLORIN-PERKINS ROAD
SACRAMENTO, CALIFORNIA 95820

STEWART TITLE OF SACRAMENTO

Robert M. Goettsch
Assistant Vice President

STEWART TITLE OF SACRAMENTO
P.O. BOX 15836, SACRAMENTO, CA 95852-0836

-----	8880	Greenback Lane, Suite C, Orangevale 95662 @(989-0840)
-----	5046	Sunrise Blvd., Suite 1, Fair Oaks 95628 @(962--1400)
-----	6700	Fair Oaks Blvd., Suite A, Carmichael 95608 @(484-7455)
✓	1495	River Park Dr., Suite 300, Sacramento 95815 @(925-6204)
-----	5770	Freeport Blvd., Suite 44 Sacramento 95822 @(393-1041)
-----	2831	G Street, Suite 100, Sacramento 95816 @(441-7900)
-----	555	Capitol Mall, Suite 280, Sacramento 95814 @(441-4950)
-----	3461	Fair Oaks Blvd., Suite 150, Sacramento 95864 @(484-6500)
-----	9632	Emerald Oak Dr., Suite M, Elk Grove 95624 @(1-685-5393)
-----	7803	Madison Avenue, Suite 100-A, Citrus Heights 95610 @(965-7012)
-----		Stewart Title Operations--6700 Fair Oaks Blvd., Suite B, Carmichael 95608 @(484-6990)

PRELIMINARY REPORT

ISSUED FOR THE SOLE USE OF:

- COLLIERS INTERNATIONAL
- SYLVA-KIRK & COMPANY
- BLT ENTERPRISES

OUR ORDER NO.: 05-001861 SW

REFERENCE: BLT ENTERPRISES

PROPERTY ADDRESS:
5200 FLORIN-PERKINS ROAD

In response to the above referenced application for a policy of title insurance, **STEWART TITLE GUARANTY COMPANY** hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown referred to as an Exception in Schedule **B** or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy forms.

The printed Exceptions and Exclusions from the coverage of said Policy or Policies are set forth in the attached list. Copies of the Policy forms should be read. They are available from the office which issued this report.

PLEASE READ THE EXCEPTIONS SHOWN OR REFERRED TO BELOW AND THE EXCEPTIONS AND EXCLUSIONS SET FORTH IN EXHIBIT "A" OF THIS REPORT CAREFULLY. THE EXCEPTIONS AND EXCLUSIONS ARE MEANT TO PROVIDE YOU WITH NOTICE OF MATTERS WHICH ARE NOT COVERED UNDER THE TERMS OF THE TITLE INSURANCE POLICY AND SHOULD BE CAREFULLY CONSIDERED.

IT IS IMPORTANT TO NOTE THAT THIS PRELIMINARY REPORT IS NOT A WRITTEN REPRESENTATION AS TO THE CONDITION OF TITLE AND MAY NOT LIST ALL LIENS, DEFECTS, AND ENCUMBRANCES AFFECTING TITLE TO THE LAND.

THIS REPORT (AND ANY SUPPLEMENTS OR AMENDMENTS HERETO) IS ISSUED SOLELY FOR THE PURPOSE OF FACILITATING THE ISSUANCE OF A POLICY OF TITLE INSURANCE AND NO LIABILITY IS ASSUMED HEREBY. IF IT IS DESIRED THAT LIABILITY BE ASSUMED PRIOR TO THE ISSUANCE OF A POLICY OF TITLE INSURANCE, A BINDER OR COMMITMENT SHOULD BE REQUESTED.

DATED AS OF JANUARY 14, 1998 at 7:30 A.M.

TITLE OFFICER
MG/ck *** NIO

ORDER NUMBER: 05-001861

SCHEDULE A

The form of policy of title insurance contemplated by this report is:

CLTA STANDARD

The estate or interest in the land hereinafter described or referred to covered by this Report is: A FEE

Title to said estate or interest at the date hereof is vested in:

THE SYLVA FAMILY LIMITED PARTNERSHIP II as to Lots 19, 20 and 21 of Lawrence Industrial Tract and EARL SYLVA, a married man, as to the remainder of the property described herein, as to an undivided 1/2 interest; and SYLVA FAMILY PROPERTIES, a California General Partnership as to an undivided 1/2 interest

The land referred to in this Report is situated in the State of California, City of Sacramento, County of Sacramento, and is described as follows:

Lots 19, 20, 21 as shown on that certain Plat of Lawrence Industrial Tract", filed in Book 48 of Maps, Map No. 5, Official Records, and

All that portion of the Southeast one-quarter of Section 23, Township 8 North, Range 5 East, M.D.M., described as follows:

BEGINNING at the Southeast corner of Lot 16, as shown on that certain Plat of "Lawrence Industrial Tract", filed in Book 48 of Maps, Map No. 5, Official Records of Sacramento County; thence from said point of beginning, along the Westerly line of Florin-Perkins Road and along the Northerly line of Fruitridge Road the following twelve (12) courses: (1) South 315.14 feet; (2) along the arc of a tangent curve to the right, concave Northwesterly, having a radius of 25.00 feet, subtended by a chord bearing South 44° 50'06" West 35.25 feet; (3) South 89° 40'10" East 255.14 feet; (4) South 00° 19'50" East 58.00 feet; (5) North 89° 40'10" East 251.20 feet; (6) along the arc of a tangent curve to the right, concave Southwesterly, having a radius of 25.00 feet, subtended by a chord bearing South 44° 16'16" East 36.00 feet; (7) South 01° 47'17" West 502.24 feet; (8) South 320.00 feet; (9) along the arc of a tangent curve to the right, concave Northwesterly, having a radius of 25.00 feet, subtended by a chord bearing South 44° 52'10" West 35.28 feet; (10) South 89° 44'20" West 320.00 feet; (11) South 87° 56'56" West 320.16 feet; and (12) South 89° 44'20" West 585.88 feet to the Southeast corner of Lot 26 as shown on said Plat of Lawrence Industrial Tract; thence, along the Easterly line of Lots 26, 25, 24, 23 and 22, as shown on said Plat, North 00° 01'52" East 739.23 feet to the Northeast corner of said Lot 22; thence, along the Northerly line of said Lot 22, North 89° 56'15" West 113.81 feet to the Southwest corner of Lot 21, as shown on said Plat; thence, along the Westerly lines of said Lots 21, 20 and 19, North 00° 03'45" East 539.19 feet to the Northwest corner of said Lot 19; thence, along the Northerly line of said Lot 19 and along the Southerly line of Lot 18, as shown on said Plat, North 89° 40'10" East 300.00 feet; thence, leaving said Southerly line of said Lot 18, South 00° 19'50" East 200.00 feet; thence, North 89° 40'10" East 802.56 feet; thence, North 00° 19'50" West 200.00 feet to a point in the Southerly line of Lot 16 as shown on the aforementioned Plat of Lawrence Industrial Tract; thence, along said Southerly line, North 89° 40'10" East 280.00 feet to the point of beginning, also being described as Parcel A in that certain Certificate of Compliance for Lot Line Adjustment recorded August 3, 1990 in Book 900803, Page 1136, Official Records.

APN: 061-0173-014

ORDER NUMBER: 05-001861

SCHEDULE B

At the date hereof exceptions to coverage in addition to the printed Exceptions and Exclusions in the policy form designated on the face page of this report would be as follows:

A. Taxes for the Fiscal Year 1998-1999, a lien not yet due or payable.

B. General and Special Taxes for the Fiscal Year 1997-1998, and any assessments and charges collected therewith,

1st Installment PAID

2nd Installment OPEN Due February 1, 1998
Delinquent April 10, 1998

Parcel No. 061-0173-014 Asst. No. 97244136 Code Area 03-112
Land Improvements

Included in the above Taxes, in the amount of , for the Sacramento City Lighting and Landscaping.

C. Supplemental Tax Bill

1st Installment OPEN - Due January 31, 1998

2nd Installment OPEN - Due May 31, 1998

Parcel No. 061-0173-014 Asst. No. 97413046 Code Area 03-112
Land Improvements

Supplemental Tax Bill
(CORRECTED BILL)
1st Installment PAID

2nd Installment OPEN Due February 1, 1998
Delinquent April 10, 1998

Parcel No. 061-0173-014 Asst. No. 97394127 Code Area 03-112
Land Improvements

D. Possible future Lien of Special Assessments, assessed pursuant to the procedures of the Mello-Roos Community Facilities Act of 1982 and/or the Landscaping & Lighting Act of 1972.

E. The Lien of Supplemental Taxes, if any, assessed pursuant to the provisions of Chapter 3.5, Revenue and Taxation Code, Section 75 et seq.

F. Any possible outstanding charges for utility services. Amounts may be obtained by contacting the City and/or County of Sacramento's Utility Services and Billing Department.

1. An easement over said land for the transmission and distribution of electric energy and incidental purposes as Granted to Pacific Gas and Electric Company, in Deed recorded in Book 43, Page 153, Official Records.

   Affects a strip of land 75 feet in width across said land as more particularly described in said easement and as shown on Assessor's Plat Book 61, Page 17.

2. Dedications as set forth and shown on the official map of said subdivision as follows:

   a. Utility easements over the Westerly 10 feet of Lots 19, 20 and 21 of said Lawrence Industrial Tract.

3. Covenants, conditions and restrictions but omitting restrictions, if any, based upon race, sex, color, religion, handicap, familial status or national origin, as contained in instrument recorded in Book 3568, Page 426, Official Records, containing a Mortgagee Protection Clause.

   Said covenants, conditions and restrictions were modified in part, by instrument recorded in Book 4218, Page 775, Official Records.

4. An easement over said land for communication facilities and incidental purposes as Granted to Pacific Telephone and Telegraph Company, in Deed recorded in Book 660103, Page 161, Official Records.

   Affects are within the Easterly 32 feet and the Southerly 12 feet of said land as more particularly described in said easement.

5. An Irrevocable Offer to Dedicate to the City of Sacramento for public utilities including planting and maintaining trees and mail delivery service over a strip of land 12.5 feet wide adjacent to Fruitridge Road and Florin-Perkins Road in the Northeasterly portion of said land as more particularly described in said Irrevocable Offer and as shown on the Map attached thereto, recorded December 12, 1986 in Book 861212, Page 1267, Official Records.

6. The requirement that there be filed in the office of the Secretary of State, a certificate of limited partnership in compliance with provision of the California Revised Limited Partnership Act, Section 15611 et seq., Corporation Code and that a Certified Copy thereof be recorded.

   Name of Limited Partnership:

   The Sylva Family Limited Partnership II

7. Possible Unrecorded Leases with Valley Forklift Company, Inc., Lessee and Russett Power Systems and Fire Equipment Service, Inc., Lessees, as disclosed by Financing Statements recorded October 28, 1992 in Book 921028, Page 1310, Official Records and re-recorded June 6, 1997, in Book 970606, Page 483, Official Records and upon the terms and conditions contained in said Unrecorded Lease.

8. In addition to the Leases that are shown herein, this Company will require that we be furnished copies and a list of all Existing Leases on the property herein described and any amendments thereto for our review and examination.

NOTE: If this property lies within the city limits of Sacramento, it is subject upon sale to a tax of .00275 of the value of consideration. The failure to pay will result in the tax being added to the future property tax bills.

NOTE:
SAFETY INSPECTION:
If this property lies within the City Limits of Folsom, it is subject, prior to any transfer, to a safety inspection to be conducted by the City of Folsom, Building Inspection Department. The fee is $25.00. For additional information, contact the City of Folsom at 355-7210 or 355-7213.

ACCORDING TO THOSE PUBLIC RECORDS UNDER THE RECORDING LAWS IMPART CONSTRUCTIVE NOTICE TO THE TITLE TO THE LAND DESCRIBED HEREIN, THE FOLLOWING MATTERS CONSTITUTE THE CHAIN OF TITLE FOR THE TWENTY-FOUR MONTH PERIOD PRECEDING THE DATE HEREOF:

GRANT DEED executed by Earle A. Sylva and Jeannette B. Sylva, Trustees of the Earle A. and Jeannette B. Sylva Family Revocable Trust to Earle A. Sylva and Jeannette B. Sylva, as Community Property recorded October 20, 1997, in Book 971020, Page 213, Official Records.

GRANT DEED executed by Earle A. Sylva and Jeannette B. Sylva, as Community Property to The Sylva Family Limited Partnership II recorded October 20, 1997, in Book 971020, Page 214, Official Records.

GRANT DEED executed by Earle A. Sylva, II, a single man; Charles J. Sylva, a married man, as his sole and separate property and Robert A. Sylva, a married man, as his sole and separate property to Sylva Family Properties, a California General Partnership recorded November 12, 1997, in Book 971112, Page 278, Official Records.

INTERSPOUSAL GRANT DEED executed by Sarah Sylva to Robert A. Sylva, a married man, as his sole and separate property recorded November 12, 1997, in Book 971112, Page 279, Official Records.

INTERSPOUSAL GRANT DEED executed by Sally J. Sylva to Kenneth J. Sylva, a married man, as his sole and separate property recorded November 20, 1997, in Book 971120, Page 280, Official Records.

INTERSPOUSAL GRANT DEED executed by Sally A. Sylva to Charles J. Sylva, a married man, as his sole and separate property recorded November 20, 1997, in Book 971120, Page 281, Official Records.

BUYER'S NOTE:
IF AN ALTA RESIDENTIAL OWNER'S POLICY IS REQUESTED AND IF THE PROPERTY DESCRIBED HEREIN IS DETERMINED TO BE ELIGIBLE FOR THIS POLICY, THE FOLLOWING EXCEPTIONS FROM COVERAGE WILL APPEAR IN THE POLICY:

1. Taxes or assessments which are not shown as liens by the public records or by the records of any taxing authority.
2. (a) Water rights, claims or title to water; (b) reservation or exceptions in patents or in Acts authorizing the issuance thereof; (c) unpatented mining claims; whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
3. Any rights, interest or claims of parties in possession of the land which are not shown by the public records.

4. Any easements or liens not shown by the public records. This exception does not limit the lien coverage in Item 8 of the Covered Title Risks.
5. Any facts about the land which a correct survey would disclose and which are not shown by the public records. This exception does not limit the forced removal coverage in Item 12 of the Covered Title Risks.

LENDER'S NOTE:
IF A 1970 ALTA LENDER'S POLICY FORM HAS BEEN REQUESTED, THE POLICY, WHEN AND IF APPROVED FOR ISSUANCE, WILL EITHER BE ENDORSED TO ADD THE FOLLOWING LANGUAGE OR AN ENCUMBRANCE WILL BE ADDED TO SCHEDULE B, PART I AS FOLLOWS:

Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:

(a) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
(b) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
(c) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:

(i) to timely record the instrument of transfer; or
(ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

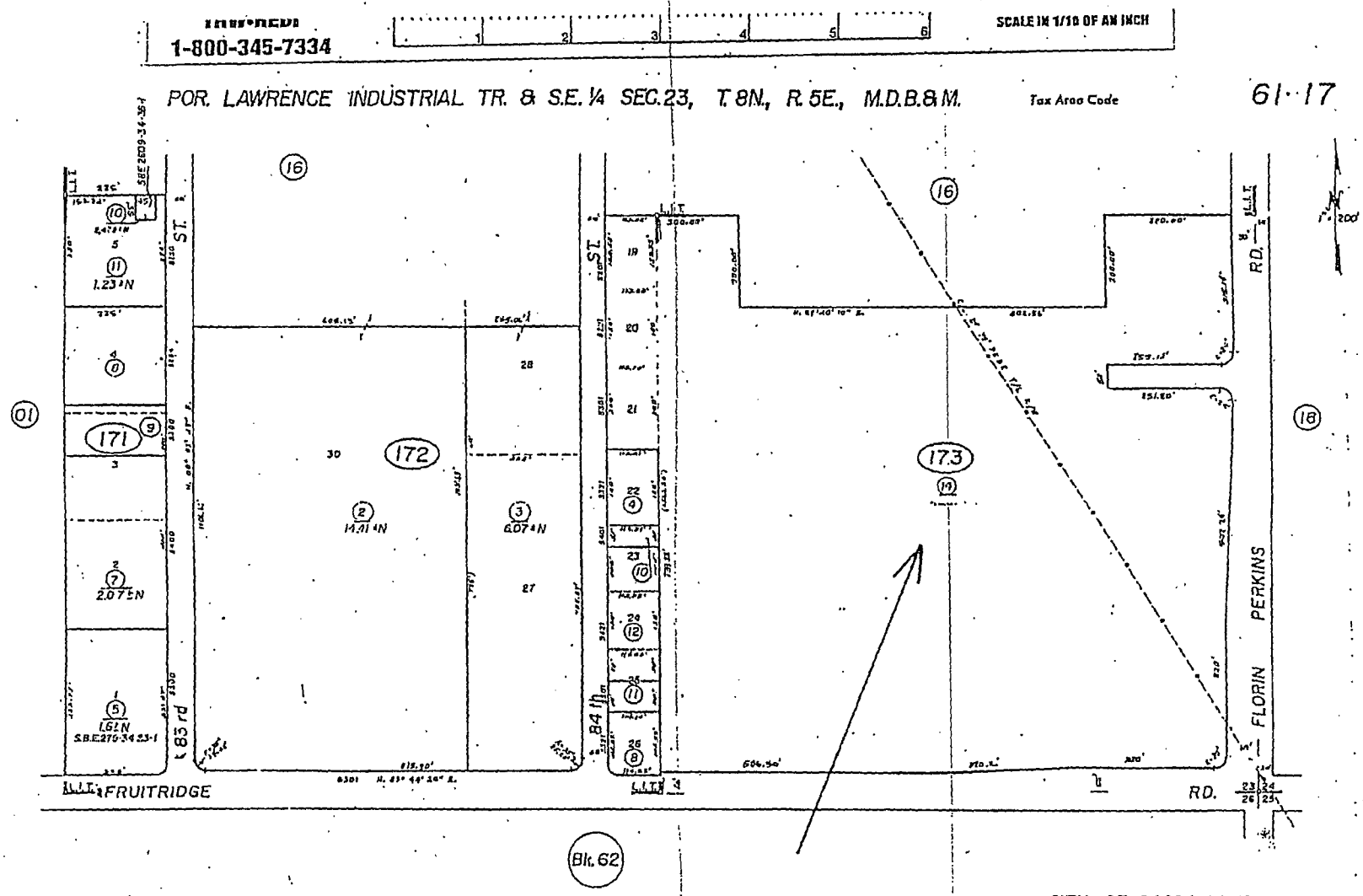
APPROVAL FOR THE ISSUANCE OF THE 1970 ALTA LENDER'S POLICY FORM MUST BE REQUESTED AND APPROVED PRIOR TO CLOSE OF ESCROW. ALL OTHER FORMS OF POLICIES THAT ARE AUTHORIZED TO BE ISSUED ARE THE 1992 POLICIES ONLY.

NOTE: CALIFORNIA "GOOD FUNDS" LAW

EFFECTIVE JANUARY 1, 1990, CALIFORNIA INSURANCE CODE SECTION 12413.1 (CHAPTER 598, STATUTES OF 1989), PROHIBITS A TITLE INSURANCE COMPANY, CONTROLLED ESCROW COMPANY OR UNDERWRITTEN TITLE COMPANY FROM DISBURSING FUNDS FROM AN ESCROW OR SUB-ESCROW ACCOUNT, (EXCEPT FOR FUNDS DEPOSITED BY WIRE TRANSFER ELECTRONIC PAYMENT OR CASH) UNTIL THE DAY THESE FUNDS ARE MADE AVAILABLE TO THE DEPOSIT OR PURSUANT TO PART 229 OF TITLE 12 OF THE CODE OF FEDERAL REGULATIONS, (REG. CC). ITEMS SUCH AS CASHIER'S, CERTIFIED OR TELLER'S CHECKS MAY BE AVAILABLE FOR DISBURSEMENT ON THE BUSINESS DAY FOLLOWING THE BUSINESS DAY OF DEPOSIT; HOWEVER, OTHER FORMS OF DEPOSITS MAY CAUSE EXTENDED DELAYS IN CLOSING THE ESCROW OR SUB-ESCROW.

"STEWART TITLE OF SACRAMENTO WILL NOT BE RESPONSIBLE FOR ACCRUALS OF INTEREST OR OTHER CHARGES RESULTING FROM COMPLIANCE WITH THE DISBURSEMENT RESTRICTIONS IMPOSED BY STATE LAW"

"IMPORTANT: This plat is not a survey. It is merely furnished as a convenience to locate the land in relation to adjoining streets and other lands and not to guarantee any dimensions, distances, bearings, or acreage."



Order: TOF: RG SA Bk-Pg 61 - 17

EXHIBIT 2.02

CITY REPRESENTATIONS AND WARRANTIES

a. Status. The City is a political subdivision of the State, duly organized and validly existing under the Constitution and laws of the State.

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

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

d. No Litigation. There is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality pending or, to the actual knowledge of the City, threatened, against the City wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by the City of its obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Amended Agreement or any other agreement or instrument entered into by the City in connection with the transactions contemplated hereby.

e. No Warranty Regarding Waste Characterization or Volume. City makes no warranties with respect to the waste characterization data contained in the Request for Proposals or any waste disposal characterization or volume study or projections by material type distributed to Contractor together therewith. The City expressly disclaims any warranties, either express or implied, as to the merchantability or fitness for any particular purpose of City Waste Delivered to the Facility or volume thereof.

EXHIBIT 3.02

CERTAIN PROVISIONS WHICH SURVIVE TERMINATION OF AMENDED AGREEMENT

Provisions in addition to representations, warranties and indemnifications which shall survive the termination of the Amended Agreement in accordance with Section 3.02 are listed here for convenience of the Parties and include:

(1) Contractor's reimbursement of City's alternative service costs in accordance with Section 13.01c;

(2) delivery of all records and other materials to the City in accordance with Section 14.01a and submission of final reports in accordance with Section 14.01b; and

(3) payment of any amounts due and owing by either Party to the other Party at the time of termination, including damages accrued in accordance with Section 19.01c and Section 20.03c, and indemnification in accordance with Sections 7.05, 16.02e and 16.03c.

EXHIBIT 4.01a(4)

CONDITIONS PRECEDENT TO CONSTRUCTION COMMENCEMENT

(1) Bring-down of Contractor's Representations and Warranties to City. The representations and warranties made by Contractor in Exhibit 2.01 shall be true and correct in all material respects on and as of the Construction Commencement Date as if made on such Date, as certified in writing by an authorized officer of the Contractor, in form and substance satisfactory to the City.

(2) Site Permits and Approvals. Contractor shall have secured title to or lease of the Site satisfactory to City and all Permits required by Applicable Law.

(3) Insurance. The Contractor shall have submitted to the City certificates of insurance and bonding (or other performance security) which Contractor is obligated to obtain and maintain prior to commencement of Construction and Equipping pursuant to Article 16, the terms, conditions, amounts and deductibles of which shall be satisfactory to the City.

(4) Opinions. The City shall have received such favorable opinions of counsel for the Contractor and other parties to contracts, agreements and other instruments to be entered into in connection with the transactions contemplated hereby, satisfactory to the City Attorney and in customary form for financing, permitting, procurement and realty transactions, with respect to the legal, valid, binding and enforceable nature of such contracts, agreements and other instruments, the representations of the Contractor set forth in Section 2.01, and such other matters of law as the City may request.

(5) Adverse Changes in Guarantor or Contractor. Since the date hereof, there shall not have occurred any material change, financial or otherwise, that would adversely affect the ability of the Guarantor to perform its obligations under the Guaranty Agreement or the ability of the Contractor to perform its Performance Obligations hereunder or its obligations under any other agreement, contract or instrument entered into or to be entered into by the Contractor in connection with Facility Development and Facility Operation, its Performance Obligations, the services hereunder and the transactions contemplated hereby.

EXHIBIT 4.03

FACILITY DESIGN REQUIREMENTS

Contractor shall design, construct and maintain the Facility to include the following features:

FACILITY DESIGN REQUIREMENTS

Contractor shall design, construct, and maintain the Facility to include the following features.

a. **Site Requirements**. Following are Site planning design criteria that must be provided in the design of the facility.

(1) General. Any Site frontage along a City street shall be improved with curb, gutter, sidewalk, and pavement to tie-in with existing roads. A security fence comprised of a masonry wall across the street frontage and chain-link fence with wood or plastic slats to minimize vision through the fence on sides of the Site not on a public street shall be constructed surrounding the Site. All entry/exit points shall have either rolling or bi-parting gates to secure the facility during off-hours. The perimeter fence shall be a minimum of ten (10) feet tall and shall obstruct the view of all piles of processed or unprocessed trash and bailed material stacked in the yard, from passersby walking on the sidewalk or passing the Site in vehicles. Walls may be located on landscaped burms to minimize their height. Outside storage areas for any construction or demolition materials shall be shielded from view from all public streets and surrounding private property. Design of the facility shall demonstrate that no passersby, visitors to the Education Center, pedestrians walking past open gates and across driveways shall be able to see inside the MRF/Transfer Station building (Building) and observe piles of processed or unprocessed waste.

(2) Operations. Shall not exceed noise levels of 55 DBA as measured at the property line of residentially zoned or occupied property. Otherwise, shall not exceed 70 DBA. Operations shall not exceed 7:00 a.m. to 7:00 p.m. when located within 200 feet of a residential zoned or occupied property.

(3) Access Traffic. A single, signalized intersection is required to control traffic flow at one of the facility driveways if access is from a main street that is defined at as Fruitridge, Florin Perkins, Elder Creek, or Power Inn Roads. The public area for people visiting the Education Center, Buy-Back Center, or Household Hazardous Waste facility must be serviced by the signalized entry/exit driveway and traffic to this area must not cross with larger vehicle traffic to or from the tipping or scale area.

(4) Traffic Mitigation Costs. Traffic mitigation requirements and estimates of the cost of those requirements will be provided by the City and are part of the project cost.

(5) Landscape. The landscape buffer along the Site frontage shall be bounded with the masonry wall to partially screen the Building. Along the front of the Site, trees of 10 gallon container size and a minimum of six feet tall shall be placed with a maximum separation of 15 feet between them. There shall also be fencing and landscaping

(6) separating the public parking area from the facility traffic ways. There shall be additional landscaping areas along the Building. The Administration/Education Center should be visible from the street. The landscape and parking areas shall be planted to meet City shade requirements. All landscaping shall be provided with an automatic irrigation system.

(7) **Parking**. Parking shall be provided for a minimum of 20 automobiles and one school bus reasonably adjacent to the entrance to the Education Facility. This parking shall be in addition to the parking required for Contractor employees and visitors. The entire facility shall be secured during all hours when not in operation. The traffic and parking portion of the Site shall be asphalt with a pavement section equal to a Traffic Index 10 except for areas that shall be concrete and the public parking which shall have a Traffic Index equal to 5.

(8) **Utilities**. Site utilities shall include domestic water, fire water, sewer, storm drain and electrical service to each building. Natural gas shall be supplied as required. A fire water loop shall encircle the entire Site with hydrants spaced throughout the facility. The paved areas shall drain via a storm drainage system that empties into City storm sewer mains. The Site shall be lighted along the exteriors of the Building and in the paved areas.

(9) **MRF/Transfer Station Building (MRF/TS)**. While Building can be a built-up, pre-manufactured metal or concrete tilt-up or unit masonry building, the City encourages proposers to provide a substantial structure that has an appearance that blends with surrounding industrial warehouse buildings. The majority of these surrounding structures are tilt-up concrete.

Automatic electronic identification of the vehicles through the weigh station shall be provided. The City drivers shall be provided access to a telephone for telephone numbers within the City limits of Sacramento and to a restroom. Both shall be conveniently located to where a vehicle may be temporarily parked, after the vehicle has exited the tipping area, while the driver uses the facilities.

The queuing line of vehicles waiting processing shall accommodate a minimum of 25 vehicles, with an average length of 30 feet each, without the queue extending outside of the perimeter fence. Expansion plans shall indicate how this queue can be increased to 50 vehicles without extending beyond the Site boundaries and the perimeter fence.

a. **Buy-Back Center**. This prefabricated metal or concrete building shall be supported on spread footings with interior lighting and fire sprinklers. A small kiosk for public check-in and cashier duties shall be by the public entry. Public entry shall be from the public parking area through a roll-up door and materials shall be moved out though a roll-up door. Minimum area shall be 2,000 SF.

b. Education Center. The Education Center should contain a closed circuit television system or other means to show close-ups of the tipping floor, sorting lines, baling operation and movement of finished product into storage areas. It should have an elevated observation deck that allows views of the MRF and Transfer Station operations. Public restrooms must be available. It shall also have a variety of informative displays and a minimum of four recycling exhibits showing recyclables transformed into end use products. The Education Center shall have a library of environmentally related publications, City provided brochures and other materials relating to recycling and waste issues shall be available.

EXHIBIT 4.05b

COMPLIANCE TESTING PROTOCOL

1. GENERAL CONDITIONS.

During Compliance Testing, Contractor shall employ the same number and type of staff, who perform the same job tasks, and use the same equipment, level of utility usage and operating procedures, as during Facility Operations.

Scales at the scalehouse shall be certified accurate by State inspectors no more than thirty days before the commencement of the Compliance Test.

During Compliance Testing the Facility shall comply with Applicable Law (including OSHA) and Permits (including the noise, fugitive dust, odor and traffic requirements contained in the Solid Waste Facilities Permit issued by the Local Enforcement Agency and approved by the California Integrated Waste Management Board).

2. GENERAL TEST PURPOSE, COMPONENTS, PROTOCOL AND REPORTS

Purpose. During the Compliance Test Contractor shall, at a minimum:

(1) meet the Throughput, Vehicle Turnaround, Transfer, Transportation and Disposal Guaranties and pass the fugitive dust, noise and odor test components described below with respect to the Throughput Component Test Period defined below, while the Facility is simultaneously Recovering and Processing waste ("**Throughput Component Test**"), and

(2) meet the Diversion Guaranties with respect to the Diversion Component Test Period defined below, while the Facility is simultaneously continuing to meet all other Performance Guaranties ("**Diversion Component Test**", together with the Throughput Component Test, the "**Compliance Test**").

Components. The Compliance Test shall consist of the following components:

(1) **One Week Throughput Test**,

(2) **Four Week Material Diversion Test**, and

(3) **One Week Noise, fugitive dust and odor** tests.

Protocol. All components of the Compliance Test shall commence simultaneously at 12:00 a.m. on the first day thereof. The Throughput Component Test and noise, fugitive

dust and odor test components will end at 11:59 p.m. of the seventh day thereafter (the "**Throughput Component Test Period**") and the Diversion Component Test will end at 11:59 p.m. of the twenty-eight day thereafter (the "**Diversion Component Test Period**" and together with the Throughput Component Test Period, the "**Compliance Test Period**"), during which periods Contractor shall receive, at a minimum, City Waste and Selfhaulers Waste up to the Throughput Guaranty and use Reasonable Business Efforts to receive additional waste in amounts at least equal to 50% of Facility's capacity in accordance with Permits. City will use Reasonable Business Efforts to deliver City Waste during the Compliance Test Period.

Prior to commencing the Test, Contractor shall measure and record the tare weights of all receptacles to be used for collecting and storing City Waste, Recovered Materials and any other Permitted Waste as required to measure Diversion Guaranties, and all Containers used to transfer Residue. Contractor shall weigh City Waste Delivered to the Facility on the first and each succeeding day during the Compliance Test. Upon the earlier of filling receptacles or Containers, as the case may be or the end of the Throughput Component Test Period or Diversion Component Test Period, Contractor shall weigh Containers containing Residue (and residue from all Permitted Waste) before leaving the Facility and receptacles containing Recovered Materials (and recovered materials from all Permitted Waste) and record their weight. Contractor shall calculate the weight of Residue and the Recovered Materials, respectively, by subtracting the tare weights of the Containers and receptacles, respectively, therefrom.

During the Compliance Test period, Contractor may record the time consumed by Processing interruptions or Facility breakdown and repairs due to actions of persons other than the Contractor or Uncontrollable Circumstances, and add such time to the Compliance Test Period. Contractor may record the time consumed by Processing interruptions or Facility breakdown and repairs due to actions of Contractor and its employees or normal wear and tear of Equipment, but may <u>not</u> add such time to such test period.

Test Report.

Contractor will prepare Compliance Test reports and submit them to the City at the times provided in Section 4.05c(1).

Throughput Component Test Report. The Compliance Test report with respect to the Throughput Component Test shall include: the throughput calculations and copies of weight records supporting such calculations for all City Waste Transferred, Transported and Disposed of during the Throughput Component Test and all other Permitted Waste handled during such Test.

Diversion Component Test Report. The Compliance Test report with respect to the Diversion Component Test shall include: the recovery calculations and copies of

weight records supporting such calculations for all City Waste Processed and/or Recovered, as the case may be, during the Diversion Component Test, and all other Permitted Waste processed and/or recovered, as the case may be, during such Test, together with Marketing and other records evidencing Diversion.

(1) Throughput Guaranty. Contractor shall report the number of Tons of City Waste Delivered to the Facility Transferred, Transported and Disposed on each Working Day during the Throughput Component Test period and state whether or not such Tonnage meets or exceeds the Throughput, Transfer, Transport and Disposal Guaranties.

(2) Diversion Guaranties. Contractor shall calculate the recovery rate with respect to each Diversion Guaranty in the same manner as is calculated in Section 8.02c and state whether it meets or exceeds such Guaranties with respect to actual Delivered Tons averaged over the Diversion Component Test Period.

3. FACILITY NOISE TEST.

Purpose. The purpose of the Facility Noise Test is to demonstrate that the Facility complies with Applicable Law, including the RSI, with respect to noise, while operating at a minimum in compliance with the Performance Guaranties.

Protocol. Contractor shall retain a qualified independent noise consultant acceptable to the City. During Compliance Testing, such consultant shall use an acoustic meter, calibrated in dbA, to measure noise at workstations in the Facility, Site boundaries, and any other specific locations directed by the City and required by Applicable Law, during the Throughput Component Test Period. Such consultant shall mark each such location and describe it in a test log. Such consultant shall re-calibrate test instruments as frequently as is the general industry practice. Such consultant shall take three samples at each location at five minute intervals on two different days of his or her selection during Compliance Testing and again during nonoperating hours when ambient traffic similar to operating conditions is present. Such consultant shall record the results in the test log.

Test Report. Such consultant shall prepare a noise report showing the statistically determined noise level at each of the test sites, the worst average recorded noise level (if required by Applicable Law), the difference between the ambient (non-operational) and operational noise generated at each site. Such report shall demonstrate and substantiate compliance with Applicable Law. The report will also describe special provisions, if any, which must be incorporated into the Facility to mitigate noise emissions. Upon Contractor's implementing any such special provisions, the City may direct its own noise consultant to confirm the noise emissions by taking measurements at the locations and intervals it deems appropriate. The Facility will pass this noise test following the implementation of any noise mitigation measures and such consultant's report demonstrating and substantiating compliance with Applicable Law. Contractor

will submit consultant's noise report together with Contractor's Compliance Test Report to City.

4. AIR QUALITY TESTS (Facility Fugitive Dust, Odor, etc.)

Purpose. The purpose of Air Quality Testing is to demonstrate that the Facility operates in compliance with Applicable Law, including the RSI, while operating, at a minimum, in compliance with the Performance Guaranties.

Protocol. Contractor shall conduct the Air Quality Test during the Throughput Component Test Period in accordance with general industry practice, if and as required by Applicable Law.

Report. Contractor shall prepare a report which demonstrates and substantiates compliance with Applicable Law. The report will also describe special provisions, if any, which must be incorporated into the Facility to reduce air emissions. Upon implementing any such special provisions, the City may direct its own consultant to confirm the air emissions by taking measurements at the locations and intervals it deems appropriate. The Facility will pass this air test following the implementation of any air mitigation measures and satisfactorily demonstrating and substantiating compliance with Applicable Law.

EXHIBIT 4.05e

DAMAGES FOR FAILURE TO MEET DIVERSION COMPONENT TEST

Contractor shall pay the following amount in accordance with Sections 4.05e (or 19.01d as the case may be):

Liquidated damages equal to five-hundred thousand dollars ($500,000), which represents City's best estimate of re-procuring recovery, processing, marketing and residue transport and disposal services, and the City's best estimate of the damages that would be suffered as a result of incrementally greater costs for transportation, transfer and processing. Contractor acknowledges that City incurs significant costs if the City undergoes a re-procurement process for such services, which might include retaining engineers, financial advisors, contract counsel and other consultants as well as dedicating City staff time to develop, distribute, evaluate and negotiate, as the case may be, requests for qualifications, requests for proposals, etc.... Contractor further acknowledges that the City has considered and relied on Contractor's representations as to its record of materials recovery, processing and diversion in entering into this Agreement and visited comparable facilities of Contractor on field trips. The Parties recognize that if the Facility fails to meet the Diversion Component Test, the City and its residents will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of such damages. Therefore, the Parties agree that the above-stated liquidated damages represent a reasonable estimate of the amount of such damages as they relate to the re-procurement of such services and the additional costs that may be incurred related to transportation, transport and processing, considering all of the circumstances existing on the date hereto, including the relationship of the sums to the range of harm that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. In signing this Agreement, each Party specifically confirms the accuracy of the statements made above and the fact that each Party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Agreement was made.

