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**AMENDED AND RESTATED AGREEMENT  
BETWEEN  
NOVATO SANITARY DISTRICT  
AND  
NOVATO DISPOSAL SERVICE, INC.  
FOR  
SOLID WASTE COLLECTION,  
PROCESSING, DIVERSION  
AND DISPOSAL**

**March 2, 2011**

Final Draft Dated 2/25/2011

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1 **AGREEMENT**

2 This Amended and Restated Franchise Agreement ("Agreement") is entered into this  
3 \_\_\_\_\_ day of \_\_\_\_\_, 2011, between the Novato Sanitary District ("District") and Novato  
4 Disposal Service, Inc. ("Company"), for the collection, transportation, recycling, reduction,  
5 composting, and disposal of solid waste and other services related to meeting the goals and  
6 requirements of the California Integrated Waste Management Act ("CIWMA").

7 **RECITALS**

8 WHEREAS, Company currently provides solid waste collection, recycling and disposal  
9 services within the jurisdictional boundary of District, including the City of Novato ("City") and  
10 surrounding areas, and has provided said services for a number of years in a manner which has  
11 been consistent with quality service being provided at competitive rates; and

12 WHEREAS, Company provides said solid waste collection, recycling and disposal  
13 services pursuant to an existing Franchise Agreement dated January 1, 2001 and such term of the  
14 existing agreement provide for termination on December 31, 2015; and

15 WHEREAS, the Legislature of the State of California, by enactment of the CIWMA, has  
16 declared that it is within the public interest to authorize and require local agencies to make  
17 adequate provisions for solid waste handling, source reduction and recycling within their  
18 jurisdictions; and

19 WHEREAS, said CIWMA sets goals for the diversion of solid wastes from landfills, and  
20 imposes the responsibility on cities and counties within the State to reduce the amount of solid  
21 waste disposed of by 50 percent by the year 2000, and beyond; and

22 WHEREAS, District and City entered into an arrangement under which City will make  
23 policy decisions on solid waste programs necessary to meet the goals of the CIWMA and District  
24 will, through Company as its franchisee, implement those programs under its jurisdiction; and

25 WHEREAS, pursuant to California Health and Safety Code Sections 6512, 6515, 6518.5,  
26 and 6522, the Board of Directors of District has determined that the public health, safety, and  
27 well-being may best be obtained by updating the existing exclusive franchise for the collection,  
28 transportation, recycling, and disposal of solid waste and other services related to meeting said  
29 CIWMA diversion goals and other requirements of the CIWMA; and

30 WHEREAS, the Board of Directors of District declares its intention of maintaining  
31 reasonable rates for the collection, transportation, recycling, reducing, composting, and disposal  
32 of solid waste and other services related to meeting and maintaining the District's Zero Waste  
33 goal of 80 percent landfill diversion by December 31, 2025 and beyond; and,

34 WHEREAS, the Board of Directors of District finds that the service which has been  
35 provided by Company has been consistently satisfactory in meeting the direction of District and  
36 the cost for such services has been provided at competitive rates as compared to surrounding  
37 communities; and

1           WHEREAS, District has determined that in order to continue to provide satisfactory  
2 service levels at competitive prices, modifications to the current manner of providing service are  
3 required, which include, increased recycling collection services, food waste collection services,  
4 and the relocation of the household hazardous waste facility; and

5           WHEREAS, District's current franchise agreement, requires revisions in order to reflect  
6 the changes necessary to implement expanded residential recycling programs, residential,  
7 commercial, and multi-family food waste collection programs commercial and multi-family  
8 recycling programs, and relocation of the drop-off recycling center and household hazardous  
9 waste facility; and

10           WHEREAS, District continues to conclude that the best interest of the constituents of the  
11 District is served by providing an exclusive franchise for the group of interrelated solid waste  
12 and Household Hazardous Waste services through a single provider, and further that the  
13 provision of these services can be best obtained through an integrated program controlled  
14 pursuant to a franchise agreement providing for collection, processing, disposal, marketing, and  
15 other related activities; and

16           WHEREAS, the parties hereto desire to enter into an updated franchise agreement with  
17 an adequate term to amortize the costs associated with these service changes; and

18           NOW, THEREFORE, the parties agree as follows:

1 **ARTICLE 1 DEFINITIONS**

2 **1.1 AB 32**

3 The California Global Warming Solutions Act (Assembly Bill 32)

4 **1.2 AB 939 or CIWMA**

5 The California Integrated Waste Management Act (Assembly Bill 939, California Public  
6 Resources Code Sections 40000 et al.), as amended from time to time.

7 **1.3 Agreement or Franchise Agreement**

8 The written document and all amendments thereto, between the District and the  
9 Company, governing the provision of Collection Services as provided herein.

10 **1.4 Agreement Year**

11 Each twelve (12) month period from January 1<sup>st</sup> to December 31<sup>st</sup> and the last Agreement  
12 Year will end on December 31<sup>st</sup>, 2025 unless otherwise extended by the District  
13 according to Article 2.4 of this Agreement.

14 **1.5 Alternative Daily Cover (ADC)**

15 Disposal Facility cover material, other than Organic Waste and at least six (6) inches of  
16 earthen material, placed on the surface of the active face of the disposal fill area at the  
17 end of each operating day to control vectors, fires, odor, blowing litter and scavenging, as  
18 defined in Section 20164 of the California Code of Regulations.

19 **1.6 Biohazardous or Biomedical Waste**

20 Any waste which may cause disease or reasonably be suspected of harboring pathogenic  
21 organisms; included are waste resulting from the operation of medical clinics, hospitals,  
22 and other facilities processing wastes which may consist of, but are not limited to, human  
23 and animal parts, contaminated bandages, pathological specimens, hypodermic needles,  
24 sharps, contaminated clothing and surgical gloves.

25 **1.7 Bulky Waste**

26 Those materials including furniture, carpets, mattresses, White Goods, E-Waste, clothing,  
27 tires without rims, Green Waste, and Large Green Waste which are attributed to the  
28 normal activities of a SFD Service Unit, or a MFD Service Unit. Bulky Waste must be  
29 generated by and at the Service Unit wherein the Bulky Waste is collected. Bulky Waste  
30 does not include items herein defined as Exempt Waste.

31 **1.8 Business Service Unit**

32 All retail, professional, office, wholesale and industrial facilities, and other commercial  
33 enterprises offering goods or services to the public.

34 **1.9 City**

35 The City of Novato, California.

- 1    **1.10   Collection Day**  
2       The specific Work Day on which Collection Services are scheduled to be conducted by  
3       the Company at a Service Unit.
- 4    **1.11   Collection**  
5       The process whereby Garbage, Recyclable Materials and Organic Waste are removed and  
6       transported to the Disposal Facility, an Organic Waste Processing Facility, or a Materials  
7       Recovery Facility, as appropriate.
- 8    **1.12   Collection Services**  
9       Single-Family Collection Service (SFD), Multi-family Collection Service (MFD),  
10      Commercial Collection Service, and Debris Box Collection Service, and Collection  
11      Service For Local Government Agencies Within District Boundaries.
- 12   **1.13   Commercial Collection Service**  
13      Commercial Garbage Collection Service, Commercial Recycling Collection Service, and  
14      Commercial Organic Waste Collection Service.
- 15   **1.14   Commercial Organic Waste**  
16      Green Waste and Food Waste separated at the source of generation for inclusion in the  
17      Commercial Organic Waste Collection Service program.
- 18   **1.15   Commercial Organic Waste Collection Service**  
19      The Collection of Commercial Organic Waste by the Company from Commercial Service  
20      Units in the Service Area, and the delivery of that Commercial Organic Waste to an  
21      Organic Waste processing facility.
- 22   **1.16   Commercial Recycling Collection Service**  
23      The Collection of Recyclable Materials by the Company from Commercial Service Units  
24      in the Service Area, the delivery of those Recyclable Materials to a Materials Recovery  
25      Facility and the processing and marketing of those Recyclable Materials.
- 26   **1.17   Commercial Service Unit**  
27      Business Service Units, and mixed Commercial and Residential Service Units that utilize  
28      a Garbage Cart or Bin for the accumulation and set-out of Garbage.
- 29   **1.18   Commercial Garbage Collection Service**  
30      The Collection of Garbage by the Company, from Commercial Service Units in the  
31      Service Area, and the delivery of that Garbage to the Disposal Facility.
- 32   **1.19   Compactor**  
33      Any Debris Box or Bin, which has a compaction mechanism, whether stationary or  
34      mobile.

- 1 **1.20 Company**  
2 Novato Disposal Services, Inc.
- 3 **1.21 Composting**  
4 The controlled biological decomposition of Organic Waste into a specific mixture of  
5 decayed organic matter used for fertilizing or soil conditioning.
- 6 **1.22 Construction and Demolition Debris**  
7 Commonly used or discarded materials removed from construction, remodeling, repair,  
8 demolition, or renovation operations on any pavement, house, commercial building, or  
9 other structure, or from landscaping. Such materials include, but are not limited to, dirt,  
10 sand, rock, gravel, bricks, plaster, gypsum wallboard, aluminum, glass, asphalt material,  
11 plastics, roofing material, cardboard, carpeting, cinder blocks, concrete, copper, electrical  
12 wire, fiberglass, formica, granite, iron, lead, linoleum, marble, plaster plant debris,  
13 pressboard, porcelain, steel, stucco, tile, vinyl, wood, masonry, rocks, trees, remnants of  
14 new materials, including paper, plastic, carpet scraps, wood scraps, scrap metal, building  
15 materials, packaging and rubble resulting from construction, remodeling, renovation,  
16 repair and demolition operations on pavements, houses, commercial buildings and other  
17 structures. Construction and Demolition Debris does not include Exempt Waste.
- 18 **1.23 Container or Containers**  
19 Means any Cart, Bin, or Debris Box used for the Collection of Garbage, Recyclable  
20 Materials, Organic Waste, or Construction and Demolition Debris from a Service  
21 Recipient.
- 22 **1.24 County**  
23 Marin County, California.
- 24 **1.25 Customer**  
25 Means a Service Recipient that receives Collection Services under the terms of this  
26 Agreement.
- 27 **1.26 Debris Box Collection Service**  
28 Collection utilizing 10 - 40 cubic yard containers, on a temporary or permanent basis, and  
29 provided to Service Units for the Collection of Garbage, Recyclable Materials, Organic  
30 Waste, and Construction and Demolition Debris and for the delivery of that material to an  
31 appropriate facility.
- 32 **1.27 Debris Box**  
33 A metal container that is normally tipped loaded onto a motor vehicle and transported to  
34 an appropriate facility.
- 35 **1.28 Detailed Rate Review**  
36 The process for adjusting the Company's compensation and rates as specified in Exhibit  
37 8.

- 1    **1.29 Disposal Facility**  
2        A facility designated by District for the disposal, or processing as appropriate, of Garbage  
3        and other materials as appropriate.
- 4    **1.30 District**  
5        Novato Sanitary District.
- 6    **1.31 District Manager-Engineer**  
7        Manager-Engineer of the Novato Sanitary District or his or her designated representative.
- 8    **1.32 Diversion From Landfill Rate**  
9        The Diversion From Landfill Rate will be calculated as the tons of materials collected by  
10       Company from providing services as specified in this Agreement that are sold or  
11       delivered to a Materials Processing Facility, Organic Waste Processing Facility, recycler  
12       or re-user, net of all residue, divided by the total tons of materials collected under this  
13       Agreement by Company in each 12-month calendar year (January 1<sup>st</sup> – December 31<sup>st</sup>).
- 14   **1.33 Dwelling Unit**  
15       Any individual living unit in a Single Family Dwelling (SFD) or Multi-Family Dwelling  
16       (MFD) structure or building intended for, or capable of being utilized for, residential  
17       living other than a hotel or motel.
- 18   **1.34 E-Waste**  
19       E-Waste, includes discarded items such as CRT devices including televisions and  
20       computer monitors, LCD desktop computers, laptop computers, LCD and plasma  
21       televisions, DVD players, cash registers computers and computer peripherals, telephones,  
22       cell phones, answering machines, stereo equipment, radios, tape and CD  
23       players/recorders, phonographs, video cassette recorders, calculators, Personal Data  
24       Assistants (PDAs) small household and kitchen electronic equipment.
- 25   **1.35 Environmental Laws**  
26       All federal and state statutes, city, county, and District ordinances concerning public  
27       health, safety, and the environment including, by way of example and not limitation, the  
28       Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42  
29       U.S.C. Sections 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C.  
30       Sections 6901 et seq.; the Federal Clean Water Act, 33 U.S.C. Sections 1251 et seq.; the  
31       Toxic Substances Control Act, 15 U.S.C. Sections 1601 et seq.; the Occupational Safety  
32       and Health Act, 29 U.S.C. Sections 651 et seq.; the California Hazardous Waste Control  
33       Act, California Health and Safety Code Sections 25300 et seq.; the Safe Drinking Water  
34       and Toxic Enforcement Act, California Health and Safety Code Sections 5249.5 et seq.;  
35       as currently in force or as hereafter amended, and all rules and regulations promulgated  
36       thereunder.

1 **1.36 Exempt Waste**

2 Biohazardous or Biomedical Waste (except Sharps), Hazardous Waste, Sludge,  
3 automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion  
4 engines, and those wastes under the control of the Nuclear Regulatory Commission.

5 **1.37 Fiscal Year**

6 The period commencing January 1st of one year and concluding December 31st of the  
7 same year for Company. For District, it means the period commencing July 1st of one  
8 year and concluding June 30th of the subsequent year. Nothing herein shall limit the  
9 right of Company to change its fiscal year, if Company should so elect.

10 **1.38 Food Waste**

11 Food scraps and trimmings from food preparation, including but not limited to: meat, fish  
12 and dairy waste, fruit and vegetable waste, grain waste, and acceptable food packaging  
13 such items as pizza boxes, paper towels, waxed cardboard and food contaminated paper  
14 products.

15 **1.39 Garbage**

16 All non-recyclable packaging, and putrescible waste attributed to normal activities of a  
17 Service Unit. Garbage must be generated by and at the Service Unit wherein the Garbage  
18 is collected. Garbage does not include those items defined herein as Recyclable  
19 Materials, Organic Waste, Bulky Waste, E-Waste, U-Waste, or Exempt Waste.

20 **1.40 Garbage Bin**

21 A metal or plastic container, with a capacity of at least one (1) cubic yard up to, and  
22 including, six (6) cubic yards, designed or intended to be mechanically dumped into a  
23 loader packer type collection vehicle that is approved for such purpose by the District.  
24 Garbage Bins may also include Compactors that are owned by the MFD or Commercial  
25 Service Unit wherein the MFD or Commercial Collection Service occurs.

26 **1.41 Garbage Cart**

27 A heavy plastic receptacle with wheels and a rated capacity of at least twenty (20) gallons  
28 and not more than ninety-six (96) gallons, having a hinged tight-fitting lid and wheels,  
29 that is approved by the District Manager-Engineer for use by Service Recipients for  
30 Collection Services under this Agreement.

31 **1.42 Green Waste**

32 Any vegetative matter resulting from normal yard and landscaping maintenance that is  
33 not more than three (3) feet in its longest dimension or six (6) inches in diameter and fits  
34 in the Organic Waste Cart utilized by the Service Recipient. Green Waste includes plant  
35 debris, such Yucca and Cactus, ivy, grass clippings, leaves, pruning, weeds, branches,  
36 brush, holiday trees, and other forms of vegetative waste and must be generated by and at  
37 the Service Unit wherein the Green Waste is collected. Green Waste does not include  
38 items herein defined as Exempt Waste.

- 1    **1.43 Hazardous Waste**  
2       Any material which is defined as a hazardous waste under California or United States law  
3       or any regulations promulgated pursuant to such law, as such as local, state or federal law  
4       or regulations may be amended from time to time.
- 5    **1.44 Household Hazardous Waste (HHW)**  
6       Residential household hazardous is governed by Health and Safety Code 25218 –  
7       25218.13. HHW includes dry cell household batteries, cell phones and PDAs; used motor  
8       oil; used oil filters when contained in a sealed plastic bag; compact fluorescent light bulbs  
9       contained in a sealed plastic bag; cleaning products, pesticides, herbicides, insecticides,  
10      painting supplies, automotive products, solvents, stripes, and adhesives, auto batteries;  
11      and Universal Waste.
- 12   **1.45 HHW Element**  
13      The Household Hazardous Waste Element of the Integrated Solid Waste Plan required to  
14      be developed by the City and the County.
- 15   **1.46 Interfamilial Assignments**  
16      The sale, exchange, or other transfer of substantially all of Company's assets dedicated to  
17      service under this Agreement to a spouse, sibling, child, or grandchild of James Ratto.
- 18   **1.47 Large Green Waste**  
19      Oversized Green Waste such as tree trunks and branches with a diameter of not less than  
20      six (6) inches and not more than two (2) feet and a length of not more than six (6) feet in  
21      its longest dimension, and not weighing more than seventy (70) pounds, which are  
22      attributed to the normal activities of a SFD, or MFD. Large Green Waste must be  
23      generated by and at the Service Unit wherein the Large Green Waste is collected.
- 24   **1.48 Materials Recovery Facility (MRF)**  
25      Any facility, selected by the Company and approved by the District, or specifically  
26      designated by the District, designed, operated, and legally permitted for the purpose of  
27      receiving, sorting, processing, storing, or preparing Recyclable Materials for sale.
- 28   **1.49 Multi-family Dwelling (MFD Collection Service)**  
29      MFD Garbage Collection Service, MFD Recycling Service, MFD Organic Collection  
30      Service, and MFD Bulky Waste Collection Service.
- 31   **1.50 MFD Organic Waste**  
32      Green Waste and Food Waste separated at the source of generation for inclusion in the  
33      MFD Organic Waste Collection Service program.
- 34   **1.51 MFD Organic Waste Collection Service**  
35      The Collection of MFD Organic Waste by the Company from MFD Service Units in the  
36      Service Area, and the delivery of that MFD Organic Waste to an Organic Waste  
37      processing facility.

- 1    **1.52 MFD Recycling Service**  
2       The Collection of Recyclable Materials, by the Company, from MFD Service Units in the  
3       Service Area, the delivery of those Recyclable Materials to a Materials Recovery Facility  
4       and the processing and marketing of those Recyclable Materials.
- 5    **1.53 MFD Service Unit**  
6       Any combination of Dwelling Units in the Service Area utilizing a common Garbage Bin  
7       for the accumulation and set-out of Garbage.
- 8    **1.54 MFD Garbage Collection Service**  
9       The Collection of Garbage, by the Company, from MFD Service Units in the Service  
10      Area and the delivery of that Garbage to the Disposal Facility.
- 11   **1.55 Non-Collection Notice**  
12      A form developed and used by the Company, as approved by the District, to notify  
13      Service Recipients of the reason for non-collection of materials set out by the Service  
14      Recipient for Collection by Company pursuant to this Agreement.
- 15   **1.56 Occupied**  
16      When a person or persons has taken or is/are holding possession of the Service Unit for  
17      temporary or permanent use. For the purpose of determining whether a Service Unit was  
18      occupied during periods when Collection Service was available to such Service Unit, the  
19      Service Unit shall be presumed to have been so occupied unless evidence is presented  
20      that no gas, electric, telephone, or water utility services were consumed on such Service  
21      Unit during such periods or such other evidence is presented to the satisfaction of the  
22      District Manager-Engineer.
- 23   **1.57 Organic Waste**  
24      Includes Food Waste and Green Waste.
- 25   **1.58 Organic Waste Bin**  
26      A metal or plastic container, with a capacity of at least one (1) cubic yard up to and  
27      including six (6) cubic yards, designed or intended to be mechanically dumped into a  
28      loader packer type truck that is approved for such purpose by the District.
- 29   **1.59 Organic Waste Cart**  
30      A heavy plastic receptacle with wheels and a rated capacity not exceeding ninety-six (96)  
31      gallons, having a hinged tight-fitting lid, and wheels, that is approved for such purpose by  
32      the District. If the Organic Waste Cart is used to hold Food Waste the Cart must have a  
33      Food Waste program sticker attached in a clearly visible area.
- 34   **1.60 Organic Waste Processing Facility**  
35      Any facility selected by the Company that is designed, approved by the District, or  
36      specifically designated by the District, operated and legally permitted for the purpose of  
37      receiving and processing Organic Waste and Large Green Waste.

1 **1.61 Owner**

2 The person holding the record title to the real property constituting the Service Unit to  
3 which Collection Service is to be provided under this Agreement.

4 **1.62 Pass-Through Cost**

5 A cost to which no element of overhead, administrative expense, profit, or other mark-up  
6 is added when included in calculations for compensation and rates as part of a Detailed  
7 Rate Review as specified in Exhibit 8.

8 **1.63 Recyclable Materials**

9 Those materials which are capable of being recycled and which would otherwise be  
10 processed or disposed of as Garbage. Recyclable Materials includes those materials as  
11 defined by the District, including, but limited to, newsprint (including inserts); mixed  
12 paper (including magazines, catalogs, envelopes, junk mail, corrugated cardboard, brown  
13 bags and paper, paperboard, paper egg cartons, office ledger paper, and telephone books);  
14 glass containers; aluminum beverage containers; small scrap and cast aluminum (up to 20  
15 pounds); steel including “tin” cans, empty aerosol cans (empty, non-toxic products) and  
16 small scrap (up to 20 pounds); bimetal containers; plastic bags, plastic food containers,  
17 #1-7 plastics regardless of form or mold (including but not limited to plastic containers,  
18 bottles, wide mouth tubs, plastic bags, film plastic, and polystyrene), aluminum foil and  
19 pans. The District, in consultation with the Company, may modify the list of Recyclable  
20 Materials.

21 **1.64 Recyclable Materials Balancing Account**

22 The process for incorporating changes in the value of Recyclable Materials as specified  
23 in Exhibit 7.

24 **1.65 Recycling Bin**

25 A plastic or metal container, with a capacity of at least one (1) cubic yard up to and  
26 including six (6) cubic yards, designed or intended to be mechanically dumped into a  
27 loader packer type recycling truck that is approved for such purpose by the District and is  
28 appropriately labeled as a Recycling Bin.

29 **1.66 Recycling Cart**

30 A heavy plastic receptacle with wheels and a rated capacity of at least sixty-four (64)  
31 gallons and not more than ninety-six (96) gallons, having a hinged tight-fitting lid, and  
32 wheels that is approved for such purpose by the District and is appropriately labeled as a  
33 Recycling Cart.

34 **1.67 Related Party Entity**

35 Any entity that has contractual relationships with Company during the term of this  
36 agreement, including extensions, and in which a majority of the ownership interest of the  
37 other entity is owned or effectively controlled by the Company, or by one or more of the  
38 current, then current or former shareholders, directors, officers, or senior management  
39 employees of Company or by their spouses, siblings, or issue.

- 1 **1.68 Service Area**  
2 That area within the jurisdictional limits of the Novato Sanitary District, California.
- 3 **1.69 Service Recipient**  
4 An individual or company receiving Collection Services.
- 5 **1.70 Service Unit**  
6 SFD Service Units, MFD Service Units, and Commercial Service Units.
- 7 **1.71 Single-family Dwelling (SFD) Collection Service**  
8 SFD Garbage Collection Service, SFD Recycling Collection Service, SFD Organic Waste  
9 Collection Service, and SFD Bulky Waste Collection Service.
- 10 **1.72 SFD Organic Waste**  
11 Green Waste and Food Waste comingled for inclusion in the SFD Organic Waste  
12 Collection Service program.
- 13 **1.73 SFD Organic Waste Collection Service**  
14 The Collection of Organic Waste by the Company from SFD Service Units in the Service  
15 Area, the delivery of that Residential Organic Waste to an Organic Waste Processing  
16 Facility.
- 17 **1.74 SFD Recycling Collection Service**  
18 The Collection of Recyclable Materials by the Company from SFD Service Units in the  
19 Service Area, the delivery of those Recyclable Materials to a Materials Recovery Facility  
20 and the processing and marketing of those Recyclable Materials.
- 21 **1.75 SFD Garbage Collection Service**  
22 The Collection of Garbage, by the Company, from SFD Service Units in the Service Area  
23 and the delivery of that Garbage to a Disposal Facility.
- 24 **1.76 SFD Service Unit**  
25 Any Dwelling Unit in the Service Area utilizing a Garbage Cart, or any combination of  
26 Dwelling Units sharing Garbage Carts, for the accumulation and set out of Garbage.
- 27 **1.77 Sharps**  
28 California law defines household sharps as “ hypodermic needles, pen needles,  
29 intravenous needles, lancets and other devices used to penetrate the skin for the delivery  
30 of medications. It also includes broken medical glass, broken capillary tubes and ends of  
31 dental wires.
- 32 **1.78 Sludge**  
33 The accumulated solids, residues, and precipitates generated as a result of waste  
34 treatment or processing, including wastewater treatment, water supply treatment, or

1 operation of an air pollution control facility, and mixed liquids and solids pumped from  
2 septic tanks, grease traps, privies, or similar disposal appurtenances or any other such  
3 waste having similar characteristics or effects.

4 **1.79 Solid Waste**

5 Garbage, Organic Waste, Recyclable Materials, and Construction and Demolition Debris.

6 **1.80 SRRE Element**

7 The Source Reduction and Recycling Element of the County Integrated Waste  
8 Management Plan prepared by the City and the County.

9 **1.81 Universal Waste or U-Waste**

10 Universal wastes are Hazardous Wastes that are widely produced by households and  
11 many different types of businesses. Universal wastes include televisions, cathode ray  
12 tubes, computers and other electronic devices as well as batteries, fluorescent lamps, non-  
13 empty aerosol cans, mercury thermostats, and other mercury containing equipment,  
14 among others.

15 **1.82 White Goods**

16 Discarded refrigerators, ranges, water heaters, freezers, and other similar household  
17 appliances.

18 **1.83 Work Day**

19 Any day, Monday through Saturday that is not a holiday.

20 **1.84 Zero Waste**

21 The term “Zero Waste” derives from applying the principal of sustainability to redefine  
22 the concept of waste in our society. Zero Waste principals promote the highest and best  
23 use of materials to eliminate waste and pollution, emphasizing a closed-loop system of  
24 production and consumption, moving in logical increments toward the goal of Zero  
25 Waste through the core principals of:

- 26 • Improving “downstream” reuse/recycling of end-of-life products and materials  
27 to ensure their highest and best use;
- 28 • Pursuing “upstream” redesign strategies to reduce the volume and toxicity of  
29 discarded products and materials, and promote low-impact or reduced  
30 consumption lifestyles;
- 31 • Fostering and supporting use of discarded products and materials to stimulate  
32 and drive local economic and workforce development.

33 **1.85 Zero Waste Minimum Requirements**

34 Those programs and standards as specified in Article 4.9 to be implemented by the  
35 Company to meet the District’s Zero Waste Goals.

