

**FIRST AMENDED AND RESTATED ~~AND AMENDED~~
OPERATING AGREEMENT**

BETWEEN

WESTERN PLACER WASTE MANAGEMENT AUTHORITY

AND

FCC ENVIRONMENTAL SERVICES CALIFORNIA, LLC

**FOR OPERATION OF THE
MATERIALS RECOVERY FACILITY**

OPERATING AGREEMENT EFFECTIVE AS OF JULY 1, 2022

[RESTATED AND AMENDED AS OF \(DATE\)](#)

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This [First Amended and Restated](#) Operating Agreement (“**Agreement**”), effective as of [July 1](#) _____, [20222026](#) (“**Effective Date**”), is by and between the **WESTERN PLACER WASTE MANAGEMENT AUTHORITY**, a joint powers authority organized under California law (“**WPWMA**”), and [FCC Environmental Services California, LLC](#) (“**Contractor**”). The WPWMA and Contractor are hereinafter referred to jointly as “**the Parties**” and singularly as a “**Party**”.

RECITALS

1. The State of California has found and declared that the amount of solid waste generated in California, coupled with diminishing landfill space and potential adverse environmental impacts from landfilling, have created an urgent need for State and local agencies to enact and implement integrated waste management programs to reduce the amount of material landfilled. The State has, through enactment of the Act, directed the responsible state agency, and all local agencies, to promote Recycling and to maximize the use of feasible source reduction, Recycling and Composting options in order to reduce the amount of solid waste that must be disposed of by land disposal by fifty percent (50%) with a goal of seventy-five percent (75%).

2. The State of California, in an effort to reduce stateside emissions of greenhouse gasses, established methane emissions reduction targets under SB 1383 that requires, among other things, that all local agencies reduce the amount of organic waste disposed of by landfilling by fifty percent (50%) by 2020 and by seventy five percent (75%) by 2025.

3. The WPWMA is an agency established under the Joint Exercise of Powers Act, California Government Code Sections 6500 et seq. The WPWMA owns the Facility and Landfill which receives Waste for Processing or disposal generated within the jurisdiction of the Participating Agencies.

4. The Facility was designed constructed, passed system performance tests specified by the WPWMA, and thereafter and continuously has been operated under various contracts with the WPWMA for the purposes of (a) recovering and Recycling materials, including glass, metal, wood, cardboard, paper and plastics from Municipal

Solid Waste and Construction and Demolition Debris; (b) generating Alternative Daily Cover from fines collected as a result of Processing Municipal Solid Waste and Construction and Demolition Debris; (c) producing Compost from Yard Waste; (d) producing landscaping ground cover and biomass fuel from Wood Waste; (e) purchasing and/or receiving and Processing certain Recyclable Materials from Participating Agencies and members of the public at a Buyback/Dropoff Center; and (f) providing for the safe receipt and disposal of certain Household Hazardous Wastes.

5. The WPWMA, after determining that it would be in the best interests of the WPWMA and the Participating Agencies, requested competitive proposals in 2020 from a number of qualified companies for continued operation of the Facility after the term of the WPWMA's then current contract with its operator expired on June 30, 2022. Also, the WPWMA determined that because of the projected increase in delivery of Municipal Solid Waste and Construction and Demolition Debris to the Facility by the Participating Agencies and the need to meet the requirements of SB 1383, the Facility should be modified after June 30, 2022. Therefore, the WPWMA (a) hired the services of Contactor as of to prepare a thirty percent (30%) design for the then proposed and envisioned improvements to the Facility that would facilitate its modification, and (b) after an extensive design and competitive procurement process, the WPWMA selected Contractor on November 29, 2021 to operate the Facility from and after July 1, 2022 until June 30, 2032, to develop the final design of the Facility modification and to construct such WPWMA-approved modifications. Such decisions of the WPWMA were implemented by the execution and delivery of [this](#) new Operating Agreement [between the Parties](#).

[6. WPWMA and Contractor, through its predecessor-in-interest, previously amended the Operating Agreement in that certain Addendum #1 and those certain First through Fifth Amendments, \(collectively, the "Initial Agreement"\).](#)

[7. WPWMA and Contractor now wish to further amend and restate the Initial Agreement as set forth in this Agreement.](#)

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

ARTICLE 1: DEFINITIONS

Unless the context clearly indicates otherwise, the capitalized terms set forth below will have the following meanings when used in this Agreement.

1. **Act**. "Act" means the California Integrated Waste Management Act of 1989, as amended, Public Resources Code Sections 40000, et seq.
2. **Affiliate**. "Affiliate" means any corporation, partnership, joint venture or other entity directly or indirectly controlling the Contractor, or directly or indirectly owned or controlled by the Contractor.
3. **Agreement**. "Agreement" means this ~~Restated and Amended~~ and Restated Operating Agreement between the WPWMA and Contractor including all exhibits and attachments, and any amendments hereto.
4. **Alternative Daily Cover**. "Alternative Daily Cover" or "ADC" means an alternative material or manufactured product that is not soil and that is authorized by the WPWMA and permitted by regulatory agencies for use as daily cover material, meaning to cover the Landfill for 24 hours or less, by placing or applying over Waste Disposed of in the Landfill.
5. **Applicable Law**. "Applicable Law" means all applicable laws of the United States, the State of California, Placer County, and with all applicable regulations promulgated by federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term, including but not limited laws and regulations governing minimum amounts of wages and benefits that must be paid to the Contractor's workers performing services under this Agreement and to the Environmental Laws and the regulations, policies and operating plans adopted by the WPWMA.
6. **Ash**. "Ash" means the material remaining after incineration of Municipal Solid Waste, including bottom ash and fly ash. "Ash" does not include ashes from residential burning, such as fireplaces, barbecues, etc.
7. **Biomedical Waste**. "Biomedical Waste" means waste which may be reasonably considered infectious, pathological or bio-hazardous, originating from hospitals, public or private medical clinics, dental offices, departments of research laboratories, pharmaceutical industries, blood banks, forensic medical departments, mortuaries, veterinary facilities and other similar facilities and includes equipment, instruments, utensils, fomites, laboratory waste (including pathological specimens and fomites attendant thereto), surgical facilities, equipment, bedding

and utensils (including pathological specimens and disposal fomites attendant thereto) sharps (hypodermic needles, syringes, etc.), dialysis unitwaste, animal carcasses, offal and body parts, biological materials (vaccines, medicines, etc.), and other similar materials, including all wastes which constitute "Infectious Waste" as defined in Health and Safety Code Section 25117.5.

8. Bulky Waste. "Bulky Waste" means large items of municipal solid waste such as appliances, furniture, large auto parts, trees, branches, stumps and other oversize wastes whose large size precludes or complicates their handling by normal collection, processing or disposal methods. (14 CCR 17225.8).

9. Buyback/Dropoff Center. "Buyback/Dropoff Center" means the portion of the Facility at which members of the public, the Participating Agencies and their Designated Haulers may deliver certain Recyclable Materials for Processing by Contractor.

10. C&D Guaranteed Minimum Recycling Level. "C&D Guaranteed Minimum Recycling Level" means the percentage by weight of Construction and Demolition Debris which Contractor is to recover from Processing Construction and Demolition Debris at the Construction and Demolition Debris Processing Area for Recycling, as set forth in Section 5.16.B. All material recovered must be Recycled such that the Participating Agencies may receive credit for it under the Act (i.e.: Creditable Recovery).

11. CalRecycle. "CalRecycle" means the California Department of Resources Recycling and Recovery, previously known as the California Integrated Waste Management Board.

12. CEQA. "CEQA" means the California Environmental Quality Act, found at California Public Resources Code sections 21050 et seq., as it currently exists or is hereafter amended.

~~12.~~13. CESQG. "CESQG" means a Conditionally Exempt Small Quantity Generator of hazardous wastes as defined in 40 CFR Section ~~261.5~~262.13, that generates such waste within Placer County and in amounts not to exceed 100 kilograms in a calendar month. Such hazardous waste may not include extremely hazardous waste as defined in 22 CCR Section 66261.110.

~~13.~~14. ClaimsClaim. "ClaimsClaim" means any and all loss, liability, penalty, fine, forfeiture, claim, demand, action, proceeding or suit, of any and every kind and description, whether judicial, quasi-judicial or administrative in nature including, but not limited to, injury to and death of any ~~person~~Person and damage to property or for contribution or indemnity claimed

by third parties, as referenced in Section 7.1.

14-15. Commingled Food and Green Waste. “Commingled Food and Green Waste” means Food Waste and Green Waste collected together in the same container and delivered to the Facility as a combined load.

15-16. Commingled Recyclable Materials. “Commingled Recyclable Materials” means Recyclable Materials, including but not limited to, paper, newspaper, cardboard and paper board, glass containers, ferrous and non-ferrous metals, and plastic containers (labeled #1 to #7), collected together in the same container and delivered to the Facility as a combined load.

16-17. Compost and Composting. When used as a noun, “Compost” means the same as the term “Stabilized Compost” as defined in [California Code of Regulations sections 17850 et seq.14 CCR section 17852](#), as it currently exists or is hereafter amended; when used as a verb, “Compost” and “Composting” means the process of controlled aerobic decomposition of organic materials as defined in [California Code of Regulations sections 17850 et seq.14 CCR section 17852](#), as it currently exists or is hereafter amended, that produces Stabilized Compost.

17-18. Construction and Demolition Debris. “Construction and Demolition Debris” means and includes solid wastes, such as building materials; packaging and rubble resulting from construction, remodeling, repair and demolition operations on pavements, houses, commercial buildings, and other structures. Construction refers to SIC Codes 152 through 1794, 1796, and 1799. Demolition refers to SIC Code 1795. (Reference: Title 14 CCR Section 17381(e).)

18-19. Construction and Demolition Debris Processing Area. “Construction and Demolition Debris Processing Area” means that area at the Facility which is separate from the Materials Recovery Facility and where Construction and Demolition Debris is Processed for Recycling.

19-20. Construction Quality Assurance. “Construction Quality Assurance,” or “CQA,” is a set of planned and systematic activities which are typically laid out before a construction project starts with the aim of giving confidence that quality requirements will be fulfilled. CQA is not to be confused with quality control, the latter being concerned with only the final outcome of a project.

20-21. Contaminants. “Contaminants” means materials which could hinder Contractor's ability to Process and market Source Separated Recyclables. Contamination levels shall be determined by separating the Contaminants from the balance of the load and: 1) by weight –

comparing the weight of the Contaminants and the remaining waste, or 2) by volume – comparing the volume of the Contaminants and the remaining waste when each is compressed into a container of known volumetric capacity at a uniform pressure in each respective container of not less than 50 pounds per square foot.

21-22. Contractor. “Contractor” means FCC Environmental Services California, LLC.

22-23. Contractor Default. “Contractor Default” means an event of Contractor Default under this Agreement as defined in Section 8.1.

23-24. Contractor’s Equipment. “Contractor’s Equipment” means all vehicles, machinery and equipment utilized by Contractor in performing services under this Agreement and that are owned by Contractor at the expiration or earlier termination of this Agreement.

24-25. Contributing Cities. “Contributing Cities” means the cities of Auburn and Colfax and the Town of Loomis and any other municipality or special district, other than the Member Agencies, which has entered into a flow commitment agreement with the WPWMA.

25-26. Customer. “Customer” means any individual, commercial business, franchised waste hauler, or other entity, including the operator and employees of the Landfill, that pays a fee or is otherwise entitled by the WPWMA to use the Facility.

26-27. Creditable Recovery. “Creditable Recovery” means the Recycling of materials such that their disposition may be credited by the Participating Agencies toward the diversion goal in Public Resources Code Section 41780, et seq. or SB 1383, as these provisions reads as of the Effective Initial Commencement Date of this Agreement. To obtain “Creditable Recovery” for any given materials recovered at the Facility, Contractor must produce to the WPWMA in the Annual Marketing Report and upon its request satisfactory evidence and documentation showing that such materials have been Recycled or re-used in such a manner as to be eligible for diversion credits from CalRecycle.

27-28. CRT. “CRT” means cathode ray tube.

28-29. Designated Hauler. “Designated Hauler” means the company or companies which from time to time are granted the exclusive right or franchise to collect Municipal Solid Waste, and/or Construction and Demolition Debris within the Participating Agencies.

29-30. Designated Waste. “Designated Waste” means those substances classified as designated waste by the State of California, presently in 23 California Code of Regulations Section 2522.

30-31. DTSC. “DTSC” means the California Department of Toxic Substances Control or any successor agency.

31-32. Effective Date. “Effective Date” has the meaning set forth in Section 4.1 of this Agreement, ~~which will be July 1, 2022.~~

32-33. Environmental Laws. “Environmental Laws” means all federal and state statutes, county, city and other local ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq.; the ~~resource~~Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Federal Clean Air Act, 42 U.S.C. Section 7401, et seq.; the Federal Clean Water Act, 33 U.S.C. Section 151, et seq.; the Emergency Planning and Community Right to Know Act, 42 U.S.C. Section 1101, et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651, et seq.; the California Hazardous Waste Control Act, California Health and Safety Code Section 25100, et seq.; the California Toxic Substances Account Act, California Health and Safety Code Section 25300, et seq.; the Porter-Cologne Water Quality Control Act, California Water Code Section 13000, et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code Section 25249.5, et seq.; and the California Clean Air Act, Health and Safety Code Sections 39000, et seq.; as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

~~33. — **Executive Director** “Executive Director” means the Executive Director or designee of the WPWMA.~~

34. Facility. “Facility” means the Western Placer Waste Management Authority Materials Recovery Facility and related structures and areas. The term “Facility” includes the Materials Recovery Facility, the Construction and Demolition Debris Processing Area, the Organics Processing Area, the Inert Materials Processing Area, the Publicly Hauled Waste Tipping Area, the Buy Back Center, the Household Hazardous Waste Facilities, and any improvements and expansions to the Facility during the Term, unless the context clearly requires otherwise.

35. Facility Expansion. “Facility Expansion” means the improvement and expansion of the Facility as described in the plans, drawings and specifications prepared pursuant to the “Design and Construction Management Services Agreement” between Contractor and the WPWMA.

36. Facility Fire. “Facility Fire” means any and all events that occur at the Facility that meet one or more of the following tiers or that otherwise activates the Facility’s fire detection and/or suppression systems:

(a) Tier 1: Pre-Ignition – Smoke is visible, but no flames are present. Fire Prevention Plan is implemented.

(b) Tier 2: Incipient Fire Event – Static fire/flames visible – isolated to one area of the pile. Contractor’s Emergency Response protocol and Fire Prevention Plan will be followed.

(c) Tier 3: Fully Developed Fire – Multiple locations of the pile or adjacent piles are on fire. Contractor’s Emergency Response protocol and Fire Prevention Plan will be followed.

(d) Tier 4: Outside emergency response arrives to the site either on their own or being called. Contractor’s Emergency Response protocol and Fire Prevention Plan will be followed. Notwithstanding the foregoing, Contractor shall follow the direction of the fire department personnel that arrive on-site in response to a Facility Fire.

36-37. Firm. “Firm” means a firm experienced in the field of Municipal Solid Waste and/or Construction and Demolition Debris collection and Recycling selected to perform a waste characterization study in accordance with Section 5-165.15.

37-38. Food Waste. “Food Waste” means uneaten food and food preparation wastes from residences and commercial establishments such as grocery stores, restaurants, and produce stands, institutional cafeterias and kitchens, and industrial sources like employee lunchrooms.

38-39. Gate. “Gate” means the Gatehouse at the entrance to the Facility, from which incoming loads of refuse may be directed to the Landfill or to a portion of the Facility for Processing.

39-40. Gate Fees. “Gate Fees” means amounts charged by the WPWMA to any Person using the Facility and/or delivering any waste (including Recyclable Materials) to the Facility. These Gate Fees will be established by and modified from time to time by the WPWMA in its sole discretion and shall be collected by the WPWMA, and Contractor has no interest in or right to them.

40-41. Gatehouse. “Gatehouse” means each of the two commercial Gatehouses for

weighing commercial vehicles and each of the two public Gatehouses for public(self-haul) ~~customers~~Customers which are located at the Facility.

41.42. Gatekeeper. “Gatekeeper” means the ~~person~~Person(s) designated by the WPWMA to be responsible for the operation of each Gatehouse.

43. General Manager. “General Manager” means the General Manager of WPWMA, or designee as designated in writing by the General Manager.

42.44. Green Waste. “Green Waste” means tree trimmings, grass cuttings, dead plants, leaves, branches and dead trees, and similar organic materials that are able to break down by Composting. Green Waste does not include palm, cattails, or bamboo.

43.45. Hazardous Waste. “Hazardous Waste” means:

(a) Wastes, materials or substances defined or characterized as hazardous waste by the Federal Solid Waste Disposal Act, as amended, including the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, et seq.) as amended from time to time, or regulations promulgated thereunder;

(b) Waste, materials or substances defined or characterized from time to time as hazardous waste by the principal agencies of the State of California (including, without limitation, the Department of Health Services, the Department of Toxic Substances Control, the California Water Resources Control Board, and ~~the California Integrated Waste Management Board~~CalRecycle) having jurisdiction over hazardous waste generated by facilities within the State, and pursuant to any other applicable governmental regulations;

(c) Wastes, materials or substances, the storage, treatment, transportation or disposal of which is subject to regulation under the Toxic Substances Control Act, 15 U.S.C. §2601-2654, as amended from time to time, or regulations promulgated thereunder;

(d) Radioactive wastes, materials, substances or items, the storage, treatment, transportation or disposal of which is subject to governmental regulations; and

(e) If two or more governmental agencies having concurrent or overlapping jurisdiction over hazardous waste adopt conflicting definitions of “hazardous waste,” for purposes of processing and disposal to land, the broader, more restrictive definition shall be employed for purposes of this Agreement.

44.46. High Diversion Organic Waste Processing Facility. “High Diversion Organic Waste Processing Facility” ~~as defined in SB-1383~~ means a facility that ~~meets or exceeds an~~

~~annual average mixed waste organic content recovery rate of 50 percent between January 1, 2022 and December 31, 2024, and 75 percent after January 1, 2025 for Organic Waste received from the Mixed Waste Organic Collection Stream qualifies as a High Diversion Organic Waste Processing Facility, as defined by SB1383.~~

45.47. Holiday. “Holiday” means a day which is one of the following legal holidays recognized for purposes of this Agreement: January 1, Memorial Day, July 4, Labor Day, the Fourth Thursday of November, and December 25. No other legal holidays are considered a “Holiday” for purposes of this Agreement.

46.48. Household Hazardous Waste. “Household Hazardous Waste” means waste which meets the definition of Hazardous Waste, but which is of residential origin and exempt from the Resource Conservation and Recovery Act. Household Hazardous Waste includes “Universal Waste” as that phrase is defined in the [California Code of Regulations, Division 4.5, Chapter 2322 CCR section 66273.9](#).

47.49. Household Hazardous Waste Facilities. “Household Hazardous Waste Facilities” means the two hazardous waste temporary storage areas located, respectively, near the Materials Recovery Facility and at the Publicly Hauled Waste Tipping Area, or as may be relocated via this Agreement, which are operated by Contractor pursuant to Section 5.13 of this Agreement.

48.50. HWEP. “HWEP” means the Hazardous Waste Exclusion Program developed [by Contractor](#) in accordance with the provisions of Section 5.7 of this Agreement.

49.51. Incompatible Material. “Incompatible Material” as defined in SB 1383 means human-made inert material including but not limited to glass, metal, plastic or Organic Waste for which the Facility, operation, property or activity is not designed, permitted or authorized to perform Organic Waste Recovery activities.

50.52. Inert Materials. “Inert Materials” means a non-liquid waste, including but not limited to, concrete, asphalt, rock, and rubble, that does not contain hazardous waste or soluble pollutants at concentrations established by the Regional Water Quality Control Board pursuant to Section 13000, et seq. of the Water Code and does not contain significant quantities of decomposable waste. Inert Materials do not include soil.

53. Initial Agreement. [“Initial Agreement” means the Operating Agreement, effective as of the Initial Commencement Date for operation of the Facility as amended by that certain Addendum #1 and those certain First through Fifth Amendments.](#)

54. Initial Commencement Date. “Initial Commencement Date” means the effective date of the Initial Agreement or July 1, 2022.

51-55. Landfill. “Landfill” means the Western Regional Sanitary Landfill owned by the WPWMA and located at the intersection of Fiddymont Road and Athens Avenue, Placer County.

52-56. Maintenance or Maintain. “Maintenance” or “Maintain” means those activities warranted to keep infrastructure in the same functionality and state of repair that existed when the WPWMA or Contractor constructed the infrastructure or, if constructed prior to the Agreement, the state of repair that existed at the Signature Date ~~of the Agreement~~; to preserve from failure or decline.

53-57. Major Appliance. “Major Appliance” means any “major appliance” as defined by Public Resources Code Section 42166, as that Section currently exists or is hereafter amended.

54-58. Materials Recovery Facility. “Materials Recovery Facility” or “MRF” means the main building at the Facility where Municipal Solid Waste is received from ~~all the~~ Participating Agencies and/or their Designated Haulers and from other commercial ~~customers~~ Customers of the Facility (but excluding the Publicly Hauled Waste Tipping Area which is a separate area within the Facility) and is Processed.

55-59. Member Agencies. “Member Agencies” means the County of Placer and the cities of Lincoln, Rocklin and Roseville.

56-60. Mixed Waste Organic Collection Stream. “Mixed Waste Organic Collection Stream” as defined in SB 1383 means Organic Waste collected in a container required by SB 1383 to be transported to a High Diversion Organic Waste Processing Facility.

57-61. MSW Guaranteed Minimum Recycling Level. “MSW Guaranteed Minimum Recycling Level” means the percentage by weight of Municipal Solid Waste which Contractor is to recover from Processing Municipal Solid Waste at the Materials Recovery Facility for Recycling, as set forth in Section 5.16.A. All material recovered must be Recycled such that the Participating Agencies may receive credit for it under the Act (i.e., Creditable Recovery).

58-62. Municipal Solid Waste. “Municipal Solid Waste” or “MSW” means all substances or materials, exclusive of Commingled Recyclable Materials, Construction and Demolition Debris, Source Separated Green Waste, Source Separated Food Waste, Source Separated Wood Waste, and Commingled Green and Food Waste that are delivered to the Facility including, without limitation, all putrescible and non-putrescible solid and semi- solid waste

which are generated by residential, commercial, industrial, institutional, municipal, agricultural and other activities and which are not otherwise restricted in a Class 3 landfill by State or Federal regulations including: Rubbish; Maintenance Waste; Green Waste and Wood Waste; used tires; ~~bulky wastes~~[Bulky Wastes](#); industrial wastes; grit and sweepings from a Water Pollution Control Plan

Municipal Solid Waste does not include: (i) Hazardous Waste; (ii) Biomedical Waste; (iii) Ash; (iv) materials which are not offered for collection by waste generators; (v) Construction and Demolition Debris; (vi) Source-Separated Recyclable Materials, including Commingled Recyclable Materials, Source Separated Green Waste, Source Separate Food Waste, Source Separated Wood Waste, and Commingled Green and Food Waste, and Inert Materials; or (vii) materials segregated for processing and Recycling at the Facility, once they have been so segregated and processed.

59-63. Operating Year. “Operating Year” means each successive period of twelve (12) months during the Term commencing on July 1 and ending on June 30. The initial Operating Year under ~~this~~[the Initial](#) Agreement ~~begins~~[began](#) on July 1, 2022, and ~~ends~~[ended](#) on June 30, 2023.

60-64. Organics, Organic Waste, or Organic Materials. “Organics”, “Organic Waste” and “Organic Materials” means solid wastes containing material originating from living organisms and their metabolic waste products including, but not limited to, food, green material, landscape and pruning waste, organic textiles and carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges.

61-65. Organics Processing Area. “Organics Processing Area” means that area of the Facility which is separate from the Materials Recovery Facility and Construction and Demolition Debris Processing Area and where Green Waste, Food Waste, and Wood Waste or other Organic Material is Processed for Recycling.

62-66. Organic Waste Recovery Efficiency. “Organic Waste Recovery Efficiency” as defined in SB 1383 means ~~an annual average~~[the quarterly](#) Mixed Waste Organic content recovery rate of 50 percent on and after January 1, 2022 and 75 percent on and after January 1, 2025.

63-67. Participating Agencies. “Participating Agencies” means the Member Agencies and the Contributing Cities, or any of them, as the context requires.

64-68. Person. “Person” means any individual or organization, including any firm,

association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Placer, municipality or special purpose district.

65-69. Primary Service Area. “Primary Service Area” means the geographical area of Placer County, but excluding any areas occupied by recognized Indian tribal reservations and lands, including Indian casinos unless such tribes elected to bring materials to the Facility.

66-70. Processing. “Processing” or to “Process” means the reduction, separation, recovery, conversion or Recycling of solid waste. If a load of materials is received at the Facility and is then transported directly to the Landfill for disposal, it shall not be deemed to have been “Processed.”

67-71. Processing Fees. “Processing Fees” means those Processing Fees described in Section 6.2 of this Agreement.

68-72. Prohibited Container Contaminants. “Prohibited Container Contaminants” as defined in SB 1383 means waste other than Organic Waste specifically allowed for collection in a container that is required to be transported to a High Diversion Organic Waste Processing Facility.

69-73. Publicly Hauled Waste. “Publicly Hauled Waste” means Municipal Solid Waste, Construction and Demolition Debris, Source Separated Green Waste and Source Separated Wood Waste delivered to the Facility by Persons other than the Participating Agencies, their Designated Haulers or contractors using self-hauled vehicles which the WPWMA has elected to receive.

70-74. Publicly Hauled Waste Tipping Area. “Publicly Hauled Waste Tipping Area” means that area at the Facility which is separate from the Materials Recovery Facility and where Publicly Hauled Waste is directed for unloading.

71-75. Reasonable or Reasonably. “Reasonable” or “Reasonably” means the objective determination a reasonably prudent ~~person~~ Person would enforce or observe under a given set of circumstances in order to protect him/herself and/or the WPWMA from liability for negligence, or that may be ordinary or usual in the circumstances.

72-76. Recoverable Materials. “Recoverable Materials” means materials that Contractor recovers for Recycling from the Municipal Solid Waste and Construction and Demolition Debris waste streams and which meet any of the following criteria: 1) were identified by Contractor in Exhibit J as a material targeted for recovery; 2) can be marketed from the

Facility for a positive dollar value net of transportation costs; 3) has been marketed by Contractor anytime within the six months prior to the written request of the Contractor for a waste characterization study.

73-77. Recyclable Materials. “Recyclable Materials” means any non-putrescible and non-hazardous materials pulled out of the waste stream, including domestic, commercial or industrial by-products of some potential value which are set aside, handled, packaged or offered for collection in a manner different from Rubbish or other forms of Municipal Solid Waste.

74-78. Recycle: Recycling. “Recycle” or “Recycling” means the process of collecting, sorting, cleaning, treating and reconstructing materials and returning them to the economic mainstream in the form of raw material for new, reused or reconstituted products which meet the quality standards necessary to be used in the marketplace. “Recycle” or “Recycling” does not include Transformation (except for Transformation to the extent that the materials Transformed qualify for Creditable Recovery.)

75-79. Recycling Level. “Recycling Level” means the percentage by weight of the Municipal Solid Waste and/or Construction and Demolition Debris (including Publicly Hauled Waste) entering the Facility which is actually diverted from land disposal by Contractor’s operations and thereafter Recycled, calculated as shown on Exhibit I.

76-80. Remnant Organic Material. “Remnant Organic Material” as defined in SB 1383 means the Organic Waste that is collected in a gray container that is part of the gray container collection stream.

77-81. Residual Organic Waste. “Residual Organic Waste” as defined in SB 1383 means waste that remains after Organic Waste has been processed which is then sent to the Landfill for disposal.

78-82. Rubbish. “Rubbish” means all non-putrescible wastes including waste wood, wood products, printed materials, paper, pasteboard, rags, straw, clothing, packaging materials, ashes from residential burning, floor sweepings, glass, and other waste materials not included in the definition of Hazardous Waste, or Green Waste.

79-83. SB1383. “SB1383” means the Short-Lived Climate Pollutants Act of 2016, Public Resources Code Sections 42652, et seq. and any regulations adopted by CalRecycle to implement it as they may be amended.

80-84. SCADA “SCADA”, or “Supervisory Control and Data Acquisition” means an

electronic system designed, configured and operated to automatically and continuously log and display real-time electromechanical equipment operational data by collecting such information from field devices.

85. Signature Date. “Signature Date” means the date that both Parties executed the Initial Agreement.

81-86. Special Occurrence. “Special Occurrence” shall have the meaning of 27 CCR 20510(c) and includes incidents such as, at minimum, fires (including Facility Fires), landslides, earthquake damage, unusual and sudden settlement, injury and property damage accidents, explosions, receipt or rejection of unpermitted wastes (e.g. mercury, medical waste, explosives/ammunition), flooding, and other unusual occurrences.

82-87. Source Separated Food Waste. “Source Separated Food Waste” means Source-Separated Recyclable Materials consisting of Food Waste, provided that such material does not contain more than five percent (5%) by volume of Contaminants.

83-88. Source Separated Green Waste. “Source Separated Green Waste” means Green Waste that (1) consists of at least fifty percent (50%) ~~percent~~ by volume grass clippings or leaves, (2) contains no shrubbery/tree limbs exceeding four (4) inches in diameter, and (3) does not contain more than five percent (5%) by volume of Contaminants.

