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**DEPARTMENT OF  
PUBLIC WORKS**

OFFICE OF THE DIRECTOR

**CITY OF SACRAMENTO  
CALIFORNIA**

CITY HALL  
ROOM 207  
915 I STREET  
SACRAMENTO, CA  
95814-2673

916-449-5283

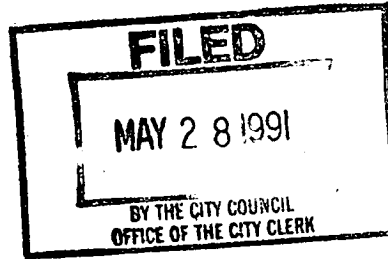
ADMINISTRATION  
916-449-8747

FAX 916-449-5573

May 28, 1991

City Council  
Sacramento, California

Honorable Members in Session:



**SUBJECT: MATERIALS RECOVERY FACILITY MODEL CONTRACT**

**SUMMARY**

This report transmits the model Materials Recovery Facility (MRF) contract to the City Council and expands upon some policies embodied in the contract. This report was heard the same day by the Budget and Finance/Transportation and Community Development Committee at the request of the MRF negotiation team.

**BACKGROUND**

See the attached Joint Committee report.

**FINANCIAL**

See the attached Joint Committee report.

**MBE/WBE**

See the attached Joint Committee report.

**POLICY CONSIDERATIONS**

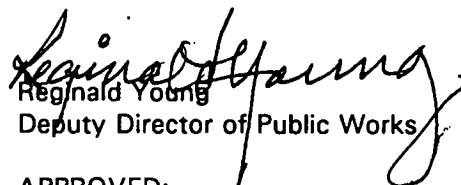
See the attached Joint Committee report.

May 28, 1991  
City Council  
Materials Recovery Facility Contract

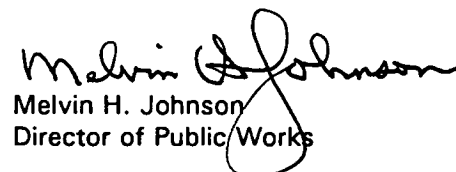
**RECOMMENDATION**

This report is provided for Council information.

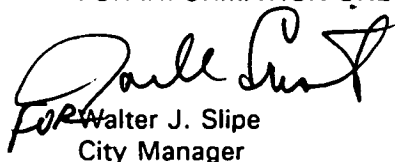
Respectfully submitted,

  
Reginald Young  
Deputy Director of Public Works

APPROVED:

  
Melvin H. Johnson  
Director of Public Works

FOR INFORMATION ONLY:

  
Walter J. Slipe  
City Manager

Contact Person:  
Reginald Young, Deputy Director of Public Works  
449-5283

May 28, 1991  
All Districts

Attachments: Materials Recovery Facility Construction, Sale and Operation Agreement



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May 28, 1991

Budget and Finance Committee/Transportation  
and Community Development Committee  
Sacramento, California

Honorable Members in Session:

SUBJECT: MATERIALS RECOVERY FACILITY MODEL CONTRACT

**SUMMARY**

This report transmits the model Materials Recovery Facility contract to the Joint Committee and expands upon some policies embodied in the contract.

**BACKGROUND**

On May 14, 1991, the Budget and Finance/Transportation and Community Development Committee jointly heard and approved a report which contained a series of policies that were to be embodied in the subject contract. The Joint Committee's approval of these policies was conditioned by a request that staff provide the Council with copies of the contract prior to its official submittal to the three vendors and that staff expand or further explain several of the policies. The concepts to be expanded included:

1. Public (City) ownership of the facility.
2. Facility financing.
3. Contract time frame.
4. Contract performance incentives.
5. A MRF educational center.
6. Updated vendor financial data.
7. Risk allocations.
8. Waste processing by type.

The attached Appendix A addresses each of the issues identified for expansion by the Joint Committee.

May 28, 1991  
Budget and Finance Committee/Transportation  
and Community Development Committee  
Materials Recovery Facility Contract

FINANCIAL

The model contractor will permit the City to select the most cost-effective option for a City MRF.

MBE/WBE

To the extent that City MBE/WBE policies are applicable to construction and operation of the MRF, these policies will be applied.

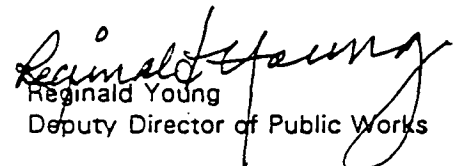
POLICY CONSIDERATIONS

The City Council is requested to reaffirm its policy of authorizing the City Manager to negotiate contracts.

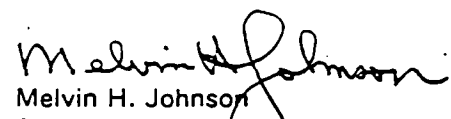
RECOMMENDATION

This report is provided for Committee information.