1                                   **ARTICLE 2 GRANT AND ACCEPTANCE OF FRANCHISE**

2   **2.1   Grant and Acceptance of Franchise**

3           Subject to Section 2.5, District hereby grants to Company the exclusive franchise, right  
4           and privilege to collect, transport, recycle, and dispose of Solid Waste accumulating in  
5           the service area that is required to be offered for Collection to Company in accordance  
6           with current laws, regulations, and ordinances for the term of and within the scope set  
7           forth in this Agreement. Company hereby accepts the franchise on the terms and  
8           conditions set forth in this Agreement.

9   **2.2   Effective Date**

10          The "Effective Date" of this Agreement shall be the date entered on the first page of this  
11          Agreement.

12   **2.3   Term of Agreement**

13          Except as provided in Section 2.5, the Term of this Agreement shall begin on March 2,  
14          2011 and shall expire at midnight on December 31, 2025, subject to extension as may  
15          occur pursuant to Section 2.4 herein.

16   **2.4   Option to Extend Term**

17          Provided that the Company has met the Zero Waste Minimum Requirements as specified  
18          in Article 4.9, District shall have the option to extend this Agreement for a maximum  
19          additional sixty (60) months. If District elects to exercise this option, it shall give written  
20          notice not less than one (1) year prior to the initial termination date provided in Section  
21          2.3 of this Agreement.

22          Company may request, prior to the time for District to provide written notice of  
23          extension, that District consider extending the Agreement as provided herein. Upon  
24          request of Company for such extension, District agrees to consider any proposal included  
25          with such request in good faith and District agrees not to unreasonably withhold approval  
26          of such request, provided that Company has at no time breached this Agreement, service  
27          has been provided at least at a satisfactory level, collection rates are competitive by  
28          comparison with surrounding communities and the Zero Waste Minimum Requirements  
29          as specified in Article 4.9 have been met. Nonetheless, the granting of such extension  
30          shall remain in the sole discretion of the District. Furthermore, should the provisions of  
31          Section 2.5 cause the term of the Agreement to be reduced, no extension of the term  
32          under this provision shall be considered.

33   **2.5   Reduction to Seven Year Term**

34          In the event that Company ceases to be within the effective management control of James  
35          Ratto or an assignment occurs pursuant to the terms of Section 11.6 herein at any time  
36          during the Term of this Agreement, then the Term shall be reduced to a maximum of  
37          seven (7) years from the date of the change of control or assignment; provided such seven  
38          (7) year term does not exceed the expiration date as provided in Section 2.3, including  
39          any extension previously granted under Section 2.4. Interfamilial Assignments shall not

1 be subjected to the reduction in term; however, any such Interfamilial Assignment shall  
2 be subject to all the provisions of Section 11.6.

## 3 **2.6 Conditions to Effectiveness of Agreement**

4 The obligation of District to permit this Agreement to become effective and to perform its  
5 undertakings provided for in this Agreement is subject to the satisfaction of each and all  
6 of the conditions set out below, each of which may be waived in whole or in part by  
7 District.

8 **2.6.1 Accuracy of Representations.** Representations and warranties made by  
9 Company throughout this Agreement are accurate, true, and correct on and as of  
10 the effective date of this Agreement.

11 **2.6.2 Absence of Litigation.** There is no litigation pending or threatened in any court  
12 challenging the award of this franchise to Company or the execution of this  
13 Agreement, or seeking to restrain or enjoin its performance.

14 **2.6.3 Furnishing of Insurance and Bonds.** Company has furnished evidence of the  
15 insurance and bonds required by Article 8.

16 **2.6.4 Effectiveness of Board of Directors Action.** The District's Resolution approving  
17 this Agreement shall have become effective pursuant to California law prior to the  
18 Effective Date of this Agreement.

## 19 **2.7 Scope of Franchise**

20 Subject to Section 2.8, the franchise granted to Company shall be exclusive for  
21 Collection, processing and disposal of Garbage, Recyclable Materials, Organic Waste,  
22 and Construction and Demolition Debris, within the Service Area. The franchise shall be  
23 for a group of interrelated services, not merely for transportation or hauling, which  
24 include the Collection, transportation, processing, recycling and disposal of the Garbage,  
25 Recyclable Materials, Organic Waste, and Construction and Demolition Debris within the  
26 Service area.

## 27 **2.8 Limitations to Scope**

28 The franchise for the Collection, removal, and disposal of Solid Waste granted to  
29 Company shall be exclusive except as to the following categories of Solid Waste listed in  
30 this section. The granting of this franchise shall not preclude the categories of Solid  
31 Waste listed below from being delivered to and collected and transported by others:

32 **2.8.1** Recyclable Materials separated from Solid Waste by the Service Recipient and for  
33 which the Service Recipient sells or is otherwise compensated by a collector in a  
34 manner resulting in a net payment to the Service Recipient;

35 **2.8.2** Recyclable Materials as may be accumulated for donation to youth, civic, and  
36 charitable entities;

- 1           **2.8.3** Recyclable Materials that are separated at any premises and are transported  
2           personally by the owner or occupant of such premises (or by his or her full-time  
3           employees) to a MRF;
- 4           **2.8.4** Containers delivered for recycling under the California Beverage Container  
5           Recycling Litter Reduction Act, found at Section 14,500 et seq. of the California  
6           Public Resources Code;
- 7           **2.8.5** Organic Waste removed from a Service Unit by a gardening, landscaping, or tree  
8           trimming service as an incidental part of a total service offered by that company  
9           or person rather than as a hauling service;
- 10          **2.8.6** Construction and Demolition Debris (including excavated soil) removed from a  
11          Service Unit by a licensed demolition or construction contractor using its own  
12          employees as an incidental part of a total service offered by that company rather  
13          than as a hauling service;
- 14          **2.8.7** Animal waste and remains from slaughterhouse or butcher shops for use as  
15          tallow;
- 16          **2.8.8** By-products of sewage treatment, water treatment, and industrial facilities,  
17          including sludge, grit, chemical wastes, and other by-products that are not similar  
18          to Solid Waste generated by household and commercial users;
- 19          **2.8.9** Materials removed by householders or occupants and transported by them to  
20          public dumps or recycling centers;
- 21          **2.8.10** Specific varieties of Recyclable Materials separated from Solid Waste by a  
22          Service Recipient and for which Company has no recycling program in place for  
23          said specific variety of Recyclable Materials; provided that the District has  
24          approved the collection of such specific Recyclable Materials by a third party  
25          after providing Company with notice of adding additional Recyclable Materials to  
26          the District’s recycling program and allowing Company an opportunity to propose  
27          a program for said variety of Recyclable Materials; and
- 28          **2.8.11** This grant to Company of an exclusive franchise for services, including the right  
29          and privilege to collect, transport, process or recycle, and dispose of Solid Waste  
30          shall be interpreted to be consistent with state and federal laws, now and during  
31          the term of the franchise. The scope of this exclusive franchise shall be limited by  
32          current and developing state and federal laws with regard to Solid Waste  
33          handling, exclusive franchises, control of Recyclable Materials, Solid Waste flow  
34          control, and related matters. In the event that future interpretations of current law,  
35          enactments, or developing legal trends limit the ability of District to lawfully  
36          provide for the scope of franchise services as specifically set forth herein,  
37          Company agrees that the scope of the franchise will, as a matter of law, be limited  
38          to those services and materials that may be lawfully provided for under this  
39          Agreement. District shall not be responsible for any damages or additional

1 compensation claimed by Company to arise out of a further limitation to the scope  
2 of the Agreement as set forth above.

3 **2.9 District's Right to Direct Changes.**

4 District may direct Company to perform additional Solid Waste services or modify the  
5 manner in which it performs existing services. Company shall promptly take direction  
6 from District in responding.

7 If Company is capable of performing or developing the ability to perform a requested  
8 service or modifying an existing service, and an adjustment in Company's revenue  
9 requirement has been requested but has not been agreed upon, Company shall commence  
10 the new or changed service while the appropriate revenue adjustment is being  
11 determined. Pilot programs and innovative services that may entail new collection  
12 methods, different kinds of services, and/or new requirements for waste generators are  
13 included among the kinds of changes that District may direct. Company acknowledges  
14 and agrees that District may permit other persons besides Company to perform additional  
15 Solid Waste services, if Company and District cannot agree on terms and conditions of  
16 such services one hundred twenty (120) days from the date when District first requests a  
17 proposal from Company to perform such services, provided such additional services are  
18 new services not subject to the exclusive rights of the franchise as set forth in this  
19 Agreement.

20 **2.10 Ownership of Solid Waste.**

21 Once Garbage, Recyclable Materials, Organic Waste, and Construction and Demolition  
22 Debris are placed in Containers and properly presented for collection at curbside,  
23 ownership and the right to possession shall transfer directly from the Service Recipient to  
24 Company by operation of law. The Company is hereby granted the right to retain,  
25 recycle, compost, dispose of, and otherwise transport and/or use such Garbage,  
26 Recyclable Materials, Organic Waste, and Construction and Demolition Debris, or any  
27 part thereof, in any lawful fashion or for any lawful purpose desired by Company.  
28 Subject to the provisions of this Agreement, and the following optional ownership rights  
29 of District, Company shall have the right to retain any benefit resulting from its right to  
30 retain, recycle, compost, dispose of, or use the Garbage, Recyclable Materials, Organic  
31 Waste, and Construction and Demolition Debris that it collects. Garbage, Recyclable  
32 Materials, Organic Waste, and Construction and Demolition Debris, or any part thereof,  
33 that is disposed of at a disposal facility (whether landfill, transformation facility, transfer  
34 station, Material Recovery Facility, or Organic Waste Processing Facility) shall become  
35 the property of the owner or operator of the disposal facility once deposited there by  
36 Company.

37 Notwithstanding the foregoing, District may determine that in order to meet the resource  
38 reduction and recycling goals of the CIWMA that apply to District, the City, and/or  
39 County, or in order to negotiate or bid for the most favorable transfer, disposal, and/or  
40 Recyclable Materials marketing options, District may assert its authority to control the  
41 wastestream once the Solid Waste that is to be collected under this Agreement is  
42 presented for Collection. In such event, the right to possession and ownership shall  
43 transfer directly from the Service Recipient to District by operation of law. District shall  
44 assert its right to ownership and control of the wastestream by providing Company with

1 specific written notification of District's intent to assert its authority with regard to  
2 ownership and control of the wastestream. Thereafter, District shall have and retain the  
3 rights to direct Company to particular facilities, such as resource recovery, transfer, or  
4 disposal facility(ies) for purposes of processing of the waste, and District may, as a  
5 market participant, enter into contracts in its own name for the disposal, processing,  
6 recycling, composting, transfer, transport, and use of a Materials Recovery Facility. In  
7 the event that District asserts its right to own and fully control the wastestream, Company  
8 shall be viewed as an agent of District with regard to Company's actions in collection,  
9 transfer, recycling, and disposal of the Solid Waste subject to this Agreement.

10 Nothing contained in this Section 2.10 is intended to nor shall it affect the exclusive right  
11 granted to Company to collect, transport, recycle and dispose of Garbage, Recyclable  
12 Materials, Organic Waste, and Construction and Demolition Debris, as set forth in this  
13 Agreement, provided that Company remains in compliance with District directives and  
14 orders, once the District has elected to assume ownership and control of the wastestream.

1           **ARTICLE 3 FRANCHISE FEE AND OTHER MISCELLANEOUS FEES**

2   **3.1   Franchise Fee.**

3           **3.1.1 Franchise Fee Amount.** In consideration of the exclusive franchise provided in  
4                                   Section 2.1 of this Agreement Company shall pay to District \$45,000 per year (or  
5                                   another amount as provided in Section 3.1.3). This franchise fee shall be a Pass-  
6                                   Through Cost.

7           **3.1.2 Time and Method of Payment.** On or before the fifteenth (15th) day of July of  
8                                   each year during the term of this Agreement, Company shall remit the franchise  
9                                   fee amount set forth in Section 3.1.1 (or another amount as provided in Section  
10                                  3.1.3).

11          **3.1.3 Adjustment to Franchise Fee.** District may adjust the amount of the franchise  
12                                  fee annually with ninety (90) days' notice to Company. Such adjustment shall be  
13                                  reflected in the rates that Company is allowed to charge and collect from  
14                                  Customers.

15   **3.2   Other Miscellaneous Fees.**

16                               District may incur expenses other than as set forth above in its administration of this  
17                               franchise and as a result of carrying out its individual or shared responsibilities with  
18                               regard to administration of solid waste and recycling programs within the greater Novato  
19                               area. These additional costs may include costs associated with membership in joint  
20                               powers authorities, CIWMA fees, participation in private solid waste programs,  
21                               undertaking additional public educational efforts with regard to solid waste recycling and  
22                               HHW, consulting and legal fees arising from District's solid waste activities, and other  
23                               miscellaneous costs that may be incurred as a result of District's role in solid waste  
24                               activities. District may from time to time determine that it is appropriate to fix additional  
25                               fees to reimburse District for the potential costs associated with these miscellaneous solid  
26                               waste activities. District may from time to time adopt and fix such fees, and thereafter  
27                               adjust the amount of such fees. Such fees may be included within the franchise fee or  
28                               may be set forth as an additional segregated fee. Company shall be allowed to charge  
29                               and collect from Customer such fees, and Company agrees to do so at the direction of  
30                               District. These fees shall be Pass-Through Costs. The time and method for payment and  
31                               for adjustment of such fees shall be the same as set forth in Sections 3.1.2 and 3.1.3  
32                               above.

1                                   **ARTICLE 4 Zero Waste Collection And Processing Services**

2   **4.1    General Conditions.**

3           **4.1.1 Service Units.** Service Units shall include all the following categories of Service  
4           Unit which are in the Service Area as of March 2, 2011, and all such Service Unit  
5           which may be added to the Service Area by means of annexation, new  
6           construction, or as otherwise set forth in this Agreement during term of this  
7           Agreement:

- 8                                   ▪   SFD Service Units
- 9                                   ▪   Commercial Service Units
- 10                                  ▪   MFD Service Units
- 11                                  ▪   Local Government Agencies Service Units

12                                  Any question as to whether a Service Unit falls within one of these categories  
13                                  shall be determined by the District Manager-Engineer and the determination  
14                                  of the District Manager-Engineer shall be final.

15           **4.1.2 Service Unit Changes.** The District and Company acknowledge that during the  
16           term of this Agreement it may be necessary or desirable to add or delete Service  
17           Units for which Company will provide Collection Services.

18           **4.1.3 Additions and Deletions.** Company shall provide services described in this  
19           Agreement to new Service Units within five (5) Work Days of receipt of notice  
20           from the District or new Service Unit to begin such service.

21           **4.1.4 Route Map Update.** Company shall revise the Service Unit route maps to show  
22           the addition of Service Units added due to annexation and/or addition of new  
23           service areas and shall provide such revised maps to the District Manager-  
24           Engineer as requested.

25           **4.1.5 District Direction of Collected Materials.** The District reserves its right to  
26           direct Company to deliver Garbage, Recyclable Materials, Organic Waste, or  
27           Construction and Demolition Debris collected by Company under the terms of  
28           this Agreement to an appropriately licensed and permitted facility that may  
29           provide financial or environment benefits to the District. If such direction by the  
30           District results in the Company’s costs to provide services to increase, the  
31           Company may request additional compensation.

32   **4.2    SFD Collection Service.**

33           These services shall be governed by the following terms and conditions:

34           **4.2.1 General Conditions of Service.** The Company shall provide SFD Collection  
35           Service to all SFD Service Units in the Service Area whose Garbage is properly  
36           containerized in Garbage Carts, Recyclable Materials are properly containerized

1 in Recycling Carts; and Organic Waste is properly containerized in Organic  
2 Waste Carts. Garbage, Recycling and Organic Waste Carts will be collected at  
3 least once a week and on the same day of Collection. SFD Collection Service  
4 shall be automated wherever feasible. The method of collection and location for  
5 collection of SFD Carts shall at all times be consistent with District's Garbage,  
6 Recyclable Materials, and Organic Waste collection, removal, diversion, and  
7 disposal regulation. Company shall offer Garbage Carts in minimum 20, 32, 64  
8 and 96-gallon Cart sizes, and Recyclable Materials and Organic Waste Carts in 64  
9 or 96 gallon Cart sizes. If containers smaller than 20 gallons become available and  
10 agree with collection methods, District and Company agree to work together to  
11 provide the smaller Garbage Collection Containers. The size of the Containers  
12 used to collect Recyclable Materials and Organic Waste shall be determined by  
13 the Customer. Customers may request up to one (1) additional recycling and  
14 Organic Waste containers which will be supplied at no additional charge. As new  
15 programs are developed, Company may provide alternate containers with the  
16 approval of the District. The size of the Cart shall be determined between the SFD  
17 Service Recipient and the Company.

18 **4.2.2 Ownership of and Replacement of Carts.** Company-furnished Carts will  
19 remain property of Company. Company shall be responsible for reasonable  
20 maintenance and replacement of Carts. Company may inform Customers that  
21 containers are to remain at the residence upon sale or transfer of the property. To  
22 the extent that Carts are lost or stolen, Company shall provide new Carts to the  
23 Service Recipient at no cost, provided that Company shall not be required to  
24 supply more than one replacement Cart to any Service Unit within a one-year  
25 period unless circumstances demonstrate that Service Recipient had no  
26 responsibility for the loss or damage to the Cart. At the end of the Term of this  
27 Agreement, including any extensions provided hereunder, the Carts shall be  
28 property of the Company, and Company shall be responsible for removal of the  
29 Carts from all Service Units, unless alternative arrangements for disposition of the  
30 Carts are agreed to by Company and District.

31 **4.2.3 Curbside Collection Service.** The Company shall service Carts that are used for  
32 SFD Service Units that are placed at the curb or roadway edge, so as to be readily  
33 accessible to the armature of the automated collection truck. In cases where  
34 placement of containers at the curb or roadway edge would present a safety  
35 hazard for motorists or pedestrians or represent a physical hardship to Customers,  
36 Company shall designate an alternate location for the placement of the Carts. The  
37 designated pick-up area, if disputed by the Customer or Company, shall be  
38 determined by the District Manager-Engineer. In such cases, Company shall be  
39 responsible for service of the Cart, irrespective of whether the automated armature  
40 can reach the Cart. However, Company shall not be obligated to provide off-  
41 sized Carts or nonstandard Cart. Some SFD Service Unit locations may not be  
42 appropriate for standard automated service, due to the topography or road  
43 conditions. In such cases, Customers may be required to supply their own Solid  
44 Waste containers. Any dispute between the Company and Customer concerning

1 the availability and use of automated Carts shall be determined by the District  
2 Manager-Engineer.

3 **4.2.4 On-Premise Collection Service - Subscription.** A SFD Service Recipient may  
4 subscribe for On-premise SFD Collection Service where Garbage, Recyclable  
5 Materials, and Organic Waste Carts are collected from a side-yard, backyard, or  
6 other off-street location agreed on between the Company and the Service  
7 Recipient. Company may charge for On-premise Collection Service at the rates as  
8 set forth in the SFD Collection Rates in Exhibit 1 unless all of the adults at the  
9 SFD are disabled and proof of the disability is provided to the Company. In cases  
10 of dispute, the Manager-Engineer will make the determination.

11 **4.2.5 Frequency and Scheduling of Service.** Unless otherwise approved by District,  
12 residential Recyclable Materials collection will be on the same day of the week as  
13 Garbage Collection Service. Company will notify recycling Customers, as is  
14 done for regular service, regarding holiday collection schedules.

15 **4.2.6 Non-Collection.** Company shall not be required to collect any Garbage,  
16 Recyclable Materials, or Organic Waste that is not placed in a Cart. In the event  
17 of non-collection, Company shall affix to the Cart a Non-collection Notice  
18 explaining why Collection was not made, or alternatively Company shall  
19 telephone the Customer with an explanation on the same day as the intended pick  
20 up. Company shall maintain a copy of such notices during the term of this  
21 Agreement.

22 **4.2.7 SFD Garbage Collection Service.** This service will be governed by the  
23 following additional terms and conditions:

- 24 a) Disposal Facility. All Garbage collected as a result of performing SFD Garbage  
25 Collection Services shall be transported to, and disposed of, at the Disposal  
26 Facility.
- 27 b) Additional Garbage Carts. Upon notification to the Company by the District or a  
28 Service Recipient that additional Garbage Carts are requested, the Company shall  
29 deliver such Garbage Carts to such Service Recipient within five (5) Work Days.  
30 Company shall be compensated for the cost of additional Garbage Carts in  
31 accordance with the SFD Collection Rates Rate in Exhibit 1 or as may be adjusted  
32 under the terms of this Agreement.

33 **4.2.8 SFD Recycling Collection Service.** This service will be governed by the  
34 following additional terms and conditions:

- 35 a) Free Service. The Company may not charge for the Collection of Recyclable  
36 Materials, and SFD Recycling Collection Service shall be unlimited. However,  
37 for a SFD Service Recipient to receive free recycling services, they must be  
38 subscribe to receive SFD Garbage Collection Service.

- 1           b) Recyclable Materials. Company shall collect Recyclable Materials as specified in  
2           this Agreement and consistent with direction of the District, the District’s Zero  
3           Waste Goals, AB 32, and the HHW and SRRE Element Plans approved by the  
4           City and the County.
- 5           c) Material Recovery Facility. All Recyclable Materials collected as a result of  
6           performing SFD Recycling Collection Service shall be delivered to the Materials  
7           Recovery Facility.
- 8           d) Marketing and Sale of Recyclable Materials. All expenses related to Recyclable  
9           Materials processing and marketing will be the sole responsibility of Company.  
10          Revenues from the sales of these materials shall be applied to the cost of services  
11          under the Agreement to reduce Company's revenue requirement. Company shall  
12          sell all Recyclable Materials collected pursuant to this Agreement at not less than  
13          fair market value.
- 14          e) Records. District shall have the right to request Company to provide to District  
15          the Company's records, as to sale of Recyclable Materials, in such form and to the  
16          extent as District deems necessary to review Company's marketing methods,  
17          primary contingent markets, pricing policy, and assumed salvage value for each  
18          collected type of recyclable.
- 19          f) Additional Recycling Carts. Company shall provide additional SFD Recycling  
20          Carts to SFD Collection Service Recipients within seven (7) days of request at no  
21          additional cost provided that additional carts are used by Service Recipients for  
22          the purposes of setting out additional Recyclable Materials for regular weekly  
23          SFD Recycling Collection Service.
- 24          g) Overages. Corrugated cardboard or other Recyclable Materials that will not fit  
25          inside the Recycling Cart may be flattened, bagged and/or bundled and placed  
26          beside the Recycling Cart.
- 27          h) Recycling - Changes to Work. Should changes in law arise that necessitate any  
28          additions or deletions to the work described herein including the type of items  
29          included as Recyclable Materials, the parties shall negotiate any necessary cost  
30          changes and shall enter into an Agreement amendment covering such  
31          modifications to the work to be performed and the compensation to be paid before  
32          undertaking any changes or revisions to such work.
- 33          i) Recycling - Improper Procedure. Except as set forth in Section 4.2.10 the  
34          Company shall not be required to collect Recyclable Materials if the Service  
35          Recipient does not segregate the Recyclable Materials from Garbage or Organic  
36          Waste. If Recyclable Materials are contaminated through commingling with  
37          Garbage or Organic Waste, the Company shall, if practical, separate the Garbage  
38          or Organic Waste from the Recyclable Materials. The Recyclable Materials shall  
39          then be collected and the Garbage or Organic Waste shall be left in the Recycling  
40          Cart along with a Non-collection Notice explaining why the Garbage or Organic

1 Waste is not considered a Recyclable Material. However, in the event the  
2 Recyclable Materials and Garbage or Organic Waste are commingled to the  
3 extent that they cannot easily be separated by the Company or the nature of the  
4 Garbage or Organic Waste renders the entire Recycling Cart contaminated, the  
5 Company will leave the Recycling Cart un-emptied along with a Non-collection  
6 Notice that contains instructions on the proper procedures for setting out  
7 Recyclable Materials.

8 **4.2.9 SFD Organic Waste Collection Service.** This service will be governed by the  
9 following terms and conditions:

- 10 a) Free Service For Up to Two (2) Organic Waste Carts. The Company may not  
11 charge for the Collection of Organic Waste collected in up to two (2) Organic  
12 Waste Carts. Company may charge SFD Service Recipients for three (3) or more  
13 Organic Waste carts in accordance with SFD Collection Rates in Exhibit 1.  
14 However, Company may not limit the amount of SFD Organic Waste Collection  
15 Service provided to a Service Recipient.
- 16 b) Organic Waste Processing Services. Company shall ensure that all Organic  
17 Waste collected pursuant to this Agreement are diverted from the landfill in  
18 accordance with AB 939 and AB 32 and any subsequent or other applicable  
19 legislation and regulations. Company shall ensure that all materials collected  
20 under this Organic Waste Collection Service will qualify for CalRecycle diversion  
21 credits. If so directed in writing by District, Company agrees to develop,  
22 implement, operate, and participate (locally and/or regionally) in mulching,  
23 composting, and/or similar such activities to achieve diversion requirements  
24 within the jurisdictional boundaries of the District. Company agrees to  
25 aggressively pursue new opportunities to divert Organic Waste from disposal at  
26 the landfill.
- 27 c) Organic Waste Processing Facility. Company shall deliver all collected Organic  
28 Waste to a fully permitted Organic Waste Processing Facility or a fully permitted  
29 Organic Waste transfer station. All expenses related to Organic Waste processing  
30 and marketing will be the sole responsibility of Company.
- 31 d) Organic Waste Processing. Company shall ensure that the Organic Waste  
32 collected pursuant to this Agreement is not disposed of in a landfill, except as a  
33 residue resulting from processing, and the degree feasible, that Organic Waste  
34 shall be composted and not be used as Alternative Daily Cover.
- 35 e) Additional Organic Waste Carts. Company shall provide one (1) additional SFD  
36 Organic Waste Cart to SFD Service Recipients within five (5) days of request at  
37 no additional cost provided that additional carts are used by SFD Service  
38 Recipients for the purposes of setting out additional Organic Waste Materials for  
39 regular weekly Organic Waste Collection Service.