84-89. Source-Separated Recyclable Materials. “Source-Separated Recyclable Materials” means Recyclable Materials which have been segregated into separate containers by the Waste Generator, the Designated Hauler or other Persons prior to their delivery to the Facility. Materials delivered to the Buyback/Dropoff Center and materials collected by the Participating Agencies’ Designated Haulers as part of “curbside” recycling programs are included in Source-Separated Recyclable Materials.

85-90. Source Separated Wood Waste. “~~Source Separated~~ Source Separated Wood Waste” is defined as Source-Separated Recyclable Materials consisting of lumber, plywood, particle board, tree trunks less than twenty-four (24) inches in diameter and tree limbs greater than one (1) inch in diameter, provided that such wood does not contain more than five percent (5%) by volume of Contaminants such as treated lumber, painted lumber, PVC pipe, metal, rock, sheet rock, dirt, plastic and other non-wood Rubbish.

86-91. Stormwater Pollution Prevention Plan (SWPPP). “Stormwater Pollution Prevention Plan” and “SWPPP” mean those plans, drafted for or reviewed and submitted to the California Water Quality Control Board, that governs Facility and Landfill operations with respect

to the protection of the water according to the Clean Water Act.

87-92. Substantial Completion "Substantial Completion" means the stage of the work for the Facility Expansion when the Facility is operational and has completed any necessary performance ~~efor~~ similar testing.

88-93. Term. "Term" has the meaning set forth in Section 4.2 of this Agreement.

89-94. Timely. "Timely" means within the time set by regulation, regulatory response requirement, statute or rules of the court. Where such provides no definitive timeframe and none is provided otherwise in this Agreement, timely shall be interpreted as within sufficient time for the would-be timely action to be fully beneficial or meaningful.

90-95. Ton. "Ton" means a short ton of 2,000 pounds avoirdupois.

91-96. Transformation. "Transformation" means the incineration, pyrolysis, distillation, gasification, or biological conversion. Transformation does not include Composting.

92-97. Uncontrollable _____ CircumstancesCircumstance. "Uncontrollable CircumstancesCircumstance" means:

a) Any "act of God" or event which is caused by the effect of nature or natural causes and without any direct interference by humans including landslides, lighting, fires, wildfires, storms, floods, pestilence, freezing, earthquakes or other catastrophic events; b) epidemics or pandemics; c) explosions, sabotage, civil disturbances, acts of terrorism or a public enemy, wars, blockades, riots, strikes or lockouts by individuals who are not employed by or directed at Contractor or other industrial disturbances; d) eminent domain, condemnation or other taking or e) other events of a similar nature, not caused or maintained by the WPWMA or Contractor, whichevents are not reasonably within the control of the Party claiming the excuse from its obligations due to such event, to the extent such event has a demonstrable material adverse effect on the ability of a Party to perform its obligations thereunder and which occurs at the Facility or within the Primary Service Area. Events which could have been reasonably foreseen and predicted or otherwise prevented by reasonable precautions, including compliance with agreements and Applicable Law and changes in Applicable Law, shall not be considered an Uncontrollable Circumstance. Labor unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other concerted job action conducted by the Contractor's employees or directed at the Contractor, or a subcontractor, are not considered Uncontrollable Circumstances.

93-98. Universal Waste. “Universal Waste” means those common types of Household Hazardous Waste described in CCR, Title 22, Division 4.5, Chapter 23, as that chapter currently exists or is hereafter amended.

94-99. Waste. "Waste" means solid waste as defined in ~~California~~ Public Resources Code, ~~Division 30, Part 1, Chapter 2, § section~~ 40191 and regulations promulgated thereunder. Excluded from the definition of Waste are Hazardous Waste and Medical and Infectious Waste. Notwithstanding any provision to the contrary, Waste may include de minimis volumes or concentrations of Hazardous Waste of a type and amount normally found in residential solid waste after implementation of programs for the safe collection, recycling, treatment and disposal of Household Hazardous Waste in compliance with ~~Section 41500 and 41802 of the California~~ Public Resources Code section 41500 and 41802.

95-100. Wood Waste. “Wood Waste” means lumber, plywood, particle board, tree trunks less than twenty-four (24) inches in diameter and tree limbs greater than four (4) inches in diameter.

96-101. WPWMA. "WPWMA" means the Western Placer Waste Management Authority, a public agency created under the Joint Exercise of Powers Act.

97-102. WPWMA Indemnitees. “WPWMA Indemnitees” means the WPWMA, its Board members, Member Agencies, officers, officials, employees, contractors, agents and assigns and any successor or successors to the WPWMA's interest.

98-103. WPWMA's Option. “WPWMA's Option” means the WPWMA's Option to purchase Contractor's Equipment as described in Section 5.20.

99-104. WPWMA Site. “WPWMA Site” means the entire WPWMA land holdings inclusive of the Facility and the Landfill.

105. Notice of Violation. “Notice of Violation” or “NOV” means a formal, written document from a regulatory agency notifying Contractor that is in violation of applicable Environmental Laws or regulations.

Such definitions shall also apply to derivations of the above terms when capitalized herein.

ARTICLE 2: REPRESENTATIONS & WARRANTIES OF CONTRACTOR

Contractor, by acceptance of this Agreement, hereby makes the following representations and warranties for the benefit of the WPWMA as of the Signature Date [and reiterated as of the Effective Date](#).

2.1 Legal Status

Contractor is duly organized, validly existing and in good standing in the State of California, and is authorized to do business in California with the lawful power to own its properties and to enter into and perform its obligations under this Agreement.

2.2 Authorization and Binding Obligation

Contractor has the authority to enter into and perform its obligations under this Agreement. Contractor, or its authorized representative, has taken all actions required by law and its governing documents to authorize the execution of this Agreement. The ~~persons~~[Persons](#) signing this Agreement on behalf of Contractor warrant and represent that they have authority to do so. This Agreement constitutes the legal, valid and binding obligation of Contractor to comply with each of the provisions of this Agreement.

2.3 Legal Authority

Contractor has the legal authority to enter into and perform its obligations under this Agreement. To the best of Contractor's knowledge, after reasonable investigation, there is no Applicable Law in effect as of the Signature Date ~~of this Agreement~~, [and reiterated as of the Effective Date](#), that would prohibit the performance by Contractor of its obligations under this Agreement and the transactions contemplated hereby.

2.4 No Conflicts or Litigation

Neither the execution nor the delivery by Contractor of this Agreement nor the performance by Contractor of its obligations hereunder (1) conflicts with, violates or results in a breach of Applicable Law or any other law or governmental regulation applicable to Contractor; (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement (including, without limitation, the certificate of incorporation of Contractor) or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument, or (3) will result in the creation or imposition of any encumbrance of any nature whatsoever upon any of the properties or assets of Contractor. To the best of Contractor's knowledge, after reasonable investigation, there is no action, suit, proceeding or investigation as of the Signature Date, [and reiterated as of the Effective Date](#), at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality decided, pending or threatened against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by Contractor of its obligations hereunder or which, in any way, would adversely affect the validity or enforceability of this Agreement or any such agreement or instrument entered into by Contractor in connection with the transactions contemplated hereby, or which would have a material adverse effect on the financial condition of Contractor, or any surety or entity guaranteeing Contractor's performance under this Agreement.

2.5 Contractor's Investigation

Contractor has made an independent investigation (satisfactory to itself) of the conditions and circumstances surrounding the Agreement and the work to be performed hereunder, including the amounts and the nature of the Wastes Contractor is required to Process as part of this Agreement, and has taken these matters into consideration in its agreement to provide these services in exchange for the compensation provided for under the terms of this Agreement. Contractor

has relied solely on its own investigation of the WPWMA, the Facility, and the WPWMA's service needs in preparing its proposal and entering into this Agreement.

Except for any express warranties that are set forth herein, the WPWMA makes no warranties in connection with this Agreement, including but not limited to the current characterization and quantity of Wastes delivered or is deliverable to the Facility on the [Initial Commencement Date, the](#) Effective Date or at any other time thereafter during the Term. The WPWMA expressly disclaims any such warranties, either express or implied, as to the merchantability or fitness for any particular purpose of Waste delivered to the Facility.

2.6 Information Supplied by the Contractor

The information and warranties supplied by Contractor in all proposals and submittals made in connection with negotiation and execution of this Agreement, including its proposals dated January 11, 2021 and September 24, 2021 and attached as Exhibit P, are true, accurate, correct and complete in all material respects on and as of the Signature Date. In case there is a contradiction between the proposals dated January 11, 2021 and September 24, 2021, the September 24, 2021 proposal shall prevail Contractor acknowledges that if the WPWMA at any time discovers a material inaccuracy in the information in Contractor's proposals, such inaccuracy may be grounds for termination or suspension of this Agreement, as provided in Section 8.2.F.

2.7 Financial Resources; Expertise and Capability

Contractor possesses the business, professional, and technical expertise, and the financial, equipment, and employee resources required to perform the services specified in this Agreement.

2.8 Representatives of the Parties

Contractor has designated and submitted to the WPWMA, in writing, the name, title and contact information of a responsible officer who shall serve as the

representative of Contractor, shall be available in cases of emergency at all times, and who shall have authority in all operational matters related to the Agreement. The WPWMA may rely upon action taken by such designated representative as action of Contractor unless for actions not taken within the scope of the Agreement.

2.9 Guaranty of the Agreement

Contractor's parent company guarantees Contractor's performance of this Agreement as set forth in that certain Guaranty, attached as Exhibit R. The Guaranty is incorporated by reference into this Agreement.

[provisions of the Second Amendment]

ARTICLE 3: RESERVED

ARTICLE 3:ARTICLE 4: CONDITIONS TO EFFECTIVENESSTERM OF AGREEMENT

3.14.1 Transition PlanEffective Date

The Parties recognize that substantial planning is required in order to ensure orderly provision of services on the Effective Date. Contractor shall submit to WPWMA a preliminary transition plan which specifies the Contractor's schedule for acquiring all necessary equipment, hiring personnel, and otherwise arranging for the services to be provided in this Agreement. This preliminary transition plan shall be submitted for WPWMA approval no later than one week following the Signature Date. The final transition plan shall be included as Exhibit A to this Agreement. Following the Signature Date, the Contractor shall, no later than May 16, 2022, submit the final transition plan to the WPWMA for approval. Substantive failure on the part of the Contractor to adhere to the transition plan will constitute a breach of this Agreement and, if incurred, an event of default under Article 8.

3.2 Conditions to Effectiveness of Agreement

This Agreement shall not become effective and the WPWMA shall not be obligated to permit this Agreement to become effective and to perform the undertakings

~~provided for in this Agreement unless each and all of the conditions set out below are satisfied or waived, in written form, in whole or in part by the WPWMA. Waiver of any of the following as a condition to the effectiveness of this Agreement will not preclude the WPWMA from pursuing any claim for breach of this Agreement.~~

~~A. Accuracy of Representations~~

~~The representations and warranties made by the Contractor in Article 2 of this Agreement and in its proposal are true and correct on and as of the Signature Date.~~

~~B. Absence of Litigation~~

~~There is no litigation pending on the Signature Date in any court challenging the award or execution of this Agreement or seeking to restrain or enjoin its performance. Contractor shall notify WPWMA, and WPWMA shall notify Contractor, in writing within thirty (30) days of any litigation which may in anyway affect each Parties respective performance of services under this Agreement.~~

~~C. Effectiveness of WPWMA Action~~

~~A WPWMA Resolution approving this Agreement, shall have become effective pursuant to Applicable Law on or prior to the Signature Date.~~

~~D. Verification of Insurance Coverage and Faithful Performance Bond~~

~~Contractor shall submit, to the reasonable satisfaction of the WPWMA, endorsements or certificates of insurance coverage pursuant to Article 7.2 and a faithful performance bond pursuant to Article 7.3 of this Agreement and provided as Exhibit B.~~

~~E. Contingency Plan~~

~~Contractor shall submit to the WPWMA six (6) weeks prior to the Effective Date of this Agreement a written "Contingency Plan" demonstrating the Contractor's specific arrangements to provide vehicles and personnel and to maintain uninterrupted service during mechanical breakdowns, and in case of natural disaster, strikes or other emergency, including events described in Article 9.20.~~

~~The Contingency Plan submitted by Contractor shall be subject to the WPWMA's reasonable approval and shall be attached as Exhibit C to this Agreement. In the event some condition arises to necessitate implementation of the plan, Contractor shall follow the plan. The WPWMA's approval or disapproval shall be given within three (3) weeks of the date the Contractor's Contingency Plan is delivered to the WPWMA.~~

F. Financing

~~WPWMA provides written notice that it has obtained or developed a plan to obtain necessary financing for the Facility Expansion, including the execution of any flow commitments or similar agreements from Participating Agencies as determined necessary by WPWMA.~~

3.3 Fire Recovery Period

~~Prior to the The Effective Date of this Agreement, the Facility incurred substantial damages due to causes outside of Contractor's control. As a result, the Facility will not be at full operating efficiency as is , 2026. As of the Effective Date, as was represented during the procurement phase of the project. Consequently, the Parties agreed that certain the provisions of this Agreement shall be suspended or modified until the Facility was at full operating efficiency. The relationship between the Parties during this period of time, shall be governed by this Agreement as amended by the Parties in that certain First Amendment to the Agreement. The Parties shall negotiate the terms and conditions of the First Amendment in good faith, and this Agreement shall not take effect until its execution. Such good faith negotiations shall include a discussion of whether the rates set forth in this Agreement should be modified but WPWMA shall not be required to agree to any rate adjustment. control over the terms of the Initial Agreement. To the extent either Party was bound by obligations under the Initial Agreement, all obligations of either Party occurring prior to the Effective Date shall continue to be subject to the terms and conditions of the Initial Agreement. Any~~

obligation of either Party occurring after the Effective Date shall be enforceable under the terms of this Amended and Restated Operating Agreement.

ARTICLE 4: TERM OF AGREEMENT

4.1 Effective Date

The Effective Date of this Agreement is July 1, 2022.

4.2 Term

The Term of this Agreement shall commence on July 1, 2022 and shall end as of midnight on June 30, 2032, unless extended by the WPWMA as provided in the following section. If this Agreement is extended by the WPWMA, the Term of this Agreement shall include any such extension periods.

4.3 Extension of Term

The WPWMA may, in its sole discretion, extend this Agreement for a period of one (1) year by delivering written notice of its exercise of that option to the Contractor no later than February 28, 2032.

If the WPWMA elects to exercise the extension option, the Contractor shall be bound to perform all Contractor obligations for the additional extension period described in the WPWMA's notice extending the Term. In addition and without limiting the above, the WPWMA and Contractor may by mutual agreement extend the Term of this Agreement for two (2) additional five (5) year terms.

ARTICLE 5: FACILITY OPERATIONS

4.15.1 General

Contractor recognizes that the WPWMA and the Participating Agencies are committed to Recycling waste materials which have in the past been disposed of in landfills, including the Landfill. To that end, the Facility has been designed and shall be operated to accomplish materials recovery as required by the provisions of this Agreement.

4.25.2 Gatehouse Operations

The Facility is equipped with Gatehouses for weighing or estimating the volume of materials in Customer vehicles. The WPWMA has elected to operate the Gatehouses at the Facility, including weighing and recording the weights or volumes of incoming loads, and to perform the Gate Fee collection and accounting activities with its own employees. The WPWMA retains the right to elect to utilize ~~either~~ a separate independent contractor ~~or Contractor~~ to perform such activities. If the WPWMA elects to use an independent contractor, it will give Contractor thirty (30) days prior notice of such election. ~~If the WPWMA elects to have Contractor perform such activities, the WPWMA shall give Contractor ninety (90) days prior written notice of such election and Contractor, at an additional negotiated fee, shall provide sufficient, qualified staff to ensure accurate and efficient operation of the Gatehouses.~~

WPWMA may install video cameras or otherwise monitor activities in person or virtually and may audit Gatehouse operations, procedures, ~~scales~~ scales, and other equipment or processes at any time.

The WPWMA shall have complete discretion to establish, change or eliminate the Gate Fees for users of the Facility and may establish different fees for different categories of users. The WPWMA has sole discretion of which vehicles are weighed and which receive volume estimates.

To protect the Facility and to insure that Contractor's compensation is properly calculated, the WPWMA ~~shall~~ will (1) direct vehicles carrying loads of Municipal Solid Waste or Commingled Recyclables which do not qualify as Publicly Hauled Waste to the Materials Recovery Facility, (2) direct vehicles carrying loads of Construction and Demolition Debris which do not qualify as Publicly Hauled Waste to the Construction and Demolition Debris Processing Area, (3) direct vehicles carrying loads of Publicly Hauled Waste directly to the Publicly Hauled Waste Tipping Area (4) direct non- Publicly Hauled Waste vehicles carrying loads of clean Green Waste, Food Waste and/or Wood Waste directly to the Organics Processing

Area, (5) direct vehicles delivering Recyclable Materials listed in Section 5.14 to the Buyback/Dropoff Center, (6) direct vehicles carrying dirt, rock and other Inert Materials to the Inert Processing Area, and (7) direct vehicles carrying sewage sludge directly to the Landfill. The WPWMA shall have sole discretion in determining which incoming vehicles and loads are directed to each area of the Facility or the Landfill, but shall/will use its best efforts to direct vehicles to the proper area and direct vehicles carrying materials that could damage machinery and equipment at the Facility directly to the Landfill as appropriate. The Contractor shall satisfy itself as to the quantity and character of wastes brought to the Facility and the ability of the machinery and Contractor's staff to protect the equipment from damage. The WPWMA shall have no obligation to compensate Contractor for damage to machinery and equipment at the Facility caused by such materials.

The WPWMA shall/will consult with Contractor and reasonably consider Contractor's requests that certain categories of loads not be directed to the Facility, but the final decision on such matters shall rest with the WPWMA. The WPWMA classifies material by sight and smell and does not operate any radioactive materials detection equipment.

WPWMA may direct loads of any individual inbound material to alternative locations or vendors, but only in an amount not to exceed the lower of (i) 0.5% of overall inbound tonnage per month; or (ii) 200 tons per month, at its reasonable discretion.

4.35.3 Days and Hours of Operation

Contractor shall operate the Facility for receipt of materials every day of the year. Contractor shall operate the Facility for Processing during the following hours, except for the Holidays:

Operation	Weekdays	Weekends	Holidays
Receipt of Waste	7 a.m. to 5 p.m.	8 a.m. to 5 p.m.	See Note 1
Minimum Hours for Processing of Waste ¹	7 a.m. to 3:00 p.m.	Closed	Closed

Additional Hours for Processing of Waste ²	6 am to 7 am 3:00 p.m. to 11:30 p.m.	6 am to 11:30 p.m.	Closed
Buyback/ Dropoff Center	7 a.m. to 5 p.m.	8 a.m. to 5 p.m.	Closed
Household Hazardous Waste Facility	7 a.m. to 5 p.m.	8 a.m. to 5 p.m.	Closed

Notes:

- Hours for the receipt of Waste shall correspond to the day of the week in which the Holiday occurs. For example, if July 4th (one of the Holidays) falls on a Saturday, the hours of receipt shall be from 8 a.m. to 5 p.m.
- In addition to the minimum hours during which the Facility will be open for Processing of Waste, Contractor shall Process all Waste received at the Facility utilizing these additional Processing hours as necessary, subject to limitations on times of operation which may be imposed through the Solid Waste Facility Permit issued by CalRecycle, the Conditional Use Permit issued by Placer County or other permits that regulate the operation of the Facility by Contractor.
Contractor must operate to achieve the requirements of this Agreement within whatever operating hour limitations are imposed through such permits.

4.45.4 Receipt of Waste

In accordance with Section 5.2, Contractor shall accept (1) all Municipal Solid Waste, Commingled Recyclable Material, Construction and Demolition Debris, Source Separated Green Waste, Source Separated Wood Waste, Source Separated Food Waste, Commingled Food and Green Waste, Inert Materials, and Recyclable Materials delivered by, or on behalf of, the Participating Agencies and/or their Designated Haulers; (2) Publicly Hauled Waste generated within the jurisdiction of the Participating Agencies; (3) Recyclable Materials delivered by residents of or businesses operating within the Participating Agencies; (4) Household Hazardous Waste delivered by business operators or residents of the Participating Agencies; and (5) Municipal Solid Waste, Commingled Recyclable Material, Construction and Demolition Debris, Source Separated Green Waste, Source Separated Wood Waste, Source Separated Food Waste, Commingled Food and Green Waste, Inert Materials, and/or Recyclable Material generated outside of the Primary Service Area, where the WPWMA and Contractor have agreed to accept such materials.

Contractor shall Process such materials for either Recycling or disposal in accordance with this Agreement.

In recognition of the inherent difficulties in determining the entire composition of a load before it is unloaded from the vehicle, the WPWMA and Contractor have developed and will continue to update and supplement a mutually agreeable protocol, which is included as Exhibit D, which details the necessary actions that should be taken when Contractor discovers that a load was misidentified by the WPWMA's Gatekeeper and subsequently requests the load be redirected by the WPWMA to a suitable location in accordance with Exhibit D.

Wastes, which have been sent to the Landfill by anyone other than Contractor and which are identified by Contractor or the operator of the Landfill, at the Landfill, as being materials that should be Processed for Recycling of Recoverable Materials at the Facility, shall be transported by Contractor, subject to the WPWMA's approval and at Contractor's sole cost, to the Gatehouses for weighing and to the Facility for Processing. Any such loads shall be taken into account for purposes of determining the applicable Recycling levels in accordance with Section 5.15. Any such materials redirected from the Landfill to the Facility shall be deducted from the Tonnage received at the Landfill.

4.55.5 Receipt and Processing of Waste from Outside the Primary Service Area

The WPWMA may at any time ~~request~~require Contractor to receive and Process Waste or Recyclable Materials which originate from outside of the Primary Service Area. ~~Unless the WPWMA does so, Contractor shall not receive any Waste from outside~~Process such Waste or Recyclable Materials. In the event that the composition of the Waste or Recyclable Materials is materially different from Waste or Recyclable Materials originating from the Primary Service Area.~~The initial, Contractor and WPWMA shall meet and confer to consider modifications to the GMRL to account for such differences.~~ The Primary Service Area is shown on Exhibit E.

The Contractor may, upon written approval from the WPWMA, utilize the Facility to Process Recyclable Materials that Contractor receives from outside the Primary Service Area. In the event Contractor desires to utilize the Facility for such purposes, it shall submit a written proposal to the WPWMA that specifies the area of origin of the Recyclable Materials, the type and forecasted quantity of the Recyclable Materials that are proposed to be Processed, the projected usage of the Facility, the proposed payment to the WPWMA for the use of the Facility, and such other information the ~~Executive Director~~General Manager or its authorized designee may require in order to evaluate the proposal.

The ~~Executive Director~~General Manager or authorized designee shall evaluate the proposal and may, subject to reporting the proposal to the WPWMA Board, provide written approval to Contractor allowing Contractor to use the Facility on terms that ~~he/she~~the General Manager deems to be in the best interests of the WPWMA.

Under no circumstances ~~may~~shall Contractor deposit into the Landfill residual material that is a result of the Processing of Recyclable Materials from outside the Primary Service Area ~~be deposited in the Landfill~~ without the prior written consent of the WPWMA. Contractor shall be solely responsible for any and all costs to isolate, identify, arrange, transport and dispose at an appropriately permitted landfill, other than the Landfill, of any residual materials that result from the Processing of Recyclable Materials from outside of the Primary Service Area.

4.65.6 Priority

The primary purpose of the Facility is to Process Municipal Solid Waste, Commingled Recyclable Materials, Construction and Demolition Debris, Source Separated Green Waste, Source Separated Wood Waste, Source Separated Food Waste, Commingled Food and Green Waste, Inert Materials and Recyclable Materials delivered by the Participating Agencies and/or their Designated Haulers, who shall have first priority in use of the Facility. A secondary purpose is to Process Publicly Hauled Waste and Recyclable Materials delivered by residents and/or businesses of the Participating Agencies, who shall have second priority in use of

the Facility. If the WPWMA allows, pursuant to Section 5.5, Municipal Solid Waste, Commingled Recyclable Materials, Construction and Demolition Debris, Source Separated Green Waste, Source Separated Wood Waste, Source Separated Food Waste, Commingled Food and Green Waste, Inert Materials or Recyclable Materials generated outside the Primary Service Area to be delivered to and accepted for Processing at the Facility, such material shall be assigned third priority. Contractor shall operate the Facility in order to give effect to the above stated priorities.

Processing of material from outside the Primary Service Area shall, if allowed, never be permitted to interfere with Processing of Municipal Solid Waste, Commingled Recyclable Materials, Construction and Demolition Debris, Source Separated Green Waste, Source Separated Wood Waste, Source Separated Food Waste, Commingled Food and Green Waste, Inert Materials or Recyclable Materials delivered by or on behalf of the Participating Agencies or their Designated Haulers. To that end, and by way of example and not limitation, the WPWMA may direct that materials from outside the Primary Service Area not be accepted during the peak hours of 9 a.m. to 3 p.m. or when vehicles of Designated Haulers from any of the Participating Agencies are delayed beyond the times allowed in Section 5.8. Vehicles carrying material from outside the Primary Service Area may be refused entry during such periods.

The WPWMA and the Participating Agencies, shall have the first right to, with at least one (1) month advanced notification, purchase materials recovered as a result of Contractor's Processing efforts that qualify towards a Participating Agencies' procurement obligations under SB 1383 at a cost at or below the lowest rate Contractor charged other ~~customers~~Customers in the actual month of sales, less a five percent (5%) discount to account for reduced marketing efforts. This priority and discount shall apply to those materials the WPWMA or a Participating Agency may elect to purchase directly itself or for contractors or haulers contracted directly with the WPWMA or the Participating Agencies. This priority shall not supersede any committed purchase agreements disclosed in writing in the most

recent submittal of the Contractor's Annual Marketing Plan pursuant to Section 5.23.

4.75.7 Hazardous Waste Exclusion Program

Contractor shall develop, implement, and update (at least annually) ~~as necessary or as required,~~ a HWEP which is submitted and acceptable to the WPWMA and which meets the requirements of [the Certified Unified Program Agency \(CUPA\)](#), CalRecycle, the Local Enforcement Agency, the Regional Water Quality Control Board, and all other public regulatory agencies, boards and bodies with proper jurisdiction and satisfies all applicable local, state and federal laws.

The HWEP shall provide for Contractor's ability and responsibility to inspect, monitor and reject loads which are discovered to contain Hazardous Waste. Contractor shall implement the approved HWEP in a diligent, efficient, reasonable and non-discriminatory manner. Contractor shall provide receiving and storage areas that are adequately sized, protected from weather, run-on/run-off, theft, damage, unauthorized access, that meets all applicable regulatory requirements and is approved by WPWMA at the Facility, which are discovered through the HWEP (or otherwise) in conjunction with Contractor's operation of the Facility, prior to their delivery to the Household Hazardous Waste Facilities. Contractor shall use its best efforts to maximize the use of storage space available at the Hazardous Waste Facilities, including arranging for more frequent pickups of materials as necessary. Contractor shall arrange for the safe and lawful Recycling or disposal of such materials through a properly licensed waste hauler engaged on a subcontract basis.

The Parties recognize that the operator of the Landfill is required and authorized to conduct its own independent Hazardous Waste exclusion program which may entail checking of loads delivered from the Facility by Contractor. If the operator of the Landfill rejects, or the WPWMA or regulatory inspector determines any material delivered by Contractor to the Landfill that may not legally be disposed of at the Landfill, Contractor shall remove and dispose of it in a safe and lawful manner, as

provided above. Any dispute between Contractor and the operator of the Landfill as to whether materials may legally be disposed of at the Landfill shall be between Contractor and such operator, and the WPWMA shall have no responsibility to Contractor as a result of any such dispute. The WPWMA may, but need not, decide any question which may arise as to the suitability for disposal of materials at the Landfill and, if it does, any such decision of the WPWMA must be final and therefore shall be binding on Contractor and operator of the Landfill.

The WPWMA has required that the operator of the Landfill accept, to the full extent that it is legally able to do so, Residuals from the Processing of Waste by Contractor by virtue of this Agreement.

4.85.8 Turnaround Time of Waste Collection Vehicles

Contractor shall operate the Facility so that: 1) all vehicles of Participating Agencies and/or their Designated Haulers are able to ~~unload, depart from the Facility, and return to the scales in no more than~~begin unloading within twenty (20) minutes between their receipt of ~~a ticket to their return to the scales and an inbound ticket to the time at which vehicles of Participating Agencies and/or their Designated Haulers begin unloading at the designated tipping area,~~ 2) all other vehicles ~~are able to unload, depart from the Facility, and return to the scales in no more than~~begin unloading within thirty (30) minutes between their receipt of ~~an inbound~~ inbound ticket to ~~their return to the scales the time at which they begin unloading at the designated tipping area.~~

The above limits are intended to apply to queueing times from when the vehicle arrives at tipping area until the vehicle is directed to unload in a tipping area. Any delays caused by WPWMA or third parties, including but not limited to, vehicle time spent un-tarping, unloading, and other delays caused by driver behavior shall not be cause for Contractor violating this Agreement.

The Parties acknowledge that consistent, efficient operation of the Facility is of utmost importance, that delays in operations which increase the costs of Participating Agencies' Designated Haulers may affect the payments that

Participating Agencies must make to the Designated Hauler, and that the WPWMA has considered and relied on Contractor's representations as to its quality of service commitment in entering into this Agreement.

The Parties further recognize that quantified standards of performance are necessary and appropriate to ensure consistent and reliable service. The Parties further recognize that the duty and ability of Contractor to satisfy the quantified standards of performance are subject to the provisions of Section 9.20. The Parties further recognize that if Contractor fails to achieve the performance standards, the WPWMA, Participating Agencies and their residents will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of damages that they will suffer.