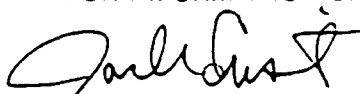
Respectfully submitted,

  
Reginald Young  
Deputy Director of Public Works

APPROVED:

  
Melvin H. Johnson  
Director of Public Works

FOR INFORMATION ONLY:

  
Jack Crist  
Deputy City Manager

Contact Person:  
Reginald Young, Deputy Director of Public Works  
449-5283

May 28, 1991  
All Districts

Attachments: Materials Recovery Facility Construction, Sale and Operation Agreement



**Joint Committee Concerns  
For Presentation at the  
May 28, 1991, Joint Committee Meeting**

**Public Ownership**

Public ownership of the MRF is desirable for many reasons

- **AB939 Responsibilities**

The City has ultimate responsibility for meeting the diversion mandates of AB939 in the most economical way and bears the full risk of penalties for not achieving the mandates. Even if the facility is privately owned, AB939 noncompliance penalties will be assessed to the City and its rate payers, not the private company. The only way for the City to control its AB939 noncompliance risk is for the City to have control of the facility; hence, public ownership.

- **Direct Control of Project Costs**

Although it may appear that private ownership would remove much of the risk from the City, ultimately all risks are assumed by City rate payers in the form of higher disposal rates. Because the City would be the major client of the MRF, it would bear the brunt of capital, financing, and risk related costs. Even under private ownership the City would ultimately bear these costs since they would be passed along as increases to the MRF service fees. It is prudent, therefore, that the City maintain ownership and actual control of the MRF.

- **Technical Control**

Unless the City owns the facility, it has little or no control over facility operations and the waste stream. If the MRF is privately owned, the City could have difficulty implementing a change in technology or material recovery necessary to meet AB939 mandates. At best, the City would have to negotiate change orders with a single service provider.

- **Operational Control**

If the facility is privately owned, the City has little ability to change operations other than negotiating with a single company or discontinuing use of the facility.

In the latter case, it would take many years for an alternative facility to be brought on line. Also, it is doubtful that a private company will build, own, and operate a MRF without a long term contract with the City to receive City waste. Under private ownership, the City could be in constant conflict with a poorly performing private company while being "locked" into a long term contract.

- **Low Cost Financing**

Only City ownership of the MRF assures access to tax exempt financing since private companies have limited availability to tax exempt bonds and must compete for them. With private ownership, any higher financing costs would be passed along to rate payers. This topic is discussed further in the Financing section of this report.

- **Control of Facility Users**

By owning the facility, adopting flow control, setting fees to users, and controlling the gate house, the City can determine who may use this facility. Thus, if the City determines that cooperation with the County is beneficial, the facility could be made available to process County refuse. Further, the City can eliminate the potential for unfair pricing to different waste haulers.

### **Financing**

Tax exempt financing for the MRF project can ONLY be assured through public ownership of the facility. Although some tax exempt financing is available to private companies for projects such as MRF's, the availability of this financing is limited and not guaranteed. Discussions with California Pollution Control Finance Authority representatives have indicated that tax exempt financing for private companies is anticipated to become highly competitive and available on a very limited basis. Thus, to assure that the facility is funded most economically, it should be City owned and financed publicly.

### **Contract Time Frame**

The intention of the contract is to retain the original contractor for the full twenty-year period provided the City is receiving cost-effective, quality service provided in a cooperative manner. However, a termination for convenience option has been included in the Draft Agreement which allows the City to terminate the contract every 5 years regardless of performance or compliance. This option is desirable for the City since, in some cases (especially to achieve higher diversion and rates), the City may wish to operate the MRF on its own or hire another private company to operate it. It also allows the City to terminate a marginally performing contractor without having to prove breach of contract. However, the contractor is well protected against an arbitrary decision by the City. If the City terminates the contract for convenience, it would be



required to make a substantial payment to the operator.

### **Performance Incentives**

Under City ownership there would be several performance incentives to the private operator:

- Revenues from sales of recyclables would be shared between the City and private company. Revenue sharing encourages the operator to maximize the amount of the waste stream recycled, the product quality, and the recyclables purchase price.
- The proposed contract is structured such that the private company will receive a fee from the City to dispose of residue. To the extent that the operator exceeds materials recovery performance guarantees, cost savings resulting from avoided residue disposal will be shared by the operator and the City.
- Under the proposed contract, the private company will make performance guarantees relating to the quantity of waste that can be processed, the extraction rates of recyclable materials, and environmental compliance. If these guarantees are not met, the private company will be assessed financial penalties. Thus, meeting performance guarantees has major financial incentives for the private company.

### **Education Center**

One of the design requirements for the MRF is that it have an education center. Design requirements are specified in the contract.

### **Updated Vendor Financial Record**

The contract requires the private companies to submit updated financial statements with their revised proposals. These statements will be reviewed by the Selection Committee prior to making a recommendation. Further, the selected contractor will be required to maintain its financial strength throughout the contract period or to provide an alternative means of assuring its performance in a manner acceptable to the City. Failure to do so would allow the City to terminate the agreement for cause.

### **City/County Cooperation**

Implementation of the project as defined in the draft agreement provides for opportunities for City/County cooperation if desired. The MRF is being sized to process the projected waste generated within the City up to the year 2005. The County could use the unutilized MRF capacity while the City waste stream reaches its expected generation rate. In order for the MRF to have sufficient capacity to process a portion of County generated waste on a long term basis,

additional processing capacity will have to be obtained by either siting additional MRFs or increasing the throughput capacity of the City MRF. If the City and County wish to cooperate in materials processing, waste flow service areas could be drawn to most efficiently route waste to any number of processing facilities regardless of jurisdiction. Thus, the City MRF could serve the portion of the City and the County nearest the project site. Additional MRF's could be built in other parts of the City or County to serve other regions. The draft agreement allows the City to determine which wastes will be accepted at this MRF and change its policy at a later date if desired.