City	**Contractor**

EXHIBIT 5.01

FACILITY OPERATIONS AND MAINTENANCE

Contractor shall attach the Report of Station Information for the Facility, which shall be incorporated by reference herein, and shall perform all requirements thereof.

SACRAMENTO RECYCLING AND TRANSFER STATION

REPORT OF STATION INFORMATION

Prepared for:

BLT ENTERPRISES OF SACRAMENTO, INC.
1717 "I" Street
Sacramento, CA 95814
(916) 492-0200

Prepared by:

CLEMENTS ENVIRONMENTAL CORP.
3607 Seneca Avenue
Los Angeles, California 90039
(213) 669-7610

February 1998

TABLE OF CONTENTS

Section		Page
1.0	FACILITY OVERVIEW	1
	Overview	
	Introduction	
	Site Location	
	Site Plan Description	
	Nature and Quantity of Wastes	
	Types and Number of Vehicles	
2.0	REGULATORY REQUIREMENTS	9
3.0	FACILITY DESIGN	10
	Detailed Site Plan	
	Building Floor Plan	
	Traffic Flow Plan	
	Striping Plan	
	Waste Flow	
	Drainage	
	Utilities	
	Design Calculations	
4.0	STATION IMPROVEMENTS	20
	Signs	
	Security	
	Roads	
	Visual Screening	
5.0	OPERATIONS	21
	Hours of Operation	
	Station Personnel	
	Station Equipment	
	Equipment Maintenance	
	Materials Handling	
	Station Maintenance	
	Health and Safety Program	

6.0 STATION CONTROLS 34

Nuisance Control
Dust Control
Vector and Bird Control
Drainage Control
Litter Control
Noise Control
Odor Control
Traffic Control

7.0 RECORDS AND REPORTING 37

Weight/Volume Records
Special Occurrences
Inspection of Records

APPENDICES

A Loadchecking Program

B Resumes

C Employee Safety Training Program

D Self-Inspection Checklist

E Illness And Injury Prevention Program (IIPP)

F Emergency Response/Contingency Plan

G Hazard Communication Program

H Lockout/Tagout Program

I Respiratory Protection Program

J Hearing Conservation Program

K Estimated Theoretical Waste Composition

L Traffic Estimates

M Markets for Recovered Recyclable Materials

FIGURES

		Page
1	Site Location Map	4
2	Site Plan	5
3	Adjacent Land Uses	6
4	Floor Plan	11
5	Off-Site Traffic Pattern - Collection Trucks And Self-Haul	13
6	Off-Site Traffic Pattern - Transfer Trucks	14
7	Waste Flow Diagram	15
8	Utilities Plan	17
9	Management Organization	23

TABLES

1	Anticipated Average Annual Tonnages	7
2	Anticipated Peak Daily Vehicles	8
3	Facility Staffing Levels	22
4	BLT Corporate Emergency Contact List	24
5	Outside Agency Emergency Contact List	24
6	Estimated Station Equipment	25
7	Summary Monitoring and Reporting Schedule	38

1.0 FACILITY OVERVIEW

OVERVIEW

The City of Sacramento is now confronting the serious challenge of managing its municipal solid waste, as closure of the Kieffer landfill approaches. The City must plan ahead to identify new waste management diversion programs, and efficient and cost-effective methods to dispose of their non-recyclable waste in more distant landfills.

The Sacramento Recycling and Transfer Station (SRTS) functions as a recycling and transfer facility at which trash collection vehicles deliver refuse for separation, recycling, and consolidation into larger capacity long-haul transfer vehicles, or rail-haul containers, for conveyance to disposal sites. Without the SRTS, the City of Sacramento and other local communities could be forced to haul waste directly from the point of collection to the closest available landfill. The distance of these landfills presents problems in greater air emissions and costs of disposal. SRTS decreases potential impacts by reducing and consolidating the bulk of refuse destined for landfill disposal.

The objectives of the City of Sacramento in developing the recycling and transfer station are to:

1) Increase the city's ability to achieve its mandate under State legislation (AB 939) that requires all cities and counties in California to divert 25% of its solid waste from landfills by 1995 and 50% by 2000;
2) Plan for the closure of the Kieffer Landfill by providing an alternative to local landfilling;
3) Provide access to alternatives for long-distance hauling of refuse, such as rail-haul and long-haul transfer by truck, as an alternative to the use of in-county landfills; and
4) Reduce county wide solid waste management costs by providing a central location for solid waste transfer and material recovery operations
5) Decrease haul distances for collection trucks

The SRTS has the capacity to handle 1,500 tons per day (TPD), and will average approximately 1,100 to 1,200 TPD over the next five years. The facility may be constructed in two phases, with the transfer station portion first, and the Material Recovery Facility following; or it may be constructed all at once. The facility is designed to accept and process a variety of waste types from numerous sources. Loads are delivered to specific sorting lines dependent on material type, and are sorted to recover valuable material such as paper, glass, plastics, metals, C&D debris and wood. Non-recoverable waste will be transported to landfills for disposal.

There will be no composting of greenwaste or any other materials at this facility. Separated wood and greenwaste may be shipped to other permitted facilities for composting or recycling.

INTRODUCTION

This document has been prepared in accordance with 14 CCR 18221 which lists the specific requirements for inclusion in a Report of Station Information. The purpose of this Report of Station Information is to describe the proposed design and operation of the Sacramento Recycling and Transfer Station to be located in the City of Sacramento. The property and all buildings and site improvements will be owned by BLT Enterprises of Sacramento, Inc.

Name of Station:	Sacramento Recycling and Transfer Station
Facility Address:	84th & Fruitridge Road Sacramento, CA APN: 061-173-014
Land Owner:	BLT Enterprises of Sacramento, Inc. Sacramento , CA 93456
Operator:	BLT Enterprises of Sacramento, Inc. Sacramento, CA 93456
Address Where Legal Notice May Be Served:	BLT Enterprises, Inc. 511 Spectrum Circle Oxnard, CA 93030
Proposed Permitted Capacity:	1,500 Tons Per Day (TPD)

SITE LOCATION

Figure 1 shows the site location, which is in both the Recycling Market Development Zone (RMDZ) and the City's Enterprise Zone. The propertty is zoned industrial and is surrounded by compatible land uses.

SITE PLAN DESCRIPTION

Site Plan

Figures 2 shows the Site Plan. The site is comprised of 19.46 acres of industrial land with access off 84th Street. Rail cars could be loaded along an extension of the Union Pacific Railroad that would enter the site from the north.

Adjacent Land Uses

The site is surrounded by Dolans Industrial Buildings, vacant land, and the UP Railroad to the north, vacant land to the east, the Packard Bell complex to the south, and several industrial facilities to the west. Figure 3 identifies the surrounding land uses within 1,000 ft.

Service Area

The facility will primarily service the City of Sacramento, and certain portions of unincorporated Sacramento County.

NATURE AND QUANTITY OF WASTES

Waste Types

Only non-hazardous municipal solid waste will be accepted at the SRTS. This includes: residential, commercial, industrial, and self-haul wastes, as well as source-separated materials form curbside collection programs, commercial recycling programs, separate yardwaste collection, or other programs. No designated, special, medical, or hazardous wastes will be accepted. A Hazardous Waste Load Check Program will be implemented to enforce this policy. (See Appendix A). Estimated theoretical waste composition and recycling rates are provided in Appendix K.

Figure 1

SITE LOCATION MAP

Figure 2

Site Plan

Figure 3

Adjacent Land Uses

Waste Quantities

At the outset of operations, the average daily throughput of the facility will be approximately 850 TPD, increasing to 1,300 TPD within five years. This allows 200 TPD in reserve to handle peak volumes due to seasonal or daily fluctuations. At full buildout, the facility will be able to handle a peak daily throughput of 1,500 tons.

The anticipated average annual waste tonnages for the first five years of operation are shown in Table 1. This five year projection is an estimate only, and may differ as a result of new or revised waste hauling contracts, legislative mandates, or changes to the available landfill disposal capacity and tipping fees. Of the 1,500 TPD capacity, 800 TPD is reserved for City-collected residential waste, and 700 TPD for commercial waste generated in the City and collected by others.

The average weekly tonnages are expected to vary, up or down, by 5-10 percent, and seasonal variations are expected to affect the averages by as much as 10 percent. The maximum daily tonnage of 1,500 TPD will not be exceeded. Unusual peak loading or emergencies will be handled at the station by adding manpower and equipment, and/or extending the length of shifts. The station building is also designed to accept and provide temporary storage for unusual peak loadings.

TABLE 1
ANTICIPATED AVERAGE ANNUAL TONNAGES

YEAR	TONS/DAY	TONS/YEAR*
1998	850	261,800
1999	1,000	308,000
2000	1,200	369,600
2001	1,300	400,400
2002	1,300	400,400
5-YEAR AVERAGE	1,130	**348,040**

* Based on 308 day per year operation

TYPES AND NUMBERS OF VEHICLES

The following types of vehicles will use the facility:

- **Incoming Waste Materials:** collection trucks and public self-haul vehicles
- **Outgoing Waste Materials (for disposal):** transfer trucks, or shipping containers on rail

- **Outgoing Recyclable Materials from Materials Recovery Operations:** semi-trucks; roll-off trucks; flatbed trucks; stake bed trucks, shipping containers on rail

- **Employee Vehicles**

Table 2 summarizes the anticipated facility traffic volumes, by truck or rail, at the peak design capacity of 1,500 TPD. Appendix L provides estimates of hourly traffic volumes. Note that the heaviest traffic is during off-peak hours.

TABLE 2
ANTICIPATED PEAK DAILY VEHICLES
1,500 TPD

VEHICLE TYPE	BY TRUCK	BY RAIL
Incoming Waste Materials		
Collection Trucks	210	210
Public Vehicles (cars & pick-ups)	95	95
Out-going Waste Materials		
Transfer Trucks	56	0
Outgoing Materials	11	11
Employees	84	84
TOTAL VEHICLES PER DAY	**456**	**400**

Assumptions:

Collection trucks = 7.0 tons each (average)

Transfer trucks = 23 tons each (approx.)

Public vehicles = 0.3 tons each

Outgoing Materials vehicles = 20 tons each (average)

To ensure that no off-site parking will occur, the facility design has set aside parking spaces to accommodate the transfer truck fleet, every employee vehicle, and visitors, including school buses.

2.0 REGULATORY REQUIREMENTS

The following regulatory requirements apply to the proposed Sacramento Recycling and Transfer Station:

- **Land Use Permit** - A Special Permit for a Mass Transfer Station and Large Volume MRF (S.P.) from the City of Sacramento Planning Commission.

- **Environmental Documentation** - As part of the S.P. approval, the City of Sacramento will conduct a review of the project under the California Environmental Quality Act (CEQA). This review will most likely be a focused EIR; or Mitigated Negative Declaration.

- **Revision of County Non-Disposal Facility Element (NDFE)** - The Sacramento County Solid Waste Management Task Force will revise the NDFE to include the Sacramento Recycling and Transfer Station.

- **Storm Water Permit** - The facility will file a Notice of Intent (NOI) for a General Industrial Storm Water Permit (NPDES) with the State Water Resources Control Board (SWRCB). A Storm Water Pollution Prevention Plan (SWPPP) and Monitoring Program Plan (MPP) will be developed.

- **Waste Discharge Requirements** - California State Water Resources Control Board correspondence states that a transfer station is exempt from provisions of Title 23 California Code of Regulations, pursuant to Section 2511; and therefore the facility is not required to adopt Waste Discharge Requirements (WDRs).

- **Industrial Wastewater Discharge Permit** - The facility will receive an Industrial Wastewater Discharge Permit from the Sacramento Regional County Sanitation District for the discharge of washdown water to an industrial wastewater clarifier and the sewer system.

- **Sacramento Regional Air Pollution Control District (APCD) Permit to Operate** - Permit requirement determination will be established with the APCD.

- **Hazardous Waste Generator ID Number** - The facility has received a State Site Specific Identification number from the Department of Toxic Substances Control (DTSC), CAL# 000161080. This number will be used for all manifesting, record keeping, and reporting required for household hazardous waste discovered through the load checking program.

- **Solid Waste Facilities Permit** - A Solid Waste Facilities Permit will be obtained from the County of Sacramento Environmental Management Department, Environmental Health Division; and the California Integrated Waste Management Board.

3.0 FACILITY DESIGN

DESIGN PLANS

Site Plan

Site Description

The Conceptual Site Plan was shown previously in Figure 2. Figure 4 shows the Floor Plan. The proposed facility will include the following major components:

- Administrative Offices/Visitors Center
- Material Recovery Facility (MRF)
- Transfer Station
- Scalehouse and Scales
- Vehicle and Equipment Maintenance Buildings
- A.B.O.P. Drop Off Center (Anti-freeze, Batteries, Oil, and Paint)

It may be that the facility is constructed in two phases, with all but the MRF in the first phase and the MRF following in a later phase.

The Site Plan shows the flow of traffic into and out of the facility for collection vehicles, transfer trucks, and self-haul. In general, traffic patterns have been designed to separate heavy truck traffic from the employees, visitors, and self-haul customers. The self-haul customers have a separate tipping area. This provides both safety for the public and quicker turnaround for the City's trucks. City collection vehicles also have their own tipping area. The maximum turnaround time on-site for the City's trucks is guaranteed to be no more than fifteen minutes.

The facility includes an approximate 50,000 sf material recovery facility (MRF) with sorting and baling capabilities, similar to the system at BLT's Del Norte Regional Recycling and Transfer Station. The sorting operations will be partially separated from the Main Tipping Floor by a stacking wall. The Floor Plan shows the location of the tipping areas, conveyors, sorting platforms, balers, and bale storage to be used in sorting operations. Sorting equipment can be expanded or reduced to accommodate recyclable material processing needs.

Tipping Areas

Three separate tipping areas are provided as shown on the Floor Plan; one for the public, one for the City vehicles, and one for all other collection trucks.

Storage Areas

Wastes awaiting transfer will be temporarily stored near the residue loadout ports. Waste storage will be minimized by implementing a "first-in, first-out" policy. In accordance with State law, no waste will be stored on site longer than 48 hours. The SRTS does not anticipate waste storage for

this extended amount of time. Waste will normally be transferred from the building within 24 hours.

Figure 4

Floor Plan

Recyclables recovered from the tipping floor will be stored in three-yard bins or roll-off containers. Bale storage is adjacent to the loading dock as shown on the Floor Plan.

Parking Areas

Empty transfer trailers will be parked on-site at the end of the day. If it is necessary to hold any loaded trailers overnight, they will also be parked on-site. On-site parking will also be provided for all employees and visitors. The proposed parking areas are shown on the Site Plan.

Traffic Plan

Offsite Traffic Patterns

Figure 5 shows the offsite traffic pattern for collection trucks and self-haul vehicles. Figure 6 shows the routing for transfer trucks. If rail haul is implemented, these transfer trucks would be eliminated. As shown, traffic will be routed to avoid the heavily-traveled Power-Inn Road.

Onsite Traffic Patterns

Refer to the Site Plan (Figure 2) for a visual depiction of onsite traffic patterns. City collection trucks will: enter through the main driveway, pull onto the designated City truck scale, weigh in, enter the building, and tip on the tipping area designated for City trucks only. Self-haul and private collection vehicles will follow a similar pattern, using their designated scale and tipping area. City trucks will have tare weights recorded in the scalehouse computer system and will normally not be required to weigh out. They will use the outbound by-pass lane.

Transfer trucks will enter a separate gate, back down the ramp and into the tunnel under the tipping floor. When the axle scales indicate a full 23 ton payload, the trucks will pull out of the ramp, close the screens over the top of the trailer, and exit the facility. Should rail haul be implemented, shipping containers will be loaded, compacted, hauled by shuttle trucks to the rail spur, and double-stacked on platform cars.

Visitors will have their own driveway and parking area adjacent to the office and visitor's center.

An on-site traffic management plan will be developed for the facility to ensure safe and efficient traffic operations. During waste receiving hours, facility personnel stationed in the scalehouse will monitor all incoming traffic. During non-waste receiving hours, the facility will be secured by fences, walls, and gates at all entry and exit points.

Waste Flow

A schematic plan showing the flow of waste materials through the facility from unloading through sorting, processing, and removal is presented in Figure 7. A discussion of the material handling activities involved in this waste flow is included in Section 5, Operations.

Figure 5
Off-site Traffic Pattern
Collection Trucks and Self-Haul

Figure 6
Off-site Traffic Pattern
Transfer Trucks

Figure 7
Waste Flow Diagram

Surface Drainage and Runoff Control Plan

The drainage and runoff control plan will be submitted as part of the Stormwater NPDES Permit application. The purpose of the plan is to ensure that runoff does not contain solids, wash water, or other contaminants; that flooding does not occur, and that erosion is avoided. Upon completion, the plan will indicate the graded direction of surface runoff, and will identify the location of drainage structures on the site. Trench drains will be installed across the transfer truck ramp to prevent storm water from running down the ramp and ponding at the bottom. A Notice of Intent will be filed for an NPDES General Stormwater Permit and a Storm Water Pollution Prevention Plan and Monitoring Program will be implemented to manage storm water at the facility.

Industrial Wastewater Discharge

A minimal amount of industrial wastewater will be generated by the occasional cleaning of the inside of the building and equipment. All industrial wastewater will be routed through an industrial clarifier prior to discharge into the Regional Sanitation District's sewer system. An industrial wastewater discharge permit will be obtained.

Utilities

The Utilities Plan is shown on Figure 8. The plan indicates the location of the connections to the sewer, water, and electrical utilities serving the site. Power to the facility will be provided by the Sacramento Municipal Utilities District (SMUD). Water and sewer service will be supplied by the Sacramento County Regional Sanitation District and the City of Sacramento.

DESIGN CALCULATIONS

Station Capacity

The purpose of this section is to substantiate the facility's ability to handle the proposed maximum design capacity of 1,500 TPD, without causing environmental harm or safety problems.

Vehicle Loading and Unloading

The following assumptions and calculations support the facility design with respect to vehicle loading and unloading:

- Collection Vehicle Weigh-in/Off-loading

Assuming 30 seconds to weigh-in and two incoming scales, approximately 240 vehicles could weigh-in per hour. This capacity greatly exceeds the maximum hourly number of collection vehicles (30-40) and self-haul vehicles (5-10) expected at the maximum capacity of 1,500 TPD.

Figure 8
Utilities Plan

The total number of vehicles able to unload at the facility per hour is estimated to be 130. The breakdown by tipping areas, per hour, is as follows: City truck tipping floor (50), commercial MRF tipping area (40), self-haul area (40).

- Solid Waste Storage

The combined waste storage areas of the City truck Tipping area, MRF area, and Self-Haul area is approximately 50,000 sf, and will have the capacity to store the maximum of 1,500 tons, with a maximum depth of 5 ft (assuming a density on the floor of 350 lbs per cy).

- Queuing

In the event queuing is necessary, eight collection vehicles can queue at each of the two incoming scales (a total of 16). Given the quick 30 second weigh in time, this should be sufficient to ensure that all queuing occurs onsite. A double queue can also be established on-site between the scales and the transfer floor to accommodate an additional ten collection trucks. In addition, up to twenty self-haul vehicles can queue between the scale and the tipping floor. In an emergency, another 25 trucks or so could queue on the property.

- Waste Transfer

Using the transfer tunnel, two transfer trucks or shipping containers can be loaded with waste residue simultaneously. Based on a loading time of six minutes per vehicle, approximately 20 trucks per hour can be loaded. This equates to approximately 460 tons per hour (20 trucks per hour x 23 tons per truck).

Should rail haul be implemented, compaction equipment would be installed to load shipping containers with 30 ton payloads (approximate). Four shipping containers could be loaded per hour. At this rate, all 1,500 tons could be transferred in roughly six hours.

Under any foreseeable circumstance, all 1,500 TPD of waste can be transferred within the State's 48-hour requirement.

Waste Processing Operations

At the commencement of MRF operations, the facility proposes to achieve a minimum of 15% diversion of incoming waste, increasing in future years to help meet the City's 30% diversion goal. To reach the diversion required by the year 2000, cities such as Sacramento will count existing baseline diversion, plus additional diversion from the private sector.

At 1,500 TPD, the recovery goal of up to 400 TPD, will be achieved by sorting loads of commercial and self-haul waste, sorting curbside recyclables, baling source-separated loads of cardboard and high-grade paper, sorting recyclables from C&D debris, transferring source-

separated yard waste to off-site composting operations, and floor sorting recyclables from loads headed directly for transfer.

The following assumptions and calculations support the facility design with respect to the sorting and processing operations at the facility. These assumptions could change during the course of the project.

- Commercial Waste Processing

Assuming a throughput capacity of 15.2 tons per hour for each of the three elevated sorting platforms, a total of 45.6 tons per hour can be conveyed across the sorting belts. This equates to over 1,000 tons per 24 hours, well above the capacity needed for commercial waste sorting.

15.2 TPH x 3 belts x 24 hours = 1,094 TPD

Source-separated cardboard and high-grade papers are anticipated at the facility from commercial and industrial businesses. Much of this material will not require processing and will be baled directly.

- Curbside Recyclables Processing

A curbside material processing line may be installed at the facility to sort commingled containers. Depending on the composition of the materials received, the material can be either positively or negatively sorted on the processing line. The curbside material processing line is capable of processing roughly seven tons per hour of curbside materials, whether positively or negatively sorted. This is more than enough capacity for the anticipated curbside stream.

- Baling

At maximum diversion, a total of approximately 300 TPD of recyclable material will need to be baled for transport to market. Assuming a capacity of approximately 21 tons per hour for the baler, 504 tons of material could be baled each 24 hour period:

21 tons per hour x 24 hours = 504 tons per day

This is more than the anticipated baling capacity required. If additional diversion requires increased baling capacity, a second baler will be installed.

- C&D Material Processing

C&D debris will be sorted using loaders and floor sorters to recover recyclables.

- Wood and Yard Waste Processing

Source-separated wood and yard waste will be transferred and shipped off-site for processing.

- Floor Sorting

Each employee is able to manually sort approximately 2.0 tons per 8-hour shift.

4.0 STATION IMPROVEMENTS

SIGNAGE

A signage plan, conforming to City of Sacramento planning standards, will ensure safe operations. Signs will be maintained and replaced as needed to ensure easy readability and maintain aesthetics. At a minimum, the following signs will be posted:

Signs Located at the Entrance of the Facility

- Hours of Operation, Days of Week
- Name of Facility and Operator
- Materials Accepted/Not Accepted
- Speed Limit

Signs Located at the Scale House

- Rates and Fee Schedule
- Transfer Station Rules (stay in truck, etc.)
- Tarping Requirement

SECURITY

The site is secured to prevent illegal entry. During waste receiving hours, facility personnel stationed in the scalehouse monitor all incoming traffic. During non-waste receiving hours, the facility is secured by a combination of walls and chain link fencing, and gates at all entry and exit points. In addition, closed system video monitors will be stationed around the facility to record daily events. These records are stored for up to one month. Locations of monitors may include the incoming scalehouse, administrative offices, and processing building.

ROADS

All on-site roads are paved. The tipping areas inside the building are concrete and designed for heavy use. Daily sweeping to remove litter and provide dust control will not impact the structural integrity of the site surfaces. The site is accessible during dry and wet weather periods.

VISUAL SCREENING

The facility has been designed so that a portion of the transfer building and its operations are screened by the office and visitor's center. Landscaping will consist of hedges, shrubs, and trees. A landscape plan will be developed and approved by the City of Sacramento during the Special Use Permit process. Per city ordinance, a 25 ft wide landscaped buffer will be installed across the front of the site, and shade trees planted in the parking areas to provide 50% shade after 15 years. Maintenance of landscaping will comply with all City of Sacramento ordinances.

BLT is willing to work with the City in selecting native plants and trees for water conservation.

5.0 OPERATIONS

HOURS OF OPERATION

The proposed hours of operation for the facility are listed below. At a minimum, the facility will be closed on Christmas and New Years.

Waste Receiving (Municipal & commercial haulers, including landscapers, etc.):
6:00 a.m. - 5:00 p.m., 7 days per week

Public Tipping (Residents, non-commercial users):
6:00 a.m. - 5:00 p.m., 7 days per week

Waste Processing: 24 hours a day, 7 days per week

Waste Transfer: 24 hours a day, 7 days per week

Visitors Center: By appointment, 7 days per week

STATION PERSONNEL

Table 3 lists the facility positions and number of personnel anticipated at the facility at the maximum 1,500 TPD capacity. The number and assignments may change to some extent depending on operational requirements.

Figure 9 shows an organizational chart for the operation of the facility. Facility management will be selected based on their proven experience in the waste management industry. Appendix B contains resumes of key BLT personnel. Tables 4 and 5 contain emergency contact lists.

The Transfer Station and MRF areas will have their own supervisor on duty during all operating hours. Attendants will be posted at the scalehouse and the self-haul tipping area to ensure safe public use.

All employees receive training including, but not limited to: safety, health, environmental controls, and emergency procedures. The training programs offer standardized training for all employees in company operations, policies and procedures, plus additional job-specific training based on the various job descriptions and responsibilities of the employees. For example, sorters are trained to recognize the types of hazardous or special waste that may be inadvertently included in the loads brought to the facility. Employees receive regular safety briefings. Copies of training records are kept on file at the facility's administrative offices and will be available for inspection from 9 a.m. - 4 p.m. Monday through Friday. For more information on the proposed training program, see the Employee Safety Training Program in Appendix C of this document.

TABLE 3
FACILITY STAFFING LEVELS
(1,500 TPD)

Position	Number
Facility Management	
Operations Manager	1
Safety Manager	1
Materials Marketing Manager (handled from corporate)	-
Administration/Clerical	
Bookkeeper/Controller	1
Office Personnel	2
Commercial/Curbside MRF	
MRF Supervisor	2
MRF Line Foreman	3
Sorters	45
Equipment Operators	
Forklift Operator	3
MRF Loader Operator	3
Baler Operator	2
Waste Transfer Operation	
Transfer Station Supervisor	1
Transfer Station Foreman	1
Equipment Operators	
Sweeper Operator	1
Transfer Station Loader Operator	2
General Laborers	
Rakers	2
Spotters	3
Floor Sorters	5
Scale Operators	3
Maintenance	
Mechanics	2
A.B.O.P. Drop	
Operator	1
TOTAL	**84**

FIGURE 9

MANAGEMENT ORGANIZATION

TABLE 4
BLT CORPORATE
EMERGENCY CONTACT LIST

In the case of an emergency, the following persons should be contacted (as the facility enters construction, local employees will be hired and added to this list):

Bernie Huberman

(213) 729-8368 (pager)
(805) 278-8200

Shawn Guttersen

(916) 492-0200

Dan Rosenthal

(213) 729-0129 (pager)
(805) 278-8200

TABLE 5
OUTSIDE AGENCY EMERGENCY CONTACT LIST

TYPE OF EMERGENCY	AGENCY	PHONE NUMBER
General Emergency	Emergency Dispatch	911
Fire, Hazardous Waste Spill, or Explosives	City of Sacramento Fire Department	911 or (916) 228-3000 (fire) (916) 264-5266 (haz waste)
Security	City of Sacramento Police Department	911 or (916) 264-5471
Hazardous/Suspected Hazardous Waste, Unknown Sludges, Slurries and Liquids	City of Sacramento Fire Department, Haz Mat	Nuisance Hotline (916) 875-5656 or (916) 264-5266
Medical Waste (Producer Known) (Producer Unknown)	Environmental Health Division (Faith King)	(916) 386-6137
Injuries/Non-Emergency Medical Assistance	Methodist Hospital	(916) 423-6193

STATION EQUIPMENT

Table 6 lists the type of equipment and estimated number of equipment units anticipated at the facility at the peak volume of 1,500 TPD.

- Transfer Trucks: Because of the different distances to various landfills, the number of trips per truck per day will vary. For example, each truck will be able to complete six trips per day to the Kiefer landfill; and three trips per day to either the Protrero Hills or Norcal Landfills. The same number of total trips per day to the landfill will be made, only the number of trucks needed will change depending on the landfill site. Based on the 56 loads shown in Table 2, approximately seven trucks plus one spare would be needed for haul to Kiefer; and 19 trucks plus three spares for use of the Protrero Hills or Norcal landfills.

Loaders: three loaders are anticipated at the commencement of operations, and four loaders are anticipated at the maximum capacity.

- Balers: One baler will be used at the commencement of operations. A second baler may be added as necessary, depending on recyclable material recovery.

TABLE 6
ESTIMATED STATION EQUIPMENT

Equipment Type	Equipment Units @ 1,500 TPD
Transfer Truck and Trailers	8-22
Transport Trailers (recyclable material)	3
Loaders	3
Forklifts	3
Balers with Loading Conveyor	1
Material Recovery System	1
Electronic Scales	
Truck (70')	3

Preventative Maintenance Program

An equipment preventative maintenance program has been implemented at the facility to ensure the reliability of all equipment and vehicles. The schedule will be approximately as follows:

- Loaders and Forklifts: every 250 hours
- Conveyors: bi-weekly lube and alignment
- Trailers: weekly brake examination and adjustment; welding as needed

- Balers: monthly inspection and service

Transfer trucks may be maintained at the facility. Maintenance includes brake inspections, adjustments, and minor welding. Transfer trailers are open-topped and covered with a plastic mesh hinged cover welded to the trailer body. This allows drivers to easily place and remove the cover as needed. Trailers will have walking floor systems, such as the Keith Compact Drive Walking Floor, for ease of unloading. These systems are rubber-lined and demonstrated to be leak resistant.

Shipping containers may also be maintained at the facility, primarily minor welding.

Standby Equipment

To assure ongoing operations, the following back-up equipment will be maintained at the facility, or will be available from off-site sources on an on-call basis:

- One (1) loader
- One (1) forklift
- One (1) transfer trailer for every seven transfer trailers in use
- One (1) portable generator

To assure fast repair, adequate parts and supplies will be kept on-site and/or maintenance contracts may be established with equipment vendors. While there are few critical spare parts necessary to maintain facility operations, it is anticipated that the following equipment may be stored at the facility for emergency purposes: shipping containers, spare baler parts, electric conveyor motor, trailer parts and conveyor parts. For the quick replacement of mobile equipment, local equipment rental companies in Sacramento, can provide same day delivery of loaders and forklifts.

Hazardous Waste Handling Equipment

Hazardous waste discovered on the tipping floor or on the sorting platforms will be handled in accordance with the facility's hazardous waste handling plan. The equipment used to handle hazardous waste may consist of the following Personal Protective Equipment (PPE):

- Eye protection: safety glasses or goggles
- Body protection: hard hats, disposal coveralls or Tyvec sleeve, Nitryl gloves, neoprene aprons and steel-toed boots
- Dust masks
- Respiratory Protection (if needed)

For the storage of hazardous wastes, at a minimum, EPA-approved 55-gallon drums will be used, along with overpak drums, and a portable hazardous waste storage locker with secondary containment and lockable doors.

MATERIALS HANDLING ACTIVITIES

The following section describes the general areas used for waste handling activities. Occasionally, these areas may be used to handle other types of permitted wastes than those described herein.

Main Tipping Area/Waste Transfer

Collection vehicles enter the facility and weigh-in on one of the two 70 ft electronic scales. If the truck is carrying mixed residential waste, commercial waste, industrial waste or agricultural waste. with low recyclable content, the scalehouse operator will direct it to tip near the load-out ports. Spotters will guide trucks to the proper unloading area. After tipping, trucks will exit the facility. Most truck tare weights will be coded into the scalehouse computer system so that repeat customers will not have to weigh-out when they exit. Self-haul vehicles will be directed to their own tipping area, and may be required to weigh-out.

After unloading, floor sorters may salvage recyclables and bulky items from the floor and load them into roll-off boxes stationed on the tipping floor. Waste material will be pushed by loader through the transfer ports into transfer trailers or shipping containers stationed on axle scales in the below-grade transfer tunnel. An electronic scoreboard suspended above each loading port will inform the loader operators when a trailer or container has reached its legal weight limit. A dispatcher located in an office overlooking the floor and transfer tunnel will then radio the transfer trailer driver to exit the tunnel. Upon exiting the tunnel, the driver will pause at the exit, cover the load to prevent litter, and either exit the site, or drive to the rail car loading area where the container will be placed on the train.

~~The transfer trucks will haul to local California landfills.~~

Waste will be transferred on a "first-in, first-out" basis whenever possible. In accordance with State law, no waste shall be stored at the facility for more than 48 hours. Storage of waste will be adjacent to the transfer ports.

Rail Operations

Should rail transportation become economically viable, an intermodal/container handling facility will be established at the transfer station. Rail rates will determine the use of two types of equipment configurations:

1. Top-loading, 40 foot or 45 foot long containers, stacked two high, using articulated rail cars similar to the "Maxi-Stack III" or,

2. End - loading 48 foot or 53 foot long containers being double stacked on stand-alone cars, similar to the "Husky Stack"

Loading and unloading to and from the rail cars will be done utilizing one of two types of equipment:

1. Top-Pick or,

2. A high-speed overhead crane

Adequate track sidings will be developed for the intermodal facility at the transfer station in conjunction with the Union Pacific or the Central Traction Railroad. A paved surface will be developed adjacent to the loading tracks for movement of containers between truck chassis and the rail cars.

If top-loading containers are used, the transfer station loading areas will not need to change. Transfer containers are equivalent in size and dimension to existing transfer truck trailers.

If end-loading containers are employed, the transfer station tunnel will be retrofitted with compactors. Processed waste will be loaded into the compactors and condensed in a pre-bale chamber. Then the compacted waste will be extruded into the containers. Shuttle trucks will move the containers to the rail car loading area. There, a fork-lift type device called a top-pick or a crane will lift the containers from the chassis and place them on the rail cars. An empty container will then placed on the chassis and the container returned to the transfer station.

Rail cars will be provided as needed from the Trailer Train Pool, a rail equipment service jointly owned by the Nation's major railroads. On a daily basis, loaded rail cars will be pulled from the facility and taken to the disposal site.

At the disposal site, intermodal loaded containers will be removed from the rail cars by top-picks or overhead cranes and placed on truck chassis. These will deliver the loaded containers to the working face of the landfill where a hydraulic tipper will be used to lift the containers and discharge the waste. The empty containers will be returned to the intermodal facility and placed on rail cars for return to the SRTS.

In the event that the rail system is inoperable due to natural occurrences or unforeseen circumstances, the waste containers will be trucked directly to the disposal site.

Material Recovery Facility (MRF)

- Collection vehicles enter the facility and weigh in on one of the two 70 ft electronic scales. If the truck is carrying commercial waste with recyclable content, the scalehouse operator directs them to unload at the MRF tipping area. Spotters guide the trucks to the proper unloading area. After tipping, trucks will exit the facility. Most truck tare weights will be coded into the scalehouse computer system so that repeat customers do not have to weigh-out when they exit. Roll-off trucks will weigh-out, because of the differences in the tare weights of the containers.

  After unloading, floor sorters may salvage bulky items from the floor and load them into roll-off boxes stationed on the tipping floor. The remaining material is then pushed by loader into the infeed conveyors which feed the elevated sorting platforms. Material conveyed down the sorting platforms is sorted by material type by sorters and dropped through the platform into

bunkers below. The walking floors or loaders convey material from beneath the sorting platforms to the baler conveyor line. Selected loads of clean cardboard, newspaper and other recyclable materials may be sent directly to the baler. Recovered material is baled and stored in the bale storage area adjacent to the baler. Appendix M lists markets for these recovered recyclable materials.

Waste residue from the sorting operations is conveyed back to the tipping floor via a conveyor belt running perpendicular to the end of the sorting belts. Residue will then be loaded into transfer trailers or shipping containers and hauled to permitted disposal facilities.

- Source-separated curbside collection vehicles enter the facility and weigh-in on one of the two 70 ft electronic scales located in the southern portion of the facility. After obtaining their total weight, curbside trucks proceed to the MRF tipping area to unload.

  After unloading, the material is pushed by loader into the infeed conveyors which feed the elevated sorting platforms. Material conveyed down the sorting platforms is sorted by material type by sorters and dropped through the platform into bunkers below. The walking floors or loaders convey materials from beneath the sorting platforms to the baler conveyor line. Selected loads of clean cardboard, newspaper and other recyclable materials may be sent directly to the baler. Recovered material is baled and stored in the bale storage area adjacent to the baler.