- 1 f) Kitchen Food Waste Pails. Company shall make one kitchen Food waste pail per  
2 SFD available for pick up at the Recycling Center for a period of six months after  
3 roll out of the food waste available at no additional cost. After the initial six  
4 months, kitchen food waste pails will be available at cost. The District shall  
5 approve the specific size and labeling of the kitchen food waste pails to be  
6 provided by the Company.
- 7 g) Home Compost Bins. Company shall provide, at direct cost, a Bio-Stack  
8 Compost Bin to any SFD Collection Service Recipient that request one.
- 9 h) Curbside Holiday Tree Collection. Company shall operate an annual holiday tree  
10 collection program. The program shall include, as a minimum service level,  
11 curbside collection of reasonably-sized whole trees during at least a one-week  
12 period each January, in addition to the collection of holiday trees placed within  
13 the Organic Waste Carts and collected pursuant to ordinary Organic Waste  
14 Collection procedures. The holiday tree collection program shall target all  
15 properties in the service area.
- 16 i) Contaminated Holiday Trees. Holiday trees that are flocked or contain tinsel or  
17 other decorations may be delivered to the Disposal Facility at the discretion of the  
18 Company.
- 19 j) Non-collection. Company shall not be required to Collect any Organic Waste that  
20 is mixed with either Garbage, or Recyclable Materials. In the event of non-  
21 collection, Company shall affix to the Organic Waste Cart a Non-Collection  
22 Notice explaining why Collection was not made. Company shall maintain a copy  
23 of such notices during the term of this Agreement.

24 **4.2.10 Bulky Waste Collection.** This service will be governed by the following terms  
25 and conditions:

- 26 a) Maximum Reuse and Recycling. Company shall dispose of Bulky Waste  
27 collected from Service Units pursuant to this Agreement in accordance with the  
28 following hierarchy:
- 29                   ▪ Reuse
  - 30                   ▪ Disassemble for reuse or Recycling
  - 31                   ▪ Recycle
  - 32                   ▪ Compost
  - 33                   ▪ Disposal
- 34 b) Bulky Waste Pick up. Company shall provide Bulky Waste Collection Services to  
35 all Single Family Dwelling Units in the District whose Bulky Wastes have been  
36 placed within (3) feet of the curb, swale, paved surface of the public roadway,  
37 closest accessible roadway, or other such location agreed to by the Company and  
38 Customer, that will provide safe and efficient accessibility to the Company's

1 collection crew and vehicle. The Customer shall be limited to three (3) cubic  
2 yards or three (3) Bulky waste items per Collection; however, in no event shall  
3 the aggregate of Bulky Waste exceed the equivalent of three (3) cubic yards. The  
4 Bulky Waste must be contained and does not include Construction and  
5 Demolition Debris. Accordingly, Company shall be compensated for the cost of  
6 collecting Bulky Waste in excess of this limitation in accordance with the  
7 “Additional Bulky Waste Collection” service rate as set forth in Exhibit 1. Each  
8 Single Family Dwelling Unit in the District shall be entitled to receive Bulky  
9 Waste Collection Service up to four (4) times/year. Bulky waste pickup shall be  
10 scheduled within seventy-two (72) hours of the Customer request excluding  
11 Weekends and holidays.

12 c) Bulky Waste Items Containing Freon. Service Recipients may also make an  
13 appointment with Company for the Collection of used appliances (*i.e. washers,*  
14 *dryers, stoves, refrigerators, freezers, etc.*). In the event Company Collects Bulky  
15 Waste that contain Freon, Company shall handle such Bulky Waste in a manner  
16 such that the Large Items are not subject to regulation as Hazardous Waste under  
17 applicable state and federal laws or regulations. Company may charge for  
18 collecting Large Items containing Freon in accordance with the rates in Bulky  
19 Waste Collection Rates set forth in Exhibit 1.

20 d) Records. Company shall record by class and weight the Garbage, Recyclable  
21 Materials, Organic Waste, E-Waste, U-Waste, used appliances, etc., collected  
22 during the cleanup events. Company shall record the kinds and weights of  
23 materials diverted during these cleanups from the landfill through recycling,  
24 reuse, composting, transformation, or other means of diversion.

### 25 **4.3 Commercial Collection Service.**

26 These services will be governed by the following terms and conditions:

27 **4.3.1 General Conditions of Service.** The Company shall provide Commercial  
28 Garbage Collection Service, Commercial Recycling Collection Service,  
29 Commercial Organic Waste Collection Service, and 1 Debris Box Collection  
30 Service to all Commercial Service Units in the Service Area whose Garbage,  
31 Recyclable Materials, and Organic Waste are properly containerized in Bins,  
32 Carts, or Debris Boxes as appropriate where the Bins, Carts are accessible as set  
33 forth in Sections 4.03.3 and 4.03.4. The size of the Container and the frequency  
34 (above the minimum) of Collection shall be determined between the Service  
35 Recipient and the Company. However, the size and frequency shall be sufficient  
36 to provide that no Garbage, Recyclable Materials, or Organic Waste Materials  
37 need be placed outside the Bin, Cart or Debris Box.

38 a) Required Capacity. Company shall provide Commercial and MFD Recycling  
39 Collection Service and Organic Waste Collection Service to all Commercial  
40 Service and MFD Units in the Service Area. For each Service Unit, Company  
41 shall offer a minimum capacity of Commercial and MFD Recycling Collection  
42 and Commercial and MFD Organic Waste Collection Service appropriate to the

1 capacity measured as the total cubic yards collected weekly for Commercial and  
2 MFD Garbage Collection Service.

3 b) Accessibility. Company shall collect all Garbage, Recycling, or Organic Waste  
4 Bins or Carts that are readily accessible to the Company's crew and vehicles and  
5 not blocked.

6 c) Manner of Collection. The Company shall provide Commercial Collection  
7 Service with as little disturbance as possible and shall leave any Bin or Cart at the  
8 same point it was originally located without obstructing alleys, roadways,  
9 driveways, sidewalks or mail boxes. Company shall provide containers and shall  
10 collect contents of the containers not less than once per week. The designated  
11 pick-up area, if disputed by Customer or Company, shall be determined by  
12 District Manager-Engineer. Additionally, if in his/her opinion the location of an  
13 existing pick up area is inappropriate, he/she shall cause the Customer or  
14 Company to relocate the pick up area.

#### 15 **4.3.2 Commercial Garbage Collection Service.**

16 a) Conditions of Service. The Company shall provide Commercial Garbage  
17 Collection Service to all Commercial Service Units in the Service Area whose  
18 Commercial Garbage is properly containerized in Garbage Bins or Carts, where  
19 the Garbage Bins or Carts are accessible.

20 b) Disposal Facility. All Commercial Garbage collected as a result of performing  
21 Commercial Garbage Collection Service shall be transported to, and disposed of,  
22 at the Disposal Facility. Failure to comply with this provision shall result in the  
23 levy of an administrative charge as specified in this Agreement and may result in  
24 the Company being in default under this Agreement.

25 c) Size and Frequency of Service. This service shall be provided as deemed  
26 necessary and as determined between the Company and the Customer, but such  
27 service shall be received no less than one (1) time per week with no exception for  
28 holiday(s) as set forth herein, except that Collection Service scheduled to fall on a  
29 holiday may be rescheduled as determined between the Customer and the  
30 Company as long as the minimum frequency requirement is met. Service may be  
31 provided by Bin or Cart at the option of the Customer. The size of the Container  
32 and the frequency (above the minimum) of Collection shall be determined  
33 between the Customer and the Company. However, size and frequency shall be  
34 sufficient to provide that no Commercial Garbage need be placed outside the Bin  
35 or Cart. The Company shall provide containers as part of the Commercial  
36 Collection Service Rates and the MFD Collection Service Rates in Exhibit 1,  
37 however, Customers may own their compactor provided that the Customer is  
38 completely responsible for its proper maintenance and that such compactor shall  
39 be of a type that can be serviced by the Company's equipment.

1 d) Commercial Garbage Overflow. In the case of repeated overflows of Commercial  
2 Garbage, Company shall contact the Commercial Service Unit management to  
3 arrange for an appropriate change in Garbage Bin or Cart size, Collection  
4 frequency or both. In the event, Company cannot successfully contact the  
5 Commercial Service Unit management after three attempts, or cannot reach an  
6 agreement with such management regarding the change in service, Company shall  
7 advise the District Manager-Engineer, either by Fax or e-mail, of the details of the  
8 Commercial Garbage overages, and the attempts at communication with the  
9 Commercial Service Unit management. The District Manager-Engineer shall  
10 respond to Company's report and make a final written determination. Within five  
11 (5) Work Days of receipt of the District Manager-Engineer's written  
12 determination, Company shall change the Collection Service in accordance with  
13 such written determination.

14 e) Non-Collection. Company shall not be required to collect any Commercial  
15 Garbage that is not placed in a Garbage Bin or Cart unless such Commercial  
16 Garbage is outside the Garbage Bin or Cart as a result of overflow. In the event  
17 of Non-collection, Company shall affix to the Garbage Bin or Cart a Non-  
18 collection Notice explaining why Collection was not made, or alternatively  
19 Company shall telephone the Customer with an explanation on the same day as  
20 the intended Collection.

21 **4.3.3 Commercial Recycling Collection Service.** This service will be governed by the  
22 following terms and conditions:

23 a) Free Service. The Company may not charge for the Collection of Recyclable  
24 Materials, for Commercial and MFD Customers receiving Garbage Collection  
25 Service. Commercial and MFD Recycling Collection Service shall be unlimited  
26 provided that Recyclable Materials are placed in Carts or Bins.

27 b) Conditions of Service. The Company shall provide Commercial Recycling  
28 Collection Service to all Commercial and MFD Service Units in the Service Area  
29 whose Recyclable Materials are properly containerized in Recycling Bins, Carts  
30 or Debris Boxes, except as set forth below, where the Recycling Bins, Carts, or  
31 Debris Boxes are accessible. Any dispute between Company and Customer  
32 concerning the availability and use of automated containers shall be determined  
33 by the District Manager-Engineer. Materials collected shall be those specified by  
34 Company consistent with direction of the District, the District's Zero Waste  
35 Goals, AB 32, and the HHW and SRRE Element Plans approved by the City and  
36 the County. Commercial Recycling Collection will occur Monday – Friday, and  
37 on Saturdays upon request.

38 c) Material Recovery Facility. All Recyclable Materials collected as a result of  
39 performing Commercial and MFD Recycling Services shall be delivered to the  
40 Material Recovery Facility. Failure to comply with this provision shall result in  
41 the levy of liquidated damages as specified in this Agreement. All expenses

1 related to Recyclable Materials processing and marketing will be the sole  
2 responsibility of Company.

3 d) Size and Frequency of Service. Commercial and MFD Recycling Service service  
4 shall be provided as deemed necessary and as determined between the Company  
5 and the Customer, but such service shall be received no less than one (1) time per  
6 week with no exception for holiday(s) as set forth herein, except that Collection  
7 Service scheduled to fall on a holiday may be rescheduled as determined between  
8 the Customer and the Company as long as the minimum frequency requirement is  
9 met. Service may be provided by Bin, Cart or Debris Box at the option of the  
10 Customer. The size of the Container and the frequency (above the minimum) of  
11 Collection shall be determined between the Customer and the Company.  
12 However, size and frequency shall be sufficient to provide that no Recyclable  
13 Materials need be placed outside the Bin, Cart or Debris Box. The Company shall  
14 provide containers as part of the Commercial Collection Service Rates and the  
15 MFD Collection Service Rates in Exhibit 1, however, Customers may own their  
16 Compactor provided that the Customer is completely responsible for its proper  
17 maintenance and such Compactor shall be of a type that can be serviced by the  
18 Company's equipment.

19 e) Additional Recycling Bins or Carts. Company shall provide additional  
20 Commercial and MFD Recycling Bins and Carts to Commercial Service  
21 Recipients within five (5) days of request at no additional cost provided that  
22 additional bins and carts are used by Commercial Service Recipients for the  
23 purposes of setting out additional Recyclable Materials for regular weekly  
24 Recycling Collection Service.

25 f) Recycling - Improper Procedure. If Recyclable Materials are contaminated  
26 through commingling with Commercial Garbage, the Company shall, if practical,  
27 separate the Commercial Garbage from the Recyclable Materials. The Recyclable  
28 Materials shall then be collected and the Commercial Garbage shall be left in the  
29 Recycling Bin, Cart or Debris Box along with a Non-collection Notice of why the  
30 Garbage is not considered a Recyclable Materials. However, in the event the  
31 Recyclable Materials and Commercial Garbage are commingled to the extent that  
32 they cannot easily be separated by the Company or the nature of the Commercial  
33 Garbage renders the entire Recycling Bin, Cart or Debris Box contaminated, the  
34 Company will leave the Recycling Bin, Cart or Debris Box un-emptied along with  
35 a Non-collection Notice which contains instructions on the proper procedures for  
36 setting out Recyclable Materials. Upon notification from the District Manager-  
37 Engineer, Company shall collect the contaminated Recyclable Materials as part of  
38 the next regularly scheduled Commercial Garbage Collection and dispose of it at  
39 the Disposal Facility.

40 g) Recycling - Changes to Work. Should changes in law arise that necessitate any  
41 additions or deletions to the work described herein including the type of items  
42 included as Recyclable Materials, the parties shall negotiate any necessary cost  
43 changes and shall enter into an Agreement amendment covering such

1 modifications to the work to be performed and the compensation to be paid before  
2 undertaking any changes or revisions to such work.

3 **4.3.4 Commercial Organic Waste Service.** This service will be governed by the  
4 following terms and conditions:

5 a) **Service Rate.** Company agrees that the provision of Commercial and MFD  
6 Organic Waste Collection Service to Commercial and MFD Service Units is  
7 critical to Company's ability to meet the Zero Waste Minimum Requirements as  
8 set forth in Article 4.9 of this Agreement. The cost of providing Commercial  
9 Organic Waste Collection Service is not known at the present. The Company  
10 agrees to limit the cost charged for this service to the net cost of Collection, and  
11 processing the material as determined through a cost audit prior to the initiation of  
12 service. Company further agrees that not all Commercial Service Units will elect  
13 to receive Organic Waste Collection Service in Carts, and that Company will  
14 provide Organic Waste Collection Bins upon request and as necessary. Further,  
15 Company agrees that there are several Commercial Service Units that utilize  
16 Compactors for Collection or Organic Waste, and that Company will provide a  
17 sufficient number of Carts or Bins and at a Collection frequency to allow for any  
18 such Commercial Service Unit to utilize the Collection of Organic Waste.  
19 Commercial Organic Waste Collection will occur Monday – Friday, and on  
20 Saturdays upon request and as necessary.

21 b) **Conditions of Service.** The Company shall provide Commercial Organic Waste  
22 Collection Service to all Commercial Service Units in the Service Area whose  
23 Organic Waste materials are properly containerized in Organic Waste Bins, Carts,  
24 Debris Boxes, or Compactors except as set forth below, where the Organic Waste  
25 Bins, Carts, Debris Boxes, or Compactors are accessible. Company shall collect  
26 and remove all Organic Waste placed in Collection Containers from commercial  
27 and institutional locations where property owners or resident on-site managers  
28 perform their own landscaping work and do not contract for a fee for such service.

29 c) **Organic Waste Processing Facility.** All Organic Waste collected as a result of  
30 performing Commercial Collection Service shall be delivered to an Organic  
31 Waste Processing Facility approved by the District. Failure to comply with this  
32 provision shall result in the levy of an administrative charge as specified in this  
33 Agreement and may result in the Company being in default under this Agreement.  
34 All expenses related to Organic Waste processing and marketing will be the sole  
35 responsibility of Company.

36 d) **Size and Frequency of Service.** This Service shall be provided as deemed  
37 necessary and as determined between the Company and the Customer, but such  
38 service shall be received no less than one (1) time per week with no exception for  
39 holiday(s) as set forth herein, except that Collection Service scheduled to fall on a  
40 holiday may be rescheduled as determined between the Customer and the  
41 Company as long as the minimum frequency requirement is met. Service may be  
42 provided by Bin, Cart or Debris Box at the option of the Customer. The

1 frequency of Collection should be as required in this Article unless generation of  
2 Organic Waste does not warrant such service to said commercial and institutional  
3 units. The size of the Container and the frequency (above the minimum) of  
4 Collection shall be determined between the Customer and the Company.  
5 However, size and frequency shall be sufficient to provide that no Organic Waste  
6 Materials need be placed outside the Bin, Cart or Debris Box. The Company shall  
7 provide containers, however, Customers may own their Compactor provided that  
8 the Customer is completely responsible for its proper maintenance and such  
9 Compactor shall be of a type that can be serviced by the Company's equipment.

- 10 e) Additional Organic Waste Bins or Carts. Company shall provide additional  
11 Commercial Organic Waste Bins and Carts to Commercial Service Recipients  
12 provided that additional bins and carts are used by Commercial Service  
13 Recipients for the purposes of setting out additional Organic Waste materials for  
14 regular weekly Organic Waste Collection Service.
  
- 15 f) Organic Waste - Improper Procedure. If Organic Waste is contaminated through  
16 commingling with Commercial Garbage, the Company shall, if practical, separate  
17 the Commercial Garbage from the Organic Waste. The Organic Waste shall then  
18 be collected and the Commercial Garbage shall be left in the Organic Waste Bin,  
19 Cart, or Debris Box along with a Non-collection Notice of why the Organic Waste  
20 is not collected. However, in the event the Organic Waste and Commercial  
21 Garbage are commingled to the extent that they cannot easily be separated by the  
22 Company or the nature of the Commercial Garbage renders the entire Organic  
23 Waste Bin, Cart, or Debris Box contaminated, the Company will collect and  
24 dispose of the contents as Garbage and charge the Customer based on rates for  
25 Commercial Garbage Collection Service. The Company will also notify the  
26 Customer of the contamination and provide instructions on the proper procedures  
27 for setting out Organic Waste.
  
- 28 g) Organic Waste - Changes to Work. Should changes in law arise that necessitate  
29 any additions or deletions to the work described herein including the types of  
30 items included as Organic Waste, the parties shall negotiate any necessary cost  
31 changes and shall enter into an Agreement amendment covering such  
32 modifications to the work to be performed and the compensation to be.

33 **4.4 MFD Collection Service**

34 These services will be governed by all conditions of service as specified in Article 4.03 of  
35 this Agreement, with the following additional services:

36 **4.4.1 MFD Organic Waste Collection Service.** The Company shall provide Organic  
37 Waste Collection Services to all MFD Service Units in a manner consistent with  
38 Section 4.2.9 for those Service Units receiving Cart Collection, and Section 4.3.4  
39 for those MFD Service Units receiving Bin Collection. The Company shall not  
40 charge for MFD Organic Waste Collection Service.

1           **4.4.2 MFD Recycling Tote Bags.** Company shall provide 5,000 recycling tote bags at  
2 the Recycling Center for handout to MFD Service Units during the roll-out of the  
3 MFD recycling program. The District shall approve the specific size and labeling  
4 of the MFD recycling tote bags to be provided by the Company.

5           **4.4.3 Kitchen Food Waste Pails.** Company shall provide one kitchen food waste pail  
6 per MFD Service Recipients available for pick up at the Recycling Center at no  
7 additional cost for the first six months after the roll out of the MFD Food Waste  
8 program. After the initial six months, kitchen food waste pails will be available at  
9 costs. The District shall approve the specific size and labeling of the kitchen food  
10 waste pails to be provided by the Company.

11           **4.4.4 MFD Bulky Waste Collection.** Company shall provide Bulky Waste Collection  
12 Service to all Multi-family dwelling units at the request of the MFD manager in a  
13 manner agreed to between the MFD manager and the Company. MFD units shall  
14 be entitled to equivalent complimentary services as a SFD Service Unit (i.e. three  
15 (3) cubic yards four (4) times per year.)

16           **4.4.5 Rates.** Charges for MFD Collection Service shall be in accordance with the MFD  
17 Collection Service Rates in Exhibit 1 of this Agreement.

## 18   **4.5 Debris Box Collection Service**

19           Upon twenty-four (24) hours request by a Service Unit for a Debris Box, Company shall  
20 provide a Debris Box at the Service Unit. Such Debris Box Service shall be on a  
21 temporary basis not to exceed seven (7) days without Collection, emptying, and  
22 replacement of the Debris Box.

23           **4.5.1 Processing Required.** Debris Boxes shall be transported by Company to an  
24 approved processing facility to achieve maximum diversion. Debris Boxes may  
25 not be taken by the Company to a landfill for disposal.

26           **4.5.2 Rates.** Charges for Debris Boxes shall be in accordance with Debris Box  
27 Collection Rates in Exhibit 1 of this Agreement.

28           **4.5.3 Container Placement.** The Company shall provide Debris Box Collection  
29 Service with as little disturbance as possible and shall leave any Debris Box in an  
30 upright position at the same point it was collected without obstructing alleys,  
31 roadways, driveways, sidewalks, or mail boxes. Company shall only place Debris  
32 Boxes in strict adherence with the appropriate right-of-way requirements and  
33 Municipal Code.

34           **4.5.4 Graffiti Removal.** The Company shall remove any and all graffiti within 24  
35 hours of being identified by the Company or District Manager-Engineer.  
36 Company shall not deliver a Debris Box without Company information or with  
37 any graffiti visible on the Debris Box.

1 **4.6 Collection Service For Local Government Agencies Within District**  
2 **Boundaries**

3 State and federal laws require cities, counties, and other units of local government to take  
4 effective measures to eliminate pollution from land, streams, creeks, rivers, lakes, and  
5 bays. The National Pollutant Discharge Elimination System (NPDES) permits issued to  
6 the City, the County, and the District, require that Solid Waste be removed and averted  
7 from water bodies. An essential method for achieving this is the maximum collection of  
8 Solid Waste in public places that, if not collected, will work its way into drainage  
9 systems and water bodies. Costs for these state and federal mandated programs should  
10 properly be placed with Solid Waste Customers, and this can best be done by inclusion in  
11 the Collection Services costs of Company. Accordingly, Company shall collect, and  
12 dispose of, at no charge, all Solid Waste placed in containers for the use of the general  
13 public at Novato School District sports fields, City of Novato public parks and streets, and  
14 County of Marin public parks and open space within the Service Area.

15 **4.6.1 Included Services.** This service shall include all Garbage and Recyclable  
16 Materials that fall within the normal Collection categories of this Agreement. It  
17 shall not include Construction and Demolition Debris, or toxic materials requiring  
18 special handling, unless such Collections are part of a toxic collection program  
19 made available to the general public. The Company shall provide On-call litter  
20 pick-up to clean up locations of roadside dumping. These services shall be  
21 provided at the direction of the Manager-Engineer. Company shall respond to  
22 request for roadside litter clean-up within 72 hours of notice from the Manager-  
23 Engineer. Company shall create a monthly log of all roadside clean-ups requested  
24 which include the date and time and location of the response and the labor, tools  
25 and equipment used to pick-up, and transport waste to the disposal or Materials  
26 Recovery Facility.

27 **4.6.2 Public Schools Collection Service.** Company shall provide a School Recycling  
28 and Food Waste Program as specified in Exhibit 5. Company's School Recycling  
29 and Food Waste Program shall include, at a minimum, on-site classroom visits,  
30 worm composting, internships, written and electronic materials, and sponsorship  
31 of environmental field trips.

32 **4.7 Household Hazardous Waste Programs**

33 **4.7.1 Household Hazardous Waste (HHW) Collection Facility.** The household and  
34 small business hazardous waste collection facility ("HHW Facility") is currently  
35 located at the Novato Recycling Center at 7576 Redwood Boulevard, Novato,  
36 California. The Novato Recycling Center is presently leased by Company or a  
37 Company affiliate. Company agrees to provide District use of a portion of the  
38 Company's existing facility for a long-term lease. District shall serve as sponsor  
39 and operator of the HHW Facility and may contract with a hazardous waste  
40 contractor to provide turnkey or other services. District shall be responsible for  
41 permitting and design of the HHW Facility as well as improvements to the current  
42 structures as may be required to operate the HHW Facility. District shall assume

1 such responsibilities as may be set forth in the lease. The Company further agrees  
2 to participate in the relocation of the HHW Facility to a new site along with the  
3 construction of the new Drop-off Recycling Facility as described in Article  
4 4.11.7.

5 **4.7.2 E-Waste Events.** Company shall participate in District’s semi-annual E-Waste  
6 events held at the Recycling Center. Company agrees to supply sufficient labor to  
7 collect and sort E-Waste at the events, as well as providing for individuals to  
8 assist with surveys and provide for a supervisor. District shall be responsible for  
9 contracting with E-Waste recycler, scheduling dates, advertising, paperwork and  
10 overall administration of the events.

11 **4.8 Drop-Off Program and Facility**

12 **4.8.1** Company will operate a drop-off program responsive to the District’s  
13 requirements. A convenient Novato drop-off facility shall be used for the  
14 collection of Recyclable Materials, including glass, plastic and metal containers,  
15 newspapers, cardboard, waste paper, telephone books, used latex paint, used  
16 motor oil, oil filters, antifreeze, used car batteries, household batteries, fluorescent  
17 tubes, compact fluorescents, and such additional Recyclable Materials as may be  
18 required by District.

19 **4.8.2** In addition to the above facility, Company shall provide at least two (2) beverage  
20 container buy-back centers to collect beverage containers eligible for deposit  
21 redemption in accordance with the beverage container deposit redemption  
22 program of the State of California. One of these buy-back centers shall be located  
23 at the main drop-off facility. The locations of the drop-off and buy-back facilities  
24 shall be approved by District. Upon the request of the District, Company shall  
25 develop and implement a third buy-back and/or drop-off facility at a location  
26 determined by the District.

27 **4.8.3** Hours of operation for the main Novato drop-off and buy-back center shall be  
28 10:00 am to 4:00 p.m. Tuesday through Sunday. Hours of operation of the other  
29 beverage container drop-off and buy-back facilities shall be 10:00 a.m. to 4:00  
30 p.m., Tuesday through Saturday.

31 **4.8.4** If a release or spill occurs at the drop-off facility, Company shall provide reports  
32 as required by Marin County Division of Environmental Health and any other  
33 competent authority with jurisdiction, and shall clean up the release or spill using  
34 approved techniques.

35 **4.9 Zero Waste Minimum Requirements**

36 The Company must achieve all of the following Zero Waste Minimum Requirements.

37 **4.9.1 Landfill Diversion Requirements.** In 2009 Company reached a 50% Diversion  
38 From Landfill Rate. The District requires the Company to achieve a diversion  
39 from landfill rate with a minimum diversion rate of 60 percent by December 31,

1 2015; 70 percent by December 31, 2020; and 80 percent by December 31, 2025,  
2 and each successive calendar year or such other amount as may be set by the  
3 District. The Diversion From Landfill Rate will be calculated as the tons of  
4 materials collected by Company from providing services as specified in this  
5 Agreement that are sold or delivered to a Materials Recovery Facility or Organic  
6 Waste Processing Facility, recycler or re-user, net of all residue, divided by the  
7 total tons of materials collected under this Agreement by Company in each 12-  
8 month calendar year (January 1<sup>st</sup> – December 31<sup>st</sup>).

9 **4.9.2 MFD and Commercial Recycling.** Company shall fully implement the MFD  
10 and Commercial Recycling Programs as set forth in Section 4.4.3 by July 31,  
11 2012.

