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WEST CONTRA COSTA  
INTEGRATED WASTE MANAGEMENT AUTHORITY

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**AGREEMENT**

**COMPOSTING SERVICES**

**FOR**

**GREEN WASTE**

June 24, 2009

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**AGREEMENT**

**FOR PROCESSING SERVICES FOR WEST COUNTY GREEN WASTE**

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between the West Contra Costa Integrated Waste Management Authority, a California Joint Exercise of Powers Authority, (Authority) and \_\_\_\_\_(Contractor).

**SECTION 1 - RECITALS**

This Agreement is entered into with reference to the following facts, circumstances, determinations and findings made by the Board of Directors:

1.1 The cities of El Cerrito, Richmond, Hercules, San Pablo and Pinole (Member Agencies) have entered into a Joint Powers Agreement (JPA Agreement) dated March 6, 1995, Additionally, the Authority has entered into a contract with Contra Costa County dated May 25, 1993.

1.2 The Authority is responsible for protection of public health and the environment. The Authority is not only authorized but required to provide solid waste handling services to its citizens under the provisions of the California Integrated Waste Management Act of 1989 (the "**Act**"), which is set forth in the California Public Resources Code at Section 40000, *et seq.*, including source reduction, recycling, composting activities and the collection, transfer and disposal of solid waste within the Service Area, as provided in Section 40057 of the Act.

1.3 The Member Agencies and the County collect source separated green waste within their respective service areas.

1.4 The Regional Integrated Waste Management Plan approve by the Authority and the California Integrated waste management Board identities yard waste collection and composting as one program for achievement of State mandated diversion requirements

1.5 The Member Agencies of the Authority and the Joint Exercise of Powers Agreement creating the Authority empowers the Authority to, among other things, direct delivery of solid waste collected from within the Service Area pursuant to a franchise agreement to facilities designated by the Authority and to determine the type, extent and manner of processing of solid waste collected from within the Service Area and to arrange for said processing.

1.6 The \_\_\_\_\_ [Insert Processing Facility Name] is intended to be the principal Processing Facility for Green Waste generated in the Service Area.

1.7 The Authority and Contractor have agreed upon the following initial rates for services:  
Initial composting rate of \$\_\_\_\_\_ per Ton;

NOW, THEREFORE, the parties hereby agree as follows:

**SECTION 2 - DEFINITIONS**

The terms defined in this Section that begin in this Agreement with capital letters shall have the meaning set forth in this Section.

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**Agreement**

This Agreement between the Authority and Contractor, including all exhibits, schedules and attachments, which are incorporated in this Agreement by reference, as this Agreement may be amended and supplemented.

**Alternative Daily Cover (ADC)**

Landfill cover material, used to cover compacted Solid Wastes in a landfill, and at least six (6) inches of earthen material, placed on the surface of the active face of the refuse fill area at the end of each operating day to control vectors, fires, odor, blowing litter, and scavenging as defined in Section 20164 of the California Code of Regulations.

**Applicable Law**

means all laws, statutes, rules, regulations, guidelines, permit conditions, permits, actions, determinations, orders, approvals or requirements of the United States, State, regional or local government authorities, agencies, boards, commissions, courts or other bodies having applicable jurisdiction, that from time to time apply to or govern services or the performance of the Parties' respective obligations under this Agreement, *including* any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation conditions and monitoring plans in accordance with environmental impact statements, conditional use permits; building codes, zoning, and non-discrimination.

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

- (1) the adoption, promulgation, repeal, modification, amendment or other change in Applicable Law or change in judicial or administrative interpretation thereof occurring after the date of this agreement, *other than* laws with respect to taxes based on or measured by net income, or any unincorporated business, payroll, franchise taxes levied by any tax board or employment taxes; or
- (2) Any order or judgment of any federal, state or local court, administrative agency or governmental body issued after the date of this agreement;
- (3) the imposition by a governmental authority or agency of any new or different material conditions in connection with the issuance, renewal, or modification of any permit after the date of this Agreement; or
- (4) the failure of a governmental authority or agency to issue or renew, or delay in the issuance or renewal of, or the suspension, interruption or termination of, any permit after the date of this Agreement; *provided* the failure to issue or the suspension or termination of any permit is not the result of negligent action or inaction of the Party relying thereon or any third party for whom the Party relying thereon is directly responsible.

**Collector**

East Bay Sanitary Co. (EBS), Richmond Sanitary Service, Inc. (RSS), or Member Agencies' successors or assignees pursuant to a collection agreement.

**Complete Processing Services.**

The weighing and receiving of Green Waste, identification of non-acceptable Green Waste, processing of Green Waste to produce compost, mulch or other products for beneficial use, marketing and transport of the finished products for beneficial use, and disposition of residues resulting from processing of Green Waste to produce compost, mulch or other products for beneficial use.

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**Contractor's Facility**

The Composting Facility located at \_\_\_\_\_ SWIS Facility No. \_\_\_\_\_

**Environmental Laws**

All federal and State statutes, City, and City ordinances concerning public health, safety and environmental issues 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 Conservation and Recovery Act, 42 U.S. C. Section 6901 et seq.; the Federal Clean Air Act, 42 U.S. C. Section 1351 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 & Safety Code Section 25100 et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health & 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 there under.

**Excess Contaminants**

Non-compostable contaminants, which are present in materials, delivered to Contractor's Facility in amounts, which exceed 10%, by weight, of said materials as determined for each load delivered to Contractor's Facility. This includes but is not limited to Hazardous Material or Hazardous Waste and does not include Prohibited Materials

**Green Waste**

A subset of Organic Materials, including, but not limited to grass clippings, weeds, leaves, prunings, brush, dead plants and trees, brush tree trimmings, fruits and vegetables, floral and plant trimmings, Christmas trees, unpainted and untreated wood and other similar materials separated and set out for collections within the Service Area. Green Waste does not include materials not normally produced from farms, gardens or landscapes, such as, but not limited to, brick, rock, gravel, large quantities of dirt, concrete, non-organic wastes, oil, and painted or treated wood or wood products.

**Hazardous Materials or Hazardous Waste**

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

- (a) "Hazardous Waste" pursuant to Section 40141 of the California Public Resources Code; regulated under Chapter 7.6 (commencing with Section 25800) of Division 20 of the California Health and Safety Code; all substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste by Sections 25110.02, 25115, and 25117 of the California Health and Safety Code (the California Hazardous Waste Control Act), California Health and Safety Code Section 25100 *et seq.*, including 23 CCR Sections 2521 and 2522; and
- (b) materials regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*, as amended (including amendments thereto made by the Solid Waste Disposal Act Amendments of 1980), and
- (c) materials regulated under the Toxic Substance Control Act, 15 U.S.C. Section 2601 *et*

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1 seq., as amended, and related federal, State and local laws and regulations, including the  
2 California Toxic Substances Account Act, California Health and Safety Code Section  
3 25300 *et seq.*; and  
4

5 (d) Materials regulated under the Comprehensive Environmental Response, Compensation  
6 and Liability Act, 42 U.S.C. 9601, *et seq.*;

7  
8 (d) materials regulated under any future additional or substitute federal, State or local laws  
9 and regulations pertaining to the identification, transportation, treatment, storage or  
10 disposal of toxic substances or hazardous waste; and  
11