Self-Haul Area

Public vehicles enter the facility and weigh-in on one of the two 70 ft electronic scales located in the southern portion of the facility. After weighing, they proceed to the Self-Haul Area where they back into the building and deposit their loads on the tipping floor.

After tipping, recyclable materials such as wood, scrap metals, and inerts are sorted from the debris using a loader and floor sorters at the outset of operations. Recovered materials are placed in roll-off boxes stationed along the perimeter of the Self-Haul Area.

Self-haul loads are delivered by two primary types of customers: professional landscapers and gardeners (repeat customers), and from residents (non-repeat customers). Repeat customers scale-in and are charged on a $/ton basis similar to other collection vehicles. For non-repeat customers, a flat tipping fee may be used in lieu of a per ton fee so these vehicles may not be required to scale-in or scale-out. The flat fee may be adjusted periodically. These vehicles are directed to tip in the Self-Haul Area during the weekdays and may also be given access to the City or MRF Tipping Floors, on weekends.

A.B.O.P. Drop

The Antifreeze, Batteries, Oil and Paint (A.B.O.P.) Drop, operates as a household hazardous waste drop-off location for area residents, and Conditionally Exempt Small Quantity Generators

(CESQG). Only waste oil, oil filters, water-based paints, antifreeze, and auto batteries are accepted. Access and parking is separated from other traffic at the facility for safety reasons. A Cal-EPA generator identification number for the acceptance of household hazardous waste has been obtained. All Federal, State, and local hazardous waste laws and regulations will be met.

Each of the wastes are specially handled. Antifreeze, Waste Oil and Water-based Paint are accepted in 1 - 5 gallon containers, with a combined liquid limit of 20 gallons per resident or business, per visit. Each of the liquid wastes are poured separately into 55-gallon drums or above ground storage tanks. The drums are stored in an approved Hazardous Waste Storage locker with secondary containment. Drums are removed periodically by a recycler.

In the case of receiving oil, the attendant pours the oil into a container and tests the oil with a vapor detector to verify that no other contaminants are in the oil. The oil is then transferred into an above-ground waste oil tank. This tank is double-lined and/or has sufficient secondary containment. The tank is emptied on a regular basis by an oil recycler.

Used oil filters received are placed in a 55-gallon drum or similar container. The oil filters may be crushed before removal by a licensed recycler.

Auto batteries received will be stored on a secondary containment pallet in the A.B.O.P. Drop area. Batteries will be removed by a recycler periodically

Collection of Fees

BLT Enterprises has developed an accounting system for the facility for billing and cash receipts of vehicles entering at the scale. BLT employees staff and operate the scalehouse. BLT also manages all fee collections and accounting.

Storage of Recyclables

Recyclable materials recovered from sorting operations are stored in several locations inside the facility. Storage of all recyclables occurs inside the building. The primary storage area for baled recyclables is in the Bale Storage area located in the Material Recovery Facility. The approximately 7,200 sf storage space is capable of storing approximately 1,440 bales of recyclables, with each bale being approximately 60"L x 42"W x 30"H. Typically, the following materials are baled and stored at the facility: all grades of paper, plastics, scrap metals, and textiles.

A stockpile and materials management plan is implemented at the facility to ensure that bale stacking procedures are performed in a safe manner. The plan includes:

- Bale storage of combustible fibers will be in accordance with Uniform Fire Code Article 28. Stacks of baled material will not contain more than 25,000 cubic feet of fiber exclusive of aisles of clearances.
- Stacks will be separated from adjacent storage by aisles not less than 5 feet wide.
- A clearance of not less than 3 feet will be maintained between sprinkler heads and the tops of stacks.

Recyclables are also stored in roll-off boxes scattered throughout the inside of the facility. In the Main Tipping Area, roll-off boxes may be stationed along the wall of the facility to store scrap metals, bulky items, wood, and cardboard sorted from the tipping floor. The same type of storage may also be found in the Self-Haul Area and in the MRF. Buy-back materials may be stored in the buy-back area or in the Bale Storage Area.

Hazardous Waste Loadchecking Program

In accordance with Title 22 of the California Code of Regulations, a hazardous waste screening program has been developed and implemented at the facility to detect illegally collected liquid, hazardous and/or special wastes (infectious wastes, dead animals, and sludge). Appendix A contains a copy of the program. Hazardous wastes are manifested and transported off-site to a permitted disposal facility in accordance with local, state, and federal laws.

Hazardous Waste Storage

Hazardous wastes discovered as part of the hazardous waste loadchecking program are properly containerized and stored in an EPA-approved, lockable hazardous waste storage locker located in the southwest portion of the building. The locker is stationed away from on-site traffic patterns. The hazardous waste storage area is inspected monthly. The hazardous waste storage has a storage capacity of five (5) 55-gallon drums. All Federal, state and local hazardous waste laws and regulations are complied with.

Hazardous waste collected from the public, specifically batteries, oil, oil filters, paint, and antifreeze, is properly containerized and stored at the A.B.O.P. Drop. For a more detailed description of storage practices for the A.B.O.P. Drop see the Materials Handling Activities section.

STATION MAINTENANCE

A comprehensive station maintenance program has been implemented at the facility. The program features a Self Inspection Checklist which is completed on a regular basis. The Checklist entails the monitoring of the General Work Environment, Worker Right-To-Know, Hazardous Waste Procedures, Personal Protective Equipment, Facility Equipment, and Facility Structure Evaluation. Elements of the Self Inspection Checklist are monitored on a daily, weekly, or monthly basis.

Items found to be in need of maintenance will be brought to the attention of the Operations Manager. Appendix D contains a copy of the Checklist.

The site is cleaned daily to collect loose litter and dust. A street sweeper patrols the site on a routine basis cleaning the site, including driveways, parking areas, and truck maneuvering areas. At the end of each day, the tipping floor is cleaned using dry clean-up methods. Every 4-8 weeks, or as needed, the tipping and processing areas are cleaned using a high-pressure water spray which generates little to no wastewater.

Equipment and containers are cleaned on the wash pad area adjacent to the shop using a high-pressure water spray. Each piece of equipment is cleaned on a weekly basis.

HEALTH AND SAFETY PROGRAM

A health and safety program has been implemented at the facility to ensure the health and safety of employees and the public visiting the facility. It includes the following programs:

- Employee Safety Training Program (Appendix C)
- Illness and Injury Prevention Program (IIPP) (Appendix E)
- Emergency Response/Contingency Plan (Appendix F)
- Hazard Communication Program (Appendix G)
- Lockout/Tagout Program (Appendix H)
- Respiratory Protection Program (Appendix I)
- Hearing Conservation Program (Appendix J)

According to the regulations (Title 8, CCR Article 108, Section 5156(a)), a confined space entry program is unnecessary for the facility because employees are not exposed to dangerous air contamination and /or oxygen deficiency within such spaces as silos, tanks, vats, vessels, boilers, compartment, ducts, sewers, pipelines, vaults, bins, tubs, and pits. Other elements of the health and safety program for the facility are described below.

Water Supply and Sanitary Facilities

The potable water supply is provided by the City of Sacramento. Water fountains or other potable water dispensers are located in the administrative offices, and in the MRF/transfer station for operations employees. Employee locker rooms, located on the north side of the MRF, are equipped with lockers, toilets, and sinks. Restrooms are also available in the office/visitors center, near the dispatch area, and at the maintenance shop.

Communications

The facility has a communications network between the scalehouses, dispatch room, transfer trucks, loaders, and administrative offices to ensure the smooth operation of the facility. The scalehouses and dispatch room are equipped with intercom phone systems, outside phone lines, and paging systems. Floor spotters, supervisors, loader operators, dispatch, and transfer trucks are equipped with two-way radios. The administrative offices have outside phone lines and a facsimile machine.

Lighting

The facility will be constructed with indoor and outdoor lighting sufficient to conduct operations during non-daylight hours. Outdoor lighting will consist of a combination of pole- and building-mounted, cut-off type fixtures sufficient to light outdoor areas of the site. This lighting will be directed to the interior of the site and shielded, if necessary, to reduce glare. Indoor lighting will vary, but generally will consist of high bay lights to illuminate the tipping and processing areas.

Fire

A fire prevention system will be designed and installed at the facility in conformance with all local fire codes. This will include an automated, overhead sprinkler system throughout the building(s). Fire extinguishers will be located in accordance with the requirements of the Fire Marshal. Existing fire hydrants are located as follows: Site 1: four hydrants on 83rd Street approximately 600 ft from the site; Site 2: four hydrants on florin-Perkins road adjacent to the site; Site 3: four hydrants on Elder-Creek, including one right across the street.

Safety Equipment

The facility requires that employees directly involved in waste handling operations be properly outfitted with Personal Protective Equipment (PPE). At a minimum, these employees are required to wear hard hats, safety glasses or goggles, safety vests, gloves, and safety boots. In addition, ear protection will be provided as necessary for all employees. Employees involved in hazardous waste handling are required to wear specialized safety equipment. This equipment is described in the section, Hazardous Waste Handling Equipment. First aid kits and eye wash kits will be located throughout the facility.

The facility has operational controls and safety devices for equipment to protect employees. Railings, curbs, grates, fences and other controls have been designed to meet OSHA standards in order to ensure the safety of each employee.

The Safety Manager and supervisors are responsible for the following: 1) monitoring and evaluating safety equipment at the facility to ensure that it is in good condition and adequate stock;

6.0 STATION CONTROLS

NUISANCE CONTROL

The site will not pose a nuisance to the surrounding public. Strict operating practices, such as daily cleaning, prompt removal of waste material, and maintaining perimeter fencing have been implemented to ensure that the facility poses no nuisance to the surrounding community. The location of the facility in an industrial park complex at the edge of the city away from populated areas also controls potential nuisances.

DUST CONTROL

Fugitive dusts may be generated at the facility as a result of dumping, sorting, and processing of wastes; and from vehicles used to transport materials on and off site. Dust is controlled at the facility through a variety of mechanical, operational, and housekeeping methods.

The primary source of dust control at the facility is to restrict waste dumping, sorting, and processing to the inside of the MRF/transfer station building. Dust control features of the building include a misting system above the load-out ports, a continuous ridge vent along the top of the building, and mechanical fresh air supply above the sorting platforms. In addition, the MRF is substantially separated from the tipping area by a divider wall and completely separated from loading operations by a structural wall. The separation of waste loading and tipping functions from waste sorting and processing significantly reduces the worker exposure to dust in the sorting area.

To reduce worker exposure to dust inside other parts of the building, employees working in the Tipping areas are evaluated for participation in the Respiratory Protection Program. At the end of each work day, an automated sweeper is used to clean the tipping floors to remove dust and litter. Every four to eight weeks, or as needed, a high pressure water spray is used to clean dust from the tipping and waste processing areas.

To control fugitive dust outside the building, onsite vehicle speed is limited to 15 mph, and a street sweeper routinely patrols and the site.

VECTOR AND BIRD CONTROL

A vector control program for the facility consists of the following elements:

- Typically, non-salvageable waste will be transferred to trailers for hauling to a landfill shortly after the waste is received in the tipping area.
- Waste will not be stored on site for longer than 48 hours.

- Salvageable loads tipped in the sorting areas will be processed within 48 hours of receipt at the facility.
- Baled recyclables will be transported off-site continuously.

- A pest control company will visit the site once per month to inspect the facility, and to set and inspect rodent traps.

- Equipment will be cleaned and maintained on a regular basis. Each piece of equipment will be cleaned on a weekly basis.

Since all waste unloading and processing occurs indoors, birds are not expected to pose a nuisance. However, if birds become a nuisance, an aggressive bird control program may be implemented, and may include contracting with a bird control company and/or installing devices throughout the facility to discourage the birds from landing on or near the facility.

Regular maintenance and cleaning of the facility and equipment also controls vectors. Section 5, Operations, discusses maintenance and cleaning schedules.

DRAINAGE CONTROLS

Storm water discharges are regulated under a General Industrial Storm Water Permit issued by the California Regional Water Quality Control Board, Central Valley Region. The facility will file a Notice of Intent (NOI) for this permit. A Storm Water Pollution Prevention Plan (SWPPP) and Monitoring Plan (MP) are being developed in compliance with this program.

The site will utilize structural and non-structural drainage controls to prevent the discharge of polluted wastewater or storm water into the sewer or storm drain. Trench drains span the width of the bottom of the transfer tunnel ramps to collect storm water washing down the slopes of the ramps. The storm water is then pumped from below-ground pumps and discharged to the storm drain system

The primary source of wastewater generated at the facility is from the equipment washdown. Equipment washed includes recycling equipment, such as bins and containers, and mobile equipment, such as loaders and forklifts. Small quantities of wastewater from inside the transfer tunnel are also anticipated. Minimal wastewater is generated from periodic water-spraying of stationary equipment and building interior walls. The small quantity of water either evaporates or is removed by the facility's sweeper.

Wastewater from the Maintenance shop area and transfer tunnel is routed to an industrial wastewater clarifier prior to discharge to the sewer. The clarifier is outfitted with a rain gauge so that the storm water in excess of 0.1 inch bypasses the clarifier and discharges directly to the storm drain.

Facility wastewater is expected to contain some dirt and small suspended inert debris. A very small concentration of organic matter and oil might also be found in the washdown water. Discharges to the sanitary sewer will be permitted under an Industrial Wastewater Discharge Permit issued by the Sacramento Regional County Sanitation District.

LITTER CONTROLS

The facility is cleaned daily to remove waste debris, and to control dust and litter. Litter control measures include mechanical sweeping of the facility on a regular basis, manual sweeping around fixed equipment, and a litter abatement program for all property boundaries and adjacent roadways. Litter is also controlled by fences and walls positioned around the perimeter of the site. To prevent litter from falling out of refuse collection and long-haul transfer vehicles, the facility has instituted a mandatory tarping policy. This policy requires all incoming loads be covered. Measures for enforcement include warnings, refusal of loads, and possibly being banned from the facility.

NOISE CONTROLS

To mitigate any potential noise impacts, waste unloading and processing operations are confined to the interior of the building, and on-site mobile equipment will be properly sound-proofed and/or muffled.

Employees working inside the building are given ear protection as necessary. In addition, a Hearing Conservation Program has been implemented at the facility to periodically measure interior and exterior noise levels at the facility. Noise measurements will be taken by an independent noise consultant during the first full-year of operations, and as needed thereafter to monitor long-term noise levels. Appendix J contains a copy of the Hearing Conservation Program.

ODOR CONTROLS

Potential odors associated with the proposed project would not be significant since odors would be controlled within the confined refuse tipping area and processing area. In addition, other odor controls that may be implemented at the facility include: cleaning the site daily of all loose material and litter, including cleaning boxes, bins, and containers on a regular basis; sweeping the site daily; removing all waste received within 48 hours in accordance with State law; and removing waste on a "first-in, first-out" basis whenever practical.

TRAFFIC CONTROLS

The SRTS will follow recommendations from the Power Inn Transportation Management Authority regarding traffic routing to minimize the impact on local streets. No queuing of vehicles on public streets will occur at the facility due to the amount of onsite queuing space. See Section 3 for a detailed description.

The site is secured to prevent the illegal entry of vehicles into the facility. During waste receiving hours, facility personnel stationed in the scalehouse monitor all incoming traffic. During non-waste receiving hours, the facility is secured by a combination of walls, chain link fencing, and gates at all entry and exit points. In addition, closed system monitors are stationed around the facility to record daily events. Locations of monitors include the incoming scalehouse, administrative offices, and processing building.

An onsite traffic management plan will be developed to ensure safe traffic operations.

7.0 RECORDS AND REPORTING

RECORDS

Records are maintained at the facility which quantify, by month, the total tonnage received, total tonnage sent to individual disposal facilities, total tonnage diverted, and total number of vehicles utilizing the site. Summary reports can be made available to the LEA as requested, and will be available for inspection at the facility offices upon request.

Records are also kept at the facility which demonstrate implementation of the various facility programs, including:

- Employee Training (new employee orientation, periodic update training, hazardous waste handling training)
- Facility Self Inspection Program (including site safety evaluations, general work environment, facility structure evaluation, hazard communication, hazardous waste operations and inspections, and facility maintenance).
- Health and Safety Programs (lock-out tag-out program, respiratory protection program, and hearing conservation program)
- Hazardous Waste Loadchecking Program
- Vector Control Program

SPECIAL OCCURRENCES

A Special Occurrences Log is kept on a daily basis to document any loads refused entry to the facility, fires, vectors, injuries, accidents, flooding, property damage, inspections, and notices of violations. The Operations Manger is responsible for making sure the log is completed each day. The log is kept in the Control Room. Section X contains a copy of SRTS Special Occurrence Log sheet for a typical month.

INSPECTION OF RECORDS

All facility records are maintained in SRTS administrative offices located at the facility, and are available for inspection by contacting the facility operator between the hours of 9:00 am and 4:00 pm Monday through Friday.

SUMMARY MONITORING AND REPORTING SCHEDULE

A summary monitoring and reporting schedule for the facility programs has been developed. Table 7 presents this schedule.

TABLE 7

SUMMARY MONITORING AND REPORTING SCHEDULE

Program	Monitoring	Reporting
Training Program		
General Safety	Annually	Upon request
First Aid	Annually	Upon request
Safety Equipment	Annually	Upon request
Emergency Procedures	Annually	Upon request
Haz Waste Handling	Annually	Upon request
Self Inspection Program		
General Environment	Weekly	Upon request
PPE	Daily	Upon request
Facility Equipment	Monthly	Upon request
Hazardous Waste	Monthly	Upon request
Facility Structure	Monthly	Upon request
Right-to-Know	Weekly	Upon request
Health and Safety Program		
Vector Control	Monthly	Upon request
Hazard Communication	Quarterly	Upon request
Lock-out, tag-out	Quarterly	Upon request
Hearing Conservation	Annually	Upon Request
Respiratory Protection	Quarterly	Upon request
Miscellaneous		
Weight Records	Daily	Monthly
Special Occurrences	Daily	Upon request
Loadchecking	Daily	Upon request
Trip Reduction	Daily	Upon Request

EXHIBIT 6.01c

UNPERMITTED WASTE INSPECTION PROCEDURE (INCLUDING HAZARDOUS WASTE EXCLUSION PROGRAM)

The Sacramento Recycling and Transfer Station will video tape record disposal on the tipping floor in an attempt to prevent the acceptance of unpermitted waste. Video tape recordings are to display both the time and date of the recording. The video tape resolution must be of high resolution and quality, that is enough to identify vehicle markings.

The following wastes are not permitted and will not be accepted at the Sacramento Recycling and Transfer Station:

- Agricultural wastes
- Asbestos (friable)
- Ash residue from solid, infectious, wood, sludge, or agricultural wastes
- Auto shredder "fluff"
- Dead Animals
- Hazardous wastes
- Infectious wastes
- Liquid wastes
- Radioactive wastes
- Sewage sludge
- Special waste as defined by the California Integrated Waste Management Board (i.e. contaminated soil)
- Bulky items which cannot fit in within an standard roll-off or collection truck

Signs will be posted at the facility entrance listing the above-mentioned wastes are not permitted inside the facility. If the scalehouse operator becomes aware of an unpermitted load, he/she will refuse entry and require the driver to leave the premises.

If the vehicle carrying unpermitted waste manages to enter the facility and tips its load onto the tipping floor, the following procedures will be followed:

Facility "spotters" will identify the load as unpermitted waste
If the transporter is still on the premises:

a. The spotter will detain the driver, obtain driver's license number, vehicle license number, vehicle identification number, and bin number if roll-off.

b. If possible, depending on the type of material, the unpermitted waste will be reloaded onto the original vehicle for transport out of the facility. However, due to the liability surrounding such an act, reloading of unpermitted wastes will be decided by the Facility's Health & Safety Officer on a case-by-case basis.

c. If necessary, contain material and notify City of Sacramento, Haz Mat Division at 916-264-5266.

3. If transporter is identified, but has already left the facility:

a. Transporter's company should be contacted and notified of findings.

b. Transport trucks from that company may be refused entry or subject to regular inspections.

4. If transporter is not identified:

a. The Sacramento Recycling and Transfer Station is responsible for disposal (becomes the generator).

The Sacramento Recycling and Transfer Station has a specific program designed to exclude hazardous wastes from entering the facility. The program includes: random sampling of loads; dumping and sorting procedures; hazardous waste handling procedures; packing, labeling and recordkeeping procedures; storage and disposal requirements; and employee training.

SACRAMENTO

RECYCLING & TRANSFER STATION

HAZARDOUS WASTE EXCLUSION PROGRAM

("LOAD CHECKING PROGRAM")

I. **Random Selection of Vehicles**

A. Select a minimum of two (2) vehicles per day.
B. Select them at different times during the day (Randomize selections each day for example Monday at 1:00 p.m. and Tuesday at 9:00 a.m.)
C. Select an equal share of roll-off and packer trucks.
D. Record date and time of selection of load checking form.

II **Dumping Procedure**

A. Dump selected trucks apart from the other haulers in clean area of the station.
B. Dumping area must be separated from the other site operations by traffic cones.

III. **Sorting Procedure**

A. Each load will be visually inspected by a trained spotter.
B. Loads will be spread out and particular items such as drums, 5 gallon containers, wastes with DOT or other descriptive labels, sludges and liquids, soils and rags, unidentifiable wastes suspected of being hazardous will be inspected and evaluated to determine whether the item is hazardous.
C. All containers large enough to contain other objects must be opened.

IV. **Handling Suspected Hazardous Waste**

A. If hazardous waste is found:

1. If the transporter is still on the premises:

a. Obtain driver's license number, vehicle license number, vehicle identification number, and bin number if roll-off.
b. Contain material and notify City of Sacramento, Haz Mat Division 916-264-5266.

2. If transporter is identified, but has already left the facility:

a. Transporter's company should be contacted and notified of

findings.

b. Transport trucks from that company may be subject to regular inspections.

3. If transporter is not identified:

a. The Sacramento Recycling and Transfer Station is responsible for disposal (becomes the generator).

B. Procedure for Handling Hazardous Waste

1. Any type of hazardous waste situation should be handled by the Sacramento Hazardous Response Team, consisting of one or more employees trained in the handling of hazardous waste. Personal Protective Equipment must be worn for hazardous waste clean ups. Any acutely hazardous waste, should be isolated and handled as an emergency.

2. If emergency, such as spills, fires, or explosions:

a. Call 911, Sacramento Fire Department, Hazardous Waste Division.

b. Call Office of Emergency Services at 1-800-852-7550.

3. For non-emergencies:

a. If waste can be easily moved to storage area, temporarily set aside identifiable materials according to the following categories:

· flammable and combustible
· oxidizers
· poisons
· poisons containing heavy metals
· corrosives (acids)
· corrosives (bases)

b. If waste is not easily moved:

1) Barricade and isolate area with rope or cones, so it will not interfere with transfer operations. Supervisor will determine severity of spill.

2) For non-emergencies the Facility Hazardous Response Team will wear appropriate Personal Protective Equipment and will clean-up and move the hazardous waste.

3) If the supervisor classifies the spill as an emergency, 911 will be called (Sacramento Fire Department, Haz Mat Division) and the State Office of Emergency Services 1-800-857-7550.

c. Leaking containers must be placed in an overpack drum and taken to the storage area immediately.

3. If material is unidentifiable, it will be set aside and an EPA-approved hazardous waste transporter will be contacted for identification and handling according to terms of the Report of Station Information and the applicable permits for the Facility.

4. Any hazardous material remaining on site over night, must be stored in the hazardous waste storage area.

C. Notification

Every hazardous waste incident should be documented.

D. Regulating agencies to contact with questions:

1. City of Sacramento Fire Department, Haz Mat Division at 916-264-5266

2. City of Sacramento, Environmental Management Department / Environmental Health Division at 916-386-7681

E. EPA-Approved Hazardous Waste Transporter:

V. Packaging Procedures

A. Small containers of the same hazardous class can be packed in the same drum (lab packs).

B. All lab packs must contain enough absorbent material to contain liquids if there is a spill and prevent breakage. Vermiculite is approved packing material.

C. Steps

1. Pack a few inches of absorbent material at bottom of drum.

2. Pack more absorbent around each small container placed in the drum.

3. Drums for corrosive acid storage to be protected with plastic liner prior to adding absorbent and waste.

4. Each drum is to be assigned a number which is clearly marked on the drum body and lid.

5. Log sheet should be taped to the lid and should be marked with facility location, drum number, and hazard category.

6. Hazardous waste label should be filled out and affixed to drum.

7. Affix proper hazard category label.

D. Packing compatibility:

1. Only chemically compatible materials can be packaged together. DON'T MIX: ACID AND BASES, CYANIDE COMPOUNDS AND ACIDS, OXIDIZERS AND FLAMMABLE (bleach is an oxidizer, though often marked poison).

2. If there is any doubt as to hazard class, call Sacramento Fire Department, Haz Mat Division.

VI. Labeling and Record Keeping

A. Log Sheet: Enter the following information on a log sheet - to be used later to prepare manifest:

1. waste category,

2. list as much information about the chemical as possible (including the brand name),

3. number of containers, and

4. volume of weight of each container.

B. Manifest: Must be prepared if wastes are to be transported (manifest forms available from the Environmental Management Department / Environmental Health Division).

C. Training Records: Including Health and Safety Certifications.

D. Inspection Reports.

E. Spill or emergency incident reports.

VII. Storage Procedures

A. Lab packed drums are to be stored in rear storage area (must be stored on pavement).

B. Drums containing flammable, poisons, corrosives (bases) must be separated from drums with corrosives, acids and oxidizers.

C. Containers must be closed except when being packed.

Hazardous waste area to be fenced and secured.

Signs in English and Spanish posted around storage area(s) reading:

DANGER: HAZARDOUS WASTE STORAGE AREA.
ALL UNAUTHORIZED PERSONS KEEP OUT.
KEEP LOCKED WHEN NOT IN USE.

VIII. Disposal Procedures

A. Each lab pack must be inspected by a site supervisor experienced in waste identification and categorization before it is sealed.

B. Each sealed drum must be labeled as to hazard class (according to CFR 40 and 49).

C. Hazardous waste cannot accumulate for more than 90 days, otherwise we must secure a permit.

D. Obtain an EPA ID# from the Dept. of Toxic Substances Control.

E. Manifest must be prepared if wastes are to be transported.

1. Manifest forms are available from the Environmental Management Department / Environmental Health Division.

2. Prepare five copies:
   - Sacramento Recycling and Transfer Station keeps two.
   - One copy to transporter.
   - Legible copy to City of Sacramento's Haz Mat Division within 30 days of each shipment.

3. Within 35 days of shipment, Sacramento Recycling and Transfer Station must receive copies of manifest signed by the operator of the disposal facility. If not, Sacramento Recycling and Transfer Station must contact the facility (if not received within 45 days, an exception report of the pertinent manifest and cover letter describing efforts made to locate shipment, must be submitted to the City of Sacramento Fire Department).

4. The Sacramento Recycling and Transfer Station will keep copies of manifests for three years at a minimum.

5. Transporter - Only EPA-permitted facilities can transport hazardous wastes.

SACRAMENTO RECYCLING AND TRANSFER STATION

HAZARDOUS WASTE LOAD CHECKING TRAINING PROGRAMS

I. Training Personnel

A. Pickers: Only those trained in the use of personal protective equipment, emergency response, identification of hazardous materials and proper handling and procedures are allowed to sort refuse.

B. Training is required at the time of the employee's INITIAL ASSIGNMENT AND WHENEVER A NEW HAZARD IS INTRODUCED into the work place.

C. Supervisors will train regarding specific aspects of the load checking program.

D. Training is to be reinforced once a year.

II. Personal Protective Equipment

A. Respiratory Protection:

- training required before worker is allowed to wear respirators,
- site manager is responsible for insuring all site workers are respirator certified, and
- certificates must be kept up to date/renewed annually, and copies must be kept available for inspection.

B. Eye Protection:

- safety glasses or goggles must be worn when handling hazardous wastes, and
- packers must wear full face shield.

C. Body Protection:

- disposable coveralls or Tyvec sleeve, Nitryl gloves, neoprene aprons, and steel toed boots.

D. Dust Masks:

- must be provided and additional protection must be available upon request.

EXHIBIT 6.04

THROUGHPUT GUARANTY

Residential and Commercial Waste (Tons per day)		Contract Year
Monday through Friday	Saturday	
600	60	1
609	61	2
618	62	3
627	63	4
637	64	5
646	65	6
656	66	7
666	67	8
676	68	9
686	69	10
696	70	11
707	71	12
717	72	13
728	73	14
739	74	15
750	75	16
761	76	17
773	77	18
784	78	19
796	80	20

EXHIBIT 6.05e

WEIGHING PROTOCOL

Attached hereto is Contractor's protocol for weighing total waste and categories of waste in accordance with Section 6.05e.

Vehicles delivering waste and recyclable materials enter the facility from 84th Street and proceed to one of the two 70 foot electronic scales located on the west side of the facility. Once the vehicle is positioned on the scale, the scalehouse operator obtains the following information from the vehicle driver:

Type of material (solid waste or recyclable)
City of origin
Hauler/Company name
Account number (if applicable)

This information along with the total weight of the vehicle (and the tare weight of the vehicle, if available) is entered into the facility's electronic scale/software system. A weighmaster certificate/ticket is printed which contains the above information, as well as the following:

- A unique ticket number
- Time in and time out
- Date of transaction
- Gross tons
- Tare tons
- Net tons
- Rate per ton
- Special fee (if applicable)
- Total fee
- Driver's signature
- Scalehouse operator's/ Weighmaster's name
- Notes

Once the transaction has been completed, the ticket is printed and given to the driver for their review and signature. The driver receives a copy of the ticket and is instructed to proceed to the appropriate area to unload.

Vehicles that do not have a tare weight and **have** a commercial account on file with the facility, weigh-in at the main scalehouse, unload the vehicle at the designated area and weigh-out at the back scalehouse (located in the northwest portion of the property) to complete the transaction.

Vehicles that do not have a tare weight and **do not** have a commercial account on file with the facility are required to leave a cash deposit with the scalehouse operator. The required deposit is in the amount of the fee for the gross weight of the vehicle. After the vehicle is unloaded, it proceeds back to the same scalehouse and is weighed to obtain a tare weight. The tare weight is subtracted from the gross weight to determine the net weight to determine appropriate charges. Any refund due to the driver is refunded, in cash, at this time.

EXHIBIT 6.06a

SELFHAULERS FEES AND RATE METHODOLOGY

Contractor will charge Selfhaulers the greater of $25.00 minimum fee or $46.50 per Ton for Selfhauler Waste except that Contractor will charge (1) $25.00 for each appliance (without CFCs) and piece of furniture and (2) $25.00 for the first appliance (with CFCs) Delivered by a Selfhauler in a single load and $25.00 for any additional appliance (with CFCs) Delivered by a Selfhauler in such load.

EXHIBIT 7.01

HOUSEHOLD HAZARDOUS WASTE CENTER

BLT Enterprises (Contractor) shall, under and in accordance with the provisions of this Exhibit 7.01, provide the labor to operate a city-permitted, permanent Household Hazardous Waste Facility (HHWF). The City of Sacramento ("City") will, under and in accordance with the provisions of this Exhibit 7.01, exercise management control over facility operations. Contractor will charge the cost of operating the facility to City, plus 10% of the cost of labor and benefits for personnel assigned to the HHWF operation.

1. **Scope of Services to be Provided by Contractor.** Except as specifically other-wise provided in this Exhibit 7.01, the services to be provided by Contractor shall include the following:

a. **Days of Operation; Number of Contractor Personnel.** Contractor will employ sufficient personnel to operate a drop-off facility for Household Hazardous Waste ("HHW") that is open to the general public a minimum of two days each week. Days of operation for the acceptance of HHW from the general public will be Friday and Saturday; additional days of operation may be designated. The Parties estimate that between one and two full-time personnel will be required to operate the facility.

b. **Materials to be Accepted at Facility.** The facility will accept a full range of HHW subject to permit restrictions, including, but not limited to the following:

Used oil
Used oil filters
Household batteries
Small quantities of mercury
Latex paints
Pesticides and herbicides
Kerosene
Acids
Old gasoline
Other household flammable liquids
Ethylene Glycol
Lead acid batteries
Household cleaners
Fertilizers
Oil based paints
Paint strippers
Lamp oil
Bases

c. **Maximum Diversion of Materials Accepted.** Contractor shall maximize diversion, exchange and waste destruction options. City shall have sole discretion to determine which options are to be utilized from time to time.

d. Jurisdiction Origin of Waste Accepted. Contractor shall accept HHW from residences within Sacramento County, including the incorporated cities within the County, unless City notifies Contractor that it has agreed to accept waste from other jurisdictions. City shall have the right to further restrict the acceptance of HHW by origin of such waste.

e. Exchange Program. Contractor shall operate an exchange program to maximize reuse of HHW. Paint-related materials shall be principally targeted for reuse through the exchange program. Contractor shall also set aside unopened containers of paint and other products for exchange and reuse. Such containers include motor oil and selected fertilizer products.

f. Cooperation with City in HHWF Design. Contractor shall design the HHWF. Contractor shall at all times during the design consult with City, and shall submit the HHWF design to City's representative for approval in advance of permitting and construction.

g. Minimization of Labpacks. Contractor shall seek to limit the number of labpacks generated for disposal by the HHWF as a means of minimizing disposal cost and maximizing materials diversion.

h. Bulking of Waste. Subject to permit restrictions and all reasonable safety precautions, Contractor shall bulk waste whenever possible for recycling and blended fuels programs. Such bulking typically includes latex paints for recycling by a local Contractor and bulking of oil based paints and compatible flammable liquids for blended fuels programs.

i. Right of City to Direct Flow of Materials. City shall have the right to direct and/or redirect the flow of materials in terms of disposal, reuse, destruction and recycling. The use of contractors by Contractor for handling HHW shall meet with the approval of City's representative. City, at its sole discretion, shall determine which contractors shall be utilized.

j. Use of Grant Funding. Contractor will cooperate with City in maximizing potential use of grant funding to pay for HHWF development and ongoing operational costs.

k. Continuous Improvement. Contractor shall work cooperatively with City to facilitate continuous improvement in HHWF operations. This includes periodically reviewing disposal contracts and methods of materials handling. Contractor personnel will seek to minimize City's cost of operations for materials reuse, recycling, exchange, destruction and disposal in balance with other considerations such as long-term liability.

l. **Preparation of Manifest Documents.** Contractor shall prepare all manifest documents and bills of lading in strict conformance with all local, state and federal regulations.

m. **Compliance with Permit and Applicable Regulations.** Contractor shall operate the HHWF in full compliance with all permit requirements and applicable regulations.

n. **Acceptance of Small Quantity Generator Waste.** Contractor shall cooperate with City to design and implement a program to accept Small Quantity Generator Hazardous Waste for a fee to cover the cost of accepting non-RCRA hazardous waste from small businesses.

o. **Preparation of Regulatory Reports.** Contractor shall cooperate with City in the preparation of regulatory reports (e.g., Form 303 for annual submittal to the California Integrated Waste Management Board). Contractor shall assist City in the preparation of any required permit documents.

p. **Incorporation of HHWF into Transfer Station Load Checking Program.** Contractor shall incorporate use of the HHWF into the transfer station load checking program specified in this Agreement.

2. <u>Scope of Services to be Provided by City</u>.

a. **City as Lead Agency and Permittee.** City shall act as the lead agency in permitting the HHWF. The HHWF permit shall be held by City.

b. **City Review of Design Features.** City shall review design features incorporated into the HHWF and make timely comments to Contractor representatives.

c. **City Interaction with Contractor.** City shall, in consultation with Contractor, develop a protocol for interaction between City and Contractor HHWF personnel. The protocol will be designed to provide Contractor with assurances related to City access and supervision of Contractor personnel, while maximizing City's right to control materials handling.

d. **City's right to Inspect Facilities.** City's representative shall have the right to inspect the HHW facilities at any time during normal business hours.

e. **HHW Training of Contractor Personnel.** City shall provide funding for reasonable training opportunities for HHWF personnel and for annual certification required under CFR §1910.120.

3. **Physical Facilities.** Physical facilities for the HHWF shall include the following features:

a. **Stand-alone HHWF.** Development of a stand-alone HHWF separate from transfer and buy-back operations.

b. **Storage Facilities.** Use of modular HHW storage containers for hazardous waste labpacks and bulk fluids.

c. **Latex Paint and Flammable Liquids Bulking Areas.** A bulking area for latex paint. Subject to all applicable regulations and permit restrictions, and subject to City's determination in its discretion that bulking of flammable liquids is not unsafe, cost prohibitive or potentially in violation of applicable permits, a bulking area for flammable liquids will be constructed for consolidating oil based paints and compatible flammable liquids for blended fuels, including emission controls as required.

d. **Queuing of Vehicles.** A queuing line for automobiles and pick-up trucks separate from any of the queuing lines for the transfer or buy-back functions.

e. **Fire Suppression System.** A fire suppression system in conformance with all applicable regulations.

f. **Worker Safety Station.** An eye wash station and chemical shower.

g. **Used Oil Bulking Area.** A bulking station for used oil and an oil tank with a berm and sump or other physical means of controlling spills and releases.

h. **Used Oil Filter Crusher.** A crusher for used oil filters.

i. **Office Area.** An office for office-related tasks including completion of paperwork, with adequate space for files and computer work stations.

j. **Separation of HHW Clients from Other Self-Haulers.** A means of separating users of the HHWF from self-haulers and larger solid waste vehicles as soon as possible upon ingress to the HHWF.

k. **Traffic Control.** Pavement markers and signage to facilitate the flow of traffic.