12 **4.9.3 Organic Waste Collection and Processing Requirements.** Company shall fully  
13 implement the SFD, MFD, and Commercial Organic Waste programs as set forth  
14 in Sections 4.2.9 and 4.3.4 by December 31, 2012.

15 **4.9.4 Recycling and Reuse Center.** Company shall fully implement the relocation,  
16 expansion and operation of a new Recycling and Reuse Center programs as set  
17 forth in Section 4.11.7 by December 31, 2015.

18 **4.9.5 Public School Recycling.** Company shall fully implement the Public School  
19 Recycling program as set forth in Exhibit 5 by December 31, 2011.

20 **4.9.6 Community Outreach Program.** Company shall fully implement the  
21 Community Outreach Program as set forth in Section 5.4 by December 31, 2011.

22 **4.9.7 Wet-Dry Collection.** Company shall work with the District to determine if wet-  
23 dry collection is necessary to meet the December 31, 2020 Landfill Diversion  
24 Requirements. Such determination shall be made by December 31, 2018, and if it  
25 is determined that wet-dry collection is necessary, and the District agrees and  
26 approves of implementing wet-dry collection, than the Company shall fully  
27 implement wet-dry collection by December 31, 2020.

28 **4.9.8 Conversion Technology.** Company shall work with the District to determine if  
29 utilizing conversion technology is viable and necessary to meet the December 31,  
30 2025 Landfill Diversion Requirements. Such determination shall be made by  
31 December 31, 2020, and if it is determined that the use of conversion technology  
32 is necessary, and the District agrees and approves of implementing the use of  
33 conversion technology, than the Company shall delivery collected Garbage to  
34 conversion technology facilities by December 31, 2025.

35 **4.9.9 Failure to Meet Minimum Requirements.** Company's failure to meet the  
36 Minimum Zero Waste Requirements set forth in Sections 4.9.1 through 4.9.8  
37 above may result in the denial of an extension to this Agreement as specified in  
38 Article 2.4. In determining whether or not to hold the Company in default of this  
39 Agreement, or denial of a term extension, the District will consider the good faith

1 efforts put forth by the Company in implementing the required programs to meet  
2 the minimum Zero Waste Requirements and the methods and level of effort of the  
3 Company to fully implement the services required in this Agreement.

4 **4.10 Future Zero Waste Services**

5 **4.10.1 Technology and Regulatory Changes.** The Company and the District  
6 acknowledge that during the term of this Agreement new technologies may be  
7 developed to cost effectively divert materials from landfill disposal, and that new  
8 local, state, or federal laws and regulations may be enacted that change the  
9 manner in which Garbage, Recyclable Materials, and Organic Waste are  
10 managed. Accordingly, the Company and the District will cooperate to develop  
11 and implement addition, or replacement, programs to further the goal of reaching  
12 Zero Waste. These changes could include the following:

- 13 a) Change in Collection Methods. If District determines that a change in collection  
14 methods is feasible, including wet/dry route collection, and would lead to  
15 accomplishing Zero Waste Goals, Company agrees to work with the District to  
16 implement new collection and processing methods.
  
- 17 b) Conversion Technology Systems. If District determines that conversion  
18 technology system are feasible, and would lead to accomplishing Zero Waste  
19 Goals, Company agrees to work with the District to implement new conversion  
20 technology system(s).

21 **4.11 Disposal, Processing, Drop-off, and Reuse Facilities**

22 **4.11.1 Compliance with Regulations.** All materials collected under this Agreement  
23 shall be delivered to facilities that comply with the Department of Resources  
24 Recycling and Recovery regulations under Title 14, Chapter 3, Minimum  
25 Standards for Solid Waste Handling and Disposal (Article 5.9 – Sections 17380-  
26 17386). Company, and not the District, must assure that all Disposal, transfer, and  
27 processing facilities are properly permitted to receive material collected under this  
28 Agreement. Failure to comply with this provision may result in the Company  
29 being in default under this Agreement.

30 **4.11.2 Permits and Approvals.** Company must assure that all facilities selected by  
31 Company shall possess all existing permits and approvals by local enforcement  
32 agencies to be in full compliance with all regulatory agencies to conduct all  
33 operations at the approved location. Company shall, upon written request from the  
34 District, arrange for the facilities selected by the Company to provide copies of  
35 facility permits, notices of violations, inspection areas or concerns, or  
36 administrative action to correct deficiencies related to the operation. Failure to  
37 provide facility information may result in the Company being in default under this  
38 Agreement.

1       **4.11.3 Disposal Facility.** All Garbage collected as a result of performing Collection  
2       Services shall be transported to, and disposed of, at the Disposal Facility. Failure  
3       to comply with this provision shall result in the levy of an administrative charge  
4       as specified in this Agreement and may result in the Company being in default  
5       under this Agreement.

6       **4.11.4 Material Recovery Facility.** All Recyclable Materials collected as a result of  
7       performing Collection Services shall be delivered to a fully licensed and  
8       permitted Material Recovery Facility. Failure to comply with this provision shall  
9       result in the levy of liquidated damages as specified in this Agreement. All  
10      expenses related to Recyclable Materials processing and marketing will be the  
11      sole responsibility of Company.

12      **4.11.5 Organic Waste Processing Facility.** All Organic Waste collected as a result of  
13      performing Collection Services shall be delivered to a fully licensed and  
14      permitted Organic Waste Processing Facility. Failure to comply with this  
15      provision shall result in the levy of an administrative charge as specified in this  
16      Agreement and may result in the Company being in default under this Agreement.  
17      All expenses related to Organic Waste processing and marketing will be the sole  
18      responsibility of Company.

19      **4.11.6 Construction and Demolition Debris Processing Facility.** All Construction and  
20      Demolition Debris collected as a result of performing Collection Services shall be  
21      delivered to a fully licensed and permitted Construction and Demolition Debris  
22      Processing Facility. Failure to comply with this provision shall result in the levy  
23      of an administrative charge as specified in this Agreement and may result in the  
24      Company being in default under this Agreement. All expenses related to  
25      Construction and Demolition Debris processing and marketing will be the sole  
26      responsibility of Company.

27      **4.11.7 Recycling and Reuse Center.** The Company will work with the District to  
28      relocate the current Recycling Center, and to expand, and operate a new  
29      Recycling and Reuse Center at a site designated by the District. The specific  
30      details of operations and timeframe for implementation will be mutually agreed  
31      on between the District and the Company. The Company will be responsible for  
32      the cost of building and operating of the Recycling and Reuse Center.

## 33   **4.12 Operations**

34      **4.12.1 Schedules.** To minimize inconvenience to the public, Garbage Recyclable  
35      Materials and Organic Waste shall be collected from residential Customers  
36      between the hours of 6:00 a.m. and 4:00 p.m. Commercial and multiple  
37      residential accounts that are adjacent to residential neighborhoods shall also be  
38      serviced between these hours. Otherwise, commercial, governmental, and  
39      institutional accounts shall be collected between the hours of 3:00 a.m. and 4:00  
40      p.m., Monday through Saturday.

1 Company shall notify District and Customers in writing at least two (2) weeks  
2 before an alternate Collection Day is scheduled, when the regularly scheduled  
3 Collection Day falls on Christmas Day or New Year's Day.

4 Company may be required to review its operations plan with the District  
5 Manager-Engineer upon written request provided not less than thirty (30) days  
6 prior to the review. The review may occur once annually and will focus on  
7 the collection, routes, intervals of collection and collection times for all  
8 materials collected under this Agreement. More frequent reviews may be  
9 required if operations are not satisfactory based on documented observations,  
10 reports, or complaints. If the plan is determined to be inadequate by the  
11 District Manager-Engineer, Company shall revise the plan incorporating any  
12 changes into a revised plan and review the revised plan with District Manager-  
13 Engineer within thirty (30) calendar days.

14 In the case of a missed pick-up, Company shall collect the Garbage,  
15 Recyclable Materials and Organic Waste within one (1) working day (24  
16 hours) of being notified. Company shall not charge a fee in cases of missed  
17 pick-ups. However, where the Customer has failed to place Garbage,  
18 Recyclable Materials or Organic Waste out for Collection on the  
19 Collection Day, Company may charge an extra fee for call-back  
20 Collections in accordance with the District's authorized Service Rates as  
21 specified in Exhibit 1.

#### 22 **4.12.2 Vehicles**

- 23 a) General. Company shall provide a fleet of collection vehicles sufficient in  
24 number and capacity to efficiently perform the work required by the Agreement in  
25 strict accordance with its terms. Company shall have available on Work Days  
26 sufficient back-up vehicles for each type of collection vehicle (e.g., residential,  
27 commercial, and roll-off) used to respond to complaints and emergencies.
- 28 b) Specifications. All vehicles used by Company in providing Collection Services  
29 shall be registered with the California Department of Motor Vehicles. All such  
30 vehicles shall have watertight bodies designed to prevent leakage, spillage, or  
31 overflow.
- 32 c) Vehicle Identification. Company's name, local telephone number, and a unique  
33 vehicle identification number designed by Company for each vehicle shall be  
34 prominently displayed on all vehicles, in letters and numbers no less than two and  
35 one-half (2 1/2) inches high.
- 36 d) Cleaning and Maintenance
- 37 (a) Company shall maintain all of its properties, facilities, and equipment used in  
38 providing service under this Agreement in a safe, neat, clean, and operable  
39 condition at all times.

1 (b) Vehicles used in the Collection of Garbage, Recyclable Materials, and  
2 Organic Waste shall be painted, thoroughly washed, and thoroughly steam  
3 cleaned on a regular basis so as to present a clean appearance. District may  
4 inspect vehicles at any time to determine compliance with this Agreement.  
5 Company shall also make vehicles available to the Marin County Division of  
6 Environmental Health for inspection, at any frequency it requests.

7 (c) Company shall inspect each vehicle daily to ensure that all equipment is  
8 operating properly. Vehicles that are not operating properly shall be taken out  
9 of service until they are repaired and do operate properly. Company shall  
10 perform all scheduled maintenance functions in accordance with the  
11 manufacturer's recommendations, specifications, and schedule.

12 (d) Company shall repair, or arrange for the repair of, all of its vehicles and  
13 equipment for which repairs are needed because of accident, breakdown, or  
14 any other cause so as to maintain all equipment in a safe and operable  
15 condition. If an item of repair is covered by a warranty, Company shall obtain  
16 warranty performance. Company shall maintain accurate records of repair,  
17 which shall include the date/mileage, nature of repair, and the signature of a  
18 maintenance supervisor affirming that the repair has been properly performed.

19 (e) Company shall furnish sufficient equipment to provide all service required  
20 under this Agreement, including back-up collection vehicles. Company shall  
21 furnish District, upon request, a written inventory of all equipment, including  
22 collection vehicles, used in providing service, and shall, upon request, update  
23 the inventory annually. The inventory shall list all equipment by  
24 manufacturer, ID number, date of acquisition, type, and capacity.

25 (f) Company shall arrange to store all vehicles and other equipment in safe and  
26 secure location(s) in accordance with City and County's applicable zoning  
27 regulations.  
28

29 e) Vehicle Operation and Specifications. Vehicles shall be operated in compliance  
30 with the California Vehicle Code and all applicable safety and local ordinances.  
31 Company shall not load vehicles in excess of the manufacturer's  
32 recommendations or limitations imposed by state or local weight restrictions on  
33 vehicles. All vehicles shall have watertight bodies designed to prevent leakage,  
34 spillage, or overflow.

35 Company equipment used for providing Collection Services shall be registered  
36 with the California Department of Motor Vehicles. Equipment shall comply with  
37 U.S. Environmental Protection Agency noise emission regulations and other  
38 applicable noise control regulations. Company shall store all equipment in safe  
39 and secure locations.

40 Company shall be responsible for any extraordinary damage caused by its trucks  
41 and other vehicles to City and County driving surfaces, whether or not paved, and  
42 associated curbs, gutters and traffic control devices, which damages shall exclude

1 normal wear and tear resulting from proper use of such vehicles. Nothing herein  
2 shall create liability for the District for damages caused to such property by  
3 Company; nor shall this Agreement create liability by Company to owners of  
4 private property (including private drives) where liability would not otherwise  
5 exist at law.

6 As required by law, Company shall convert and/or retrofit its vehicles and/or fuel  
7 utilizing the most cost-effective means to reduce air pollutant emissions and at all  
8 times be in full compliance with local, state, and federal clean air requirements  
9 that were adopted or proposed to be adopted, including the proposed California  
10 Air Resources Board Heavy Duty Engine Standards to be contained in CCR Title  
11 13, Section 2020 et seq; and the Federal EPA's Highway Diesel Fuel Sulfur  
12 regulations. All of Company's costs of compliance with such clean air  
13 requirements shall be considered an ordinary cost of business. Such costs shall be  
14 capitalized and depreciated and shall not constitute a basis for an Interim Rate  
15 Adjustment under Section 6.9 of this Agreement. A reasonable estimate of  
16 anticipated costs for modification of the fleet to comply with clean air regulations  
17 expected to become effective in 2009, shall be provided during the rate setting  
18 process for the 2008 rate year so as to address these anticipated costs.

19 f) BAAQMD Grant Restrictions. Solid Waste collection vehicles retrofitted with  
20 diesel emission control systems (DECS) funded in part by a grant from the Bay  
21 Area Air Quality Management District (BAAQMD) shall comply with the  
22 following special terms and conditions:

- 23 (a) Display the TFCA logo decal;
- 24 (b) Use only ultra-low sulfur diesel fuel, in compliance with CARB requirements;
- 25 (c) Operate only within the boundaries of the BAAQMD;
- 26 (d) Maintain information as to the operational status of each vehicle and DECS  
27 and provide this information to the BAAQMD within 60 calendar days of a  
28 request for this information;
- 29 (e) Provide written notification to BAAQMD of any change in operational status  
30 of the vehicles or DECS. For the purposes of this agreement, a change in  
31 operational status means that the DECS, or the vehicle has been removed from  
32 active service in the BAAQMD, wrecked, scrapped, or sold or transferred to  
33 another entity, before it has been in use for at least five full years of service;
- 34 (f) Refund the grant funds to the District, on a pro-rated basis, if any vehicle or  
35 DECS is subject to a change in operational status.

36 The Company is liable to reimburse the District for  
37 any refunds of grant monies or penalties incurred  
38 for failure to comply with the conditions of the  
39 grant.

1           **4.12.3 Litter Abatement**

2           a) **Minimization of Spills.** Company shall use due care to prevent Garbage,  
3           Recyclable Materials, or Organic Waste from being spilled or scattered during the  
4           Collection or transportation process. If any Garbage, Recyclable Materials, or  
5           Organic Waste is spilled during Collection, Company shall promptly clean up all  
6           spilled materials. Each collection vehicle shall carry a broom and shovel at all  
7           times for this purpose.

8                               Without prior written approval by the District Manager-Engineer,  
9                               Company shall not transfer loads from one vehicle to another on  
10                              any public street, unless it is necessary to do so because of  
11                              mechanical failure or accidental damage to a vehicle.

12           b) **Clean Up.** During the Collection or transportation process, Company shall clean  
13           up litter in the immediate vicinity of any Garbage, Recyclable Materials, or  
14           Organic Waste storage area (including the areas where Carts, Bins or Debris  
15           Boxes are delivered for Collection) whether or not Company has caused the litter.  
16           Company shall discuss instances of repeated spillage not caused by it directly  
17           with the waste generator responsible and will report such instances to District.  
18           District Manager-Engineer will attempt to rectify such situations with the waste  
19           generator if Company has already attempted to do so without success.

20           c) **Covering of Loads.** Company shall cover all open Debris Boxes during transport  
21           to the Disposal Facility.

22           **4.12.4 Personnel.** Company shall furnish such qualified drivers, mechanical,  
23           supervisory, clerical, management, and other personnel as may be necessary to  
24           provide the services required by this Agreement in a satisfactory, safe,  
25           economical, and efficient manner. All drivers shall be trained and qualified in the  
26           operation of vehicles they operate and must possess a valid license, of the  
27           appropriate class, issued by the California Department of Motor Vehicles.

28           Company also agrees to establish and vigorously enforce an educational program  
29           that will train Company's employees in the identification of Hazardous Waste.  
30           Company's employees shall neither knowingly place such Hazardous Waste in the  
31           collection vehicles, nor knowingly dispose of such Hazardous Waste at a transfer  
32           station, processing facility, or disposal facility.

33           Company shall train its employees in customer courtesy, shall prohibit the use of  
34           loud or profane language, and shall instruct collection crews to perform the work  
35           quietly. Company shall use its best efforts to assure that all employees present a  
36           neat appearance and conduct themselves in a courteous manner. If any employee  
37           is found to be discourteous or not to be performing services in the manner  
38           required by this Agreement, Company shall take all necessary corrective  
39           measures including, but not limited to, transfer, discipline, or termination. If  
40           District has notified Company of a complaint related to a discourteous or  
41           improper behavior, Company will consider reassigning the employee to duties not

1           entailing contact with the public while Company is pursuing its investigation and  
2           corrective action process.

3           Company shall provide suitable operations, health, and safety training for all its  
4           employees who use or operate equipment or who are otherwise directly involved  
5           in collection or other related operations.

6           **4.12.5 Identification Required.** Company shall provide its employees and  
7           subcontractors with identification for all individuals who may make personal  
8           contact with residents or businesses in service area. District may require  
9           Company to notify Customers yearly of the form of said identification. Company  
10          shall provide a list of current employees, companies, and subcontractors to  
11          District upon request.

12          **4.12.6 Fees and Gratuities.** Company shall not itself, or through any agent, employee,  
13          or subcontractor employed by it request, solicit, demand, or accept, either directly  
14          or indirectly, any compensation or gratuity for the Collection, transportation,  
15          recycling, composting, and disposal of Garbage, Recyclable Materials, or Organic  
16          Waste and Construction and Demolition Debris otherwise required under this  
17          Agreement.

18          **4.12.7 Non-Discrimination.** Company shall not discriminate in the provision of service  
19          or the employment of persons engaged in performance of this Agreement on  
20          account or race, color, religion, sex, age, physical handicap, or medical condition  
21          in violation of any applicable federal or state law.

22          **4.12.8 Change in Collection Schedule.** Company shall provide written notification to  
23          District not less than thirty (30) days prior to a proposed change in residential  
24          collection operations that results in a change in the day of operation on which  
25          Collection of Garbage Recyclable Materials, or Organic Waste occurs. District  
26          shall have the right to approve all such changes; however, District's consent will  
27          not be unreasonably withheld.

28          **4.12.9** Upon consent by District to a change in the day of Collection Services, the  
29          Customer will be given not less than ten (10) days notice and Company will not  
30          permit any Customer to go more than seven (7) days without service as a result of  
31          the collection schedule change.

32          **4.12.10           Report of Accumulation of Solid Waste; Unauthorized Dumping.**

33          Company shall direct its drivers to note the address or other location description,  
34          of any premises at which they observe: (1) Solid Waste accumulating that is not  
35          being delivered for Collection; (2) Solid Waste having been dumped in an  
36          apparent unauthorized manner; and/or (3) Solid Waste accumulating due to  
37          Customer subscribing to an inadequate service level. Company shall deliver the  
38          address or description to the District within five (5) working days of such  
39          observation.

1 **4.13 Contingency Plan**

2 Company shall submit to District on or before the effective date of the Agreement, a  
3 written contingency plan demonstrating Company's arrangements to provide vehicles and  
4 personnel and to maintain uninterrupted service during breakdowns, and in case of  
5 natural disaster or other emergency, including the events described in Section 10.4.

1 **ARTICLE 5 OTHER SERVICES**

2 **5.1 Mandatory Company Billing Services**

3 **5.1.1 Billing.** Company shall prepare, mail and collect bills, and issue written receipts  
4 for cash payments, for Collection Services provided by Company under this  
5 Agreement. Except for Customers receiving Bin Collection, bills for SFD  
6 Collection Service shall be mailed to Customers quarterly. Company may mail  
7 bills at the beginning of the quarter, and they are due and payable upon  
8 mailing, and if not paid, become delinquent thirty (30) days after the end of the  
9 billing period. Company shall add an administrative late charge of 10% per  
10 month for amounts due and remaining unpaid for a period sixty (60) days after the  
11 end of the billing period. In addition, Company shall be allowed to discontinue  
12 Collection Service to any Customer whose billing remains unpaid for a period of  
13 sixty (60) days after the end of the billing period, provided Company complies  
14 with Section 5.3.1.

15 Commercial and MFD Customers shall be billed monthly, for one (1) month in  
16 arrears. Such bills are due and payable upon mailing and, if not paid, become  
17 delinquent thirty (30) days after the end of the billing period. The service charge  
18 for late payment, and service cancellation provisions shall be the same as those  
19 for SFD Customers listed above.

20 Company may also provide a payment option for voluntary advance payment for  
21 one (1) year of service with the twelfth (12th) month of service provided at no  
22 charge in exchange for such advance payment. District shall have the right to  
23 stipulate the billing format to itemize certain charges.

24 Company may require full payment for Debris Boxes or other special services  
25 prior to delivery of Debris Box or the provision of other special services by  
26 Company.

27 **5.1.2 Review of Billings.** The District Manager-Engineer may require that Company  
28 review its billings to Customers. The purpose of the review is to determine that  
29 the amount Company is billing each Customer is correct in terms of the level of  
30 service (i.e. frequency of Collection, size of Container, location of container)  
31 being provided to such Customer by Company. Company shall review customer  
32 accounts not less than every other year, unless District shall direct Company to do  
33 so more frequently, and submit to District a written report of that review  
34 annually on the anniversary of the effective day of this Agreement, unless  
35 otherwise directed by District Manager-Engineer. The intent of this section is for  
36 District to have the right to receive reports that will cover the entire list of  
37 Customers every other year. The scope of the review and the reviewer's work  
38 plan shall be submitted to District for approval prior to submission of the first  
39 report.

1    **5.2    Customer Service**

2           **5.2.1    Company Office.** Company's current office location is in Santa Rosa,  
3           approximately thirty miles north of the City. Office hours shall be, at a minimum,  
4           from 8:00 a.m. to 4:30 p.m., Monday through Friday, exclusive of holidays. For  
5           the convenience of Customers who wish to pay their bills in cash, Company shall  
6           maintain at least two (2) convenient locations in the Novato area where payments  
7           may be made. Such locations shall be approved by District.

8                           A responsible and qualified representative of Company shall be available  
9                           during office hours for communication with the public. Normal office hour  
10                          telephone numbers shall either be a local or toll free call. The local and/or toll  
11                          free number shall be printed on all Company bills or invoices for service and  
12                          listed in the local telephone book. Company's telephone system shall be  
13                          adequate to handle the volume the calls typically experienced on the busiest  
14                          days. Company shall also maintain a local or toll free telephone number for  
15                          after-hours. Company shall have a representative, or answering  
16                          machine/message service (voice mail) available at said after-hours telephone  
17                          number.

18           **5.2.2    Complaints.** All service complaints shall be directed to Company. A  
19           representative of the Company shall be available to receive complaints during  
20           normal business hours. All service complaints will be handled by the Company in  
21           a prompt and efficient manner. In the case of a dispute between the Company and  
22           the Customer, the matter will be reviewed and a decision made by the District  
23           Manager – Engineer. Company may appeal the decision of the District Manager  
24           – Engineer to the District Board within 10 days of the receipt of the decision.  
25           Customers will be advised that any unresolved complaint can be forwarded to the  
26           District in accordance with Section 5.2.3.

27                           All complaints alleging that Company personnel have mixed Recyclable  
28                           Materials or Organic Waste with Garbage, have missed collections, have  
29                           failed to pick up litter, have refused to pick up unauthorized wastes, or have  
30                           engaged in unsafe driving will be logged. Also, all complaints alleging  
31                           Company failure to maintain vehicles, equipment, or Containers. Such log  
32                           will be available for review by the District upon request.

33                           All customer service records and logs kept by Company shall be available to  
34                           District upon request and provided at no cost to District. District shall, at any  
35                           time during regular Company business hours, have access to Company's customer  
36                           service department for purposes that may include monitoring the quality of  
37                           customer service or researching Customer complaints.

38           **5.2.3    Resolution of Customer Complaints.** Company shall notify Customers of the  
39           complaint procedure at the time Customers apply for or are provided service, and  
40           subsequently in the New Customer Brochure provided for in Section 5.4.3 herein.

1 A Customer dissatisfied with Company's response regarding a complaint may ask  
2 District to review the complaint. To obtain this review, the Customer must  
3 submit a written request within thirty (30) days of the original complaint to  
4 Company if Company has failed to respond to the complaint. District may extend  
5 the time to request its review for good cause. In reviewing the complaint, the  
6 District Manager-Engineer shall seek a response and remedy by Company.

7 The District Manager-Engineer shall determine if the Customer's complaint is  
8 justified, and if so, what remedy if any shall be provided. The District Manager-  
9 Engineer may delegate these duties to a designee. The decision of the District  
10 Manager-Engineer or his/her designee shall be final on any matter under Five  
11 Hundred Dollars (\$500). In the event of a decision on a matter involving Five  
12 Hundred Dollars (\$500) or more, Company may seek review by the Board of  
13 Directors.

14 **5.2.4 Company Liaison.** Company shall designate in writing a "company liaison" who  
15 shall be responsible for working with the District Manager-Engineer and/or the  
16 District Manager-Engineer's designated representative(s) to resolve customer  
17 complaints.

18 **5.3 Discontinuance of Collection Service and/or Refusal to Collect**

19 **5.3.1 Discontinuance of Service.** If Company elects, pursuant to Section 5.1.1 to  
20 discontinue Collection Services for failure to pay for said services, the Company  
21 shall, prior to discontinuance: (1) provide the Customer with thirty (30) days prior  
22 written notice of the intent to discontinue service and (2) provide the District with  
23 fifteen (15) days prior written notice of the intent to discontinue service to said  
24 Customer. Company shall not, however, discontinue service until resolution of  
25 any good faith disputes concerning amounts due Company.

26 **5.3.2 Refusal to Collect.** Company may, at its discretion, refuse to collect Garbage,  
27 Recyclable Materials, and/ or Organic Waste from any Customer who uses a non-  
28 standard sized container for Collection of Garbage, Recyclable Materials, and/ or  
29 Organic Waste.

30 Company may refuse to collect any waste containing Hazardous Waste, medical  
31 wastes, or any other such unauthorized wastes. Company shall immediately  
32 notify the District and the Marin County Division of Environmental Health of any  
33 Hazardous Waste left for Collection by said Customer, to the extent said wastes  
34 pose a significant threat to human health or the environment.

35 Company may, at its discretion, refuse to collect any Recyclable Materials carts or  
36 bins that contain significant amounts of Garbage that is commingled with  
37 Recyclable Materials.