12 (f) Any substance the presence of which at the Landfill is prohibited by Applicable Law.  
13

14 If two (2) or more governmental agencies having concurrent or overlapping jurisdiction over Hazardous  
15 Waste adopt conflicting definitions of "Hazardous Waste", for purposes of collection, transportation,  
16 processing and/or disposal, the broader, more restrictive definition is employed for purposes of this  
17 Agreement.  
18

19 **Non-acceptable Green Waste**

20 Green Waste containing Excess Contaminants or Prohibited Materials.  
21

22 **Organic Materials**

23 Green Waste, and food waste including fruits, vegetables, grain products, dairy products, meat, seafood,  
24 napkins, waxed cardboard, non-recyclable paper, soiled paper products, pieces of unpainted and  
25 untreated wallboard and wood crates.  
26

27 **Party or Parties**

28 Refers to the Authority and Contractor, individually or together.  
29

30 **Processing Charge**

31 The amounts set forth in this Agreement to be paid to Contractor for providing Complete Processing  
32 Services.  
33

34 **Processing Facility**

35 Means any plant or site used for the purpose of sorting, cleaning, and processing Green Waste or  
36 Organic Material. Activities that may be undertaken at a Processing Facility are not limited to, processing  
37 Organic Materials and Green Waste. The Processing Facility approved by the Authority is \_\_\_\_\_  
38 [Insert Address and Location] which was selected by the Contractor and approved by the Authority.  
39 Change in facility designation shall require written authorization of Authority.  
40

41 **Prohibited Materials**

42 Organic or non-organic materials which are present in amounts which cause materials delivered to  
43 Contractor's Facility to be non-processable or which would cause harm to the Contractor's Facility,  
44 process or product; materials containing PCB's, creosote, arsenic, pentachlorophenols, petroleum  
45 hydrocarbons, diesel or gasoline residues; dead animals; hot or burning wastes and materials; explosives  
46 or combinations of materials that could spontaneously burn or explode. Hazardous Substances; and  
47 Hazardous Waste; and any material the receipt of which is prohibited by permits, laws or regulations duly  
48 enacted after the date of this Agreement.  
49

50 **Service Area**

51 The area served by Collector in an area within the boundaries of a Member Agency or unincorporated  
52 West County.  
53

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1 **Solid Waste**

2 Solid waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, §40191 and  
3 regulations promulgated thereunder. Notwithstanding any provision to the contrary, Solid Waste may  
4 include de minimus volumes or concentrations of waste of a type and amount normally found in  
5 residential Solid Waste after implementation of programs for the safe collection, recycling, treatment and  
6 disposal of household hazardous waste in compliance with Section 41500 and 41802 of the California  
7 Public Resources Code.

8  
9 **Uncontrollable Circumstance(s)**

10 Any act, event or condition, whether affecting (i) services or (ii) either Party, that is beyond the reasonable  
11 control of the party relying thereon and not the result of willful or negligent action or inaction of that Party  
12 (other than the contesting in good faith or the failure in good faith to contest that action or inaction), which  
13 materially and adversely affects the ability of either Party to perform any obligation under this Agreement,  
14 comprised of:

- 15 (1) An act of God, landslide, lightning, earthquake, fire, flood, (other than reasonably  
16 anticipated weather conditions for the geographic area of the Authority), explosion,  
17 sabotage, terrorism, acts of a public enemy, war, blockade or insurrection, riot, or civil  
18 disturbance;
- 19 (2) The failure of any appropriate Federal, State or local public agency or private utility  
20 having operational jurisdiction in the area in which the Processing Facility is located to  
21 provide and maintain utilities, services, water, sewer or power transmission lines thereto;
- 22 (3) A Change in Law other than a Change in Law excluded in items (ii) and (vi) below; and
- 23 (4) Strikes, work stoppages or other labor disputes or disturbances of persons other than  
24 Contractor or any affiliates performing Services;

25  
26 **“Uncontrollable Circumstances”** *excludes*, without limitation:

- 27  
28 (i) Either Party's own breach of its obligations under this Agreement;
- 29 (ii) Adverse changes in the financial condition of either party or any change in law with  
30 respect to any taxes based on or measured by net income, or any unincorporated  
31 business, payroll, franchise or employment taxes;
- 32 (iii) Strikes, work stoppages or other labor disputes or disturbances of Contractor or any  
33 affiliates performing services, or Contractor's of affiliates' inability to hire adequate  
34 numbers of personnel who are competent and skilled in the work to which they are  
35 assigned;
- 36 (iv) The failure of the Contractor to secure patents, licenses, trademarks, and the like  
37 necessary for services;
- 38 (v) As to the Contractor, the failure of any facilities and/or equipment to perform in  
39 accordance with any warranties, unless caused by Uncontrollable Circumstances; and
- 40 (vi) With respect to the Authority's, any change in law adopted by the Authority, unless that  
41 change in law is mandated by state or federal Applicable Law.

42  
43 **SECTION 3 - SCOPE OF SERVICES**

44 **3.0 General.**

45 Contractor agrees to perform all services described in the following paragraphs in accordance with the  
46 terms and conditions of this Agreement.

47  
48 **3.1 Complete Processing Services.**

49 Contractor shall provide Complete Processing Services for all Green Waste delivered by Collector and  
50 shall not landfill or otherwise dispose of Green Waste in a manner that does not count towards the  
51 achievement of the 50% diversion goal as specified by State law or regulation without the prior consent of

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1 the Authority. The Processing Facility is a facility owned or controlled by Contractor, Contractor shall  
2 provide the following Processing and Marketing services:  
3

- 4 (a) The receipt, storage, and processing of Green Waste collected and delivered to Contractor's  
5 Processing Facility under Agreement with Authority;
- 6 (b) The provision, operation and maintenance of a Processing Facility with a guaranteed  
7 processing capacity sufficient to receive and process all Green Waste collected or delivered  
8 under this Agreement, and adequate storage capacity for the handling and disposition of  
9 Green Waste products and processing residues;
- 10 (c) The marketing of Green Waste products. Proceeds or deficits from the marketing of these  
11 products are assumed solely by Contractor;  
12

13 **3.2 Weighing.**

14 Contractor shall weigh all materials delivered to Contractor's Facility pursuant hereto. Contractor shall  
15 concurrently provide to the Authority, the Member Agencies, and Collector numbered weight records for  
16 each load of materials delivered to Contractor pursuant to this Agreement.  
17

18 **3.3 Non-acceptable Green Waste.**

19 Contractor may, but is not obligated to, accept Non-acceptable Green Waste. In the event that Contractor  
20 elects to accept such waste, it shall be deemed to be Green Waste under this Agreement and shall be  
21 the sole responsibility of Contractor. Contractor's acceptance of such waste on one occasion does not  
22 obligate Contractor to accept similar or other such waste on another occasion and shall not have the  
23 effect of changing the definition of Green Waste hereunder. Contractor shall, at the time of rejection of  
24 such waste, concurrently provide Collector and the Authority with a written specification of the specific  
25 reasons for rejection of any material as such waste. The Authority or its authorized agent will examine  
26 materials rejected by Contractor and the Member Agencies and Collectors the concurrence or non-  
27 concurrence with Contractor's reasons for rejection as such waste.  
28