### **Risk Allocation**

Private companies often assert that the City assumes substantially more risk by owning the facility. In fact, under the proposed contract structure, the risks are allocated to the party best able to control them. The increased control afforded the City under public ownership improves its ability to manage the risks which would fall on its shoulders regardless of ownership including AB939 compliance and cost of service. Under the draft contract, project development and technological risks are allocated to the contractor. Thus, the structure proposed minimizes the City's risk by contractually allocating significant risks to the contractor while providing the City with the needed control and flexibility to manage the risks it cannot pass on the private sector regardless of ownership structure.

### **Waste Types to be Processed**

All acceptable (non-hazardous) solid wastes generated within the City limits would pass through the facility. The acceptable waste stream would include materials collected by the City (residential, some commercial, yard waste, and curbside recyclables) and private collectors (mostly commercial and industrial). In their responses to the draft agreement, the competing private companies will determine which waste streams should be processed for the recovery of recyclable materials. Processing household refuse is not a contract requirement. If a private company believes that sufficient levels of recyclables have been removed by curbside and other recycling programs to make it unfeasible to further process, household refuse may be transferred directly through the facility to the landfill.

**ATTACHMENT**

(To be provided on May 28, 1991)

**MATERIALS RECOVERY FACILITY  
CONSTRUCTION, SALE AND OPERATION AGREEMENT**

Between

**THE CITY OF SACRAMENTO, CALIFORNIA**

and

\_\_\_\_\_

Dated

\_\_\_\_\_, 1991

May 28, 1991

Council Item 3.24  
Jt. Committee Item 7

BUSINESS PROPOSAL FORM  
PROPOSAL TRANSMITTAL LETTER  
(to be typed on Vendor's Letterhead)

June \_\_, 1991

Reginald Young  
City of Sacramento  
City Hall  
Sacramento, California 95814

Dear Mr. Young:

We, the undersigned, being duly authorized, on behalf of [name of vendor] (the "Vendor") and [name of Parent and/or Guarantor] (the "Guarantor") herewith submit to the City of Sacramento, California (the "City"), our Business and Technical Proposals. As set forth in these Proposals, we are prepared to make the following commitments to the City. We have included with our Proposal suggested revisions to the draft Materials Recovery Facility Construction, Sale and Operation Agreement (the "Agreement") which was provided to us by the City. Any capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Agreement.

1. We are prepared to design, construct, start-up, Acceptance Test and operate, in accordance with the provisions of the Agreement, a materials recovery and processing facility (the "Facility") conforming to the technical requirements of the City's RFP and as described in Appendix 4 of the Agreement.
2. We are prepared to accept an unlimited obligation, except for Uncontrollable Circumstances, to secure acceptance of the Facility in accordance with the Acceptance Test set forth in Appendix 6 of the Agreement, conforming to the Design Requirements contained in Appendix 4 of the Agreement, and in accordance with the Acceptance Test Standard set forth in Appendix 6. We will guarantee to cause the Acceptance Date to occur no later than \_\_\_\_\_ [to be bid] days following the Construction Date as defined in the Agreement (including 30 days for the Consulting Engineer's concurrence with the Acceptance Test Report) and to assume the liabilities attendant to meeting the Scheduled Acceptance Date set forth in the Agreement.
3. We will provide materials recovery and processing services to the City at the Facility in accordance with the Performance Guarantees set forth in Schedule A hereto and which will be incorporated into Appendix 13 of the Agreement for a term of at least 20 years beginning on the Purchase Date in return for Service Fee payments from the City pursuant to the formula set forth in Section 11.1 of the Agreement.

4. We will guarantee compliance with all federal, State and local environmental requirements and permit conditions applicable to the Facility as of the Contract Date and will comply with any changes occurring thereto throughout the term of the Service Agreement.
5. The Fixed Purchase Price (Section 6.3 of the Agreement) is \$\_\_\_\_\_ [to be bid]. The Fixed Purchase Price includes all costs for the design, construction, start-up, and Acceptance Testing of the Facility. (Proposal Forms A through D are itemizations of our Fixed Purchase Price). The Fixed Purchase Price is a firm, fixed, lump-sum amount not subject to escalation through \_\_\_\_\_, 1992. The Fixed Purchase Price shall escalate from \_\_\_\_\_, 1992 until the Start Construction Date in accordance with the Purchase Price Index described in Appendix 10 of the Agreement. As of the Construction Date, the Fixed Purchase Price shall be a firm, fixed, lump-sum amount not subject to further escalation and will be subject only to Fixed Price Adjustments (Section 6.3 of the Agreement).
6. For the purpose of determining the Net Service Fee, we propose the following:
  - A. The Base Operation and Maintenance Charge (Section 11.1(B) of the Agreement) is \$\_\_\_\_\_ [to be bid] which is the cost to operate and maintain the Facility if processing an amount of Acceptable Waste equal to the Baseline Acceptable Waste Tonnage. The Baseline Acceptable Waste Tonnage is 468,000 Tons of Acceptable Mixed Waste (312 operating days X 1500 TPD), 18,720 Tons of Acceptable Yardwaste (312 operating days X 60 TPD) and 78,000 Tons of Acceptable Yardwaste (312 operating days X 250 TPD) and unlimited amounts of Acceptable Household Hazardous Waste, all per Contract Year. (Proposal Forms E through H are an itemization of the Base Operation and Maintenance Charge.) In addition we propose to receive from the City the following:
    - (i) the Excess Recyclable Materials Processing Charge (Section 11.1(C) of the Agreement) which is equal to \$\_\_\_\_\_ [to be bid] per ton of Acceptable Recyclable Materials processed in excess of the 18, 720 Tons of Acceptable Recyclable Materials per Contract Year;
    - (ii) the Excess Mixed Waste Processing Charge (Section 11.1(D) of the Agreement) which is equal to \$\_\_\_\_\_ [to be bid] per ton of Acceptable Mixed Waste processed in excess of 468,000 Tons of Acceptable Mixed Waste per Contract Year;
    - (iii) the Excess Yardwaste Processing Charge (Section 11.3(E) of the Agreement) which is equal to \$\_\_\_\_\_ [to be bid] per ton of Acceptable Yardwaste processed in excess of 78,000 Tons of Acceptable Yardwaste per Contract Year;