38 If, for any reason, Company refuses to collect Garbage, Materials, and/or Organic  
39 Waste containers from a Customer, Company shall promptly provide said

1 Customer with a written explanation or alternatively, Company shall telephone  
2 the Customer with an explanation on the same day as the intended pick up.  
3 Company shall maintain a log of such events.

#### 4 **5.4 Community Outreach Services**

5 Company agrees to work diligently to promote and expand Zero Waste programs and to  
6 meet the goals established to meet the requirements of the City of Novato's and the  
7 District's Zero Waste Goals. Company shall develop and distribute promotional  
8 materials describing recycling programs and encouraging recycling to all residential,  
9 commercial, and industrial accounts at least two times per year, or more often if  
10 requested by the District. These materials shall be submitted to the District Manager-  
11 Engineer for prior approval. A schedule for preparation and approval of promotional  
12 materials shall be submitted for approval of District by November 1 of each subsequent  
13 year. The Company's Community Outreach Services shall include, at a minimum, the  
14 following:

15 **5.4.1 Community Involvement and School Recycling Programs.** By October 31,  
16 2011, The Company shall fully develop for implementation the Zero Waste  
17 Community Outreach Outline as included in Exhibit 4, and the School Recycling  
18 and Food Waste Program Outline as included in Exhibit 5. The District shall  
19 review and approve the plans prior to implementation by the Company. Updates  
20 of the action plans must be submitted annually for District approval no later than  
21 October 31, 2012 and no later than October 31st each Agreement Year thereafter.  
22 The program must include specific steps designed to increase diversion and  
23 participation, for the District residents, businesses, and Public Schools.  
24 Campaigns should target certain diverted materials or "problem" areas of the  
25 Company's Service Area where improvements can be maximized. Targets of  
26 outreach should be based on local trends and recycling patterns based on  
27 information obtained by both the District Manager-Engineer and Company staff.  
28 The Company shall provide space in Company's public outreach materials, such  
29 as mailers, flyers and newsletters, for the District to include announcements,  
30 community information, articles, and photographs. The Public School campaigns  
31 shall correspond with the school year and should target student, faculty and staff  
32 participation in the diversion of Recyclable Materials and Organic Waste.

33 **5.4.2 Recycling Coordinator.** Company will provide for the equivalent 2/5 full-time  
34 Recycling Coordinator dedicated to the District. Company may use an approved  
35 sub-contractor as approved by the District to perform some or all the duties  
36 normally assigned to the Recycling Coordinator.

37 **5.4.3 Annual Collection Service Notice.** Company shall periodically prepare and  
38 distribute at least twice annually, subject to direction from the District Manager-  
39 Engineer, separate notices to all SFD Service Units regarding the SFD Collection  
40 Service, to all MFD Service Units regarding MFD Collect Service, and to all  
41 Commercial Service Units regarding Commercial Collection Service. To the  
42 extent appropriate, based on the category of Customer receiving the notice, it shall

1 contain at a minimum: definitions of the materials to be collected, procedures for  
2 setting out the materials, Collection and disposal options for unacceptable  
3 materials such as Hazardous Waste, maps of the Service Area indicating the day  
4 of the week that Collection Service will be provided, and the Company customer  
5 service phone number and website address. The notice shall also inform  
6 Customers of recycling and waste diversion opportunities and goals, emphasizing  
7 Zero Waste as well as AB 32, and explain use of recycling and waste diversion  
8 services offered by Company and other specific information that will assist in the  
9 efficient Collection of Garbage, Recyclable Materials and Organic Waste. The  
10 notice shall be provided in English, and other languages as reasonably directed by  
11 the District, and shall be distributed by the Company no later than November 1<sup>st</sup>  
12 each Agreement Year.

13 **5.4.4 Website.** Company shall be responsible for updating and maintaining a website  
14 for use by Customers. The website shall emphasize Zero Waste goals as well as  
15 AB 32 and shall contain the same information discussed in the Zero Waste  
16 Community Outreach Outline included in Exhibit 4.

17 **5.4.5 New Customer Brochure.** Company shall also prepare and update annually a  
18 brochure for mailing to all new Customers entitled to service under this  
19 Agreement. The brochure shall contain a listing of Company's Collection Service  
20 Rates, annual holiday schedule and a general summary of services required to be  
21 provided hereunder and optional service that may be furnished by Company. The  
22 brochure shall include the same type of information as described in  
23 Section 5.04.3. This brochure shall include information appropriate to allow a  
24 new Customer to participate fully in the Garbage, Recyclable Materials, and  
25 Organic Waste collection programs offered by Company. Company shall include  
26 any specific information as may be requested by District.

27 **5.4.6 Additional Programs and Services.** Company shall provide additional services  
28 and programs as requested by District at a price to be mutually agreed upon  
29 between the Company and the District Manager-Engineer. In the event the  
30 Company and the District Manager-Engineer cannot reach a mutually agreed  
31 upon price for the requested service or program, District shall have the right to  
32 procure the service of other vendors or Companies to provide the requested  
33 service.

34 **5.4.7 News Media Relations.** Company shall notify the District Manager-Engineer by  
35 e-mail or phone of all requests for news media interviews related to the Collection  
36 Services program within twenty-four (24) hours of Company's receipt of the  
37 request. Before responding to any inquiries involving controversial issues or any  
38 issues likely to affect participation or Service Recipient perception of services,  
39 Company will discuss Company's proposed response with the District Manager-  
40 Engineer.

41 **5.4.8 News Releases.** Copies of draft news releases or proposed trade journal articles  
42 shall be submitted to District for prior review and approval at least five (5) Work

1 Days in advance of release, except where Company is required by any law or  
2 regulation to submit materials to any regulatory agency in a shorter period of  
3 time, in which case Company shall submit such materials to District  
4 simultaneously with Company's submittal to such regulatory agency. Copies of  
5 articles resulting from media interviews or news releases shall be provided to the  
6 City within five (5) Work Days after publication.

7 **5.4.9 Compost Delivery.** Upon request by the District Manager-Engineer, Company  
8 shall provide premium quality compost materials delivered to locations and in  
9 amounts as requested by the District Manager-Engineer, provided that the total  
10 amount during any single Agreement Year does not exceed three-hundred sixty  
11 (360) cubic yards. Such delivery of compost shall be made within seventy-two  
12 (72) hours upon request by the District Manager-Engineer. Company shall also  
13 deliver premium quality compost to individual Service Unit seventy-two (72)  
14 hours upon request of a Service Recipient. The quantity of Company deliveries of  
15 premium compost and shall be a minimum of five (5) cubic yards.

16 **5.4.10 Community Reuse E-Network.** The Company will work with the District to  
17 develop, implement, and manage a Community Reuse E-Network to promote the  
18 reuse of Bulky Waste.

1                                   **ARTICLE 6 COMPANY'S COMPENSATION AND RATES**

2   **6.1    General**

3           Company's compensation provided for in this article shall be the full, entire, and  
4           complete compensation due to Company for all labor, equipment, materials, and supplies,  
5           taxes, insurance, bonds, overhead, disposal, profit, and all other things necessary to  
6           perform all the services required by this Agreement in the manner and at the times  
7           prescribed.

8           Company will not look to District for payment of any sums under this Agreement.  
9           Company will perform the responsibilities and duties described in this Agreement in  
10          consideration of the right to charge and collect from Customers for services rendered at  
11          rates fixed by District from time to time.

12   **6.2    Refuse Rate Index Adjustments to Service Rates**

13          **6.2.1   Adjustments to Service Using the Refuse Rate Index (RRI).** Beginning on  
14          January 1, 2012, and annually thereafter, Company shall, subject to compliance  
15          with all provisions of this Article, shall receive an annual adjustment in of the  
16          Service Rates as set forth in Exhibit 1 of this Agreement.

17          **6.2.2   RRI Adjustment.** Beginning on January 1, 2012, and annually thereafter during  
18          the term of this Agreement, the Service Rates set forth in Article 6.2.1 above shall  
19          be adjusted by the RRI adjustment set forth below. In any year that the  
20          calculation of the RRI results in a negative number, there shall be no adjustment  
21          of the Service Rates. Instead, the negative RRI number shall be added to the result  
22          of the subsequent years RRI calculation and the result shall be the RRI adjustment  
23          for that subsequent year.

24          **6.2.3   12-Month Annual Average.** The RRI adjustment shall be the sum of the  
25          weighted percentage change in the 12-month annual average of each RRI index  
26          number between the base year, which shall be the prior preceding fiscal year  
27          ending June 30th and the preceding fiscal year ending June 30th as contained in  
28          the most recent release of the source documents listed in Exhibit 2, (“REFUSE  
29          RATE INDEX”) which is attached to and included in this Agreement. Therefore,  
30          the first Service Rate adjustment will be based on the percentage changes between  
31          the 12-month Annual Average of the RRI indices for the fiscal year ending June  
32          30, 2010 and the Annual Average of the RRI indices for the fiscal year ending  
33          June 30, 2011. The RRI shall be calculated using the RRI methodology included  
34          in Exhibit 2.

35   **6.3    RRI Financial Information**

36          On or before September 1, 2011, and annually thereafter during the term of this  
37          Agreement, Company shall deliver to District financial information for the specific  
38          services performed under this Agreement for the preceding Agreement Year. Such  
39          financial information shall be in the format as set forth in Exhibit 2, or as may be further  
40          revised by District from time to time. If Company fails to submit the financial

1 information in the required format by September 1<sup>st</sup>, it is agreed that Company shall be  
2 deemed to have waived the RRI adjustment for that year. Company's failure to provide  
3 the financial information shall not preclude District from applying the RRI using the prior  
4 year's financial data, or pro forma data if no prior year financial data is available, if that  
5 application would result in a negative RRI.

6 **6.3.1** Annual Adjustments shall be made only in units of one cent (\$0.01). Fractions of  
7 less than one cent (\$0.01) shall not be considered in making adjustments. The  
8 indices shall be truncated at four (4) decimal places for the adjustment  
9 calculations.

10 **6.3.2** If Company's failure to submit the financial information required under Article  
11 6.4 is the result of extraordinary or unusual circumstances as demonstrated by  
12 Company to the satisfaction of District Manager-Engineer, District at its sole  
13 discretion, may consider the request for the annual RRI rate adjustment.

14 **6.3.3** As of November 15, 2011, and annual thereafter during the term of this  
15 Agreement, the District Manager-Engineer shall notify Company of the RRI  
16 adjustment to the affected service rates to take place on the subsequent January  
17 1st.

#### 18 **6.4 Recyclable Materials Balancing Account**

19 Because of the variation of Recyclable Materials commodity prices, the District and  
20 Company agree to use the Recyclable Materials Balancing Account as described in  
21 Exhibit 7.

#### 22 **6.5 District or Company Requested Detailed Rate Review**

23 The District or the Company may request a Detailed Rate Review to be conducted  
24 following the procedures as specified in Exhibit 8. However, a Detailed Rate Review  
25 shall not be conducted more than once every three (3) Agreement years. A request for a  
26 Detailed Rate Review shall be made in writing at least six months prior to the January 1st  
27 rate adjustment period for the year in which the results for the Detailed Rate Review are  
28 to be applied. The Company shall pay the cost for the Detailed Compensation Review,  
29 and the cost of such a Detailed Rate Review is an allowable pass-through cost.

30

1       **ARTICLE 7 RECORDS, REPORTS, AND INFORMATION REQUIREMENTS**

2       **7.1     General**

3       Company shall maintain such accounting, statistical, and other records related to its  
4       performance under this Agreement, as shall be necessary to develop the financial  
5       statements and other reports required by this Agreement. Also, Company agrees to  
6       conduct data collection, information and record keeping, and reporting activities needed  
7       to comply with applicable laws and regulations and to meet the reporting and Solid Waste  
8       and Zero Waste program management needs of District. To this extent, such  
9       requirements set out in this and other articles of this Agreement shall not be considered  
10      limiting or necessarily complete. In particular, this Article is intended to only highlight  
11      the general nature of records and reports and is not meant to define exactly what the  
12      records and reports are to be and their content.

13      **7.2     Records**

14      **7.2.1   General.** Company shall maintain records required to conduct its operations, to  
15      support requests it may make to District, and to respond to requests from District  
16      in the conduct of District business. Adequate record security shall be maintained  
17      to preserve records from events that can be reasonably anticipated such as a fire,  
18      theft, and earthquake. Electronically maintained data/records shall be protected  
19      and backed up.

20              Company agrees that upon the request of the District for records of any and all  
21              companies conducting operations addressed in this Agreement, including related  
22              party entities, reasonably related to the determination of compliance with this  
23              Agreement or determination of the Company's compensation or rates, Company  
24              shall provide such records or make them available to District and its official  
25              representatives during normal business hours. However, for those years when the  
26              compensation methodology set forth in Section 6.3.3 (Compensation for Recyclable  
27              Materials) remains in use, the Company shall have no obligation to provide records  
28              for affiliated recycling companies.

29      **7.2.2   Financial Records.** Financial records shall be maintained and cost and revenue  
30      information for the Service Area segregated from other areas served by Company.

31      **7.2.3   Solid Waste Records.** Records shall be maintained for the Service Area relating  
32      to:

- 33              a) Customer services and billing;
- 34              b) Character, weight, and volume of Solid Waste, especially as related to reducing  
35              and diverting Recyclable Materials, Organic Waste, or Construction and  
36              Demolition Debris from disposal. Information will be separated by kind of  
37              account;

- 1 c) Routes in a format suitable for preparing reports and coordinating with  
2 other agencies;
- 3 d) Facilities, equipment, and personnel used;
- 4 e) Facilities and equipment operations, maintenance, and repair;
- 5 f) Processing and disposal of Solid Waste;
- 6 g) Complaints as detailed in Section 5.2.2; and
- 7 h) Disposal Records. Company shall maintain records of disposal facility and  
8 transfer station disposal of all Garbage collected in service area for the period of  
9 this Agreement and all extensions to this Agreement or successor agreements. In  
10 the event Company discontinues providing Collection Services to District,  
11 Company shall provide all records of disposal facility and transfer station disposal  
12 of all Garbage collected in service area to District within thirty (30) days of  
13 discontinuing service. Records shall be in chronological and organized form and  
14 readily and easily interpreted.

15 **7.2.4 Recycling Service Records.** At direction of District, Company shall maintain  
16 records for the service area that relate to:

- 17 a) Records described in 7.2.3 above;
- 18 b) Recycling participation -- especially as related to determining participation rates  
19 and implementing programs to increase existing participation and to expand  
20 diversion;
- 21 c) Weight of each material by type;
- 22 d) Sales -- kind of material, name of buyer/user, date of sales/transactions,  
23 processing costs, quantity purchased (in tons) and value per ton, and net sales; and
- 24 e) Inventories.

25 **7.2.5 Other Programs Records.** Records for other programs shall be tailored to  
26 specific needs. In general, District may require records which include:

- 27 a) Plans, tasks, and milestones; and
- 28 b) Accomplishments in terms such as dates, activities conducted, quantities of  
29 products used, produced or distributed, numbers of participants and responses, as  
30 well as tonnages diverted, recycled or composted, etc.

1 **7.3 Reports**

2 **7.3.1 Report Formats and Schedule.** Records shall be maintained in forms and by  
3 methods that facilitate flexible use of data contained in them to structure reports,  
4 as needed. Reports are intended to compile recorded data into useful forms of  
5 information that can be used to, among other things:

- 6 a) Determine and set rates and evaluate the financial efficacy of operations;
- 7 b) Evaluate past and expected progress towards achieving goals and  
8 objectives;
- 9 c) Determine needs for adjustment to programs; and
- 10 d) Evaluate customer service and complaints.

11 Company may propose report formats that are responsive to the objectives and  
12 audiences for each report. The format of each report shall be approved by the  
13 District Manager-Engineer. All reports shall be submitted to:

14 District Manager-Engineer  
15 Novato Sanitary District  
16 500 Davidson Street  
17 Novato, CA 94945

18 **7.3.2 Quarterly Reports.** Quarterly reports shall be submitted within 40 calendar days  
19 after the end of the applicable quarter.

- 20 a) Garbage Collection Services. Garbage, sorted by kind of generator, collected by  
21 Company, in tons, generated by month. Tons will be separately reported for SFD,  
22 MFD, and Commercial Customers.
- 23 b) Recyclable Materials Collection Service. Tonnage of Recyclable Materials  
24 collected by month, by specific material type. Tons will be separately reported  
25 for SFD, MFD, and Commercial Customers, and buy-back centers.
- 26 c) Organic Waste Collection Service. Tonnage of all Organic Waste collected by  
27 month and final disposition of materials. Tons will be separately reported for  
28 SFD, MFD, and Commercial Customers.
- 29 d) Debris Box Collection Service. Tonnage of all Organic Waste collected by  
30 month and final disposition of materials.
- 31 e) Number of accounts by service category (i.e. SFD, MFD, Commercial  
32 Customers) and receptacle size at the end of each quarter.

1 f) Bulky Waste. Report by class and weight the Garbage, Recyclable  
2 Materials, Organic Waste, E-Waste, U-Waste used appliances, etc.,  
3 collected as Bulky Waste and the kinds and weights of Bulky Waste  
4 diverted during these cleanups from the landfill through recycling, reuse,  
5 composting, transformation, or other means of diversion.

6 **7.3.3 Other Reports.** Company shall furnish District with other reports as may be  
7 reasonably required by District in order that District may fulfill its obligations  
8 under applicable laws or regulations. Such reports may include, but are not  
9 limited to, Recyclable Materials sales at or relating to the quantities and sales  
10 price of Recyclable Materials including monthly tonnages and sales information  
11 and inventories on hand.

12 **7.3.4 Annual Financial Report.** When requested by District, Company's and (to the  
13 extent necessary to determine compliance with this Agreement or to determine the  
14 Company's compensation or rates) related party entities' financial  
15 reports/statements shall be included with the annual report. The annual report  
16 shall also include a complete inventory of equipment used to provide all services.

17 Company shall submit, annually, a financial statement to the District.  
18 Financial statements shall include a supplemental schedule showing Company's  
19 results of operations, including the specific revenues and expenses in connection  
20 with the operations provided for in this Agreement, as well as other operations  
21 included in such financial statements. The financial statements, supplemental  
22 schedule and footnotes shall be prepared in accordance with Generally Accepted  
23 Accounting Principles (GAAP) and audited, in accordance with Generally  
24 Accepted Auditing Standards (GAAS) by a certified public accountant (CPA)  
25 licensed (in good standing) to practice public accounting in the State of California  
26 as determined by the State of California Department of Consumer Affairs Board  
27 of Accountancy. The CPA opinion on Company's annual financial statements and  
28 supplemental schedule shall be unqualified, except as to uncertainties for which  
29 the ultimate outcome cannot be determined by the date of the CPA's opinion. The  
30 cost for the annual audit shall be borne by Company as a direct cost of service.  
31 The annual report shall also include an inventory of equipment used to  
32 provide all services.

33 **7.3.5** Company shall, in its Agreement with the CPA performing its annual audit  
34 referred to above, when requested by District, have its CPA make available to  
35 District (or District's designated representative) such CPA's working papers  
36 related to the audit. The cost, if any, incurred by Company's CPA shall be  
37 included in the cost of the audit.

38 **7.3.6** Company agrees that all financial transactions with all related party entities shall  
39 be subject to approval by the District. Company agrees to provide records of said  
40 financial transactions in such form and detail as requested by the District. The  
41 District may request that there be an annual independent review of related party

1 transactions, by a third party selected by the District, at Company's expense. In  
2 addition, related party transactions shall be disclosed annually (coinciding with  
3 Company's annual audited financial statements referred to in this Section) to  
4 District in a separate disclosure letter to the District Manager-Engineer. This  
5 letter shall include, but not be limited to, the following information:

6 **7.3.7** A general description of the nature of each transaction, or each type of transaction  
7 (for similar transactions). Such description shall include for each transaction (or  
8 each similar type of transaction), the specific related party entity, the amount,  
9 basis of amount (how charge or amount was determined), and description of the  
10 allocation methodology used to allocate any costs common to this and other  
11 operations. Amounts shall be reconciled to the related party entity disclosures  
12 made in Company's annual audited financial statements referred to in this section.

13 **7.3.8** At District's request, Company shall provide District with copies of working  
14 papers or other documentation deemed relevant by District relating to information  
15 shown in the annual disclosure letter. The annual disclosure letter shall be  
16 provided to District within ninety (90) days of Company's fiscal year end.

17 **7.4 Right to Inspect Records**

18 District shall have the right to inspect or review the payroll tax reports, specific  
19 documents, or records required, expressly or by inference, pursuant to this Agreement, or  
20 any other similar records or reports of Company that District shall deem, in its sole  
21 discretion, necessary to evaluate annual reports, compensation applications provided for  
22 in this Agreement and Company's performance provided for in this Agreement. The  
23 District, or the person selected by the District to conduct the above annual independent  
24 review, as described in Section 7.3.4, shall have access to the records described herein  
25 annually and similar such records of the related party entities as part of the independent  
26 review of related party transactions.

1                   **ARTICLE 8 INDEMNIFICATION, INSURANCE, AND BOND**

2   **8.1    Indemnification**

3    Company shall indemnify and hold harmless District, its officers, directors, employees,  
4    and agents from and against any and all loss, liability, penalty, forfeiture, claim, demand,  
5    action, proceeding, or suit of any and every kind and description (including, but not  
6    limited to, injury to and death of any person and damage to property, or for contribution  
7    or indemnity claimed by third parties) arising or resulting from or in any way connected  
8    with performance of this Agreement, including allegations of: (1) negligence or willful  
9    misconduct of Company, its officers, employees, agents and/or subcontractors in  
10   performing services under this Agreement (whether or not third parties may also be  
11   contributorily negligent); (2) failure of Company, its officers, employees, agents, and/or  
12   subcontractors to comply in all respects with the provisions of this Agreement, applicable  
13   laws (including, without limitation, the environmental laws) and regulations, and/or  
14   applicable permits and licenses; (3) acts of Company, its officers, employees, agents,  
15   and/or subcontractors in performing services under this Agreement for which strict  
16   liability is imposed by law (including, without limitation, the environmental laws). The  
17   foregoing indemnity shall apply regardless of whether such loss, liability, penalty,  
18   forfeiture, claim, demand, action, proceeding, suit, injury, death, or damage is also caused  
19   in part by any of the District's or City's negligence, except that which was caused by the  
20   sole negligence or willful misconduct of District, City, its officers, directors, employees,  
21   of agents. Company further agrees to and shall, upon demand of District or City, at  
22   Company's sole cost and expense, defend (with attorneys acceptable to District and City)  
23   District, City, its officers, directors, employees, and agents against any claims, actions,  
24   suits, or other proceedings, whether judicial, quasi-judicial or administrative in nature,  
25   arising or resulting from any events described in this paragraph. The Company agrees  
26   that its duty to indemnify set forth here in this Article 8, including the Hazardous Waste  
27   indemnification, shall apply to the lease and operation of the drop-off recycling facility at  
28   7576 Redwood Boulevard, in Novato, California, by the Company or a Company  
29   affiliate, and its provision of a portion of the Company's existing facility there to the  
30   District for a HHW Facility.

31   Company's duty to indemnify and defend shall survive the expiration or early termination  
32   of this Agreement as to matters occurring during the term of the Agreement, including  
33   any extension thereof.

34   **8.2    Hazardous Waste Indemnification**

35   Company shall indemnify, defend (with attorneys acceptable to District), protect, and  
36   hold harmless District, its officers, Directors, employees, and agents (collectively)  
37   indemnitees from and against all claims, damages (including but not limited to special,  
38   consequential, natural resources, and punitive damages), injuries, costs, (including  
39   without limit any and all response, remediation, and removal costs), losses, demands,  
40   debts, liens, liabilities, causes of action, suits, legal or administrative proceedings,  
41   interest, fines, charges, penalties, and expenses (including without limit attorneys' and  
42   expert witness fees and costs incurred in connection with defending against any of the  
43   foregoing or in enforcing this indemnity), (collectively, "damages") of any kind  
44   whatsoever paid, incurred, or suffered by, or asserted against indemnitees, arising from or

1 attributable to the acts or omissions of Company, its officers, directors, employees,  
2 companies, or agents, whether or not negligent or otherwise culpable, in connection with  
3 or related to the performance of this Agreement, including, without limit, damages  
4 arising from or attributable to any repair, cleanup, or detoxification, or preparation and  
5 implementation of any removal, remedial, response, closure, or other plan (regardless of  
6 whether undertaken due to governmental action) concerning any Hazardous Waste,  
7 and/or Household Hazardous Waste in the service area at any places where Company  
8 transports, processes, stores, or disposes of Solid Waste, and/or Construction and  
9 Demolition Debris, other materials. The foregoing indemnity is intended to operate as an  
10 agreement pursuant to Sections 107(e) of the Comprehensive Environmental Response,  
11 Compensation and Liability Act, CERCLA, 42 USC Sections 9607(e) and California  
12 Health and Safety Code Sections 25364, to defend, protect, hold harmless, and indemnify  
13 District from liability. This provision is in addition to all other provisions in this  
14 Agreement and is intended to survive the end of the term of this Agreement.

15 The above indemnity does not apply to any Solid Waste and Hazardous Waste that  
16 Company may have disposed of at Redwood Landfill prior to the effective date of this  
17 Agreement. If Company elects to continue use of Redwood Landfill as a disposal facility  
18 after the effective date of this Agreement, Company agrees to seek an indemnification  
19 agreement with Redwood Landfill, naming the District as an indemnitee. Said  
20 indemnification agreement shall be substantially similar to the above provisions set forth  
21 herein.

22 If Company selects a disposal facility at any time during the term of this agreement other  
23 than Redwood Landfill, Company agrees to obtain an indemnity agreement from said  
24 landfill indemnifying the District on terms substantially in the form as set forth  
25 hereinabove. If the District, however, directs the wastestream to a different disposal  
26 facility, Company will not be required to indemnify the District as set forth herein, unless  
27 the District requires that the disposal facility so selected provide a substantially similar  
28 indemnity.

### 29 **8.3 CIWMA Indemnification**

30 Under CIWMA, the California Integrated Waste Management Act, the City and the  
31 County have the direct responsibility to meet percentage diversion goals and other  
32 requirements of the Act. However, many of the programs developed to comply with the  
33 requirements of the CIWMA will be implemented by Company as the provider of  
34 Garbage, Recyclable Materials, and Organic Waste Collection Services in the community  
35 under this Agreement with District.

36 As of January 1, 2001, Section 41821.2 is added to the Public Resources Code which  
37 applies to a sanitary district providing for Solid Waste handling services. Pursuant to this  
38 section, the District must comply with the Source Reduction and Recycling Element, and  
39 the Household Hazardous Waste Element, of the City and County in which Company  
40 provides Solid Waste handling services pursuant to this Agreement. The District may be  
41 subject to a portion of a penalty imposed under Public Resources Section 41850 upon the  
42 City or County in proportion to the District's responsibility for failure to implement  
43 within its jurisdiction a Source Reduction Recycling Element or a Household Hazardous  
44 Waste Element.