Therefore, the Parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective Initial Commencement Date, including the relationship of the sums to the range of harm to the WPWMA and Participating Agencies that reasonably could be anticipated and in anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Agreement was made.

Contractor
Initial Here: _____

WPWMA
Initial Here: _____

Contractor agrees to pay (as liquidated damages and not as a penalty) the amount set forth below and further agrees that this amount may be deducted by the WPWMA from payments to Contractor by the WPWMA:

For each vehicle owned or operated on behalf of the Participating Agencies and/or their Designated Haulers which is unable to unload and return to the scales within twenty (20) minutes after its departure from the scales as defined above:

\$500.

For any other vehicle which is unable to unload and return to the scales within thirty (30) minutes after its departure from the scales as defined above: \$200

The liquidated damages provided for herein are the WPWMA's sole monetary remedy for the delays for which they are assessed.

The above amounts are effective as of July 1, 2022 and may only be adjusted by written agreement between both WPWMA and Contractor.

Neither the time limits nor the liquidated damages set forth in this section shall apply to vehicles selected for load check procedures pursuant to the HWEP or which are otherwise delayed because of Contractor's investigation of their contents for Hazardous Waste, or to vehicles delayed by mechanical breakdown or by driver negligence. Neither the time limits nor the liquidated damages set forth in this section shall apply during the period of construction of the Facility Expansion.

4.95.9 Regulatory Compliance Performance Standards

Contractor agrees that the regulatory compliance and public perception of the Facility is of extreme importance to the WPWMA and agrees to perform all operations in such a way as to minimize the amount of regulatory compliance issues with all Applicable Law so that: 1) there are no more than two (2) consecutive months for which the any part of the Facility receives an Area of Concern (AOC) from a regulatory agency as a result of the Contractor's actions or inactions related to the operational responsibilities as outlined in this Agreement, and 2) there are zero (0) months for which the any part of the Facility receives a Notice of Violation (NOV) from any regulatory agency as a result of the Contractor's actions or inactions related to the operational responsibilities as outlined in this Agreement.

The Parties acknowledge that consistent, compliant operation of the Facility is of utmost importance, that poor regulatory performance may adversely affect the WPWMA, and that the WPWMA has considered and relied on Contractor's

representations as to its quality of compliance commitment in entering into this Agreement. The Parties further recognize that quantified standards of performance are necessary and appropriate to ensure consistent and reliable service. The Parties further recognize that if Contractor fails to achieve the regulatory compliance performance standards, the WPWMA, the Participating Agencies and their residents will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of damages that they will suffer. Therefore, the Parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the [Effective/Initial Commencement](#) Date, including the relationship of the sums to the range of harm to the WPWMA and Participating Agencies that reasonably could be anticipated and in anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Agreement was made

Contractor
Initial Here: _____

WPWMA
Initial Here: _____

Contractor agrees to pay (as liquidated damages and not as a penalty) the amount set forth below and further agrees that this amount may be deducted by the WPWMA from payments to Contractor by the WPWMA: [but only to the extent \(a\) Contractor fails to resolve any such regulatory infraction to the issuing regulatory agency's reasonable satisfaction within thirty \(30\) days' receipt of written notice, or \(b\) WPWMA has suffered damages in the form of a fine or penalty assessed by a regulatory agency for such regulatory infraction:](#)

For each Area of Concern any part of the Facility receives from any regulatory body related to Contractor's performance or failure to perform its responsibilities pertaining to operation of the Facility as outlined in this Agreement that occurs in two (2) or more consecutive months: \$5,000 per month or portion thereof

until the Area of Concern is resolved to the reasonable satisfaction of the issuing regulatory body.

For each Notice of Violation any part of the Facility receives from any regulatory body related to Contractor responsibilities as it pertains to operation of the Facility as outlined in this Agreement: \$5,000 per month or portion thereof until the Notice of Violation is resolved to the reasonable satisfaction of the issuing regulatory body.

The liquidated damages provided for herein are the WPWMA's sole monetary remedy for the Areas of Concern and ~~Notices of Violation~~Notice of Violations for which they are assessed.

The above amounts are effective as of July 1, 2022 and may only be adjusted by written agreement between both WPWMA and Contractor.

The liquidated damages set forth in this section shall not apply to such matters caused by any third party, except for matters caused by Contractor's subcontractors. ~~Notwithstanding~~Notwithstanding the above liquidated damages, Contractor shall be responsible to pay any fines or monetary penalties assessed by any regulatory body associated with any Notice of Violation related to ~~the Contractor responsibilities. Materials Recovery Facility and Construction and Demolition Debris Processing Area Operations~~Contractor's operations under this Agreement.

Contractor shall operate the Facility in accordance with the following provisions and as specified elsewhere in this Agreement and as set forth in Exhibit F.

A. Obligation to Process and Recover Recyclable Materials.

Contractor shall operate the Materials Recovery Facility and Construction and Demolition Debris Processing Area for the purposes of sorting and Processing Municipal Solid Waste, Commingled Recyclable Materials, and Construction and Demolition Debris delivered by the Participating Agencies and their Designated Haulers and Publicly Hauled Waste to recover Recyclable Materials for Recycling. Contractor shall use all efforts to divert the maximum amount of such Municipal

Solid Waste, Commingled Recyclable Materials, and Construction and Demolition Debris from land disposal for reuse or Recycling that is commercially feasible.

B. Inert Materials.

Contractor shall deliver Inert Materials recovered by it through Processing at the Materials Recovery Facility and Construction and Demolition Debris Processing Area to the Inert Processing Area at no additional cost to the WPWMA.

C. Alternative Daily Cover

Contractor may produce ~~MRF~~MSW ADC and C&D ADC (collectively "MRF ADC") and deliver to the Landfill for subsequent use, a maximum of one thousand five hundred eighty eight (1,588) Tons per calendar week consistent with any usage limitations identified in the Landfill Operating Agreement between WPWMA and the Landfill operator, and subject to the Landfill operator's daily request for MRF ADC. MRF ADC may not be stored overnight for any reason. For the purposes of this section, the calendar week shall begin on Monday and end on the following Sunday. Any amounts of MRF ADC produced by Contractor in excess of these quantities shall be considered as disposed in the Landfill for the purposes of computing the MSW Guaranteed Minimum Recycling Level and the C&D Guaranteed Minimum Recycling Level. Contractor shall deliver MRF ADC to the Landfill as requested by the Landfill operator. Any Organic fraction of ADC produced by Contractor and used at the Landfill or other landfill shall be considered Disposal for the purposes of determining Contractor's compliance with the Organic Materials Recycling Level identified in Section 5.15.D. Contractor may deliver MRF ADC to other landfills, but only if Contractor produces more MRF ADC than can be used at the Landfill and if use of the MRF ADC at other landfills will qualify as ~~creditable recovery~~Creditable Recovery, pursuant to the Act and SB 1383, to the Participating Agencies. MRF ADC sold or delivered to other landfills shall not be eligible for the incentive payment identified in Section 6.7.A.

Contractor shall not commingle ~~MRF~~MSW ADC with C&D ADC. All MRF ADC shall be weighed and recorded at the Gatehouse separately prior to delivery to

the Landfill or transported offsite to any other landfill. If Contractor produces MRF ADC at the Materials Recovery Facility or the Construction and Demolition Debris Processing Area and sends such material to the Construction and Demolition Debris Processing Area or Materials Recovery Facility, as applicable, for further Processing, such materials shall be treated for all purposes under this Agreement as having been produced at the Materials Recovery Facility, and there shall be no additional credit or Processing Fees owed to Contractor in connection with such further Processing. Contractor shall not be obligated to produce any specific amount of [MRF](#) ADC by reason of the provisions of this Section 5.10.C.

D. Major Appliances

Contractor shall remove and arrange for the Recycling or proper disposal of any material or component that is a regulated Hazardous Waste or Universal Waste from Major Appliances delivered to the Facility. Contractor shall maintain a license as a Certified Appliance Recycler and any other applicable certifications and conduct such activities in an area suited for and identified as an area for such activities on the SWPPP and all other permits. WPWMA reserves the right to utilize an independent third party to manage Major Appliances. If WPWMA elects to utilize an independent third party to manage Major Appliances, Contractor shall cooperate with WPWMA and such third party to facilitate the efficient and safe collection and Recycling of said materials.

E. Used Tires

Contractor shall arrange for the Recycling of used tires recovered from Municipal Solid Waste or Construction and Demolition Debris and/or delivered to the Facility, by any Person, source separated from other materials.

F. Carpet

Contractor shall arrange for the Recycling of carpet and carpet padding recovered from Municipal Solid Waste or Construction and Demolition Debris and/or delivered to the Facility, by any Person, source separated from other materials. Contractor shall utilize bins provided by the Carpet CARE Program for carpet and

carpet padding meeting the program requirements and shall coordinate bin removal and replacement with Carpet CARE. Contractor shall conduct all necessary recordkeeping and furnish to WPWMA monthly. WPWMA will conduct all necessary program reporting. [The If the CARE program becomes unavailable or there are changes to the CARE program fee structure, the](#) WPWMA will reimburse Contractor for its [third-party](#) costs, plus five percent (5%), actually and reasonably incurred for the transport of this material off site for Recycling and for the direct, verifiable and supported costs borne by Contractor for such Recycling.

G. Mattresses

Contractor shall arrange for the Recycling of all mattresses, box springs and futon mattresses that meet the Bye Bye Mattress program standards that are recovered from Municipal Solid Waste or Construction and Demolition Debris and/or delivered to the Facility, by any Person, source separated from other materials. Contractor shall utilize bins provided by the Bye Bye Mattress Program for mattresses and box springs meeting the program requirements and shall coordinate bin placement, removal and replacement with ~~Carpet CARE~~[Bye Bye Mattress](#). Contractor shall conduct all necessary program recordkeeping and furnish to WPWMA monthly. WPWMA will conduct all necessary program reporting. [The If the Bye Bye Mattress program becomes unavailable or there are changes to the Bye Bye Mattress program fee structure, the](#) WPWMA will reimburse Contractor for its [third-party](#) costs, plus five percent (5%), actually and reasonably incurred for the transport of this material off site for Recycling and for the direct, verifiable and supported costs borne by Contractor for such Recycling [and](#).

H. Paint

Contractor shall arrange for the Recycling of all paint products that meet the PaintCare program standards that are recovered from Municipal Solid Waste or Construction and Demolition Debris and/or delivered to the Facility, by any Person, source separated from other materials. Contractor shall utilize bins or containers

provided by the PaintCare Program for paint materials meeting the program requirements and shall coordinate bin placement, removal and replacement with PaintCare. Contractor shall conduct all necessary program recordkeeping and furnish to WPWMA monthly. WPWMA will conduct all necessary program reporting. Half the PaintCare program becomes unavailable or there are changes to the PaintCare program fee structure, the WPWMA will reimburse Contractor for its third-party costs, plus five percent (5%), actually ~~disposal~~ and reasonably incurred for the transport of this material off site for Recycling and for the direct, verifiable and supported costs borne by Contractor for such Recycling.

I. Solar Panels

Contractor shall arrange for the Recycling of solar panels recovered from Municipal Solid Waste, ~~Landfill or~~ Construction and Demolition Debris and/or delivered to the Facility or the Landfill, by any Person, source separated from other materials. The WPWMA will reimburse Contractor for its costs, plus five percent (5%), actually and reasonably incurred for the transport of this material off site for Recycling and for the direct, verifiable and supported costs borne by Contractor for such Recycling.

J. Rated Capacity of Materials Recovery Facility.

The rated capacities of the Materials Recovery Facility, the Construction and Demolition Debris Processing Area and the Organics Processing Area are set forth in Exhibit G— and Exhibit P. In the event that any of the individual rate capacities of the Materials Recovery Facility, the Construction and Demolition Debris Processing Area and the Organics Processing Area are greater in the systems performance test than the capacities set forth in Exhibit G, that additional capacity shall be utilized subject to the provisions of Section 5.5.

Should Contractor demonstrate, after taking into consideration its ability to store and Process materials at a later date, that the amount of Municipal Solid Waste, Commingled Recyclable Materials, Source Separated Green Waste, Source Separated Food Waste, or Source Separated Wood Waste being received at the

Materials Recovery Facility, Construction and Demolition Debris Processing Area or Organics Processing Area during any operating day will exceed the rated capacity of that area and its ability to accommodate such exceedances in its Contingency Plan, Contractor shall notify the WPWMA of this fact in a Timely fashion, and the Parties will confer on appropriate measures to address such circumstances, including the amount and types of materials that may be diverted from the Materials Recovery Facility or Construction and Demolition Debris Processing Area to the Landfill within the Landfill permits. Contractor's proposal identifies 1.5 acres for Organics material receiving, 80,000 square feet for MSW, and 3 acres of inert receiving to meet this performance standard. Contractor shall notify and provide survey mapping and tonnage reports to the WPWMA immediately in the event any of these aforementioned spaces have exceeded 75 percent capacity. The WPWMA shall not cause the Materials Recovery Facility, Construction and Demolition Debris Processing Area or Organics Processing Area to exceed its rated capacity upon receipt of notice from the Contractor as described above. However, the Contractor may request that material continue to be delivered to the Materials Recovery Facility, Construction and Demolition Debris Processing Area or Organics Processing Area should the Contractor decide to carry over material for future Processing. The WPWMA shall not be liable to the Contractor for any damages or loss of revenues or incentive payments (pursuant to Section 6.7.A) suffered by Contractor when materials are diverted from the Materials Recovery Facility, Construction and Demolition Debris Processing Area or Organics Processing Area by the WPWMA in accordance with this section. The diversion of materials from the Materials Recovery Facility, Construction and Demolition Debris Processing Area or Organics Processing Area pursuant to this section shall not relieve the Contractor from fulfilling its obligations under this Agreement including Contractor's obligation to meet the MSW Guaranteed Minimum Recycling Level, the C&D Guaranteed Minimum Recycling Level and Organics Recycling Level.

5.10 Organics Processing Area

Contractor shall operate the Organics Processing Area to produce Compost, mulch, woodchips or any other product that qualifies as Recycled under SB 1383 in accordance with the following provisions and as specified elsewhere in this Agreement, Exhibit F, and in compliance with SB 1383.

Contractor agrees that the existing ~~composting~~ Composting area ~~of approximately 13.5 acres~~ is sufficient to actively Compost One Hundred Forty Four Thousand Four Hundred (144,400) Tons of Green Waste, Food Waste and Municipal Solid Waste Organics combined per year based on inbound Gatehouse tonnages for these materials. For the purposes of this section, “per year” shall mean any twelve consecutive month time period and “actively Compost” shall have the same meaning as “Active Compost” as defined in California Code of Regulations sections 17850 et seq., as it currently exists or is hereafter amended.

The Gatekeeper shall direct to the Organics Processing Area for unloading all incoming Source Separated Green Waste, Commingled Food and Green Waste, Source Separated Food Waste and Source Separated Wood Waste. Contractor shall deliver to this area all Green Waste, Food Waste, Municipal Solid Waste Organics and Wood Waste recovered from Municipal Solid Waste at the Materials Recovery Facility or from Construction and Demolition Debris from the Construction and Demolition Debris Processing Area.

Contractor shall develop and implement a load checking program as required by SB 1383 to prevent the acceptance of Prohibited Container Contaminants. As required by SB 1383, Contractor shall maintain separation between Source Separated Organic Waste processing operations and processing operations for other waste streams. Contractor shall ensure that Remnant Organic Material separated from the gray container collection stream for recovery is only combined with organic material removed from the source separated organic waste collection stream for recovery once the material from the source separated organic waste collection stream has gone through the SB 1383 measurement protocol.

Contractor shall conduct, [in accordance with the provisions of Section 5.15.D of this Agreement](#), all SB 1383 measurement protocols, including measuring Organic Waste in materials removed from the Source Separated Organic Waste collection stream that is sent to the Landfill for disposal, gray container waste evaluations, and measuring Incompatible Materials in recovered Organic Waste.

Contractor shall provide and operate all equipment necessary to Process and Compost Green Waste, Food Waste and Municipal Solid Waste Organics and Process Wood Waste.

Compost and mulch produced at the Facility by Contractor shall be suitable for use as landscaping soil amendments or for different types of applications of a horticultural or agricultural nature. Contractor shall Process Organic Material for use as biomass fuel, soil amendments, mulch, Compost, or feedstock for "waferboard"- type products. No Transformation of any material other than Organic Material is permitted without the prior written consent of the WPWMA. Compost, mulch and wood chips produced by Contractor must qualify for Creditable Recovery and meet any applicable quality requirements specified by CalRecycle or other regulatory agency.

Contractor shall have no obligation to Compost Green Waste, Food Waste and Municipal Solid Waste Organics in excess of One Hundred Forty-Four Thousand Four Hundred (144,400) Tons per year as noted herein if Contractor can demonstrate to WPWMA that there is insufficient capacity at the Facility to actively Compost Green Waste and Food Waste in excess of this amount. [To the extent received Green Waste tonnage exceeds the capacity of the Green Waste Facility, Contractor will grind material and will arrange for loading, transportation and processing at a third-party facility. In such an event, Contractor's tipping fee shall be reduced by 50% and WPWMA shall reimburse Contractor for all third-party transportation and processing costs. The WPWMA shall retain the right to keep the material onsite or direct the material to its desired location. If Contractor is directed by WPWMA to move processed Green Waste to another area of the](#)

Facility for any purpose, Contractor shall have no responsibility for the material beyond the initial transportation to the area designated by WPWMA. Any further handling is the sole responsibility of WPWMA.

Contractor shall Compost all Food Waste and Municipal Solid Waste Organics delivered to the Organics Processing Area, either source separated or recovered from MRF Processing. Contractor shall Compost a minimum of fifty percent (50%) by weight per Operating Year of all ~~Organic Material~~Green Waste delivered to the Organics Processing Area subject to the provisions of the preceding paragraph. Contractor shall weigh all Green Waste, Municipal Solid Waste Organics, and Food Waste recovered from Municipal Solid Waste and Construction and Demolition Debris prior to Contractor delivering such materials to the Organics Processing Area. The weight of Green Waste recovered by Contractor from Municipal Solid Waste and Construction and Demolition Debris shall be added to the total weight of Source Separated Green Waste directed by WPWMA to the Organics Processing Area each Operating Year and shall comprise the total amount of Green Waste and Food Waste deemed delivered to Contractor for Composting for each Operating Year.

The following calculation shall be used to determine Contractor's compliance with the Composting requirement

$$\text{Composted Percentage} = B/A$$

Where: A = Total weight (in Tons) of ~~Organics~~Green Waste delivered to the Organics Processing Facility.

B = Total weight (in Tons) of chipped or ground Organics Green Waste delivered to the ~~compost~~Compost pad for Composting.

Contractor acknowledges that increases and decreases in weight due to misting, the use of other dust suppression methods or other factors may occur and may

cause the same materials to weigh more or less at different times, but that such factors shall not be considered in making the above percentage calculations.

If Contractor desires to add amendments to the materials to be Composted, Contractor shall present a written plan to the WPWMA describing Contractor's proposal in detail, including any technical aspects of the proposal requested by the WPWMA. Contractor shall not add amendments to the materials to be Composted until each of the following conditions is satisfied: (1) receipt of the WPWMA's advance written approval of Contractor's plan, which may be withheld in the WPWMA's sole and absolute discretion, (2) the completion of any required CEQA analysis and review, and (3) the obtaining of any required permit modifications and approvals by the applicable regulatory agencies.

Contractor shall be responsible for marketing or arranging for the beneficial reuse of all Compost, mulch and wood chips produced by Contractor at the Organics Processing Area. [WPWMA may require Contractor to market materials to preferred vendors at the average per ton or per yard sales prices of the previous three \(3\) months.](#)

5.11 Inert Materials Processing Area

Contractor shall receive and Process for Recycling all Inert Materials and soil delivered by Customers, the Landfill contractor or Contractor directly to the Inert Materials Processing Area. Contractor shall establish the location of the Inert Materials Processing Area and shall confine the area to no more than one (1) acre of receiving area and four (4) acres of stockpiling, Processing and Processed materials storage area for a total of five (5) acres. Contractor shall process and market ~~inert materials~~[Inert Materials and soil](#) such that receiving areas, storage areas, processing and marketing areas remain within the space allocated by the WPWMA. Contractor may, if agreed to by the WPWMA, rent additional space annually from the WPWMA, to the extent a mutually agreeable price is agreed upon. Contractor shall be responsible for maintaining a spotter at all times material is received that is within visual and vocal range of the ~~inert material customers~~[Inert](#)

Material and soil Customers. Contractor shall review tonnage and traffic data quarterly and maintain a receiving area greater than the maximum daily traffic count for the applicable season of the year. Inert Materials ~~so Processed shall be deemed Recycled, and therefore recovered by Contractor from Municipal Solid Waste or Construction and Demolition Debris shall~~ count towards Contractor's achievement of the applicable guaranteed minimum recycling level, provided that the delivered material does not contain more than one percent (1%) by volume of Contaminants. Inert Materials delivered to the Inert Processing Area by any Customer other than the Landfill contractor or Contractor and subsequently Processed by Contractor shall count towards Contractor's achievement of the C&D Guaranteed Minimum Recycling Level in so far as the Recycling of said Inert Materials qualify towards achievement of the material diversion requirements of the California Green Building Standards Code, California Code of Regulations, Title 24, Part 11 or applicable CalRecycle regulations.

5.12 Publicly Hauled Waste Tipping Area

Contractor shall operate and Maintain the Publicly Hauled Waste Tipping Area. The Gatekeeper shall direct Publicly Hauled Waste to this area for unloading. Contractor shall place all Municipal Solid Waste and Construction and Demolition Debris received in this area in bins, depending on the final destination of each bin load (e.g., Materials Recovery Facility, Construction and Demolition Debris Processing Area or Landfill). Contractor shall haul the filled bins to the Gatehouse to be weighed and shall then transport the materials to the Materials Recovery Facility, Construction and Demolition Debris Processing Area or Landfill for further Processing or disposal.

5.13 Household Hazardous Waste Program

Contractor shall operate the Household Hazardous Waste Facilities in compliance with all ~~applicable laws~~Applicable Laws, regulations and permits, including:

- a) All applicable provisions of California law, including but not limited to, Article

10.8 of the California Health & Safety Code, commencing with Section 25218;

- b) All applicable regulations issued under the Health & Safety Code, including but not limited to, the regulations of the DTSC codified at 22 CCR Section 67450.25 (Requirements Applicable to Permanent Household Hazardous Waste Collection Facilities Deemed to Have a Permit by Rule);
- c) The authorization to operate issued by the DTSC on March 15, 1996, including the information contained in Part B of the application for standardized permit submitted to the DTSC and referred to in the Notification to the DTSC submitted in February 1996 and any subsequent amendments.

In addition to the foregoing, Contractor shall operate the Household Hazardous Waste Facilities in accordance with the following provisions:

- a) Contractor shall accept Household Hazardous Waste from current residents of Placer County who deliver the materials in quantities below the statutory and regulatory limits on the transportation of Household Hazardous Waste (currently 125 pounds/15 gallons), and who provide evidence that the materials are only Household Hazardous Waste (i.e., are of only residential origin). Contractor shall accept larger quantities/volumes if the ~~eustomer~~Customer appears to have unknowingly transported more than what was allowed in Health & Safety Code Section 25218.5.1 so as to decrease the likelihood that the transportation limit is exceeded or the material is unlawfully disposed.

Contractor shall accept Hazardous Waste from CESQGs, which was generated within Placer County within the limits specified by law, currently 100 kilograms from any one CESQG in a calendar month.

Contractor shall not accept any extremely Hazardous Waste from a CESQG.

- b) Contractor shall accept Household Hazardous Waste from current residents of Sacramento County and any other non-Placer County municipality as directed by WPWMA and who deliver the materials in quantities below the statutory and regulatory limits on the transportation of Household Hazardous Waste (currently 125 pounds/15 gallons), and who provide evidence that the materials are only Household Hazardous Waste (i.e., are of only residential origin). Contractor shall accept larger quantities/volumes if the ~~customer~~Customer appears to have unknowingly transported more than what was allowed in Health & Safety Code Section 25218.5.1 so as to decrease the likelihood that the transportation limit is exceeded or the material is unlawfully disposed.
- c) The Household Hazardous Waste Facilities shall be open for collection of Household Hazardous Waste delivered by residents of the Participating Agencies and CESQGs whose business is located within ~~the~~ one of the Participating Agencies. The Household Hazardous Waste Facility at the Publicly Hauled Waste Tipping Area shall be open for the collection of Household Hazardous Wastes as identified in Section 5.3.

Although devices containing CRTs and other Electronic Waste and Major Appliances that contain materials or components classified by the DTSC as Universal Waste or Hazardous Waste shall be Processed as a Hazardous Waste by Contractor, Contractor acknowledges that the WPWMA may charge a separate Gate Fee for these items, and that Contractor shall be responsible for accepting these items during the hours the Facility is open for the receipt of materials as identified in Section 5.3.

Contractor shall arrange for the off-site Recycling of all Household Hazardous Waste which must be Recycled under Health & Safety Code Section 25175 and 22CCR Section 66266. Contractor shall dispose of, or arrange for the disposal of, all non-recyclable Household Hazardous Waste in compliance with all [applicable laws](#)Applicable Laws and regulations. Specifically, all non-recyclable Household Hazardous Waste which is required to be incinerated by Health & Safety Code Section 25155.5, and all other Household Hazardous Waste which may feasibly be incinerated, shall be incinerated. Remaining Household Hazardous Waste shall be (1) neutralized or (2) disposed of at a permitted Class I Hazardous Waste disposal site, in that order of priority.

All Household Hazardous Waste which is transported off-site from the Household Hazardous Waste Facilities shall be transported by Department of Health Services registered Hazardous Waste haulers which have been determined by Contractor to meet the training, financial responsibility and other requirements of the Health & Safety Code. Contractor shall solicit competitive bids from responsible, fiscally sound, adequately insured and properly licensed/permitted Hazardous Waste contractors for this service at least once every two (2) years. Copies of the bids will be furnished to the WPWMA. Unless there is an overriding reason, in which the WPWMA concurs, Contractor will use the low bidder for transport and disposal of Household Hazardous Waste.

Contractor shall complete, provide to the hauler, and maintain copies of applicable Hazardous Waste manifests for all Household Hazardous Waste transported from the Household Hazardous Waste Facilities. The WPWMA may be identified as the generator of the Household Hazardous Waste for manifest purposes.

Contractor shall furnish a monthly report to WPWMA consistent with Section 5.23 showing the amount of each type of Household Hazardous Waste delivered by each Customer, separately by city. Contractor shall provide a monthly report identifying the quantities (in pounds) and disposal method of each material transported from the Household Hazardous Waste Facilities. Contractor shall also

provide the name and address of the disposal site for each material to the extent available from the Hazardous Waste hauler.

Contractor shall operate a Reuse Program as shown on Exhibit H-1. Contractor shall obtain a waiver of liability, substantially in the form of Exhibit H-2, from all Persons taking reusable Household Hazardous Waste materials from the Household Hazardous Waste Facilities.

5.14 Buyback/Dropoff Center

Contractor shall operate the Buyback/Dropoff Center. The purpose of the Buyback/Dropoff Center is to receive, Process and then market (1) Recyclable Materials delivered to the Facility by members of the public which have been separated prior to entering the Facility; (2) Recyclable Materials, other than Commingled Recyclable Materials, collected through Recycling programs operated by the Participating Agencies and their Designated Haulers; (3) Recyclable Materials delivered by commercial recyclers, and Recyclable Materials, other than Commingled Recyclable Materials, received from outside of the Primary Service Area pursuant to Section 5.5.

Contractor shall accept at least the following materials at the Buyback/Dropoff Center:

- Newsprint
- Glass bottles, jars and other beverage containers
- Aluminum, Tin and other metals
- Corrugated cardboard
- High grade office paper, mixed paper and paper board
- Plastics (PET, HDPE and any plastic container with a California Redemption Value)

Contractor shall pay prices as required by CalRecycle for any material with a California Redemption Value or that are comparable to market prices for these

materials delivered in comparable quantity and quality within Placer County, or if no such comparison exists in Placer County, within Sacramento County. If any such material has no market value, Contractor need not pay for such material, but shall nonetheless accept it and may not charge a fee for so doing. Disposal of any materials received and accepted by Contractor at the Buyback/Dropoff Center in a landfill, including the Landfill, is strictly prohibited.

Contractor may refuse to accept any such materials delivered by commercial Recyclers and/or may charge a fee for accepting them.

5.15 Guaranteed Minimum Recycling Levels

A. MSW Guaranteed Minimum Recycling Level

From the Effective Initial Commencement Date until Substantial Completion of the Facility Expansion, Contractor shall Recycle for Creditable Recovery not less than twenty two percent (22%) by weight of all Municipal Solid Waste received at the WPWMA Site regardless of whether or not it is directed to the Facility for Processing. Following Substantial Completion of the Facility Expansion, Contractor shall Recycle for Creditable Recovery not less than sixty percent (60%) by weight of all Municipal Solid Waste received at the WPWMA Site regardless of whether or not it is directed to the Facility for Processing. This recovery percentage is referred to as the MSW Guaranteed Minimum Recycling Level (“GMRL”). If Facility does not achieve fifty-eight percent (58%) diversion or higher within six (6) months after Substantial Completion, despite all commercially reasonable efforts by Contractor, then the Parties shall convene, in good faith, to temporarily modify, in writing, the GMRL for a period of one hundred eighty (180) days to allow Contractor time to design, construct and install at Contractor’s sole cost any necessary upgrades to processing equipment and infrastructure. MRF ADC produced by Contractor from Municipal Solid Waste at the Materials Recovery Facility and subsequently used at the Landfill or another landfill, in accordance with Section 5.10.C, shall only count towards Contractor’s achievement of the MSW Guaranteed Minimum Recycling Level if permitted by Applicable Law, including SB

1383. Contractor's achievement of the MSW Guaranteed Minimum Recycling Level will be calculated on a quarterly basis with the first quarter beginning on the first day of each Operating Year. The calculation will be as shown on Exhibit I.