4. **Operating Costs.** Contractor shall submit a monthly invoice to City containing the following:

a. **Labor.** A statement specifying all gross wages and benefits, plus ten percent (10%) for Contractor's HHWF employees.

b. Direct Expenses. A statement specifying all expenses incurred by Contractor for HHW hauling, recycling, destruction or disposal including contractors for services such as used oil recycling, used oil filter recycling, hazardous waste hauling, latex paint recycling, battery recycling, and hazardous waste treatment.

City shall have the right to request any documentation or other information that is reasonably necessary for City to appropriately evaluate any such invoice, and to withhold payment pending receipt and evaluation of all information requested. Contractor hereby grants City permission to contact any vendor, supplier, contractor, or subcontractor named
in the invoice for purposes of verification. City shall further have the right to audit all relevant books and records of Contractor for the purpose of evaluation and/or verification of an invoice.

5. Capital Cost. Contractor and City shall share capital costs related to development of the HHWF in accordance with the following terms and conditions:

a. Grant Reimbursement. Contractor and City shall cooperate to maximize grant reimbursement for any and all capital costs eligible for grant funding. Examples of capital costs which may be eligible for funding include the oil tank, used oil filter crusher, pad, berm and/or sump installation for oil bulking station. Grant funding may be available to pay for other components of the physical facilities.

b. Cost of HHWF Development. Subject to any actual funds received as grants for reimbursement, Contractor shall pay the entire capital cost of design and construction of the HHWF including modular storage units and all facilities and equipment.

c. Accounting for Capital Cost. Contractor shall keep complete and accurate records of the capital cost of designing and constructing the HHWF, including the cost of all facilities and equipment and furnishings such as tanks, dollies, computer(s), office furniture, basins, and safety features. This cost shall be reduced by any third party grant funding provided by or through City, and Contractor shall provide City all necessary documentation and other information necessary or convenient to support an application for such grant funding.

6. HHWF Ownership. Contractor shall own the HHWF and operate it in accordance with this Exhibit 7.01, for a period of time equal to the Term of the Amended Agreement, or any extension thereof.

a. Change of HHWF Ownership. If Contractor sells or otherwise relinquishes ownership of the HHWF, or assigns its interest under the Amended Agreement, this Exhibit 7.01 shall remain in full force and effect for the Term of the Amended Agreement. In any agreement for sale or disposition of the HHWF, or any agreement assigning Contractor's rights under the Amended Agreement, Contractor shall include in such agreement the terms of this section 6. In any such case, City shall have the right to operate the HHWF itself or to contract such operation out to a contractor or subcontractor of its choice.

b. Default under Amended Agreement. If Contractor defaults under the Amended Agreement, City's rights under this Exhibit 7.01 shall remain in effect until expiration of the original term of the Amended Agreement. In any such case, City shall have the right to operate the HHWF itself or to contract such operation out to a contractor or subcontractor of its choice.

7. Indemnification. The indemnification and defense provisions of the Agreement, as set forth in sections 16.02 and 16.03 thereof, shall apply with respect to the HHWF.

a. Subcontractor Indemnification of City. Contractor shall include the indemnification language set forth below in all HHW agreements with its contractors, subcontractors and service providers (the reference to "Contractor" in the following language shall refer to any such contractor, subcontractor or provider):

> Contractor shall indemnify and save harmless City, its officers, employees and agents, and each and every one of them, from and against all actions, damages, costs, liability, claims, losses, judgments, penalties and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by City's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "liabilities"), to which any or all of them may be subjected, as a direct or indirect result of any act or omission of Contractor, its officers, employees, subconsultants, subcontractors or agents in connection with the performance or nonperformance of this Agreement, whether or not City, its officers or employees reviewed, accepted or approved any service or work product performed or provided by the Contractor, and whether or not such liabilities are litigated, settled or reduced to judgment. Contractor shall, upon City's request, defend at Contractor's sole cost any action, claim, suit, cause of action or portion thereof which asserts or alleges liabilities resulting directly or indirectly from any negligent act or omission or willful misconduct of Contractor, its officers, employees, subconsultants, subcontractors or agents in connection with the performance or nonperformance of this Agreement, whether such action, claim, suit, cause of action or portion thereof is founded or not. In the event that a final decision or judgment allocates

liability by determining that any portion of damages awarded is attributable to City's negligence or willful misconduct, City shall pay the portion of the damages which is allocated to City's negligence or willful misconduct, provided that City shall not be liable for any passive negligence of City, its officers or employees in reviewing, accepting or approving any service or work product performed or provided by Contractor.

b. Survival. The provisions of this section 7 shall survive any termination of this Agreement.

EXHIBIT 8.01

RECOVERY AND PROCESSING PROTOCOL

Contractor's Recovery and Processing protocol in form satisfactory to the City, including City attribution of Recovery and Processing of Commercial Waste, Neighborhood Cleanup Waste and White Goods, Brown Goods, Construction and Demolition Debris and Yard Waste, and Residue therefrom, is attached hereto.

The following protocol will allow BLT to achieve the following diversion guaranties:

- to divert City-delivered Neighborhood Clean-up waste in the amounts at least equal to 50% by weight.
- to divert City-delivered Commercial waste in the amounts at least equal to 30% by weight.

NEIGHBORHOOD CLEAN-UP WASTE RECOVERY AND PROCESSING PROTOCOL

During designated Neighborhood Clean-up (NCU) days, a portion of the City tipping floor will be set aside for NCU waste recovery and processing. City vehicles loaded with NCU wastes will weigh in on one of the two City-designated electronic scales and proceed to the City tipping floor. Traffic directors within the building will guide trucks to the proper unloading area, making sure trucks maneuver and back-up safely. Materials will be unloaded from the vehicles either manually or with the use of loaders. Most truck tare weights are coded into the scalehouse computer system so they will not have to weigh-out upon exit.

Recovery and Processing of NCU waste will depend on its material type. Therefore, protocols have been developed to addresses the various material types.

White Goods

White Goods (refrigerators, freezers, dishwashers, washers and dryers) will be handled in one of two ways:

1. White goods are temporarily stationed along the perimeter of the floor until which a subcontracted Mobil unit arrives to remove any compressors and/or compressor oil or chlorinated flouro-carbons which may be present. The subcontractor will keep a record of the number of compressors and/or compressor oil and/or chlorinated flouro-carbon removed. This receipt will then be presented to the facility's Operations Manager for reimbursement recordkeeping purposes. The white goods (now without compressors and/or compressor oil and/or chlorinated flouro-carbons) will then be loaded into transport vehicles for delivery or pick-up by a contracted metal recycler.

2. White goods are unloaded from City vehicles and reloaded into roll-offs or transport trailers provided by a subcontractor. The subcontractor will pick-up the white good loads as part of a regularly scheduled route and take the goods off-site for removal of any compressors and/or compressor oil or chlorinated flouro-carbons which may be present. The subcontractor will keep a record of the number of compressors and/or compressor oil and chlorinated flouro-carbon removed. This receipt will then be presented to the facility's Operations Manager for reimbursement recordkeeping purposes.

As required by contract with BLT, the subcontractor will then be responsible for recycling the white goods as scrap metal.

Metal and Brown Goods

Metal and Brown goods (market audio equipment, microwaves, etc.) are manually or mechanically removed from NCU loads and reloaded into a roll-off container, specially designated for scrap metal, stationed along the perimeter of the tipping floor. Once full, the roll-off will be picked-up by a contracted metal recycler and taken to their off-site facility for recovery and processing.

Construction and Demolition Debris

C&D debris is sorted using loaders and floor sorters to recover recyclables, such as wood, scrap metals, and inerts. Recovered material is placed in roll-off boxes stationed along the perimeter of the floor. Once filled, the roll-off boxes are hauled to an off-site recycling facility.

Wood / Yard Waste

Wood / Yard Waste is manually sorted on the tipping floor to remove any obvious contaminants (metals, inerts, etc.). The contaminants are either discarded or recycled, depending on the material. The remaining yard waste is then pushed by loader through a transfer port into transfer trucks staged in the transfer tunnel. Once the transfer trailer reaches its maximum weight/volume, the yard waste material will be transported to an off-site recycling facility for processing.

Mattresses / Furniture

Mattresses delivered to the facility as part of NCU waste will be removed the temporarily stored along the perimeter of the tipping floor. A pre-determined mattress recycler will be come to the facility and remove the recovered mattresses for reuse or recycling.

It is BLT's experience that furniture picked-up for disposal is beyond repair or resale. Therefore, furniture delivered to the facility as part of NCU waste will be considered residual waste and transported to a disposal facility.

Residue
Any material remaining after the above-mentioned recovery and processing is complete is considered residual waste. This material is then pushed by loaders through: 1) a transfer ports into transfer trailers stationed in the transfer tunnel; or 2) a hopper port leading to a end-loading compactor stationed in the transfer tunnel.

COMMERCIAL WASTE RECOVERY AND PROCESSING PROTOCOL

All City Commercial collection vehicles enter the facility and weigh in on one of the two 70 ft electronic scales.

Rich Recyclable Content Loads

If the truck is carrying commercial waste with rich recyclable content, the scalehouse operator directs them to unload at the MRF tipping area. Spotters guide the trucks to the proper unloading area. After tipping, trucks will exit the facility. Most truck tare weights will be coded into the scalehouse computer system so that repeat customers do not have to weigh-out when they exit. Roll-off trucks will weigh-out, because of the differences in the tare weights of the containers.

After unloading, floor sorters may salvage bulky items from the floor and load them into roll-off boxes stationed on the tipping floor. The remaining material is then pushed by loader into the infeed conveyors which feed the elevated sorting platforms. Material conveyed down the sorting platforms is sorted by material type by sorters and dropped through the platform into bunkers below. The walking floors or loaders convey material from beneath the sorting platforms to the baler conveyor line. Selected loads of clean cardboard, newspaper and other recyclable materials may be sent directly to the baler. Recovered material is baled and stored in the bale storage area adjacent to the baler.

Waste residue from the sorting operations is conveyed back to the tipping floor via a conveyor belt running perpendicular to the end of the sorting belts. Residue will then be loaded into transfer trailers or shipping containers and hauled to permitted disposal facilities.

Low Recyclable Content Loads

If the truck is carrying commercial waste with low recyclable content, the scalehouse operator directs them to unload on the tipping floor. Spotters guide the trucks to the proper unloading area. After tipping, trucks will exit the facility. Most truck tare weights will be coded into the scalehouse computer system so that repeat customers do not have to weigh-out when they exit. Roll-off trucks will weigh-out, because of the differences in the tare weights of the containers.

After unloading, recovery and processing of the low recyclable content loads will depend on material type. The following protocols have been developed to addresses the various material types.

Construction and Demolition Debris

C&D debris is sorted using loaders and floor sorters to recover recyclables, such as wood, scrap metals, and inerts. Recovered material is placed in roll-off boxes stationed along the perimeter of the floor. Once filled, the roll-off boxes are hauled to an off-site recycling facility.

Wood and Yard Waste

Wood and Yard Waste is manually sorted on the tipping floor to remove any obvious contaminants (metals, inerts, etc.). The contaminants are either discarded or recycled, depending on the material. The remaining wood and yard waste is then pushed by loader through a transfer port into transfer truck designated specifically for this material type. Once the transfer trailer reaches its maximum weight/volume, the yard waste material will be transported to an off-site composting/recycling facility for processing.

Metal and Brown Goods

Metal and Brown Goods (market audio equipment, microwaves, etc.) of any kind are manually or mechanically removed from the incoming Commercial wastes and placed in a roll-off container stationed along the perimeter of the tipping floor. Once full, the roll-off will be picked-up by a contracted metal recycler and taken to their off-site facility for recovery and processing.

White Goods

White Goods (refrigerators, freezers, dishwashers, washers and dryers) will be handled in one of two ways:

1. White goods are temporarily stationed along the perimeter of the floor until which a subcontracted Mobil unit arrives to remove any compressors and/or compressor oil or chlorinated flouro-carbons which may be present.

   The white will then be loaded into transport vehicles for delivery or pick-up by a contracted metal recycler.

2. White goods are unloaded from City vehicles and reloaded into roll-offs or transport trailers provided by a subcontractor. The subcontractor will pick-up the white good loads as part of a regularly scheduled route and take the goods off-site for removal of any compressors and/or compressor oil or chlorinated flouro-carbons which may be present. As required by contract with BLT, the subcontractor will also be responsible for recycling of white goods as scrap metal.

Organic/Food Wastes
In the event BLT can secure an organic/food composting contract with an off-site facility, City trucks known to be carrying high levels of organic/food waste will be directed to unload in a separate area of the tipping floor. This area will be located near the loadout port to be utilized for greenwaste/organic materials. Minor floor sorting will occur to remove obvious contaminants. The remaining organic/food waste will be pushed by loader through the loadout ports into the same transfer trailer designated for greenwaste waste. This material will be mixed with the greenwaste in a proportion predetermined by the composting facility to which it will be delivered.

Residue
Any material remaining after the above-mentioned recovery and processing is complete is considered residual waste. This material is then pushed by loaders through: 1) a transfer ports into transfer trailers stationed in the transfer tunnel; or 2) a hopper port leading to a end-loading compactor stationed in the transfer tunnel.

EXHIBIT 8.02c

MEASUREMENT OF DIVERSION GUARANTIES

Each Diversion Guaranty with respect to Commercial Waste or Neighborhood Cleanup Waste, or Commercial Waste and commercial Merchant Waste commingled in fact or merely for purposes of this calculation, as the case may be, ("**Measured Waste Stream**") shall be calculated and measured monthly (and/or on a Contract-Year-to-date basis, as applicable) as follows:

100 X {[DW - (Res. +DRM)]/DW} = Percentage Diversion, where

DW = Delivered Tons of Measured Waste Stream during each calendar month (and/or Contract Year-to-date), or with respect to the first year following the Operations Date, the portion thereof. DW may include source separated recyclable materials which would have otherwise been Commercial Waste, Delivered by the City in accordance with Section 8.02b.

Res = Tons of Residue and/or any other materials remaining after Recovery of the Measured Waste Stream during each such calendar month (and/or Contract Year-to-date).

DRM = Recovered Materials which are Recovered from the Measured Waste Stream during such calendar month (and/or Contract Year-to-date), but subsequently disposed of due to lack of markets.

1. For example, with respect to segregated Commercial Waste:

DW = 10,000 Tons
Res = 8,000 Tons
DRM = 500 Tons

$$100\{[\frac{10,000 - (8,000 + 500)}{10,000}]\} = 15\ \%\ \text{Recovered},$$

which is less than 30%.

2. For example, with respect to the same volume of Commercial Waste which is commingled, actually during Recovery/Processing or mathematically for purposes of calculating compliance, with commercial Merchant Waste:

DW = 150,000 Tons
Res = 100,000 Tons
DRM = 800 Tons

$$100\{[\frac{150,000 - (100,000 + 800)}{150,000}]\} = 33\%\ \text{Recovered},$$

which is more than 30%.

EXHIBIT 10.01b

TRANSFER PROTOCOL TRUCK TRANSFER

1. Vehicle Inspection

All transfer vehicles will be inspected by the driver prior to leaving the facility at the start of each day. He will use the same inspection checklist used by BLT drivers at Del Norte.

Each driver is required to maintain a Driver's Daily Log. It will be identical to the one used at Del Norte.

2. Vehicle Cleaning

Transfer trailers are cleaned thoroughly on a daily basis. The exterior of the cab and trailer, as well as the interior of the trailer are washed with a pressure/steam cleaning system available at the facility. Generally, the trucks will be cleaned prior to being parked at the end of the day.

3. Dispatch

Empty transfer vehicles enter the facility and proceed towards the inbound transfer truck down-ramp. Prior to proceeding down the ramp, the driver removes the tarps/screens covering the empty trailer and radios the dispatch tower to notify them the empty transfer vehicle is on-site and available to proceed to the transfer truck loading area to receive waste.

The dispatcher informs the driver of the empty transfer truck when it is safe/clear for the vehicle to enter the tunnel. Once the truck enters the tunnel, the driver positions the trailer directly below the load-out ports. The tower dispatcher provides additional instructions, via radio, to the driver to align the load-out ports with the open transfer trailer. Once the transfer trailer is aligned with the load-out ports, loading/transferring of waste to the trailer can begin.

A modified traffic light (green and red lights only) is located in the transfer truck tunnel to notify the drivers when it is safe to exit the tunnel. The light is operated by the tower dispatcher. During the transfer process, the light is red. After the trailer has been filled, properly compacted, and the load-out area has been cleared of excess debris, the dispatcher changes the signal to green to signal to the driver it is safe/clear to leave the tunnel.

The truck then exits the tunnel to the designated truck inspection and tarping area. There, the driver stops the vehicle and performs a brief walk-around inspection of the entire vehicle to check for leaks (oil and air), defects, and items protruding from the trailer. He then places tarps/screens over the trailer and exits the facility to go to the landfill.

4. Bills of Lading

Typically, bills of lading are not required for outbound loads of solid waste. However, if desired, the outbound transfer trucks could weigh-out at the facility's scalehouse to obtain relevant information such as vehicle identification, weight (gross and net), destination, time, date, etc.

5. Receipt of Waste at Landfill

When the transfer truck arrives at the landfill, it will proceed to one of the electronic scales located at the scalehouse. Once the vehicle is positioned on the scale, the scalehouse operator obtains the following information from the vehicle driver:

- Type of material (solid waste or recyclable)
- Jurisdiction/Facility of origin
- Hauler/Company name
- Account number (if applicable)

This information along with the total weight of the vehicle (and the tare weight of the vehicle) is entered into the facility's scale/software system. A weighmaster certificate/ticket is printed which contains the above information, as well as the following:

- A unique ticket number
- Time in and time out
- Date of transaction
- Gross tons
- Tare tons
- Net tons

Rate per ton

Special fee (if applicable)
Total fee
Driver's signature
Scalehouse operator's
Weighmaster's name
Notes

Once the transaction has been completed, the ticket is printed and given to the driver for their review and signature. The driver receives a copy of the ticket and is instructed to proceed to the appropriate area to unload. A copy of the ticket is also forwarded to the facility for their files.

EXHIBIT 11.01b

PRIMARY TRANSPORTATION AND BACK-UP TRANSPORTATION PROTOCOLS All landfills are directly accessible using interstate highway systems. The following are the primary routes to each landfill:

- Lockwood Landfill: Interstate Highway 80 East from Sacramento to the Lockwood exit (approximately 10 miles east of Sparks, Nevada).

- Portero Hills Landfill: Interstate Highway 80 West from Sacramento to the Pedrick Road exit; proceed south to Midway west; to route 1 13 south; to route 12 west; to Portero Hills Lane to the landfill.

- Kiefer Landfill: Florin-Perkins Rd. North; proceed East on Jackson Rd.SR 16; North on Grant Line Rd; proceed East on Kiefer Blvd to landfill, 12701 Kiefer Boulevard and Grant Line Road Sloughhouse CA 95683

- Forward Landfill: Florin-Perkins Rd. South; Proceed West on Gerber Rd, South to Stockton Blvd, take on ramp HWY 99 South, Exit French Cam Rd East, proceed to Austin Rd South to landfill. 999 S. Austin Rd., Stockton, CA 95363.

- Anderson Landfill: Interstate 80 West from Sacramento, take ramp to Interstate 5 North, exit 664 for Gas Point Rd; West on Gas Point Rd; proceed North on W. Anderson Dr; proceed West on Cambridge Rd to landfill.

If Interstate 80 East to Nevada is closed due to weather, there are a number of alternative routes available. Alternative 1: Highway 5 north; to I-Eghway 70; through the Feather River; to Highway 395; south to Highway 80 east; to Lockwood exit. Alternative 2: Highway 50 east; to Highway 395 north; to Highway 80 east; to Lockwood exit.

If the Portero Hills Landfill is not accessible due to Highway 80 being closed, there are many alternative routes that can be taken. The main alternative route would be to proceed south on Highway 5; west on Route 12 to the landfill.

If the Kiefer Landfill is not accessible due to Highway 16 closure, there are several alternatives including reaching Kiefer Blvd via Florin-Perkins South to Gerber East to Excelsior then south to Calvine, East to Grantline then to Kiefer Blvd.

If the Forward Landfill is not accessible due to Hwy 99 closure, take Interstate 5 South, exit French Camp Rd West, proceed South on Austin Rd to landfill.

If the Anderson Landfill is not accessible due to Interstate 5 North closure, an alternate route on Highway 99 North to Red Bluff on to Highway 36 would be utilized to reach West Gas Point Rd on to West Anderson Rd and Cambridge Rd to the landfill.

EXHIBIT 12.02

ATTACHMENT 12.02#1

DISPOSAL SUBCONTRACT

DISPOSAL FACILITY SUBCONTRACT

THIS AGREEMENT, made and entered into this ____ day of _____, 1998, by and between _____ Landfill, a _____ corporation (hereinafter referred to as "Subcontractor"), and BLT Enterprises, a California corporation (hereinafter referred to as "Contractor"), as follows:

WITNESSETH:

WHEREAS, Subcontractor is the owner and permit holder of a landfill disposal site located in _____ County, State of _____, and generally described as the _____ Landfill (herein the "Disposal Facility"); and,

WHEREAS, Contractor is the owner and/or operator of a transfer station for the processing of municipal solid waste and generally referred to herein as the Facility;

WHEREAS, Contractor has entered into a Service Agreement with the City of Sacramento (herein the "City") For Municipal Solid Waste Transfer, Transport, Disposal, Processing And Marketing Of Recovered Materials (herein the "Service Agreement") which is appended hereto as Exhibit B and incorporated into this Agreement by this reference; and,

WHEREAS, the _____ Landfill has been designated as the Disposal Facility in the Service Agreement between Contractor and City; and,

WHEREAS, the parties hereto are desirous of entering into an agreement whereby Contractor shall have the right to dispose of solid waste at the Disposal Facility operated by Subcontractor, upon the terms and conditions herein set out; and,

WHEREAS, Subcontractor has reviewed the Service Agreement between Contractor and City and, in consideration of its selection of the _____ Landfill by Contractor and approval thereof by City, Subcontractor has agreed to implement the use of the Facility by Contractor and City for the disposal of City Waste in accordance with the terms of the Service Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, the receipt of which is hereby specifically acknowledged, the Contractor and Subcontractor do hereby agree as follows:

I

DEFINITIONS

Where used in this Agreement, the words and phrases used in the Service Agreement which are not inconsistent with other terms and provisions of this Agreement are hereby incorporated by reference,

and shall have the same meaning in this Subcontract as in the Service Agreement. In the event of any ambiguity, the Service Agreement shall govern.

II
REPRESENTATIONS AND WARRANTIES

(a) **Of Subcontractor.** The Subcontractor represents and warrants as of the date hereof:

1. **Status.** The Subcontractor is a _____ corporation duly organized and validly existing under the Constitution and laws of the State of _____.

2. **Authority and Authorization.** The Subcontractor has full legal right, power and authority to execute and deliver this Subcontract and perform its obligations hereunder. This Subcontract has been duly executed and delivered by the Subcontractor and constitutes a legal, valid and binding obligation of the Subcontractor enforceable against the Subcontractor in accordance with its terms. The Subcontractor has complied with Applicable Law in entering into this Subcontract.

3. **No Conflicts.** Neither the execution or delivery by the Subcontractor of this Subcontract, the performance by the Subcontractor of its obligations hereunder and thereunder, nor the fulfillment by the Subcontractor of the terms and conditions hereof: (1) conflict with, violates or result in a breach of Applicable Law; or (2) conflict with, violate or result 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 Subcontract or instrument to which the Subcontractor is a party or by which the Subcontractor or any of its properties or assets are bound, or constitute a default thereunder.

4. **No Approvals.** No approval, authorization, license, permit, order or consent of, or declaration, registration or filing with any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution and delivery of this Subcontract by the Subcontractor, except those that have already been obtained.

5. **No Litigation.** There is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality pending or, to the best the Subcontractor's knowledge, threatened, against the Subcontractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by the Subcontractor of its obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Subcontract, or any other agreement or instrument entered into by the Subcontractor in connection with the transactions contemplated hereby.

6. **Compliance with Service Agreement.** Subcontractor has reviewed,

acknowledges and understands the provisions of the Service Agreement relating to disposal of solid waste by Contractor and agrees to abide by its provisions relating to the operation of, and disposal of City waste at the Facility.

(b) **Of Contractor.** Contractor represents and warrants as of the date hereof:

1. **Status.** Contractor is a California corporation duly organized and validly existing under the Constitution and laws of the State of California.

2. **Authority and Authorization.** Contractor has full legal right, power and authority to execute and deliver this Subcontract, and perform its obligations hereunder. This Subcontract, and the Service Agreement between City and Contractor have been duly executed and delivered by Contractor and constitute legal, valid and binding obligations of Contractor enforceable against Contractor in accordance with their terms. Contractor has complied with Applicable Law in entering into this Subcontract.

3. **No Conflicts.** Neither the execution or delivery by Contractor of this Subcontract or the Service Agreement, the performance by Contractor of its obligations hereunder and thereunder, nor the fulfillment by Contractor of the terms and conditions hereof or thereof: (1) conflict with, violates or result in a breach of Applicable Law; or (2) conflict with, violate or result 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 instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitute a default thereunder.

4. **No Approvals.** No approval, authorization, license, permit, order or consent of, or declaration, registration or filing with any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution and delivery of this Subcontract by Contractor, except as have been already obtained.

5. **No Litigation.** There is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality pending or, to the best Contractor's knowledge, threatened, against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by Contractor of its obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Subcontract or the Service Agreement or any other agreement or instrument entered into by Contractor in connection with the transactions contemplated hereby.

III
LANDFILL AGREEMENT

(a) **Right to Use.** Subcontractor does hereby grant to the Contractor, in consideration of the rates and charges to be paid by Contractor pursuant to Article V hereof, the right to transport

solid waste to the Subcontractor's Disposal Facility for final disposal at Subcontractor's Disposal Facility by Subcontractor.

(b) **Non-Exclusive Use.** This agreement and all rights hereunder are granted by Subcontractor and accepted by Contractor as non-exclusive in nature. In this regard, it is understood and agreed that nothing in this agreement prohibits Subcontractor from entering into similar arrangements with transfer stations, haulers, collectors, and public or private entities, who may also desire to utilize the services of the Disposal Facility, provided that nothing in this paragraph shall release the Subcontractor from its obligation to accept all the solid waste delivered by Contractor pursuant to Section VIII.(a)1. hereof.

IV
TERM, OPTION TO EXTEND, AND TERMINATION

(a) **Term.** The right to use the Disposal Facility, as herein set out, is hereby granted to Contractor for a period of twenty (20) years, commencing on the date solid waste is first delivered to the Disposal Facility by Contractor pursuant to this Agreement and ending twenty (20) years thereafter. During the term hereof, Contractor shall have the right to terminate this Agreement upon twenty-four months prior written notice to Subcontractor.

(b) **Use After Termination.** In the event that Contractor, a replacement Contractor or the City itself remains in material breach of this agreement and Subcontractor exercises its right to terminate this agreement for cause, and Contractor, a replacement Contractor, or the City fails to cure said material breach within the time allowed therefor by this Agreement, City shall have the right to continue to use the Disposal Facility for disposal of all City Waste pursuant to the terms and conditions of this agreement for a period of no less than six (6) months after receiving from Subcontractor notice of the agreement's termination. Subcontractor acknowledges that the purpose of this subparagraph (e) is to provide the City with sufficient time to reopen or develop a new disposal site for waste originating in City.

V
RATES AND CHARGES: INCREASES IN RATES

(a) **Rates.** As consideration for Contractor disposing of solid waste at Subcontractor's Disposal Facility, Contractor agrees to pay to Subcontractor, a rate per ton of solid waste delivered to the Facility which is set out in Exhibit A hereto (the "Tipping Fee"), which is hereby incorporated into this Agreement by this reference. The Disposal tipping fee so designated shall be subject to escalation commencing on July 1 following the date on which City Waste is first delivered to Subcontractor's Disposal Facility. Such escalation shall be calculated by computing seventy five percent (75%) of the percentage change in the CPI on each July 1 following the date on which City Waste is first delivered to Subcontractor's Disposal Facility, from the CPI level as of the previous July 1, and multiplying the amount to be escalated by one plus such percentage change; provided

that the maximum increase in any Contract Year shall be six percent (6%).

1. The Disposal tipping Fee requires Contractor to deliver solid waste to the tippers or tipping face of the landfill provided at Subcontractor's Disposal Facility, and in containers that can utilize the tipping equipment in accordance with the procedures and methods established by Subcontractor. The Disposal tipping fee does not include any costs of transportation to the Disposal Facility or any costs that require the special handling of solid waste containers. The Tipping Fee is subject to adjustment for any special handling of solid waste or solid waste containers.

2. Subcontractor reserves the right to adjust the Tipping Fee to reflect additional fees that may be assessed by the State of _____, or any political subdivision thereof, the State of California or by the Federal Government, after the effective date of this agreement. In the event of the assessment of such additional fees, then Subcontractor shall act only as a collecting agent for such political entities and shall follow any method for collection and payment required by such political entities. Subcontractor shall notify Contractor at the earliest practical opportunity of any potential fee adjustment described in this Subsection and immediately upon any actual imposition of any such adjustment. However, in the event that any such fee is imposed, the Contractor shall have the right to terminate this Agreement, in its sole discretion, with thirty days notice.

3. Subcontractor reserves the right to adjust Tipping Fees to reflect increased costs resulting in changes to landfill methods or changes in handling solid waste that may be imposed by changes in laws or regulations of governmental agencies having jurisdiction over the Landfill, or any changes in landfill methods imposed by Contractor or City. Tipping Fees so adjusted shall be levied on a uniform pro rata basis to all users of the Landfill. Subcontractor shall notify Contractor at the earliest practical opportunity of any potential increased costs due to changes in law or regulation described in this Subsection and immediately upon any actual imposition of any such adjustment.

(b) **Invoices.** Itemized invoices for payment shall be submitted on a monthly basis, and shall be paid by the thirtieth (30th) day of the month following the month wherein solid waste was disposed of at Subcontractor's Landfill.

(c) **Conflicts.** In the event any term of provision of the Service Agreement, or of any other agreement where the City or Contractor are parties, should be in conflict with the terms and provisions set out in this Article V and the provision for determining rates set forth herein, then the terms and provisions of this agreement shall supersede any such conflicting provision, and this Agreement shall govern the rights of the parties. Conflicts of Applicable Law shall be determined in accordance with Section 12(j) hereof.

VI
COMPLIANCE WITH LAWS

(a) **Compliance With Laws.**

1. Subcontractor represents, warrants and agrees that it will comply with all Federal, State and local laws and regulations, as they now exist, or as they exist in the future, regarding the operation and maintenance of the Landfill, during the term of this agreement or any extensions thereof.

2. Contractor recognizes that Subcontractor is subject to regulation by federal, state and local laws and all rights granted herein are subject to such laws; furthermore, Contractor represents, warrants and agrees that it will comply with all Federal, State and local laws and regulations, as they now exist, or as they may exist in the future, regarding the transport to and disposal of solid waste at Subcontractor's Landfill.

(b) **Unpermitted Waste.** Contractor further represents and warrants that it will comply with its Unpermitted Waste exclusion program as provided in the Service Agreement and will not knowingly transport to and dispose of any Hazardous Waste at Subcontractor's Landfill other than *de minimis* amounts of Household Hazardous Waste that may be inadvertently included in loads of Permitted Waste otherwise acceptable pursuant to this Subcontract. Contractor agrees to comply with all rules and regulations reasonably adopted by the Subcontractor as to the methods and manner of delivery of solid waste for deposit at the Landfill. Subcontractor's rules and regulations shall be uniformly applied to all users of the Landfill. Subcontractor reserves the right to refuse delivery of any solid waste that is in violation of any Federal, State or local laws and regulations, or in violation of its own rules and regulations.

(c) **Jurisdiction of Regulatory Agencies.** It is understood that the agencies having permitting jurisdiction over the Landfill is the _____ County _____. It is understood and agreed that performance under this agreement shall require Contractor, and any public and/or private entity having control over the solid waste stream from its point of origin, to comply with the rules, regulations and orders of the _____ County _____.

(d) **Notices.** Subcontractor shall immediately notify Contractor and City, in writing of any notices of violation, failure to comply with law or regulation, or adverse permit action received from any legislative body or regulatory agency with jurisdiction over Subcontractor's Disposal Facility which notices shall include a copy of any such notice from any such body or agency.

VII
INSURANCE

(a) **Maintenance of Insurance.** Subcontractor agrees to take out and maintain throughout the term of this agreement, liability insurance in an amount and subject to the terms and conditions of the Special Use Permit issued by _____ County, and to name Contractor and the City, as additional insureds thereon and to provide proof thereof to Contractor and the City.

(b) **Public Liability.** Contractor agrees to maintain public liability insurance in the sum of One Million Dollars ($1,000,000.00) and shall furnish to Subcontractor proof of insurance. Contractor may fulfill this requirement by naming Subcontractor as an additional insured on any existing liability policies presently held by Contractor. In this event, Contractor shall be required to deliver to Subcontractor copies of proof of insurability under this agreement. Contractor further agrees to name the City, as an additional insured on said policy of liability insurance and shall provide to City certificates of insurance evidencing such coverage.

(c) **Environmental Impairment and Local Pollution Liability.** Subcontractor agrees to maintain coverage for any environmental liability attributable to Subcontractor's actions, including clean-up and/or transportation of pollutants, hazardous materials or Unpermitted Waste off site. Minimum limits of liability shall be $10,000,000 per occurrence and in the aggregate. This coverage is required beginning on the Operations Date. The pollution policy shall not contain a warranty stating that coverage is null (or the words to that effect) I the insured does not comply with the most stringent regulations governing the work. The pollution policy will name the Contractor and the City, as additional insureds thereon and to provide proof thereof to Contractor and the City.

(d) **Change in Coverage.** The amount for liability insurance shall be changed by agreement of the parties to reflect changes in costs and the exposure to liability.

VIII
PERFORMANCE UNDER SERVICE AGREEMENT

(a) **Relation to Service Agreement.** Subcontractor does hereby acknowledge that Contractor has entered into this Subcontract in furtherance of Contractor's performance of its obligations to the City under the Service Agreement between City and Contractor. In accordance with the Service Agreement between Contractor and City, Subcontractor agrees:

1. **Disposal Capacity.** Subcontractor does hereby certify and acknowledge that the Disposal Facility has capacity currently permitted in accordance with Applicable Law, and will maintain such capacity sufficient, at a minimum, to meet Contractor's Disposal Performance Obligations under the Service Agreement, in no event less than the sum of the aggregate Throughput Guaranty Tonnage for weekdays and Saturdays during each Contract Year remaining prior to the stated Term of the Service Agreement as of any given date *plus* disposal of all other waste transferred from the Facility in the event that Contractor elects not to segregate the handling of City Waste in accordance with Section 6.01a of the Service Agreement.

2. **Unloading and Disposal Specifications.** Subcontractor and Contractor shall comply with the prescribed protocols for unloading and disposing of City Waste as prescribed in Attachment 12.01#1 of the Service Agreement.

3. **Contractor Designated Disposal Facility Specifications.** Subcontractor agrees to comply with the specifications prescribed in Attachment 12.02#2 of the Service

Agreement, including description of any liner; leachate detection, collection, removal and treatment; gas extraction; and surface water and erosion control systems.

4. **Contractor Designated Disposal Facility Operation and Maintenance.** Subcontractor agrees to operate and maintain the Disposal Facility in accordance with Applicable Law and substantially in accordance with the O&M protocol attached to the Service Agreement as Attachment 12.02#3, including groundwater and leachate monitoring and the laws of the State of _____, regulations adopted by the _____, _____ County _____, and all laws and regulations adopted by the United States government, and shall at all times be in full and complete compliance with any permit, order or directive of any state, county or Federal agency having jurisdiction of the Disposal Facility.