(iv) the Allowable Residue Hauling Charge (Section 11.1(G) of the Agreement) which is equal to \$\_\_\_\_\_ [to be bid] per one-way ton/mile for the transfer, transportation and handling of all Residue produced by the Facility within the Residue Allowance.

The Base Operation and Maintenance Charge, the Excess Mixed Waste Processing Charge and the Excess Yardwaste Processing Charge shall be adjusted in accordance with the Operation Price Index as and to the extent provided in Appendix 11 of the Agreement. The Allowable Residue Hauling Charge shall be adjusted in accordance with the Transportation Price Index as and to the extent provided in Appendix 12 of the Agreement.

We acknowledge that we shall receive the Pass Through Cost Charge of the Service Fee only to the extent provided in Section 11.1(H) of the Agreement.

B. The share of Recovered Products Sales Revenues to which the Company shall be entitled pursuant to Section 11.1 of the Agreement shall be equal to the following percentages provided below:

(i) for each Class of Recovered Recyclable Materials for which the Product Sales Revenues attributable to the marketing of such class is positive in any Contract Year, the Recovered Recyclable Materials Revenue Charge in such Contract Year shall be an amount equal to \_\_\_\_% [to be bid] of such Recovered Product Sales Revenues for each such Class (Section 11.1(J) of the Agreement);

(ii) for each Class of Recovered Mixed Waste Recyclable Materials for which the Product Sales Revenues attributable to the marketing of such Class is positive in any Contract Year, the Mixed Waste Recovered Materials Revenue Charge shall be an amount equal to \_\_\_\_% [to be bid] of such Recovered Product Sales Revenues for each such Class (Section 11.1(K) of the Agreement); and

(iii) the Compost Revenue Charge in each Contract Year shall be an amount equal to \_\_\_\_% [to be bid] of such Recovered Products Sales Revenues attributable to the marketing of Compost in such Contract Year (Section 11.1(M) of the Agreement).

7. \_\_\_\_\_ [the Guarantor] will provide an irrevocable guarantee of all the Company's obligations by executing the Guaranty Agreement appended to the Service Agreement as Transaction Form A.

8. We certify that the City can rely on information provided in our proposal as true and accurate.

9. We agree to inform the City of any material adverse changes in our or our Guarantor's financial condition prior to the Contract Date.
10. We agree to meet the milestones identified in Appendix 2 to the Agreement by the date we have marked into such Appendix and now provide to you. Specifically, we agree that all milestones identified in Section 3.1 of the Agreement will be achieved by \_\_\_\_\_ [to be bid].
11. We waive any future claim against the City in the event that we are not selected as the Selected Vendor and/or are unable to negotiate a mutually satisfactory Service Agreement with the City as a result of the procurement process undertaken by the City.

Sincerely,

VENDOR: \_\_\_\_\_

GUARANTOR: \_\_\_\_\_

By: \_\_\_\_\_  
Chief Executive Officer  
of Vendor

By: \_\_\_\_\_  
Chief Executive Office  
of Guarantor

Attest:

Attest:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Secretary

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE A**  
**PERFORMANCE GUARANTEES**

**I. Recyclable Materials Guarantees**

**A. Recyclable Materials Throughput Guarantee** (Section 8.3(A) of the Agreement): The Company shall receive and process through the Recyclable Materials Processing Train a minimum average of 90 Tons of Acceptable Recyclable Materials per calendar day calculated on a rolling 90-day basis.

**B. Recyclable Materials Residue Quality Guarantee** (Appendix 13 of the Agreement): The total amount of Recyclable Materials Process Residue in any rolling 90 day period shall not exceed [to be bid] of the Recyclable Materials processed during such rolling 90 day period.

**II. Mixed Waste Guarantees**

**A. Mixed Waste Throughput Guarantee** (Section 8.3(B) of the Agreement): The Company shall receive and process through the Mixed Waste Processing Train a minimum average of 2250 Tons of Acceptable Mixed Waste per calendar day calculated on a rolling 90 day basis.

**B. Mixed Waste Recovery Efficiency Guarantee** (Appendix 13 of the Agreement): The Company shall provide the following minimum recovery rates for each product listed below. The Efficiency Guarantees shall be calculated on a rolling 90 day basis in accordance with Appendix 13 of the Agreement.