B. C&D Guaranteed Minimum Recycling Level

From the Effective Initial Commencement Date until Substantial Completion of the Facility Expansion, Contractor shall Recycle for Creditable Recovery not less than fifty percent (50%) by weight of all Construction and Demolition Debris ~~and qualifying Inert Materials~~ received at the WPWMA Site regardless of whether or not it is directed to the Facility for Processing. Following ~~final completion~~ Substantial Completion of the Facility Expansion, Contractor shall Recycle for Creditable Recovery not less than sixty-five (65%) by weight of all Construction and Demolition Debris received at the WPWMA Site regardless of whether or not it is directed to the Facility for Processing. If Facility does not achieve sixty-one and three quarters percent (61.75%) diversion or higher within six (6) months after Substantial Completion, despite all commercially reasonable efforts by Contractor, then the Parties shall convene, in good faith, to temporarily modify, in writing, the GMRL for a period of one hundred eighty (180) days to allow Contractor time to design, construct and install at Contractor's sole cost any necessary upgrades to processing equipment and infrastructure. This recovery percentage is referred to as the C&D Guaranteed Minimum Recycling Level. MRF ADC produced at the Construction and Demolition Processing Area and originating from Construction and Demolition Debris by Contractor and subsequently used at the Landfill or another landfill, in accordance with Section 5.10.C, shall count towards Contractor's achievement of the C&D Guaranteed Minimum Recycling Level if permitted by Applicable Law, including SB 1383. Contractor's achievement of the C&D Guaranteed Minimum Recycling Level will be calculated on a quarterly basis with the first quarter beginning on the first day of each Operating Year. The calculation will be as shown on Exhibit I.

C. Changes to the Guaranteed Minimum Recycling Levels

Contractor warrants and represents that Contractor believes it will be able to satisfy its obligations under this Agreement, including achieving the recovery of sufficient quantities of Recyclable Materials for Creditable Recovery to satisfy the MSW Guaranteed Minimum Recycling Level and C&D Guaranteed Minimum Recycling Level requirements hereof, based on Contractor's inspection of the character of the Municipal Solid Waste, and Construction and Demolition Debris ~~and Inert Material~~ streams ~~at the Substantial Completion of the Facility Expansion~~.

Contractor further represents and warrants that it has performed an independent analysis of the present Municipal Solid Waste, and Construction and Demolition Debris ~~and Inert Material~~ streams received at the WPWMA Site, and based on such independent investigation believes it can achieve the MSW Guaranteed Minimum Recycling Level and C&D Guaranteed Minimum Recycling Level by recovering from each material category comprising the current Municipal Solid Waste, and Construction and Demolition Debris ~~and Inert Material~~ streams the estimated percentage quantities shown in Exhibit J.

The MSW Guaranteed Minimum Recycling Level or C&D Guaranteed Minimum Recycling Level may be adjusted only where a new waste characterization study is conducted which shows that the Municipal Solid Waste stream and/or Construction and Demolition Debris stream delivered to the WPWMA Site has materially changed and that as a result thereof a different MSW Guaranteed Minimum Recycling Level or C&D Guaranteed Minimum Recycling Level should be imposed on Contractor. WPWMA shall conduct a waste characterization study if an SB 1383 waste composition or similar study is conducted by a Participating Agency which demonstrates a material change in that Participating Agency's waste composition as determined by WPWMA in its reasonable discretion. WPWMA may conduct a waste characterization study if substantial information is provided demonstrating a material change in the waste composition as determined by WPWMA in its reasonable discretion. This is meant to cover significant changes

made by Participating Agencies or haulers that materially change the waste stream.

Contractor may also request new waste characterization studies if the WPWMA or one of the Participating Agencies proposes to implement a new Recycling program which may cause the composition of the Municipal Solid Waste or Construction and Demolition Debris delivered to the WPWMA Site to materially vary. If the WPWMA or one of the Participating Agencies does, after the [Effective/Initial Commencement](#) Date of this Agreement, propose to implement a new Recycling program, then the WPWMA shall notify Contractor of the proposed new Recycling program and confer with Contractor over whether such new Recycling program may materially vary the composition of the Municipal Solid Waste or Construction and Demolition Debris delivered to the WPWMA Site.

If Contractor agrees that the new Recycling program should not cause a material variance in the composition of the Municipal Solid Waste or Construction and Demolition Debris being delivered to the WPWMA Site, then no waste characterization study shall be necessary and Contractor may not subsequently request any adjustment in the MSW Guaranteed Minimum Recycling Level or C&D Guaranteed Minimum Recycling Level based on the perceived effects of this Recycling program.

However, if Contractor believes that the new Recycling program may cause a material variance in the Municipal Solid Waste or the Construction and Demolition Debris delivered to the WPWMA Site, Contractor may, but only within thirty (30) days of receiving notice of the new Recycling program from the WPWMA, request in writing that new waste characterization studies be conducted both immediately before and [within four \(4\) months](#) after the new Recycling program is implemented. Unless Contractor requests new waste characterization studies as provided herein, the Contractor shall thereafter waive its right to seek an adjustment in the MSW Guaranteed Minimum Recycling Level or C&D Guaranteed Minimum

Recycling Level based on the Recycling program referred to in the WPWMA's notice to Contractor.

Waste characterization studies, if requested by either Party in accordance with this section, shall be performed by a Firm which is acceptable to both Parties and shall be conducted in accordance with the protocols described in Exhibit K. The costs of the studies shall be shared equally by WPWMA and Contractor. WPWMA shall pay for the costs related to hiring and compensating the Firm. Contractor shall be responsible for all other costs related to conducting the studies including, but not limited to, providing the labor and equipment necessary to conduct the studies. In addition, Contractor may not submit a ~~claim~~Claim and/or request for compensation of any form, including Processing Fees, for Municipal Solid Waste or Construction and Demolition Debris that would normally be directed to the Materials Recovery Facility or Construction and Demolition Debris Processing Area for Processing but was instead sent directly to the Landfill as provided in the protocols described in Exhibit K.

After the waste characterization studies described in this section have been completed, WPWMA shall deliver copies thereof to Contractor. The Parties shall meet to discuss whether the composition of the Municipal Solid Waste or the Construction and Demolition Debris stream has materially changed.

A change in the Municipal Solid Waste or Construction and Demolition Debris stream shall not be considered material unless the total quantity, in Tons, of Recoverable Materials delivered to the WPWMA Site has changed by more than 1% by weight by virtue of implementation of the new Recycling program. The market value of Recoverable Materials and their ease of recovery shall not be considered factors in determining the materiality of a change in the Municipal Solid Waste or Construction and Demolition Debris stream.

If the change in either the Municipal Solid Waste or Construction and Demolition Debris stream has been determined to be material, the MSW Guaranteed Minimum

Recycling Level or the C&D Guaranteed Minimum Recycling level shall be adjusted up or down by the following formula:

New Guaranteed Minimum Recycling Level = Old Guaranteed Minimum Recycling Level + % change in total Recoverable Materials delivered to the WPWMA Site.

If the Parties are unable to agree on one or more of the matters that are required to be discussed between them by reason of the provisions of the immediately preceding paragraph of this section, then at the request of either Party the matter shall be submitted for determination by the WPWMA Board at a public hearing on the matter. The decision of the WPWMA Board shall be final and binding on the Parties. Moreover, in no event may the MSW Guaranteed Minimum Recycling Level or the C&D Guaranteed Minimum Recycling Level be reduced below those amounts required by Applicable Law.

D. Organic Material Recycling Level

Contractor shall operate the Facility to meet the applicable requirements of SB 1383, which are incorporated by this reference, including but not limited to the minimum Recycling percentages of Organic Materials for a High Diversion Organic Waste Processing Facility which shall be governed in accordance with SB 1383. To demonstrate that the ~~facility is~~Facility is in compliance with the requirements of SB 1383, including its designation as a High Diversion Organic Waste Processing Facility, ~~the Contractor, if reasonably requested by WPWMA in writing, shall engage an independent third-party acceptable to the WPWMA, in its reasonable discretion in which acceptance shall not be unreasonably withheld, who~~ shall conduct all necessary sampling and reporting as required by SB 1383. Contractor shall be responsible for the reasonable and necessary costs of such sampling and reporting, and shall not seek or be granted additional compensation or reimbursement from WPWMA. Contractor's compliance with the applicable requirements of SB 1383 will be calculated on a quarterly basis with the first quarter beginning on the first day of each Operating Year.

5.16 Transportation

Contractor shall transport and deliver to the Landfill all Residuals that are not Recycled, Transformed or Composted. Contractor shall transport and deliver to the appropriate location consistent with the terms and conditions of this Agreement (or arrange for the transportation and delivery of) all Recyclable Materials, all Municipal Solid Waste, Commingled Recyclable Materials, and Construction and Demolition Debris that is Recycled, all Compost, mulch and wood chips produced at the Facility, all MRF and C&D ADC, and any other materials that Contractor is required to remove from the Facility pursuant to this Agreement. Contractor shall transport and deliver (or arrange for the transportation and delivery of) Hazardous Waste (including Household Hazardous Waste) and other materials which cannot legally be accepted at the Landfill to an appropriately permitted disposal facility or otherwise cause such materials to be Recycled or disposed of lawfully. The frequency of deliveries and routes over which vehicles travel to affect this transport and delivery shall be selected to minimize environmental impacts, inconvenience and disturbance to the public and shall be subject to the approval of the WPWMA.

Contractor shall use due care to prevent Residuals, Recyclable Materials, MRF ADC and Hazardous Waste (including Household Hazardous Waste) from being spilled or scattered during transport. All vehicles hauling materials from the Facility shall be enclosed or have other appropriate covering as approved by the WPWMA. If any Residuals, Recyclable Materials, MRF ADC or Hazardous Waste (including Household Hazardous Waste) is spilled, Contractor shall immediately clean up all spilled materials, whether on private or public property.

No materials which have been recovered at the Facility for Recycling, no Recyclable Materials delivered to the Facility, and no Compost, mulch or wood chips produced at the Facility may be disposed of on land, in the water, or in the atmosphere without the prior written consent of the WPWMA. The sale or delivery of Processed wood for use as a boiler fuel, the lawful use of Compost or mulch as a soil amendment or soil supplement, or the lawful use of MRF and C&D ADC or [compost](#) [Compost](#) at the Landfill or any other landfill shall not be considered

"disposed of on land" for purposes of this section when handled in accordance with Applicable Law and the Facility SWPPP.

Except if specifically permitted to the contrary by any other provision of this Agreement, no materials of any kind may be disposed of on land at any location other than the Landfill.

If due to an event of Uncontrollable Circumstance as provided in Section 9.20, the Landfill is not operating or otherwise is not capable of accepting Waste during its normal hours of operation that is required by this Agreement to be disposed of thereat, and if there is then inadequate storage at the Facility including any and all trucks, trailers and bins owned by Contractor, WPWMA shall direct Contractor to transport and deliver all Waste that is not Recycled, Transformed or Composted to such other location at which it can be disposed of lawfully as directed by the WPWMA. Contractor will be entitled to reimbursement for the additional documented costs of such transportation and disposal, except any compensation to which Contractor is so entitled from the WPWMA shall be offset by all compensation, if any, that may be received by Contractor for such materials from one or more third Persons.

5.17 Operations During Improvement of the Facility

Contractor has been ~~or will be~~ engaged under separate agreement with the WPWMA to provide design, engineering and construction services for the Facility Expansion. Under this separate agreement Contractor and its team members will be designing and constructing the Facility Expansion.

Contractor acknowledges that (1) the construction of the Facility Expansion may have significant adverse effects on Contractor's ability to perform the services required by this Agreement during the course of construction and may decrease Contractor's efficiency in operating, and that some of these impacts may not be foreseeable; and (2) that the Processing Fees to be paid Contractor under this Agreement reflect all such foreseen and unforeseen adverse impacts on Contractor's operations and performance, whether caused by the alleged

negligence or fault of the WPWMA or the company engaged by Contractor and its subcontractors to construct the Facility Expansion. Contractor shall not be entitled to any increase in its Processing Fees, or to any damages from the WPWMA or its other contractors or their subcontractors, for any adverse effects on Contractor's operations or performance caused by or relating to the construction of the Facility Expansion, except to the extent any such damage, delay or hindrance to Contractor's operations or performance is solely caused by WPWMA or ~~its~~WPWMA's other contractors or their subcontractors (if any). Contractor shall cooperate with any company or companies engaged by the WPWMA during the construction of the Facility Expansion.

5.18 Systems Performance Test

Since Contractor shall be responsible for the design and construction of the Facility Expansion, Contractor shall be responsible for assuring the WPWMA that the Facility Expansion shall perform as represented by passing a systems performance test established by Contractor and approved by WPWMA.

Contractor shall cause the Facility Expansion to pass the systems performance test within ninety (90) days ~~of~~after the completion of the Facility Expansion Completion Date. For the purposes of this Section, the Facility Expansion completion date shall be no later than July 31, 2026. For each thirty (30) day period after the systems performance test deadline for Contractor to complete the systems performance test that the Facility does not pass the systems performance test, the Processing Fees paid to Contractor shall be reduced by One Hundred Fifty Thousand Dollars (~~\$400,000~~150,000) per thirty (30) day period. This reduction in Contractor's Processing Fees shall be pro-rated should the Facility Expansion pass the systems performance tests during any given thirty (30) day period. Notwithstanding the foregoing, Contractor shall cause the Facility Expansion to pass the systems performance test no later than December 31, 2026. Successful completion of the systems performance test shall occur at or prior to Substantial Completion.

5.19 SB 1383 Sampling Requirements

SB 1383 Section 170409.5.5. measuring Organic Waste in materials removed from source separated Organic Waste collection stream for disposal also requires quarterly sampling of inbound source separated organic waste feedstock. The Contractor shall follow the sampling and reporting protocol outlined for mixed waste collection system to meet requirements of SB 1383. The Contractor shall use the following protocol to determine the amount of Organic Materials removed from source separated Organic Waste collection stream after processing that is sent for disposal.

For each reporting period, the contractor shall perform the sampling protocol over ten (10) consecutive operating days. On each sampling day, the Contractor shall take on sample of at least two hundred (200) pounds of the material removed from source separated Organic Waste collection stream at the operation or facility on that operating day prior to sending to disposal. Each sample shall be:

- A.) Representative of a typical operating day; and
- B.) A random, composite sample taken either from various times during the operating day or from various locations within the pile(s) of material that will be sent to disposal

Contractor shall record the total weight of the sample and remove ~~incompatible material~~Incompatible Material to determine the remaining weight of the organic waste in the sample. Then the Contractor will determine the ratio of Organic Waste present in the material removed from the source separated Organic Waste collection stream for disposal by dividing the total weight of remaining Organic Waste in the sample by the total weight of the sample. Contractor shall then determine the total weight of Organic Waste removed from the source separated organic waste collection stream that is sent to disposal by multiplying the ratio by the total weight of the materials removed from the source separated Organic Waste collection stream for disposal.

Contractor shall report sampling data and estimate of the total Organic Material sent for disposal to the WPWMA at the end of each reporting period

5.20 Procurement and Ownership of Vehicles, Machinery and Equipment

Contractor shall provide and Maintain all vehicles, machinery pavements, roads, canopies, lights, light standards, signage, power, water systems, sewer, storm drains, ponds, blowers, piping, data, conduits, foundations, buildings, grading, paving, striping, fire suppression, security and security cameras, access control systems, fences, pest control and abatement systems, landscape and irrigation, cleaning supplies, PPE and other equipment necessary for performing its obligations in this Agreement and providing the work space for the WPWMA to perform its obligations, unless noted otherwise. Contractor shall develop and maintain a spare parts list, keep these spare parts on hand and provide the back-up equipment to the equipment it uses regularly at the Facility as necessary to insure complete and uninterrupted operations of the Facility and as described in the MRF Downtime Report requirements of Section 5.23. All machinery and equipment provided by Contractor must be suitable in design and construction for arduous heavy-duty service at a solid waste transfer station operation. All such machinery and equipment shall be either in new or in "like new" condition when originally purchased, leased or otherwise procured by Contractor. All such machinery and equipment shall comply with all Applicable Laws and regulations.

The WPWMA shall have the right, but not the duty, to purchase any or all of Contractor's Equipment that are owned by Contractor at the expiration or earlier termination of this Agreement. The WPWMA's Option may be exercised by the WPWMA's delivery to Contractor of an appropriate written notice which is received by Contractor on or before the end of the Term or up to the date of any earlier termination, as may be applicable.

Contractor shall be responsible throughout the Term of the Agreement, inclusive of any and all extensions to the Term as contemplated in Section 4.3, for all costs related to the repair or replacement of all machinery and equipment necessary for

performing its obligations in this Agreement, including any and all equipment installed as part of the Facility Expansion, regardless of whether or not WPWMA initially paid for any such equipment.

5.21 Personnel

Contractor shall furnish qualified competent and properly licensed, certified and trained drivers and maintenance, supervisory, clerical, laborers and other personnel in sufficient numbers to perform the work required by this Agreement (including the continued and uninterrupted operation and Maintenance of the Facility and the transfer of Residuals and MRF ADC to the Landfill and Recyclable Materials to market) in a safe and efficient manner.

The minimum training by department shall include, for all shift supervisors, department heads, and all staff in the supervisory chain in between those two positions:

1. MRF and C&D: SWANA Certified Transfer Station Manager, SWANA Integrated Solid Waste Management Systems, 40-Hr HAZWOPER
2. Maintenance: PEMAC Certified Asset Management Professional, IFMA Certified Facility Manager
3. HHW: SWANA HHW and CESQG Operations, 40-Hr HAZWOPER
4. Composting: SWANA Certified Compost Manager

Contractor shall staff the Facility in accordance with Contractor's staffing plan in Exhibit F and shall not materially deviate from said staffing plan (including but not limited to any deviation from the total proposed staffing of the Facility at any stage of operations) by reducing the staffing identified by Contractor in Exhibit F by more than fifteen percent (15%) without the prior written consent of the WPWMA.

In the event that any Contractor employee neglects to properly serve any Customer or WPWMA personnel in a courteous and efficient manner, or fails to conduct operations at the Facility in compliance with this Agreement, or permits or causes any other violation of this Agreement, Contractor shall, upon receiving

notice from the WPWMA, replace such ~~person~~Person within a reasonable time (not to exceed 15 days) with a competent and trained employee.

5.22 Reporting

Contractor shall submit complete, concise, accurate and Timely reports per the requirements and schedules described below and as required by SB 1383.

A. Immediate Reports

1) Special Occurrence Notification

Contractor shall deliver to WPWMA, via electronic mail to reports@wpwma.ca.gov (or other suitable location as WPWMA may later provide), a summary of any and all Special Occurrences within 24 hours of occurrence unless the Special Occurrence was or included a Facility Fire, in which case Contractor shall deliver the Special Occurrence summary via email or text within two (2) hours of occurrence. Contractor's notification shall list the date, time of detection, end time of the event, a description of the event, a copy of a recent aerial map with the location of the event marked on the map, a description of the actions taken by Contractor or others to control the event, employee and ~~customer~~Customer injuries, property damage and apparent environmental impact (if any). Contractor shall report deaths ~~or,~~ near misses (incidents where property or personal damage was minimal but where, given a slight shift in time or position, damage and/or injury could have been significant) ~~promptly,~~ within one hour of the event, seven (7) days a week, twenty four (24) hours a day, to the WPWMA representative(s).

2) Notice of Inspection, Concern, Complaint, or Violation

Contractor shall deliver to WPWMA, via electronic mail to reports@wpwma.ca.gov (or other suitable location as WPWMA may later provide), a notification of any inspection, concern, complaint or violation Contractor receives for the Facility or operation within 24 hours of receiving the notice itself.

B. Monthly Reports

1) Monthly Facility Operations Report

By the fifteenth (15th) day of each month, concurrently with submitting the Application for Payment, Contractor shall submit a comprehensive report including:

- a) The Tonnage of Wastes received sitewide, tabulated and graphed in juxtaposition to tonnage Processed via each Facility component (ie. MSW MRF, C&D MRF, Organics Processing Area, Inert Area, Landfill, and MRF sewer discharge), each indicating the daily tonnage relation to the system daily capacity.
- b) The Tonnage of Recyclable Materials delivered to the Buyback/Dropoff Center during the previous month by (1) the Participating Agencies and their respective Designated Haulers, with amounts from each jurisdiction shown separately;
(2) residents of each of the Participating Agencies; (3) other Persons.
- c) The Tonnage of Recyclable Materials recovered by Contractor from Municipal Solid Waste.
- d) The Tonnage of Recyclable Materials recovered by Contractor from Construction and Demolition Debris.
- e) The tonnage of Recyclable Materials sold during the previous month by type and grade and the total revenue received from the sale thereof.
- f) The tonnage of Recyclable Materials given away without charge to third Persons for reuse, or for which a disposition cost was paid, and the total amount (if any) paid out.
- g) Equipment uptime and breakdown reports for both WPWMA equipment and Contractor's ~~equipment~~ [Equipment](#) to the extent not required to be made available by Contractor to the WPWMA continuously via the SCADA system.
- h) The tonnage of Source Separated Green Waste, Source Separated Food Waste, Commingled Food and Green Waste, Source Separated Wood

Waste, and Inert Materials delivered to the Facility during the previous month by (1) the Participating Agencies and their respective Designated Haulers, with amounts from each jurisdiction shown separately; (2) residents of each of the Participating Agencies; (3) other Persons;

- i) The Tonnage of Green Waste, Wood Waste and Food Waste recovered by Contractor from Municipal Solid Waste and Construction and Demolition Debris delivered to the Organics Processing Area.
- j) The tonnage of Green Waste, Wood Waste and Food Waste Processed by Contractor during the previous month by type and grade.
- k) The Tonnage of Processed Green Waste, Wood Waste and Food Waste sold during the previous month by type and grade and the total revenue received from the sale thereof.
- l) The Tonnage of Processed Green Waste, Wood Waste and Food Waste given away without charge to third Persons for reuse, or for which a disposition cost was paid, and the total amount (if any) paid out.
- m) The volume of (in cubic yards) and Facility area encumbered by (in acres) unprocessed organic materials, in-process materials (under aeration and curing reported separately), and resultant products ready for sale.
- n) Equipment uptime and breakdown reports for both WPWMA equipment and Contractor's [equipment](#) [Equipment](#), temperatures, turn logs, over temperature or fire monitoring and response information to the extent not required to be made available by Contractor to the WPWMA continuously via the SCADA system.
- o) Daily tonnage totals for Illegally Dumped Waste cleanup activities reported separately for this Agreement.

2) Month HHW Facility Report

- a) The quantities of HHW delivered to the Facility during the previous month by

(1) the Participating Agencies and their respective Designated Haulers, with amounts from each jurisdiction shown separately; (2) residents of each of the Participating Agencies; (3) other Persons;

The quantities of the above materials recovered by Contractor from Municipal Solid Waste and Construction and Demolition Debris and returned from the Landfill and delivered to the HHW area;

- b) The quantities of the above materials processed during the previous month by type and grade tabulated in a format and ordered identical to the online reporting tool used by HHW 303 reports required by law, with the same units of measure included in the reporting tool and other formats as requested by WPWMA;
- c) The quantities of the above materials marketed for reuse during the previous month by type and grade and the total revenue received from the sale thereof; and
- d) The disposal costs for the above materials.

C. Quarterly Reports

On or before the 15th of the month following the end of the quarter, Contractor shall submit a comprehensive report for all Facility operations with the following additional information:

- a) An executive summary outlining the successes and challenges experienced in the quarter.
- b) Quarterly recovery rates compared to the ~~annual~~ GMRL and the performance achieved in the prior three (3) consecutive quarters.
- c) Number of staff, presented in full-time equivalents for internal and contract staff, separately, used to achieve the operational results of the current prior three (3) consecutive quarters and a comparison to the Staffing Plan in Exhibit F or prior WPWMA approved deviations therefrom, including a list of all subcontractors used and their DIR registration number.

- d) A revised organization chart with contact information and functional job title, a summary of staff credentials, and summary of staff training received during the quarter
- e) A summary of Special Occurrences, Areas of Concern or Notices of ~~Violation~~Violations, regulatory agency Inspection Reports, awards or complaints.
- f) A summary of sampling of Organic Waste ~~recovery efficiency~~Recovery Efficiency as required by SB 1383.

D. Marketing Reports

Contractor shall submit within its transition plan a summary of commodity sales, a report on the successes and shortcomings of the prior Marketing Plan and a plan for marketing of Recyclable Materials for the forthcoming quarter. Each such Marketing Report shall include the following:

- a) Quantities: estimated quantities of Recyclable Materials in each of the following categories which Contractor expects to process for marketing during the pertinent quarter: Newsprint, Glass, Aluminum, Ferrous Metals, Corrugated Cardboard, High Grade Office Papers, Mixed Papers, PET Plastics, HDPE Plastics, Film and mixed plastics, Electronics, Compost, Alternative Daily Cover, Products derived from Wood Waste, any other materials Contractor successfully marketed over the previous quarter
- b) Prices: estimated unit sales prices and total sales revenue for each category.
- c) Summary of Prior Promotion Strategy and Marketing Results: an assessment of the influence Contractor's advertising and sales promotion strategy had on its markets and a summary and total of the labor charges and expenses incurred to complete the prior quarter's marketing efforts.
- d) Summary of Prior Recovery and Sales Results: quantities of materials in each of the foregoing categories Recycled and marketed during the prior quarter and the total sales revenue for each category.
- e) Explanation of the differences between the prior quarter marketing plan and

actual performance.

- f) Upcoming quarter Promotion Strategy and Marketing Plan and budget.
- g) Evidence of Purchase/Recycled End Use. Contractor shall submit a certificate of end use from each purchaser of Recyclable Materials and from Persons to whom the Recyclable Materials have been transferred without payment, establishing that the materials have in fact been Recycled. Contractor shall furnish copies of all such certificates to the WPWMA. The WPWMA may direct Contractor to discontinue use of a recipient of Recyclable Materials (e.g., Recycler, Recycling facility, materials broker, or end user) if the WPWMA determines that such Person is disposing of the Recyclable Materials or otherwise improperly processing them or has been found to be in material violation of a law or regulation in its operations.

E. Annual Reports

1) Annual Asset Management Report.

Contractor shall submit to the WPWMA on or before February 15 of each year, a summary of Contractor's efforts to maintain the life of WPWMA assets and estimate their remaining life. Each such report shall be based on the prior calendar year and include the following:

- a) A complete list of all WPWMA assets with its asset management system tag, maintenance schedule summaries, maintenance performed and equipment breakdown summaries by system and asset for the year.
- b) A list of any part costing over \$500 (including shipping) that was replaced to keep equipment operational, the approximate cost rounded to the nearest \$1,000, the approximate shipping time or any factors indicating how readily available the part was or is expected to be.
- c) An updated Spare Parts List of parts Contractor is keeping on hand to minimize overall WPWMA equipment downtime.
- d) A narrative indicating any updates to the preventative maintenance plan included in the Asset Management System.
- e) A list of WPWMA equipment added to or removed from the Asset Management System.

F. Periodic Plan or Report Updates

1) Operating and Maintenance Manuals.

Contractor shall prepare and deliver by the date of Substantial Completion of the Facility Expansion to the WPWMA both in hardcopy and electronic formats, one operating and maintenance manual that covers (1) the Materials Recovery Facility, (2) the Construction and Demolition Debris Processing Area, (3) the Organics Processing Area, (4) the Publicly Hauled Waste Receiving Area, (5) the Inert Processing Area, (6), the Buyback/Dropoff Center, and (7) the Household

Hazardous Waste Facilities. The manual shall cover all phases of normal operation, cleaning and Maintenance, with Maintenance and cleaning schedules and parts lists, and also include procedures for operation at start-up, shut-down, peak capacity periods, and during emergencies and shall include detailed descriptions related to:

- a) Information on operation of all machinery and equipment in sufficient detail so that all such machinery and equipment can be operated in a safe and efficient manner by the WPWMA or a third-party retained by the WPWMA;
- b) Detailed description of procedures to be followed in emergencies which can be anticipated to be encountered in conjunction with the Facility's operations;
- c) Machinery and equipment cleaning and maintenance procedures and schedules for each piece of machinery and equipment in accordance with the applicable manufacturer's recommendations, if any.
- d) Space Utilization Plan for indoor and outdoor areas the Contractor intends to use that maps the areas on a plan view map, outlines the total area, lists the length, width and height of the materials and machinery encompassed in that area, the access points (lanes, widths, fire lanes), current or proposed signage, describes the activities conducted therein and, if intermittent, the thresholds for operation (i.e. when tonnage reaches a number, or weekends, etc.), expected throughput and other operational data the WPWMA may require to understand the Contractor's proposed traffic flow, use of the Facility, impacts to safety and reliability, degree of planning and value of the work area to the Contractor. The WPWMA will review these plans to determine the potential impact of WPWMA projects on Contractor's operation for the upcoming year and predict the impact of the Contractor's operation on the lifespan of WPWMA owned improvements and any obligation the WPWMA may have to recondition or replace the improvements. The WPWMA will review

and submit written comments to the Space Utilization Plan within 30 days of submittal or it shall be deemed approved.