5. **Disposal Facility Closure and Post-Closure Care.**

a. **Cost included in Service Fee.** Subcontractor acknowledges that the disposal fee paid by Contractor under this Subcontract compensates Subcontractor for Subcontractor's best estimate of the costs of closure and post-closure obligations with respect to the Disposal Facility allocable to City Waste and Residue. Subcontractor releases the City and Contractor from any obligation to provide for closure or post closure funding and care of the Disposal Facility, regardless of the accuracy or adequacy of such estimates. Subcontractor assumes full financial responsibility for the Disposal Facility closure and post-closure obligations with respect to the City and Contractor and shall defend, indemnify and hold harmless the Contractor and the City therefor in accordance with paragraph 9 of the Service Agreement.

b. **Closure and Post-closure Plan.** During the Term of the Service Agreement Subcontractor will close the Disposal Facility substantially in accordance with its closure and minimum thirty year post-closure plan, including with respect to closure, the grade, cap, revegetation, surface water drainage systems, environmental control systems (leachate and gas collection and treatment), and with respect to post-closure, leachate and gas migration monitoring, inspection protocol, and leachate or gas extraction and treatment as described in Attachment 12.02#4 of the Service Agreement and required in its permit issued under the laws and regulations of the State of _____, _____ County _____, United States government, and any other agency having jurisdiction of the Disposal Facility. Subcontractor shall provide such plan to Contractor or City promptly upon request therefor.

c. **Financial Assurances.** Subcontractor agrees to provide financial assurances or a guarantee through the Subcontractor or other entity acceptable to the City and Contractor, of full and timely complete closure and post-closure care in accordance with its plan described in the preceding paragraph and Applicable Law. The form of such financial assurances or financial qualifications of the guarantor are prescribed in Attachment 12.02#5 of the Service Agreement.

6. **Contractor Disposal Permits.** Subcontractor agrees to provide and secure and maintain all Permits for Disposal Services required by Applicable Law. Subcontractor shall supply the City with copies of any such Permits promptly upon City request.

7. **Inspection Rights.** Subcontractor agrees that City and Contractor shall have the right, but not the obligation, to observe and inspect the Disposal Facility operations during hours that such Disposal Facility is open to receive waste, upon one Working Day's notice to Subcontractor at a mutually agreeable time. In connection therewith, City, the Contractor, and their representatives shall have the right to speak to any of Subcontractor's employees; provided that they shall comply with the Subcontractor's reasonable safety and security rules and shall not interfere with the work of the Subcontractor or its subcontractors. Upon City or Contractor request, Subcontractor shall make specified personnel available to accompany City or Contractor's employees on inspections. Subcontractor shall ensure that its employees cooperate with the City or Contractor and respond to the City's or Contractor's inquiries.

8. **Records and Reporting.** Subcontractor shall promptly upon either Party's request, provide Contractor or the City, as the case may be, with any and all records of City Waste Disposed of at the Disposal Facility, including weight slips, computer print outs and related items. THE TERMS OF THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS DISPOSAL SUBCONTRACT.

(b) **Bonds.** No later than the date of first delivery of solid waste to the Disposal Facility, Subcontractor shall procure a performance bond to guaranty Subcontractor's acceptance of solid waste from the City and performance of its other obligations hereunder in the amount of one and one half million dollars ($1,500,000.00) from underwriters approved by the Contractor and the City, rated not less than "A minus, VII" by A.M. Best Company, Inc.; provided that the Contractor and City may waive such rating requirements. The performance bond shall name the Contractor as obligee and City as co-obligee and provide at least thirty days prior notice of any cancellation. Subcontractor may alternatively procure an alternative form of security, including irrevocable letters and lines of credit and pledges of securities, in favor of the Contractor and City, upon approval of the Contractor and City in their sole discretion. The performance bond shall contain terms and conditions agreed upon by the Parties and customary for such bonds securing performance of similar obligations, including provisions for release of the bond at the end of the term of this Agreement. Within thirty days from the date this Agreement is executed by the Parties and approved by the City, Subcontractor shall submit a letter from its broker or underwriter addressed to the Contractor and City stating that such broker or underwriter is committed to provide Subcontractor the performance bond described in this Section above as of the expected date of first delivery of solid waste to the Disposal Facility.

IX
DEFAULTS AND REMEDIES

(a). **Defaults of Subcontractor.** Unless excused by an event of Uncontrollable

Circumstances, each of the following shall constitute an event of default by the Subcontractor ("Subcontractor Default") hereunder:

1. **Breach of Agreement.** Subcontractor fails to perform any of its obligations under this Disposal Facility Subcontract with respect to City Waste, other than that described in item (3) below, and fails to cure such breach (i) within forty-five days of receiving Notice from Contractor specifying the breach, provided that if the nature of the breach is such that it will reasonably require more than forty-five days to cure, Subcontractor shall promptly provide Contractor Notice explaining why Subcontractor believes it needs additional time to effectuate a cure together with a schedule therefor and shall diligently proceed to cure the breach within such schedule, whereupon Contractor, in its sole discretion, may (x) make a written demand that Subcontractor cure the default within such time period or any alternative time period set by Contractor, or (y) terminate the Disposal Agreement with respect to City Waste at the end of the forty-five day cure period; or (ii) immediately, if the breach is such that the health, welfare or safety of the public is endangered thereby. The Contractor agrees that simultaneously with its delivery of any notice under this subsection, it shall send a copy of any such notice to City.

2. **Failure to Accept City Waste.** Subcontractor fails to provide disposal for City Waste or Selfhaulers Waste (or Merchant Waste, as the case may be) in accordance with the terms of the Disposal Subcontract for more than (i) four consecutive days or (ii) an aggregate of fifteen days in any Contract Year.

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

4. **Involuntary Bankruptcy, Insolvency.** With respect to Subcontractor, a court having jurisdiction, with Subcontractor's consent or where Subcontractor fails to oppose the proceeding: (a) enters a decree or order for relief in respect of the Agreement, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect; or (b) any such court enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Subcontractor or for any part of the Subcontractor's operating equipment or assets; or (c) orders the winding up or liquidation of the affairs of the Subcontractor.

(b) **Remedies of Contractor and City.** Upon occurrence of a Subcontractor Default, Contractor (and City as third party beneficiary) shall have the following rights:

1. **Termination**: to terminate the Disposal Subcontract with respect to Subcontractor's obligations regarding City Waste; provided that in the event of Subcontractor Event of Default pursuant to Sections IX(a)3 and 4 termination shall be automatic as of the date of filing, consent, assignment or failure described therein to the extent authorized by applicable law.

2. **Compensatory Damages**: to assess and collect compensatory damages in amounts equal to Contractor's incremental transport and disposal costs, calculated in substantially the same manner as Incremental Transport Costs and Incremental Disposal Costs in the Agreement; and

3. **All Other Available Remedies:** exercise all other available remedies at law and in equity, including specific performance.

(c) **Defaults of Contractor.** Each of the following shall constitute an event of default by the Contractor ("Contractor Default") hereunder:

1. **Breach of Agreement.** Contractor fails to perform any of its obligations under this Disposal Facility Subcontract, other than that described in item (2) below, and fails to cure such breach (i) within forty-five days of receiving Notice from Subcontractor specifying the breach, provided that if the nature of the breach is such that it will reasonably require more than forty-five days to cure, Contractor shall promptly provide Subcontractor Notice explaining why Contractor believes it needs additional time to effectuate a cure together with a schedule therefor and shall diligently proceed to cure the breach within such schedule, whereupon Subcontractor, in its sole discretion, may (x) make a written demand that Contractor cure the default within such time period or any alternative time period set by Subcontractor, or (y) terminate the Disposal Agreement with respect to City Waste at the end of the forty-five day cure period or immediately, if the breach is such that the health, welfare or safety of the public is endangered thereby but only as specifically provided herein. . The Subcontractor agrees that simultaneously with its delivery of any notice under this subsection, it shall send a copy of any such notice to City;

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

3. **Involuntary Bankruptcy, Insolvency.** With respect to Contractor, a court having jurisdiction, with Contractor's consent or where Contractor fails to oppose the proceeding: (a) enters a decree or order for relief in respect of the Agreement, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect; or (b) any such court enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee,

sequestrator (or similar official) of the Contractor or for any part of the Contractor's operating equipment or assets; or (c) orders the winding up or liquidation of the affairs of the Contractor.

(d) **Remedies of Subcontractor.** Upon occurrence of a Contractor Default, Subcontractor may exercise all available remedies at law and in equity. However, it shall not terminate this Agreement due to breach or default by Contractor except in the following specific circumstances:

1. **No Termination During Attempted Cure.** No termination shall be effective during any period in which the Contractor's Lender or the City is attempting to cure any breach or Contractor Default pursuant to the terms hereof.

2. **Lenders' Rights.** The Contractor's Lender has been given certain rights to cure any Contractor Default under the Service Agreement including, without limitation, a cure period, the suspension of the City's right to terminate the Service Agreement during a cure or foreclosure proceedings, and the right to a new Service Agreement upon the occurrence of certain events. The Subcontractor hereby grants the Lender the same rights in this Subcontract as are specifically enumerated in the Service Agreement as if those Sections in the Service Agreement giving rise to the Lender's rights appeared in this Subcontract and shall not terminate this Agreement during proper exercise by the Lender of its rights as related to this Subcontract. Notwithstanding the preceding sentence, however, if otherwise allowed hereby, the Subcontractor shall have the right to terminate this Agreement in the same manner as the Service Agreement can be terminated by City in the event the Lender fails to cure, foreclose, or otherwise resolve a Contractor breach or default hereof in the manner proscribed herein and in the Lender protection language in the Service Agreement.

3. **City's Rights.** Subcontractor expressly agrees that upon breach or Default hereunder which would otherwise give the Subcontractor the right to terminate this Subcontract, the City may, upon written notice to Subcontractor have the right to assume the rights and obligations of Contractor as a third party beneficiary of this Subcontract and if it does so, and cures any Default capable of being cured through the payment of money and any other Default that is reasonably capable of being cured, and after assumption of the rights and obligations of Contractor, shall again comply with the terms hereof, this Agreement shall remain in full force and effect for the remainder of its term.

(e) **Remedies Not Exclusive.** The Parties rights and remedies in event of breach and default under the Disposal Subcontract are not exclusive, and a party's or City's exercise of one such remedy is not an election of remedies.

X

HOLD HARMLESS, DEFENSE, AND INDEMNIFICATION

(a) **Indemnification, Defense by Subcontractor.** Except in cases of sole and active negligence or willful misconduct on the part of the City and/or its related parties, Subcontractor, its successors and assigns agree to defend and hold harmless, and indemnify the City and its related parties (as defined below) and except in the case of active negligence or willful misconduct on the part of the Contractor and/or its related parties, agrees to defend and hold harmless and indemnify the Contractor and its related parties (as defined below), successors and assigns from any and all claims, costs or damages whatsoever arising out of or in any way related, directly or indirectly, to this Subcontract including, without limitation:

1. **Personal Injuries and Property Damage.** personal injuries including wrongful death, and property damage of any kind, nature or sort;

2. **Penalties, Fines and Charges.** penalties, fines and charges arising from Subcontractor's violation of Applicable Law,

3. **Environmental.** Any condition of the Disposal Facility or associated with the operation, maintenance or closure thereof relating to hazardous or toxic substances and other environmental damage or liability, including any one or more release or threatened release of any materials (including Hazardous Waste) and water or ground water contamination therefrom and replacement or restoration of natural resources arising from or related to toxic or hazardous substances (including Hazardous Waste) or petroleum products and specifically, without limitation, Subcontractor shall be liable to City and Contractor in accordance with Applicable Law for releases occurring in connection with its Performance Obligations of any materials, including Hazardous Waste, into the environment, including from the Disposal Site, including any repair, cleanup or detoxification thereof, or preparation and implementation of any removal, remedial, response, closure or other plan with respect thereto (regardless of whether undertaken due to governmental action);

4. **CERCLA.** This indemnity of City and Contractor and its related parties by Subcontractor is intended to operate as an agreement pursuant to, but not limited to, Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364, to insure, protect, hold harmless, defend and indemnify the City and Contractor from liability in accordance with this Section. The City, Contractor and their related parties do not hereby waive or surrender any other indemnity available to it under any Applicable Law.

(b) **Indemnification by Contractor.** Contractor agrees to hold harmless and indemnify the Subcontractor and its related parties (as defined below), successors and assigns from any and all claims, costs or damages relating to environmental damage, environmental liability, water or ground water contamination problem but only if such damage, liability or problem is the direct result of Contractor's active negligence or willful misconduct in disposing of Unpermitted Waste at the Disposal Facility. If the source or cause of the environmental problem cannot be traced, then it is the

responsibility of Subcontractor to correct or solve. The hold harmless and indemnity provision includes all costs and expenses associated therewith, including attorney fees and court costs.

(c) **Defense of City.** Subcontractor agrees further, upon City request, with counsel acceptable to City, to defend at Subcontractor's sole cost any action, claim or suit which asserts or alleges any such liabilities, whether well founded or not and whether or not such action, claim or suit also asserts or alleges negligent or wrongful conduct by City and/or its related parties.

(d) **Allocation of Liability.** In the event that a final decision or judgment allocates liability by determining that any portion of damages awarded is attributable solely to the indemnified party's (or its related parties') active negligence or willful misconduct, the indemnified party shall pay the portion of damages which is allocated to the indemnified party's (or its related parties') active negligence or willful misconduct. As used herein, the phrase "active negligence or willful misconduct" shall not include any negligent act or omission by the City, Contractor or their related parties occurring in connection with or related to the review, approval, supervision or acceptance of any service or work product performed or provided by Subcontractor.

(e) **Related Parties.** "City and its related parties"; "liabilities"; "Contractor" or "Subcontractor and related parties". For purposes of this Section, "City and its related parties" includes City and City's Council members, officers, officials, employees, contractors Subcontractors, consultants, agents, assigns and volunteers and each and every one of them; "liabilities" means liabilities, lawsuits, claims, demands, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs, expenses, loss and other detriments of every nature and description whatsoever, including all costs and expenses of litigation or arbitration, attorneys fees (whether City's staff attorneys or outside attorneys) and court costs, whether under State or federal law; and "Contractor" or "Subcontractor" and its related parties" means Contractor or Subcontractor and their agents, employees, contractors, subcontractors, consultants, licensees or invitees.

f. Survival. THE TERMS OF THIS ARTICLE X (INDEMNIFICATION) SHALL SURVIVE TERMINATION OF THE DISPOSAL SUBCONTRACT.

XI
UNCONTROLLABLE CIRCUMSTANCES

(a) **Uncontrollable Circumstances** The following provisions shall govern the rights of the parties in the event of Uncontrollable Circumstances:

1. **Performance Excused.** Neither party shall be deemed in breach or default of its duties, obligations (other than a payment obligation), responsibilities, or commitments to the extent that such breach or default is due to an Uncontrollable Circumstance defined below, provided such party exerted best efforts to prevent the occurrence and mitigate the effects of such

Uncontrollable Circumstance.

2. **Notice.** The party experiencing an Uncontrollable Circumstance and relying thereon shall give immediate written notice thereof to the other party and to the City, including describing performance hereunder for which it seeks to be excused; the expected duration of the Uncontrollable Circumstance; the extent deliveries of waste may be curtailed; and any requests or suggestions to mitigate the adverse effects of such Uncontrollable Circumstance.

3. **Definition.** Uncontrollable Circumstance(s) means any act, event or condition, whether affecting the Disposal Facility or either party beyond the reasonable control of such party and not the result of willful or negligent action or inaction of such party (other than the contesting in good faith or the failure in good faith to contest such action or inaction), which materially and adversely affects the ability of either party to perform any obligation hereunder, comprised of the following:

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

b. the failure of any appropriate federal, state or local public agency or private utility having operational jurisdiction in the area in which the Disposal Facility is located, to provide and maintain utilities, services, water, sewer or power transmission lines to the Disposal Facility which are required for operation, maintenance and closure thereof;

c. a Change in Law (as defined in the Agreement) <u>other</u> than Changes in Law excluded in items e(ii) below; and

d. the failure of any Subcontractor or supplier to furnish labor, services, materials or equipment on the dates agreed to if such failure is caused by an Uncontrollable Circumstance and the affected party is not reasonably able to obtain substitute labor, services, materials or equipment on the agreed upon dates;

e. but <u>excluding</u>, without limitation:

(i) either party's own breach of its obligations under the Disposal Subcontract;

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

(iii) the consequences of errors in Disposal Facility design, operation, maintenance or closure on the part of Subcontractor, its employees, agents, Subcontractors

or affiliates;

(iv) with respect to the Contractor, the failure of any Disposal Facility technology;

(v) strikes, work stoppages or other labor disputes or disturbances other than those of subcontractors or suppliers as described in subsection XI(a)3.d above;

XII
MISCELLANEOUS

(a) **Successors and Assigns.** This agreement is binding upon and shall inure to the benefit of the Contractor's and Subcontractor's successors and assigns.

(b) **Assignment.** Except as otherwise provided herein, neither party shall have the right to Assign this agreement, as that term is defined in the Service Agreement, in whole or in part, without the written consent of the other Party and the City if consent is required thereby by the terms of the Service Agreement. Any Assignment in violation of this provision shall be null and void and unenforceable against the non-Assigning party. Notwithstanding the foregoing, however, the Contractor shall have the right to Assign this Subcontract to its Lender or to an affiliated entity in the same manner as provided in Section 23.01 of the Service Agreement.

(c) **Subject Headings.** The subject headings of the paragraphs or subparagraphs of this agreement are included for convenience only and shall not affect the construction or interpretation of any of its provisions.

(d) **Entire Agreement.** This agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. No supplement, modification or amendment to this agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

(e) **Attorney's Fees.** In the event that any party hereto is required to retain an attorney to enforce any of the terms, conditions or covenants herein contained, then, and in that event, the prevailing party shall be entitled to the award of a reasonable attorney's fee together with court costs and administrative expenses, including testing and inspection.

(f) **Notices.** All notices or demands of any kind which either party may or are required to serve upon the other, may be served by mailing a copy of such demand or notice addressed to the other party at the addresses hereinafter set out by certified or registered mail, or at such other address

ATTACHMENT 12.02#2

DISPOSAL FACILITY UNLOADING PROTOCOL

TO BE PROVIDED BY CONTRACTOR/SUBCONTRACTOR UPON CITY REQUEST.

ATTACHMENT 12.02#3

DISPOSAL FACILITY DISPOSAL PROTOCOL AND SPECIFICATIONS

TO BE PROVIDED BY CONTRACTOR/SUBCONTRACTOR UPON CITY REQUEST.

ATTACHMENT 12.02#4

DISPOSAL FACILITY
O&M PROTOCOL

TO BE PROVIDED BY CONTRACTOR/SUBCONTRACTOR UPON CITY REQUEST.

ATTACHMENT 12.02#5

DISPOSAL FACILITY CLOSURE AND POST-CLOSURE PLAN

TO BE PROVIDED BY CONTRACTOR/SUBCONTRACTOR UPON CITY REQUEST.

EXHIBIT 12.02b

ALTERNATE DISPOSAL FACILITIES

Lockwood Landfill

Portero Hills Landfill

Kiefer Landfill

Forward Landfill

Anderson Landfill

EXHIBIT 13.02a(1)

PERSONNEL SCHEDULE

Attached is Contractor's personnel schedule, including job description and categories, maintained in accordance with Section 13.02a(1).

FACILITY STAFFING LEVELS
(1,500 TPD)

Position	Number
Facility Management	
Operations Manager	2
Safety Manager	1
Materials Marketing Manager (handled from corporate)	-
Administration/Clerical	
Bookkeeper/Controller	2
Office Personnel	1
Commercial/Curbside MRF	
MRF Supervisor	2
MRF Line Foreman	10
Sorters	76
Equipment Operators	
Forklift Operator	8
MRF Loader Operator	8
Baler Operator	4
Waste Transfer Operation	
Transfer Station Supervisor	1
Transfer Station Foreman	1
Transfer Station Dispatcher	2
Equipment Operators	
Sweeper Operator	1
Transfer Station Loader Operator	4
General Laborers	
Rakers	2
Spotters	4
Floor Sorters	3
Scale Operators	4
Drivers	14

Maintenance	
Mechanics	7
A.B.O.P. Drop	
Supervisor	1
Operator	2
TOTAL	**160**

EXHIBIT 13.02a(3)

ALTERNATIVE WORKFORCE

Alternative workforce employee hiring policies must meet the following City goals:

Neighborhood Revitalization and Enhancement. This priority stresses neighborhood empowerment, improvement of quality of life, safe and nuisance free neighborhoods, cultural sensitivity, and customer driven philosophies with responsive, efficient and accessible services.

Public Safety. This priority encompasses a partnership with the Neighborhood which protects life and property, creates safe neighborhoods and prevents fire and health problems. A major emphasis is placed on curing the crime, violence, drug and gang activity in City neighborhoods.

Positive Youth Alternatives. This priority emphasizes developing partnerships in the Neighborhood to provide various your oriented programs, safe after school recreational and educational activities, jobs, apprenticeships, academic and violence avoidance programs.

EXHIBIT 13.02a(4)

EQUAL EMPLOYMENT OPPORTUNITIES

During performance of its Performance Obligations hereunder, Contractor agrees, for itself, its assignees and successor in interest, as follows:

(1) Compliance with Regulations: Contractor shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Orders 11375 and 12086 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) ("**Regulations**")

(2) Nondiscrimination: With regard to work performed by Contractor after award and prior to completion of its Performance Obligations, Contractor shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurements of materials and leases of equipment. Contractor shall not participate either directly or indirectly in discrimination prohibited by the Regulations.

(3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by Contractor for work to be performed under any subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligation hereunder and under the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.

(4) Information and Reports: Contractor shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information and the Facility as may be determined by the City to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish this information, contractor shall so certify to the City, and shall set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of noncompliance by Contractor with the nondiscrimination provisions hereof, the City shall impose such sanctions as it may determine to be appropriate including withholding of payments to Contractor hereunder until Contractor complies; and canceling, terminating or suspending the Agreement, in whole or in part.

(6) Incorporation of Provisions: Contractor shall include the provisions of paragraphs (1) through (5) of this Exhibit in every subcontract, including procurements of materials and leases of equipment, unless exempted by the Regulations or by any order or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontract or procurement as the City may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Contractor may request City to enter such litigation to protect the interests of City.

EXHIBIT 13.02b

SCHEDULE OF SUBCONTRACTORS
(As amended from time to time)

Disposal services provider: (see Disposal Subcontract attached to Exhibit 12.02.)

Transport services provider (and subcontract therewith) Darrel Green Trucking

Processing services provider (and subcontract therewith) [Labor: Advantage Staffing, Randstad Staffing, MDT Personnel LLC., Sacramento Local Conservation Corps, California Conservation Corps, Pride Industries; Metal Recycling: Sims LMC Recyclers, Schintzer Steel]:

EXHIBIT 14.01a

RECORD KEEPING REQUIREMENTS

1. Weight.

(1) **Delivered City Waste:** the weight of City Waste in the aggregate and by any category (including Residential Waste, Commercial Waste and Neighborhood Cleanup Waste which City identifies by ID number or other method at the scalehouse, and to the extent Delivered in segregated loads or capable of estimation by Contractor in accordance with described basis (e.g. visually estimated volume thereof with assumed weight equivalents), White Goods, Brown Goods, Yard Waste, and Construction and Demolition Waste;

(2) **Delivered Selfhaulers Waste:** the weight or assumed weight of Selfhaulers Waste, or count and general description of unweighed vehicles;

(3) **Delivered Merchant Waste:** the weight of Merchant Waste;

(4) **Transferred, Transported and Disposed of City Waste and Residue:** the weight of City Waste and Selfhaulers Waste, and the separate weight of Residue Transferred, Transported and Disposed of at the Contractor Designated Disposal Facility;

(5) **Recovered Materials:** the weight of Recovered Materials (including specifically the weight of all Recovered Materials Processed, sold or otherwise diverted from disposal, and/or otherwise disposed);

(6) **Facility Waste, Recovered Materials and Residue:** the weight of Merchant Waste, materials recovered therefrom and residue attributable thereto;

(7) copies of the invoices or other receipts issued by third parties (e.g. owner/operator of Contractor Designated Disposal Facility; brokers, purchasers or other takers of Recovered Materials) evidencing weight of all materials shipped from the Facility;

(8) gross and tare weight of each of the City's Vehicles (including vehicle ID number and date and time of Delivery);

(9) weight and payment, if any, agreed to between Contractor and City, to City for Recyclable Materials which City Delivers, or causes to be Delivered, to the Facility in source separated or relatively clean and uncontaminated loads.

2. Operations.

(1) video tape recordings of Facility Operations (including views of weighing and each tipping operation, with date and times);

(2) upon City request, traffic counts, and time trucks queue, cross scales at the Scalehouse and tip.

3. Marketing: any certifications of end use or other documentation evidencing Diversion of Recovered Materials.

Promptly upon City request, Contractor shall provide City with any and all records of City Waste Disposed of at the Contractor Designated Disposal Facility and Merchant Waste disposed of at such Facility or elsewhere, including weight slips, computer print outs etc.; provided that if Contractor marks such materials "proprietary and confidential" the disclosure protocol provided in Section 14.01a shall apply.

EXHIBIT 14.01b

REPORTING REQUIREMENTS

a. Monthly.

(1) <u>Inclusion</u>. The monthly report shall include the following information, based on records kept in accordance with Exhibit 14.01a:

(i) City Tonnage: summary of daily/monthly weight records with respect to City Waste and Selfhaulers Waste Delivered to the Facility and Transferred and Transported to and/Disposed of at the Contractor Designated Disposal Facility;

(ii) Recovery Information and Performance Guaranties:

-reports required by Ordinance No. 2;

-Tonnage of Commercial Waste, Neighborhood Cleanup Waste, White Goods, Brown Goods (if any), Construction and Demolition Debris (if any), Yard Waste (if any) and Recovered Materials which was Recovered and Processed;

-calculation of Performance Guaranties on monthly and Contract Year-to-date basis. If any Performance Guaranty is not met, Contractor shall include a discussion of reasons why such Guaranty was not met, its proposed corrective action to meet such Guaranty in the succeeding month, and projections for future compliance thereof.

- projections of Recovery and Processing during the months remaining in the then current Contract Year.

(iii) Safety Report: report of any major accidents with respect to City or Selfhaulers' vehicles on Site and any accidents to Persons, including Contractor's employees, on Site.

(iv) Lender Information. The name and current address for receipt of first class mail of Contractor's lender which will receive a courtesy copy of any Notice of termination in accordance with Section 20.01c.

(2) <u>Upon City Request</u>. Upon City request, the monthly report shall further include the following information, based on records kept in accordance with Exhibit 14.01a:

(i) Facility Tonnage: summary of daily/monthly weight records with respect to all materials accepted at and shipped from the Facility.

(ii) Transfer, Transport and Disposal: daily and monthly summary of Tons Transferred and Transported to and/Disposed of at the Contractor Designated Disposal Facility.

(iii) Marketing and Diversion: summary of Marketing and Diversion tonnage records and projections thereof during the months remaining in the then current Contract Year.

b. Annual Report. The annual report shall include a summary of the information presented in the monthly reports during such Contract Year, and upon request of City, any additional information described in Exhibit 14.01a which may have not previously been requested by City during such Contract Year.

The City may request additional information and Contractor shall to supply such requested information promptly; provided that if Contractor marks such materials "proprietary and confidential" the disclosure protocol provided in Section 14.01a shall apply.

EXHIBIT 16.01

INSURANCE

A. DURING CONSTRUCTION AND EQUIPPING

Contractor shall secure and maintain the following insurance at all times it is performing its Performance Obligations with respect to Construction and Equipping:

I. **GENERAL LIABILITY INSURANCE** in accordance with item I of the following Section B, <u>except</u> that Products and Completed Operations shall remain applicable for at least two years following the Operations Date.

II. **COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE** in accordance with item II of the following Section B.

III. **UMBRELLA LIABILITY AND/OR EXCESS LIABILITY INSURANCE** in accordance with item V of the following Section B.

IV. **ARCHITECTS' AND ENGINEERS' PROFESSIONAL LIABILITY INSURANCE (ERRORS AND OMISSIONS INSURANCE)** applying to any design or specifications work by its architects and engineers with respect to the Facility only, in minimum amounts of $2,000,000 per occurrence and in the aggregate, with a minimum self-insured retention of $25,000.

B. BEGINNING WITH START-UP OF FACILITY

Contractor shall secure and maintain the following insurance no later than the beginning of Start-up and Compliance Testing.

I. **GENERAL LIABILITY INSURANCE** 1973 Comprehensive General Liability (Occurrence Form), or 1986 or 1988 commercial General Liability (Occurrence Form) which does not exclude pollution liability (to the extent commercially available), including the following extensions:

1. premises and operations
2. products and completed operations
3. advertising and personal injury, including copyrights infringement
4. unlicensed mobile equipment
5. explosion, collapse and underground hazard coverage
6. broad form blanket contractual
7. broad form property damage

8. contingent coverage for any subcontractors
9. premises medical coverage
10. cross suits.
11. project endorsement

Minimum limits of liability for 1973 Comprehensive General Liability (Occurrence Form) shall be $1,000,000 each occurrence or in the aggregate, as applicable, for Combined Single Limit-Bodily Injury and Property Damage Liability and $1,000,000 aggregate for Products/Completed Operations and Property Damage on the Site; and for 1986 or 1988 Commercial General Liability (Occurrence Form) shall be:

Per occurrence limit:	$2,000,000
Products/Completed Operations aggregate	$2,000,000
Policy aggregate	$2,000,000
Personal and Advertising Injury limit	$1,000,000
Fire damage limit	$1,000,000
Medical Payments	$ 10,000.

Deductibles shall be no greater than $10,000 per loss, which deductibles shall be the responsibility of Contractor. The general liability policy shall not contain a sunset provision.

II. COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE comprehensive coverage for:

1. all vehicles and equipment requiring licenses under Applicable Law owned or leased by Contractor, and their drivers employed by the Contractor
2. all vehicles hired by City or Contractor, and their drivers employed by the Contractor

3. all vehicles non-owned and hired by City or Contractor, and their drivers employed by the Contractor

4. Uninsured/Underinsured Motorists liability coverage

5. cross suits

6. transportation by insured vehicle of "pollutants" or "wastes" and clean-up costs relating to spills thereof

Deductibles shall be no greater than $10,000 per loss, which deductibles shall be the responsibility of Contractor. Automobile liability polices shall include an MCS 90 endorsement.

III. WORKERS' COMPENSATION INSURANCE Part 1, in accordance with Applicable Law. Such policy shall include a waiver of rights of subrogation against the City and the Facility.

IV. EMPLOYERS' LIABILITY INSURANCE in the following amounts:

1. bodily injury by accident $1,000,000 each accident
2. bodily injury by disease $1,000,000 policy limit, $1,000,000 each employee.

Such policy shall include a waiver of rights of subrogation against the City and the Facility.

V. UMBRELLA LIABILITY AND/OR EXCESS LIABILITY policies with endorsements providing "drop down" coverage solely for Contractor's Performance Obligations hereunder effective when primary limits of General Liability, Automobile and Employers' Liability policies described in items I, II and IV above are exhausted, with minimum limits of liability (Occurrence Form) of $10,000,000 each occurrence or in the aggregate, as applicable, for Combined Single Limit-Bodily Injury and Property Damage Liability and $10,000,000 aggregate for Products/Completed Operations and Property Damage on the Site. Non-concurrent exclusions shall not be permitted. Deductibles shall be no greater than $10,000 per loss, which deductibles shall be the responsibility of Contractor.

VI. ENVIRONMENTAL IMPAIRMENT AND LOCAL POLLUTION LIABILITY coverage for any environmental liability attributable to Contractor's actions, including clean-up and/or transportation of pollutants, hazardous materials or Unpermitted Waste off-Site. Minimum limits of liability shall be $10,000,000 per occurrence and in the aggregate for the Disposal Subcontractor and $1,000,000 per occurrence and in the aggregate for the Contractor if reasonably and commercially available. This coverage is required beginning on the Operations Date. The pollution policy shall not contain a warranty stating that coverage is null (or words to that effect) if the insured does not comply with the most stringent regulations governing the work. City agrees that if the County of Sacramento's Kiefer Landfill is the Primary Disposal Facility, a County affidavit of self-insurance shall satisfy the $10,000,000 requirement stated above.

VII. PROPERTY insurance covering "All Risks" of loss or damage to physical property, including the periods of earthquake and flood, including extensions for:

1. Business Interruption
2. Expediting Expense
3. Boiler and Machinery (Systems Performance and Efficacy)

4. Contractors' and Inland Marine Equipment
5. On-Site or Off-Site Materials in storage or in the open
6. Materials in Transit
7. Valuable Papers
8. Electronic Data Processing Equipment
9. Media and Hardware
10. Increased Cost of Construction
11. Ordinance or Law,

Minimum limits of liability shall be in an amount acceptable to the City, but in no event less than replacement cost of the project and written on a replacement cost basis, which amount may be adjusted on the Operations Date and as of the first day of each Contract Year thereafter to equal the value of the Facility and income it generates to City. Such policy shall contain a valid agreed amount endorsement waiving any co-insurance penalty. Deductibles shall be no greater than $10,000 per loss, which deductibles shall be the responsibility of Contractor.

EXHIBIT 16.04

PERFORMANCE BOND OR ALTERNATIVE SECURITY

Copies of the performance bond required by Section 16.04, or other form of performance security (including letters and lines of credit) are attached hereto. Contractor represents and warrants that the bond is in the principal sums required by Section 16.04 and are executed as surety by a corporation admitted to issue surety bonds in the State of California, subject to regulation by the California Insurance Commissioner. Contractor acknowledges and agrees that such representation and warranty is material. City acknowledges that the financial condition and record of service of such corporation is satisfactory.

EXHIBIT 16.05

GUARANTY AGREEMENT

This Guaranty, made as of the date of the Agreement (as defined below) by BLT Enterprises, a California corporation duly organized and existing in good standing under the laws of the State of California and having its principal place of business in Oxnard, California ("**Guarantor**"), to and for the benefit of the City of Sacramento ("**City**"), a municipal corporation of the State of California (the "**State**").

WITNESSETH

WHEREAS, BLT Enterprises of Sacramento, LLC, a California limited liability company (the "**Contractor**"), an affiliate of the Guarantor, and the City have negotiated a Service Agreement for Municipal Solid Waste Transfer, Transport, Disposal, Processing and Recovered Materials Diversion, dated as of the later of the date of execution thereof by the City or the Contractor, as may be supplemented and amended from time to time in accordance with the terms thereof (the "**Agreement**"), which Agreement is incorporated herein by reference and hereby made part hereof;

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

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

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

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

Capitalized terms used herein and not otherwise defined herein, shall have the meaning assigned to them in the Agreement

(1) Guaranty of Contractor's Obligations to City. Guarantor hereby directly, unconditionally, irrevocably, and absolutely guaranties the timely and full performance of Contractor's obligations under the Agreement in accordance with the terms and conditions contained therein. Notwithstanding the unconditional nature of the Guarantor's payment obligations set forth herein, the Guarantor shall have the right to assert the defenses provided in the paragraph entitled "Defenses" under Section 8 hereof, against claims made hereunder.

(2) Governing law; consent to jurisdiction; service of process. This Guaranty shall be governed by the laws of the State. The Guarantor hereby agrees to the service of process in the State for any claim or controversy arising out of this Guaranty or relating to any breach. The Guarantor hereby agrees that the courts of the State, and to the extent permitted by law, courts of the County in the State shall have the exclusive jurisdiction of all suits, actions, and other proceedings involving itself and to which the City may be party for the adjudication of any claim or controversy arising out of this Guaranty or relating to any breach hereof, waives any objections that it might otherwise have to the venue of any such Court for the trial of any such suit, action, or proceeding, and consents to the service of process in any such suit, action, or proceeding by prepaid registered mail, return receipt requested.

(3) Enforceability; no assignment. This Guaranty shall be binding upon and enforceable against Guarantor, its successors, assigns, and legal representatives. It is for the benefit of the City, its successors and assigns. The Guarantor may not assign or delegate the performance of this Guaranty without the prior written consent of the City. Any such assignment made without the consent of City shall be void. Guarantor shall submit its request for City consent to the City together with the following documentation and any other documentation the City may request:

(i) audited financial statement for the immediately preceding three (3) operating years; indicating that in the opinion of the City the proposed assignee's financial status is equal to or greater than Guarantor's.

(ii) satisfactory proof that in the last five years, the proposed assignee has not suffered any citations or other censure from any federal, state or local agency having jurisdiction over its waste management operations due to any significant failure to comply with state, federal or local waste management law and that the assignee has provided City with a complete list of such citations and censures;

(iii) satisfactory proof that the proposed assignee has at all times conducted any solid waste management operations in an environmentally safe and conscientious fashion;

(iv) satisfactory proof that the proposed assignee conducts its municipal solid waste management practices in accordance with sound waste management practices in full compliance with all federal, state and local laws regulating the collection and disposal of waste, including hazardous waste as identified in Title 22 of the California Code of Regulations;

(v) of any other information required by City to ensure the proposed assignee can fulfill the terms hereof, including the payment of damages, in a timely, safe and effective manner.