1 Company agrees to indemnify District for any sums of money District is required to pay  
2 City or County in accordance with Section 41821.2, of the Public Resources Code, in the  
3 event that the District's failure to implement City or County approved elements is due to  
4 the failure of Company to meet its obligations under this Agreement. Company shall, in  
5 addition, indemnify the District for any fines and penalties assessed the City or County  
6 for delays by Company in providing information that prevents District, the City or the  
7 County from submitting reports required by the CIWMA in a timely manner.

## 8 **8.4 Insurance**

9 **8.4.1 General.** Company shall take out and maintain during the life of the contract  
10 such public liability and property damage insurance as shall protect Company and  
11 any subcontractor performing work covered by this Agreement from claims for  
12 property damages, which may arise because of the nature of the work or from  
13 operation under the contract, whether such operations be by Company or by any  
14 subcontractor or person directly or indirectly employed by either, even though  
15 such damages may not be caused by the negligence of the Company or any  
16 subcontractor, or person employed by either. The public liability and property  
17 damage insurance shall directly protect the District, its officers, agents, employees  
18 and volunteers, as well as the Company and any subcontractors, and all insurance  
19 policies issues hereunder shall so state.

20 **8.4.2 Minimum Scope of Insurance.** Coverage shall be at least as broad as:

- 21 a) Insurance Services Office form number GL 0002 covering Comprehensive  
22 General Liability and Insurance Services Office form number GL 0404 covering  
23 Broad Form Comprehensive General Liability; or Insurance Services Office  
24 Commercial General Liability coverage ("occurrence" form CG 0001).
- 25 b) Insurance Services Office form number CA 0001 covering Automobile Liability,  
26 code 1 "any auto" and endorsement CA 0025.
- 27 c) Workers' Compensation insurance as required by the Labor Code of the State of  
28 California and Employers Liability insurance.

29 **8.4.3 Minimum Limits of Insurance.** Company shall maintain limits no less than:

- 30 a) Comprehensive General Liability: Five Million Dollars (\$5,000,000) combined  
31 single limit per occurrence for bodily injury, personal injury and property  
32 damage.
- 33 b) Automobile Liability: Five Million Dollars (\$5,000,000) combined single limit  
34 per accident for bodily injury and property damage.
- 35 c) Workers' Compensation and Employers Liability: Workers' compensation limits  
36 as required by the Labor Code of the State of California and Employers Liability  
37 limits of \$1,000,000 per accident.

1           **8.4.4 Deductibles and Self-Insured Retentions.** Any deductibles or self-insured  
2 retentions must be declared to and approved by District. At the option of District,  
3 either: the insurer shall reduce or eliminate such deductibles or self-insured  
4 retentions as respects District, its member agencies, its officials and employees; or  
5 Company shall provide a financial guarantee satisfactory to District guaranteeing  
6 payment of losses and related investigations, claim administration and defense  
7 expenses.

8           **8.4.5 Other Insurance Provisions.** The policies are to contain, or be endorsed to  
9 contain, the following provisions:

10           a) General Liability and Automobile Liability Coverages -

11                   (a) District, its officials, employees and volunteers are to be covered as additional  
12 insureds as respects: liability arising out of activities performed by or on  
13 behalf of Company; products and completed operations of Company;  
14 premises owned, leased or used by Company; or automobiles owned, leased,  
15 hired or borrowed by Company. The coverage shall contain no special  
16 limitations on the scope of protection afforded to District, its officials,  
17 employees or volunteers, unless otherwise approved by the District.

18                   (b) Company's insurance coverage shall be an occurrence policy and primary  
19 insurance as respects District, its officials, employees and volunteers. Any  
20 insurance or self-insurance maintained by District, its officials, employees or  
21 volunteers shall be excess of Company's insurance and shall not contribute  
22 with it.

23                   (c) Any failure to comply with reporting provisions of the policies shall not affect  
24 coverage provided to District, its officials, employees or volunteers.

25                   (d) Coverage shall state that Company's insurance shall apply separately to each  
26 insured against whom claim is made or suit is brought, except with respect to  
27 the limits of the insurer's liability and no right of subrogation by Company's  
28 insurer against District shall be available.

29           b) Workers' Compensation and Employers Liability Coverage - The insurer shall  
30 agree to waive all rights of subrogation against District, its officials, employees  
31 and volunteers for losses arising from work performed by Company for District.

32           c) All Coverages - Each insurance policy required by this clause shall be endorsed to  
33 state that coverage shall not be suspended, voided, canceled by either party,  
34 reduced in coverage or in limits except after thirty (30) days' prior written notice  
35 by certified mail, return receipt requested, has been given to District.

36           **8.4.6 Acceptability of Insurers.** The insurance policies required by this section shall  
37 be issued by an insurance company or companies approved by District, which  
38 approval shall not be unreasonably withheld.

1           **8.4.7 Verification of Coverage.** Company shall furnish District with certificates of  
2 insurance and with original endorsements affecting coverage required by this  
3 clause. The certificates and endorsements for each insurance policy are to be  
4 signed by a person authorized by that insurer to bind coverage on its behalf. The  
5 certificates and endorsements are to be on forms provided by or acceptable to  
6 District and are to be received and approved by District before work commences  
7 under this Agreement. District reserves the right to require complete, certified  
8 copies of all required insurance policies, at any time.

9           **8.4.8 Subcontractor.** Company shall include all subcontractors as insureds under its  
10 policies or shall furnish separate certificates and endorsements for each  
11 subcontractor. All coverages for subcontractors shall be subject to all of the  
12 requirements stated herein. In addition, all such policies shall meet the  
13 requirements as set forth in 8.4.4 above.

14           **8.4.9 Required Endorsements**

15           a) The Workers' Compensation policy shall contain an endorsement in substantially  
16 the following form:

17                                 Thirty (30) days prior written notice shall be given to District in the  
18 event of cancellation, reduction in coverage, or non-renewal of this  
19 policy. Such notice shall be sent to:

20                                 District Manager-Engineer  
21                                 Novato Sanitary District  
22                                 500 Davidson Street  
23                                 Novato, California 94945”

24           b) The Comprehensive General Liability and Automobile Liability policies shall  
25 contain endorsements in substantially the following form:

26           (a) “Thirty (30) days prior written notice shall be given to District in the event of  
27 cancellation, reduction in coverage, or non-renewal of this policy. Such  
28 notice shall be sent to:

29                                 District Manager-Engineer  
30                                 500 Davidson Street  
31                                 Novato, California 94945”

32           (b) “District, its officers, employees, volunteers and agents are additional  
33 insureds on this policy.”

34           (c) “This policy shall be considered primary insurance as respects any other valid  
35 and collectible insurance maintained by District, including any self-insured  
36 retention or program of self-insurance, and any other such insurance shall be  
37 considered excess insurance only.”

1 (d) "Inclusion of District as an insured shall not affect District's rights as respects  
2 any claim, demand, suit or judgment brought or recovered against Company.  
3 This policy shall protect Company and District in the same manner as though  
4 a separate policy had been issued to each, but this shall not operate to increase  
5 Company's liability as set forth in the policy beyond the amount shown or to  
6 which Company would have been liable if only one party had been named as  
7 an insured."

8 **8.4.10 Delivery of Proof of Coverage.** Simultaneously with the execution of this  
9 Agreement, Company shall furnish District certificates of each policy of  
10 insurance required hereunder, in form and substance satisfactory to District. Such  
11 certificates shall show the type and amount of coverage, effective dates and dates  
12 of expiration of policies and shall have all required endorsements. If District  
13 requests, copies of each policy, together with all endorsements, shall also be  
14 promptly delivered to District.

15 Renewal certificates will be furnished periodically to District to demonstrate  
16 maintenance of the required coverages throughout the term of the Agreement.

17 **8.4.11 Other Insurance Requirements.**

- 18 a) In the event any services are delegated to a subcontractor, Company shall require  
19 such subcontractor to provide statutory workers' compensation insurance and  
20 employer's liability insurance for all of the subcontractor's employees engaged in  
21 the work in accordance with Section 8.4. The liability insurance required by  
22 Section 8.4 shall cover all subcontractors or the subcontractor must furnish  
23 evidence of insurance provided by it meeting all of the requirements of this  
24 Section 8.4.
- 25 b) Company shall comply with all requirements of the insurers issuing policies. The  
26 carrying of insurance shall not relieve Company from any obligation under this  
27 Agreement. If any claim exceeding the amount of any deductibles or self-insured  
28 reserves is made by any third person against Company or any subcontractor on  
29 account of any occurrence related to this Agreement, Company shall promptly  
30 report the facts in writing to the insurance carrier and to District.

31 If Company fails to procure and maintain any insurance required by  
32 this Agreement, District may take out and maintain, at Company's  
33 expense, such insurance as it may deem proper and deduct the cost  
34 thereof from any monies due Company.

35 **8.5 Faithful Performance Bond**

36 Simultaneously with the execution of this Agreement, Company shall file with District a  
37 bond, payable to District, securing Company's faithful performance of its obligations  
38 under this Agreement. The principal sum of the bond shall be One Hundred Thousand  
39 Dollars (\$100,000). The bond shall be executed as surety by a corporation authorized to

1 issue surety bonds in the State of California, with a financial condition and record of  
2 service satisfactory to District. The bond shall be in the form attached as Exhibit 3.

1                                   **ARTICLE 9 DISTRICT’S RIGHT TO PERFORM SERVICE**

2   **9.1    General**

3       In the event that Company, for any reason whatsoever, fails, refuses, or is unable to  
4       collect, transport, or dispose of any or all Solid Waste that it is required by this  
5       Agreement to collect and transport, at the time and in the manner provided in this  
6       Agreement, for a period of more than forty-eight (48) hours (on working days), and if, as  
7       a result thereof, Solid Waste should accumulate in the Service Area to such an extent, in  
8       such a manner, or for such a time that the District Manager-Engineer should find that  
9       such accumulation endangers or menaces the public health, safety, or welfare, then  
10      District shall have the right, but not the obligation, upon twenty-four (24) hour prior  
11      written notice to Company during the period of such event as determined by the District  
12      Manager-Engineer, (1) to perform, or cause to be performed, such services itself with its  
13      own or other personnel or to contract for performance of said services with a third party  
14      selected by the District, without liability to Company; and/or (2) to take possession of  
15      any or all of Company's land, equipment, and other property to collect and transport any  
16      Solid Waste generated within the service area which Company would otherwise be  
17      obligated to collect and transport pursuant to this Agreement.

18      Notice of Company's failure, refusal, or neglect to collect and transport Solid Waste may  
19      be given orally or by telephone to a responsible Company official, at Company's  
20      principal office, and shall be effective immediately. Written confirmation of such oral  
21      notification shall be sent to Company within twenty-four (24) hours of the oral  
22      notification.

23      Company further agrees that in such event:

24           **9.1.1** It will take direction from District to effect the transfer of possession of property  
25           to District for District's use.

26           **9.1.2** It will, if District so requests, keep in good repair and condition all of such  
27           property, provide all motor vehicles with fuel, oil and other service, and provide  
28           such other service as may be necessary to maintain said property in operational  
29           condition.

30           **9.1.3** District may immediately engage all or any personnel necessary or useful for the  
31           providing Collection Services, including, if District so desires, employees  
32           previously or then employed by Company. Company further agrees, if District so  
33           requests, to furnish District the services of any or all management or office  
34           personnel employed by Company whose services are necessary or useful for  
35           providing Collection Services and for the billing and of fees for these services.

36           District agrees that it assumes complete responsibility for the proper and normal  
37           use of such equipment and facilities while in its possession.

38           If the interruption or discontinuance in service is caused by any reasons other than  
39           those listed in Section 10.1, District shall pay to Company the reasonable rental  
40           value of the equipment and facilities, possession of which is taken by District, for

1 the period of District's possession. Additionally, District shall pay to Company  
2 the reasonable value of any goods or services provided by Company (e.g. gas, oil,  
3 use of mechanic, etc.). Under circumstances not set forth in Section 10.1, District  
4 shall also provide some reasonable return to Company, provided there are  
5 revenues available through collection of the established rates to reimburse District  
6 for its costs and pay Company for rental and services.

7 **9.2 Temporary Possession for Service Interruption Caused by Other Events**

8 If the interruption or discontinuance of services is caused by any event listed in Section  
9 10.1 (including interruptions and discontinuance due to strikes, lockout, and other labor  
10 disturbances), District may take possession of and use all of Company's property  
11 described above without paying Company or any other person any rental or any other  
12 charges or compensation whatsoever for said possession and use. However, District may,  
13 in its discretion, pay to Company the reasonable rental value of equipment and facilities,  
14 possession of which is taken by District, along with the reasonable value of goods and  
15 services provided by Company during temporary possession; provided however, no  
16 payment to Company may occur unless the revenues provided through the collection of  
17 rates are sufficient to make such payments once all reasonable costs incurred by District  
18 due to the temporary takeover are paid.

19 **9.3 Billing and Compensation to District During District's Possession**

20 During such time that District is providing Solid Waste services, as above provided,  
21 Company shall bill and collect payment from all users of the above-mentioned services.  
22 Company further agrees that, in such event, it shall reimburse District for any and all  
23 costs and expenses incurred by District in taking over possession of the above-mentioned  
24 property for Solid Waste service in such manner and to an extent as would otherwise be  
25 required of Company under the terms of this Agreement. Such reimbursement shall be  
26 made from time to time after submission by District to Company of each statement listing  
27 such costs and expenses, but in no event later than five (5) working days from and after  
28 each such submission.

29 **9.4 District's Right to Relinquish Possession**

30 It is further mutually agreed that District may at any time at its discretion relinquish  
31 possession of any or all of the above-mentioned property to Company and thereupon  
32 demand that Company resume the Solid Waste services as provided in this Agreement,  
33 whereupon Company shall be bound to resume the same.

34 **9.5 District's Possession Not A Taking**

35 District's exercise of its rights under this Article (1) does not constitute a taking of private  
36 property for which compensation must be paid, (2) will not create any liability on the part  
37 of District to Company, and (3) does not exempt Company from any of the indemnity  
38 provisions of this Agreement, which are meant to extend to circumstances arising under  
39 this Article, provided that Company is not required to indemnify District against claims  
40 and damages arising from the active negligence of District officers, employees, and  
41 agents in the operation of such equipment and facilities during the period of District's  
42 possession.

1 **9.6 Duration of District's Possession**

2 District's right pursuant to this Article to retain temporary possession of Company's  
3 facilities and equipment, and to render Collection Services, shall terminate when the  
4 District determines that such services can be resumed by Company, or when the District  
5 no longer reasonably requires such facilities or equipment. In any case, the District has  
6 no obligation to maintain possession of Company's property and/or continue its use for  
7 any period of time and may at any time, in its sole discretion, relinquish possession to  
8 Company.

9 **9.7 Possession in Event of Termination**

10 In the event of termination as provided in Article 10, the District shall have the right to  
11 take possession of any and all of Company's land, equipment, and other property used or  
12 useful in the collection, composting, and/or transportation of Solid Waste and to use such  
13 property to collect, recycle, compost, and transport any Solid Waste generated within  
14 District. District shall have the right to retain the possession of such property until other  
15 suitable arrangements can be made for the provision of Collection Services, which may  
16 include the grant of a franchise to another waste hauling company. In the event of  
17 termination, Company shall only be entitled to the payments, if at all, as set forth in  
18 Section 9.2 above, which payments shall be offset against any damages due District for  
19 Company's default. Company shall furnish District with immediate access to all of its  
20 business records related to billing of accounts for service and other records necessary for  
21 maintaining ongoing service during the period of possession.

1           **ARTICLE 10           DEFAULT, REMEDIES, AND LIQUIDATED DAMAGES**

2   **10.1 Events of Default**

3           All provisions of the franchise and this Agreement to be performed by Company are  
4           considered material. Each of the following shall constitute an event of default:

5           **10.1.1 Fraud or Deceit.** If Company practices, or attempts to practice, any fraud or  
6           deceit upon District.

7           **10.1.2 Insolvency or Bankruptcy.** If Company becomes insolvent, unable, or unwilling  
8           to pay its debts, or upon listing of an order for relief in favor of Company in a  
9           bankruptcy proceeding.

10          **10.1.3 Failure to Maintain Coverage/Indemnification.** If Company fails to provide or  
11          maintain in full force and effect the Workers' Compensation and liability  
12          coverage, or fails to provide indemnification as required by this Agreement.

13          **10.1.4 Violations of Regulation.** If Company violates any orders or filings of any  
14          regulatory body having jurisdiction over Company relative to this Agreement,  
15          which violation adversely affects Company's ability to provide service, provided  
16          that Company may contest any such orders or filings by appropriate proceedings  
17          conducted in good faith, in which case no breach of the franchise shall be deemed  
18          to have occurred.

19          **10.1.5 Failure to Perform.** If Company ceases to provide Collection Services as  
20          required under this Agreement for a period of forty-eight (48) hours (on working  
21          days) or more, for any reason within the control of Company.

22          **10.1.6 Failure to Pay.** If Company fails to make any payments required under this  
23          Agreement and/or refuses to provide District with required information, reports,  
24          and/or records in a timely manner as provided for in the Agreement.

25          **10.1.7 Acts or Omissions.** Any other act or omission by Company that violates the  
26          terms, conditions, or requirements of this Agreement, the California Integrated  
27          Waste Management Act of 1989, as it may be amended from time to time, or any  
28          order, directive, rule, or regulation issued thereunder and that is not corrected or  
29          remedied within the time set in the written notice of the violation, or, if Company  
30          cannot reasonably correct or remedy the breach within the time set forth in such  
31          notice, or if Company should fail to commence to correct or remedy such  
32          violation within the time set forth in such notice and diligently effect such  
33          correction or remedy thereafter.

34          **10.1.8 Attachment.** There is a seizure of attachment of, or levy on, the operating  
35          equipment of Company, including without limits its equipment, maintenance, or  
36          office facilities, or any part thereof, to the extent the partial attachment or levy

1 materially affects the operations of Company with regard to its obligations under  
2 this Agreement.

3 **10.1.9 Suspension or Termination of Service.** There is any unexcused termination of  
4 service or suspension of the transaction of business by Company.

5 **10.1.10 Failure to Provide Assurance of Performance.** If Company fails to  
6 provide reasonable assurances of performance as required under Section 10.6.

## 7 **10.2 Right to Terminate Upon Default**

8 Upon a default by Company, District shall have the right to terminate this franchise and  
9 this Agreement upon ten (10) days' notice, but without the need for any hearing, suit, or  
10 legal action. This right of termination is in addition to any other rights of District upon a  
11 failure of Company to perform its obligations under this Agreement. If Company is in  
12 default as set forth above, the District, in using its discretion as to whether to exercise its  
13 right to declare default and terminate the Agreement, shall consider issues such as  
14 Company's ability to perform the Agreement and cure the default, and whether a cure of  
15 said default is possible within a reasonable time. District's right to terminate this  
16 Agreement and to take possession of Company's properties are not exclusive, and  
17 District's termination of this Agreement shall not constitute an election of remedies.  
18 Instead, they shall be in addition to any and all other legal and equitable rights and  
19 remedies that District may have.

20 By virtue of the nature of this Agreement, the urgency of timely continuous and high-  
21 quality service, the lead time required to effect alternative service, and the rights granted  
22 by District to Company, the remedy of damages for a breach hereof by Company is  
23 inadequate and District shall be entitled to injunctive relief.

## 24 **10.3 Liquidated Damages**

25 **10.3.1 General.** District finds, and Company agrees, that as of the time of the execution  
26 of this Agreement, it is impractical, if not impossible, to reasonably ascertain the  
27 extent of damages that shall be incurred by District as a result of a breach by  
28 Company of its obligations under this Agreement. The factors relating to the  
29 impracticability of ascertaining damages include, but are not limited to, the fact  
30 that: (i) substantial damage results to members of the public who are denied  
31 services or denied quality or reliable service; (ii) such breaches cause  
32 inconvenience, anxiety, frustration, and deprivation of the benefits of the  
33 Agreement to individual members of the general public for whose benefit this  
34 Agreement exists, in subjective ways and in varying degrees of intensity that are  
35 incapable of measurement in precise monetary terms; (iii) that services might be  
36 available at substantially lower costs than alternative services and the monetary  
37 loss resulting from denial of services or denial of quality or reliable services is  
38 impossible to calculate in precise monetary terms; and (iv) the termination of this  
39 Agreement for such breaches, and other remedies are, at best, a means of future  
40 correction and not remedies that make the public whole for past breaches.

1 **10.3.2 Service Performance Standards; Liquidated Damages for Failure to Meet**  
2 **Standards.**

3 The parties acknowledge that consistent and reliable Collection  
4 Service is of utmost importance to District and that District has considered and  
5 relied on Company's representations as to its quality of service commitment in  
6 awarding the franchise to it. The parties further recognize that if Company fails  
7 to achieve the performance standards, or fails to submit required documents in a  
8 timely manner, District and its residents will suffer damages and that it is and will  
9 be impractical and extremely difficult to ascertain and determine the exact amount  
10 of damages that District will suffer. Therefore, without prejudice to District's  
11 right to treat such non-performance as an event of default under this Article 10,  
12 the parties agree that the following liquidated damage amounts represent a  
13 reasonable estimate of the amount of such damages considering all of the  
14 circumstances existing on the date of this Agreement, including the relationship of  
15 the sum to the range of harm to District that reasonably could be anticipated and  
16 the anticipation that proof of actual damages would be costly or inconvenient. In  
17 placing their initials at the places provided, each party specifically confirms the  
18 accuracy of the statements made above and the fact that each party has had ample  
19 opportunity to consult with legal counsel and obtain an explanation of the  
20 liquidated damage provisions at the time that the Agreement was made.

21 Company District  
Initial here: \_\_\_\_\_ Initial here: \_\_\_\_\_

22 Accordingly, District may, in its discretion, but after complying with notice and  
23 hearing procedures set forth below, assess liquidated damages not to exceed Five  
24 Hundred Dollars (\$500.00) per day, for each calendar day that Collection Service  
25 is not provided by Company in accordance with this Agreement. Failure by  
26 Company to provide Collection Service that may give rise to the imposition of  
27 liquidated damages include, but are not limited to, failures to comply fully with  
28 the terms of this Agreement with regard to collection reliability, collection  
29 quality, customer responsiveness, timeliness of submission of reports, and/or  
30 violations of federal, state and local law.

31 Company agrees to pay (as liquidated damages and not as a penalty) the amount  
32 of Five Hundred Dollars (\$500.00) per day as set forth above. The amount of the  
33 liquidated damages shall be subject to an annual CPI adjustment based on the  
34 "San Francisco /Oakland/San Jose All Urban Consumer Price Index."

35 District may determine the occurrence of events giving rise to liquidated damages  
36 through the observance of its own employees or representatives or through  
37 investigation of customer complaints.

38 Prior to assessing liquidated damages, District shall give Company notice of its  
39 intention to do so. The notice will include a brief description of the  
40 incident(s)/non-performance. Company may review (and make copies at its own  
41 expense) all information in the possession of District relating to incident(s)/non-  
42 performance. Company may, within ten (10) days after receiving the notice,  
43 request a meeting with District. If a meeting is requested, it shall be held by the

1 District Manager-Engineer or his/her designee. Company may present evidence  
2 in writing and through testimony of its employees and others relevant to the  
3 incident(s)/non-performance. The District Manager-Engineer or designee will  
4 provide Company with a written explanation of his or her determination assessing  
5 liquidated damages. Company may appeal a determination to assess  
6 liquidated damages to the District Board within 10 days of receipt of the  
7 determination.

8 **10.3.3 Timing of Payment.** Company shall pay any liquidated damages assessed by  
9 District within ten (10) days after they are assessed. If they are not paid within  
10 the ten (10) day period, District may proceed against the performance bond  
11 required by the Agreement or order the termination of the franchise granted by  
12 this Agreement, or both.

13 **10.4 Excuse from Performance**

14 The parties shall be excused from performing their respective obligations hereunder in  
15 the event they are prevented from so performing by reason of floods, earthquakes, other  
16 "acts of God," war, civil insurrection, riots, labor unrest, acts of any government  
17 (including judicial action), and other similar catastrophic events that are beyond the  
18 control of and not the fault of the party claiming excuse from performance hereunder.  
19 Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out,  
20 picketing, or other concerted job action conducted by Company's employees is not an  
21 excuse from performance and Company shall be obligated to continue to provide service  
22 notwithstanding the occurrence of any or all of such events.

23 The party claiming excuse from performance shall, within 48 hours (two (2) business  
24 days) after such party has notice of such cause, give the other party notice of the facts  
25 constituting such cause and asserting its claim to excuse under this Section.

26 The interruption or discontinuance of Company's services caused by one or more of the  
27 events excused shall not constitute a default by Company under Section 10.1 of this  
28 Agreement. In the event the Company is prevented from providing service, either due to  
29 attachment or any other factor set forth above, including judicial action, for a period of  
30 thirty (30) days or more, it is understood and agreed that the District will have the right to  
31 provide service pursuant to Article 9, either directly or by subcontracting with a third  
32 party. Under circumstances where the Company has failed to provide service and the  
33 default is excused, as set forth above, the District has the right to perform such services or  
34 to subcontract for the same, for up to one (1) year. In the case of excused labor unrest set  
35 forth above, however, the District has the right to perform said services or to subcontract  
36 for the same, for a period of up to six (6) months. Company agrees to pay the District's  
37 cost of providing the service. If, after the time specified herein, Company cannot  
38 thereafter provide service as agreed, the District can declare default and terminate the  
39 Agreement.

40 **10.5 Notice, Hearing and Appeal of District Breach**

41 Should Company contend that District is in breach of this Agreement, it shall file a  
42 written request with the District Manager-Engineer for an administrative hearing on the

1 allegation. The District Manager-Engineer shall notify Company of the time and date  
2 said hearing shall be held within thirty (30) days of receipt of Company's request.  
3 Company shall present its position and all relevant facts after District staff has made its  
4 presentation. Company shall be notified of the District Manager-Engineer's ruling in  
5 writing within fourteen (14) days of the administrative hearing.

6 If Company is not in agreement with the ruling issued by the District Manager-Engineer  
7 at the administrative hearing, it shall have the right to appeal this ruling to District Board  
8 members. This appeal shall be made in writing to the District Manager-Engineer no later  
9 than fourteen (14) days after receipt of the administrative hearing ruling. The District  
10 Manager-Engineer shall notify Company of the time and date of the hearing before the  
11 District Board, which hearing will be within forty-five (45) days of receipt of the request  
12 for appeal. Company shall present its position and all relevant facts after staff has made  
13 its presentation. Company shall be notified in writing within thirty (30) days of District  
14 Board members' ruling, District Board members' ruling shall be final, and Company shall  
15 have no further rights of appeal.