[TO BE BID]

(i)	—%	of the total incoming newspaper
(ii)	—%	of the total incoming corrugated boxboard
(iii)	—%	of the total incoming PET
(iv)	—%	of the total incoming HDPE
(v)	—%	of the total incoming other plastics
(vi)	—%	of the total incoming aluminum cans
(vii)	—%	of the total incoming other aluminum
(viii)	—%	of the total incoming ferrous cans
(ix)	—%	of the total incoming other ferrous
(x)	—%	of the total incoming non ferrous metals
(xi)	—%	of the total incoming glass
(xii)	—%	of the total incoming household batteries
(xiii)	—%	of the total incoming [other products bid by vendor]

**C. Mixed Waste Aggregate Recovery Efficiency Guarantee** (Appendix 13 of Agreement): The Company shall recover Received Mixed Waste Materials (aggregate for all Classes of Recyclable Materials) in each Contract Year in an amount at least equal to [to be bid]% of the Acceptable Mixed Waste processed in such Contract Year.

### III. Yard Waste Guarantees

A. Yard Waste Throughout Guarantee (Section 8.3 of the Agreement): The Company shall receive and process through the Yardwaste Processing Train a minimum average of 350 Tons of Acceptable Yardwaste per calendar year day calculated on a rolling 90-day basis.

B. Yard Waste Residue Quantity Guarantee (Appendix 13 of the Agreement): Yardwaste Process Residue shall not contain any Acceptable Yardwaste other than (i) the non-compostable fraction thereof plus (ii) \_\_\_\_% [to be bid] of the compostable fraction of the Yardwaste processed at the Facility.

### IV. Recovered Product Quality Guarantees

A. Recyclable Materials Product Quality Guarantee (Appendix 13): The Recovered Recyclable Materials shall conform to the product quality standards (for individual Recovered Products based on the delivery of Recyclable Materials in accordance with Appendix 15 of the Agreement) described in Appendix 13 of the Agreement.

B. Mixed Waste Product Quality Guarantee (Appendix 13): The Recovered Mixed Waste Materials shall conform to the product quality standards (for individual Recovered Mixed Waste Materials based on the delivery of Mixed Waste in accordance with Appendix 15 of the Agreement) described in Appendix 13 of the Agreement.

C. Compost Quality Guaranty (Appendix 13): The Compost produced at the Facility shall conform to the following specifications:

(i) The compost shall be free of pathogenic materials and maintained daily in an inbed temperature of no less than 130<sup>0</sup> Fahrenheit.

(ii) The pH shall be no less than 6.5 nor more than 8.0.

(iii) the moisture content shall not exceed 45%.

(iv) The particle size for all cured compost shall be no greater than the following based on particle size determined by analysis of representative composite samples passing through square hold screens:

<u>Particle Size</u>	<u>Weight(%)</u>
1/4" minus	95% of all cured compost
3/8" minus	100% of all cured compost

(v) All cured compost shall meet the criteria as defined in the Food and Agricultural Code Section 14,512 for Commercial Fertilizer. The Company shall obtain a fertilizer

certificate from the California Department of Agriculture. It is anticipated that extensive laboratory testing for heavy metals, pesticides and hydrocarbons will be required prior to the issuance of a certificate. The fertilizer certificate shall be obtained within 90 days of Project Acceptance.

(vi) Inerts in the cured compost shall be no greater than:

1. 2.0% dry weight for glass
2. 2.0% dry weight for plastic
3. 0.5% dry weight for total metals
4. 5.0% dry weight for total inerts

(vii) The wet respiration rate shall be 1000 mg O<sub>2</sub>/kg/hr or less.

(viii) Seed germination shall not exceed an acceptable control sample within an accuracy of  $\pm 5\%$ .

(ix) Metals in the Compost shall not exceed the following levels: (mg/kg, dry weight basis):

Cadmium	_____
Copper	_____
Lead	_____
Nickel	_____
Zinc	_____
Chromium	_____
Mercury	_____
Arsenic	_____

(x) Pesticides and PCBs in the Compost shall not exceed the following levels (mg/kg, dry weight basis):

Alorin	_____
Chlordane	_____
Dielorin	_____
Endrin	_____
Heptacor	_____
Heptaclor Epoxide	_____
Lindane	_____
Methoxchlor	_____
Murex	_____
P, P <sup>1</sup> - TDE(DDD)	_____
P, P <sup>1</sup> - DDT	_____
P <sub>1</sub> , P <sup>1</sup> - DDE	_____
Toxaphene	_____
Total Polychlorinated Biphenals	_____

V. Household Hazardous Waste Throughput Guarantee (Section 8.3):

The Company shall receive, handle, segregate, store, transport and dispose of all Acceptable Household Hazardous Waste delivered to the Facility.

VI. Environmental Guarantees

The Company shall, at all times during the term of the Agreement, comply with the Law Compliance Guarantee (Section 7.4, Appendix 13), the Noise Control Guarantee (Appendix 13), the Odor Control Guarantee (Appendix 13), the Dust Control Guarantee (Appendix 13) and the Cleanliness Guarantee (Appendix 13).

VII. Marketing and Disposal Guarantees

The Company shall, at all times during the Operation Period, comply with the Bypass Waste Disposal Guarantee (Section 8.3) the Recovered Product Marketing Guarantee (Sections 9.1, 9.2, 9.3 and 9.4) the Reject Disposal Guarantee (Section 9.5), the Residue Disposal Guarantee (Section 9.6) and the Hazardous Waste Disposal Guarantee (Section 9.8).