Guarantor shall undertake to pay City its reasonable expenses for attorneys' fees and investigation costs necessary to investigate the suitability of any propose d assignee, and to review and finalize any documentation required as a condition for approving any such assignment.

"Assign". For the purpose of this Section, "assign" includes:

(x) to sell, exchange or otherwise transfer to a third party all or substantially all of Guarantor's assets.

(y) issuing new stock or selling, exchanging or otherwise transferring thirty percent or more of the then outstanding common stock of Guarantor to a Person other than the shareholders owning said stock as of the date hereof.

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

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

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

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

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

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

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

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

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

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

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

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

<u>provided</u> that, notwithstanding the foregoing, Guarantor shall not be required to pay any monetary obligation of Contractor to City from which Contractor would be discharged, released or otherwise excused under the provisions of the Agreement.

(5) Waivers. Guarantor hereby waives:

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

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

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

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

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

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

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

To the extent that it may lawfully do so, the Guarantor hereby further agrees to waive, and does hereby absolutely and irrevocably waive and relinquish, the benefit and advantage of, and does hereby covenant not to assert, any appraisement, valuation, stay, extension, redemption or similar laws, now or at any time hereafter in force, which might delay, prevent or otherwise impede the

due performance or proper enforcement of this Guaranty, the Agreement, or the obligations of the Contractor under the Agreement, and hereby expressly agrees that the right of the City hereunder may be enforced notwithstanding any partial performance by the Contractor or the Guarantor, or the foreclosure upon any security (including, with limitation, any performance bond) given by the Contractor for its performance of any of its obligations under the Agreement.

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

(a) renew, modify or compromise the liability of the Contractor for or upon any of the obligations hereby Guarantied; or

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

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

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

all without releasing or discharging the liability of Guarantor hereunder.

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

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

(8) Defenses. The Guarantor may exercise or assert any and all legal or equitable rights, defenses, counter claims or affirmative defenses under the Agreement or Applicable Law which the Contractor could assert against any party seeking to enforce the Agreement against the Contractor, except for any defenses Guarantor waives under Section (4) (a)- (k), and nothing in this Guaranty shall constitute a waiver thereof by the Guarantor.

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

(10) Enforcement. The terms of this Guaranty may be enforced as to any one or more breaches either separately or cumulatively.

(11) Remedies cumulative. No remedy herein conferred upon or reserved to the City hereunder is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Guaranty and the Agreement or hereinafter existing at law or in equity or by statute.

(12) Severability. The invalidity or unenforceabilty of any one or more phrases, sentences or clauses in this Guaranty contained shall not effect the validity or enforceability of the remaining portions of this Guaranty, or any part thereof.

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

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

(15) No set-offs, etc.

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

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

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

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

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

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

Guarantor acknowledges and agrees that such representations and warranties are material.

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

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

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

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

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

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

(23) Personal Liability. It is understood and agreed to by the City that nothing contained herein shall create any obligation or right to look to any director, officer, employee or stockholder of the Guarantor (or any affiliate thereof) for the satisfaction of any obligations hereunder, and no judgment, order or execution with respect to or in connection with this guaranty shall be taken against any such director, officer, employee or stockholder.

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

BLT Enterprises, a California corporation

By:_____
Bernard Huberman, President

Dan Rosenthal, Secretary

EXHIBIT 18.02

The Contractor's Service Fee Component as of the execution of this Amended Agreement shall be as follows:

Before Kiefer Landfill becomes Primary Disposal Facility:

Contractor's Service Fee Component	
Fuel Component	$7.19
Non-Fuel Component	$36.70
Total	$43.89

After Kiefer Landfill becomes Primary Disposal Facility:

Contractor's Service Fee Component	**Annual Tonnage Received at Facility ("Tonnage Level")**			
	Fee for up to 150,000 tons received	Fee for 150,001-250,000 tons received	Fee for 250,001-350,000 tons received	Fee for over 350,000 tons received
Fuel Component	$1.40	$1.40	$1.40	$1.40
Labor Component	$8.23	$7.43	$5.89	$5.87
Disposal Component	$25.00	$24.00	$23.00	$23.00
Other Costs Component	$21.22	$20.08	$14.71	$13.08
Total	$55.85	$52.91	$45.00	$43.35

The amounts shown in this Exhibit shall be adjusted pursuant to Article 25 or as otherwise provided in the Amended Agreement.

After Kiefer Landfill becomes the Primary Disposal Facility, the Service Fee Component shall be set for each Contract Year based on the Tonnage Level of City Waste received during the previous Contract Year.

If a Tonnage Level change upwards or downwards is expected to occur during any Contract Year that would result in a different Contractor's Service Fee Component amount to be used per the table above, then, at City's election, Contractor's Service Fee Component shall be adjusted effective at the beginning of the month in which such change is expected.

At the end of each Contract Year after Kiefer Landfill becomes the Primary Disposal Facility, if the actual tonnage of City Waste received at the Facility would have resulted in using a different Tonnage Level for the calculation of that Year's Contractor's Service Fee Component or if the Tonnage Level has been changed as described in the preceding paragraph, then any over-payment or under-payment of the Contractor's Service Fee Component shall be reimbursed by Contractor or paid by the City, as applicable, within thirty (30) days after the computation of such amount.

EXHIBIT 18.02d

Before Kiefer becomes the Primary Disposal Facility

The Contractor's Service Fee Component shall be comprised of two (2) components, as follows:

1 - a "Fuel" component, representing the diesel fuel cost per ton required to transport from the Facility to the Primary Disposal Facility; and

2 - a "Non-Fuel" component comprising other costs of the Contractor relating to transfer and transport.

After Kiefer becomes the Primary Disposal Facility

(a) The Contractor's Service Fee Components shall be separated in four (4) components, as follows:

1 - a "Fuel" component, representing the diesel fuel cost per ton required to transport from the Facility to the Primary Disposal Facility;

2 - a "Labor" component, representing the transfer station labor costs per ton for processing at the Facility plus the transport labor costs per ton for transportation to the Primary Disposal Facility;

3 - an "Other Costs" component, comprising other costs of the Contractor relating to transfer and transport; and

4 - a "Disposal" component representing the Tipping Fee at the Primary Disposal Facility.

(b) For any subsequent permanent change in the Primary Disposal Facility after Kiefer becomes the Primary Disposal Facility, Contractor will propose new Contactor's Service Fee Components based on the following:

1 - the "Fuel" component

- will be adjusted to represent the difference in Contractor's fuel costs for the new Primary Disposal Facility when compared to the then-in-effect Primary Disposal Facility by providing calculations for both facilities, using transport mode, transport distances, transport times, transport routes, transport equipment type, and transport fuel type;

2 - the "Labor" component

- will be adjusted to represent the difference in Contractor's labor costs for the new Primary Disposal Facility when compared to the then-in-effect Primary Disposal Facility by providing calculations for both facilities, using transport mode, transport distances, transport times, transport routes, number of employees, type of employees, loading times, and unloading times; and,
- will not be adjusted for general and administrative labor costs per ton unless Contractor demonstrates a need for additional general and administrative personnel as a result of the change to a new Primary Disposal Facility;

3 - the "Other Costs" component

- will be adjusted to represent the difference in Contractor's "Other Costs" for the new Primary Disposal Facility when compared to the then-in-effect Primary Disposal Facility by providing calculations for both facilities for the "Other Costs" directly attributable to the change to a new Primary Disposal Facility, for which Contractor seeks adjustment; and,
- will not be adjusted for general and administrative "other" costs per ton unless Contractor demonstrates a need for additional general and administrative personnel as a result of the change to a new Primary Disposal Facility.

4 - the "Disposal" component will be adjusted to represent the per ton amount paid or received for disposal of City Waste at the new Primary Disposal Facility.

EXHIBIT 18.03

REGULATORY FEES COMPONENT

The list of regulatory fees which are included in the Regulatory Fees Component as of the date hereof together with calculations supporting the allocation thereof to the per Ton Regulatory Fees Component, is set forth below. The Regulatory Fees Component will be increased or decreased in accordance with the same allocation methodology within thirty days following Contractor's Notice of any increase or decrease thereof or new addition thereto, in amounts equal to the Direct Costs of such increase, decrease or addition. Such adjustment shall be retroactive to the date Contractor first incurred or saved payment of such Direct Costs.

LOCAL ENFORCEMENT AGENCY (LEA) FEES

Annual Fee - The Sacramento County Environmental Management Department, the Local Enforcement Agency (LEA) assessed, in 2010, a $13,477 annual fee to cover direct costs incurred by the LEA during normal inspections and administrative duties associated with a recycling and transfer station permit.

Each year the LEA Annual Fee will be divided by the number of City-delivered tons processed by the facility in one year (530 tons/day x 260 days/year = 117,806.33 tons/year).

$$\frac{\$13{,}477}{117{,}806.33 \text{ tons/year}} = \$\ 0.11 \text{ / Ton}$$

This fee will be allocated to the Service Fee on a per ton basis

SACRAMENTO COUNTY REGIONAL SOLID WASTE FEES

Regional Cost Fee (Variable) - The Solid Waste Division of the Sacramento County Environmental Management Department assesses a per ton fee to all solid waste facilities located within the county. This fee covers variable regional costs not covered by the annual fee.

The $/ton fee is determined using the following equation:

$$\frac{[\text{Annual Total of County's Regional costs (\$)}]}{[\text{Total Tons Disposed Within County Landfills (Tons)}]} = \$\ \text{/ Ton}$$

According to the County's 2010 figures, this equated to:

$$\frac{\$\ 182{,}932}{1{,}917{,}257 \text{ tons}} = \$\ 0.10 / \text{Ton}$$

The variable Regional Cost will be directly added to the Service Fee on a per ton basis.

TOTAL REGULATORY FEES

TYPE OF FEE	AMOUNT
LEA Annual Fee	$ 0.11 / Ton
Regional Cost Fee (Variable)	$ 0.10 / Ton
Total:	**$ 0.21 / Ton**

Contract No. 70443

COUNTY OF SACRAMENTO
MUNICIPAL SERVICES AGENCY

AGREEMENT FOR NORTH AREA RECOVERY STATION

THIS AGREEMENT is made and entered into on _____, by and between the COUNTY OF SACRAMENTO, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and the City of Sacramento, a municipal corporation, hereinafter referred to as "CITY."

RECITALS

WHEREAS, COUNTY owns, operates and provides waste disposal services at the North Area Recovery Station (hereinafter "NARS"), a licensed Transfer Station having a permit to accept MSW; and

WHEREAS, COUNTY owns and operates a Class III landfill, the Kiefer Landfill (hereinafter "Kiefer), and transports MSW from NARS to Kiefer for ultimate disposal; and

WHEREAS, CITY desires to dispose of MSW at NARS for ultimate transfer and disposal at Kiefer; and

WHEREAS, COUNTY and CITY have negotiated tipping fee(s) for disposal services at NARS for ultimate disposal at Kiefer in consideration of the volume of MSW CITY will dispose at NARS which will generate revenue to COUNTY.

WHEREAS, COUNTY and CITY desire to enter into this Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, COUNTY and CITY agree as follows:

1. DEFINITIONS

Applicable Law means all law, statutes, rules, regulations, guidelines, Permits, actions, determinations, orders, or requirements as most recently amended of the United States, State, County, City, regional or local government authorities, agencies, boards, commissions, courts or other bodies having applicable jurisdiction, that from time to time apply to or govern NARS or Kiefer, Performance Obligations or the performance of any other of the Parties' respective obligations hereunder, including AB 939, CEQA and any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, zoning, nondiscrimination,

the payment of minimum wages and the County Integrated Waste Management Plan.

Construction and Demolition Waste shall be as defined by the Federal EPA as "Construction and Demolition Waste" under Section 243.101(i) of the Code of Federal Regulations, Title 40, Part 243 (40CFR Part 243).

Contract Tipping Fee is as established in Section 5 of this Agreement.

Contract Service Fee is as established in Section 5 of this Agreement.

Contract Year means each year commencing July 1, and ending June 30.

CPI - All Urban Consumers. When used herein, "CPI" shall be seventy-five percent (75%) of the "Northern California All Urban Consumers" Consumer Price Index – All Urban Consumers, San Francisco – Oakland – San Jose, CA, All items (1982-84=100).

Director is COUNTY'S Director of the Department of Waste Management and Recycling or his/her designee.

EIA – Diesel Fuel. When used herein, "EIA" shall be one-hundred (100%) of the "Energy Information Administration" U.S. On-Highway Diesel Fuel Prices - West Coast, California - No. 2 Diesel Retail Sales by All Sellers.

Gate Tipping Fee shall be as defined in the most current resolution adopted by the County of Sacramento Board of Supervisors to establish tipping fees at NARS. For informational purposes, at time of execution of this Agreement, the most current resolution is Resolution No. 2009-0707, adopted September 15, 2009 establishing the gate tipping fee at $48.00 for NARS effective September 15, 2009.

Hazardous Waste is a type of Unpermitted Waste which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious illness or pose a substantial threat or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise mismanaged; or any waste which is defined or regulated as a hazardous waste, toxic waste, hazardous chemical substance or mixture, or asbestos under Applicable Law, including:

(1) "Hazardous Waste" pursuant to Section 40141 of the California Public Resources Code; materials regulated under Chapter 8 (commencing with Section 114960), Part 9, of Division 104 of the California Health and Safety Code (Radiation Control Law); all substances defined or listed under the California Hazardous Waste Control Act (California Health and Safety Code, Division 20,

Chapter 6.5 beginning with Section 25100 et seq.,) and regulations promulgated hereunder, including future amendments to or recodification thereof as hazardous waste, acutely hazardous waste, or extremely hazardous waste including those substances defined by Sections 25110.02, 25115, and 25117 as hazardous waste, acutely hazardous waste or extremely hazardous waste and those substances defined or listed as hazardous waste under 22 California Code of Regulations Section 66261.3 and 23 California Code of Regulations Section 2521; all substances defined or listed under California Health and Safety Code, Division 20, Chapter 6.7 including but not limited to Section 25281; those substances defined as biohazardous waste under California Health and Safety Code Section 117635 and

(2) materials regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended (including, but not limited to, amendments thereto made by the Solid Waste Disposal Act Amendments of 1980), and related federal, State and local laws and regulations, including future amendments to or recodification thereof;

(3) materials regulated under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., and related federal, State of California, and local laws and regulations, including the California Toxic Substances Account Act, California Health and Safety Code Section 25300 et seq., including future amendments to or recodification thereof;

(4) materials regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq., and regulations promulgated hereunder, including future amendments to or recodification thereof; and

(5) materials regulated under 40 Code of Federal Regulations parts 260 to 279 (Solid Waste Regulations) including any future amendments or recodification thereof; and

(6) 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.

Material Recovery Facility Residuals are residual, non-recyclable waste culled from SSR Materials.

Municipal Solid Waste ("MSW") shall include the following as defined by the Federal EPA: "Solid Waste" under Section 243.101(y); "Residential solid waste" under Section 243.101(s); and "Commercial Solid Waste" under Section 243.101(g); of the Code of Federal Regulations, Title 40, Part 243 (40 CFR Part 243). MSW does not include Green Waste.

Performance Obligations means each and every obligation and liability of the County hereunder.

Permits or "Permitting" means all federal, State, County, City, regional or local government authorities, agencies, boards, commissions, courts or other bodies' permits, orders, licenses, approvals, authorizations, consents and entitlements of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the NARS or Kiefer, or Performance Obligations or any matters covered hereby.

Permitted Waste is MSW, construction and demolition waste, material recovery facility residuals, and any other combination of these wastes that NARS or Kiefer may receive under Applicable Law.

Single Stream Recyclables are source-separated mixed recyclable materials set out for separate collection and are hereinafter referred to as "SSR Materials".

Uncontrollable Circumstances means any act, event or condition beyond the reasonable control of either party and not the result of willful or negligent action or inaction of such party (other than the contesting in good faith or the failure in good faith to contest such action or inaction), which materially and adversely affects the ability of either party to perform any obligation hereunder, comprised of the following:

(1) an act of God, landslide, lightning, earthquake, fire, flood, (other than reasonably anticipated weather conditions for the geographic area of NARS and Kiefer Landfill (collectively "Facility"), explosion, sabotage, acts of a public enemy, war, blockade or insurrection, riot or civil disturbance;

(2) the failure of any appropriate federal, State, City, or local public agency or private utility having operational jurisdiction in the area in which the Facility is located, to provide and maintain utilities, services, water, sewer or power transmission lines to the Facility which are required for Facility operation;

(3) a change in law other than a change in law excluded in item (iii) below; and

(4) the failure of any subcontractor (other than any subcontractor providing transfer, transportation or disposal services hereunder) or supplier to furnish labor, services, materials or equipment on the dates agreed to if the affected party has used best efforts to obtain substitute labor, services, materials or equipment on the agreed upon dates;

but excluding:

(i) CITY or COUNTY's own breach of its obligations hereunder;
(ii) with respect to the COUNTY, the failure of any operations or technology at the Facility, unless caused by Uncontrollable Circumstances;

(iii) with respect to either party, any change in law adopted by either party other than in compliance with mandate of State, federal or other governmental agency law, regulation or directive;

(iv) strikes, work stoppages or other labor disputes or disturbances other than failures of subcontractors or suppliers described in paragraph (4) above.

Unpermitted Waste means wastes that NARS or Kiefer may not receive under their permits.

2. TERM

This Agreement shall commence on the date first written above and shall end on June 30, 2030.

3. NOTICE

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by mail, addressed as follows:

TO COUNTY:	TO CITY:
Department of Waste Management & Recycling County of Sacramento 9850 Goethe Road Sacramento, CA 95827 Attn: Paul Philleo, Director	City of Sacramento Dept. of Utilities, Solid Waste Services 2812 Meadowview Road Sacramento, CA 95832 Attn: Edison Hicks, General Manager

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

4. SCOPE OF SERVICES

Services under this Agreement shall commence immediately upon approval of the agreement by both parties. The COUNTY shall accept at NARS Permitted Waste delivered by the CITY as provided for in this Agreement.

A. Acceptance of Permitted Waste and Landfill Practices.

During the term of this Agreement, COUNTY guarantees that it shall accept, transfer, transport, and dispose up to a maximum of up to 200 tons per weekday Monday through Friday and 200 tons each Saturday for a maximum of 50,000 tons per Contract Year of any Permitted Waste delivered by the CITY to NARS, according to standard solid waste handling practices, the terms and conditions of the Solid Waste Facilities Permits issued by the local enforcement agency for NARS, and the State of California Minimum Standards for transfer station operations. COUNTY shall deliver any such Permitted Waste delivered by the CITY to NARS to the Kiefer Landfill for ultimate disposal.

B. Rejection of Unpermitted Waste.

COUNTY may refuse to accept Unpermitted Waste delivered by the CITY at NARS. COUNTY shall implement an inspection procedure to check for delivery of Unpermitted Waste at NARS. If COUNTY inadvertently accepts delivery of Unpermitted Waste at NARS, COUNTY shall use reasonable business efforts to determine who delivered the Unpermitted Waste at NARS. If COUNTY determines that CITY delivered the Unpermitted Waste , CITY shall pay the costs for the handling, cleanup and disposal of such Unpermitted Waste. City may dispute requirement to pay in accordance with Section 16 herein.

C. Disposal Capacity

COUNTY does hereby certify and acknowledge that Kiefer has capacity currently permitted in accordance with Applicable Law pertaining to Kiefer and will maintain such capacity sufficient, at a minimum, to accept all Permitted Waste delivered by the CITY to NARS during the term of this Agreement in accordance with the terms of this Agreement.

D. COUNTY Operating Procedures

The parties acknowledge that consistent and efficient facility operation is of utmost importance to the CITY and any delays in unloading at NARS increases the CITY's hauling costs; and the CITY has considered and relied on COUNTY's representations as to its quality of service commitment in entering into this Agreement. The parties further recognize that quantified standards of performance are necessary and appropriate to ensure consistent and reliable service. To that end, the COUNTY guarantees that the COUNTY will serve the CITY in a workmanlike fashion and CITY vehicles will receive the same level of access as COUNTY vehicles utilizing NARS. Further all COUNTY operational policies applicable to COUNTY vehicles, shall be applicable to CITY vehicles and CITY contractor vehicles. The CITY and COUNTY agree to meet and confer concerning any claim that the CITY has failed to comply with operational policies applicable to COUNTY vehicles. Failure to comply with operational policies shall not be a default under this Agreement.

E. Receiving Hours.

COUNTY shall accept waste delivered by the CITY at NARS during its normal operating hours of 6:30 a.m. to 6:00 p.m. (Monday – Friday) and 8:30 a.m. to 4:00 p.m. (Saturday and Sunday), or such other times as the Parties may mutually agree ("Receiving Hours"). COUNTY may deny access to NARS when waste is delivered outside the Receiving Hours or when NARS is partially or completely closed due to Uncontrollable Circumstances.

5. CONTRACT SERVICE FEES, SINGLE STREAM RECYCLABLES TRANSFER FEES, INVOICING, AND PAYMENTS

A. Contract Service Fees

1. The Contract Service Fee for Permitted Waste delivered to NARS shall be $42.00/ton delivered. The Contract Service Fee consists of a Contract Tipping Fee as defined in section 5(A)(3) below in the amount of $40.60 and the State of California Board Of Equalization Integrated Waste Management Fee (hereinafter "BOE Fee") in the amount of $1.40. There is no minimum tonnage requirement for the CITY to deliver Permitted Waste to NARS. The BOE shall be determined pursuant to Section 5(A)(2) below.

2. The BOE fee shall be the entire amount, as determined by the BOE of the BOE Fee. As of the execution of this Agreement, the BOE fee is $1.40. COUNTY shall provide CITY with notice of any changes to the BOE Fee immediately upon the COUNTY receiving notification from the state BOE. Any adjustment to the BOE Fee shall become effective upon the effective date of the change in the BOE Fee.

3. The Contract Tipping Fee consists of a "Non-Fuel Component" in the amount of $38.57 and a "Fuel Component" in the amount of $2.03. The Non Fuel Component shall be adjusted annually pursuant to Section 5(A)(4) below. The Fuel Component shall be adjusted pursuant to Section 5(A)(5) below.

4. The adjustment of the Non-Fuel Component of the Contract Tipping Fee shall be adjusted to be effective July 1 of each Contract Year by computing seventy five percent (75%) of the percentage change in the CPI on each April 1 prior to the commencement of each Contract Year, from the CPI level as of the previous April 1, and multiplying the Non-Fuel Component then in effect by one plus such percentage change. The adjustment may result in an increase or decrease in the Non-Fuel Component of the Contract Tipping Fee. In no event shall the adjustment of the Non-Fuel Component of the Contract Tipping Fee (i.e. the adjusted amount for the Non-Fuel Component) result in an increase of over six percent (6%) for any Contract Year.

5. The adjustment of the Fuel Component of the Contract Tipping Fee shall be adjusted to be effective July 1 of each Contract Year by computing percentage change in the EIA Diesel Retail Price for the month of April prior to the commencement of each Contract Year from the same value for the month of April of the prior year, and multiplying the Fuel Component then in effect by one plus such percentage change. The adjustment may result in an increase or decrease in the Fuel Component as the case may be.

6. The combined changes to the Non Fuel Component and Fuel Component of the Contract Tipping Fee shall not be increased or decreased by more than ten percent (10%) as compared to the prior year for the Contract Tipping Fee.

7. The Contract Tipping Fee shall not exceed Gate Tipping Fee. If an annual CPI/EIA adjustment would result in exceeding the current gate tipping fee, adjustment shall be made to not exceed the current Gate Tipping Fee.

8. The Contract Tipping Fee will be adjusted lower to match any new contracts during contract term ("Most Favored Nations Clause"), as applicable (excludes any existing contracts or future amendments thereto).

A. 9. The Contract Tipping Fee includes transfer out of NARS by COUNTY. COUNTY will be responsible for transfer hauling and disposal costs for MSW delivered by CITY to NARS.

10. Penalty for Delinquent Disposal Account. If CITY'S disposal account is determined to be delinquent and it is determined by COUNTY that delinquency was caused by conditions:

a). outside of CITY'S control, such as Uncontrollable Circumstances, then no penalty shall be assessed to CITY, or

b). within CITY'S control, then COUNTY may assess a penalty of ten percent (10%) to the total value of the delinquent amount.

11. Exhibit A is attached hereto and incorporated herein by this reference. The parties agree that said exhibit contains examples of the calculation of the adjustment to the Non-Fuel Component of the Contract Tipping Fee and adjustment to the Fuel Component of the Contract Tipping Fee.

B. <u>Green Waste Services.</u>

No Green Waste services are provided in this contract.

C. <u>Invoices and Payments</u>

1. Monthly. COUNTY will invoice CITY each month for waste deliveries made by CITY to NARS

2. Payment. CITY shall pay COUNTY within sixty (60) days of receipt of the invoices. Payment shall be delivered by first class mail to the COUNTY OF SACRAMENTO:

County of Sacramento
Consolidated Utilities Billing
Attn: Accounting Unit
9700 Goethe Road, Suite C
Sacramento, CA 95827

3. Delinquent Disposal Account. CITY's disposal account shall be delinquent if full payment of the invoice amount is not received by COUNTY within 60 days from the date of receipt of the invoice by CITY, and said disposal account shall remain delinquent until full and current payment is received by COUNTY. Unless CITY notifies COUNTY pursuant to Section 3 above of a dispute over the amount claimed due on an invoice, failure to pay COUNTY within one year of receipt of an invoice constitutes a default under this Agreement.

4. Invoice Format and Content. COUNTY's invoices shall follow the format and content of the COUNTY'S WasteWORKS scale software system or similar.

D. Additional Negotiated Terms.

1. Emission Reduction Credit (ERC) – Presently no protocol exists to calculate or value ERC's due to reductions in vehicular miles traveled. CITY and COUNTY agree to meet and negotiate assignment of ERC's once protocols are established.

2. COUNTY will not use or lease its South Area Transfer Station (SATS) for transfer of MSW. COUNTY reserves the right to lease SATS to another party for any other allowable use. COUNTY can sell SATS at its sole discretion. CITY will not deliver MSW to any other north area MSW transfer station during the term of this Agreement.

E. Kiefer Closure and Post-Closure Care.

1. Cost included in Service Fee. COUNTY acknowledges that the Tipping Fee paid by CITY under this Agreement compensates COUNTY for COUNTY's best estimate of the costs of closure and post-closure obligations with respect to Kiefer allocable to Permitted Waste. COUNTY releases the CITY from any obligation to provide for closure or post closure funding and care of Kiefer, regardless of the accuracy or adequacy of such estimates. COUNTY assumes full financial responsibility for closure of Kiefer and post-closure obligations with

respect to CITY and shall defend, indemnify and hold harmless CITY in accordance with this Agreement.

2. Closure and Post-Closure Plan. Throughout and subsequent to the Term of this Agreement, COUNTY will close Kiefer substantially in accordance with its closure and minimum thirty year post-closure plan, including with respect to closure, the grade, cap, revegetation, surface water drainage systems, environmental control systems (leachate and gas collection and treatment), and with respect to post-closure, leachate and gas migration monitoring, inspection protocol, and leachate or gas extraction and treatment as described in the Closure and Post-Closure Maintenance Plan. COUNTY will provide such plan to CITY promptly upon request therefore.

6. COMPLIANCE WITH LAWS

The parties shall observe and comply with all applicable Federal, State, and County laws, regulations and ordinances.

COUNTY shall immediately notify CITY, in writing of any notices of violation, failure to comply with law or regulation, or adverse permit action received from any legislative body or regulatory agency with jurisdiction over Kiefer which notices shall include a copy of any such notice from any such body or agency. Failure of the COUNTY to immediately notify CITY shall not be a default under this Agreement.

7. GOVERNING LAWS AND JURISDICTION

This Agreement shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to this Agreement shall be brought in Sacramento County, California.

8. LICENSES AND PERMITS

The parties shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Sacramento and all other appropriate governmental agencies. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement.

9. INDEMNIFICATION AND DEFENSE

A. **Indemnification.** Except in cases of sole and active negligence or willful misconduct on the part of the CITY and/or its related parties, COUNTY, its successors and assigns agree to defend and hold harmless, and indemnify the

CITY and its related parties (as defined below) from any and all claims, costs or damages whatsoever arising out of or in any way related, directly or indirectly, to this Agreement, including, without limitation:

1. **Personal Injuries and Property Damage.** Personal injuries including wrongful death and property damage of any kind, nature or sort;

2. **Penalties, Fines and Charges.** Penalties, fines and charges arising from COUNTY's violation of Applicable Law;

3. **Environmental.** Any condition of NARS or Kiefer or associated with the operation, maintenance or closure thereof relating to hazardous or toxic substances and other environmental damage or liability, including any one or more release or threatened release of any materials (including Hazardous Waste) and water or ground water contamination there from and replacement or restoration of natural resources arising from or related to toxic or hazardous substances (including Hazardous Waste) or petroleum products and specifically, without limitation, COUNTY shall be liable to CITY and in accordance with Applicable Law for releases occurring in connection with its performance related to this Agreement of any materials, including Hazardous Waste, into the environment from NARS or the Kiefer Landfill, including any repair, cleanup or detoxification thereof, or preparation and implementation of any removal, remedial, response, closure or other plan with respect thereto (regardless of whether undertaken due to governmental action);

4. **CERCLA.** This indemnity of CITY and its related parties by the COUNTY is intended to operate as an agreement pursuant to, but not limited to, Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25346, to insure, protect, hold harmless, defend and indemnify the CITY from liability in accordance with this Section. The CITY and its related parties do not hereby waive or surrender any other indemnity available to it under any Applicable Law.

B. **Defense of CITY.** COUNTY agrees to further, upon CITY request, with counsel mutually agreeable to both the CITY and the COUNTY, to defend at COUNTY's sole cost any action, claim or suit which asserts or alleges any such liabilities, whether well founded or not and whether or not such action, claim or suit also asserts or alleges negligent or wrongful conduct by CITY and/or its related parties.

C. **Allocation of Liability.** In the event that a final decision or judgment allocates liability by determining that any portion of damages awarded is attributable to the CITY's (or CITY's related parties') active negligence or willful misconduct, the CITY shall pay the portion of damages which is allocated to the CITY's (or its related parties') active negligence or willful misconduct. As used

herein, the phrase "active negligence or willful misconduct" shall not include any negligent act or omission by the CITY or its related parties occurring in connection with or related to the review, approval, supervision or acceptance of any service or work product performed or provided by COUNTY.

D. Related Parties. "CITY and its related parties"; "liabilities"; or "COUNTY and related parties". For purposes of this Section 9, "CITY and its related parties" includes CITY and CITY's Council members, officers, officials, employees, contractors, subcontractors, consultants, agents, assigns and volunteers and each and every one of them; "liabilities" means liabilities, lawsuits, claims, demands, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs, expenses, loss and other detriments of every nature and description whatsoever, including all costs and expenses of litigation or arbitration, attorneys fees (whether CITY's staff attorneys or outside attorneys and court costs, whether under State or federal law); and "COUNTY" and its related parties" means COUNTY and COUNTY's Board of Supervisors, officers, employees, contractors, subcontractors, consultants, agents, assigns, volunteers, and invitees and each and every one of them.

E. Survival. THE TERMS OF THIS SECTION 9 (DEFENSE AND INDEMNITY) SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

10. INSURANCE

A. COUNTY, at its sole cost and expense, shall carry insurance –or self-insure - its activities in connection with this Agreement, and obtain, keep in force and maintain, insurance or equivalent programs of self-insurance, for general liability, workers compensation, and business automobile liability adequate to cover its potential liabilities hereunder. COUNTY agrees to provide the CITY thirty (30) days' advance written notice of any cancellation, termination or lapse of any of the insurance or self-insurance coverages. COUNTY shall provide an affidavit of self-insurance satisfactory the CITY's risk management division.

B. Notice of Cancellation or Change. Any insurance policy required by this Agreement shall be endorsed to state that coverages shall not be cancelled or changed except after thirty (30) days prior written notice has been given to CITY.

11. SUBCONTRACTS OR ASSIGNMENT

A. CITY shall provide written notice to COUNTY 5 business days in advance of subcontracting any delivery of waste under this Agreement. CITY remains responsible for the performance of all contract terms, and subcontracting will be subject to all applicable provisions of this Agreement.

B. This Agreement is not assignable by CITY in whole or in part, without the prior written consent of COUNTY.

12. AMENDMENT AND WAIVER

Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder.

13. SUCCESSORS

This Agreement shall bind the successors of COUNTY and CITY in the same manner as if they were expressly named.

14. TIME

Time is of the essence of this Agreement.

15. INTERPRETATION

This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

16. DISPUTES

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. If the dispute cannot be resolved by mutual agreement, nothing herein shall preclude either party's right to pursue remedy or relief by civil litigation, pursuant to the laws of the State of California.

17. DEFAULTS

The COUNTY's failure to accept all Permitted Waste as provided for in this Agreement, including but not limited to Section 4 above is a COUNTY default.

The CITY's failure to pay COUNTY within one year of receipt of an invoice is a CITY default.

18. REMEDIES UPON DEFAULT

In the event of COUNTY default, CITY shall have the right to terminate the Agreement. The CITY shall have available to it all rights and remedies allowable in law or equity, including, but not limited to, the right to collect all costs and damages incurred by CITY as a result of COUNTY default such as the cost to secure or engage others to replace the services otherwise to be performed by COUNTY or CITY under this Agreement and any consequential fines and penalties assessed on the CITY arising from COUNTY default.

In the event of CITY default, COUNTY shall have the right to terminate the Agreement. The COUNTY shall have available to it all rights and remedies allowable in law or equity, including, but not limited to, the right to collect all costs and damages incurred by COUNTY as a result of CITY default and any consequential fines and penalties assessed on the COUNTY arising from CITY default.

19. TERMINATION FOR CONVENIENCE

CITY may terminate this Agreement with 36 (thirty-six) months notice to COUNTY. The COUNTY may terminate this Agreement with 36 (thirty-six) months notice to CITY. Notice shall be deemed served on the date of mailing.

20. RECORDS

COUNTY shall keep daily accurate and complete records in paper, electronic, magnetic or other media with sufficient detail to allow the COUNTY to calculate and CITY to corroborate the Contract Tipping Fee. Upon CITY request therefore, COUNTY shall supply CITY with any or all computations, records, files, correspondence, reports and data prepared by or possessed by the COUNTY relating to the Contract Tipping Fee no later than ten (10) days after request therefore.

COUNTY shall keep daily accurate and complete records in paper, electronic, magnetic or other media with sufficient detail to allow the COUNTY to calculate and CITY to corroborate the Tipping Fee to be paid through the COUNTY-BLT Disposal Agreement referenced below in Section 27(1). Upon CITY request therefore, COUNTY shall supply CITY with any or all computations, records, files, correspondence, reports and data prepared by or possessed by the COUNTY relating to the Contract Tipping Fee no later than ten (10) days after request therefore.

For purposes relating to this Agreement and Performance Obligations hereunder, CITY shall have full ownership and control of all reports specifically produced by COUNTY for the CITY pursuant to this Agreement. With regard to other records which COUNTY is obligated to provide hereunder, such records shall remain in

the ownership of COUNTY, and COUNTY shall have full control over such records. CITY shall be provided full access to and use thereof "Records." For purposes of this Section, "Records" includes documents, writings, handwriting, typewriting, printing, photostating, photographing, computer models and any other computerized data and every other means of recording any form of information, communication or representation, including letter, works, pictures, drawings, sounds or symbols or any combination thereof.

COUNTY shall keep records of additional information, in different media, or alternative formats as COUNTY and CITY may mutually agree.

21. PRIOR AGREEMENTS

This Agreement constitutes the entire contract between COUNTY and CITY regarding the subject matter of this Agreement. Any prior agreements, whether oral or written, between COUNTY and CITY regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.

22. SEVERABILITY

If any term or condition of this Agreement or the application thereof to any person(s) or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.

23. UNCONTROLLABLE CIRCUMSTANCES

Neither CITY nor COUNTY shall be liable or responsible for delays or failures in performance resulting from Uncontrollable Circumstances.

24. SURVIVAL OF TERMS

All services performed and deliverables provided pursuant to this Agreement are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive.

25. AUTHORITY TO EXECUTE

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement for

or on behalf of the parties to this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized.

26. DUPLICATE COUNTERPARTS

This Agreement may be executed in duplicate counterparts. The Agreement shall be deemed executed when it has been signed by both parties.