29 **3.4 Ownership of Materials Received.**

30 Upon acceptance of materials delivered to the Contractor's Facility, Contractor shall have title to and sole  
31 responsibility for said materials.  
32

33 **3.5 Regulatory Compliance.**

34 Throughout the contract term, Contractor shall maintain the Contractor's Facility in full regulatory  
35 compliance with the terms of any and all existing permits and other approvals from government  
36 authorities.  
37

38 Contractor shall keep the Authority fully informed, in a timely manner, of its progress in securing any  
39 permits, or renewals of permits, pertaining to the Contractor's Facility operations, which occur during the  
40 contract term and the costs related therewith.  
41

42 Contractor shall provide the Authority with copies of any applications that the Contractor submits to any  
43 regulatory body in connection with the issuance of new permits, or the extension, revision or modification  
44 of existing permits with respect to the Contractor's Facility. Contractor shall provide such copies to the  
45 Authority at the same time the Contractor submits the applications to the regulatory body.  
46

47 Violations of, or suspensions of any permits, may be considered failure to comply with law and may lead  
48 to an event of default as described in Section 5.3.  
49

50 **3.6 End Products.**

51 Contractor shall produce consistent end products on a continuous basis which contribute to achievement  
52 of compliance with State law (Assembly Bill 939, as amended) requiring diversion of waste from landfill  
53 disposal and in a manner such that the maximum amount of Green Waste delivered pursuant to this

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1 Agreement can be successfully put to beneficial use. Failure to do so without the express approval of the  
2 Authority shall constitute a material breach of this Agreement and shall subject the Contractor to liability  
3 for any fine imposed upon the Authority, for violation of the requirements set forth in California Public  
4 Resources Code Section 41780 et seq. Contractor's liability for payment of any such fine shall be limited  
5 to the proportionate amount and/or degree to which Contractor's failure to perform pursuant to this  
6 Section 3.6 gives rise to the levying of said fine.

7  
8 The parties agree that a minimum of fifty percent (50%) of the Green Waste collected will be composted.  
9 The parties agree that the remaining Green Waste will be processed into compost, mulch, land  
10 application, or landfill beneficial use (such as Alternative Daily Cover (ADC)) and biomass fuel or other  
11 beneficial use to ensure compliance with State law (Assembly Bill 939, as amended). Contractor shall  
12 notify the Authority immediately and in writing should the Green Waste designated for composting be  
13 used as ADC, and shall notify the Authority each day that Green Waste designated for composting is  
14 used as ADC. Marketing and distribution of end products shall be the sole responsibility of Contractor.

15  
16 Authority may, at its sole option, alter the minimum processing requirement, by requiring that Contractor  
17 produce various percentages (in increments of 10%) of type of end product in any given contract year.

18  
19 **3.7 Monthly Reporting.**

20 Contractor shall provide the Authority and Collectors within 30 calendar days following the end of each  
21 month, with monthly tonnage reports and monthly end use reports in a form approved by the Authority  
22 which contain the following information:

- 23  
24 (a) Each tonnage report shall report (1) the quantity of Green Waste received during the  
25 reporting period, the date and time of each delivery including vehicle identification number,  
26 the weight (gross weight, tare and net weight) of each delivery, the Processing Charge per  
27 ton and total charge for each delivery and (2) the quantity of materials rejected as Non-  
28 acceptable Green Waste, the date and time and vehicle identification number for each such  
29 rejection, the specific causes of each such rejection and the weight of the rejected non-  
30 Green Waste and (3) the quantity of any Green Waste disposed of with the prior consent of  
31 the Authority.  
32  
33 (b) Each end use summary report shall identify the Contractor's best estimate of the tonnage  
34 amounts for each end use of products produced from Green Waste, based upon operating  
35 experience, current market conditions, and other relevant factors.  
36

37 **3.8 Annual Reporting.**

38 Contractor shall concurrently provide the Authority and Collectors within 30 calendar days following the  
39 end of each year:

- 40  
41 (a) Annual tonnage reports and annual end use reports, in a form approved by the Authority,  
42 which contain for the reporting year the information specified in Section 3.7(a) and 3.7(b).  
43  
44 (b) Work Force Composition Reports in a form approved by the Authority and a description of the  
45 good faith efforts by Contractor undertaken by Contractor during the year to meet the goals of  
46 the Authority Non-Discrimination Policy attached hereto as Exhibit 1.  
47

48 **3.9 Right to Inspect Contractor's Records**

49 Authority, Member Agency, and Collector shall have the right to inspect records of the Contractor  
50 pertaining to the weighing of Green Waste and Non-acceptable Green Waste and pertaining to the sale  
51 or other disposition of processed Green Waste or Non-acceptable Green Waste hereunder. No right to  
52 inspect other records of the Contractor, including, without limitation, weighing records relating to any other

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1 materials and records regarding the disposition of any other materials, shall be implied or otherwise arise  
2 hereunder.

3  
4 **3.10 Alternative Processing**

5 If Contractor does not process the Authority's Green Waste at the Contractor's Facility for reasons other  
6 than Uncontrollable Circumstances, then following Authority approval given in the Authority's sole  
7 discretion, Contractor will (i) accept and Process the Authority's Green Waste at another Processing  
8 Facility owned by it or an affiliate at a price not to exceed the Processing Charge, including any additional  
9 transportation costs incurred in delivering the Authority's Green Waste to the other Processing Facility; or,  
10 (ii) will arrange for the Authority's Green Waste to be processed at another Processing Facility not owned  
11 by it or an affiliate, in which case Contractor will pay any difference in the fees charged at that Processing  
12 Facility plus any additional transportation costs incurred in delivering Green Waste to the other  
13 Processing Facility.

14  
15 If Contractor does not Process the Authority's Green Waste at the approved Processing Facility due to  
16 Uncontrollable Circumstances, then promptly upon Authority direction, Contractor will, to the extent it is  
17 legally able to do so in accordance with Applicable Law, accept and process Green Waste at another  
18 Processing Facility owned by it or an affiliate at a price not to exceed the Processing Charge in effect  
19 under this Agreement. Contractor is not obligated to deduct from the Processing Charge any additional  
20 transportation costs incurred in delivering Authority's Green Waste to the other Processing Facility. If the  
21 Authority does not direct Contractor to process Green Waste at another Processing Facility, the Authority  
22 may, at its sole discretion, terminate this Agreement, as provided in accordance with Section 5.  
23

24  
25 **SECTION 4 - COMPENSATION AND BILLING**

26 **4.1 Processing Charge**

27 For the first year of this Agreement, the Processing Charge shall be \_\_\_\_\_Dollars (\$) per ton  
28 delivered at the Facility Name\_\_\_\_\_. Beginning January 1, 2010.  
29

30 **4.1.1 Annual Adjustments.**

31 Per RFP: The Proposer is requested to submit the methodology for determination and adjustment of the  
32 per ton processing fee.  
33

34 **4.2 Billing and Payment Procedures.**

35 Contractor agrees to receive payment for services rendered pursuant to this Agreement in accordance  
36 with the provisions of this Section 4.2.  
37