Contractor shall review the manual annually and revise, as necessary, to reflect current operating procedures. Contractor shall remit updated copies of the manual by July 1 of each new Operating Year in electronic format that clearly identifies any revisions made to the document(s).

Contractor shall operate and maintain the Facility, machinery and equipment in accordance with its current manual. In the event of any inconsistency between the manual and this Agreement, this Agreement shall control.

The WPWMA may, but need not, comment on any updates or interim revisions to the manual.

Notwithstanding any such review and comment by the WPWMA, the operation and maintenance of the Facility shall remain the responsibility of Contractor. Neither the review nor comment upon, nor the failure of the WPWMA to comment upon, the manual shall relieve Contractor of any of its responsibilities under this Agreement, nor shall any WPWMA review or comment or failure to comment be deemed to be a representation by the WPWMA that operating the Facility pursuant to the manual will cause the Facility to be in compliance with all provisions of this Agreement or Applicable Law, or impose any liability upon the WPWMA.

5.23 Marketing of Recyclable Materials

A. Marketing Effort

Contractor shall use its best efforts to market and promote the sale of Recyclable Materials recovered at or delivered to the Facility, shall employ a marketing strategy in effecting disposition of these Recyclable Materials, and shall use its best efforts to obtain prices for Recyclable Materials consistent with prevailing conditions in the market, whether foreign or domestic. Contractor will exert at least the same effort in marketing the Recyclable Materials from the Facility as it does in marketing materials which it markets for its own account as a principal or as an

agent/broker for any third Person. In addition, if requested by WPWMA in writing Contractor shall market materials to preferred vendors designated by WPWMA, but only to the extent compensation to Contractor is at or above ninety percent (90%) of the current rates paid to Contractor at similar payment terms.

B. Marketing Duties

Contractor shall perform all of the following:

1) Storage

Contractor shall suitably store all Recyclable Materials to protect against theft, deterioration, contamination or other damage. Contractor shall ensure that storage of Recyclable Materials does not allow for run-on/run-off into the on or off-site storm drain system or leach into the ground.

2) Delivery

Contractor shall be responsible for effecting delivery to purchasers of Recyclable Materials, unless the terms of sale require one or more of such purchasers to arrange for delivery.

3) Warranties

Contractor shall be solely responsible for any warranties, express or implied, which attach to its sale of Recyclable or Recoverable Materials to third Persons. Contractor acknowledges that neither the WPWMA nor any of the Participating Agencies have, by virtue of entering into this Agreement or otherwise, made any representations or warranties to Contractor as to the merchantability or fitness for purpose of any of the materials, including Source-Separated Recyclable Materials, to be delivered to the Facility and expressly disclaim any such warranties. The Contractor shall defend and indemnify the WPWMA against any ~~claims~~Claims associated with the marketing and sale of Recyclable or Recoverable Materials, including ~~claims~~Claims for personal injury or property damage brought by consumers, purchasers or users of such materials. This obligation shall survive termination of the Agreement.

4) Disposition Costs When No Markets Exist

When market conditions are such that some or all of the Recyclable or Recoverable Materials cannot be sold, Contractor shall pay all transportation costs of delivering such materials to users willing to accept them, beginning with Member Agencies, or other uses if Member Agencies have declined in writing. In addition, if users are willing to accept them only on condition of payment, Contractor shall be responsible for paying such disposition costs.

C. Relationship of Parties

Nothing contained herein shall be construed to create any employment, partnership, joint venture or co-ownership relationship between the Parties, and Contractor shall not by any action allow any presumption to arise that a relationship of partnership exists between the Parties. Contractor also acknowledges that the Participating Agencies are not required by this Agreement to deliver Recyclable Materials to the Facility and are free to market them directly and independently of the WPWMA.

D. ~~SB 1383~~SB1383 Procurement of Recovered Organic Waste Products

Notwithstanding the foregoing, Contractor shall, for the Term of the Agreement and without additional charge to the Participating Agencies, meet the annual ROWP Procurement Target ~~for each Member Agency~~, as defined by California Code of Regulations Title 14, Division 7, Chapter 12, pursuant to the terms in Exhibit Q, for each Participating Agency that has an active flow commitment agreement with the WPWMA with the Member Agencies receiving first priority for compliance with the ROWP Procurement Target.

5.24 Permits

All Facility operating permits shall be obtained and held by the WPWMA in the WPWMA's name. Facility operating permits are those permits related to operation of the WPWMA equipment, not Contractor's rolling stock and movable equipment. Contractor shall be solely responsible to obtain and maintain permits for its rolling

stock and movable equipment and shall provide a copy of any and all such permits for WPWMA records.

Contractor shall assist the WPWMA in a Timely manner in obtaining all Facility operating permits and approvals from federal, state, regional and local governmental agencies necessary for the operation by Contractor of the Facility in the manner that is required, permitted and/or contemplated by the other terms, provisions and conditions of this Agreement.

Contractor shall reimburse the WPWMA for its reasonable expenses, including WPWMA staff time, the WPWMA's out of pocket expenses, and the cost to the WPWMA of experts, consultants and attorneys, in obtaining any permits and approvals, including any annual renewals to such permits, required by changes in the method of operation of the Facility or in the scope of Contractor's required performance hereunder if such changes are requested by Contractor and approved by the WPWMA.

Contractor shall not operate the Facility in any manner which requires a permit or other prior approval, unless and until it has obtained all such permits and approvals that are necessary to conduct such operations. WPWMA will not knowingly direct Contractor to operate the Facility in violation of any permit. If Contractor reasonably believes that WPWMA has directed Contractor to operate the Facility in such a manner to cause Contractor to be materially out of compliance with any operating permit, Contractor shall notify WPWMA, in writing, citing the permit condition(s) it believes the WPWMA is causing Contractor to violate.

The WPWMA will use its best efforts to provide, at its cost, any and all environmental assessments and evaluations under CEQA which may be necessary to support the applications for any and all such permits and approvals.

The Parties acknowledge that the time to undertake and prepare studies, investigations and reports under CEQA, and to obtain permits and approvals, may be dependent on a variety of factors beyond the control of the Parties, and in all

events the WPWMA shall not be deemed in breach of this Agreement, nor shall it be liable to Contractor for any costs, expenses or damages resulting from any delays in performing the WPWMA's obligations under this section. Similarly, the WPWMA shall not be obligated to defend Contractor in any challenges to the WPWMA's CEQA evaluations, and shall not be deemed in breach of this Agreement, nor shall it be liable to Contractor for any costs, expenses or damages resulting from any challenges to the WPWMA's CEQA evaluations or any delays resulting therefrom. However, should a delay occur in the WPWMA's processing of a CEQA evaluation in a Timely manner that is beyond the control of the Contractor, the Contractor shall not be deemed in breach of this Agreement by reason of such delay.

Contractor shall be solely responsible for paying any fines or penalties imposed by governmental agencies for Contractor's noncompliance with permit or approval terms or its failure to operate with any necessary permits and approvals.

5.25 Mitigation Measures

A. CEQA Mitigation Measures

Contractor shall perform all existing mitigation measures required by CEQA, which are identified in Exhibit L as well as any other applicable mitigation measures identified as part of the WPWMA Waste Action Plan Environmental Impact Report currently being prepared by the WPWMA. Mitigation measures required by CEQA or the WPWMA for future projects (after the Facility Expansion) affecting the Contractor's scope shall be performed by Contractor at the WPWMA's request; provided that, unless the Parties agree otherwise, the financial responsibility for such measures shall be borne by the Party requesting the future project.

B. Odor Mitigation Measures

Contractor shall fully comply with the WPWMA's Site Wide Odor Plan (SWOP) in Exhibit M as it relates to the Contractor's operations, including but not limited to the implementation of Best Management Practices related to operation of the Facility as specified in the SWOP. Contractor shall also take any and all other

necessary actions, as agreed to with the WPWMA, to minimize off-site odor issues associated with the Contractor's operations.

C. Other Operating Procedures and Standards

In addition to the foregoing, Contractor shall conduct its operations in accordance with the requirements of CalRecycle (currently codified at 14 California Code of Regulations Sections 17401-17564) and as they may be amended or superseded.

5.26 WPWMA Use of Facilities

A. Offices

The Facility includes a portion of the administrative area dedicated to the exclusive use by the WPWMA. Ten offices in the northern section of the administration building are dedicated to WPWMA use, as well as ½ of the semi-circular reception desk in the primary lobby. In addition, ten (10) parking spaces identified by WPWMA will be reserved for WPWMA staff and visitors.

Contractor shall provide at no charge, utilities and janitorial services to this portion of the Facility, including water, sewer, electric power, heat/cooling, light and pest control. Contractor shall also furnish, operate, Maintain and permit a standby generator and automatic transfer switch that starts and loads within one (1) minute of loss of grid power and supplies sufficient power to the offices to run the computers, phones and lights of the offices. Contractor shall test the backup generator after the gate hours at least monthly year-round. The WPWMA will furnish its own telephones and other communications at no cost to Contractor.

B. Board Room

The Facility includes a Board of Directors meeting room and separate conference room. The WPWMA shall have priority at all times in the use of the rooms; Contractor shall not use them without prior approval of the WPWMA. However, Contractor's requests for use of the Board room for purposes directly related to the operation of the Facility and at times which do not conflict with the WPWMA's use will not be unreasonably refused and will be so granted or refused promptly.

C. Gatehouses

The Facility includes four Gatehouses staffed by WPWMA personnel and used by Contractor for final weighing of Recovered Materials sold by Contractor.

Contractor shall provide at no charge, utilities and janitorial services to this portion of the Facility, including water, sewer, electric power, heat/cooling, light, security and pest control. Contractor shall also furnish, operate, Maintain and permit a standby generator, or multiple generators and automatic transfer switch that starts and loads within one (1) minute of loss of grid power and supplies sufficient power to the Gatehouses to run the computers, phones and lights for conducting transactions as normal. Contractor shall test the backup generator after the gate hours at least monthly year-round. The WPWMA will furnish its own telephones and other communications at no cost to Contractor.

D. Contractor or Third Party Use

WPWMA may permit third parties to use portions of the Facility for the development and operation of compatible technologies or other uses with Contractor's reasonable consent, and Contractor shall cooperate with such use. ~~Contractor acknowledges and approves of the existing uses as of the Effective Date: BioGas Energy and Energy 2001.~~ For future uses, WPWMA shall provide Contractor with advance notice of a proposed compatible technology or other use. Contractor may only deny a request if it demonstrates that such technology or use interferes with Contractor's ability to perform this Agreement within thirty (30) days

of WPWMA' s request and provides supporting documentation for such determination.

5.27 Contractor's Use of and Obligation to Maintain the Facility

Contractor shall have the use of the remainder of the Facility, only for purposes directly and exclusively related to providing services to the WPWMA under this Agreement as noted in the Space Utilization Plan submitted in the Operations and Maintenance Report, insofar as it was not rejected by the WPWMA. Contractor shall not perform or engage in any other business or operations at the Facility except for the activities related to performing services to the WPWMA under this Agreement unless and until the WPWMA has provided its consent in writing.

Contractor shall be fully responsible for the Maintenance, cleaning and upkeep of the Facility, excepting the ~~WPWMA~~ vehicle scales and Gatehouses maintained by the WPWMA. Contractor shall develop and maintain a computerized asset management system complete with tags for all assets, the standard operating procedures for Maintaining each asset, and a scheduled Maintenance ticketing, tracking and reporting system. Contractor shall populate the Maintenance schedule in the asset management system using the manufacturer's published guidelines. For the remainder of the Facility, where no such manufacturer guideline is published, Contractor shall follow the Maintenance guidelines and schedule published in the General Services Administration (GSA) Public Buildings Maintenance Standards, Final Edition dated October 1, 2012, or later edition as may be published by the GSA. Contractor shall remove all residuals and debris and pressure wash the inside of the MRF semi-annually in April and October, and the outside of all Facility buildings and the administrative offices building annually in July. Contractor shall inspect all Facility roofing components doors, windows, mechanical, electrical, plumbing and fire suppression ~~shall~~ at least annually and Maintain, repair or replace parts as necessary to maintain the original functionality.

5.28 Contractor's Modification of Facility

Should Contractor propose any modification of the Facility (including but not limited to any equipment located therein) during the Term (apart from the Facility Expansion described in Article 5), Contractor shall submit a request in writing to the ~~Executive Director~~[General Manager](#) that details the proposed modification, including engineered drawings, and describes any associated changes in operations. Contractor shall also submit to the WPWMA any other information requested by the ~~Executive Director~~[General Manager](#) regarding the proposed modification. Contractor shall not make any modifications to the Facility without having received the prior written consent of the WPWMA thereto, and all necessary permits and regulatory approvals. Contractor shall pay for any such modification proposed by the Contractor, unless the WPWMA agrees otherwise in writing. WPWMA may impose conditions as part of its approval of the proposed modification. Contractor shall ensure that any such modification conforms to the description and drawings approved by the WPWMA, and Contractor shall satisfy all conditions associated with the WPWMA's approval of the modification. Within sixty (60) days of the completion of any such modification, Contractor shall submit to WPWMA "as-built" drawings in electronic (AutoCAD) and hardcopy formats that clearly depict the modification.

Contractor shall obtain the WPWMA's written acceptance of any such modification upon its completion and prior to its subsequent use by Contractor. Any such modifications made by Contractor shall become the property of the WPWMA. The WPWMA shall be under no obligation to approve any modification proposed by Contractor.

5.29 Additional Services

WPWMA may from time to time during the Term request that Contractor perform services associated with the ongoing operation and maintenance of the Facility that are not within the scope of this Agreement and which are not extraordinary in nature, involve unusual risks or require expertise that is not reasonably

accessible to Contractor. To the extent Contractor agrees to perform such additional services, Contractor proposal to perform shall be consistent with commercially reasonable prices, providing for reimbursement of the Contractor's direct costs of providing the additional services, plus a net profit not to exceed ten percent (10%) of Contractor's direct and documented or reasonably supportable projected costs in performing such additional services. In carrying out the intent of this paragraph, the following terms and conditions also shall apply:

A. WPWMA's Written Request

WPWMA must submit to Contractor a written request to perform any additional services with reasonable detail to allow Contractor to estimate the costs to Contractor to perform such services.

B. Contractor's Estimate.

Contractor shall provide to WPWMA a written estimate of Contractor's commercially reasonable price for performing such additional services, with a detailed breakdown of the components of Contractor's projected costs and pricing proposal costs and documentation which supports Contractor's estimated costs.

B.C. Acceptance of Contractor's Proposal.

Upon receipt of Contractor's proposal, WPWMA may, in its sole discretion, deliver a written approval by the ~~Executive Director~~General Manager to the Contractor of its proposal to perform such additional services as called for in the WPWMA's request and in accordance with Contractor's proposal. WPWMA shall pay Contractor for Contractor's performance of such additional services at the dollar amount set forth in Contractor's proposal and in accordance with the payment provisions in this Agreement.

5.30 Illegally Dumped Waste

Contractor shall be responsible for the patrol and clean-up of illegally dumped Waste and litter. Contractor shall submit an Illegally Dumped Waste Pickup Plan including the staffing and schedule for collection. Contractor shall perform daily

patrol and clean-up on all of the following sections of roadway (including easement areas):

- Fiddymment Road 1 mile north of Athens Ave. to 2 miles south of Athens Ave.
- Athens Ave: Fiddymment Road to Industrial Blvd
- Industrial Blvd: Twelve Bridges Dr. to 1 mile south of Athens Ave.
- Foothills Blvd North: Athens Ave. to Sunset Blvd West

In addition, Contractor shall be responsible for the weekly patrol and clean-up of illegally dumped Waste and litter on all of the following sections of roadway (including easement areas):

- Fiddymment Road 2 miles south of Athens Ave. to Blue Oaks Blvd.
- Industrial Blvd 1 mile south of Athens Ave. to Sunset Blvd. West
- Sunset Blvd West: Fiddymment Road to 1 mile west of Fiddymment Road
- East Catlett Road Fiddymment Road to 1 mile west of Fiddymment Road

Additionally, Contractor shall be responsible for the daily removal of litter blown off-site from the Facility to surrounding properties, including the Landfill. Prior to entering off-site properties to pick-up litter, Contractor shall have permission from the landowner(s) to enter. If any landowner refuses entry by Contractor, Contractor shall document such refusal and shall not enter the refusing landowner's property unless and until the landowner subsequently gives permission to either WPWMA or Contractor to enter the subject property.

5.31 EPR Programs

Contractor shall establish agreements with and participate in the following Extended Producer Responsibility (EPR) programs: 1) California Architectural Paint Recovery Program (Paint Care), 2) Mattress Recycling Council – Bye Bye Mattress Program, and 3) Carpet America Recovery Effort (CARE).

In the event WPWMA elects to participate in additional future EPR programs, it shall meet and confer with Contractor on what additional costs or savings, if any, may be accrued to either Party by virtue of participating in the additional EPR program. In the event the WPWMA elects to participate in any future EPR

program, Contractor will cooperate fully with the WPWMA and participate in such additional program(s).

5.32 Stormwater Monitoring and Reporting

Contractor shall be responsible for constructing all improvements, performing all Maintenance, monitoring, sampling, analysis and report preparation associated with the stormwater/surface water provisions included in the Facility Industrial Stormwater Permit, Compost General Permit, and the Waste Discharge Requirements as may be adopted by the Water Board. The WPWMA may, at any time, conduct its own monitoring to verify Contractor performance. Contractor shall correct any deficiencies noted by the WPWMA in a Timely manner regardless of weather or working conditions. Any additional costs or efforts associated with stormwater related activities by virtue of the Facility, or any portion of it, moving from a less stringent to a more stringent reporting tier, whether or not the reclassification was associated directly or indirectly with Contractor's operation of the Facility, or from any enhanced monitoring of a requirement or regulation in place on the Effective/Initial Commencement Date of the Agreement, shall be the sole responsibility of Contractor and shall not be deemed a Change in Circumstances pursuant to Section 6.4. WPWMA will include, in agreements with other contractors, requirements to comply with the then-effective Stormwater Pollution Prevention Plan. To the extent that Contractor and the WPWMA can determine a WPWMA contractor was solely responsible for increased stormwater related costs, the WPWMA will reimburse Contractor any remuneration received from said contractor.

Contractor shall submit such reports to the WPWMA as complete, draft documents no later than fourteen (14) days prior to the report due date for WPWMA review and comment. Contractor shall make any and all changes to such reports as requested by WPWMA. WPWMA shall be responsible for filing the reports with the applicable regulatory agencies; Contractor shall not communicate with the regulatory agencies on behalf of the WPWMA. Permitting of the stormwater system will remain the WPWMA responsibility. Contractor shall submit any

requested changes to permitting documents to the WPWMA for review at least thirty (30) days prior to the date Contractor wishes the permit application be filed.

ARTICLE 6: COMPENSATION TO CONTRACTOR

6.1 General

The payments provided for in this Article 6 are the full, entire and complete compensation due to Contractor from the WPWMA for furnishing all labor, equipment, materials and supplies and all other things necessary to perform all of the services required by this Agreement in the manner and at the time prescribed, and for fulfilling all of its obligations under this Agreement, including but not limited to the operation of the Facility (including the transportation of Municipal Solid Waste, Construction and Demolition Debris and Residuals and the marketing and transportation of Recyclable Materials) and the improvement of the Facility to the extent required specifically by other provisions of this Agreement, as well as the acquisition of specified additional machinery and equipment in the manner that is provided elsewhere in this Agreement. Unless otherwise provided specifically to the contrary elsewhere in this Agreement, such payments shall include all costs for the items mentioned above and also for all taxes, insurance, bonds, overhead, profit and all other costs necessary or appropriate for Contractor to perform its required services in accordance with this Agreement, as well as adequate compensation for all risks that are being taken by Contractor by reason of its execution and delivery of this Agreement. Possessory interest taxes, if any, levied pursuant to Revenue and Taxation Code Section 107 on Contractor for use of the Facility are included in the payments provided for in this Article 6 and no separate reimbursement of such taxes, if any, will be made.

6.2 Compensation for Contractor's Operating the Facility Under Article 5

Contractor shall be paid the amounts described in this Section 6.2 for performing all work required by this Agreement, including Article 5, in accordance with all requirements of this Agreement, subject to an offsetting adjustment for the

potential assessment by the WPWMA of liquidated damages pursuant to Sections 5.8 and 5.9.

A. Processing Fees on Municipal Solid Waste and Commingled Recyclable Material

For each Ton of Municipal Solid Waste, Contractor will receive a Processing Fee for Waste delivered by any Person, other than Contractor and the operator of the Landfill, to the Materials Recovery Facility and accepted by Contractor for Processing in accordance with the table below. The Processing Fee will be adjusted as of July 1, 2023 and each following July 1st as specified in Section 6.6

Annual Tons	Processing Fee per Ton
First 250,000 Tons	\$64.56
Each Ton above 250,000 and below 350,000	\$59.48
In excess of 350,000 Tons	\$56.51

B. Processing Fee for Construction and Demolition Debris.

Contractor will receive a Processing Fee for each Ton of Construction and Demolition Debris delivered by any Person, other than Contractor and the operator of the Landfill, to the Construction and Demolition Debris Processing Area and accepted by Contractor for Processing in accordance with the table below.

Annual Tons	Processing Fee per Ton
First 125,000 Tons	\$44.69
Each Ton above 125,000 and below 175,000	\$42.46
In excess of 175,000 Tons	\$40.33

The Processing Fee will be adjusted as of July 1, 2023 and each following July 1st as specified in Section 6.6.

C. Processing Fee for Source Separated Green Waste.

Contractor will receive a Processing Fee of Fifty-One Dollars and Thirty-Four Cents (\$51.34) for each Ton of Source Separated Green Waste delivered by any Person, other than Contractor and the operator of the Landfill, to the Organics Processing Area and accepted by Contractor for Processing. The Processing Fee will be adjusted as of July 1, 2023 and each following July 1st as specified in Section 6.6.

D. Processing Fee for Source Separated Wood Waste.

Contractor will receive a Processing Fee of Thirty Nine Dollars and Ninety Four Cents (\$39.94) for each Ton of Source Separated Wood Waste delivered by any Person, other than Contractor and the operator of the Landfill, to the Organics Processing Area and accepted by Contractor for Processing. The Processing Fee will be adjusted as of July 1, 2023 and each following July 1st as specified in Section 6.6.

E. Processing Fee for Source Separated Food Waste.

Contractor will receive a Processing Fee of Fifty One Dollars and Thirty Four Cents (\$51.34) for each Ton of Source Separated Food Waste delivered by any Person, other than Contractor and the operator of the Landfill, to the Organics Processing Area and accepted by Contractor for Processing. The Processing Fee will be adjusted as of July 1, 2023 and each following July 1st as specified in Section 6.6.

F. Processing Fee for Commingled Food and Green Waste

Contractor will receive a Processing Fee of Fifty One Dollars and Thirty Four Cents (\$51.34) for each Ton of Commingled Food and Green Waste delivered by any Person, other than Contractor and the operator of the Landfill, to the Organics Processing Area and accepted by Contractor for Processing. The Processing Fee will be adjusted as of July 1, 2023 and each following July 1st as specified in Section 6.6.

G. Processing Fee for Inert Materials

Contractor will receive a Processing Fee of Forty Four Dollars and Sixty Nine Cents (\$44.69) for each Ton of Inert Material delivered by any Person, other than Contractor and the operator of the Landfill, to the Inert Materials Processing Area and accepted by Contractor for Processing. [The stockpile of unprocessed Inert Materials shall be maintained at five thousand \(5,000\) cubic yards or less.](#)

The Processing Fee will be adjusted as of July 1, 2023 and each following July 1st as specified in Section 6.6.

H. Processing Fees on Publicly Hauled Waste

Contractor shall not receive a separate fee for operating the Publicly Hauled Waste Tipping Area, including the additional Publicly Hauled Tipping Area for Source Separated Green Waste and Wood Waste, but shall instead receive the applicable Processing Fees (i.e.; Municipal Solid Waste Processing Fee, Construction and Demolition Debris Processing Fee, Source Separated Green Waste Processing Fee, Source Separated Wood Waste Processing Fee or Inert Materials Processing Fee) for materials received at the Publicly Hauled Waste Tipping Area, transported by Contractor to the commercial Gatehouse to be weighed by WPWMA and delivered by Contractor to either the Materials Recovery Facility, Construction and Demolition Debris Processing Area, or Organics Processing Area for additional Processing. No Processing Fees shall be earned by Contractor for Publicly Hauled Waste delivered directly to the Landfill by Contractor.

Notwithstanding the foregoing, Source Separated Green Waste and Source Separated Wood Waste delivered by the public shall not be transported by Contractor to the commercial Gatehouse to be weighed by WPWMA. Instead, Contractor's entitlement to Processing Fees for Source Separated Green Waste and Source Separated Wood Waste delivered by the public shall be calculated by the WPWMA based on the total volume of these materials received as determined by the Gatehouse utilizing the volume to weight conversion factor of 386 pounds

per cubic yard for Source Separated Green Waste and 528 pounds per cubic yard for Source Separated Wood Waste.

I. Processing Fees on Materials from Outside the Primary Service Area.

If the WPWMA directs that Contractor accept Waste from outside the Primary Service Area, Contractor will be paid as if such material had been received from the Primary Service Area. These materials will be counted as if such material had been received from the Primary Service Area in calculating the MSW Guaranteed Minimum Recycling Level and the C&D Guaranteed Minimum Recycling Level.

If Contractor requests the WPWMA to allow Contractor to accept Recyclable Materials from outside the Primary Service Area, and the WPWMA agrees to such request pursuant to Section 5.5, then no compensation shall be earned by Contractor from the WPWMA on such Recyclable Materials collected from outside the Primary Service Area.

J. Processing Fees Do Not Cover Hazardous Waste Disposal

The Processing Fees do not cover the cost of the transport off-site by licensed third party haulers and disposal of Household Hazardous Wastes or Hazardous Wastes, which shall be compensated in accordance with Section 6.2.L, below.

Contractor shall keep complete records of all such off-site third-party transport and disposal costs and shall be reimbursed by the WPWMA for actual and reasonable expenses incurred.

K. No Processing Fees on Source-Separated Recyclable Materials

There will be no Processing Fees paid for ~~Source Separated~~Source-Separated Recyclable Materials, except as provided in this Agreement for Source Separated Green Waste, Source Separated Wood Waste, Source Separated Food Waste, Commingled Food and Green Waste, and Inert Materials.

L. Fee for Operation of Household Hazardous Waste Facilities

Effective July 1, 2022, Contractor shall receive an annual fee of Four Hundred Seventy-Six Thousand Four Hundred Eighty-Seven Dollars (\$476,487.00) for operating the Household Hazardous Waste Facilities. This fee shall be adjusted each July 1st pursuant to Section 6.6. In addition, the WPWMA will reimburse Contractor for its costs, plus five percent (5%), actually and reasonably incurred for the transport of Household Hazardous Waste off site for Recycling or disposal and for the direct, verifiable and supported costs borne by Contractor for such Recycling and disposal.

Contractor shall also credit the WPWMA on each monthly billing statement fifty percent (50%) of all gross revenues and payments received by Contractor during the billing period in question arising from the sale, disposal or processing of electronic wastes pursuant to the California Electronic Waste Recycling Act of 2003, as it may be amended from time to time but only while the California Electronic Waste Recycling Act provides for such payments to Contractor.

Contractor's compensation under this Agreement already takes into account that Contractor will incur costs in handling, Processing and disposing of electronic waste and therefore such costs shall not be subtracted from Contractor gross revenues and payments before calculating the WPWMA's fifty percent (50%) share of such revenues and payments.

M. Organic Materials Processing Fee Increase Limitations

Contractor agrees to not seek or otherwise request from the WPWMA any increase in the Source Separated Green Waste, Source Separated Food Waste, or Commingled Food and Green Waste Processing Fees resulting from, or in any way related to, Contractor's design change to the Organics Processing Area green waste aerated Compost system design, which resulted in utilizing above ground aeration piping methods rather than below grade aeration methods, including any impact to operations, unless otherwise allowable under this Agreement.

6.3 Revenue from Sale of Recyclable Materials

The Processing Fees provided for in Section 6.2 include compensation for the Recycling activity and effort required under Article 5. The WPWMA, however, wishes to encourage greater recovery of materials for productive use and to reduce the amount of materials disposed. Therefore, as a further incentive to Contractor to maximize both the quantity and quality of materials Recycled and successfully marketed, Contractor will be entitled to retain one hundred percent (100%) of the gross revenues which it receives from the sale, arranged by Contractor in compliance with the provisions of Section 5.23, of: (1) materials recovered by Contractor from Municipal Solid Waste and Construction and Demolition Debris delivered to the Facility, (2) materials delivered by Participating Agencies and members of the public to the Buyback/Dropoff Center, (3) Compost, mulch and wood chips produced at the Organics Processing Area, (4) Inert Materials delivered to the Inert Processing Area and/or (5) for the disposition of any MRF ADC produced at the Facility and sold and delivered to any Person for use at a landfill other than at the Landfill. As used in this section, the phrase "gross revenues" shall mean gross revenues received by Contractor for such materials FOB the Facility (which prices are net of brokerage fees) and without further deduction for other costs or costs of sales except for any sales and use tax that may be due, owing and paid by Contractor.