27. EFFECTIVE DATE

This Agreement shall not be effective unless:

1. BLT Enterprises of Sacramento, LLC. enters into an agreement with COUNTY for disposal services for City of Sacramento generated MSW at the County of Sacramento Kiefer Landfill ("COUNTY-BLT Disposal Agreement");

2. BLT Enterprises of Sacramento, LLC. enters into an agreement with the COUNTY for use of the Sacramento Recycling and Transfer Station located at 8491 Fruitridge Road, Sacramento for County waste;

3. CITY and BLT Enterprises of Sacramento, LLC. enter into an Amended Service Agreement for Municipal Solid Waste Transfer, Transport, Disposal, Processing and Recovered Materials Diversion; and

4. BLT Enterprises of Sacramento, LLC. gives written notice to the subcontractor of that certain Disposal Facility Subcontract dated March 29, 1999 incompliance with the terms of the Disposal Facility Subcontract dated March 29, 1999 with a copy of such written notice forwarded to the City.

28. USE OF THE COUNTY KEIFER LANDFILL

COUNTY and CITY agree that if COUNTY terminates the COUNTY-BLT Disposal Agreement referenced above in Section 27(1) for any reason, the CITY shall have the right to use the County of Sacramento Keifer Landfill pursuant to the terms and conditions of the COUNTY-BLT Disposal Agreement for a period of not less than six (6) months after receiving notice of termination of the COUNTY-BLT Disposal Agreement from the COUNTY in the manner provided in Section 3 above.

(SIGNATURE PAGE FOLLOWS.)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

COUNTY OF SACRAMENTO, a political subdivision of the State of California

By: _____
Paul Philleo, Director
Department of Waste Management and Recycling
Municipal Services Agency

"COUNTY"

Date: _____

Signed by the Director under the authority delegated by Resolution Number 99-0327.

Agreement approved by Board of Supervisors.

Agenda Date: _____

Item Number: _____

Reviewed and Approved by County Counsel:

By: _____ Date: _____
Diane E. McElhern
Deputy County Counsel

CITY OF SACRAMENTO, a municipal corporation

By: _____ Date: _____
Gus Vina
Interim City Manager

Approved as to Form

_____ Date: _____
City Attorney

Attest

_____ Date: _____
City Clerk

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Exhibit A

Note: *Data in this Exhibit represents sample Contract Service Fee escalation using available 2008 and 2009 numbers*

Previous Year Base Amounts

BOE Fee	$1.40	
Contract Tipping Fee	$40.60	
Contract Service Fee	**$42.00**	
Base Year Contract Tipping Fee	**$40.60**	
includes		
Base Year Non-Fuel Component	$38.57	95% of Contract Tipping Fee
Base Year Fuel Component	$2.03	05% of Contract Tipping Fee
Previous Year's April CPI	222.074	Source:
This Year's April CPI	223.854	http://data.bls.gov/cgi-bin/surveymost?cu
Change in CPI	**0.80%**	Select 'San Francisco ...' then Click 'Retrieve Data'
Previous Year's April EIA Price	426.5	Source:
This Year's April EIA Price	233.6	http://tonto.eia.doe.gov/dnav/pet/pet_pri_gnd_dcus_sca_m.htm
EIA Price Change	**-45.23%**	Select Area: California and Period: Monthly
		Click on '1995-2008 in the 'View History' column for 'Diesel (On-Highway) - All Types'

Calculation

	No Cap	Calculations
Benchmarks		
75% of Change in CPI	0.60%	75% x (CPI % Change from Previous Year's April to April This Year's)
EIA Price Change	-45.23%	EIA Price % Change from Previous Year's April to April This Year's
Non-Fuel Component		
Maximum Allowable Non-Fuel Component Adjustment	$2.31	6% x (Base Year Non-Fuel Component)
Calculated Non-Fuel Component Increase	$0.23	(Base Year Non-Fuel Component) x [75% of Change in CPI]
Non-Fuel CAP Test	NO CAP	CAP If [Calculated Non-Fuel Component) Increase] > [Maximum Allowable Non-Fuel Component Adjustment]
Non-Fuel Component Adjustment	**$0.23**	[Calculated Non-Fuel Component Increase] if 'NO CAP', [Maximum Allowable Non-Fuel Component Adjustment] if 'CAP'
Fuel Component		
Calculated Fuel Increase	-$0.92	(Base Year Fuel Component) x [EIA Price Change]
Fuel Component Adjustment	**-$0.92**	
Contract Tipping Fee		
Maximum Allowable Contract Tipping Fee Adjustment	$4.06	10% x (Base Year Service Fee)
Calculated Allowable Contract Tipping Fee Adjustment	-$0.69	[Non-Fuel Component Adjustment] + [Fuel Component Adjustment]
Contract Tipping Fee CAP Test	NO CAP	CAP If [Calculated Allowable Contract Tipping Fee Adjustment] > [Maximum Allowable Contract Tipping Fee Adjustment]
Contract Tipping Fee Adjustment	**-$0.69**	[Calculated Allowable Contract Tipping Fee Adjustment] if 'NO CAP', [Maximum Allowable Contract Tipping Fee Adjustment] if 'CAP'
New Base Amounts for Next Fiscal Year		
BOE Fee	$1.40	Previous Year's BOE Fee unless changed by BOE
Adjusted Contract Tipping Fee	$39.91	(Base Year Contract Tipping Fee) + [Contract Tipping Fee Adjustment]
Adjusted Contract Service Fee	**$41.31**	(BOE Fee) + (Adjusted Contract Tipping Fee)

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AMENDED AGREEMENT FOR PURCHASE OF RECYCLABLES BETWEEN THE CITY OF SACRAMENTO AND BLT ENTERPRISES OF SACRAMENTO, LLC

THIS AGREEMENT ("Amended Agreement") is made at Sacramento, California, as of _____, by and between the **CITY OF SACRAMENTO,** a municipal corporation ("CITY"), and BLT Enterprises of Sacramento, LLC ("BLT").

Recitals

A. In November 2007, CITY entered into an agreement with BLT for purchase of Recyclable Materials (as defined herein) from the CITY's Curbside Recycling Program ("Recycling Agreement"). Under the terms of the Recycling Agreement, the CITY delivers Recyclable Materials from the CITY's Curbside Recycling Program to BLT and BLT purchases the Recyclable Materials. The Recycling Agreement expires on February 13, 2013.

B. Separate from the Recycling Agreement, the CITY and BLT are parties to an agreement for the transfer, transport, disposal and processing of municipal solid waste ("MSW") ("Service Agreement"). Under the terms of the Service Agreement, the City delivers MSW to the BLT transfer station located on Fruitridge Road, Sacramento and BLT transfers the MSW to a disposal site located in Lockwood, Nevada.

C. The CITY, BLT, and the County of Sacramento have negotiated a series of agreements including an amended Service Agreement that would provide for in region disposal of CITY MSW at the Sacramento County Kiefer Landfill.

D. As partial consideration for amending the Service Agreement, the CITY and BLT have agreed to amend the Recycling Agreement pursuant to this Amended Agreement, including requiring Commercial Recyclable Materials (as defined herein) collected citywide by the City (and by City Franchisees (as defined herein) south of the American River) to be delivered to BLT for purchase (with respect to City Franchisees, only if the CITY franchises collection of Commercial Recyclable Materials south of the American River).

E. As additional partial consideration for amending the Service Agreement, the CITY and BLT have agreed to extend the terms of the Recycling Agreement pursuant to this Amended Agreement so that this Amended Agreement shall run concurrently with the term of the Amended Service Agreement (as defined herein).

Now therefore, in consideration of the mutual promises hereinafter set forth, CITY and BLT agree as follows:

Definitions

"CITY Franchisee(s)" means a private hauler who collects Commercial Recyclable Materials pursuant to a franchise or other similar agreement between the CITY and the private hauler. "CITY Franchisee(s)" is not intended to include haulers who collect in an open or unregulated market.

"Commercial Recyclable Material(s)" are Recyclable Materials collected from business or industrial generators and multi-family residences of five or more units.

"Curbside Recycling Program" means the CITY's program for collection of Recyclable Materials segregated for collection by residential generators.

"Recyclable Materials" means corrugated cardboard, newspaper, office paper, mixed paper, clear glass, colored glass, flat glass, ferrous metals, non-ferrous metals, HDPE, PET, film plastic, wood, textiles, tires, and such other materials collected in recycling programs in the State and designated from time to time by the City.

1. **Delivery of Recyclables Materials.** CITY shall deliver all Recyclable Materials collected through the CITY's Curbside Recycling Program to BLT and BLT shall accept such Recyclable Materials pursuant to the provisions in the attached Exhibit A. All City collected Commercial Recyclable Materials shall be delivered to BLT and BLT shall accept such Commercial Recyclable Material(s) pursuant to the provisions in the attached Exhibit A-1. If the CITY franchises collection of Commercial Recyclable Materials south of the American River, for the duration of any such franchise, the CITY shall cause all such Commercial Recyclable Materials collected south of the American River by CITY Franchisees to be delivered to BLT and BLT shall accept such Commercial Recyclable Materials pursuant to the provisions in the attached Exhibit A-1.

2. **Payment.** BLT shall pay CITY for all the delivered Recyclable Materials collected through the CITY's Curbside Recycling Program pursuant to the provisions in the attached Exhibits B, C, D, E and F. BLT shall pay CITY for all the delivered Commercial Recyclable Materials collected citywide by CITY and/or collected by CITY Franchisees south of the American River pursuant to the provisions in the attached Exhibit B-1, C-1, D-1, E-1 and F-1.

3. **Time of Performance; Term.** This Amended Agreement shall not be effective unless and until the City and BLT execute an amended Service Agreement between the City and BLT for municipal solid waste transfer, transport, disposal, processing and recovered materials diversion ("Amended Service Agreement"). The term of this Amended Agreement shall be concurrent with the term of the Amended Service Agreement unless sooner terminated under the provisions of this Amended Agreement.

4. **Notices and Representatives.** Any and all notices to or from CITY or BLT shall be in writing.

Notices to City under this Amended Agreement shall be addressed and mailed (or personally delivered) to the following CITY representative:

Solid Waste Support Services Manager
City of Sacramento, Department of Utilities
2812 Meadowview Road
Sacramento, CA 95832
916-808-4931

Notices to BLT under this Amended Agreement shall be addressed and mailed (or personally delivered) to the following BLT representative:

Shawn Guttersen
BLT Enterprises
8491 Fruitridge Road
Sacramento, CA 95826
916-379-0500

Either party may change the address to which subsequent notice and/or other communications can be

sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

5. **Independent Contractor**.

A. It is understood and agreed that BLT (including BLT's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto for any purpose whatsoever. Neither BLT nor BLT's assigned personnel shall be entitled to any benefits payable to employees of CITY. As an independent contractor, BLT hereby agrees to indemnify and hold CITY harmless from any and all claims that may be made against CITY based upon any contention by any of BLT's employees or by any third party, including but not limited to any state or federal agency, that an employer-employee relationship or a substitute therefor exists for any purpose whatsoever by reason of this Amended Agreement.

B. If, in the performance of this Amended Agreement, any third persons are employed or used by BLT, such persons shall be deemed under the direction, supervision, and control of BLT and not City. Except as may be specifically provided elsewhere in this Amended Agreement, all terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by BLT. It is further understood and agreed that BLT shall issue W-2 or 1099 Forms for income and employment tax purposes, for all of BLT's assigned personnel and subcontractors.

C. The provisions of this Section 5 shall survive any expiration or termination of this Amended Agreement. Nothing in this Amended Agreement shall be construed to create an exclusive relationship between CITY and BLT. BLT may represent, perform services for, or be employed by such additional persons or companies as BLT sees fit provided that BLT does not violate the provisions of Section 9, below.

6. **Licenses; Permits, Etc.** BLT represents and warrants that BLT has all licenses, permits, City Business Operations Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for BLT to perform under the terms of this Amended Agreement. BLT represents and warrants that BLT shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Amended Agreement any licenses, permits, and approvals that are legally required for BLT to perform under the terms of this Amended Agreement. Without limiting the generality of the foregoing, if BLT is an out-of-state corporation, BLT warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.

7. **Time.** BLT shall devote such time and effort to the performance of its obligations pursuant to this Amended Agreement as is necessary for the satisfactory and timely performance of BLT's obligations under this Amended Agreement. Neither party shall be considered in default of this Amended Agreement, to the extent that party's performance is prevented or delayed by any cause, present or future, that is beyond the reasonable control of that party.

8. **BLT Not Agent.** Except as CITY may specify in writing, BLT and BLT's personnel shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. BLT and BLT's personnel shall have no authority, express or implied, to bind CITY to any obligations whatsoever.

9. **Conflicts of Interest.** BLT covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY hereunder or that would in any way hinder BLT's performance under this Amended Agreement. BLT further covenants that in the performance of this Amended Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. BLT agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Amended Agreement. If BLT is or employs a former officer or employee of the CITY, BLT and any such employee(s) shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City Council or any CITY department, board, commission or committee.

10. **Standard of Performance.** BLT shall perform pursuant to this Amended Agreement in the manner and according to the standards currently observed by a competent practitioner of BLT's profession in California.

11. **Suspension; Termination.** In the event of a material default in the performance of this Amended Agreement by BLT, CITY shall notify BLT in writing of the nature of such default. Within thirty (30) days:

    A. BLT shall correct the default; or

    B. BLT shall request additional time in order to correct the default. The time extension must be approved by the CITY's Director of Utilities or designee.

    If BLT fails to correct the default as provided above, CITY, without further notice, shall have available to it all rights and remedies allowable in law or equity including all of the following which the CITY may exercise singly or in combination:

    A. The right to declare that this Amended Agreement together with all rights granted BLT hereunder are terminated, effective upon such date as the CITY shall designate;

    B. The right to engage others to perform the services otherwise to be performed by BLT hereunder, or to perform such services itself;

    C. Collect all sums due and payable to CITY. The remedies specified herein are not exclusive. CITY shall have available to it all rights and remedies allowable in law and equity in the event of a material default of BLT.

    In the event CITY shall terminate this Amended Agreement, CITY will have complete documentation of all transactions as part of BLT's normal reporting and accounting system.

12. **Defense and Indemnity.**

    A. Defense. Upon CITY's request, BLT shall defend with legal counsel acceptable to the CITY at BLT's sole cost, any action, claim or suit which asserts or alleges any liabilities (defined as liabilities, lawsuits, claims judgments, demands, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs, expenses, loss, penalties and other detriments of every nature and description whatsoever, including all costs and expenses of litigation or arbitration, attorneys fees (whether CITY's staff attorneys or outside attorneys) and court costs, whether under State or federal law), whether well founded or not, arising or resulting from, in whole or in

part, directly or indirectly, any wrongful or negligent act, error or omission of BLT related parties defined as BLT and/or its officers, directors, shareholders, partners, agents, employees, contractors, subcontractors, consultants, licensees or invitees or of CITY related parties defined as CITY and/or its CITY Council members, officers, officials, employees, contractors, subcontractors, consultants, agents, assigns and volunteers, performed or occurring under or in connection with the Amended Agreement.

Notwithstanding the foregoing, BLT shall have no defense obligations as described in this subsection if the claim giving rise to the obligation shall arise from, in whole or in part, directly or indirectly, any wrongful or negligent act, error or omission of CITY and/or CITY's related parties and BLT is not also named as a defendant in any such claim or cause of action.

B. Indemnity. BLT shall indemnify and hold harmless CITY related parties defined in Section A above and each and every one of them, from and against all liabilities as defined in Section A above to which any of them may be subjected by reason of, or resulting directly or indirectly from any wrongful or negligent act, error or omission of BLT and or BLT's related parties as defined in Section A above whether or not such liabilities are caused in part by any wrongful or negligent act, error or omission of any party indemnified hereunder; provided that if a final decision or judgment allocates liability by determining that any portion of damages awarded is attributable to a wrongful or negligent act, error or omission of the CITY and/or CITY's related parties, the CITY shall pay such portion of damages.

C. Insurance Policies; Intellectual Property Claims: The existence or acceptance by CITY of any of the insurance policies or coverages described in this Amended Agreement shall not affect or limit any of CITY's rights under this Section 12, nor shall the limits of such insurance limit the liability of BLT hereunder. The provisions of this Section 12 shall survive any expiration or termination of this Amended Agreement.

13. Insurance Requirements. During the entire term of this Amended Agreement, BLT shall maintain the insurance coverage described in this Section 13.

It is understood and agreed by BLT that its liability to the CITY shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the BLT in connection with this Amended Agreement.

A. Minimum Scope & Limits of Insurance Coverage

(1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars ($1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

(2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars ($1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of BLT.

(3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars ($1,000,000). The Worker's Compensation policy shall include a waiver of subrogation for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

_____ Workers' Compensation waiver of subrogation in favor of the CITY is required for all work performed by BLT.

B. Additional Insured Coverage

(1) Commercial General Liability Insurance: CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of BLT, products and completed operations of BLT, and premises owned, leased or used by BLT. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier for contracts involving construction or maintenance, or if required by the CITY by selecting the option below:

_____ Additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

(2) Automobile Liability Insurance: The CITY, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

(1) BLT's insurance coverage shall be primary insurance as respects CITY, its officials, employees and volunteers. Any insurance or self-insurance maintained by CITY, its officials, employees or volunteers shall be in excess of BLT's insurance and shall not contribute with it.

(2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officials, employees or volunteers.

(3) Coverage shall state that BLT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(4) CITY will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 13 must be declared to and approved by the CITY Risk Management Division in writing prior to execution of this Amended Agreement.

E. Verification of Coverage

(1) BLT shall furnish CITY with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the CITY representative named in Section 4. Copies of policies shall be delivered to the CITY on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

(2) The CITY may withdraw its offer of contract or cancel this Amended Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Amended Agreement. The CITY may withhold payments to BLT and/or cancel the Amended Agreement if the insurance is canceled or BLT otherwise ceases to be insured as required herein.

F. Subcontractors

BLT shall require and verify that all subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsection A, above.

14. Equal Employment Opportunity. During the performance of this Amended Agreement, BLT, for itself, its assignees and successors in interest, agrees as follows:

A. Compliance With Regulations: BLT shall comply with the Executive Order 11246 entitled "Equal Opportunity in Federal Employment", as amended by Executive Order 11375 and 12086, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), hereinafter collectively referred to as the "Regulations".

B. Nondiscrimination: BLT, with regards to the work performed by it after award and prior to completion of the work pursuant to this Amended Agreement, shall not discriminate on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation in selection and retention of subcontractors, including procurement of materials and leases of equipment. BLT shall not participate either directly or indirectly in discrimination prohibited by the Regulations.

C. Solicitations for Subcontractors, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by BLT for work to be performed under any subcontract, including all procurement of materials or equipment, each potential subcontractor or supplier shall be notified by BLT of BLT's obligation under this Amended Agreement and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex, national origin, age, marital status, physical handicap or sexual orientation.

D. Information and Reports: BLT shall provide all information and reports required by the Regulations, or by any orders or instructions issued pursuant thereto, and shall permit

access to its books, records, accounts, other sources of information and its facilities as may be determined by the CITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of BLT is in the exclusive possession of another who fails or refuses to furnish this information, BLT shall so certify to the CITY, and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance: In the event of noncompliance by BLT with the nondiscrimination provisions of this Amended Agreement, the CITY shall impose such sanctions as it may determine to be appropriate including, but not limited to:

(1) Withholding of payments to BLT under this Amended Agreement until BLT complies;

(2) Cancellation, termination, or suspension of the Amended Agreement, in whole or in part.

F. Incorporation of Provisions: BLT shall include the provisions of subsections A through F, above, in every subcontract, including procurement of materials and leases of equipment, unless exempted by the Regulations, or by any order or instructions issued pursuant thereto. BLT shall take such action with respect to any subcontract or procurement as the CITY may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event BLT becomes involved in, or is threatened with, litigation with a subcontract or supplier as a result of such direction, BLT may request CITY to enter such litigation to protect the interests of CITY.

15. Records and Audits. BLT agrees that CITY or any duly authorized representative of CITY shall, with reasonable notice, have access to and the right to examine any pertinent books, documents, paper, and accounting records of BLT which pertain to transactions under this Amended Agreement for a period of three (3) years after expiration of this Amended Agreement. BLT shall maintain, in its office, in the County of Sacramento, full and complete accounting records, reflecting BLT's work on this contract. CITY may require an audit of BLT's books and records at any reasonable time, for the purpose of documenting tonnage and revenue to the CITY, and not to audit BLT's expense, revenue and profit.

16. Entire Agreement. This Amended Agreement, including all Exhibits, contains the entire agreement between the parties with respect to the transactions contemplated hereby and supersedes and replaces whatever oral or written understanding they may have had prior to the execution of this Amended Agreement, including, without limitation, the Recycling Agreement. No alteration to the terms of this Amended Agreement shall be valid unless approved in writing by BLT, and by CITY, in accordance with applicable provisions of the Sacramento City Code.

17. Severability. If any portion of this Amended Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Amended Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

18. Waiver. Neither CITY acceptance of, or payment for, any Service or Additional Service performed by BLT, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Amended Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.

19. Enforcement of Agreement. This Amended Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Amended Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

20. Assignment Prohibited. The expertise and experience of BLT are material considerations for this Amended Agreement. CITY has a strong interest in the qualifications and capability of the persons and entities who will fulfill the obligations imposed on BLT under this Amended Agreement. In recognition of this interest, BLT shall not assign any right or obligation pursuant to this Amended Agreement without the written consent of the CITY given or withheld in City's reasonable discretion, including but not limited to consistency with City policy. Any attempted or purported assignment without CITY's written consent shall be void and of no effect.

21. Binding Effect. This Amended Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 19, above.

22. Authority. The person signing this Amended Agreement for BLT hereby represents and warrants that he/she is fully authorized to sign this Amended Agreement on behalf of BLT and to bind BLT to the performance of its obligations hereunder.

23. Counterparts. This Amended Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

24. Exhibits. All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.

Executed as of the day and year first above stated.

CITY OF SACRAMENTO
A Municipal Corporation

By:_____

Print name:_____
Title:_____

For: Gus Vina, Interim City Manager

APPROVED TO AS FORM:

_____
City Attorney

ATTEST:

_____ City Clerk

BLT ENTERPRISES OF SACRAMENTO, LLC.

_____
NAME OF FIRM

_____
Federal I.D. No.

_____
State I.D. No.

_____
City of Sacramento Business Op. Tax Cert. No.

TYPE OF BUSINESS ENTITY *(check one)*:

_____ Individual/Sole Proprietor
_____ Partnership
_____ Corporation *(may require 2 signatures)*
_____ Limited Liability Company
_____ Other (*please specify:* _____)

_____
Signature of Authorized Person

_____
Print Name and Title

_____
Additional Signature *(if required)*

_____
Print Name and Title

Exhibit A

DELIVERY AND ACCEPTANCE THROUGH CITY'S CURBSIDE RECYCLING PROGRAM

A. BLT shall accept Recyclable Materials for recycling from the CITY's Curbside Recycling Program.

B. BLT shall provide facility(ies) at the location(s) specified below for off-loading CITY recycling trucks and processing Recyclable Materials from the CITY's Curbside Recycling Program on the terms set forth herein:

8491 Fruitridge Road
Sacramento, CA 95826

C. Unloading Time/Truck Turnaround Time. Each CITY recycling truck entering a BLT facility(ies) shall have a maximum of fifteen (15) minutes turnaround time from the time the truck arrives at the facility until the time the truck exists the facility. The fifteen (15) minutes turnaround time shall apply under all circumstances, but shall not be enforced in the case of driver-caused delays.

D. BLT shall either provide separate scales, ingress, and egress from their facility, or otherwise accommodate CITY vehicles to avoid queuing CITY vehicles behind CITY Franchisee trucks, self-haul or other commercial trucks.

E. BLT shall provide a means to avoid "stacking" of recycling trucks on public streets as they enter their facility(ies). CITY trucks shall be provided preference if necessary to facilitate off-loading efficiencies and turnaround time.

F. Accounting System and Annual Materials Characterization

(1) BLT shall provide the CITY with scale tags and a disk (containing scale data).
(2) BLT shall conduct an annual materials characterization ("Characterization") at BLT's sole expense. The Characterization shall be conducted pursuant to the protocol attached as Exhibit F.
(3) The Characterization shall be conducted between March 1 and May 1 once in any fiscal year. The date of such Characterization shall be determined by the CITY. If the CITY does not make a written request to BLT by April 15 of a given fiscal year to conduct a Characterization, BLT shall conduct the Characterization no later than May 1 of such fiscal year. The City shall be invited to observe the Characterization.
(4) The Characterization shall identify the shares of total weights for all Recyclable Materials including materials that either Party requests to be weighed that are not included in Exhibit C and the share of total weight for waste residuals.
(5) Within fifteen (15) days following such Characterization, BLT shall notify the CITY in writing with the results of the Characterization and proposed adjustments in accordance with the results of the Characterization to the materials and amounts in Exhibit C and to the materials in Exhibit D to reflect 1) any additional Recyclable Materials identified through the annual materials characterization (if any) and proposed index for such additional Recyclable Materials (if any); 2) changes in index for any other Recyclable Materials identified-to-date if any currently utilized index no longer exists or if any currently utilized index no longer reflects market conditions; and 3) the new shares of total weights for all Recyclable Materials and for those waste residuals.
(6) If the CITY does not dispute the first Characterization, the adjustments to Exhibit C and Exhibit D proposed by BLT shall become effective July 1 of the next fiscal year.

(7) If the CITY disputes the Characterization, BLT shall conduct a second materials characterization utilizing the protocols provided in Exhibit F at the CITY's sole expense no later than June 1 of the next fiscal year. The City shall be invited to observe this second characterization and the results of the two characterizations shall be averaged and the averaged results shall be binding on City and BLT and effective July 1 of the next fiscal year.

(8) Intentionally Omitted

(9) The City Manager or designee shall have the authority on behalf of the CITY to accept the adjustments proposed by BLT or to dispute the proposed adjustments proposed by BLT and the authority on behalf of the CITY to require a CITY materials characterization.

(10) As of the effective date of this Amended Agreement, those shares shall be as specified in Exhibit C and those materials shall be as specified in Exhibit D as shown in this Amended Agreement.

(11) All payments to the CITY shall be based on weight net of (-) used motor oil, oil filters and waste residuals delivered to the Facility(ies).

G. BLT shall comply with all State and local regulations that apply to Recyclable Materials delivered to it by CITY recycling trucks under the terms of this Amended Agreement.

H. Motor Oil. Used motor oil collected by the CITY shall be delivered to BLT's facility(ies) in sealed, opaque, plastic containers (provided by the CITY). All used motor oil delivered by CITY trucks shall be bulked and stored in accordance with all applicable State and local laws. BLT personnel shall help the driver unload oil containers from the truck at the used oil station. BLT shall cooperate with CITY to maximize reimbursement of expenses through grant funding. The CITY shall be entitled to used oil redemption monies from collection of the oil.

I. Unmarketable Materials. In no case shall BLT take any CITY delivered Recyclable Materials to a disposal facility unless permission is provided by the CITY on a load by load basis. If BLT can demonstrate that a Recyclable Material is not marketable, such permission shall not be unreasonably withheld. This prohibition does not apply to normal residue from processing of Recyclable Materials collected through the CITY's Curbside Recycling Program. If the City requires BLT to recover material that has negative monetary value then the City shall be responsible for the cost per ton of recovery, transportation, and disposition of any such material, subject to good faith negotiations between BLT and CITY.

J. BLT will provide for alternative off-loading methods in the event of reasonable downtime due to repair and maintenance of equipment. BLT shall maintain adequate space to stockpile Recyclable Materials during such reasonable downtime for acceptance of material without a break in service. "Reasonable down time" shall be defined as less than one day each operating month.

K. BLT shall be responsible for disposal of residue from processing of Recyclable Materials collected through the CITY's Curbside Recycling Program and BLT shall pay all costs for the disposal of such residue that does not exceed 10% of total weight. The CITY shall pay for the cost for residue that exceeds 10% of total weight, at the per ton Service Fee as specified by the Amended Service Agreement.

L. BLT's facilities shall be open to receive Recyclable Materials from CITY trucks at all times from 6:00 a.m. to 5:00 p.m., Monday through Friday, year round.

M. BLT shall provide an area for tipping of CITY vehicles separate from the waste transfer area and shall provide spotting of CITY trucks in areas at their facility with tight maneuverability.

N. CITY's representative(s) may inspect BLT facilities during normal business hours to assure compliance with the terms of this Amended Agreement.

O. With the exceptions of what is commonly recognized by the recycling industry as "residue" or "contaminants," BLT agrees to divert from landfilling all Recyclable Materials delivered by CITY recycling trucks under this Amended Agreement.

P. BLT shall provide use of a phone to CITY employees in the event a CITY driver needs to contact their supervisor regarding CITY business.

Q. BLT shall provide paved surfaces for all areas where CITY trucks will operate at their facility(s) and all ingress and egress from BLT's facility(ies) shall be paved.

R. BLT shall make reasonable accommodations to provide tours of their facilities to the public upon request by CITY's representative.

S. Notwithstanding anything herein to the contrary, BLT shall have the right to reject any load, before or after unloading, and shall not be deemed to have accepted any load, nor shall title thereto be deemed to have transferred to BLT, containing any material defined as a "Hazardous Substance" under the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601 et seq., as amended, or any material defined as "Hazardous or Toxic Wastes" under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901 et seq., as amended. If all or any portion of any load of material delivered to BLT is found to contain any Hazardous Substance or Hazardous or Toxic Wastes, as defined above , such hazardous waste shall be diverted to the CITY household Hazardous Waste Collection Facility, which is co-located at the Facility, for proper handling, recycling or disposal. The cost of such handling, recycling or disposal shall be paid in accordance with the provisions of the Amended Service Agreement.

T. BLT shall comply with all legal requirements that apply to the performance of its obligations under this Amended Agreement, including without limitation all federal and state laws and regulations governing wages, working hours, and other conditions of employment, including the National Labor Relations Act.

U. BLT shall adhere to the following "good neighbor" requirements:

1) BLT shall conform to all applicable local land use conditions.

2) BLT shall attend neighborhood meetings upon the request of the CITY representative to answer questions regarding materials processing operations.

3) BLT shall utilize best practices to prevent the migration of odors off-site.

4) BLT shall maintain landscaping and/or fencing to deny visual access to materials processing operations from the street contiguous to the facility(ies).

5) BLT shall pick up any litter on the approach to the facility(ies) associated with materials processing operations.

6) BLT shall utilize dust suppressants, a water truck, sweeping, and/or fogging equipment as needed to prevent dust from processing operations to migrate off-site.

7) In the event the "good neighbor" actions taken by BLT are determined by the CITY, in its reasonable discretion, to be insufficient to resolve any problem or complaint, the CITY may provide a written notice to BLT requiring BLT to take additional action(s) to resolve the problem(s) or complaint(s). If the CITY determines, in its discretion, and not less than thirty (30) days after the date of such written notice, that BLT has not taken any action or additional action required hereunder and/or that such problem(s) or complaint(s) remain unresolved, then pursuant to Article 11 CITY may terminate this Amended Agreement upon a written notice of such determination and termination to BLT.

V. Contamination Levels. This Amended Agreement assumes that BLT shall process Recyclable Materials with contamination levels generally consistent with the industry; provided, however, that Recyclable Material and contamination shall not include any Hazardous Substance or Hazardous or Toxic Wastes. CITY agrees that it shall continue efforts to minimize contamination.

W. In consideration of BLT's payment to CITY for Recyclable Materials hereunder, BLT shall retain all revenue from the sale of Recyclable Materials as well as all California Redemption Value, processing payments or similar programs for the processing of material and CITY relinquishes any rights thereto.

Exhibit A-1

DELIVERY AND ACCEPTANCE OF COMMERCIAL RECYCLABLE MATERIALS

A. BLT shall accept Commercial Recyclable Materials collected citywide by the CITY (and collected south of the American River by CITY Franchisees).

B. BLT shall provide facility(ies) at the location(s) specified below for off-loading CITY and/or CITY Franchisee recycling trucks and processing Commercial Recyclable Materials collected citywide by the City (and collected south of the American River by CITY Franchisees), on the terms set forth herein:

8491 Fruitridge Road
Sacramento, CA 95826

C. Unloading Time/Truck Turnaround Time. Each CITY and/or CITY Franchisee recycling truck entering a BLT facility(s) shall have a maximum of fifteen (15) minutes turnaround time from the time the truck arrives at the facility until the time the truck exists the facility. The fifteen (15) minutes turnaround time shall apply under all circumstances, but shall not be enforced in the case of driver-caused delays.

D. BLT shall either provide separate scales, ingress and egress from their facility or otherwise accommodate CITY and/or CITY Franchisee vehicles to avoid queuing CITY and/or CITY Franchisee vehicles behind self-haul or other commercial trucks but not CITY trucks.

E. BLT shall provide a means to avoid "stacking" of recycling trucks on public streets as they enter their facility(ies). Franchisee trucks shall be provided preference if necessary to facilitate off-loading efficiencies and turnaround time.

F. Accounting System and Annual Materials Characterization

(1) BLT shall provide the CITY with scale tags and a disk (containing scale data).
(2) BLT shall conduct an annual materials characterization ("Characterization") at BLT's sole expense. The Characterization shall be conducted pursuant to the protocol attached as Exhibit F.
(3) The Characterization shall be conducted approximately May 1 in any fiscal year. The date of such characterization shall be determined by the CITY. If the CITY does not make a written request to BLT by April 15 of a given fiscal year to conduct a Characterization, BLT shall conduct the Characterization no later than May 1 of such fiscal year. The City shall be invited to observe the Characterization.
(4) The Characterization shall identify the shares of total weights for all Recyclable Materials including materials that City requests to be weighed that are not included in Exhibit C-1 and the share of total weight for waste residuals.
(5) Within fifteen (15) days following such Characterization, BLT shall notifying the CITY in writing with the results of the Characterization and proposed adjustments in accordance with the results of the Characterization to the amounts in Exhibit C-1 to reflect 1) for any Recyclable Materials identified-to-date, proposed changes in index if any currently utilized index no longer exists or if any currently utilized index no longer reflects market conditions; and 2) the new shares of total weights for all Recyclable Materials and for those waste residuals.
(6) If the CITY does not dispute the first Characterization, the adjustments to Exhibit C-1 proposed by BLT shall become effective July 1 of any fiscal year.

(7) If the CITY disputes the Characterization, BLT shall conduct a second materials characterization utilizing the protocols provided in Exhibit F-1 at the CITY's sole expense no later than June 1 of any fiscal year and the results of the two Characterizations shall be averaged and the averaged results shall be binding on the City and BLT and effective July 1 of any fiscal year. The City shall be invited to observe the Characterization.

(8) Intentionally Omitted.

(9) The City Manager or designee shall have the authority on behalf of the CITY to accept the adjustments proposed by BLT or to dispute the proposed adjustments proposed by BLT and the authority on behalf of the CITY to require a CITY materials characterization.

(10) As of the effective date of this Amended Agreement, those shares shall be as specified in Exhibit C-1 and those materials shall be as specified in Exhibit D as shown in this Amended Agreement.

(11) All payments to the CITY shall be based on weight net of (-) used motor oil, oil filters and waste residuals delivered to the Facility(s).

G. BLT shall comply with all State and local regulations that apply to Commercial Recyclable Materials delivered to them by CITY Franchisee recycling trucks under the terms of this Amended Agreement.

H. Motor Oil. Used motor oil, collected by CITY Franchisees shall be delivered to BLT's facility(ies) in sealed, opaque, plastic containers (provided by the Franchisee). All used motor oil delivered by Franchise trucks shall be bulked and stored in accordance with all applicable State and local laws. BLT personnel shall help the driver unload oil containers from the truck at the used oil station. BLT shall cooperate with CITY Franchisees to maximize reimbursement of expenses through grant funding. The CITY Franchisees shall be entitled to used oil redemption monies from collection of the oil.

I. Unmarketable Materials. In no case shall BLT take any City and/or CITY Franchisee delivered Recyclable Materials to a disposal facility unless permission is provided by the CITY on a load by load basis. If BLT can demonstrate that a Recyclable Material is not marketable, such permission shall not be unreasonably withheld. This prohibition does not apply to normal residue from processing of Commercial Recyclable Materials. If the City requires BLT to recover material that is not marketable (i.e., has no monetary value) then the City shall pay the cost of recovery, transportation and disposition of any such material, subject to good faith negotiations between BLT and CITY.

J. BLT will provide for alternative off-loading methods in the event of reasonable downtime due to repair and maintenance of equipment. BLT shall maintain adequate space to stockpile Recyclable Materials during such reasonable downtime for acceptance of material without a break in service. "Reasonable down time" shall be defined as less than one day each operating month.

K. BLT shall be responsible for disposal of residue from processing of Recyclable Materials, and BLT shall pay all costs for the disposal of such residue that does not exceed 15% of total weight. The CITY (or CITY Franchisee, as applicable), shall pay for the cost for residue that exceeds 15% of total weight, at the per ton Service Fee as specified by the Amended Service Agreement.