## FORM A

### PURCHASE PRICE PROPOSAL

The Purchase Price is a fixed price as of \_\_\_\_\_ for all activities required for the site selection and acquisition, development, design, construction, start-up, and acceptance testing of the Facility in accordance with our Proposal. The Purchase Price shall escalate in accordance with the Agreement.

The Company is required to identify the total Facility construction costs on the following Forms.

Specific Facility	Purchase Price
1. Basic Project-Materials Recovery and Transfer Facility	_____
2. Yardwaste Composting Facility	_____
3. Drop-off Household Hazardous Waste Facility	_____
Total Purchase Price	_____

## FORM B

### ITEMIZED PURCHASE PRICE PROPOSAL BASIC PROJECT - MATERIALS RECOVERY AND TRANSFER STATION

The Purchase Price is a fixed price as of \_\_\_\_\_. Prices indicated in Phase I to V are inclusive of all labor, materials, overhead, profit, and other costs required.

Total Cost	
<b>Phase I: Siting</b> 1. Siting Study 2. Acquisition of Land (purchase) 3. Zoning Changes	_____ _____ _____
<b>Phase II: Design Phase</b> 1. Company Project Development Expenses 2. Design 3. Permits	_____ _____ _____
<b>Phase III: Construction Phase</b> <b>A. General</b> 1. Construction Management Personnel and Services 2. Mobilization and General Conditions 3. Temporary Utilities	_____ _____ _____
<b>B. Facility Site Work</b> 1. Building Demolition 2. Clearing and Grubbing 3. Excavation and Fill 4. Roadway and parking lot pavement 5. General site work - fences, gates, lighting, final grading, etc. 6. Landscaping 7. Sanitary sewer system 8. Water supply 9. Storm sewer system 10. Electrical service connections 11. Natural gas connection 12. Fuel oil provision	_____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____



**FORM B**  
**(Continued)**  
**ITEMIZED PURCHASE PRICE PROPOSAL**  
**BASIC PROJECT - MATERIALS RECOVERY AND TRANSFER STATION**

		Total Cost
C.	Facility Building Costs (Installed) 1. Concrete 2. Structural steel work 3. Electrical work 4. Mechanical work 5. HVAC Equipment	_____ _____ _____ _____ _____
D.	Processing/Waste Hauling and Miscellaneous Equipment 1. Weighing equipment 2. Front end loaders 3. Compactors 4. Overhead cranes 5. Forklifts 6. Conveyors 7. Balers 8. Shredders and screens 9. Other equipment (specify)	_____ _____ _____ _____ _____ _____ _____ _____ _____
E.	Other/Miscellaneous (Specify) 1. _____ 2. _____ 3. _____ 4. _____	_____ _____ _____ _____
F.	Performance Bond Costs	_____
G.	Insurance Costs	_____
Phase IV:	Start-Up and Initial Operation Test Phase 1. Labor 2. Utilities 3. Other (specify) _____	_____ _____ _____

**FORM B**  
**(Continued)**  
**ITEMIZED PURCHASE PRICE PROPOSAL**  
**BASIC PROJECT - MATERIALS RECOVERY AND TRANSFER STATION**

	Total Cost
Phase V: Acceptance Test Phase	
1. Labor	_____
2. Utilities	_____
3. Environmental/Acceptance Testing	_____
4. Other (specify) _____	_____
Total Construction Costs (Phases I-V)	

## FORM C

### ITEMIZED PURCHASE PRICE PROPOSAL YARDWASTE COMPOSTING FACILITY

The Yardwaste Processing Train Purchase Price is a fixed price as of \_\_\_\_\_ . Prices indicated in Phase I to V are inclusive of all labor, materials, overhead, profit and other costs required.

The Company shall indicate below those costs associated with the yardwaste composting facility. The composting facility costs must be itemized separately from the basic project. For example, allocate costs for additional access roads, parking areas, utility extensions, fencing, permits, equipment, and other construction costs which are needed for the yardwaste composting facility. If an item listed is not applicable enter N/A in the cost columns.

		Total Cost
Phase I:	Siting	
	1. Siting Study	_____
	2. Acquisition of Land (purchase)	_____
	3. Zoning Changes	_____
Phase II:	Design Phase	
	1. Vendor Project Development Expenses	_____
	2. Design	_____
	3. Permits	_____
Phase III:	Construction Phase	
A.	General	
	1. Construction Management Personnel and Services	_____
	2. Mobilization and General Conditions	_____
	3. Temporary Utilities	_____

**FORM C**  
**(Continued)**  
**ITEMIZED PURCHASE PRICE PROPOSAL**  
**YARDWASTE COMPOSTING FACILITY**

		Total Cost
<b>B. Facility Site Work</b> 1. Building Demolition 2. Clearing and Grubbing 3. Excavation and Fill 4. Roadway and parking lot pavement 5. General site work - fences, gates, lighting, final grading, etc. 6. Landscaping 7. Sanitary sewer system 8. Water supply 9. Storm sewer system 10. Electrical service connections 11. Natural gas connection 12. Fuel oil provision		_____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____
<b>C. Facility Building Costs (Installed)</b> 1. Concrete 2. Structural steel work 3. Electrical work 4. Mechanical work 5. HVAC Equipment		_____ _____ _____ _____ _____
<b>D. Processing/Waste Hauling and Miscellaneous Equipment</b> 1. Weighing equipment 2. Front end loaders 3. Compactors 4. Overhead cranes 5. Forklifts 6. Conveyors 7. Balers 8. Shredders and screens 9. Other equipment (specify) _____		_____ _____ _____ _____ _____ _____ _____ _____ _____