#### 16 **10.6 Assurance of Performance**

17 District may, at its option and in addition to all other remedies, in the event of Company  
18 default, demand from Company reasonable assurances of future timely and proper  
19 performance of this Agreement, in such form and substance as District may deem  
20 required. If Company fails or refuses to provide satisfactory assurances of timely and  
21 proper performance in the form and by the date required by District, such failure or  
22 refusal shall itself constitute an event of default.

1                   **ARTICLE 11           OTHER AGREEMENTS OF THE PARTIES**

2   **11.1   Relationship of Parties**

3           The parties intend that Company shall perform the services required by this Agreement as  
4           an independent Company engaged by District and not as an officer or employee of  
5           District nor as a partner of or joint venture with District. No employee or agent of  
6           Company shall be or shall be deemed to be an employee or agent of District. Except as  
7           expressly provided herein, Company shall have the exclusive control over the manner  
8           and means of conducting the Collection Services performed under this Agreement, and  
9           all persons performing such services. Company shall be solely responsible for the acts  
10          and omissions of its officers, employees, subcontractors, and agents. Neither Company  
11          nor its officers, employees, subcontractors, and agents shall obtain any rights to  
12          retirement benefits, workers' compensation benefits, or any other benefits that accrue to  
13          District employees.

14   **11.2   Compliance with Law**

15          In providing the services required under this Agreement, Company shall at all times, at its  
16          sole cost, comply with all applicable statutes, ordinances and laws of the United States,  
17          the State of California, applicable local public agencies (including District); and with all  
18          applicable regulations promulgated by federal, state, regional, or local administrative and  
19          regulatory agencies, now in force and as they may be enacted, issued, or amended during  
20          the term.

21   **11.3   Governing Law**

22          This Agreement shall be governed by, and construed and enforced in accordance with,  
23          the laws of the State of California.

24   **11.4   Jurisdiction**

25          Any lawsuits between the parties arising out of this Agreement shall be brought and  
26          concluded in the courts of the State of California, County of Marin, or within the U.S.  
27          District Court, Northern District of California.

28          With respect to venue, the parties agree that this Agreement is made in and will be  
29          performed in Marin County.

30   **11.5   Mediation**

31          The parties agree to consider mediation prior to filing suit, provided, however, that there  
32          is no concern as to a statute of limitations issue. If either part files suit with respect to  
33          performance of this Agreement, the parties agree to seek mediation services during the  
34          first ninety (90) days of the lawsuit.

35   **11.6   Assignment**

36          Except as may be provided for in Article 9 (District's Right to Perform Service), neither  
37          party shall assign its rights nor delegate, subcontract, or otherwise transfer its obligations  
38          under this Agreement to any other person without the prior written consent of the other  
39          party, except as provided for a joint powers authority described below. Any such

1 assignment made without the consent of the other party shall be void and the attempted  
2 assignment shall constitute a material breach of this Agreement.

3 For purposes of this section, when used in reference to Company, "assignment" shall  
4 include, but not be limited to (i) a sale, exchange, or other transfer of substantially all of  
5 Company's assets dedicated to service under this Agreement to a third party; (ii) a sale,  
6 exchange, or other transfer of the outstanding common stock of Company to a third party,  
7 provided said sale, exchange, or transfer may result in a change of control of Company;  
8 (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock  
9 issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation,  
10 or other transaction to that Company, any of its shareholders, subsidiary, or parent  
11 company is a party which results in a change of ownership or control of Company; (iv)  
12 any assignment by operation of law, including insolvency or bankruptcy, assignment for  
13 the benefit of creditors, writ of attachment for an execution being levied against this  
14 Agreement, appointment of a receiver taking possession of Company's property, or  
15 transfer occurring in the event of a probate proceeding; (v) transfer of responsible  
16 management control of Company from the current Chairman of the Board (James Ratto);  
17 and (vi) any combination of the foregoing (whether or not in related or contemporaneous  
18 transactions) that has the effect of any such transfer or change of ownership, or change in  
19 control of Company. Nothing herein shall be deemed to prevent the current Chairman of  
20 the Board of the Company (James Ratto) from buying out other shareholders of  
21 Company.

22 Company acknowledges that this Agreement involves rendering a vital service to  
23 District's residents and businesses, and that District has selected Company to perform the  
24 services specified herein based on (1) Company's experience, skill, and reputation (and  
25 that of James Ratto as the responsible managing officer of the Company) for conducting  
26 its solid waste management operations in a safe, effective, and responsible fashion, at all  
27 times in keeping with applicable waste management laws, regulations and good waste  
28 management practices, and (2) Company's financial resources to maintain the required  
29 equipment and to support its indemnity obligations to District under this Agreement.  
30 District has relied on each of these factors, among others, in choosing Company to  
31 perform the services to be rendered by Company under this Agreement.

32 If Company requests District's consideration of, and consent to, an assignment, District  
33 may deny or approve such request in its complete discretion. Approval by the District,  
34 however, of such requested assignment, shall not be unreasonably withheld. It shall be  
35 the responsibility of Company, in requesting an assignment, to comply with the following  
36 requirements:

37 **11.6.1** Company shall undertake to pay District its reasonable expenses for attorney's  
38 fees and investigation costs necessary to investigate the suitability of any  
39 proposed assignee, and to review and finalize any documentation required as a  
40 condition for approving any such assignment;

41 **11.6.2** Company shall furnish District with audited financial statements of the proposed  
42 assignee's operations for the immediately preceding three (3) operating years;

1           **11.6.3** Company shall furnish District with satisfactory proof: (i) that the proposed  
2 assignee has at least ten (10) years of solid waste management experience on a  
3 scale equal or to exceeding the sale of operations conducted by Company under  
4 this agreement; (ii) that in the last five (5) years, the proposed assignee has not  
5 suffered any significant citations or other censure from any federal, state, or local  
6 agency having jurisdiction over its waste management operations due to any  
7 significant failure to comply with state, federal, or local waste management laws  
8 and that the assignee has provided District with a complete list of such citations  
9 and censures; (iii) that the proposed assignee has at all times conducted its  
10 operations in an environmentally safe and conscientious fashion; (iv) that the  
11 proposed assignee conducts its solid waste management practices in accordance  
12 with sound waste management practices in full compliance with all federal, state,  
13 and local laws regulating the collection and disposal of waste, including  
14 hazardous waste; (v) that the proposed assignee has a net worth, liquidity, and  
15 debt structure at least as favorable as Company's; (vi) that the proposed managing  
16 official of assignee is qualified to supervise assignee's operations in performing  
17 the Agreement; (vii) of any other information required by District to ensure the  
18 proposed assignee can fulfill the terms of this Agreement in a timely, safe, and  
19 effective manner.

20           Company shall have a reasonable period of time in which to seek approval of any  
21 assignment occasioned by operation of law.

22           Under no circumstances shall District be obliged to consider any proposed  
23 assignment by District if Company is in default at any time during the period of  
24 consideration.

25           **11.6.4** Acquisition costs incurred by assignee in purchasing Company, or otherwise  
26 securing assignment of the Agreement, shall be excluded from allowable costs in  
27 the rate base.

28           Nothing in this Agreement is intended to prevent District from assigning its rights  
29 and obligations under this Agreement to a joint powers authority organized for the  
30 purpose of dealing with solid waste management matters on a countywide or  
31 regional basis. Such an assignment to a joint powers authority, where District is a  
32 member agency, may occur without prior written consent of Company.

33           If District requests consideration of and consent to an assignment (other than to a  
34 joint powers authority which District is a member), Company may deny or  
35 approve such request in its complete discretion. Company may request that the  
36 proposed assignee of District provide such documents, resolutions, and  
37 ordinances that may be necessary for Company to properly evaluate assignment to  
38 proposed assignee.

39           For purposes of this section, the term "proposed assignee" shall refer to the  
40 proposed transferee(s) or other successor(s) in interest pursuant to the assignment.

1 **11.7 Other Agreements**

2 Company shall not enter into any agreements subsequent to the within Agreement that  
3 materially interferes with Company's ability to perform its obligations contained herein.  
4 Any agreements that Company proposes to enter into with entities other than the District,  
5 providing for disposal of Garbage, or for long-term (i.e., over three (3) years)  
6 commitment of wastestream, including Recyclable Materials and Organic Waste, shall be  
7 submitted by Company to the District for review prior to said agreements becoming  
8 effective. The District may, at its sole discretion, approve or disapprove said agreements,  
9 or approve of said agreements subject to conditions or limitations set by the District.

10 **11.8 Related Party Entities**

11 Company's accounting records shall be maintained on a basis showing the results of  
12 Company's operations under this Agreement separately from operations in other  
13 locations, as if Company were an independent entity providing service only to District.  
14 The costs and revenues associated with providing service to District shall not be  
15 combined, consolidated or in any other way incorporated with those of other operations  
16 conducted by Company in other locations, or with those of related party entities.  
17 If Company is owned or controlled by another corporation, then the financial reports and  
18 auditor's opinions required of Company shall also be required of such "parent company."

19 **11.9 Subcontracting**

20 Company shall not engage any subcontractors for Collection or disposal of Garbage  
21 without the prior written consent of District. In the event of an emergency or other  
22 urgent circumstances (e.g. labor unrest), the District's consent to subcontracting shall not  
23 be unreasonably withheld.

24 **11.10 Binding on Assigns**

25 The provisions of this Agreement shall inure to the benefit of and be binding on all  
26 permitted assigns of the parties.

27 **11.11 Transition to Next Company**

28 If transition of services to another company occurs through expiration of term, default,  
29 termination, or otherwise, Company will cooperate with District and subsequent  
30 company(s) to assist in an orderly transition, which will include Company providing  
31 route lists and billing information. Company will not be obliged to sell collection  
32 vehicles, and Containers to the next company or District. Depending on Company's  
33 circumstances at the point of transition, Company at its option may enter into  
34 negotiations with District or the next company to sell (in part or all) collection vehicles  
35 and Containers.

36 **11.12 Parties in Interest**

37 Nothing in this Agreement, whether express or implied, is intended to confer any rights  
38 on any persons other than the parties to it and their representatives and permitted assigns.

1 **11.13 Waiver**

2 The waiver by either party of any breach or violation of any provisions of this Agreement  
3 shall not be deemed to be a waiver of any breach or violation of any other provision nor  
4 of any subsequent breach or violation of the same or any other provision. The subsequent  
5 acceptance by either party of any monies that become due hereunder shall not be deemed  
6 to be a waiver of any pre-existing or concurrent breach or violation by the other party of  
7 any provision of this Agreement.

8 **11.14 Company's Investigation**

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

11 **11.15 Notice**

12 All notices, demands, requests, proposals, approvals, consents, and other communications  
13 that this Agreement requires, authorizes, or contemplates shall be in writing and shall be  
14 personally delivered to a representative of the parties at the address below; be sent by  
15 facsimile to the number below; or be deposited in the United States mail, first class  
16 postage prepaid, addressed as follows:

17 If to District: District Manager-Engineer  
18 Novato Sanitary District  
19 500 Davidson Street  
20 Novato, CA 94945  
21 Fax: 415-898-2279

22  
23 If to Company: James Ratto, President  
24 Novato Disposal Service, Inc.  
25 P.O. Box 3849  
26 Santa Rosa, CA 95402-3849  
27 Fax: 707-586-2285

28 The address to which communications may be delivered may be changed from time to  
29 time by a notice given in accordance with this Section.

30 Notice shall be deemed given on the day it is personally delivered or sent by facsimile. If  
31 mailed, notice shall be deemed given three (3) days from the date it is deposited in the  
32 mail. Sender shall retain proof of service by facsimile and proof of service by courier, if  
33 courier service is utilized.

34 **11.16 Representatives of the Parties**

35 References in this Agreement to the "District" shall mean the Board of Directors and all  
36 actions to be taken by District shall be taken by the Board of Directors except as provided  
37 below. The Board of Directors may delegate, in writing, authority to District Manager-  
38 Engineer, and/or to other District officials or employees and may permit such officials or  
39 employees, in turn, to delegate in writing some or all of such authority to subordinate  
40 officers. Company may rely upon actions taken by such delegates if they are within the  
41 scope of the authority properly delegated to them.

1 Company shall, by the effective date, designate in writing a responsible officer who shall  
2 serve as the representative of Company in all matters related to the Agreement and shall  
3 inform District in writing of such designation and of any limitations upon his or her  
4 authority to bind Company. District may rely upon action taken by such designated  
5 representatives as actions of Company unless they are outside the scope of the authority  
6 delegated to him/her by Company as communicated to District.

7 **11.17 District Free to Negotiate with Third Parties**

8 District may investigate all options for the collection, processing and disposal of Solid  
9 Waste after the expiration of the term. Without limiting the generality of the foregoing,  
10 District may solicit proposals from Company and from third parties for the provision of  
11 collection services, disposal services, recycling services, organic waste collection and  
12 composting, and any combination thereof, and may negotiate and execute agreements for  
13 such services that will take effect upon the expiration or earlier termination under Section  
14 10.1 of this Agreement. Nothing in this Agreement is intended to give rise to  
15 demobilization costs or damages, or other costs or damages associated with winding up  
16 the business operations of Company upon expiration or termination.

17 **11.18 Lease of Equipment and Facilities**

18 Company agrees not to enter into leases or the purchase of equipment and facilities  
19 without the advance, written approval of District. Prior approval of the District shall be  
20 required only for transactions exceeding \$300,000 in value.

21 **11.19 Loans**

22 Company agrees to eliminate use of all related party entity loans and only enter into such  
23 future loans upon approval by District.

24 **11.20 Fair Market Value**

25 Company acknowledges the obligation to receive fair market value for all  
26 Recyclable Materials sold to any related party.

27 **11.21 Privacy**

28 Company shall strictly observe and protect the rights of privacy of customers.  
29 Information identifying individual customers or the composition or contents of a  
30 Customer's wastestream shall not be revealed to any person, governmental unit, private  
31 agency, or Company, unless upon the authority of a court of law, by statute, or upon valid  
32 authorization of the Customer. This provision shall not be construed to preclude  
33 Company from preparing, participating in, or assisting in the preparation of waste  
34 characterization studies or waste stream analyses that may be required by CIWMA. The  
35 District agrees to protect any information supplied by Company, which Company  
36 designates as "Proprietary" and "Confidential," from disclosure to the extent allowed by  
37 law. If any person files suit or seeks or other legal recourse challenging the District's  
38 refusal to disclose proprietary and confidential information, Company agrees to pay all  
39 costs incurred with respect to such suit or other legal challenge.

1 **11.22 Savings Clause**

2 If this Agreement is terminated prior to the termination date of the existing franchise  
3 Agreement as a result of a challenge of the District's authority to enter into this  
4 Agreement or as a result of a challenge based on failure to comply with the relevant  
5 provisions of the California Environmental Quality Act (CEQA), or other relevant  
6 procedural requirements under California law, then the franchise agreement between  
7 District and Company currently in existence at the date of this Agreement shall be  
8 reinstated and shall remain in full force and effect during the remaining term expiring on  
9 June 30, 2015.

1                                   **ARTICLE 12            MISCELLANEOUS AGREEMENTS**

2   **12.1    Entire Agreement**

3                    This Agreement, including the exhibits, represents the full and entire agreement between  
4                    the parties with respect to the matters covered herein.

5   **12.2    Section Headings**

6                    The article headings and section headings in this Agreement are for convenience of  
7                    reference only and are not intended to be used in the construction of this Agreement nor  
8                    to alter or affect any of its provisions.

9   **12.3    References to Laws**

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

12   **12.4    Interpretation**

13                  This Agreement shall be interpreted and construed reasonably and neither for nor against  
14                  either party, regardless of the degree to which either party participated in its drafting.

15   **12.5    Agreement**

16                  This Agreement may not be modified or amended in any respect except by a writing  
17                  signed by the parties.

18   **12.6    Severability**

19                  If any non-material provision of this Agreement is for any reason deemed to be invalid  
20                  and unenforceable, the invalidity or unenforceability of such provision shall not affect  
21                  any of the remaining provisions of this Agreement, which shall be enforced as if such  
22                  invalid or unenforceable provision had not been contained herein.

23   **12.7    Agreement Supersedes Prior Agreements**

24                  This Agreement shall supersede any and all agreements heretofore entered into by the  
25                  parties.

26   **12.8    Exhibits**

27                  Each of Exhibits identified as Exhibit "1", "2", and "3" is attached hereto and  
28                  incorporated herein and made a part hereof by this reference.

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IN WITNESS WHEREOF, District and Company have executed this Agreement as of the day and year first above written.

NOVATO DISPOSAL SERVICE, INC.      NOVATO SANITARY DISTRICT

By: \_\_\_\_\_  
Deana Ratto, Secretary

By: \_\_\_\_\_  
Beverly James,  
District Manager-Engineer

By: \_\_\_\_\_  
James Ratto, President

By: \_\_\_\_\_  
William C. Long, President  
Board of Directors

By: \_\_\_\_\_  
(SEAL)

By: \_\_\_\_\_  
(SEAL)

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Kenton L. Alm  
Attorney for District



**EXHIBIT 1**  
**Service Rates Effective January 1, 2011**

**A. SINGLE FAMILY RESIDENTIAL CURBSIDE COLLECTION SERVICE**  
**SFD Garbage, Recycling and Organic Waste Collection Service**

Garbage Cart Sizes (gallons)		20	32	68	95
1	<b>MONTHLY CURBSIDE RATE</b>	\$11.12	\$17.79	\$35.57	\$53.36
2	Additional <b>Curbside</b> Garbage Cart (added to line A1)	\$5.46	\$5.46	\$5.46	\$5.46
3	Monthly <b>On-Premise</b> Rate (added to line A1)	\$11.09	\$11.09	\$11.09	\$11.09
4	Additional Walk-in Distance –Each 50 feet (added to line A1)	\$5.13	\$5.13	\$5.13	\$5.13
5	Additional 95 gallon Green Waste Carts (after 2) (added to line A1)				\$16.93
<b>ADDITIONAL BULKY WASTE COLLECTION</b>					
6	Excess Bulky Waste (over 3 CY/pickup)	To be provided prior to program startup			
7	Excess Bulky Waste Items (over 3 large items /pickup)	To be provided prior to program startup			
8	Additional Bulky Waste Collection (Over 4/ yr)	To be provided prior to program startup			

**B. MULTI-FAMILY AND MOBILE HOME PARKS**  
**MFD Garbage, Recycling and Organic Waste Collection Service**

Container Size	Collection Frequency						Extra Pickups
	1X Week	2X Week	3X Week	4X Week	5X Week	6X Week	
<b>32 Gallon</b>	\$19.27	\$41.10	\$62.86			\$128.24	\$5.46
<b>68 Gallon</b>	\$36.98	\$78.84	\$120.57			\$245.98	\$5.46
<b>95 Gallon</b>	\$55.47	\$118.26	\$180.85			\$368.98	\$5.46
<b>2 CY BIN<sup>1</sup></b>	\$183.78	\$322.57	\$461.32	\$600.01	\$738.73	\$877.43	\$50.18
<b>3 CY BIN<sup>2</sup></b>	\$231.82	\$403.40	\$575.20	\$746.77	\$918.53	\$1,090.17	\$50.18
<b>4 CY BIN<sup>2</sup></b>	\$301.83	\$529.52	\$757.35	\$985.03	\$1,212.83	\$1,440.56	\$60.18
<b>6 CY BIN<sup>2</sup></b>	\$441.83	\$781.76	\$1,121.65	\$1,461.52	\$1,801.44	\$2,141.34	\$100.35
<b>15 CY BIN<sup>2</sup></b>	\$1,937.87	\$3,880.21	\$5,818.08				\$447.54

<sup>1</sup> The above Debris Box rates for 2-CY containers include an allowance of \$45.08 for container rental.

<sup>2</sup> The above Debris Box rates for 3-, 4-, 6-, and 15-CY containers include an allowance of \$60.18 for container rental.

**EXHIBIT 1**  
**Service Rates Effective January 1, 2011**

**C. COMMERCIAL/INDUSTRIAL**  
**Commercial Garbage and Recycling Collection Service**

Container Size	Collection Frequency						Extra Pickups
	1X Week	2X Week	3X Week	4X Week	5X Week	6X Week	
32 Gallon	\$19.27	\$41.10	\$62.86			\$128.24	\$5.46
68 Gallon	\$36.98	\$78.84	\$120.57			\$245.98	\$5.46
95 Gallon	\$55.47	\$118.26	\$180.85			\$368.98	\$5.46
2 CY BIN <sup>1</sup>	\$183.78	\$322.57	\$461.32	\$600.01	\$738.73	\$877.43	\$50.18
3 CY BIN <sup>2</sup>	\$231.82	\$403.40	\$575.20	\$746.77	\$918.53	\$1,090.17	\$50.18
4 CY BIN <sup>2</sup>	\$301.83	\$529.52	\$757.35	\$985.03	\$1,212.83	\$1,440.56	\$60.18
6 CY BIN <sup>2</sup>	\$441.83	\$781.76	\$1,121.65	\$1,461.52	\$1,801.44	\$2,141.34	\$100.35
15 CY BIN <sup>2</sup>	\$1,937.87	\$3,880.21	\$5,818.08				\$447.54

**Commercial Organic Waste Collection Service**

Container Size	Collection Frequency						Extra Pickups
	1X Week	2X Week	3X Week	4X Week	5X Week	6X Week	
32 Gallon							
68 Gallon							
95 Gallon							
2 CY BIN <sup>1</sup>							
3 CY BIN <sup>2</sup>							
4 CY BIN <sup>2</sup>							
6 CY BIN <sup>2</sup>							
15 CY BIN <sup>2</sup>							

Organic Waste Collection  
Service Rates to be updated  
as service becomes available

<sup>1</sup> The above Debris Box rates for 2-CY containers include an allowance of \$45.08 for container rental.

<sup>2</sup> The above Debris Box rates for 3-, 4-, 6-, and 15-CY containers include an allowance of \$60.18 for container rental.

**EXHIBIT 1**  
**Service Rates Effective January 1, 2011**

**D. TEMPORARY CLEANUP BINS/DEBRIS BOXES**

<b>Container Size</b>	<b>2-Day Rental Rate</b>	<b>Weekend Rental Rate</b>	
<b>3 CY Bin</b>	\$161.99	\$161.99	
<b>6 CY Bin</b>	\$273.11	\$273.11	
<b>Container Size</b>	<b>Weekly Rental Rate</b>		
<b>15 CY Box</b>	\$447.54	Includes up to 3 Tons	
<b>20 CY Box</b>	\$502.23	Includes up to 3 Tons	
<b>30 CY Box</b>	\$838.04	Includes up to 4 Tons	
<b>Additional Tons for Cleanup Bins/Debris Boxes</b>	\$54.23 Per Ton		
<b>Occasional or irregular collections per 5 cubic feet</b>	\$5.46	Special collections other than debris box (plus regular rate)	\$23.11
<b>Monthly charge for special collection conditions</b>	\$10.89	Special collections for debris boxes (plus regular rate)	\$50.21

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**EXHIBIT 2**  
**Refuse Rate Index**

The "Refuse Rate Index" adjustment shall be calculated in the following manner:

1. The expenses of providing Collection Services in the Service Area for the designated fiscal period (July to June) shall be prepared in the format set forth in the Operating Cost Statement - Description on the following page of this Exhibit.
2. The expenses of providing Collection Services in the Service Area shall be broken down into one of the following seven cost categories: Labor; Fuel; Vehicle Replacement; Maintenance, Disposal Fee, Organic Waste Processing fee, and All Other. Each cost category is assigned a weighted percentage factor on that cost category's proportionate share of the total of the costs shown for all cost categories.
3. The following indices are used to calculate the adjustment for each cost category of the Service Rates. The change in each index is calculated on a twelve-month fiscal period (July to June). The twelve-month average index from July 2010 to June 2011 will serve as the "First Year Index".

<u>Cost Category</u>	<u>Index</u>
<b>Labor</b>	Series ID: ceu6056210008 Production Workers-Waste Collection
<b>Fuel</b>	California No 2 Diesel Ultra Low Sulfur (0-15 ppm) <a href="http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp">http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp</a>
<b>Vehicle Replacement</b>	Series ID: pcu336211336211 Truck, bus, car and other vehicles bodies, for sale separately.
<b>Vehicle Maintenance</b>	Series ID: pcu333924333924 Parts and attachments for Industrial work trucks.
<b>Disposal Fee</b>	The per ton tip fee charged at the Disposal Facility.
<b>Organic Waste Processing Fee</b>	The per ton tip fee charged at the approved Organic Waste Processing Facility.
<b>All Other</b>	Consumer Price Index, Series ID: CUURA422SA0 CPI-All Urban Consumers, All Items, San Francisco,

4. The percentage weight for each cost category is multiplied by the change in each appropriate index to calculate a weighted percentage for each cost category. The weighted percentage changes for each cost category are added together to calculate the Refuse Rate Index for the Service Rates in Exhibit 1.

**EXHIBIT 2**  
**Refuse Rate Index**

<b>Operating Cost Statement - Description</b>	
<b>Operating Costs</b>	
<b>Labor:</b>	List all administrative, officer, operation and maintenance salary accounts.  List payroll tax accounts directly related to the above salary accounts.
<b>Fuel:</b>	List all fuel and oil accounts.
<b>Vehicle</b>	
<b>Replacement:</b>	List all Collection and Collection related vehicle depreciation accounts.  List all vehicle lease or rental accounts related to Collection or Collection related vehicles.
<b>Vehicle</b>	
<b>Maintenance:</b>	List all Collection or Collection related vehicle parts accounts.
<b>Disposal Fee:</b>	List all Landfill Disposal related accounts.
<b>Organic Waste Processing Fee:</b>	List all Organic Waste Processing related accounts.
<b>All Other:</b>	List all other expense accounts related to the services provided under this Contract. This category includes all insurance including general liability, fire, truck damage, extended coverage and employee group medical and life; rent on property, truck licenses and permits; real and personal property taxes; telephone and other utilities; employee uniforms; safety equipment; general yard repairs and maintenance; office supplies; postage; trade association dues and subscription; advertising; employee retirement or profit sharing contributions; and miscellaneous other expenses.



**EXHIBIT 3**  
**Faithful Performance Bond**

KNOW ALL MEN BY THESE PRESENTS:

That \_\_\_\_\_, a California \_\_\_\_\_ as PRINCIPAL, and \_\_\_\_\_, a Corporation organized and doing business by virtue of the laws of the State of California, and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as SURETY, are held and firmly bound to District, hereinafter called OBLIGEE, in the penal sum of One Hundred Thousand Dollars (\$100,000) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above bounden PRINCIPAL has entered into a contract, entitled "COLLECTION AND DISPOSAL OF SOLID WASTE" with District, to do and perform the following work, to wit: collect Solid Waste generated within the service area, in accordance with the contract.