38 **4.2.1 Contractor's Invoices.**

39 Contractor shall, within thirty (30) calendar days following the end of each month, submit a monthly  
40 invoice for services rendered under this Agreement to the Authority, with concurrent submittal of duplicate  
41 copies each to the Collectors. Said invoice shall identify the total amount of Green Waste delivered  
42 during the month, the Processing Charge, and the total amount due.  
43

44 **4.2.2 Payment of Undisputed Amounts.**

45 Authority shall pay the undisputed portion of Contractor's invoices within forty five (45) days of receipt.  
46 The undisputed portion of Contractor's invoices shall be deemed delinquent if not paid by the Authority  
47 within forty five (45) of receipt and may, thereafter, at Contractor's election, bear interest on the unpaid  
48 balance at a rate not to exceed one (1) percent per month.  
49

1 **4.2.3 Disputed Amounts.**

2 Authority shall, within forty five (45) days of receipt of Contractor's invoices, provide the Contractor, and  
3 Collector with an identification of any disputed portion of Contractor's invoices. Together with an  
4 explanation of said dispute and any further information needed from Contractor in order to resolve said  
5 dispute. Thereafter, Contractor shall have fifteen (15) days to file a response to the submittal provided by  
6 the Authority. The Authority shall thereafter, within fifteen (15) days of receipt of Contractor's response,  
7 notify Contractor, of Authority's decision regarding the disputed amount. Contractor's failure to submit a  
8 response within the required time period shall constitute Contractor's waiver of any claim to the disputed  
9 amount.

10  
11 **4.2.4 Non-Payment by the Authority.**

12 If the Authority fails to pay any undisputed portion of a Contractor's invoice for sixty (60) days from the  
13 date thereof, then Contractor may, upon sixty (60) days written notice to the Authority and Collector  
14 refuse all further deliveries of Green Waste until all unpaid and outstanding disputed invoices to the  
15 Authority from Contractor have been paid in full. Non-payment by the Authority, without good cause, shall  
16 constitute a material breach of this Agreement and the Service Agreement.  
17

18 **4.2.5 Notice to Authority.**

19 Contractor shall provide prompt written notice to the Authority of any failure to pay the sums required  
20 above and of any disputes between Authority and Contractor. Authority shall provide prompt written  
21 notice to the Contractor of any disputes between Contractor and Authority  
22

23 **4.2.7 Dispute Resolution**

24 Any dispute between Contractor and the Authority, which cannot be resolved informally, shall be referred  
25 to a meeting between representatives of the Parties to this Agreement, which shall collectively meet and  
26 confer in good faith to reach a resolution mutually satisfactory to the disputing parties. Contractor and  
27 Authority shall notify the parties in writing when this procedure is to be invoked.  
28

- 29 (a) Non-Binding Arbitration Optional. In the event of a dispute arising under this Agreement, any  
30 party may call for non-binding arbitration. Such non-binding arbitration shall be conducted as  
31 the parties may agree. Irrespective of these non-binding arbitration provisions, the parties  
32 hereto retain all rights and remedies provided by this Agreement and by law.  
33  
34 (b) Interest on disputed Amounts. A court may award interest, or an arbitrator, if arbitrated, on  
35 the disputed sums determined by an arbitrator or court to be due Contractor and the interest  
36 shall be at the Bank of America prime rate, but no higher than ten (10) percent.  
37

38 **4.3 Coordination with Annual Budget Process**

39 Contractor shall cooperate to identify amounts of Service Area Green Waste to be received and  
40 processed in preparation of the annual budgets said amounts and the costs to be recovered in rates to be  
41 charged for Green Waste processing from the Service Area.  
42

43 **4.4 Potential Revenue**

44 The potential revenue that will be generated by this Agreement does not create any rights or reliance by  
45 Contractor to receive that revenue.  
46

47 **4.5 Authority and Member Agencies Not Liable for Delivery to Contractor.**

48 The parties acknowledge that, under this Agreement, the Authority has no duty to deliver Green Waste to  
49 Contractor's Facility.  
50  
51

**SECTION 5 – TERM, DEFAULT AND TERMINATION**

**5.1 Term**

The term of this Agreement shall be for a four (4) year period beginning January 1, 2010 and ending December 31, 2013 unless extended as provided below.

**5.2 Authority Option for Renewal**

The Authority shall have the option to extend this Agreement, for up to two (2), two (2)-year periods after the initial Term.

The Authority, at its sole discretion, may exercise this option by delivering to the Contractor a written notice stating that it desires to extend the Term. Such notice shall be delivered no later than one (1) year before the initial termination date or any termination date of any extension period, if the option is exercised. If notice of election to exercise the option is not delivered at such time, the option will lapse.

For the Option period, the Processing Charge shall be adjusted as described in Section 4.1.1 above.

**5.3 Contractor Default**

Each of the following will constitute an event of default by Contractor (“Contractor Default”), under this Agreement:

- A. Failure to Perform.** Contractor's failure to perform any duty or obligation under this Agreement for more than five (5) cumulative days in any calendar year.
- B. Uncured Breach.** Contractor fails or refuses to perform any of its obligations under this Agreement; the Authority notifies the Contractor in writing that a specific failure or refusal has occurred which will, unless corrected, in its opinion, give the Authority a right to terminate this Agreement; and the Contractor does not correct the breach within 20 days of receiving the Authority's Notice thereof. However, if the breach is not capable of cure within 20 days, Contractor will promptly provide Authority a Notice explaining why Contractor believes it needs additional time to effectuate a cure, together with a schedule therefore, and will diligently proceed to cure the breach within that schedule, whereupon Authority, at its sole discretion, may (a) accept Contractor's schedule of cure; (b) make a written demand that Contractor cure the default within an alternative time period set by Authority, or (c) terminate this Agreement at the end of the 20 day period;
- C. Repeated Breach.** Contractor fails or refuses to perform any of its obligations under this Agreement repeatedly or habitually, whether or not specific instance of failure or refusal has been previously cured.
- D. Failure to Comply with Law.** Contractor fails to materially comply with Applicable Law within 20 days' notice of violation thereof.
- E. Failure to Provide Insurance.** Contractor fails to provide insurance in accordance with Section 6.
- F. Transfer, Assignment.** Contractor Assigns this Agreement without Authority approval required by Section 8.03.
- G. Seizure, Attachment.** Any asset used to provide Services is seized, attached, or levied upon (other than a pre-judgment attachment) so as to substantially impair Contractor's ability to timely

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1 and fully perform Services, and which cannot be released, bonded, or otherwise lifted within 48  
2 hours, excepting weekends and Holidays;

3  
4 **H. Insolventcy, Bankruptcy, Liquidation.**

5  
6 (a) Contractor files a voluntary claim for debt relief under any applicable bankruptcy, insolventcy,  
7 debtor relief, or other similar law now or hereafter in effect, or will consent to the appointment of  
8 or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of  
9 assets no longer used to provide Services or backup Services), trustee (other than as security of  
10 an obligation under a deed of trust), custodian, sequestration, administrator (or similar official) of  
11 Contractor for any part of Contractor's operating assets or any substantial part of Contractor's  
12 property, or will make any general assignment for the benefit of Contractor's creditors, or will fail  
13 generally to pay Contractor's debts as they become due or will take any action in furtherance of  
14 any of the foregoing; or

15  
16 (b) A court, having jurisdiction, enters a decree or order for relief in respect of the Agreement, in  
17 any involuntary case brought under any bankruptcy, insolventcy, debtor relief, or similar law now  
18 or hereafter in effect, or Contractor consents to or fails to oppose any proceeding, or that court  
19 enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee,  
20 sequestrator, administrator (or similar official) of the Contractor or for any part of the Contractor's  
21 operating equipment or assets, or orders the winding up or liquidation of the affairs of the  
22 Contractor.