6.4 Changes in Circumstances

The WPWMA recognizes that, during the Term of this Agreement, there may be changes in Federal, State or local laws or regulations, the Facility's permits, or in the method the WPWMA chooses or is allowed to manage Wastes. In the event that such an unanticipated event occurs and Contractor believes the change could unavoidably, directly and materially increase Contractor's cost of performing services under this Agreement, Contractor shall submit a Notice of Change of Circumstances to the WPWMA following the notification protocol in Section 9.9.

The WPWMA may likewise notify Contractor if it believes changed circumstances could directly and materially decrease the Contractor's cost of performing services.

Contractor may apply to the Board for an adjustment in compensation to reflect such change, or in such event the Board itself may initiate proceedings to adjust the Contractor compensation. If Contractor applies for an adjustment to the Board, the WPWMA may in its reasonable discretion, but is not obligated to, grant Contractor an equitable adjustment in the Contractor compensation under this Agreement to compensate Contractor for all or a part of Contractor's increased costs due to the unanticipated event, and such equitable adjustment shall not be unreasonably withheld. The WPWMA will not grant a ~~claim~~ Claim for a Change in Circumstances based on circumstances that were publicly available, adopted or drafted and released for review on or before the Signature Date. Similarly, the WPWMA may only retroactively apply the Change in Circumstances adjustment a maximum of ninety days (90-days) prior to the date the Contractor notified the WPWMA of the Change in Circumstances.

6.5 Cost of Living Adjustment

Contractor's Processing Fees and other fees subject to a cost of living adjustment where expressly indicated in this Agreement, shall be adjusted using the following formula:

New Fee = Operating Year 2022/23 Fee x COLA Where:

$$\text{COLA} = 0.05 + \frac{0.350.15}{100} \times \left(\frac{\text{PPI}_i}{\text{PPI}_0} \right) + 0.30 \times \left(\frac{\text{ECI}_i}{\text{ECI}_0} \right) + \frac{0.300.50}{100} \times \left(\frac{\text{MW}_i/\text{MW}_0 \text{CPI-U}_i/\text{CPI-U}_0}{100} \right)$$

PPI_i = The Producer Price Index (Commodity Data), All Commodities (Series ID: WPU00000000), Not Seasonally Adjusted as published by the United States Department of Labor, Bureau of Labor Statistics for the month of March of the prior Operating Year to the year the adjustment is to be made (e.g., adjustment for Operating Year 2023/24 will utilize statistics from March, 2023).

PPI₀ =The Producer Price Index (Commodity Data), All Commodities (Series ID: WPU00000000), Not Seasonally Adjusted as published by the United States Department of Labor, Bureau of Labor Statistics for the month of March, 2022.

ECL_i = Employment Cost Index, Total Compensation, Private Industry, West (Series ID: CIU2010000000240I); Not Seasonally Adjusted as published by the United States Department of Labor, Bureau of Labor Statistics for the first quarter of the prior Operating Year to the year the adjustment is to be made (e.g., adjustment for Operating Year 2023/24 will utilize statistics from the first quarter of 2023).

ECL₀ =Employment Cost Index, Total Compensation, Private Industry, West (Series ID: CIU2010000000240I); Not Seasonally Adjusted as published by the United States Department of Labor, Bureau of Labor Statistics for the first quarter of 2022.

[CPI-U_j = Consumer Price Index for All Items in San Francisco-Oakland-Hayward, CA, all urban consumers \(Series ID: CUURS49BSA0\); Not Seasonally Adjusted as published by the United States Department of Labor, Bureau of Labor Statistics for the month of February of the prior Operating Year to the year the adjustment is to be made \(e.g., adjustment for Operating Year 2023/24 will utilize statistics from February, 2023\).](#)

~~MW_i =The California Minimum Wage effective as of the adjustment period~~

~~MW₀ =The California Minimum Wage effective as of July 1, 2022~~

[CPI-U₀ = Consumer Price Index for All Items in San Francisco-Oakland-Hayward, CA, all urban consumers \(Series ID: CUURS49BSA0\); Not Seasonally Adjusted as published by the United States](#)

Department of Labor, Bureau of Labor Statistics for the month of February, 2022.

Notwithstanding the foregoing, the effective annual adjustment to unit Processing Fees paid to Contractor shall be no less than zero percent (0%) (i.e., unit Processing Fees shall not be reduced by virtue of the Cost of Living Adjustment calculation) and no more than three and three-quarters percent (3.75%).

6.6 Recycling Incentive Payments and Disincentive Adjustments

A. Incentive Payments.

The WPWMA will pay Contractor Twenty Dollars (\$20) per Ton of Municipal Solid Waste which is received for Processing at the Materials Recovery Facility and diverted from land disposal (excluding MRF ADC delivered to the Landfill or which is sold or delivered by Contractor to other landfills) in excess of the MSW Guaranteed Minimum Recycling Level and which qualifies as Creditable Recovery.

The WPWMA will pay Contractor Twenty Dollars (\$20) per Ton of Construction and Demolition Debris which is received for Processing at the Construction and Demolition Debris Processing Area and diverted from land disposal (excluding MRF ADC delivered to the Landfill or which is sold or delivered by Contractor to other landfills in excess of the C&D Guaranteed Minimum Recycling Level and which qualifies as Creditable Recovery. Contractor's entitlement to incentive payments will be calculated at the end of each Operating Year in accordance with the provisions of Section 6.6.C. The calculation of incentive payments is illustrated in Exhibit N.

The per ton Incentive Payment will be adjusted as of July 1, 2025 and each following July 1st as specified in Section 6.6.

B. Disincentive Adjustments

If, prior to July 1st, 2026, Contractor fails to achieve the MSW Guaranteed Minimum Recycling Level, the Municipal Solid Waste Processing Fees shall be reduced by one percent (1%) for each percentage (or portion thereof) by which Contractor's recovery falls below the MSW Guaranteed Minimum Recycling Level.

If, during the period between July 1st, 2026 and Substantial Completion, Contractor fails to achieve the MSW Guaranteed Minimum Recycling Level, the Municipal Solid Waste Processing Fees shall be reduced by one and one half percent (1.5%) for each percentage (or portion thereof) by which Contractor's recovery falls below the MSW Guaranteed Minimum Recycling Level.

If, following Substantial Completion, Contractor fails to achieve the MSW Guaranteed Minimum Recycling Level, the Municipal Solid Waste Processing Fees shall be reduced according to the schedule below for each percentage (or portion thereof) by which Contractor's recovery falls below the MSW Guaranteed Minimum Recycling Level.

<u>MSW Recovery Level</u>	<u>Disincentive Adjustment</u>
<u>99.99% GMRL and 95.00% GMRL</u>	<u>1.0%</u>
<u>94.99% GMRL and 90.00% GMRL</u>	<u>1.3%</u>
<u><90.00% GMRL</u>	<u>1.6%</u>

If, prior to July 1st, 2026, Contractor fails to achieve the C&D Guaranteed Minimum Recycling Level, the Construction and Demolition Debris Processing Fee shall be reduced by one percent (1%) for each percentage (or portion thereof) by which Contractor's recovery falls below the C&D Guaranteed Minimum Recycling Level.

If, during the period between July 1st, 2026 and Substantial Completion, Contractor fails to achieve the C&D Guaranteed Minimum Recycling Level, the Construction

and Demolition Debris Processing Fee shall be reduced by one and one half percent (1.5%) for each percentage (or portion thereof) by which Contractor's recovery falls below the C&D Guaranteed Minimum Recycling Level

If, following Substantial Completion, Contractor fails to achieve the C&D Guaranteed Minimum Recycling Level, the Construction and Demolition Debris Processing Fee shall be reduced according to the schedule below for each percentage (or portion thereof) by which Contractor's recovery falls below the C&D Guaranteed Minimum Recycling Level.

<u>C&D Recovery Level</u>	<u>Disincentive Adjustment</u>
<u>99.99% GMRL and 95.00% GMRL</u>	<u>1.0%</u>
<u>94.99% GMRL and 90.00% GMRL</u>	<u>1.3%</u>
<u><90.00% GMRL GMRL</u>	<u>1.6%</u>

This disincentive adjustment will be calculated at the end of each Operating Year in accordance with the provisions of Section 6.6.C.

The calculation of a disincentive adjustment is illustrated in Exhibit N.

C. Determination of Applicable Incentive Payments and Disincentive Adjustments

If in any given quarter of an Operating Year Contractor fails to achieve the MSW Creditable Recovery rate identified in Section 8.1.H, then any and all disincentive adjustments and any incentive payments, if applicable, for the given Operating Year will be computed based on the individual quarterly MSW Creditable Recovery rates. If Contractor achieves MSW Creditable Recovery rates above the rate identified in Section 8.1.H in each of the four (4) quarters of an Operating Year, then Contractor's MSW incentive payment or disincentive adjustment, whichever is applicable, shall be computed based on the overall MSW Creditable Recovery rate achieved for the applicable Operating Year.

Separately, if in any given quarter of an Operating Year Contractor fails to achieve the C&D Creditable Recovery rate identified in Section 8.1.I, then any and all disincentive adjustments and any incentive payments, if applicable, for the given Operating Year will be computed based on the individual quarterly C&D Creditable Recovery rates. If Contractor achieves C&D Creditable Recovery rates above the rate identified in Section 8.1.I in each of the four (4) quarters of an Operating Year, then Contractor's C&D incentive payment or disincentive adjustment, whichever is applicable, shall be computed based on the overall C&D Creditable Recovery rate achieved for the applicable Operating Year.

6.7 Billing and Payment

A. Monthly Applications for Payment

On or before the fifteenth (15th) day of each month Contractor shall submit to the WPWMA an application for payment to invoices@wpwma.ca.gov (or other suitable location as WPWMA may later provide) in a format and level of detail reasonably required by the WPWMA and consistent with this Agreement. The application for payment shall show at least the following information:

1) Processing Fees for Municipal Solid Waste

Amount, in Tons, of Municipal Solid Waste delivered to and Processed at the Materials Recovery Facility during the previous calendar month.

2) Processing Fees for Commingled Recyclable Materials

Amount, in Tons, of Commingled Recyclable Materials delivered to and Processed at the Materials Recovery Facility during the previous calendar month.

3) Processing Fees for Construction and Demolition Debris.

Amount, in Tons, of Construction and Demolition Debris delivered to and Processed at the Construction and Demolition Debris Processing Area during the previous calendar month.

4) Processing Fees for Source Separated Green Waste

Amount, in Tons, of Source Separated Green Waste delivered to and Processed at the Organics Processing Area during the previous calendar month.

5) Processing Fees for Source Separated Food Waste

Amount, in Tons, of Source Separated Food Waste delivered to and Processed at the Organics Processing Area during the previous calendar month.

6) Processing Fees for Commingled Food and Green Waste

Amount, in Tons, of Commingled Food and Green Waste delivered to and Processed at the Organics Processing Area during the previous calendar month.

7) Processing Fees for Source Separated Wood Waste

Amount, in Tons, of Source Separated Wood Waste delivered to and Processed at the Organics Processing Area during the previous calendar month.

8) Processing Fees for Inert Materials

Amount, in Tons, of Inert Materials delivered to and Processed at the ~~inert~~Inert Materials Processing Area during the previous calendar month. [Amount, in Tons, of Processed Inert Materials transferred or delivered to an independent third party during the previous calendar month.](#)

9) Household Hazardous Waste Facilities Operating Fee

The application for payment shall request one-twelfth of the applicable annual fees due under Section 6.2.L in relation to the Household Hazardous Waste Facilities.

10) Household Hazardous Waste Disposal Fees

The application for payment shall request reimbursement for costs related to disposal of Household Hazardous Wastes as provided in Section 6.2.L.

B. Payment By WPWMA

WPWMA shall pay Contractor the amount due within thirty (30) days after it has received and approved the application for payment. If the WPWMA disputes a

portion of an application for payment, it shall pay the undisputed portion within thirty (30) days and notify Contractor in writing, within seven (7) business days' receipt of Contractor's application for payment, of the reason(s) for nonpayment of the disputed amount.

The WPWMA may request clarification and/or additional information about an application for payment and/or report. Such a request shall be in writing and shall describe the information requested with reasonable specificity. Contractor shall furnish the clarification and/or additional information requested promptly and in any event within thirty (30) days from the date of the request.

6.8 Miscellaneous

The making of any payment to Contractor does not imply acceptance of work, nor lessen Contractor's responsibility to correct unsatisfactory work whether or not the unsatisfactory character of such work was apparent or detected at the time such payment was made.

6.9 Minimum Tonnage

Both Parties agree that the original request for proposals issued by WPWMA, in relation to the Agreement as set forth herein, requested pricing for Processing Fees based on annual Tons of Municipal Solid Waste received at the Materials Recovery Facility starting at no less than 200,000 Tons per Operating Year. Consequently, the pricing offered by Contractor included a fee schedule that did not consider pricing not reaching the 200,000 Tons per Operating Year threshold.

Due to the current volumes committed by the Participating Agencies in their respective flow commitment agreements for the Facility Expansion not meeting initial expectations, the Parties acknowledge the possibility that annual Tonnage volumes of Municipal Solid Waste may fall below the initially proposed Processing Fee tiers.

The Parties agree that should the annual Tons in any given Operating Year of the Agreement be less than 200,000 Tons per year, the Parties shall mutually discuss

and agree to a new pricing tier for Tons below 200,00 for the Processing Fees, to be added to Section 6.2.A. of the Agreement. Such tier shall apply to previously billed Tons in the current Operating Year and future Operating Years in which the annual amount of Municipal Solid Waste received is less than 200,000. Processing Fees in such future years shall be adjusted to include or exclude the tier as applicable and previously billed Tons shall be adjusted as applicable. The pricing tier shall be reasonably agreed to by the Parties and reflect the additional costs on Contractor due to lower than expected Tons.

ARTICLE 7: INDEMNITY, INSURANCE, BOND

7.1 Indemnification

A. Contractor Indemnity

Contractor shall indemnify, defend and hold harmless the WPWMA Indemnitees, from and against any and all Claims, arising out of or occasioned in any way by, directly or indirectly, (1) the negligence or willful misconduct of Contractor, its officers, managers, employees, agents and/or subcontractors in performing services under this Agreement; (2) the material failure of Contractor, its officers, employees, agents and/or subcontractors to comply in all respects with the provisions of this Agreement, Applicable Laws (including, without limitation, the Environmental Laws and public contract and prevailing wage laws) and regulations, and/or applicable permits and licenses; and/or (3) Contractor's material failure to maintain the confidentiality of any and all financial records made available to WPWMA in accordance with Section 9.16. The foregoing indemnity shall apply regardless of whether such loss, liability, penalty, forfeiture, ~~claim~~Claim, demand, action, proceeding, suit, injury, death or damage is also caused in part by the negligence of others, including that of any of the WPWMA Indemnitees; provided, however, that this indemnity does not extend to Claims to the extent that they are caused by the active negligence of any of the WPWMA Indemnitees, or are caused by the intentional misconduct of or breach of contract by any of the WPWMA Indemnitees, or where strict liability is imposed by law upon the WPWMA in the absence of any material fault of Contractor. Upon the ~~occurrence~~occurrence

of any Claim, Contractor, at Contractor's sole cost and expense, shall defend each and all of the WPWMA Indemnitees, provided, however, that in the event the named parties to any such Claim (including any impleaded parties) include both the Contractor and the WPWMA, and if the WPWMA Indemnitees shall have one or more legal defenses available to any of them which are in direct conflict with the best interests of Contractor and which therefor preclude the same counsel from representing the WPWMA Indemnitees and Contractor jointly after taking into account the obligations of Contractor herein for the benefit of the WPWMA, then the WPWMA Indemnitees shall have the right to select separate counsel, with the consent of Contractor which will not be withheld unreasonably, at the sole cost and expense of Contractor to pursue such legal defenses and to otherwise participate in the defense of such action on behalf of the WPWMA Indemnitees to the extent that joint representation of the WPWMA Indemnitees and Contractor is not permissible because of conflicts of interest between the WPWMA Indemnitees and Contractor. Contractor's duty to indemnify and defend shall survive the expiration or earlier termination of this Agreement, so long as the event upon which such Claim is predicated occurred prior to such expiration or termination.

7.2 Insurance

A. Types and Amounts of Coverage

Contractor, at Contractor's sole cost and expense, shall procure from an insurance company or companies admitted to do business in the State of California and subject to the regulation of the California Insurance Commissioner and shall maintain in force at all times during the Term the following types and amounts of insurance.

1) Workers' Compensation and Employer's Liability

Contractor shall maintain workers' compensation insurance covering its employees in statutory amounts and otherwise in compliance with the laws of the State of California. Contractor shall maintain Employer's Liability insurance in an amount not less than Five Million Dollars (\$5,000,000) per accident or disease

(limits may be arranged through any combination of underlying and excess or umbrella policies).

2) General Liability and Automobile Liability.

Contractor shall maintain comprehensive Commercial General Liability insurance with a combined single limit of not less than Ten Million Dollars (\$10,000,000) per occurrence and Ten Million Dollars (\$10,000,000) aggregate covering all ~~elaims~~[Claims](#) and all legal liability for personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out of, or occasioned in any way by, directly or indirectly, Contractor's performance of, or its failure to perform, services under this Agreement (limits may be arranged through any combination of underlying and excess or umbrella policies).

The insurance required by this subsection shall include:

- a) Premises Operations (including X, C and U coverages);
- b) Independent Contractor's Protective;
- c) Products and Completed Operations, protecting against possible liability resulting from use of Recyclable Materials by another ~~person~~[Person](#);
- d) Personal Injury Liability with Employment Exclusion deleted;
- e) Broad Form Blanket Contractual, with no exclusions for bodily injury, personal injury or property damage; and
- f) Broad Form Property Damage, including Completed Operations.

Contractor shall also maintain Automobile Liability Insurance for each of Contractor's vehicles used in the performance of this Agreement, including owned, non-owned, leased or hired vehicles, in the minimum amount of Ten Million Dollars (\$10,000,000) combined single limit per occurrence (limits may be arranged through any combination of underlying and excess or umbrella policies).

The Commercial General Liability and Automobile Liability insurance required by Section 7.2.A.2 shall be written on an "occurrence" (not an "accident"), rather than a "claims made" basis, if such coverage is readily obtainable for a commercially reasonable premium. Any excess or umbrella policies shall be on a "following form" basis. The policy may not contain a deductible or self-insured retention of more than Ten Thousand Dollars (\$10,000.00) per occurrence or more than Fifty Thousand Dollars (\$50,000) annual aggregate without prior written approval of the WPWMA. The policy limit and the self-insured retention shall be adjusted as of each such five (5) year anniversary of July 1, 2022 utilizing the same indices and procedures provided in Section 6.6, rounded up to the nearest \$100,000 in relation to policy limits and to the nearest \$1,000 in relation to self-insured retentions. The existence of a self-insured retention or deductible shall not affect Contractor's duty to defend and indemnify the WPWMA under Section 7.1 as to Claims below the self-insured retention or deductible level.

3) Pollution Liability

Contractor shall purchase and thereafter maintain, so long as such insurance is available on a commercially reasonable basis, Pollution Liability insurance in the amount of Four Million Dollars (\$4,000,000) covering liability arising from the sudden and accidental release of pollution on the Facility Site (limits may be arranged through any combination of underlying and excess or umbrella policies).

4) Physical Damage

Contractor shall maintain comprehensive (fire, theft and collision) Physical Damage insurance covering the vehicles and the machinery and equipment that is owned by Contractor and used in providing service to the WPWMA under this Agreement, with a deductible or self-insured retention of not greater than Fifty Thousand Dollars (\$50,000).

All insurance policies required under Section 7.2 shall be issued by an insurance company or companies admitted to do business in the State of California, subject to regulation by the California Insurance Commissioner and with a rating in the

most recent edition of Best's Insurance Reports of size category XV or larger, and a rating classification of A or better, except that the Pollution Liability policy may be issued by a company rated A-IX.

B. Required Endorsements

- 1) The Worker's Compensation policy shall contain endorsements insubstantially the following form:
 - a) "Thirty (30) days prior written notice shall be given to the WPWMA in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:
Western Placer Waste Management
Authority c/o ~~Executive Director~~ General Manager
c/o Risk Manager
Risk Management
Division 11491 B
Avenue
Auburn, CA 95603"
 - b) "Insurer waives all right of subrogation against the WPWMA and its officers and employees for losses arising from work performed for the WPWMA."
- 2) The Comprehensive General Liability policy shall contain endorsements insubstantially the following form:
 - a) "Thirty (30) days prior written notice shall be given to the WPWMA in the event of cancellation, reduction of coverage, or non-renewal of this policy. Such notice shall be sent to:
Western Placer Waste Management
Authority c/o ~~Executive Director~~ General Manager
c/o Risk Manager
Risk Management
Division 11491 B
Avenue
Auburn, CA 95603"
 - b) "The WPWMA, its officers, employees, and agents are

additional insureds on this policy.”

- c) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the WPWMA, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."
- d) "Inclusion of the WPWMA as an insured shall not affect the WPWMA's rights as respects any ~~claim~~Claim, demand, suit or judgment brought or recovered against Contractor. This policy shall protect Contractor and the WPWMA in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the company's liability as set forth in the policy beyond the amount shown or to which the company would have been liable if only one party had been named as an insured."

The Physical Damage policy shall contain the following endorsements:

- 1) Notice of cancellation, reduction in coverage or non-renewal, as provided in subsection B.2.a.
- 2) Waiver of subrogation against the WPWMA.

C. Delivery of Proof of Coverage

No later than thirty (30) days after the execution of this Agreement by the Parties, Contractor shall furnish the WPWMA a certificate for each policy of insurance required under Sections 7.2 in form and substance satisfactory to the WPWMA. Each such certificate shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall have all required endorsements. If the WPWMA requests, copies of each policy, together with all endorsements, shall also be promptly delivered to the WPWMA.

Contractor shall furnish renewal certificates to the WPWMA to demonstrate maintenance of the required coverages throughout the Term.

Furnishing of evidence of required insurance being in force is a condition to Contractor's entitlement to payment.

D. Other Insurance Requirements

In the event any services are delegated to a subcontractor, Contractor shall require all such subcontractors to provide statutory workers' compensation insurance and employer's liability insurance for all of the subcontractor's employees engaged in the work. The liability insurance required by Subsection 7.2.A.2 shall cover Contractor's liability for acts of its subcontractors or each subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section 7.2.

Contractor shall comply with all requirements of the insurers issuing policies and shall require its subcontractors to do so. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement, including those imposed by Section 7.2. If any Claim is made by any third Person against Contractor or any subcontractor on account of any occurrence related to this Agreement, Contractor, shall promptly report the facts in writing to the insurance carrier and to the WPWMA. If Contractor fails to procure and maintain any insurance required by this Agreement, the WPWMA may take out and maintain, at Contractor's expense, such insurance as it may deem proper and deduct the cost thereof from any monies due Contractor.

If requested by the WPWMA, the Comprehensive General Liability policy shall be promptly, and at no cost to the WPWMA, amended by endorsement to add the trustee of any bonds, which were issued by the WPWMA to finance the original construction of the Facility, as an additional insured.

7.3 Faithful Performance Bond

~~Between the signature of the Agreement and the Effective Date, the~~The Contractor shall furnish the WPWMA, and maintain at all times during the Term, a performance bond securing the Contractor's faithful performance of its obligations under this Agreement in the initial amount of Ten Million Dollars (\$10,000,000) which shall be annually adjusted in accordance with Section 6.6.

Not less than ninety (90) days before the expiration of each such current performance bond, Contractor shall furnish either the replacement bond or a continuation certificate satisfactory to the WPWMA, executed by the surety. Contractor may provide WPWMA with a performance bond with an annual term, which Contractor shall cause to be renewed annually to comply with the requirements of this section. Contractor's failure to provide a continuation certificate, substitute bond or alternate financial assurances mechanism on time shall constitute a default, entitling the WPWMA to draw on the bond or alternative mechanism then in place and hold the funds until a new bond or substitute mechanism is provided.

7.4 Waiver of Consequential Damages

ARTICLE 8: NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT TO THE CONTRARY, NEITHER WPWMA NOR CONTRACTOR SHALL BE LIABLE UNDER THIS AGREEMENT OR UNDER ANY CAUSE OF ACTION RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCTS LIABILITY, OR ANY OTHER CAUSE OF ACTION FOR SPECIAL, INDIRECT, INCIDENTAL OR

CONSEQUENTIAL LOSSES OR DAMAGES, INCLUDING LOSS OF PROFITS, USE, OPPORTUNITY, REVENUES, FINANCING, BONDING CAPACITY, OR BUSINESS INTERRUPTIONS, OR DAMAGES.

ARTICLE 8: DEFAULT AND REMEDIES

8.1 Events of Default

Each of the following shall constitute an event of Contractor Default hereunder:

- A) Contractor fails to perform its material obligations under this Agreement, or any present or future amendment or supplement to this Agreement, excluding failures stemming from an Uncontrollable Circumstance as provided in Section 9.20, and fails to cure such material breach (1) within thirty (30) days of receiving notice from the WPWMA specifying the breach, provided that if the nature of the breach is such that it will reasonably require more than thirty (30) days to cure, Contractor shall not be in default so long as Contractor promptly commences the cure and diligently proceeds to completion of the cure; or (2) promptly, if the material breach is such that the health, welfare or safety of the public is meaningfully endangered thereby.
- B) There is a lawful seizure or attachment of, or levy on, the operating equipment of Contractor used at the Facility which is not released or discharged within thirty (30) days or which is not replaced by comparable equipment at Contractor's sole cost within such period of thirty (30) days.
- C) Excluding failures stemming from an Uncontrollable Circumstance as provided by Section 9.20, there is any termination or suspension from any cause, including without limit, labor unrest including strike, work

stoppage or slowdown, sickout, picketing, or other concerted job action which results in (a) Contractor's inability to accept materials at the Facility for more than five (5) consecutive days, or (b) its inability to carry on Processing operations for more than fourteen (14) consecutive days.

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

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

E)F) A representation and warranty made by Contractor in Article 2 proves to be materially false and misleading.

F)G) Contractor fails to furnish reasonable assurances of performance in response to a demand under Section 9.16.

G)H) Contractor fails to achieve eighty five percent (85%) of the MSW Guaranteed Minimum Recycling Level.

~~H~~I) Contractor fails to achieve eighty five percent (85%) of the C&D Guaranteed Minimum Recycling Level.

~~H~~J) Contractor fails to achieve the organics diversion requirements of SB 1383 after Substantial Completion of the Facility Expansion.

8.2 Right to Suspend or Terminate Upon Default

Upon any Contractor Default, the WPWMA shall have the right to suspend or terminate this Agreement, in whole or in part, but only to the extent WPWMA has provided written notice to Contractor and Contractor has failed to commence and diligently pursue cure of such Contractor Default within thirty (30) days receipt of such notice. Such suspension or termination shall be effective thirty (30) days after the WPWMA has given notice of suspension or termination to Contractor and Contractor has failed to commence and diligently pursue cure within such thirty (30) days, except that such notice may be effective immediately if the Contractor Default is one which endangers the health, welfare or safety of the public. Notice shall be given in writing and shall be sent via a nationally recognized overnight courier or by mail, postage prepaid via certified mail, return receipt requested to the address listed in Section 9.9, below.

8.3 Equitable Remedies and Rights

By virtue of the nature of this Agreement, the urgency of ~~timely~~Timely, continuous and high-quality service, the lead time required to effect alternative service, and the rights granted by the WPWMA to Contractor, the remedy of damages for a breach hereof by Contractor is inadequate and the WPWMA shall be entitled to any and all forms of equitable relief, including specific performance and injunctive relief.

8.4 Right to Perform

If this Agreement is suspended and/or terminated due to a Contractor Default, the WPWMA shall have the right to perform and complete, by contract or otherwise, the work herein or such part thereof as it may deem necessary and to procure

labor, equipment, and materials and incur all other expenses necessary for completion of the work, including, but not limited to, the transportation of Municipal Solid Waste and Construction and Demolition Debris to the Landfill. If such expenses exceed the amounts which would have been payable to Contractor under this Agreement if it had been fully performed by Contractor, then Contractor pay the amount of such excess to the WPWMA.

In addition, in the event Contractor fails to commence and diligently pursue cure of any Contractor Default within thirty (30) days receipt of written notice from WPWMA, WPWMA at its reasonable discretion, shall have the right to temporarily perform and complete, by contract or otherwise, the work herein or such part thereof as it may deem necessary and to procure labor, equipment, and materials and incur all other reasonable expenses necessary for completion of the work. If such expenses exceed the amounts which would have been payable to Contractor under this Agreement if it had been fully performed by Contractor, then Contractor will pay the reasonable and documented amount of such excess to the WPWMA. WPWMA shall make such election with written notice to Contractor that shall specify the work to be completed by WPWMA and the approximate length of time that WPWMA will do so.

8.5 The WPWMA's Remedies Cumulative

The WPWMA's right to cure breaches, to suspend or terminate this Agreement, to obtain specific performance, and to perform service under this Agreement are not exclusive, and the WPWMA's exercise of one such right shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies that the WPWMA may have, including a legal action for damages. No delay or omission to exercise any right occurring upon a Contractor Default shall impair such right nor shall it be construed as a waiver of any Contractor Default and every such right may be exercised from time to time and as often as may be deemed expedient.

8.6 Relationship of Liquidated Damages to Right to Terminate

The WPWMA's right to recover liquidated damages under Section ~~5.8 and~~ 5.9 for Contractor's failure to meet the service performance standards shall not preclude the WPWMA from obtaining equitable relief for persistent failures to meet such standards nor from suspending or terminating this Agreement for such persistent failures in accordance with the foregoing provisions of this Article.