NOW, THEREFORE, if the above bounden PRINCIPAL shall well and truly perform, or cause to be performed each and all of the requirements and obligations of said contract to be performed by said PRINCIPAL, as in said contract set forth, then this BOND shall be null and void; otherwise it will remain in full force and effect.

And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
a California Corporation

\_\_\_\_\_  
SURETY

By: \_\_\_\_\_  
(PRINCIPAL)  
(SEAL)

By: \_\_\_\_\_  
(ATTORNEY IN FACT)  
(SEAL)



## **Exhibit 4**

### **Zero Waste Community Outreach Outline**

- Two newsletters annually
- Newsletter will contain a minimum of one Zero Waste feature (i.e. reuse/repair, EPR, backyard composting, environmentally preferable purchasing, etc.)
- Promote waste reduction and recycling
- Promote small (20 gal) garbage carts
- Offer backyard composting bins at cost
- Two additional outreach campaigns promoting waste reduction, Zero Waste, and/or diversion concepts
- Promote commercial audits to all businesses of 4 cubic yards of garbage service or larger
- New Customer packets will include Zero Waste concept promotions
- Visit all commercial businesses of 4 cubic yards of garbage service or more annually
- Visit all Multi-family complexes of 5 units or more annually
- Participate in 10 events annually (Chamber of Commerce, Earth Day, etc.) promoting Zero Waste, recycling, diversion, and resource conservation
- Conduct annual retraining at NSD schools on recycling and Zero Waste
- Participate in developing Zero Waste curriculum for NSD schools
- Offer Zero Waste and recycling for school assemblies
- Work closely with the City of Novato developing and implementing the City's Zero Waste goals
- Annual waste audits of all City facilities
- Bilingual Zero Waste recycling and diversion guides (Spanish/English)
- Paperless billing
- Interactive website with links to Zero Waste reuse opportunities
- Billing inserts and blurbs on program updates as needed
- Annual selective route audits of residential routes to gauge program success
- Corrective action cart hangers informing Customers of concerns and how to properly participate in recycling and organics programs
- Work with regional Reuse E-network Plan

## Exhibit 5 School Recycling And Food Waste Program Outline

### 1. Stakeholders Meeting

Invite stakeholders (administrators, school board, staff, teachers, and custodians) to a joint meeting to assess waste, recycling, and compost options and develop overall strategy. Determine where the plan should be centralized (i.e. purchasing, kitchens) and decentralized (individual campus recycling and composting efforts).

- a. **Review purchasing policies** to promote Zero Waste goals by minimizing waste at the front end. Shift purchasing to environmentally preferable products: reusable or Recyclable Materials instead of disposables.  
<http://www.epa.gov/msw/buyrec.htm>
- b. **Policy Decision** promoting Zero Waste goals by address recycling, composting, and waste reduction at a policy level i.e. School Board resolution or mandate from administration.  
<http://www.greenschools.net/sampleresolution.html>

### 2. Identify current service levels.

Assess current Solid Waste, recycling, and composting service levels and identify locations where service levels can be immediately reduced. This evaluation will provide the basis for selecting and prioritizing specific target areas for waste reduction and recycling efforts. Evaluate if “locking bins” are needed to address illegal dumping of Solid Waste.

### 3. Organize a Green Team on each Campus:

Conduct on-campus meetings at each school with campus stakeholders (principal, secretary, staff, teachers, custodians, parent volunteers and students) to promote Zero Waste goals by developing waste reduction, recycling, and composting strategy for each campus. Explore ways of tying curriculum goals into the program.

- a. **Recycling Advocate(s):** Preferably an employee with a commitment to recycling who can carry the Zero Waste torch from year to year. This person will be the point of contact for communication with Zero Waste Coordinators and other team members.
  - i. Report problems with participation, contamination, missed pickups, need for additional education or recycling infrastructure
  - ii. Coordinate with Zero Waste Coordinators to conduct student assemblies or classroom presentations
  - iii. Work with Zero Waste Coordinators to conduct trainings, waste

## Exhibit 5 School Recycling And Food Waste Program Outline

audits

iv. Coordinate the promotion of the recycling and composting programs

- b. Recycling Team:** Identify system and individuals responsible for transporting Recyclable Materials to collections bins. This may be custodians and/or older students. Depending on the level of participation at each school, there may be collection of recycling in classrooms, administrative offices and lunch areas.
- c. Promotion Team:** Students and others interested in promoting the school recycling program. Design and produce posters for campus, fliers to take home to parents, painting projects on campus to identify recycling areas, organizing recycling pep rallies, events or other activities to keep kids energized about waste reduction and recycling.
- d. Recycling Monitors:** Older students and teachers/ parents, helping out during lunchtime to educate younger students about proper recycling including which materials are placed where and helping student's empty containers before recycling. This group can be rewarded in some way for working during their lunchtime.
- e. Zero Waste Coordinators:** Zero Waste Coordinators from the Solid Waste, recycling, and composting company are available to attend meetings, conducts presentations or staff trainings, to assist with waste audits and for general support and questions. Zero Waste Coordinators can facilitate identifying programmatic resources.

#### 4. Conduct School Waste Audit:

Work with hauler to Identify what materials are generated and disposed on campus. This information is useful in deciding where to start and what systems to implement. See [http://www.recycleworks.org/schools/s\\_audits.html](http://www.recycleworks.org/schools/s_audits.html) for waste audit options.

Annually in the Spring, Novato Disposal will conduct waste audits to determine the success of the diversion programs for each site. A report will be supplied by Novato Disposal for each site on the success of each programs and recommendations to increase diversion.

#### 5. Getting Started - Areas identified to target may include:

##### a. Classroom Recycling

Zero Waste Coordinators can provide internal recycling crates for the collection of paper. These crates will need to be emptied into central

**Exhibit 5**  
**School Recycling And Food Waste Program Outline**

collection bin for collection by NDS

**b. Lunch Area Recycling**

Zero Waste Coordinators have a resource sheet with recommended lunch area collection containers. Food waste composting will be provided as an option at each site as the program is expanded.

**c. Administration & Office Recycling**

Zero Waste Coordinators can provide internal recycling crates for the collection of paper. These crates will need to be emptied into central collection bin for pickup.

**d. Compost Program**

Zero Waste Coordinators can provide resource information and training for the food waste collection and composting program.

**6. Ongoing**

**a. Education:**

Zero Waste Coordinators will work with Green Team to develop a training program for students and staff about the recycle program.

In addition, Zero Waste Coordinators can provide educational presentations or assemblies about the importance of waste reduction, recycling, and composting in relation to resource conservation.

Newsletters will be supplied to the schools for additional Zero Waste outreach.

Novato Disposal will coordinate with a local community-based organization (i.e. North Bay Conservation Corp) to provide additional resources for promoting Zero Waste goals.

**b. Promotion:**

Work with Green Team to promote recycling program. Zero Waste Coordinators can provide many resources, help locate additional on-line resources or students can develop their own materials. Send home a letter with students letting parents know about the expanded program for additional reinforcement.

Identify locations for recycle stations with painted recycling symbols, logos or messages.

Conduct a kick-off campaign. Get the whole school involved. Contact the

**Exhibit 5**  
**School Recycling And Food Waste Program Outline**

local media. Identify local businesses who will contribute recognition awards to student team leaders. Have campaign promotion contest and award students, classrooms or schools for efforts.

**c. Monitor:**

Train Monitors regarding Recyclable Materials, Organic Waste and Garbage. Train monitors to effectively communicate with students in a friendly manner.

**d. Evaluation & Expansion:**

Conduct Green Team meetings each quarter to Identify barriers and obstacles and develop strategies to address them. Maintain close contact with custodial staff and collection drivers to evaluate successes and difficulties. Use this information to identify additional target areas for further waste reduction and recycling efforts and to improve and expand your program.

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**TO PROVIDE THE PROPER INCENTIVES FOR BOTH THE SCHOOL DISTRICT AND THE COMPANY, NOVATO DISPOSAL SERVICE WILL COMMIT, AS PART OF THE AGREEMENT, SHARE EQUALLY IN THE COST OF PROVIDING THE SOLID WASTE, RECYCLING, AND COMPOSTING SERVICE WITH THE SCHOOL DISTRICT**

**Exhibit 6**  
**Zero Waste Program Implementation Schedule**

<b>Activity</b>	<b>Implementation Deadline</b>
<b>1. Food/Green Waste Composting</b> <ul style="list-style-type: none"> <li>▪ Single family residential food/green waste diversion</li> <li>▪ Place food waste diversion stickers on all green carts</li> <li>▪ Supermarket food waste diversion</li> <li>▪ Restaurant food waste diversion</li> <li>▪ Multi-family food waste diversion</li> </ul>	February 28, 2011 January 2012 February 2012 March 2012 July 2012
<b>2. C&amp;D recycling, reports &amp; enforcement</b> <ul style="list-style-type: none"> <li>▪ Monitor C&amp;D recycling reports &amp; conduct outreach to contractors</li> <li>▪ Enforce C&amp;D recycling thru Solid Waste ordinance</li> </ul>	Ongoing  Ongoing
<b>3. Public Outreach/Education campaign</b> <ul style="list-style-type: none"> <li>▪ Revise Novato Disposal website to include zero waste messages</li> <li>▪ Include zero waste messages &amp; programs in newsletter, ads, promotional items</li> </ul>	September 2011  Ongoing
<b>4. AB32 Multi-family and Commercial mandated recycling</b> <ul style="list-style-type: none"> <li>▪ Identify all multifamily &amp; commercial sites</li> <li>▪ Make site visits</li> <li>▪ Develop materials for commercial &amp; multifamily residents</li> <li>▪ Participate in workshops for multifamily &amp; commercial property managers</li> <li>▪ Provide recycling containers</li> <li>▪ Implement mandated multifamily &amp; commercial recycling</li> </ul>	May 2011 September 2011 January 2012  March 2012  May 2012 July 2012
<b>5. Schools campaign</b>	
<ul style="list-style-type: none"> <li>▪ Institute food waste recycling program</li> </ul>	2010
<ul style="list-style-type: none"> <li>▪ Monitor food waste &amp; recycling programs; meet with teachers, students</li> </ul>	Ongoing

**Exhibit 6**  
**Zero Waste Program Implementation Schedule**

<b>Activity</b>	<b>Implementation Deadline</b>
<b>6. Backyard Composting</b>	
<ul style="list-style-type: none"> <li>▪ Promote backyard composting through compost bin promotion</li> </ul>	Ongoing
<b>7. Recycling Center</b>	
<ul style="list-style-type: none"> <li>▪ Assist in siting and permitting of new and expanded Recycling Center</li> </ul>	2015
<b>8. Wet/Dry Route Collections</b>	
<ul style="list-style-type: none"> <li>▪ Discuss feasibility of instituting wet/dry collection system</li> <li>▪ If feasible, institute system</li> </ul>	2018 2020
<b>9. Discuss feasibility and diversion potential of conversion technology systems</b>	2025
<b>10. Zero Waste Goals</b>	
<ul style="list-style-type: none"> <li>▪ 60% Diversion</li> <li>▪ 70% Diversion</li> <li>▪ 80% Diversion</li> </ul>	December 31, 2015 December 31, 2020 December 31, 2025

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**Exhibit 7**  
**Recyclable Materials Balancing Account**

**1. Recyclable Material Per Ton Net Revenue Amount.**

Fair Market Value - For purposes of forecasting recyclable material net revenues for 2008, the Company shall use the calculated fair market value of recyclable material revenues for 2006, which shall equal the annual total of the fair market value for such material for each month times the associated monthly tonnage collected or received by the Company for calendar year 2006, times any applicable growth rate (the 2006 Projected Revenues). A similar methodology will be used for purposes of forecasting recyclable material sales revenues for subsequent years. That fair market value shall be calculated as follows:

- a. The fair market value of net revenue paid by related parties to the Company for recyclable materials net of processing costs, and any and all other costs (the Per Ton Net Revenue Amount), shall initially be set at \$44.85 per ton effective July 2005. This initial Per Ton Net Revenue Amount will be adjusted on a monthly basis, as described below.
- b. The prior month Per Ton Net Revenue Amount shall be adjusted for purposes of establishing the Per Ton Net Revenue Amount for the current month based on changes to the Official Board Markets Transacted Paper Stock Prices (OBM Index Prices) as reported for "San Francisco" as follows:
  - i. The starting point for the Per Ton Net Revenue Amount shall be \$44.85 per ton effective July 2005.
  - ii. The Per Ton Net Revenue Amount shall be adjusted monthly based on changes to the OBM Index Prices for Mixed Paper, #8 Newspaper and OCC as reported in the first weekly OBM issue of each month. The OBM Index Prices for each of these commodities shall be set at the average of the high and low prices reported each month, which are \$67.50, \$87.50 and \$87.50 respectively for July 2005.
  - iii. The weighted average percentages for Mixed Paper, #8 Newspaper and OCC for purposes of applying the OBM Index Prices shall be 46%, 46% and 8% respectively.
  - iv. Every month, one hundred percent (100%) of the weighted average O.B.M. index price adjustment (up or down) compared to the previous month shall be added or subtracted from the prior month Per Ton Revenue Amount for purposes of establishing the Per Ton Revenue Amount for each month.
- c. Example: The OBM Index Price adjustments from July 2005 to August 2005 for Mixed Paper, #8 Newspaper and OCC were -\$10/ton, -\$5/ton and -\$10/ton respectively. Applying the above referenced weighted average by material type, the price change July to August is -\$9.00/ton. The Per Ton Net Revenue Amount for July 2005 would decrease from \$44.85 to \$35.85. which is the Per Ton Net

**Exhibit 7**  
**Recyclable Materials Balancing Account**

Revenue Amount for August 2005. (See Exhibit A for a sample calculation.)

- d. The calculated Per Ton Net Revenue Amount for each month shall be applied to all tonnages collected or received by the Company through the recycling program and delivered to related parties for processing for that month, including any and all processing residue, contaminants, non-processable or other material tonnages.
- e. Notwithstanding any provision of this Agreement to the contrary, at no time shall the Per Ton Net Revenue Amount paid by a related party be less than \$10 per ton (The Floor Price) nor more than \$80 per ton (The Ceiling Price) – The Floor Price and Ceiling Price shall be adjusted for the full impact of any change in the CRV value as provided for below.
- f. In the event of any future changes to the California Redemption Value (CRV) paid by the State of California, the Per Ton Net Revenue Amount shall be adjusted to account for that relative impact on the Per Ton Net Revenue Amount. That impact shall be determined by multiplying the total applicable CRV tons for the prior 12 months times the applicable net change in CRV per ton revenue to project the total additional annual CRV revenue. This total additional annual CRV revenue shall then be divided by the total tonnage collected or received by the Company through the recycling program for the prior 12 months to determine the net additional per ton revenue amount that shall be added to the calculated Per Ton Net Revenue Amount going forward. The parties agree that should the CRV value be adjusted on or after July 1, 2007, as provided for in the California Beverage Container Recycling and Litter Reduction Act, allowances will be made to the rates that are set for 2008 and beyond to fully account for this change, notwithstanding any provision of this Agreement to the contrary.

**2. Balancing Account Calculation for Recyclable Materials.**

Because of the potential volatility of recyclable material prices, the District and Company agree to establish a Balancing Account for recyclable material sales revenue. The Balancing Account amount will be based on the difference between the projected revenues for each year (as calculated using the above methodology) and the calculated revenues for that year (i.e., the annual total of the actual monthly tonnage times the calculated Per Ton Revenue Amount for each month using the methodology described above).

- a. For purposes of tracking the Balancing Account amount, the Company shall provide the District with an annual report that includes:
  - i. A copy of the OBM Index Prices as reported in the first issue of each month;
  - ii. The total commingled recyclable tonnage delivered to any related party for processing;
  - iii. The calculated current month Per Ton Revenue Amount and the

**Exhibit 7**  
**Recyclable Materials Balancing Account**

calculation used to determine that amount;

- iv. The total monthly Calculated Revenue equal to the total tonnage collected or received by the Company through the recycling program and delivered to the related parties for processing times the calculated monthly Per Ton Revenue Amount); and
  - v. All prior year to date monthly figures for the calendar year for items (ii) through (iv) above.
- b. The net cumulative Balancing Account amount for 2008 through 2011 shall be accounted for in full in setting the rates for Calendar Year 2013 as follows:
- i. The net cumulative Balancing Account will be divided by five (to account for rates in 2013, 2014, 2015, 2016 and 2017) (the annualized Balancing Account amount);
  - ii. The Company's fiscal year 2011 audited financial statement rate revenue will be divided by the annualized Balancing Account amount to calculate the annualized Balancing Account rate adjustment; and
- c. The calculated RRI rate adjustment for 2013 will be adjusted up (if the Balancing Account amount is due to the Company) or down (if the Balancing Account amount is due to the City) by the annualized Balancing Account rate adjustment, which shall be carried forward through rate year 2016.
- d. The net cumulative Balancing Account amount for 2012 through 2016 shall be accounted for in full in setting the rates for Calendar Year 2018 by dividing that amount by five (to account for rates in 2018, 2019, 2020, 2021 and 2022) and applying the same rate adjustment methodology specified for Calendar Year 2013 in Section 6.6.6.2.2 above.
- e. The net cumulative Balancing Account amount for 2017 through 2021 shall be accounted for in full in setting the rates for Calendar Year 2023 by dividing that amount by three (to account for rates in 2023, 2024 and 2025) and applying the same rate adjustment methodology specified for Calendar Year 2013 in Section 6.6.6.2.2 above.
- f. The cumulative balancing account amount for Calendar Years 2022 through 2025 shall be paid by the applicable party to the other party in no less than equal annual payments over a period of no more than four years starting January 1st 2026, without interest.
- g. In the event that a Detailed Rate Review is conducted the impact of the Balancing Account will be factored into the associated rate adjustment for that year in the same manner specified for Calendar Year 2013 in Section 6.6.6.2.2 above.
- h. Exit Clause – The parties agree that the proposed methodology is intended to provide a reasonable projection of the fair market value of revenues paid by third

**Exhibit 7**  
**Recyclable Materials Balancing Account**

parties to the Company. Recyclable material commodity prices can, however, be extremely volatile and factors other than those accounted for in the proposed methodology may impact the fair market value of revenues. To provide a contingency for such potential events, each party shall have the right to terminate the use of the methodology for establishing the monthly Per Ton Revenue Amount described in this Section at any time during the term of this Agreement at either party's sole discretion. The notification shall be in writing and shall be effective thirty calendar days after receipt. The exercising of said option shall not remove either party's obligation to the other party for any Balancing Account balance at the time said option is exercised and becomes effective.

- i. In the event that either party exercises its option to terminate the methodology for establishing the Per Ton Revenue Amount, the parties agree to negotiate a new methodology that is acceptable to both parties. In the event that the parties cannot agree on acceptable changes to the methodology, the fair market value will be based on a review of actual related recyclable material sales revenues and related processing expenses.



## Exhibit 8 Detailed Rate Review Methodology

### 1. Request for Detailed Rate Review

At least six months prior to a normally scheduled July 1st RRI, the District or the Company may request that a Detailed Rate Review be conducted. In the event that either the District or the Company requests a Detailed Rate Review, the Detailed Rate Review shall be based on the audited financial statements for the preceding complete fiscal year.

Company shall assemble and submit such information as necessary to support assumptions made with regard to forecasts used to develop their Service Rates. Company shall provide all information from related party entities regarding any material transactions between Company and those related party entities. Service Rates shall be adjusted based on the forecasted annual cost of operations, profit, and forecasted pass-through expense reviewed as set forth below.

- a. Forecasted annual cost of operations. The forecasted annual cost of operations shall consist of the sum of:
  - Forecasted labor-related costs
  - Forecasted vehicle-related costs
  - Forecasted other costs
  - Forecasted depreciation expense

Each of these sums shall be reviewed based on the following:

- i. **Determination of actual costs.** Company's financial statement will be reviewed to determine Company's costs for each of the foregoing categories during the fiscal year involved. District will use the audited financial statements to determine that costs have actually been incurred and have been assigned to the appropriate category.
- ii. **Adjustment of actual costs.** District may adjust the actual costs in two ways: (1) to exclude any non-allowable costs, set out below, and (2) to exclude and/or reduce any costs that were not reasonably and necessarily incurred in the performance of the services provided in accordance with this Agreement.

Costs that may be deemed non-allowable include, but are not limited to, the following:

  - i. Payments to directors and/or owners of Company unless paid to reasonably compensate for services actually rendered.
  - ii. Promotional, entertainment, and travel expenses, unless authorized in advance by District.
  - iii. Payments to repair damage to property of District or other parties, including the City or County for which Company is legally liable.
  - iv. Fines or penalties of any nature.
  - v. Liquidated damages assessed under Section 10.3 of this Agreement.

## Exhibit 8

### Detailed Rate Review Methodology

- vi. Federal or state income taxes.
- vii. Charitable or political donations.
- viii. Attorney's fees and other expenses incurred by Company in any court proceeding in which District and Company are adverse parties, unless Company is the prevailing party in said proceedings.
- ix. Attorney's fees and other expenses incurred by Company in any court proceeding in which Company's own negligence, violation of law or regulation, or other wrongdoing, are in issue and occasions in part the attorney's fees and expenses claimed, provided, however, such attorney's fees will be allowed to the extent Company can demonstrate they were reasonable and necessary and a cost of doing business, and were not the result of any intentional or willful misconduct by Company or its employees; and attorney's fees and expenses incurred by Company in a court proceeding in which the legal theory or statute providing a basis of liability against Company also provides for separate strict liability for District arising from the action of its citizens or ratepayers (such as in a CERCLA lawsuit).
- x. Payments to related party entities for products or services, in excess of the fair market value for those products or services. For purposes of this Agreement, related party expenses are those resulting from transactions between Company and another company (companies) that has (have) common ownership or management control. Except as otherwise provided below the amount of these transactions shall be based on the actual cost to the related party and shall include no profit. To demonstrate the actual cost to the related company, Company shall provide, at a minimum, the invoice for the good or service, the receiving document, the corresponding canceled check and the basis for the transaction. Whenever possible, materials shall be delivered directly to Company or the related party entity, as appropriate. Because the following types of related party transactions have existed, they have been specifically addressed below:
  - 1. Management Fees: Company pays management fees to North Bay Corporation, a related party. The management fee compensates North Bay Corporation for its management team's time spent in managing the operations and administering the Company (including the time of Mr. James Ratto). For purposes of determining Company's compensation in accordance with this Agreement, a management fee of \$134,400 annually shall be stipulated and the North Bay Corporation management team, including Mr. James Ratto, shall not otherwise be compensated for these same services. This stipulated amount shall not be adjusted during the term of this Agreement or any extension period.
  - 2. Site Rent Expense: Company operates from facilities it leases from Creekwood Investments and North Bay Corporation, related parties. For purposes of determining Company's compensation in accordance with this Agreement, a lease amount of \$54,000 annually shall be stipulated. This stipulated amount shall not be adjusted during the term of this Agreement or any extension period.

## **Exhibit 8**

### **Detailed Rate Review Methodology**

3. Equipment Rental: Company leases equipment from North Bay Corporation, a related party, and is entitled to compensation for depreciation and interest expense related to this equipment. No compensation for the depreciation of the equipment listed in Exhibit 3 shall be provided to Company, pursuant to this Agreement.

For purposes of this Agreement, Company shall be entitled to compensation for equipment depreciation whether leased or purchased by the Company, based on the following useful lives:

5 Years: Computers and software, office equipment.

7 Years: Automated side load collection vehicles.

10 years: Front or rear load collection vehicles, roll-off collection vehicles, Bins, Carts, and Debris Boxes.

Company shall be required to provide to District (or District's representative) documentation of the original cost of the equipment.

For purposes of this Agreement, Company shall be entitled to compensation for interest expense on equipment leases assuming financing of one hundred percent (100%) of the original cost and based on the Prime Rate of the Bank of America NT & SA in effect at the time the equipment was first leased.

4. Employee Health Insurance: Company purchases employee health insurance for both itself and related parties and is entitled to compensation for Company's cost of this insurance. Because the premium is allocated among several companies, Company's compensation shall be calculated by dividing the premium by the total number of employees covered and multiplying the quotient by the number of Company employees. If Company provides ongoing administration of the health insurance program for itself and related parties, the full cost of such administration shall be distributed among the parties and the Company on the basis of the number of employees covered. To determine the amount of compensation due the Company, Company shall submit to District (or District's designated representative) a copy of the insurance broker's invoice, the corresponding canceled check and the calculations described above, including corresponding documentation supporting the values used (e.g., total employees covered).
5. Automotive Liability Insurance: Company purchases automotive liability insurance for both itself and related parties and is entitled to compensation for Company's cost of this insurance. Because the

## Exhibit 8

### Detailed Rate Review Methodology

premium is allocated among several companies, Company's compensation shall be calculated by prorating the premium among related parties and Company on the basis of the actual total liability premiums paid for vehicles of each company. To determine the amount of compensation due Company, Company shall submit to District (or District's designated representative) a copy of the insurance broker's invoice, the corresponding canceled check and the calculations described above, including corresponding documentation supporting the values used (e.g., total vehicles covered).

6. Fuel Expense: Company purchases fuel for both itself and related parties and is entitled to compensation for Company's cost of fuel. Because fuel is pumped into both Company and other trucks, Company shall maintain a fuel log that will record actual usage by particular truck. To determine the amount of compensation due Company, Company shall submit to District (or District's designated representative) a copy of the fuel invoices, the receiving documents, the corresponding canceled checks and copies of the fuel log, and calculations supporting the amount of fuel expense claimed by Company.
- b. Forecasts of Costs. Allowed Costs of operations for the Company's prior fiscal year will be used to evaluate the forecasted cost for upcoming year. The review will evaluate forecasted labor-related costs, vehicle-related costs, and other costs, including pass-through expenses as outlined below.
- c. Depreciation Expense. Depreciation expense will be calculated by dividing the actual purchase price of the assets by the number of years in the Term of the Agreement. The result is the forecasted depreciation expense for the rate year.
- d. Profit. Profit or return to Company shall be determined by District applying an operating ratio so as to provide for reasonable costs of service and adequate rate of return to Company. The rate of return or profit shall be reasonably sufficient to allow for financial soundness of Company's operations within the service area of this Agreement, when operated under efficient and economical management, and to provide a return to Company over the term of the Agreement commensurate with the level of business risk, the competitive market place and the necessity to provide the public with reasonable rates. For purposes of this Agreement, the District-determined operating ratio shall be 90% as of the date of the execution of this Agreement.