23  
24 **I. False Representation.** Contractor makes a representation, certification, or warranty in this  
25 Agreement or pursuant to this Agreement which Contractor knows, or in the course of diligently  
26 conducting business and providing Services should have known, is untrue as of the date thereof.  
27 Contractor makes a representation or fails to make a disclosure, whether within this Agreement or  
28 otherwise, to the Authority in connection with, or as a material inducement to, entering into this  
29 Agreement or any future amendment to this Agreement, which representation or failed disclosure  
30 is false or misleading in any material respect when made.

31  
32 **5.4 Right to Suspend or Terminate Agreement**

33  
34 **A. Upon Default.** Upon any Contractor Default, the Authority shall have the right to suspend or  
35 terminate this Agreement unless cured within the prescribed period. Otherwise, such suspension  
36 or termination shall be effective thirty (30) calendar days after the Authority has given notice by  
37 certified mail of suspension or termination to Contractor, except that such notice may be effective  
38 five (5) business days after receiving notice by certified mail if the Contractor Default is one which  
39 results in the Contractor's failure to accept and process Green Waste. Notice shall be in writing  
40 and delivered to the representative of Contractor designated in or under Section 8.5.

41  
42 **B. Upon Change in Permits or Applicable Law.** The Authority shall have the right to suspend or  
43 terminate this Agreement, upon the same notice provisions in 5.4.A, if Contractor's ability to  
44 perform is prevented or materially interfered with by a change in permits or Applicable Law with  
45 which Contractor must comply. Such suspension or termination may apply even if non-  
46 performance of the Contractor is neither a breach nor a default by Contractor.

47  
48 If Authority excuses Contractor from performing Contractor's obligations hereunder for any cause for a  
49 period of thirty (30) calendar days or more, the Authority shall have the right, in its sole discretion, to  
50 terminate this Agreement by giving ten (10) calendar days notice.

1  
2 **5.5 Right to Perform**

3 If this Agreement is suspended and/or terminated due to Contractor Default, the Authority shall have the  
4 right to perform and complete, by contract or otherwise, the work herein or such part thereof as it may  
5 deem necessary and incur all expenses necessary for completion of the work, including, but not limited  
6 to, transportation and processing of Green Waste to alternate Processing Facilities. If such expenses  
7 (including, but not limited to, the costs of transportation to an alternative facility and the actual fees  
8 charged for processing) exceed the amounts which would have been paid to Contractor under this  
9 Agreement, if it had been fully performed by Contractor, then Contractor shall pay the amount of such  
10 excess costs to the Authority within thirty (30) calendar days of Contractor's receipt of a claim for  
11 reimbursement, and evidence of costs incurred, from the Authority.  
12

13 **5.6 Authority's Remedies Cumulative; Specific Performance**

14 The Authority's rights to suspend or terminate this Agreement under Section 5.4 or to perform under  
15 Section 5.5 are not mutually exclusive, and the Authority's exercise of one such right shall not constitute a  
16 selection of remedies. Instead, the remedy shall be in addition to any and all other legal and equitable  
17 rights and remedies which the Authority may have.  
18  
19

20 **SECTION 6 - INDEMNITY AND INSURANCE**

21 **6.1 General Indemnity**

22 Contractor shall indemnify, defend (with Counsel selected by Contractor and acceptable to Authority) and  
23 hold harmless the Authority (and its Member Agencies), their respective Board Members, officers,  
24 directors, employees, administrators, agents and any successor to Authority's interest from and against  
25 any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit of any and every  
26 kind and description, whether judicial, quasi-judicial or administrative in nature, including, but not limited  
27 to, injury to or death of any person. damage to property or resources, or for contribution or indemnity  
28 claimed by third parties (collectively the "Claims"), arising out of, or caused in any way, directly or  
29 indirectly, by Contractor's performance of, or failure to perform, its obligations under this Agreement,  
30 including but not limited to, compliance with applicable laws or legal requirements or breach of  
31 Contractor's representations and warranties set forth in this Agreement. Contractor's duty to indemnify  
32 and defend shall survive the expiration or earlier termination of this Agreement. The foregoing indemnity  
33 shall not apply in favor of the Authority if, and only to the extent, the losses or claims were caused by the  
34 active negligence or willful misconduct of the Authority. Notwithstanding the foregoing, in the event of  
35 one or more Claims hereunder arising from the active negligence or willful misconduct of the Authority,  
36 Contractor shall be entitled to recover its losses arising there from the Authority , depending upon which,  
37 if any, of the Authority is liable.

38 **6.2 Hazardous Substance Indemnification**

39 Contractor shall protect, defend (with Counsel selected by Contractor and acceptable to the Authority),  
40 indemnify and hold harmless the Authority (including its Member Agencies), their respective Board  
41 Members, officers, directors, employees, administrators, agents and any successor to Authority's interest  
42 from and against all claims, damages (including but not limited to, special and consequential damages),  
43 natural resources damages, punitive damages, injuries, costs, responses, remediation and removal costs,  
44 losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings,  
45 interest, fines, charges, penalties and expenses (including but not limited to attorney's and expert witness  
46 fees and costs incurred in connection with defending against any of the foregoing or in enforcing the  
47 indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, the Authority, its  
48 Member Agencies or, their respective board members, officers, directors, employees, administrators and  
49 agents arising from, or attributable to, any repair, clean-up, or detoxification, or preparation, and  
50 implementation of any removal, remedial, response, closure, post-closure or other plan (regardless of  
51 whether undertaken due to governmental action), concerning the release or threatened release of any

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1 Hazardous Substance or Hazardous Waste at any place that Green Waste has been transported,  
2 transferred, processed, stored, sold or disposed of or has otherwise come to be located by Contractor, or  
3 the activities of Contractor pursuant to this Agreement which results in a release or threatened release of  
4 hazardous waste or hazardous substances into the environment. The foregoing indemnity is intended to  
5 operate as an Agreement pursuant to section 107(e) of the Comprehensive Environmental Response and  
6 Liability Act (CERCLA), 42 USC Section 9607(e) and California Health and Safety Code Section 25364,  
7 to defend, protect and hold harmless and indemnify the Authority (and its Member Agencies) and the from  
8 liability.  
9

10 **6.3 Indemnification Procedures**

11 With respect to any claim for indemnification, the Authority shall: (1) give a minimum of thirty (30) days  
12 written notice to Contractor following knowledge of the claim or proceeding to which the right to  
13 indemnification may be asserted by the Authority; (2) allow Contractor (including its employees, agents  
14 and counsel) reasonable access to any of the Authority's employees, property and records for the  
15 purpose of conducting an investigation in defense of such claim and taking such steps as may be  
16 necessary to preserve evidence of the occurrence on which the claim is based; and (3) reasonably co-  
17 operate with and assist Contractor in the defense of the Authority.  
18