**FORM C**  
**(Continued)**  
**ITEMIZED PURCHASE PRICE PROPOSAL**  
**YARDWASTE COMPOSTING FACILITY**

		Total Cost
E.	Other/Miscellaneous (Specify) 1. _____ 2. _____ 3. _____ 4. _____	_____ _____ _____ _____
F.	Performance Bond Costs	_____
G.	Insurance Costs	_____
Phase IV:	Start-Up and Initial Operation Test Phase 1. Labor 2. Utilities 3. Other (specify) _____	_____ _____ _____
Phase V:	Acceptance Test Phase 1. Labor 2. Utilities 3. Environmental/Acceptance Testing 4. Other (specify) _____	_____ _____ _____ _____
<b>Total Yardwaste Composting Facility Purchase Price (Phases I-V)</b>		_____

## FORM D

### ITEMIZED PURCHASE PRICE PROPOSAL DROP-OFF HOUSEHOLD HAZARDOUS WASTE FACILITY

Prices indicated in Phase I to V are inclusive of all labor, materials, overhead, profit, and other costs required.

Proposers should indicate below those costs associated with the dropoff household hazardous waste facility. The facility costs must be itemized separately from the basic plan. For example, allocate costs for additional access roads, parking areas, utility extensions, fencing, permits, equipment, labor, and other construction costs which are needed for the drop-off household hazardous waste facility. If an item listed is not applicable, enter N/A in the cost columns.

Total Cost	
<b>Phase I: Siting</b> 1. Siting Study 2. Acquisition of Land (purchase) 3. Zoning Changes	_____ _____ _____
<b>Phase II: Design Phase</b> 1. Vendor Project Development Expenses 2. Design 3. Permits	_____ _____ _____
<b>Phase III: Construction Phase</b> <b>A. General</b> 1. Construction Management Personnel and Services 2. Mobilization and General Conditions 3. Temporary Utilities	_____ _____ _____
<b>B. Site Work</b> 1. Building Demolition 2. Clearing and Grubbing 3. Excavation and Fill 4. Roadway and parking lot pavement 5. General site work - fences, gates, lighting, final grading, etc. 6. Landscaping 7. Sanitary sewer system 8. Water supply 9. Storm sewer system 10. Electrical service connections 11. Natural gas connection 12. Fuel oil provision	_____ _____ _____ _____ _____ _____ _____ _____ _____ _____ _____

**FORM D**  
**(Continued)**  
**ITEMIZED PURCHASE PRICE PROPOSAL**  
**DROP-OFF HOUSEHOLD HAZARDOUS WASTE FACILITY**

Total Cost	
<b>C. Facility Building Costs (Installed)</b> 1. Concrete 2. Structural steel work 3. Electrical work 4. Mechanical work 5. HVAC Equipment	_____ _____ _____ _____ _____
<b>D. Processing/Waste Hauling and Miscellaneous Equipment</b> 1. Weighing equipment 2. Front end loaders 3. Compactors 4. Overhead cranes 5. Forklifts 6. Conveyors 7. Balers 8. Shredders and screens 9. Other equipment (specify) _____	_____ _____ _____ _____ _____ _____ _____ _____ _____
<b>E. Other/Miscellaneous (Specify)</b> 1. _____ 2. _____ 3. _____ 4. _____	_____ _____ _____ _____
<b>F. Performance Bond Costs</b>	_____
<b>G. Insurance Costs</b>	_____

**FORM D**  
**(Continued)**  
**ITEMIZED PURCHASE PRICE PROPOSAL**  
**DROP-OFF HOUSEHOLD HAZARDOUS WASTE FACILITY**

	Total Cost
Phase IV: Start-Up and Initial Operation Test Phase 1. Labor 2. Utilities 3. Other (specify) _____	_____ _____ _____
Phase V: Acceptance Test Phase 1. Labor 2. Utilities 3. Environmental/Acceptance Testing 4. Other (specify) _____	_____ _____ _____ _____
Total Drop-Off Household Hazardous Waste Facility Purchase Price (Phases I-V)	_____



**FORM E**  
**BASE OPERATION AND MAINTENANCE CHARGE PROPOSAL**

List operating and maintenance costs by facility type.

Total Cost	
Base Operation and Maintenance Charge Proposals	
1. Basic Project-Materials Recovery and Transfer Facility	_____
2. Yardwaste Composting Facility	_____
3. Drop-off Household Hazardous	_____
Total Base Operation and Maintenance Charge	_____

## FORM F

### ITEMIZED BASE OPERATION AND MAINTENANCE CHARGE BASIC PROJECT - MATERIALS RECOVERY AND TRANSFER FACILITY ( ), 1992 DOLLARS)

Proposers should indicate below those costs associated with the materials recovery and transfer facility. The optional facility costs must be itemized separately from the basic project.