ARTICLE 9: OTHER AGREEMENTS OF THE PARTIES

9.1 Relationship of Parties

The Parties intend that Contractor shall perform the services required by this Agreement as an independent contractor engaged by the WPWMA and not as an officer or employee of the WPWMA nor as a partner of or joint venturer with the WPWMA. No employee or agent of Contractor shall be deemed to be an employee of the WPWMA, nor an agent of the WPWMA. Except as expressly provided herein, Contractor shall have the exclusive control over the manner and means of conducting the solid waste handling, Processing, and transportation services performed under this Agreement, and over all ~~persons~~Persons performing such services. Contractor shall be solely responsible for the acts and omissions of its managers, officers, employees, subcontractors and agents. Neither Contractor nor its managers, officers, employees, subcontractors and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to the WPWMA's employees by virtue of their employment with the WPWMA.

9.2 Compliance with Law

In providing the services required under this Agreement, Contractor shall at all times comply with all applicable laws of the United States, the State of California, Placer County, and with all applicable regulations promulgated by federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term, including but not limited laws and regulations governing minimum amounts of wages and benefits that must be

paid to the Contractor's workers performing services under this Agreement and to the Applicable Law(s). Should Contractor be subject to a [claimClaim](#), workplace safety, or immigration/employment law investigation, Contractor shall notify the [AuthorityWPWMA](#) within twenty four (24) hours of Contractor being notified or having reasonable suspicion of an impending [claimClaim](#) so the [AuthorityWPWMA](#) can conduct its own investigation if necessary. Contractor is aware of the requirements of California Labor Code Sections 1720 et. seq. and 1770 et. seq., as well as California Code of Regulations, Title 8, Section 16000 et. seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Contractor shall defend, indemnify and hold WPWMA, its elected officials, officers, employees and agents free and harmless from any [claimsClaims](#), liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

9.3 Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATED TO THIS MASTER AGREEMENT, ANY SUBCONTRACT OR THE TRANSACTIONS CONTEMPLATED THEREBY.

9.4 Jurisdiction

Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be performed in Placer County.

9.5 Assignment

A. No Assignment Without Consent of the WPWMA

Contractor shall not assign its rights nor delegate or otherwise transfer its obligations under this Agreement to any Person without the prior written consent of the WPWMA. Any such assignment made without the consent of the WPWMA shall be void and the attempted assignment shall constitute a breach of this Agreement. Without limiting the foregoing, WPWMA shall review and approve any subcontractors utilized by Contractor. Contractor shall be responsible for any breach of this Agreement by or other action of any subcontractor. Notwithstanding the foregoing, Contractor may assign this Agreement to a limited liability company or corporation formed to conduct business in California and wholly owned by Contractor, provided that Contractor executes a guaranty of its obligations under this Agreement in such form as reasonable required by WPWMA.

B. Assignment Defined

For the purpose of this Section, an "*assignment*" shall include, but not be limited to, (1) a sale, exchange or other transfer to a third Person of substantially all of Contractor's assets dedicated to service under this Agreement; (ii) the issuance of new stock or membership interests to or the sale, exchange or other transfer of more than thirty-three percent (33%) of the then outstanding stock or membership interests to a Person, other than to the existing shareholders, members and/or [affiliates](#) of existing shareholders/ members of Contractor who own shares/membership interests on the [Effective Initial Commencement](#) Date.

C. Consent Requirements

If Contractor requests the WPWMA's consideration of and consent to an assignment, the WPWMA may deny or approve such request in its complete discretion. No request by Contractor for consent to an assignment need be considered by the WPWMA unless and until Contractor has met the following requirements:

Contractor shall undertake to pay the WPWMA its reasonable expenses for attorneys' fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment;

a) Contractor shall furnish the WPWMA with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) fiscal years of such proposed assignee;

b) Contractor shall furnish the WPWMA with satisfactory proof: (i) that the proposed assignee has at least two (2) years of Municipal Solid Waste management experience on a scale equal to or exceeding the scale of operations conducted by Contractor; (ii) that in the last five (5) years, the proposed assignee has not suffered any citations or other censure from any federal, state or local agency having jurisdiction over its waste management operations due to any significant failure to comply with state, federal or local waste management laws and that the assignee has provided the WPWMA with a complete list of such citations and censures; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its Municipal Solid Waste management practices in accordance with sound waste management practices in full compliance with all federal, state and local laws regulating the collection and disposal of waste, including hazardous waste as identified in Title 22 of the California Code of Regulations; and (v) of any other information reasonably required by the WPWMA to ensure the proposed assignee can fulfill the terms of this Agreement in a ~~timely~~Timely, safe and effective manner.

9.6 Binding on Successors

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

9.7 Parties in Interest

Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons other than the Parties to it and their representatives, successors and permitted assigns, with the express exception of the Participating Agencies, which are third party beneficiaries of the WPWMA's rights hereunder.

9.8 Waiver

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

9.9 Notice

All notices, demands, requests, proposals, approvals, consents and other communications which this Agreement requires, authorizes or contemplates shall, except as provided in Section 8.2, be in writing and shall either be personally delivered to a representative of the Parties, at the address below or be deposited in the United States mail, first class postage prepaid (certified mail, return receipt requested), addressed as follows: If to the WPWMA:

All matters relating to risk and insurance management:

Western Placer Waste Management
Authorityc/o Risk Manager
Risk Management
Division 11491 B
Avenue
Auburn, CA 95603

All other matters, operations, contracts, etc.:

Western Placer Waste Management
Authority c/o ~~Executive Director~~ General
Manager
3013 Fiddymont Road
Roseville, CA 95747

If to Contractor:

FCC Environmental Services California, LLC
Attn: Dan Brazil, ~~VP of Operations~~ CEO
~~10077 Grogans Mill Rd~~ 460 Wildwood Forest
Dr, Suite 466100
~~The Woodlands~~ Spring, Texas
77380

With copy to:

FCC Environmental Services California, LLC
Attn: Joel Blake, Head of Legal
460 Wildwood Forest Dr, Suite 100
Spring, Texas 77380

9.10 Representatives of the Parties

A. Representatives of the WPWMA

References in this Agreement to "WPWMA" shall mean the Board of Directors of WPWMA and all actions to be taken by the WPWMA shall be taken by the Board, except as provided below. The Board may delegate, in writing, to an official of the WPWMA and may permit such official, in turn, to delegate in writing some or all of such authority to subordinate officers. Contractor may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

B. Representative of Contractor

Contractor shall, by the ~~Effective~~ Initial Commencement Date, designate in writing a responsible Person who shall serve as the representative of Contractor in all

matters related to this Agreement and shall inform the WPWMA in writing of such designation and of any limitations upon his or her authority to bind Contractor. The WPWMA may rely upon action taken by such designated representative as actions of Contractor, unless they are outside the scope of the authority delegated to him/her by Contractor as communicated to the WPWMA.

9.11 Duty of Contractor Not To Discriminate; Accessibility

Contractor shall not discriminate in the employment of Persons engaged in the performance of this Agreement or in the operation of the Facility on account of race, ancestry, religion or religious creed, color, age, sex, sexual orientation, gender, gender identity, gender expression, genetic information, national origin, marital status, medical condition, disability, military and veteran status, pregnancy, childbirth and related medical conditions, or any other classification protected by Federal, State or local laws or as otherwise prohibited by applicable WPWMA policy. —The Facility shall be designed in compliance with the accessibility requirements of the Americans with Disabilities Act.

9.12 Right to Enter and Inspect Facility

Contractor acknowledges that this Agreement does not constitute a lease and does not give Contractor the exclusive right to occupy any part of the Facility. The WPWMA and its agents and invitees shall have the right to enter the Facility and to have access to any part of the Facility at any time, including during operating hours. Contractor may not place any conditions or limitations on the WPWMA or its agents or invitees having access to the Facility. The WPWMA shall have the right, but not the obligation, to observe and inspect all of the Contractor's operations under this Agreement. The WPWMA and its agents may speak to any of Contractor's employees and shall receive full cooperation from such employees in response to any such inquiries. If the WPWMA so requests, Contractor shall make specified personnel available to accompany the WPWMA's employees and agents on inspections. The WPWMA, its agents and invitees may photograph, videotape and/or film any operations and equipment at the Facility at any time.

Upon reasonable notice and without interference with Contractor's operations, the WPWMA may review and copy (at its expense) any of Contractor's operational records related to this Agreement. The WPWMA may designate third parties to audit Contractor's records, and Contractor shall cooperate with all such designated auditors.

Contractor shall provide the WPWMA with continuous access, from WPWMA office computers, to high bandwidth, low latency, live and archived video footage of all parts of the Facility Contractor has placed video cameras, excepting only those office locations where such could constitute surveillance of Contractor private meetings. WPWMA acknowledges and agrees such video footage is the property of Contractor and shall not copy and distribute such footage to any non-WPWMA employee without first obtaining Contractor's written consent.

Contractor shall also provide the WPWMA with continuous access, from the WPWMA office computers, to live and archived SCADA data inasmuch as it is available to Contractor. WPWMA shall be solely responsible for the cost of software licenses and license updates required to maintain its access to Contractor's camera and SCADA portals.

WPWMA shall provide Contractor with continuous access, from Contractor's office computers, to high bandwidth, low latency, live and archived transactional records which, at the [Effective/Initial Commencement](#) Date of this Agreement, is WasteWorks by Carolina Software. Contractor shall be solely responsible for the cost of software licenses and license updates required to maintain its access to WPWMA's transactional record portal.

9.13 Recycling Programs Not Restricted

Nothing in this Agreement shall restrict the WPWMA or one or more of the Participating Agencies, or any of them, as to their participation or nonparticipation, or the nature or extent of their participation in, any Recycling program, developed or operated by the WPWMA, the Participating Agencies, or by one or more

residents, businesses, commercial, industrial or retail operators, or other Persons, within their respective jurisdictions.

This Section 9.14 is not, however, intended to modify the provisions of Section 5.16 pertaining to the MSW Guaranteed Minimum Recycling Level or the C&D Guaranteed Minimum Recycling Level.

9.14 Maintenance and Review of Records

Contractor shall compile, on a daily basis, accurate records of its operations at the Facility in sufficient detail to allow for (1) accurate determinations of all matters that require periodic determination under this Agreement, including, but not limited to, Articles 5, 6 and 7 hereof; (2) the compilation of reports to CalRecycle by the WPWMA and by each of the Participating Agencies; and (3) the allocation of credit for Recycling among the Participating Agencies. WPWMA shall have the right during regular business hours and upon reasonable notice to review and make copies (at the WPWMA's expense) of any documents relevant to this Agreement whether such records are maintained in electronic, magnetic and other media. Advance notice of at least twenty-four (24) hours shall be deemed reasonable.

9.15 Financial Records and Reporting

Contractor shall maintain a proper set of books and records on an accrual basis, and an annual financial statement, audited by Contractor's certified public accountant, in accordance with Generally Accepted Accounting Principles, accurately reflecting the business done by it under this Agreement. Contractor shall submit to WPWMA each year a copy of its audited annual financial statement as soon as it is received by Contractor, but in all events no later than four (4) months following the close of Contractor's fiscal year. The information required herein shall pertain only to Contractor's operations covered and regulated by this Agreement.

Contractor shall maintain all records relating to the services provided hereunder for a period of five (5) years from the date of the generation of each such record.

WPWMA or its Agents shall have the right, upon ten (10) business days advance notice, to inspect Contractor's books and records and other like materials of the Contractor which reasonably relate to Contractor's compliance with the provisions of the Agreement. Such records shall be made available to WPWMA or its Agents at Contractor's regular place of business, but in no event outside of Placer County. WPWMA shall treat all information required by this paragraph and provided by Contractor as confidential information to the maximum extent permitted by Applicable Law and shall not be used or disclosed except as expressly authorized hereby. While WPWMA will use its best efforts to keep such documents confidential as indicated above, WPWMA makes no representation that these documents will not be treated by the courts as public records subject to disclosure to any ~~persons~~Persons requesting copies of such documents. Contractor shall be required to indemnify and defend the WPWMA, in accordance with Section 7.1, in the event a member of the public or other Person requests the disclosure of documents marked by Contractor as "Confidential".

WPWMA's Agents shall be entitled to examine the books, records and financial statements of Contractor and its Affiliates pertaining to operations not regulated under this Agreement for the sole purpose of gathering information necessary to allow the Agents to ascertain whether income, expenses, assets and liabilities are reasonably and consistently allocated among operations regulated under this Agreement and those not regulated under this Agreement and to assess the reasonableness of any transactions between Contractor and any of its Affiliates. A transaction shall be deemed reasonable if, in the judgment of WPWMA's Agent, the price for any goods or services provided by an Affiliate to Contractor represent an established market price for such goods or services.

Information gained from examination of records pertaining to operations not regulated under this Agreement shall be treated by WPWMA and its Agents as confidential information to the maximum extent permitted by Applicable Law and shall not be used or disclosed except as expressly authorized hereby.

WPWMA's Agents shall prepare a confidential report regarding the results of their examination of Contractor's non-regulated operations and transactions with Affiliates. WPWMA's Agent shall issue its report on Contractor's non-regulated operations and Contractor's transactions with Affiliates to WPWMA's legal counsel, and said report shall remain confidential, except that the dollar amount and general description of any costs that WPWMA's Agent recommends be disallowed shall be disclosed to the [WPWMA](#) Board. If Contractor appeals the conclusion of said report to the [WPWMA](#) Board, Contractor shall decide what portions, if any, of said report shall be disclosed to the [WPWMA](#) Board. The [WPWMA](#) Board shall then consider Contractor's appeal, but may, in its discretion, deny said appeal if inadequate information has been disclosed to the [WPWMA](#) Board to make an informed decision on the appeal.

For review of books and other financial records necessary to verify the Contractor's income, expenses, assets and liabilities, "Agent" shall mean an independent certified public accountant or public accountancy firm designated by WPWMA.

9.16 Right to Demand Assurances of Performance

If Contractor (1) persistently suffers the imposition of liquidated damages under Section 5.8 or 5.9; (2) is the subject of any labor unrest, including work stoppage or slowdown, sickout, picketing or other concerted job action, which materially and adversely affects its ability to operate the Facility in the ordinary course; (3) appears in the reasonable judgment of the WPWMA to be unable to regularly pay its bills as they become due; (4) appears in the reasonable judgment of the WPWMA to be unable to regularly meet cleaning, maintenance, reporting, fair employment, safe work environment, or other performance obligation(s) included in the Agreement, or comply with Applicable Law; (5) is the subject of a civil or criminal proceeding brought by a federal, state, regional or local agency for violation of Applicable Law; or (6) is not Recycling at a rate sufficient to make it probable that it will achieve the MSW Guaranteed Minimum Recycling Level, the C&D Guaranteed Minimum Recycling Level or otherwise reach the Organic Waste Recovery Efficiency on ~~an annual~~ [a quarterly](#) basis, the WPWMA may, at its option

and in addition to all other remedies it may have, demand from Contractor reasonable assurances of ~~timely~~Timely and proper performance of this Agreement, in such form and substance as the WPWMA may require.

9.17 Right of the WPWMA to Make Changes

~~The~~Without limiting WPWMA's rights under Section 8.4, the WPWMA may, without amending this Agreement, direct Contractor to cease performing one or more services described in Article 5, may direct Contractor to modify the scope of one or more such types of service, may direct Contractor to perform additional solid waste Processing services, or may otherwise direct Contractor to modify its performance under any other section of this Agreement. Contractor shall promptly and cooperatively comply with such direction.

If such changes cause an increase or decrease in the cost of performing the services, an equitable adjustment in the compensation due Contractor shall be made. If such changes cause an increase or decrease in the amount of time necessary to perform the service, Contractor will continue to perform the new or changed service while the appropriate adjustment in compensation and/or time is being determined.

If the WPWMA has directed a change in the scope of work under this section and either Party believes that such change will increase or decrease the costs of providing service, the Party which believes Contractor's compensation should be adjusted shall, within thirty (30) calendar days, submit to the other Party a proposed adjustment and the Parties shall thereafter meet and discuss the matter. Contractor shall promptly provide all relevant schedules, supporting documentation and other financial information requested by the WPWMA to evaluate the necessity for an adjustment and the amount thereof. Within ninety (90) days of the submission of the proposed adjustment, the WPWMA will determine the amount of the adjustment, if any, and shall thereafter, adjust Contractor's compensation accordingly. Any adjustments will be made effective as of the date the change in service is implemented.

If Contractor is dissatisfied with the decision of the WPWMA, any dispute may be referred to arbitration that is conducted pursuant to the procedures set forth in Exhibit O, or may be the subject of an appropriate judicial proceeding.

9.18 Provisions Applicable During Final Two Years of Term

During the final two (2) Operating Years of the Term, the WPWMA shall have the right to construct or have third parties construct additions to and expansions/modifications of the Facility, provided that such construction is carried out in a way that does not interfere materially with Contractor's operations. Contractor will allow the WPWMA and its agents and contractors full access to the Facility to design and carry out such construction.

In addition, Contractor will cooperate with the WPWMA in preparing for operations of the Facility after expiration of the Term, including but not limited to, providing full access to the Facility to other potential operators so that they may observe operations of Contractor during such final two Operating Years.

9.19 Uncontrollable Circumstances

Neither Party shall be in default of its obligations under this Agreement in the event, and for so long as, it is impossible or extremely impracticable for it to perform its obligations due to an any Uncontrollable Circumstance. A Party claiming excuse under this Section 9.20 must (1) have taken reasonable precautions, if possible, to avoid being affected by the cause, and (2) notify the other Party in writing pursuant to Section 9.9 within five (5) days after the occurrence of the event declaring an Uncontrollable Circumstance under this Section, specifying the nature of the event, the expected length of time that the Party expects to be prevented from performing, and the steps which the Party intends to take to restore its ability to perform. The Party claiming excuse under this Section 9.20 shall use its best efforts to remedy its inability to perform as quickly as possible.

If performance by a date specified in this Agreement is excused under this Section 9.20, the date by which performance is to be required will be postponed for an

amount of time equivalent to the excused delay. The preceding sentence shall not operate, however, to extend the Term.

ARTICLE 10: MISCELLANEOUS

10.1 Exhibits

Each of the Exhibits, identified as Exhibits A through [PR](#) is attached hereto and incorporated herein and made a part hereof by this reference.

10.2 Entire Agreement

This Agreement, including the referenced Exhibits, represents the full and entire agreement between the Parties with respect to the matters covered herein and supersedes all prior negotiations and agreements, either written or oral, other than the representations of Contractor referred to in Article 2.

10.3 Section Headings

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

10.4 Interpretation

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

10.5 Amendment

~~This~~[Notwithstanding the provisions of Section 9.17, this](#) Agreement may not be modified or amended in any respect except by a writing signed by the Parties.

10.6 Severability

If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall

not affect any of the remaining provisions of this Agreement that shall be enforced as if such invalid or unenforceable provision had not been contained herein.

10.7 Attorneys' Fees

The prevailing Party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with such an action from the other Party.

10.8 References to Laws

All references in this Agreement to laws and regulations shall be understood to include such laws and regulations as they may be subsequently amended or recodified. In addition, references to specific governmental agencies, boards and/or other bodies shall be understood to include agencies that succeed to or assume the functions they are currently performing.

10.9 Mediation/Arbitration

The Parties agree to cooperate with each other in an attempt to resolve any dispute. If the ~~parties~~Parties are not able to resolve the dispute, then the ~~parties~~Parties agree to submit the dispute to mediation to be conducted before a mutually agreeable mediator and pursuant to mutually-agreeable rules within sixty (60) days of the written request for mediation by either ~~party~~Party. Each ~~party~~Party shall pay its own costs plus an equal share of the cost of the mediator and mediation facilities. If the ~~parties~~Parties are unable to resolve the dispute pursuant to the terms herein above, the Parties may, in their discretion, but need not, submit disputes which arise under any sections of this Agreement to arbitration in accordance with the procedure set out in Exhibit O and may at that time agree as to whether such arbitration shall be binding or non-binding.

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

WESTERN PLACER WASTE MANAGEMENT
AUTHORITY, a joint powers authority organized
under California law

CONTRACTOR

By: _____
Chair

By: _____
President

APPROVED AS TO FORM

WPWMA Counsel

EXHIBIT A

~~TRANSITION~~

~~PLAN~~ RESERVED

~~—Supplied by Contractor—~~

EXHIBIT B
PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS; that

WHEREAS, the Western Placer Waste Management Authority, a public agency of the State of California (hereinafter called "OBLIGEE") has entered into a contract with _____ (CONTRACTOR's NAME) _____, a _____ (STATE) _____ corporation (hereinafter called "PRINCIPAL"), entitled "Agreement for Solid Waste Handling Services" (hereinafter called "contract"); and

WHEREAS, said PRINCIPAL is required under the terms of Article Seven, Section 3 of said contract to furnish a bond of faithful performance for said contract.

NOW, THEREFORE, we, the PRINCIPAL, and _____, a corporation organized and doing business under the laws of the State of _____, and duly licensed and admitted in the State of California for the purpose of making, guaranteeing or becoming sole surety upon bonds required or authorized by the laws of the State of California (hereinafter referred to as "SURETY") are held and firmly bound unto the OBLIGEE, in the penal sum of Ten Million Dollars (\$10,000,000) lawful money of the United States, for the payment of which sum, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT if the above bound PRINCIPAL shall well and truly perform, or cause to be performed, each and all of the requirements and obligations of said contract, and any alteration thereof made as therein provided, to be performed by said PRINCIPAL during the term of this bond at the time and in the manner therein specified, then this obligation shall become null and void; otherwise it shall be and remain in full force an effect until PRINCIPAL's obligations during the term of this bond have been satisfied.

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 thereunder or the

specifications accompanying the same shall in any ways 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.

The term of this bond shall commence on _____; and shall end on _____.

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this _____ day of _____, 20__.

(PRINCIPAL)

By: _____

(SEAL)

(SURETY)

By: _____

(ATTORNEY IN FACT)

(SEAL)

(Signatures of Principal and Surety must be acknowledged by Notary Public)

CONTINUATION CERTIFICATE

In consideration of premium charged,

_____ hereby continues in force:

Bond No.: _____

Dated: _____

In the amount of: _____ Dollars (\$_____)

On behalf of: _____ (CONTRACTOR's NAME)
as PRINCIPLE

In favor of: Western Placer Waste Management Authority
as OBLIGEE

For the period:

Beginning: _____

and ending: _____ subject to all the terms and conditions of said bond, PROVIDED that the liability of: _____ shall not exceed in the aggregate the amount above written, whether the loss shall have occurred during the term of said bond or during any continuation or continuations thereof, or partly during said term and partly during any continuation or continuations thereof.

Signed and sealed: _____ (date)

(NAME OF SURETY)

By: _____

Attorney in Fact

(ACKNOWLEDGMENT)

EXHIBIT C

CONTINGENCY PLAN

--Supplied by Contractor--

EXHIBIT D

PROCEDURES FOR HANDLING MISIDENTIFIED LOADS

Misidentified loads include incoming loads of Waste that are not suitable for Processing at the Facility and that have been misdirected by WPWMA Gatehouse staff. Material in these loads may include (but is not limited to) treated lumber certain types of ~~green waste~~Green Waste (palm fronds), or household items such as ~~mattresses and couches or other Bulky Wastes~~. The rejected load procedure is as follows:

~~When~~ Contractor determines that a load has been misidentified and should be rejected, Contractor will contact WPWMA's Gatehouse attendant before notifying the Customer. This will allow the WPWMA's Gatehouse attendant to explain to Contractor why the load was sent to the Facility. If Contractor still wants to reject the load, Contractor shall direct the Customer to the Gatehouse with all of their original paperwork issued at the Gatehouse. When the Customer arrives at the Gatehouse, the WPWMA's Gatehouse attendant will void the original receipt and issue a new one referencing the rejected load. The WPWMA's Gatehouse attendant will then direct the ~~customer~~Customer to the Landfill.

In the event that a load directed to the Landfill arrives at the Facility, Contractor should redirect the Customer to the Landfill. In this case, the Customer does not need to return to the Gatehouse (except to weigh out if necessary) for new paperwork.

EXHIBIT E
PRIMARY SERVICE AREA

EXHIBIT F
OPERATIONS PLAN

--Supplied by Contractor--

EXHIBIT G
FACILITY RATED CAPACITIES

--Supplied by Contractor--

EXHIBIT H-1

REUSE PROGRAM REQUIREMENTS AND LIMITATIONS

EXHIBIT H-1

REUSE PROGRAM REQUIREMENTS AND LIMITATIONS

Materials must meet the following requirements in order to be eligible for the Household Hazardous Waste reuse program. Any individual who utilizes the reuse program must complete a waiver of liability.

- All containers must be at least 50% full
- All labels are intact and readable
- Personal care products may not be given away for reuse
- Only pesticides which are currently available at a garden shop or supermarket may be given away
- Containers which have labels stating “Industrial Use” or “Institutional Use” are not eligible for the reuse program.
- Products containing arsenic, mercury or cyanide are not eligible for the reuse program.

EXHIBIT H-2

WAIVER OF LIABILITY FOR REUSE

OF HAZARDOUS MATERIALS

EXHIBIT H-2

WAIVER OF LIABILITY FOR REUSE OF HAZARDOUS MATERIALS

_____(CONTRACTOR'S NAME)_____, under contract with the Western Placer Waste Management Authority (WPWMA), operates a household hazardous waste collection program to provide residents of Placer County a safe and proper means of disposal of certain hazardous materials. Some of these materials are made available for recycling or reuse.

The WPWMA and _____(CONTRACTOR'S NAME)_____ make no warranties concerning (1) the physical or chemical characteristics of the hazardous materials, (2) the manner in which such hazardous materials may be transported, stored, treated, discharged, disposed of, used, handled, or otherwise managed, or (3) any actual or potential effects to human health and safety or to the environment from any activities stated in (2) above. The reuse materials are acceptable by the customer "as is" and "with all faults". There are no warranties which extend beyond the description on the face of the waiver, and the waiver applies to any implied warranties of fitness for a particular purpose and merchantability.

By signature below, you agree to transport, store, treat, process, emit, discharge, dispose, use, handle, or otherwise manage the hazardous materials in compliance with all applicable local, state and federal law.

By signature below, you release all personal and property injury ~~claims~~Claims caused by the negligent acts, errors, or omissions of the Authority or _____(CONTRACTOR'S NAME)_____ or otherwise. Any and all risks regarding the quality, condition, constituency or performance of the reuse material is on the customer, and should the reuse material prove to be defective or injurious in anyway, it is the customer and not WPWMA or _____(CONTRACTOR'S NAME)_____ who is responsible for and assumes the costs and other consequence of any resulting personal or property injuries or reports.

This waiver releases and extinguishes forever all of your rights accruing through Section 1542 of the California Civil Code or under any comparable federal or state statute or rule of law, whether a common law or equitable principle of similar effect.

**EXHIBIT H-2
WAIVER OF LIABILITY FOR REUSE OF HAZARDOUS MATERIALS**

Said Section 1542 provides:

A general release does not extend to ~~claims~~Claims which the creditor does not know or expect to exist in his favor at the time of executing the release, which, if known by him, must have materially affected his settlement with the debtor.

By signature below, you agree to use this product for your own personal use, and agree not to sell the product.

The material you are taking is described on the attached form. The attached form becomes a part of this waiver. Please initial and date the form once it is filled out.

Please state where and how you plan to use this material:

Please write out in your own handwriting in the space provided below the following: "I have read this waiver, and understand what rights I am waiving. I agree to comply with the conditions, covenants and provisions in this waiver."

Signature Date

Printed Name Telephone Number

Street Address City Zip Code

EXHIBIT I

CALCULATION OF RECYCLING LEVEL ACHIEVED

The Recycling Level will be calculated as follows:

$$C = \frac{A - B}{A} \times 100$$

Where:

A = Tons of Municipal Solid Waste delivered to the WPWMA Site between July 1 and June 30 of any year.

B = Tons of Municipal Solid Waste delivered to the Materials Recovery Facility and delivered by Contractor to the Organics Processing Area, and subsequently disposed of at the Landfill or otherwise disposed of during the same period.

C = Percentage of Municipal Solid Waste Recycled for the same period.

Example:

For the purposes of this example, assume the following quantities of Municipal Solid Waste were received at the WPWMA Site and Recycled or disposed of (as applicable) during the Operating Year:

A = 350,000 Tons

B = 227,250 Tons

Thus,

$$C = \frac{A - B}{A} \times 100 = \frac{350,000 - 227,250}{350,000} \times 100 = 26.5\%$$

Recycling Level = 26.5%

EXHIBIT J
FACILITY MASS FLOW AND RECOVERY DIAGRAM

--To be Provided by Contractor--

EXHIBIT K

WASTE CHARACTERIZATION SAMPLING PROTOCOL

The following defines the protocol for conducting a Waste characterization study (WCS) pursuant to Section 5.15 of the Agreement. As required by the Agreement, the applicable Waste stream will be sampled twice to ascertain the impact of any new Recycling program implemented by the WPWMA or any one or more of the Participating Agencies. The first of the two sampling events will occur immediately preceding implementation of the Recycling program; the second will occur ~~approximately three~~ within twelve (312) months after implementation of the program.

1. GENERAL METHODOLOGY FOR CONDUCTING THE WCS

The entire Municipal Solid Waste or Construction and Demolition Debris stream, including the materials normally directed to the Landfill without first being Processed at the Facility, will be analyzed to determine the relative composition of the waste stream.