19 **6.4 Required Insurance**

20 Subject to Section 6.4.4 below, Contractor, at Contractor's sole cost and expense, shall procure and  
21 maintain in force at all times during the term of this Agreement, including any extensions, the following  
22 types and amounts of insurance:  
23

24 **6.4.1 Workers Compensation and Employer's Liability**

25 Contractor shall maintain workers compensation insurance covering its employees in statutory amounts  
26 and otherwise in compliance with the laws of the State of California. Contractor shall maintain employer's  
27 liability insurance in an amount not less than one million dollars (\$1,000,000) per accident or disease.  
28

29 **6.4.2 Commercial or Comprehensive General Liability**

30 Contractor shall maintain commercial or comprehensive general liability insurance with a combined single  
31 limit of not less than ten million dollars (\$10,000,000) per occurrence covering all claims and all legal  
32 liability for personal injury, bodily injury, death, and property damage, including the loss of use thereof,  
33 arising out of or occasioned in any way by, directly or indirectly, Contractor's performance of, or its failure  
34 to perform, services under this Agreement. The policy or policies shall not contain a deductible or self-  
35 insured retention without the prior written approval of the Authority, provided that a deductible or self-  
36 insured retention of up to \$250,000 will be allowed if Contractor remains responsible for payment losses  
37 and related investigations, claims administration and defense expenses. The self-insured retention  
38 provision shall be such that the insurance company's or companies' duty to defend arises as of the date  
39 that Contractor has incurred defense and related litigation and investigation expenses in that amount.  
40 The insurance required by this Section 6.4.2 shall include (1) Premises Operations, (2) Independent  
41 Contractor's Protection, (3) Products and Completed Operations, (4) Personal Injury Liability with  
42 Employment Exclusion deleted, (5) Broad Form Blanket Contractual, including Contractor's obligations  
43 under Section 6.1 above, with no exclusions for bodily injury, personal injury, or property damage, and (6)  
44 Owned, Non-Owned and Hired Vehicles.  
45

46 **6.4.3 Environmental Impairment Liability**

47 Contractor shall maintain environmental impairment liability insurance in the amount of one million dollars  
48 (\$1,000,000) covering liability arising from the release of pollution at, or in the vicinity of, Contractors  
49 Facility. Each policy of insurance shall contain a standard cross-liability provision within each policy or by  
50 endorsement thereto.  
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1 **6.4.4 Acceptability of Insurers**

2 The insurance policies required by Section 6.4 shall be issued by an insurance company or companies  
3 admitted to do business in the State of California, or legally doing business in the State of California, and  
4 with a rating in the most recent edition of Best's Insurance Reports that is reasonably acceptable to the  
5 Authority. A Best rating inferior to the size category VII and a rating classification of A will not be  
6 acceptable unless Contractor demonstrates to the reasonable satisfaction of the Authority that the  
7 coverage required by this Agreement cannot be obtained from a company with a Best rating size category  
8 VII or larger and a rating classification of A or better.  
9

10 **6.5 Other Required Policy Provisions**

11 The policies required by this Agreement shall contain, or be endorsed to contain, the following provisions:  
12

13 **6.5.1 General Liability Coverage**

- 14 (a) The Authority, its Member Agencies, their respective Board members, directors, officers and  
15 employees are to be covered as additional insured. The coverage shall contain no special  
16 limitations on the scope of protection afforded to the Authority, its Member Agencies, their  
17 respective Board members, directors, officers, and employees.
- 18 (b) Contractor's insurance coverage shall be primary insurance as respects the Authority, its  
19 Member Agencies, their respective Board members, directors, officers and employees. Any  
20 insurance or self-insurance maintained by the Authority, its Member Agencies, their  
21 respective Board members, directors, officers, and employees, shall be excess of  
22 Contractor's insurance and shall not contribute with it.
- 23 (c) Coverage shall state that Contractor's insurance shall apply separately to each insured  
24 against whom claim is made, or suit is brought, except with respect to the limits of the  
25 insurer's liability.
- 26 (d) Each policy of insurance shall contain a standard cross-liability provision within each policy or  
27 by endorsement thereto.
- 28 (e) Coverage shall be written on an "occurrence" (not an "accident"), rather than a "claims made"  
29 basis. If such coverage is not obtainable, Contractor shall arrange for "tail coverage" to  
30 protect the Authority, its Member Agencies, their respective Board members, directors,  
31 officers, and employees from claims filed during the time following expiration or termination of  
32 this Agreement relating to incidents which occurred prior to such expiration or termination. If  
33 the cost of tail-coverage for an indefinite period of time is commercially unreasonable,  
34 Contractor may, with the written consent of the Authority, obtain tail-coverage for an agreed  
35 upon definite duration.  
36

37 **6.5.2 All Coverages**

38 Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be  
39 suspended, voided, or canceled by either party, except after thirty (30) days prior written notice by  
40 certified mail, return receipt requested, has been given to the Authority.  
41

42 **6.5.3 Required Endorsements**

43 Without limiting the generality of Section 6.5, the policies shall contain endorsements substantially in the  
44 following form:

- 45 (1) Workers' Compensation Policy
- 46 (a) "Thirty (30) days prior written notice shall be given by certified mail, return receipt requested, to  
47 the Authority in the event of cancellation, reduction in coverage amounts, or non-renewal of this  
48 policy."
- 49 (b) "Insurer waives all right of subrogation against the Authority, its Member Agencies, , their  
50 respective Board members, directors, officers and employees for losses arising from work  
51 performed by Contractor."  
52 (2) Commercial or Comprehensive General Liability

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- 1 (a) "Thirty (30) days prior written notice shall be given by certified mail, return receipt requested, to  
2 the Authority in the event of cancellation, reduction in coverage, or non-renewal of this policy."  
3 (b) "The Authority, its Member Agencies, their respective Board members, directors, officers, and  
4 employees are additional insured on this policy."  
5 (c) "This policy shall be considered primary insurance as it respects any other valid and collectible  
6 insurance maintained by the Authority or including any self-insured retention or program of self-  
7 insurance, and any other such insurance shall be considered excess insurance only."  
8 (d) "Inclusion of the Authority and as additional insured shall not affect their respective rights as  
9 respects any claim, demand, suit, or judgment brought or recovered against Contractor. This  
10 policy shall protect the Authority and in the same manner as though a separate policy had been  
11 issued to each, but this provision shall not operate to increase the company's liability as set forth  
12 in the policy beyond the amount shown or to which the company would have been liable if only  
13 one party had been named as an insured."  
14

15 **6.5.4 Governing Law and Choice of Forum**

16 Contractor shall exercise its best efforts to assure that each required policy of insurance contains a  
17 Governing Law and Choice of Forum clause which expressly provides that the agreement of insurance  
18 shall be governed by the laws of the State of California, and any questions arising under the agreement of  
19 insurance shall be construed and determined according to such law, and that any action, arbitration or  
20 proceeding relating to the agreement for insurance shall be instituted and maintained in any court or other  
21 forum having jurisdiction over such action, arbitration or other proceedings, in Contra Costa County,  
22 California.  
23