L. BLT's facilities shall be open to receive Recyclable Materials from CITY Franchisee trucks at all times from 6:00 a.m. to 5:00 p.m., Monday through Friday, year round.

M. BLT shall provide an area for tipping of CITY and CITY Franchisee vehicles separate from the waste transfer area and shall provide spotting of CITY and CITY Franchisee trucks in areas at their facility with tight maneuverability.

N. CITY's representative(s) may inspect BLT facilities during normal business hours to assure compliance with the terms of this Amended Agreement.

O. With the exceptions of what is commonly recognized by the recycling industry as "residue" or "contaminants", BLT agrees to divert from landfilling all Recyclable Materials delivered by CITY and CITY Franchisee recycling trucks under this Amended Agreement.

P. BLT shall provide paved surfaces for all areas where City and CITY Franchisee trucks will operate at their facility(s) and all ingress and egress from BLT's facility(ies) shall be paved.

Q. Notwithstanding anything herein to the contrary, BLT shall have the right to reject any load, before or after unloading, and shall not be deemed to have accepted any load, nor shall title thereto be deemed to have transferred to BLT, containing any material defined as a "Hazardous Substance" under the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601 et seq., as amended, or any material defined as "Hazardous or Toxic Wastes" under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901 et seq., as amended. If all or any portion of any load of material delivered to BLT is found to contain any Hazardous Substance or Hazardous or Toxic Wastes, as defined above , such hazardous waste shall be diverted to the CITY household Hazardous Waste Collection Facility, which is co- located at the Facility, for proper handling, recycling or disposal. The cost of such handling, recycling or disposal shall be paid in accordance with the provisions of the Amended Service Agreement.

R. BLT shall comply with all legal requirements that apply to the performance of its obligations under this Amended Agreement, including without limitation all federal and state laws and regulations governing wages, working hours and other conditions of employment, including the National Labor Relations Act.

S. BLT shall adhere to the following "good neighbor" requirements:

1) BLT shall conform to all applicable local land use conditions.

2) BLT shall attend neighborhood meetings upon the request of the CITY representative to answer questions regarding materials processing operations.

3) BLT shall utilize best practices to prevent the migration of odors off-site.

4) BLT shall maintain landscaping and/or fencing to deny visual access to materials processing operations from the street contiguous to the facility(ies).

5) BLT shall pick up any litter on the approach to the facility(ies) associated with materials processing operations.

6) BLT shall utilize dust suppressants, a water truck, sweeping and/or fogging equipment as needed to prevent dust from processing operations to migrate off-site.

7) In the event the "good neighbor" actions taken by BLT are determined by the CITY, in its reasonable discretion, to be insufficient to resolve any problem or complaint, the CITY may provide a written notice to BLT requiring BLT to take additional action(s) to resolve the problem(s) or complaint(s). If the CITY determines, in its discretion, and not less than thirty (30) days after the date of such written notice, that BLT has not taken any action or additional action required hereunder and/or that such problem(s) or complaint(s) remain unresolved, then pursuant to Article 11, CITY may terminate this Amended Agreement upon a written notice of such determination and termination to BLT.

T. Rainy Day Condition. On a "rainy day condition", when agreed to by all parties to this Amended Agreement to be in effect, CITY shall take a maximum forty percent reduction in fiber weight to compensate BLT for moisture content. This compensation shall be limited to those days that BLT telephones or emails the City of Sacramento Solid Waste Planning Manager (808-4934) at the City's Solid Waste Division offices and secures agreement that a rainy day condition is in effect.

U. Contamination Levels. This Amended Agreement assumes that BLT shall process Recyclable Materials with contamination levels generally consistent with the industry provided, however, that Recyclable Material and contamination shall not include any Hazardous Substance or Hazardous or Toxic Wastes. CITY agrees that it shall continue efforts to minimize contamination.

V. BLT shall retain all revenue from the sale of Recyclable Materials as well as all California Redemption Value, processing payments or similar programs for the processing of material and CITY relinquishes any rights thereto.

EXHIBIT B

ACCEPTANCE AND PAYMENT – CURBSIDE RECYCLING PROGRAM

A. BLT shall provide the CITY with a weight ticket for each CITY vehicle that off loads Recyclable Materials at BLT's facility. BLT shall provide the CITY a monthly report on the overall amount of Recyclable Material delivered by the CITY recycling trucks. The weight tickets and monthly summary reports will be provided to the CITY by the 10th of each month following the reporting period.

B. BLT shall make payment to the CITY for such Recyclable Materials within thirty (30) days of the end of each calendar month for such Recyclable Materials received from CITY during that month and interest on amounts past due shall be assessed at the maximum rate permitted by law. The payments made to CITY for such Recyclable Materials shall be as follows:

(1) The Floor Price paid to the CITY for all Recyclable Materials collected by the CITY's Curbside Recycling Program and delivered to the facility shall be $20 per net ton. At no time shall the price drop below $20 per net ton, except during such time that there is "catastrophic failure" in the recyclables commodities market. All payment to the CITY shall be based on weight net (-) of used motor oil, oil filters, and waste residuals delivered to the facility.

For purposes of this agreement "catastrophic failure" shall be defined as an interruption of normal market conditions such that that the per net ton material value of Curbside Recyclable Materials calculated using exhibit E is $55.00, or less, for the next applicable adjustment (July 1). Contractor shall promptly notify CITY if a catastrophic failure market condition exists, but such notification by Contractor shall not affect payment of Recyclable Materials to CITY for the remainder of the fiscal year during which it occurs.

Effective July 1 of the next Fiscal Year, it will be in the City's sole and absolute discretion to either:

(a) deliver the Curbside Recyclable Materials to BLT which BLT agrees to continue to accept though no further payments for those Curbside Recyclable Materials will be made to CITY until the market value of the Curbside Recyclable Materials calculated using exhibit E exceeds $55.00 per net ton, at which time BLT shall resume payments for material thereafter delivered, or

(b) deliver the Curbside Recyclable Materials to any alternate location offering to pay the CITY for such delivery until BLT agrees to resume accepting and paying for such materials thereafter delivered in an amount equal to the lesser of (i) the amount payable per ton by the alternate location in use at the time, and (ii) the Floor Price, with such acceptance and payment resuming within 30 days or on the first business day of the next calendar month, at CITY's discretion.

Effective July 1 of the second Fiscal Year in which the "catastrophic failure" is still occurring, the CITY shall have the sole discretion to terminate this Amended Agreement provided that the CITY delivers written notice to BLT of the City's intent to terminate and BLT does not, within 30 days after receipt of such intent to terminate notice, notify the City that BLT will (i) immediately resume acceptance of Curbside Recyclable Materials, and (ii) immediately resume payments for material thereafter delivered in an amount equal to the lesser of (a) the amount payable per ton by the alternate location in use at the time, and (b) the Floor Price.

Notwithstanding anything to the contrary contained in this Exhibit B, if there are any changes in law that materially increases or decreases BLT's costs and/or revenues (e.g., elimination of any CRV component payments or applicability of CITY's Living Wage Ordinance to this agreement), then the

parties shall meet and confer in good faith regarding a reasonable adjustment to the payments made to the City hereunder. If a change in law would result in payments to the CITY increasing or decreasing by more than $100,000 for the remainder of that contract year, then the payment amount would not increase or decrease until July 1st of the following contract year.

In addition, at the request of the City, BLT and the City shall meet and confer in good faith regarding BLT providing transportation of Curbside Recyclable Material from the North Area Recycling and Transfer Station ("NARS") currently owned and operated by the County of Sacramento if the CITY uses NARS as a transfer point to BLT's facility.

(2) Market pricing index shall be tied to the index as listed in Exhibit D.

C. The starting curbside materials price moving forward effective 11/01/10 shall be $30 per net ton based on the April 2010 pricing of those index listed in Exhibit D.

D. The weighted average percentages for Curbside Recyclable Materials as described in Appendix C shall be updated following an annual Characterization(s) as provided in Exhibit A.

E. Every year subsequent to the annual materials characterization, fifty percent (50%) of the weighted average price adjustment (up or down) of those index listed in Exhibit D compared to the previous year (April to April) shall be added or subtracted from the CITY's curbside rate. In no event shall such an adjustment result in the CITY's curbside rate be below the Floor Price.

F. Example of such annual adjustments are provided in Exhibit E.

G. The above pricing assumes that the residual content of the Recyclable Materials collected by the CITY's Curbside Recycling Program delivered to the facility(ies) will not exceed 10%. If the foregoing assumption proves incorrect on a repeated basis, the CITY and BLT shall meet and negotiate in good faith to reach agreement upon appropriate changes to the prices set forth above.

EXHIBIT B-1

ACCEPTANCE AND PAYMENT – COMMERCIAL RECYCLABLE MATERIALS

A. BLT shall provide the CITY with a weight ticket for each CITY Franchisee vehicle that off loads Recyclable Materials at BLT's facility. BLT shall provide the CITY a monthly report on the overall amount of Commercial Recyclable Materials delivered by the CITY Franchisee recycling trucks. The weight tickets and monthly summary reports will be provided to the CITY by the 10th of each month following the reporting period.

B. BLT shall make payment to the CITY for such Commercial Recyclable Materials within thirty (30) days of the end of each calendar month for such materials received from CITY Franchisees during that month, and interest on amounts past due shall be assessed at the maximum rate permitted by law. The payments made to CITY for such Commercial Recyclable Materials shall be as follows:

(1). Notwithstanding Exhibit A-1 and this Exhibit B-1, the CITY shall be paid for the first 250 tons per month of Commercial Recyclable Materials collected by the City and delivered for acceptance and recycling to BLT pursuant to the provisions of Exhibit A and Exhibit B above.

(2). The Floor Price paid to the City for all Commercial Recyclable Materials collected by the CITY or CITY Franchisee(s)and delivered to the facility shall be $10 per net ton. At no time shall the price drop below $10 per net ton, except during such time that there is "catastrophic failure" in the recyclables commodities market. All payment to the CITY shall be based on weight net (-) of used motor oil, oil filters, and waste residuals delivered to the facility.

For purposes of this agreement "catastrophic failure" shall be defined as an interruption of normal market conditions such that that the per net ton material value of Commercial Recyclable Materials calculated using exhibit E is $55.00, or less, for the next applicable adjustment (July 1). Contractor shall promptly notify CITY if a catastrophic failure market condition exists, but such notification by Contractor shall not affect payment of Commercial Recyclable Materials to CITY for the remainder of the fiscal year during which it occurs.

Effective July 1 of the next Fiscal Year, it will be in the City's sole and absolute discretion to either:

(a) deliver the Commercial Recyclable Materials to BLT which BLT agrees to continue to accept though no further payments for those Commercial Recyclable Materials will be made to CITY until the market value of the Commercial Recyclable Materials calculated using exhibit E exceeds $55.00 per net ton, at which time BLT shall resume payments for material thereafter delivered, or

(b) deliver the Commercial Recyclable Materials to any alternate location offering to pay the CITY for such delivery until BLT agrees to resume accepting and paying for such materials thereafter delivered in an amount equal to the lesser of (i) the amount payable per ton by the alternate location in use at the time, and (ii) the Floor Price, with such acceptance and payment resuming within 30 days or on the first business day of the next calendar month, at CITY's discretion.

Effective July 1 of the second Fiscal Year in which the "catastrophic failure" is still occurring, the CITY shall have the sole discretion to terminate this Amended Agreement provided that the CITY delivers written notice to BLT of the CITY's intent to terminate and BLT does not, within 30 days after receipt of such intent to terminate notice, notify the CITY that BLT will (i) immediately resume acceptance of Commercial Recyclable Materials, and (ii) immediately resume payments for material thereafter

delivered in an amount equal to the lesser of (a) the amount payable per ton by the alternate location in use at the time, and (b) the Floor Price.

Notwithstanding anything to the contrary contained in this Exhibit B, if there are any changes in law that materially increases or decreases BLT's costs and/or revenues (e.g., elimination of any CRV component payments or applicability of CITY's Living Wage Ordinance to this agreement), then the parties shall meet and confer in good faith regarding a reasonable adjustment to the payments made to the CITY hereunder. If a change in law would result in payments to the CITY increasing or decreasing by more than $100,000 for the remainder of that contract year, then the payment amount would not increase or decrease until July 1st of the following contract year.

In addition, at the request of the CITY, BLT and the City shall meet and confer in good faith regarding BLT providing transportation of Commercial Recyclable Material from the North Area Recycling and Transfer Station ("NARS") currently owned and operated by the County of Sacramento if the CITY uses NARS as a transfer point to BLT's facility.

C. Market pricing index shall be tied index as listed in Exhibit D.

D. The starting commercial materials price moving forward effective 11/01/10 shall be $15 per net ton based on the April 2010 pricing of those index listed in Exhibit D.

E. Every year subsequent to the annual materials characterization, fifty percent (50%) of the weighted average of those index listed in Exhibit D compared to the previous year (April to April) shall be added or subtracted from the CITY's curbside rate. In no event shall such an adjustment result in the CITY's commercial rate be below the Floor Price.

F. The weighted average percentages for Commercial Recyclable Materials as described in Exhibit C-1 shall be updated following an annual Characterization(s) as provided in Exhibit A-1.

G. Example of such annual adjustments are provided in Exhibit E-1

H. The above pricing assumes that the residual content of the Commercial Recyclable Materials will not exceed 15%. If the foregoing assumption proves incorrect on a repeated basis, the CITY and BLT shall meet and negotiate in good faith to reach agreement upon appropriate changes to the prices set forth above.

EXHIBIT C

Residential Materials	Current Fiscal Year Characterization Weights[1]
Scrap Value	
Mixed Paper	9.58%
News #8	24.01%
OCC	18.50%
HDPE Colored	0.73%
HDPE Clear/Natural	0.82%
PET	0.94%
Aluminum	0.23%
Three-Mix Glass	10.67%
Tin Cans	1.08%
Scrap Metal	0.72%
Mixed Rigid Plastics 1-7	0.82%
Scrap Value Total	68.10%
CRV Value[2]	
HDPE color	0.73%
HDPE Clear/Natural	0.82%
PET	0.94%
Aluminum	0.23%
Three-Mix Glass	10.67%
CRV Value Total[2]	13.39%
Residual Reduction	31.91%

[1] *2010/2011 Fiscal Year values shown*
[2] *percentages already included in the Scrap Value total*

Changes to the materials listed in this Exhibit C shall be based on the results of the Characterization upon CITY's request and BLT's approval, not to be unreasonably withheld.

EXHIBIT C-1

Commercial Materials	Current Fiscal Year Characterization Weights[1]
Scrap Value	
Mixed Paper	32.09%
News #8	2.43%
OCC	49.86%
Non-fiber Recyclables	0.00%
Scrap Value Total	84.38%
Residual Reduction	15.62%

[1] *2010/2011 Fiscal Year values shown*

Changes to the materials listed in this Exhibit C-1 shall be based on the results of the Characterization upon CITY's request and BLT's approval, not to be unreasonably withheld.

If a Recyclable Material is not Mixed Paper, News#8, or OCC, but is not residue, then such material shall be included in the Non-fiber Recyclables line item and valued at $0.00.

EXHIBIT D

The following indexes shall be used for market pricing of the commodities listed in Exhibit C.

Should any of these indexes cease to exist or cease to be representative of the market price for the commodity it prices, or should new commodities be added to Exhibit C, those index references shall be updated to reflect such changes.

Residential Materials	Current Fiscal Year Prices[1]	Index	CRV Value Applicable?
Scrap Value			
Mixed Paper	$125.00	Official Board Markets San Francisco, High Side	No
News #8	$140.00	Official Board Markets San Francisco, High Side	No
OCC	$125.00	Official Board Markets San Francisco, High Side	No
HDPE Colored	$410.00	Waste and Recycling News	Yes, as per CalRecycle
HDPE Clear/Natural	$570.00	Waste and Recycling News	Yes, as per CalRecycle
PET	$470.00	Waste and Recycling News	Yes, as per CalRecycle
Aluminum	$1,500.00	Waste and Recycling News	Yes, as per CalRecycle
Three-Mix Glass	$0.00	Waste and Recycling News	Yes, as per CalRecycle
Tin Cans	$87.50	Waste and Recycling News	No
Scrap Metal	$87.50	Waste and Recycling News	No
Mixed Rigid Plastics 1-7	$0.00	Waste and Recycling News	No
CRV Value[2]			
HDPE color	$120.00		
HDPE Clear/Natural	$120.00		
PET	$1,180.00		
Aluminum	$2,900.00		
Three-Mix Glass	$88.00		
CRV Value Total[2]			

[1] *April 2010 index values shown*

EXHIBIT D-1

The following indexes shall be used for market pricing of the commodities listed in Exhibit C-1.

Should any of these indexes cease to exist or cease to be representative of the market price for the commodity it prices, or should new commodities be added to Exhibit C-1, those index references shall be updated to reflect such changes.

Commercial Materials	Current Fiscal Year Prices[1]	Index	CRV Value Applicable?
Mixed Paper	$125.00	Official Board Markets San Francisco, High Side	No
News #8	$140.00	Official Board Markets San Francisco, High Side	No
OCC	$125.00	Official Board Markets San Francisco, High Side	No
Non-fiber Recyclables	$0.00	N/A	No

[1] *April 2010 index values shown*

EXHIBIT E

The annual adjustment shall be as follows, for each commodity listed in Exhibit C and Exhibit D above and for any additional marketable commodity that may be identified through the Characterization or a CITY materials characterization:

Next Fiscal Year Adjusted Market Price = Fifty percent (50%) of the difference between (Next Fiscal Year Weighted Average multiplied by Next Fiscal Year Material Price) and (Current Fiscal Year Weighted Average multiplied by Current Fiscal Year Material Price)

An example of these calculations for Curbside Recyclables Materials can be found in the table below (all numbers for "Next Fiscal Year" in that table are given as illustration and may not represent actual values).

	A	B	C	D	E	F	G
1		**Current Fiscal Year Weighted Average %**	**Current Fiscal Year Material Prices**	**Current Fiscal Year Material Value**	**Next Fiscal Year Weighted Average %**	**Next Fiscal Year Material Prices**	**Next Fiscal Year Material Value**
2	**Scrap Value**						
3	Mixed Paper	9.58%	$125.00	=C3*B3	10.00%	$150.00	=F3*E3
4	News #8	24.01%	$140.00	=C4*B4	25.00%	$150.00	=F4*E4
5	OCC	18.50%	$125.00	=C5*B5	20.00%	$125.00	=F5*E5
6	HDPE Colored	0.73%	$410.00	=C6*B6	1.00%	$400.00	=F6*E6
7	HDPE Clear/Natural	0.82%	$570.00	=C7*B7	1.00%	$500.00	=F7*E7
8	PET	0.94%	$470.00	=C8*B8	1.00%	$500.00	=F8*E8
9	Aluminum	0.23%	$1,500.00	=C9*B9	0.25%	$1,500.00	=F9*E9
10	Three-Mix Glass	10.67%	$0.00	=C10*B10	10.00%	$0.00	=F10*E10
11	Tin Cans	1.08%	$87.50	=C11*B11	1.00%	$75.50	=F11*E11
12	Scrap Metal	0.72%	$87.50	=C12*B12	0.50%	$75.50	=F12*E12
13	Mixed Rigid Plastics 1-7	0.82%	$0.00	=C13*B13	0.75%	$0.00	=F13*E13
14	**Scrap Value Total**			**=SUM(D3:D13)**			**=SUM(G3:G13)**
15	**CRV value**						
16	HDPE color	0.73%	$120.00	=C16*B16	1.00%	$150.00	=F16*E16
17	HDPE Clear/Natural	0.82%	$120.00	=C17*B17	1.00%	$150.00	=F17*E17
18	PET	0.94%	$1,180.00	=C18*B18	1.00%	$1,000.00	=F18*E18
19	Aluminum	0.23%	$2,900.00	=C19*B19	0.25%	$3,100.00	=F19*E19
20	Three-Mix Glass	10.67%	$88.00	=C20*B20	10.00%	$75.00	=F20*E20
21	**CRV Value Total**			**=SUM(D16:D20)**			**=SUM(G16:G20)**
22	**Material Value**			=D14+D21			=G14+G21
23	**Material Value Change**						**=G22-D22**
24	**Current Fiscal Year Material Price**			**$30.00**			
25	**Next Fiscal Year Material Price**						**=D24+G23/2**

EXHIBIT E-1

The annual adjustment shall be as follows, for each commodity listed above and for any additional marketable commodity that may be identified through the Characterization or CITY materials characterization:

Next Fiscal Year Adjusted Market Price = Fifty percent (50%) of the difference between (Next Fiscal Year Weighted Average multiplied by Next Fiscal Year Material Price) and (Current Fiscal Year Weighted Average multiplied by Current Fiscal Year Material Price)

An example of these calculations for Commercial Recyclables Materials can be found in the table below (all numbers for "Next Fiscal Year" in that table are given as illustration and may not represent actual values).

	A	B	C	D	E	F	G
1		**Current Fiscal Year Weighted Average %**	**Current Fiscal Year Material Prices**	**Current Fiscal Year Material Value**	**Next Fiscal Year Weighted Average %**	**Next Fiscal Year Material Prices**	**Next Fiscal Year Material Value**
2	**Scrap Value**						
3	Mixed Paper	32.09%	$125.00	=C3*B3	30.00%	$150.00	=F3*E3
4	News #8	2.43%	$140.00	=C4*B4	2.50%	$150.00	=F4*E4
5	OCC	49.86%	$125.00	=C5*B5	50.00%	$125.00	=F5*E5
6	Non-fiber Recyclables	0.00%	$0.00	=C6*B6	5.00%	$0.00	=F6*E6
7	**Material Value**			=SUM(D3:D6)			=SUM(G3:G6)
8	**Material Value Change**						**=G7-D7**
9	**Current Fiscal Year Material Price**			**$15.00**			
10	**Next Fiscal Year Material Price**						**=D9+G8/2**

EXHIBIT F

The following shall be used as protocols for the Characterization for Curbside Recyclable Materials.

PROTOCOL

Collection Period
The Characterization or CITY materials characterization is to be scheduled to avoid a period immediately after holidays or other events that might influence the recyclables stream.

Selection of Trucks, Collection and Delivery

The Characterization shall consist of the equivalent of a full week of CITY Curbside Recyclables Program collection so that all trucks for each day of collection are participating, though the Characterization could be conducted during several consecutive weeks (e.g., Monday trucks on week 1, Tuesday trucks on Week 2, etc.), provided that the Characterization will be conducted in no more weeks that there are collection days (e.g., four weeks if the CITY Curbside Recyclables Program collection occurs over four collection days), though it will be in BLT's discretion to decide the actual collection days to conduct the Characterization consistently with the foregoing.

Temporary Material Storage
The loads collected from the specifically designed routes above shall be placed in a special tipping area near the processing line, but separated from the stockpile area used for recyclables in order to minimize the chance of mixing materials that are not part of the Characterization or CITY materials characterization from those that are part of Characterization or CITY materials characterization.

This special tipping area shall be thoroughly cleaned by BLT staff and observed as such by CITY staff before materials from the Characterization or CITY materials characterization are to be deposited.

Starting Conditions
The operating parameters of the sorting equipment prior to processing the materials from the Characterization or CITY materials characterization are to be observed in two areas: the sorting line and the containers where the separated recyclable materials are to be placed.

The operational conditions of the sorting line shall include the number of staff on the sorting line to ensure that the number of sorting staff present is similar to regular operating conditions.

The containers for receiving the separated recyclables are to be free of debris that might contaminate the materials from the Characterization or CITY materials characterization and of recyclables that would alter the results from the Characterization or CITY materials characterization.

This standard is to be followed for the conveyors, debris boxes, bins, silos, bunkers, and walking floor areas.

The weights of empty storage bins shall be recorded before the Characterization or CITY materials characterization.

Sorting Process
During the sorting process, the recyclable materials shall be stored in various types of containers, so as to provide the most accurate process for weighing such materials, as follows:

- Mixed rigid plastic items are to be removed and dropped into a debris box.
- Fibrous materials, such as cardboard and paper are to be dropped into bunkers.

- Glass is to be removed by disc screens and conveyed into a storage bin located below the sorting line. The full bin is to be dumped in a debris box and put back in service. Additional storage bins are to be located at the end of the sort line for glass that would not be removed by the initial disc screens.
- On the sort line, staff members shall use residential-sized trash receptacles to store some plastic and aluminum recyclables as they pick them off of the line. The small receptacles are to be hand-carried around the sort line to be dumped into a vacuum inlet. The vacuum inlets feed large silos where recyclables like aluminum, clear PET, colored HDPE, and natural HDPE are stored prior to baling.
- Tin cans are to be removed by a magnet and stored in a bunker under the sort line.
- Scrap metal is to be removed by hand and stored in a series of bins under the sort line.
- Film plastic is to be removed by hand and stored in a series of bins under the sort line.
- Liquids trapped in containers re to be poured into a tube that led to a drum used for temporary storage until the liquid could be disposed of. The liquid shall be separated from the materials so that it cannot influence the outgoing weights of recyclable materials.

Weighing the Materials
City staff shall be present in the scalehouse to observe the weighing of materials.

The scales at the Facility shall have been certified by Sacramento County.

All bins shall be tared before each sort and shall be marked with a blue tare tag.

Fibrous materials such as newspaper and cardboard shall be weighed during the sorting process; other materials shall be weighed following the sort.

After weighing, materials shall be returned to the bale storage area and shall be held in a special staging area reserved for the processed materials from the Characterization or CITY materials characterization.

Shrinkage and Liquid
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.

Shrinkage consists of materials that may get caught in machinery, or items that fall off the line. Since that material will be swept from the facility and taken for disposal, it shall be considered residual material.

Liquid shall be defined as the fluids trapped in containers. Such liquid shall be separated from the materials so that it cannot influence the outgoing weights of recyclable materials.

EXHIBIT F-1

The following shall be used as protocols for the Characterization for Commercial Recyclable Materials.

PROTOCOL

Collection Period
The Characterization or CITY materials characterization is to be scheduled to avoid a period immediately after holidays or other events that might influence the recyclables stream.

Selection of Trucks, Collection and Delivery

The Characterization shall consist of the equivalent of a full week of CITY Curbside Recyclables Program collection so that all trucks for each day of collection are participating, though the Characterization could be conducted during several consecutive weeks (e.g., Monday trucks on week 1, Tuesday trucks on Week 2, etc.), provided that the Characterization will be conducted in no more weeks that there are collection days (e.g., four weeks if the CITY Curbside Recyclables Program collection occurs over four collection days), though it will be in BLT's discretion to decide the actual collection days to conduct the Characterization consistently with the foregoing.

Temporary Material Storage
The loads collected from the specifically designed trucks above shall be placed in a special tipping area near the processing line, but separated from the stockpile area used for recyclables in order to minimize the chance of mixing materials that are not part of the Characterization or CITY materials characterization from those that are part of Characterization or City materials characterization.

This special tipping area shall be thoroughly cleaned by BLT staff and observed as such by CITY staff before materials from the Characterization or CITY materials characterization are to be deposited.

Starting Conditions
The operating parameters of the sorting equipment prior to processing the materials from the Characterization or CITY materials characterization are to be observed in two areas: the sorting line and the containers where the separated recyclable materials are to be placed.

The operational conditions of the sorting line shall include the number of staff on the sorting line to ensure that the number of sorting staff present is similar to regular operating conditions.

The containers for receiving the separated recyclables are to be free of debris that might contaminate the materials from the Characterization or CITY materials characterization and of recyclables that would alter the results from the Characterization or CITY materials characterization.

This standard is to be followed for the conveyors, debris boxes, bins, silos, bunkers, and walking floor areas.

The weights of empty storage bins shall be recorded before the Characterization or CITY materials characterization.

Sorting Process
During the sorting process, the recyclable materials shall be stored in various types of containers, so as to provide the most accurate process for weighing such materials, as follows:

- Mixed rigid plastic items are to be removed and dropped into a debris box.
- Fibrous materials, such as cardboard and paper are to be dropped into bunkers.

- Glass is to be removed by disc screens and conveyed into a storage bin located below the sorting line. The full bin is to be dumped in a debris box and put back in service. Additional storage bins are to be located at the end of the sort line for glass that would not be removed by the initial disc screens.
- On the sort line, staff members shall use residential-sized trash receptacles to store some plastic and aluminum recyclables as they pick them off of the line. The small receptacles are to be hand-carried around the sort line to be dumped into a vacuum inlet. The vacuum inlets feed large silos where recyclables like aluminum, clear PET, colored HDPE, and natural HDPE are stored prior to baling.
- Tin cans are to be removed by a magnet and stored in a bunker under the sort line.
- Scrap metal is to be removed by hand and stored in a series of bins under the sort line.
- Film plastic is to be removed by hand and stored in a series of bins under the sort line.
- Liquids trapped in containers re to be poured into a tube that led to a drum used for temporary storage until the liquid could be disposed of. The liquid shall be separated from the materials so that it cannot influence the outgoing weights of recyclable materials.

Weighing the Materials
City staff shall be present in the scalehouse to observe the weighing of materials.

The scales at the Facility shall have been certified by Sacramento County.

All bins shall be tared before each sort and shall be marked with a blue tare tag.

Fibrous materials such as newspaper and cardboard shall be weighed during the sorting process; other materials shall be weighed following the sort.

After weighing, materials shall be returned to the bale storage area and shall be held in a special staging area reserved for the processed materials from the Characterization or CITY materials characterization.

Shrinkage and Liquid
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.

Shrinkage consists of materials that may get caught in machinery, or items that fall off the line. Since that material will be swept from the facility and taken for disposal, it shall be considered residual material.

Liquid shall be defined as the fluids trapped in containers. Such liquid shall be separated from the materials so that it cannot influence the outgoing weights of recyclable materials.

AGREEMENT CONCERING SETTLEMENT AND RELEASE OF OUTSTANDING AMOUNTS OWED OR CLAIMED BETWEEN THE CITY OF SACRAMENTO AND BLT ENTERPRISES OF SACRAMENTO, LLC

THIS AGREEMENT ("Agreement") is made as of _____ , 2010, by and between the City of Sacramento, a municipal corporation (the "City") and BLT Enterprises of Sacramento, LLC ("BLT, LLC").

RECITALS

A. In 1998, the City and BLT Enterprises of Sacramento, Inc. ("BLT, Inc.") entered into a Service Agreement for Municipal Solid Waste Transfer, Transport, Disposal, Processing and Recovered Materials Diversion ("Service Agreement," City Agreement 98-131);

B. Pursuant to the Service Agreement, the City delivers municipal solid waste to the BLT transfer station located on Fruitridge Avenue, Sacramento, California for ultimate disposal at an approved disposal site. As compensation for the services provided to the City, the City pays a per ton service fee;

C. In July 2008 and August 2008, the City made two payments to BLT, Inc. totaling $166,293.42 ("Service Fee Overpayment"). The City alleges such payments were made through error and were in excess of the service fee required to be paid pursuant to the terms of the Service Agreement and that such payments were over payments and amounts not owed to BLT, Inc. pursuant to the terms of the Service Agreement;

D. BLT, LLC disputes that the payments of $166,293.42 were overpayments;

E. In addition to the alleged overpayment, pursuant to Article 23 of the Service Agreement, BLT, Inc. requested that the City consent to assignment of the Service Agreement to BLT, LLC. On June 16, 2009, through Sacramento City Council Resolution 2009-402, the City consented to assignment of the Service Agreement to BLT, LLC. Article 23.01(c) of the Service Agreement, requires payment of $10,000 to the City for any request for assignment;

F. Pursuant to the assignment, BLT, Inc. assigned all its assets and liabilities, including the Service Agreement, to BLT, LLC;

G. Separate from the Service Agreement, on April 11, 2006, City and BLT, Inc. entered into the Memorandum of Understanding City of Sacramento North Area Transfer Station ("North Area MOU," City Agreement 2006-0352);

H. Pursuant to the North Area MOU, BLT, Inc. was responsible to pay for all costs associated with the environmental impact report consultant and all studies required for that purpose;

I. Pursuant to the North Area MOU, if the Sacramento City Council were to make a discretionary decision not to site a transfer station in the north area for reasons unrelated to the feasibility of the north area transfer station project, BLT, Inc. is to be compensated for its to-date

direct costs excluding its staff time and costs. However, pursuant to the North Area MOU, such reimbursement to BLT, Inc. shall not exceed $500,000;

J. To date, BLT has paid in excess of $500,000 pursuant to the terms of the North Area MOU;

K. Separate from the above, on April 8, 2009, BLT, Inc. filed a claim with the City for a fuel surcharge in the amount of $2,042,827.59 alleging that the City was liable for unexpected fuel costs incurred between April 2007 and July 17, 2008. While the amount of the claim was $2,042,827.59, in a March 30, 2009 letter that was included with the claim, BLT, Inc. alleged that it incurred unexpected fuel costs between the time period of April 2007 and July 17, 2008 in a total amount of $2,209,121.01;

L. City disputes the claim that the City is liable for any amounts claimed for unexpected fuel costs including amounts allegedly owed through the claim received by the City on April 8, 2009, or the March 30, 2009, letter to the City; and

M.BLT, LLC is the authorized successor to BLT, Inc., for all rights, liabilities, and claims related to this Agreement

NOW THEREFORE, in consideration of the mutual promises hereinafter set forth, the City and BLT, LLC, for itself and for BLT, Inc., agree as follows:

1. Pursuant to a discretionary decision made by the Sacramento City Council, the City is obligated to reimburse BLT, LLC $500,000 in accordance with the terms of the North Area MOU.

2. Such reimbursement amount shall be offset by the following amounts which the parties agree and acknowledge are owed to the City by BLT, LLC:

a. Service Fee Overpayment in the amount of $166,293.42 and

b. Assignment Fee in the amount of $10,000.

3. The total amount the City owes to BLT, LLC or BLT, Inc.,pursuant to the North Area MOU less any offsets for Service Fee Overpayment, Assignment Fee or unpaid environmental costs is $323,706.58. City shall pay such amount to BLT, LLC within thirty (30) days of the mutual execution of this Agreement.

4. In exchange for payment of $323,706.58 by City to BLT, LLC, City and BLT, LLC release and forever discharge each other, and their respective successors, assigns, officers, agents, employees and any and all persons, firms, and corporations having any interest in them or any of them of and from any and all claims and demands of any kind, nature, and description whatsoever and from any and all liabilities, damage, injuries, action, or causes of action either at law or in equity which City or BLT, LLC has or in the future may have against any such entities or any one or more of them, arising out of or in any way related to or connected with:

a. BLT, LLC's claim for reimbursement in the amount of $500,000 pursuant to the North Area MOU and any claim by the City for reimbursement from BLT, LLC and/or BLT, Inc. for any costs incurred by the City pursuant to the North Area MOU;

b. City's claim for over payment in the amount of $166,293.42;

c. City's claim for payment of the Assignment Fee concerning the assignment of the Service Agreement to BLT, LLC; and

d. BLT, LLC's claim for payment of a fuel surcharge in the amount of $2,209,121.01 for unexpected fuel costs incurred between April 2007 and July 17, 2008.

5. It is understood and agreed that this Agreement is a full and final general release applying to all known, unknown and unanticipated claims of City and BLT, LLC (and BLT, Inc.) arising out of the above specified claims, as well as any injury to the property and/or person of City or BLT, LLC (and BLT, Inc.) relating to the above specified claims .

6. The parties agree and acknowledge that this Agreement shall not be deemed or treated as an admission of liability by either City or BLT.

7. The City acknowledges and agrees that since the City has made a discretionary decision not to site a transfer station in the north area of the City, neither BLT, LLC nor BLT, Inc. shall have any further obligations under the North Area MOU and/or the Service Agreement (as amended) to site, permit, and/or construct a transfer station in the north area of the City.

8. This Agreement may be pleaded as a full and complete defense to, and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of this Agreement.

9. The parties further declare and represent that no promise, inducement or Agreement not herein expressed has been made to the undersigned, and that this Agreement contains the entire agreement between the parties hereto.

10. No alteration, modification, or variation of the terms of this Agreement shall be valid unless made in writing and executed by both parties.

11. The provisions of this Agreement shall inure to the benefit of and be binding upon the respective successors, heirs, and assigns of the parties hereto.

12. Each individual executing this Agreement on behalf of any entity represents and warrants that he or she has been authorized to do so by the entity on whose behalf he or she executes this Agreement and that said entity will thereby be obligated to perform the terms of this Agreement.

Executed as of the day and year first stated above.

CITY OF SACRAMENTO, a
Charter municipal corporation,

By:_____
Gus Vina
Interim City Manager

APPROVED AS TO FORM.

_____
City Attorney

ATTEST:

_____
City Clerk

BLT ENTERPRISES OF SACRAMENTO, LLC
a California limited liability company

By:_____
Authorized Signatory