The WCS shall be conducted over a period of one to two days. The quantity of waste to be analyzed will be computed as approximately thirty three percent (33%) of the average weekday quantity of Municipal Solid Waste or Construction and Demolition Debris (as applicable) received at the Facility for the 3-month period preceding the WCS. For example, if the average weekday quantity of Municipal Solid Waste received at the Facility over the 3-month period preceding the WCS is 850 Tons, then the quantity of waste to be analyzed during the WCS shall be approximately 280 Tons.

The Waste stream to be sampled will not be differentiated by jurisdictional origin or by generation sector (residential, commercial, industrial, etc.) The purpose of the WCS is to determine the relative impact of a specific Recycling program on the Waste stream, not to ascertain trends or predict future changes in the waste stream.

The WCS will be conducted at the Materials Recovery Facility. The WPWMA shall be responsible for: 1) providing the necessary personnel to oversee and supervise the WCS, 2) recording and analyzing the data gathered during the WCS and 3) preparing the WCS report. Contractor shall be responsible for supplying all necessary personnel and equipment to conduct the WCS.

Every third non-Publicly Hauled Waste vehicle delivering Municipal Solid Waste or Construction and Demolition Debris (as applicable) to the Facility will be directed to the Materials Recovery Facility receiving area, the contents of which will be included in the WCS. All other non-Publicly Hauled Waste vehicles delivering Municipal Solid Waste or Construction and Demolition Debris to the Facility will be directed to the Landfill.

Publicly Hauled Waste vehicles will continue to be directed to the Publicly Hauled Waste Tipping Area. Every third vehicle transporting Municipal Solid Waste or Construction and Demolition Debris (as applicable) from the Publicly Hauled Tipping Area will be selected to enter the Materials Recovery Facility; the remaining vehicles will be directed to the Landfill.

Wastes will generally be sorted in the same manner as occurs during normal Processing operations by Contractor at the ~~of the~~ Materials Recovery Facility. After being Processed, the residue from the sort will be returned to the receiving floor so that it may be sorted a second time in the same manner as the first sort. Finally, a random sample of the secondary residual material will be hand-sorted. The results of the three sorts will be combined to generate a single Waste stream composition.

2. SPECIFIC METHODOLOGY FOR CONDUCTING THE WCS

The following provides a detailed description for conducting ~~the~~ each of the WCS events.

2.1. Pre-Test Preparation

By the end of operations on the day preceding the WCS, Contractor shall prepare the Material Recovery Facility for the test by:

- a) Processing or otherwise removing all Municipal Solid Waste from the Materials Recovery Facility. No materials shall be stockpiled prior to initiating the WCS.
- b) Emptying all recovered material storage bunkers and containers.
- c) Providing the necessary material storage containers for the initial floor sort as described in Section 2.3.
- d) Providing the necessary scale(s) for weighing of recovered materials as described in Section 3.

2.2. Selection and Receipt of Waste

Upon arrival at the Gatehouse, the WPWMA will direct every third truck delivering Municipal Solid Waste or Construction and Demolition Debris (including vehicles operated by the Contractor delivering loads from the Publicly Hauled Tipping Area) to the Materials Recovery Facility receiving floor. Wastes will continue to be directed to the receiving floor until the necessary quantity of Municipal Solid Waste or Construction and Demolition Debris has been received. Vehicles not selected to unload at the Materials Recovery Facility will be sent directly to the Landfill.

Upon arrival at the Materials Recovery Facility, Contractor will direct the driver to unload in an area of the receiving floor that provides: 1) WPWMA and Contractor staff with safe and unobstructed access to the entire perimeter of the load for purposes of photographing/~~video taping~~[videotaping](#) and making initial observations about the load and 2) the ability for Contractor to conduct an initial floor sort of the material as described in Section 2.3. After conducting the initial review and floor sort of the material, Contractor may push the waste into a stockpile or on to the Processing infeed lines.

2.3. Initial Floor Sort

After initial observation of the load by the WPWMA and Contractor, Contractor shall conduct an Initial Sort of the load. The intent of the Initial Sort is to remove large or ~~bulky items~~[Bulky Wastes](#) and any materials that are clearly non-targeted, residual materials.

Contractor shall also attempt to open bagged materials if the conditions of the receiving floor safely permit Contractor to do so. All materials recovered during this initial sort shall be placed into bins or otherwise stockpiled on the receiving floor to allow for the weights of the recovered items to be accurately determined.

2.4. Primary Sort

After conducting the Initial Sort, Contractor shall conduct the Primary Sort of the materials by Processing the materials through the Materials Recovery Facility in accordance with Contractor's normal and routine operating methodology including operating the MRF ADC equipment. To prevent excessive burden depths and surges of materials on the sorting lines, Contractor shall endeavor to feed the Processing lines at a steady rate that is approximately $\frac{1}{2}$ to $\frac{3}{4}$ of the normal operating feed rate.

Contractor shall attempt to recover the maximum amount of material from each of the categories listed in ~~Table K-1~~[Form 4A of Contractor's proposal included in Exhibit P for Municipal Solid Waste or Form 4B of Contractor's proposal included in Exhibit P for Construction and Demolition Debris.](#)

Materials that drop beneath the infeed conveyors and/or screens during the Primary Sort shall be collected and returned to the receiving floor and placed on the infeed lines for Processing.

2.5. Secondary Sort

All residue from the Primary Sort shall be returned to the receiving floor to be sorted a second time. When unloading the residue from the Primary Sort, Contractor shall direct the trucks to unload in an area separate from materials that have not yet undergone the Primary Sort. The purpose of maintaining separation between the materials is to ensure that all of the Municipal Solid Waste or Construction and Demolition Debris originally received at the Materials Recovery Facility undergoes a Primary Sort before undergoing the Secondary Sort. The Secondary Sort shall not commence until all materials have undergone the Primary Sort.

As with the Primary Sort, Contractor shall conduct the Secondary Sort of the materials by Processing the materials through the Materials Recovery Facility in accordance with Contractor's normal and routine operating methodology including operating the MRF ADC equipment. To prevent excessive burden depths and surges of materials on the sorting lines, Contractor shall endeavor to feed the Processing lines at a steady rate that is approximately $\frac{1}{2}$ to $\frac{3}{4}$ of the normal operating feed rate.

During the Secondary Sort, Contractor shall attempt to recover the maximum amount of material from ~~each of the~~ same categories ~~listed/identified~~ in ~~Table K-1~~ Section 2.4.

Materials that drop beneath the infeed conveyors and/or screens during the Secondary Sort shall be collected and returned to the receiving floor and placed on the infeed lines for Processing.

Residue from the Secondary Sort shall be weighed and directed to the Landfill for disposal except as described in Section 2.6.

2.6. Random Sample Selection of Residue for Secondary Sort

The residue resulting from the Secondary Sort will generally be weighed and hauled to the Landfill for disposal. However, randomly selected loads will be transferred to the receiving floor for hand sorting as described in Section 2.7.

Periodically throughout the Secondary Sort, WPWMA will direct Contractor to obtain a sample of the residue for hand sorting. For approximately every 50 Tons of material Processed during the Secondary Sort, WPWMA shall direct Contractor to collect an approximately 400 pound sample from the residue load-out chutes (where the residue

trucks are normally loaded). The sample shall be weighed and transported by Contractor to the hand sort area of the receiving floor.

2.7. Hand Sort

The hand sort may begin during the performance of the Secondary Sort and may be continued the next day as necessary. If the materials to be sorted are to be stored overnight, they shall be stored in an area of the receiving floor that will not interfere with the receipt of materials the following day.

During the Hand Sort, Contractor shall attempt to recover the maximum amount of material from ~~each of the~~ same categories listed in ~~Table K-1~~ Section 2.4 with the exception of fines that would normally be Processed and collected using the MRF ADC equipment. All recovered materials shall be placed into separate containers for accurate weighing. All non-recovered materials shall be transferred to a separate container so that it may also be weighed.

3. WEIGHING PROCEDURES

The following materials shall be weighed and recorded at the Gatehouse:

- a) Municipal Solid Waste or Construction and Demolition Debris initially selected for the WCS.
- b) Residue resulting from the Primary Sort prior to delivery to the Materials Recovery Facility receiving area.
- c) Residue resulting from the Secondary Sort that is hauled by Contractor directly to the Landfill
- d) MRF ADC produced during the Primary and Secondary Sorts.

Tare weights of the vehicles shall not be used for determining the weights of these materials. All vehicles shall weigh both loaded and empty so that the most accurate accounting the material weights can be determined. Information to be recorded in addition to the weight of the material includes:

- a) Material type (based on the classification above)
- b) Truck number
- c) Time the loaded and empty weights of the truck were recorded.

Weights for these materials shall be logged on form K-1. Weighing of materials recovered during the Initial Sort shall occur at either the Gatehouse (in which case the weighing procedure shall be the same as described above) or shall be weighed on a scale with precision of ± 1 pound.

Weighing of materials recovered during the Primary, Secondary and Hand Sorts (with the exception of MRF ADC) and residue selected for the Hand Sort shall be weighed on a scale with precision of ± 1 pound. Materials recovered during the sorts may be baled or weighed loose, however in no case shall Recyclable Materials recovered prior to the WCS or received at the commercial or residential Buyback ~~centers~~/Dropoff Centers be blended with materials recovered from the Municipal Solid Waste or Construction and Demolition Debris during the WCS. Weights for all recovered materials shall be logged on form

K-2.

4. COMPILE AND ANALYZE DATA

After completing the WCS as described in Sections 2 and 3, WPWMA shall compile the data and prepare a Municipal Solid Waste or Construction and Demolition Debris composition using the following method:

- a) Combine the weights of each material type recovered (~~see Table K-1~~) from the Initial, Primary and Secondary Sorts.
- b) Compile the results of the Hand Sort and develop the relative composition of the material that was hand sorted. The relative composition shall be determined by dividing the weight of each material type recovered by the total weight of materials selected for the Hand Sort.
- c) Apply the relative composition determined in step “b” to the total quantity of residue generated during the Secondary Sort and either hauled to the Landfill or sorted during the Hand Sort. Results shall be reported in terms of Tons.
- d) Add the results of step “a” to those of step “c”.
- e) Divide the individual material quantities determined in step “c” by the total quantity of Municipal Solid Waste or Construction and Demolition Debris delivered to the Materials Recovery Facility as part of the WCS.

After conducting both the pre and post WCS, WPWMA will prepare a brief report that summarizes the results of each WCS. WPWMA will provide a draft copy of the report to Contractor for review and comment before issuing the final report.

EXHIBIT L

MITIGATION MEASURES

--TBD Supplied by WPWMA--

EXHIBIT M

SITE WIDE ODOR PLAN

--Supplied by WPWMA--

EXHIBIT N

INCENTIVE AND DISINCENTIVE PAYMENT CALCULATION

Incentive Payment Example

Pursuant to Section ~~6-76.6~~.A, Contractor shall receive, in addition to all other compensation, an incentive payment for each Ton of Municipal Solid Waste which is delivered to the Facility and diverted from land disposal in excess of the Guaranteed Minimum Recycling Level and which qualifies as Creditable Recovery. ~~The incentive payment shall be computed on an Operating Year basis.~~

Following is an example of the method for computing the incentive payment earned by Contractor ~~in any Operating Year.~~

Assume:

- A total of 350,000 Tons of Municipal Solid Waste is received at the WPWMA Site ~~during the Operating Year.~~
- Of this amount, 257,250 Tons are delivered by Contractor to the Landfill for disposal or otherwise did not qualify as Creditable Recovery during the ~~Operating Years~~ same period.
- Guaranteed Minimum Recycling Level is 22%

Then:

Recycling Level achieved = $\frac{350,000 \text{ Tons} - 257,250 \text{ Tons}}{350,000 \text{ Tons}}$

350,000 Tons

Recycling Level achieved = 26.50%

For purposes of this example only, since the Recycling Level achieved by Contractor exceeded the Guaranteed Minimum Recycling Level of 22%, Contractor would be entitled incentive payments as detailed below:

Incentive Payment = 350,000 Tons x (26.50% - 22.00%) x (\$20.00/Ton)

Incentive Payment = \$315,000

Disincentive Adjustment Example

Prior to July 1st, 2026:

Pursuant to Section 6-76.6.B, if Contractor fails to achieve the Guaranteed Minimum Recycling Level, the Municipal Solid Waste Processing Fees shall be reduced by one percent (1%) for each percentage (or portion thereof) by which Contractor's recovery falls below the Guaranteed Minimum Recycling Level. ~~The disincentive adjustment shall be computed on an annual basis.~~

Following is an example for the method of computing the disincentive adjustment.

Assume:

- A total of 350,000 Tons of Municipal Solid Waste is received at the WPWMA Site.
- Contractor received and Processed a total of 250,000 Tons of Municipal Solid Waste during the same period.
- Of this amount, 197,400 Tons are delivered by Contractor to the Landfill for disposal or otherwise did not qualify as Creditable Recovery during the same period.
- Guaranteed Minimum Recycling Level is 22%

Then:

$$\text{Recycling Level achieved} = \frac{250,000 \text{ Tons} - 197,400 \text{ Tons}}{250,000 \text{ Tons}}$$

$$\text{Recycling Level achieved} = 21.04\%$$

For purposes of this example only, since the Recycling Level achieved by Contractor did not meet the Guaranteed Minimum Recycling Level of 22%, Contractor would be subject to a disincentive adjustment as detailed below:

$$\text{MSW}_{PF} = 250,000 \text{ Tons} \times PF$$

Where:

$$\text{MSW}_{PF} \quad \equiv \quad \text{The Municipal Solid Waste Processing Fees paid to Contractor during the applicable period}$$

$$PF \quad \equiv \quad \text{Municipal Solid Waste Processing Fee}$$

$$\text{Disincentive Adjustment} = (22.00 - 21.04) \times 1\% \times \text{MSW}_{PF}$$

$$\text{Disincentive Adjustment} = (22.00 - 21.04) \times 1\% \times 250,000 \times PF$$

$$\text{Disincentive Adjustment} = 2,400 \times PF$$

Disincentive Adjustment Example

Between July 1st, 2026 and Substantial Completion:

Pursuant to Section 6.6.B, if Contractor fails to achieve the Guaranteed Minimum Recycling Level, the Municipal Solid Waste Processing Fees shall be reduced by one and one half percent (1.5%) for each percentage (or portion thereof) by which Contractor's recovery falls below the Guaranteed Minimum Recycling Level.

Following is an example for the method of computing the disincentive adjustment.

Assume:

- A total of 350,000 Tons of Municipal Solid Waste is received at the WPWMA Site during the Operating Year.
- Contractor received and Processed a total of ~~325,000~~250,000 Tons of Municipal Solid Waste during the Operating Years same period.
- Of this amount, ~~276,350~~197,400 Tons are delivered by Contractor to the Landfill for disposal or otherwise did not qualify as Creditable Recovery during the Operating Years same period.
- Guaranteed Minimum Recycling Level is 22%

Then:

$$\text{Recycling Level achieved} = \frac{\del{325,000}\u250,000 \text{ Tons} - \del{276,350}\u197,400 \text{ Tons}}{\del{325,000}\u250,000 \text{ Tons}}$$

$$\text{Recycling Level achieved} = 21.04\%$$

For purposes of this example only, since the Recycling Level achieved by Contractor did not meet the Guaranteed Minimum Recycling Level of 22%, Contractor would be subject to a disincentive adjustment as detailed below:

$$\text{MSW}_{\text{PF}} = \del{325,000}\u250,000 \text{ Tons} \times \text{PF}$$

Where:

MSW_{PF} = The Municipal Solid Waste Processing Fees paid to Contractor during the Operating Year applicable period

PF = Municipal Solid Waste Processing Fee

$$\text{Disincentive Adjustment} = (22.00 - 21.04) \times \u1.5\% \times \text{MSW}_{\text{PF}}$$

$$\text{Disincentive Adjustment} = (22.00 - 21.04) \times \u1.5\% \times \del{325,000}\u250,000 \times \text{PF}$$

$$\text{Disincentive Adjustment} = \u3,1203,600 \times \text{PF}$$

After Substantial Completion:

Pursuant to Section 6.6.B, if Contractor fails to achieve the MSW Guaranteed Minimum Recycling Level, the Municipal Solid Waste Processing Fees shall be reduced according to the schedule below for each percentage (or portion thereof) by which Contractor's recovery falls below the MSW Guaranteed Minimum Recycling Level.

<u>MSW Recovery Level</u>	<u>Disincentive Adjustment</u>
<u>99.99% GMRL and 95.00% GMRL</u>	<u>1.0%</u>
<u>94.99% GMRL and 90.00% GMRL</u>	<u>1.3%</u>
<u><90.00% GMRL</u>	<u>1.6%</u>

Assume:

- A total of 350,000 Tons of Municipal Solid Waste is received at the WPWMA Site.
- Contractor received and Processed a total of 250,000 Tons of Municipal Solid Waste during the same period.
- Of this amount, 122,500 Tons are delivered by Contractor to the Landfill for disposal or otherwise did not qualify as Creditable Recovery during the same period.
- Guaranteed Minimum Recycling Level is 60%

Then:

$$\text{Recycling Level achieved} = \frac{250,000 \text{ Tons} - 122,500 \text{ Tons}}{250,000 \text{ Tons}}$$

$$\text{Recycling Level achieved} = 51.00\%$$

For purposes of this example only, since the Recycling Level achieved by Contractor did not meet the Guaranteed Minimum Recycling Level of 60%, Contractor would be subject to a disincentive adjustment as detailed below:

$$\text{MSW}_{PF} = 250,000 \text{ Tons} \times PF$$

Where:

$$\text{MSW}_{PF} = \text{The Municipal Solid Waste Processing Fees paid to}$$

Contractor during the applicable period

PF \equiv Municipal Solid Waste Processing Fee

Disincentive Adjustment = [(60.00 - 57.00) x 1.00% + (57.00 - 54.00) x 1.3% + (54.00 - 51.00) x 1.6%] x MSW_{PF}

Disincentive Adjustment = [(60.00 - 57.00) x 1.00% + (57.00 - 54.00) x 1.3% + (54.00 - 51.00) x 1.6%] x 250,000 x PF

Disincentive Adjustment = 29,250x PF

EXHIBIT O

PROCEDURES FOR ARBITRATION

A. Request for Arbitration

If a question or dispute should arise, WPWMA or Contractor may indicate its desire to resolve the matter through arbitration proceedings by service of a written Request for Arbitration setting forth the issues to be arbitrated and the general contentions relating to those issues of the party serving the Request.

If a Request is made by Contractor, it shall be served in accordance with the notice provisions in Section 9.9 of the Agreement.

If the party upon which a Request for Arbitration is served wishes to submit the matter to arbitration it shall, within 30 days after service of the Request, serve a Notice of Election to become a party to arbitration and a Response to the Request, setting forth its position and general contentions with respect to the issues set forth in the Request. In this case, the arbitration will proceed in accordance with the procedures herein.

If the party upon which a Request for Arbitration is served does not wish to submit the matter to arbitration, it shall, within 30 days after service of the Request, serve a Notice of Refusal to Arbitrate. If no action is taken within the 30 days, it shall be presumed that the party upon which the Request for Arbitration has been served does not want to arbitrate and no future proceedings will occur under the procedures herein.

B. Number and Appointment of Arbitrators

All arbitration proceedings shall be conducted by a single arbitrator selected by Contractor and WPWMA. The arbitrator shall be selected within 45 days after the service of the Request for Arbitration. If the Parties to the arbitration cannot agree on an arbitrator within 45 days, either party may petition the California Superior Court in and for Placer County for the appointment of an arbitrator.

C. Guidelines for Qualification of Arbitrators

The Parties acknowledge that the arbitrator should have experience in one or more of the following fields: construction, civil engineering, solid waste disposal engineering, ~~materials recovery facility~~ [Materials Recovery Facility](#) operation and management, utility accounting methods and practices. The Parties to the arbitration shall use their best

efforts to agree in advance upon the qualifications of any arbitrator to be appointed by the Superior Court.

D. Powers of Arbitrator: Conduct of Proceedings

Except as hereinafter provided, arbitrations shall be conducted by and in accordance with the commercial arbitration rules of the American Arbitration Association. Unless waived in writing by the Parties to the arbitration, the notice of hearing served by the arbitrator shall not be less than 90 days. The arbitrator shall not base his or her award on information not obtained at the hearing. The arbitrator shall have the power to issue orders mandating compliance with the terms of this Agreement or enjoining violations of this Agreement only if both Parties agree to make the decision of the arbitrator binding.

EXHIBIT P
CONTRACTOR'S PROPOSAL

EXHIBIT Q

ANNUAL RECOVERED ORGANIC WASTE PRODUCT

PROCUREMENT TARGET

EXHIBIT R
CONTRACTOR'S GUARANTY

EXHIBIT Q

ANNUAL RECOVERED ORGANIC WASTE PRODUCT PROCUREMENT TARGET

SB 1383 (short-lived climate pollutants) was approved by the Governor in September 2016. Beginning January 1, 2022, SB 1383 required cities and counties to annually procure specific quantities of recovered organic waste product. The SB 1383 regulations relevant to this Agreement are in the California Code of Regulations, Title 14, Division 7, Chapter 12 (“Regulations”). The Regulations set forth quantities of ROWP, including ~~compost~~ Compost, that municipalities must procure (“ROWP Target(s)”). The parties intend that if SB 1383 is amended from time to time or its implementing code sections or regulations renumbered or reorganized, the amended and renumbered sections or regulations will be read into this Agreement and replace any specific references.

As provided below, Contractor shall meet the annual ROWP Target for each Member Agency Participating Agency that has an active flow commitment agreement with the WPWMA (hereinafter “PA FC”) pursuant to SB 1383, as may be amended from time to time. The Compost under this Agreement must meet the specifications and requirements in the Regulations.

1. Recovered Organic Waste Product (ROWP) Target

Annually, Contractor shall satisfy the state’s published ROWP Targets for the Member Agencies PA FCs, unless the ROWP Targets are adjusted as provided in Section 3 below, in which case Contractor will be responsible for the adjusted ROWP Target(s) for the respective Member Agency or Agencies PA FC. It is Contractor’s responsibility to ensure it is complying with SB 1383 requirements to meet the ROWP Targets for all Member Agencies PA FCs.

Pursuant to 14 CCR § 18993.1, the per capita ROWP Target is 0.08 Tons and 0.58 Tons of Compost constitutes one (1) ~~ton~~ Ton of ROWP credit. The ROWP Targets established by CalRecycle for January 1, 2022 through December 31, 2026, are provided below, along with the ~~compost~~ Compost equivalent.

Member Agency	Population	Annual ROWP Procurement Target (Tons)	
		Total Procurement	Compost Equivalent
Lincoln	49,624	3,970	2,303
Placer County	114,613	9,169	5,318
Rocklin	70,469	5,638	3,270
Roseville	146,875	11,750	6,815
TOTAL	381,581	30,527	17,706

These targets may be impacted by AB 1985; Contractor is solely responsible for verifying the applicable annual ROWP Targets. The state will provide updated ROWP Targets in the future, and Contractor will be responsible for satisfying those as provided herein.

2. Member Agency PA FC Population Estimates

Member Agency PA FC population estimates shall be determined based on the most recent annual data reported by the California Department of Finance at www.dof.ca.gov/forecasting/demographics/estimates-e1/ . For the period of January 1, 2022 through December 31, 2026, the population estimates for 2021, which are presented above, shall be used for all subsequent computations required under this Exhibit Q.

3. Adjustment to ROWP Targets

In the event a Member Agency PA FC or its Designated Hauler elects to reduce the quantities of Qualifying Materials it delivers (as defined below) to the Facility, the following methodology shall be used to compute the ROWP Targets.

3.1 Qualifying Materials

Qualifying Materials shall include only Source Separated Green Waste, Source Separated Food Waste delivered to the Facility, and a portion of the Municipal Solid Waste directed to the Materials Recovery Facility for Processing by a ~~Member Agency or their Designated Hauler~~ PA FC corresponding to the Compostable organics fraction as defined in the most recent waste composition study results conducted by WPWMA¹. As of December 2023, the portion of Municipal Solid Waste deemed Compostable is 22.7%. No other residentially or commercially generated Wastes from within the jurisdictional boundaries of the ~~Member Agency~~ PA FC shall be included in determining the Qualifying Materials.

3.2 Per Capita Delivery of Qualifying Materials

WPWMA shall utilize data from its Gatehouse customer transaction database to determine the total Qualifying Materials received from the ~~Member Agencies~~ PA FC. For the purposes of determining Contractor’s ROWP Targets for a given calendar year, WPWMA shall rely on Qualifying Material Tonnage data for the immediately preceding calendar year.

For purposes of example only, the following table summarizes the total Qualifying Material Tonnage delivered by each ~~Member Agency~~ PA FC in calendar year 2022 which would be used for establishing Contractor’s calendar year 2023 ROWP Targets for each ~~Member Agency~~ PA FC.

Member Agency <u>PA FC</u>	Qualifying Materials (Tons)	Population	Per Capita Qualifying Materials (Tons)
Lincoln	12,103	49,624	0.244
Placer County ²	25,277	97,906	0.258
Rocklin	17,501	70,469	0.248
Roseville	37,384	146,875	0.255

3.3 Normalize Per Capita Qualifying Material Delivery Results

For purposes of example only, divide the computed Per Capita Qualifying Material Tonnage values for each ~~Member Agency~~ PC FC by the maximum value of the set. This will produce the relative value of the Per Capita Qualifying Material Tonnage value ranging between 0 and 100%.

Member Agency <u>PA FC</u>	Per Capita Qualifying Materials (Tons)	Max Value	Per Capita Qualifying Materials (Normalized)
Lincoln	0.244	0.258	94%
Placer County	0.258		100%
Rocklin	0.248		96%
Roseville	0.255		99%

3.4 Determine Adjusted ROWP Target

For purposes of example only, using the table below, determine Contractor’s minimum ROWP Target coverage requirement.

¹ WPWMA Waste Characterization Study 2018-19, Cascadia Consulting Group, October 2019

² Placer County’s population, for purposes of this section, is reduced by 16,707 reflecting the population residing in Franchise Areas 2 and 3 which is outside of the Primary Service Area.

Normalized Per Capita Range (Percent)	ROWP Target Coverage Factor (Percent)
90 – 100	100
80 – 89	90
70 – 79	80
60 – 69	70
50 – 59	60
40 – 49	50
30 – 39	40
20 – 29	30
10 – 19	20
0 – 9	10

For purposes of example only, using the example figures from Sections 1 and 3 above, Contractor would be obligated to market Compost in such a manner to meet at least the following quantities:

Member-AgencyPA_FC	Annual Compost ROWP Target (Tons)	ROWP Target Coverage	Contractor's Min. ROWP Target (Tons)	
			Annual	Quarterly
Lincoln	2,303	100%	2,303	576
Placer County	5,318	100%	5,318	1,330
Rocklin	3,270	100%	3,270	818
Roseville	6,815	100%	6,815	1,704
Total	17,706		17,706	4,428

4. ROWP Procurement Credit Allocation

Each quarter, Contractor will allocate ROWP Credit proportionally among the [Member AgenciesPA_FCs](#), based on Relative % of total ROWP Target.

- A. Determine the ROWP Targets for the [Member AgenciesPA_FCs](#). These will either be the targets provided by CalRecycle or, if a [Member AgencyPA_FC](#) reduces the Qualifying Material delivered to the Facility, it will be the adjusted ROWP Target(s) calculated pursuant to Section 3.
- B. Determine the [Member AgenciesPA_FCs](#)' relative % of total ROWP Target
- C. Assign ROWP by the relative % of total ROWP Target.

To illustrate the calculation, for the period from January 1, 2022, through December 31, 2026, assuming there is no adjusted ROWP Target, the ROWP credit allocation would be calculated as follows.

Member-AgencyPA_FC	ROWP Compost Target (Tons)	Relative % of Total Target
Lincoln	2,303	13.0%
Placer County	5,318	30.0%
Rocklin	3,270	18.5%
Roseville	6,815	38.5%
Total	17,706	100%

For example, using the above calculations, if Contractor procures 5,000 tons of ROWP in a quarter, ROWP credit would be allocated as follows for that quarter:

- *Lincoln:* 5,000 tons * 13% = 650 tons
- *Placer County:* 5,000 tons * 30% = 1,500 tons

- *Rocklin:* $5,000 \text{ tons} * 18.5\% = 925 \text{ tons}$
- *Roseville:* $5,000 \text{ tons} * 38.5\% = 1,925 \text{ tons}$

5. Quarterly Reporting

As part of the Quarterly Reports required under Section 5.22.C., Contractor will provide current data on SB 1383 ROWP procurement in its quarterly reports to WPWMA. The quarterly reports will include, at a minimum:

- The ROWP Target tonnage satisfied during the reporting quarter and supporting documentation
- The allocation of ROWP Target credit amongst the [Member Agencies PA FCs](#)
- The remaining ROWP Target needed for the year for the [Member Agencies PA FCs](#)

6. Penalties

Contractor acknowledges and agrees that it shall be financially liable for any monetary fines or penalties levied against any of the [Member Agencies PA FCs](#) by CalRecycle should Contractor fail to procure the quantity of Compost required under this Exhibit Q, but only to the extent allowable under Applicable Law.

Summary report:	
Litera Compare for Word 11.14.1.3 Document comparison done on 6/7/2026 12:24:17 PM	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original DMS: iw://bbklaw-mobility.imatege.work/imatege/45038778/1 - Amended and Restated MRF Operations Agreement (existing language).docx	
Modified DMS: iw://bbklaw-mobility.imatege.work/imatege/45064409/2 - First Amended and Restated MRF Operations Agreement-WPWMA (Clean).docx	
Changes:	
<u>Add</u>	570
Delete	455
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	5
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	1030