24 **6.6 Delivery of Proof of Coverage**

25 Contractor shall furnish the Authority with certificates of each policy of insurance required hereunder, in  
26 form and substance satisfactory to the Authority not later than thirty (30) days before execution of this  
27 Agreement and prior to proceeding with the work under this Agreement. Such certificates shall show the  
28 type and amount of coverage, effective dates, and dates of expiration of policies and shall be  
29 accompanied by originals of all required endorsements. The certificates and endorsements for each  
30 policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. If at any time  
31 the Authority so requests, complete certified copies of each policy, together with all endorsements, shall  
32 also be promptly delivered to the Authority and within thirty (30) days of the request. Contractor shall  
33 periodically furnish renewal certificates and endorsements to the Authority to demonstrate maintenance of  
34 the required coverages throughout the term of this Agreement including any extensions.  
35

36 **6.7 Other Insurance Requirements**

- 37 (a) In the event of suit between the parties hereto and/or between the parties and the parties to the  
38 Collection Franchise Agreement, Contractor hereby waives any claim of privilege with respect to  
39 insurance policies required herein. Contractor agrees to furnish, upon request, as part of said  
40 suit, full and complete executed copies of each such insurance policy, including any and all  
41 endorsements thereto, without delay.  
42 (b) In the event any services are delegated to a subcontractor, Contractor shall require each  
43 subcontractor to provide statutory Workers' compensation insurance and employer's liability  
44 insurance for all of the subcontractor's employees engaged in the work. The liability insurance  
45 required by Section 6.4 shall cover all subcontractors, or the subcontractor must furnish evidence  
46 of insurance provided by it meeting all of the requirements of this Section 6. Such policies shall  
47 contain the same, or substantially the same, waiver of subrogation clause as set forth in Section  
48 6.5.3(1)(B) above, in favor of the Authority, its Member Agencies, their respective Board  
49 members, directors, officers and employees. Such policies shall also contain the same, or  
50 substantially the same, cross-liability provision or endorsement in favor of the Authority, its  
51 Member Agencies, , their respective Board members, directors, officers and employees as  
52 required above. Proof of such insurance coverage shall be provided to the Authority in the same  
53 manner as set forth in Section 6.6 above.

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- 1 (c) Contractor shall comply with all requirements of the insurers issuing policies. The carrying of
- 2 insurance does not relieve Contractor from any obligation under this Agreement. If any claim is
- 3 made by a third person against Contractor or any subcontractor on account of any occurrence
- 4 related to this Agreement, Contractor shall promptly report the facts in writing to the insurance
- 5 carrier and to the Authority.
- 6 (d) If Contractor fails to procure and maintain any insurance required by this Agreement, the
- 7 Authority may take out and maintain, at Contractor's expense, such insurance as they may deem
- 8 proper and deduct the cost thereof from any monies due Contractor, or bill Contractor
- 9 accordingly.

**SECTION 7 - NON-DISCRIMINATION**

**7.1 Non-Discrimination**

In performance of this Agreement, Contractor, and its subcontractors, shall not discriminate against any employee or applicant for employment, or any person using or desiring the use of the Contractor's Facility because of age, sex, religion, race, color, ancestry, national origin, disability, handicapped condition, sexual orientation, HIV infection, AIDS or an AIDS-related condition, or Vietnam-era veteran status.

**7.2 Affirmative Action**

Contractor shall take affirmative action during the application process to ensure that applicants are employed, that employees are treated during employment, and that persons desiring the use of Contractor's Facility are treated without regard to their age, sex, religion, race, color, ancestry, national origin, disability, handicapped condition, sexual orientation, HIV infection, AIDS or an AIDS-related condition, or Vietnam-era veteran status, and said affirmative action shall include, without limitation, employment, promotion, demotion or transfer; recruitment and recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship.

**7.3 Notice**

Contractor shall post in a conspicuous place at the Contractor's Facility notices setting forth the provisions of Section 8.1 and 8.2.

**7.4 Information**

Contractor agrees to provide all information, and to permit access to its books, records, accounts, other sources of information, and its facilities, as may be determined by the Authority to be pertinent to ascertain compliance with this Section 8. Where any information required of either party pursuant to Section 8 is in the exclusive possession of another who fails or refuses to furnish such information, the party shall so certify to the Authority, as appropriate, and set forth what effort said party has made to obtain the information.

**SECTION 8 - OTHER AGREEMENTS OF THE PARTIES**

**8.1 Relationship of Parties**

The parties intend that Contractor shall perform the services required by this Agreement as independent contractors with respect to each other and with respect to any relationship to the Authority arising out of this Agreement. Contractor is not performing said services as officers, employees or agents of the Authority nor as partners of, or joint ventures with, the Authority or with each other. No employee or agent of one party shall be, nor shall be deemed to be, an employee or agent of any other party.

**8.2 Governing Law and Consent to Jurisdiction**

This Agreement shall be interpreted, governed by, and construed in accordance with the laws of the State of California. The parties irrevocably consent and submit to the jurisdiction of the State and Federal Courts in the State of California as the exclusive jurisdiction, and as the courts in which any action, suit or

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1 proceeding of any kind or nature may be brought against one party by the other which is related to any  
2 matter contained in this Agreement. The parties hereby waive and agree not to assert, by way of motion,  
3 defense, or otherwise, in any such actions, suits or proceedings, that said party is not personally subject  
4 to the jurisdiction of any such court, or that any such court is an inconvenient forum or that venue in any  
5 such court is improper. The parties agree to accept service of process in any matter relating to this  
6 Agreement in any place within the State of California where said parties' officers, agents or employees  
7 may be found.

8  
9 **8.3 Assignment**

- 10 (a) Contractor shall not assign its rights nor delegate or otherwise transfer its obligations under  
11 this Agreement to any other person without the prior written consent of Authority. Any such  
12 assignment made without the written consent of Authority shall be void and the attempted  
13 assignment shall constitute a breach of this Agreement.
- 14 (b) The provisions of this Agreement shall inure to the benefit and be binding on the successors  
15 and permitted assigns of the parties. No assignment by any party hereto shall be construed  
16 as a release of said party's obligations under this Agreement, unless the party or parties to  
17 whom such obligations extend consent in writing to release the obligor from such obligations.

18  
19 **8.3.1 Assignment Defined**

20 For the purpose of this Section when used in reference to Contractor, "assignment" shall include, but not  
21 be limited to (1) a sale, exchange or other transfer of substantially all of Contractor's assets dedicated to  
22 service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding  
23 common stock of Contractor to a third party provided said sale, exchange or transfer may result in a  
24 change of control of contractor; (iii) any dissolution, organization, consolidation, merger, re-capitalization,  
25 stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other  
26 transaction to which results in a change of ownership or control of Contractor; (iv) any assignment by  
27 operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors,  
28 appointment of a receiver taking possession of Contractor's property, or transfer occurring in the event of  
29 a probate proceeding; and (v) any combination of the foregoing (whether or not in related or  
30 contemporaneous transactions) which has the effect of any such transfer or change of ownership, or  
31 change of control of Contractor.

32  
33 Contractor acknowledges that this Agreement involves rendering a vital service to the Authority's  
34 residents and business, and that the Authority has selected Contractor to perform the services specified  
35 herein based on (1) Contractor's experience, skill and reputation for conducting its operations in a safe,  
36 effective and responsible fashion, at all times in keeping with applicable Environmental Laws,  
37 regulations, and best management practices, and (2) Contractor's obligations to the Authority under this  
38 Agreement. The Authority has relied on each of these factors, among others, in choosing Contractor to  
39 perform the services to be rendered by Contractor under this Agreement.

40  
41 **8.3.2 Contractor Request for Assignment.**

42 If Contractor requests the Authority's consideration of and consent to an assignment, the Authority may  
43 reasonably deny or approve such request. No request by Contractor for consent to any assignment need  
44 be considered by Authority unless and until Contractor has met the following requirements:

- 45  
46 (a) Contractor shall undertake to pay Authority its reasonable expenses for attorney's fees and  
47 investigation costs necessary to investigate the suitability of any proposed assignee, and to  
48 review and finalize any documentation required as a condition for approving any such  
49 assignment;
- 50  
51 (b) Contractor shall furnish Authority with audited financial statements of the proposed  
52 assignee's operations for the immediately preceding three (3) operating years;

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1 (c) Contractor shall furnish Authority with satisfactory proof: (i) that the proposed assignee has at  
2 least ten (10) years of Solid Waste management experience on a scale equal to or exceeding  
3 the sale of operations conducted by Contractor under this Agreement; (ii) that in the last five  
4 (5) years, the proposed assignee has not suffered any significant citations or other censure  
5 from any federal, state or local agency having jurisdiction over its Solid Waste management  
6 operations due to any significant failure to comply with state, federal or local Environmental  
7 Laws and that the assignee has provided Authority with a complete list of such citations and  
8 censures; (iii) that the proposed assignee has at all times conducted its operations in an  
9 environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its  
10 Solid Waste management practices in accordance with sound Solid Waste management  
11 practices in full compliance with all federal, state and local laws regulating the collection and  
12 disposal of Solid Waste including hazardous substances; and, (v) of any other information  
13 required by Authority to ensure the proposed assignee can fulfill the terms of this Agreement  
14 in a timely, safe and effective manner.  
15

16 Under no circumstances shall Authority be obligated to consider any proposed Assignment if Contractor  
17 is in default at any time during the period of consideration.  
18

19 **8.4 Waiver**

20 The waiver by any party of any breach or violation of any provisions of this Agreement shall not be  
21 deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or  
22 violation of the same or any other provision. The subsequent acceptance by any party of any monies,  
23 which become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent  
24 breach or violation by any other party of any provision of this Agreement.  
25

26 **8.5 Notices**

27 All notices, demands, requests, proposals, approvals, consents, and other communications which this  
28 Agreement requires, authorizes or contemplates shall, except where otherwise provided, be in writing and  
29 shall either be personally delivered to a representative of the parties at the address below or be deposited  
30 in the United States mail, first class postage prepaid (certified mail, return receipt requested), addressed  
31 as follows:  
32

33 To the Authority: West Contra Costa Integrated Waste Management Authority  
34 One Alvarado Square  
35 San Pablo, California 94806  
36 Attention: Executive Director  
37

38 To Contractor: \_\_\_\_\_[Insert Address]  
39

40 To RSS: Richmond Sanitary Service Inc.  
41 3260 Blume Drive, Suite 200  
42 Richmond, CA 94806  
43 Attention: President  
44

45 To EBS: East Bay Sanitary Co.  
46 P.O. Box 1316  
47 El Cerrito, CA 94530  
48 Attention: President  
49

50 Such written notice, if not personally delivered, shall be mailed in such a manner to insure delivery within  
51 seventy-two (72) hours of deposit in the mail. The address to which communications may be delivered  
52 may be changed from time to time by a notice given in accordance with this Section. Notices shall be  
53 deemed delivered only upon receipt.

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**8.6 Entire Agreement**

This Agreement 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.

**8.7 Section Headings**

The section and subsection 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.

**8.8 Interpretation**

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

**8.9 Amendment**

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

**8.10 Severability**

If any 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, which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

**8.11 Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

**8.12 Contractor's Warranties.**

Contractor warrants that:

- (a) Contractor's facility is a legally permitted and commercially operating facility capable of receiving and processing Green Waste as of the date first written above and meets all local, state and federal standards necessary to the acceptance and processing of said Green Waste.
- (b) Contractor has, as of the date of this Agreement, sustainable markets for the products to be produced from Green Waste delivered to Contractor's facility from the Service Area.
- (c) Each Member Agency may take delivery at Contractor's Facility of up to one hundred (100) cubic yards per year of compost products or mulch at no cost to the Member Agency for use in public areas of County. Upon request, Contractor will work with a Member Agency or Authority to arrange transportation of up to 100 cubic yards of material annually.
- (d) Contractor is fully competent to perform the services required by this Agreement and will at all times implement quality control methods including inspection of materials received, removal of contaminants, grinding, hydrating and aerating of composting material, monitoring of moisture and temperature of composting material, screening of finished material, market evaluation of products in process and end products, appropriate laboratory testing of in process and end products as appropriate and necessary to ensure consistent achievement of end product quality standards necessary to successful marketing of end products.
- (e) No litigation or regulatory actions are pending against Contractor's Facility.
- (f) Limitations on capacity of Contractor's facility will not preclude Contractor's acceptance of Green Waste.

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(g) Short term interruptions (i.e. (five) 5 consecutive days or less) in processing systems at Contractor's facility will not require rejection of Green Waste and that, in the event of said short term interruption, Green Waste delivered will be stored in the receiving and unloading area of Contractor's facility.

**8.13 Change of Law and Acts of God**

In the event of a change of law or Act of God that materially affects the ability of Contractor to perform hereunder, Contractor shall be given the opportunity to demonstrate how such changes impact this Agreement. Upon written request of Contractor, the parties shall meet and confer to discuss possible modifications to this Agreement in order to mitigate the aforementioned change of law or Act of God. If the Contractor and the Authority cannot reach agreement on modifications to this Agreement within ninety (60) days from the initial notification by Contractor, this Agreement shall terminate and be of no further force and effect and Contractor shall have no further obligations hereunder.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in quadruplicate by their respective duly authorized officers and representatives, as of the date first written above.

"CONTRACTOR NAME"

\_\_\_\_\_

Date:

\_\_\_\_\_

By:

**WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY**, a joint exercise of powers agency:

ATTEST

\_\_\_\_\_

By: [NAME]  
Secretary

\_\_\_\_\_

By: [NAME]  
Chair of the Board

\_\_\_\_\_

Date:

Approved As to Form:

\_\_\_\_\_

Agency Counsel

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**Exhibit A**  
**Authority Non-Discrimination Policy**  
**(Attached Hereto as Exhibit A)**

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**EXHIBIT B**

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**TO AGREEMENT FOR PROCESSING SERVICES FOR GREEN WASTE**

4

**PROCESSING CHARGE**

5

6 Contractor agrees to accept the Processing Charge specified below as the only compensation to be  
7 provided Contractor for performance of the Agreement for Processing Services for Green Waste during  
8 the time period specified:  
9

Time Period	Processing Charge	
		per ton of Acceptable Green Waste Received
		per ton of Acceptable Green Waste Received
		per ton of Acceptable Green Waste Received
		per ton of Acceptable Green Waste Received

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