	Annual Total Cost
<b>A. Facility Operating Personnel</b> 1. Facility management 2. Operations controllers 3. Equipment operators 4. Truck drivers 5. Laborers 6. Maintenance personnel 7. Other (specify) _____	_____ _____ _____ _____ _____ _____ _____
<b>B. Utilities (as applicable)</b> 1. Electricity 2. Water 3. Natural Gas 4. Fuel Oil 5. Sewer 6. Other (Specify) _____	_____ _____ _____ _____ _____ _____
<b>C. Facility and Equipment Maintenance</b>	_____
<b>D. Contract Services (specify)</b>	_____
<b>E. Equipment Rentals or Leases (specify)</b>	_____
<b>F. Equipment Replacement Fund</b>	_____
<b>G. Insurance (annual premium cost)</b>	_____

**FORM F**  
**(Continued)**  
**ITEMIZED BASE OPERATION AND MAINTENANCE CHARGE**  
**BASIC PROJECT - MATERIALS RECOVERY AND TRANSFER FACILITY**  
**( \_\_\_\_\_, 1992 DOLLARS)**

	Annual Total Cost
<b>H. Other/Miscellaneous (specify)</b> 1. _____ 2. _____ 3. _____ 4. _____	_____ _____ _____ _____
<b>I. Residue Disposal</b> 1. Residue Hauling	_____
<b>J. Property Taxes</b>	_____
<b>K. Direct Operating Costs (A-J)</b>	_____
<b>L. Indirect Operating Costs</b> <b>(Management Fee Profit or Other)</b>	_____
<b>M. Total (K+L) Materials Recovery and</b> <b>Transfer Facility Base Operation and</b> <b>Maintenance Charge</b>	_____

# FORM G

## BASE ANNUAL OPERATION AND MAINTENANCE CHARGE YARD WASTE COMPOSTING FACILITY (\_\_\_\_\_, 1992 DOLLARS)

Proposers should indicate below those costs associated with the yard waste composting facility. The facility costs must be itemized separately from the basic plan. For example, allocate costs for additional personnel, utilities, equipment rentals, residue disposal, and maintenance required in addition to that which are needed for the Material Recovery and Transfer Facility. If an item listed is not applicable, enter N/A in the cost columns.

	Annual Total Cost
<b>A. Facility Operating Personnel</b> 1. Facility management 2. Operations controllers 3. Equipment operators 4. Truck drivers 5. Laborers 6. Maintenance personnel 7. Other (specify) _____	_____ _____ _____ _____ _____ _____ _____
<b>B. Utilities (as applicable)</b> 1. Electricity 2. Water 3. Natural Gas 4. Fuel Oil 5. Sewer 6. Other (Specify) _____	_____ _____ _____ _____ _____ _____
<b>C. Facility and Equipment Maintenance</b>	_____
<b>D. Contract Services (specify)</b>	_____
<b>E. Equipment Rentals or Leases (specify)</b>	_____
<b>F. Equipment Replacement Fund</b>	_____
<b>G. Insurance (annual premium cost)</b>	_____

**FORM G**  
**(Continued)**  
**ITEMIZED BASE OPERATION AND MAINTENANCE CHARGE**  
**YARD WASTE COMPOSTING FACILITY**  
**( \_\_\_\_\_, 1992 DOLLARS)**

Annual Total Cost	
<b>H. Other/Miscellaneous (specify)</b> 1. _____ 2. _____ 3. _____ 4. _____	_____ _____ _____ _____
<b>I. Residue Disposal</b> 1. Residue Hauling	_____
<b>J. Property Taxes</b>	_____
<b>K. Direct Operating Costs (A-J)</b>	_____
<b>L. Indirect Operating Costs (Management Fee Profit or Other)</b>	_____
<b>M. Total (K+L) Materials Recovery and Transfer Facility Base Operation and Maintenance Charge</b>	_____

## FORM H

### ITEMIZED BASE OPERATION AND MAINTENANCE CHARGE DROP-OFF HOUSEHOLD HAZARDOUS WASTE FACILITY (\_\_\_\_\_, 1992 Dollars)

Proposers should indicate below those costs associated with the drop-off household hazardous waste facility. Costs must be itemized separately from the basic plan. For example, allocate costs for additional personnel, utilities, equipment rentals, residue disposal, and maintenance, required in addition to that which are needed for the Material Recovery and Transfer Facility. If an item listed is not applicable, enter N/A in the cost columns.

Annual Total Cost	
A. Facility Operating Personnel 1. Facility management 2. Operations controllers 3. Equipment operators 4. Truck drivers 5. Laborers 6. Maintenance personnel 7. Other (specify) _____	_____ _____ _____ _____ _____ _____ _____
B. Utilities (as applicable) 1. Electricity 2. Water 3. Natural Gas 4. Fuel Oil 5. Sewer 6. Other (Specify) _____	_____ _____ _____ _____ _____ _____
C. Facility and Equipment Maintenance	_____
D. Contract Services (specify)	_____
E. Equipment Rentals or Leases (specify)	_____
F. Equipment Replacement Fund	_____

**FORM H**  
**(Continued)**  
**ITEMIZED BASE OPERATION AND MAINTENANCE CHARGE**  
**DROP-OFF HOUSEHOLD HAZARDOUS WASTE FACILITY**  
**( \_\_\_\_\_, 1992 DOLLARS)**

	Annual Total Cost
G. Insurance (annual premium cost)	_____
H. Other/Miscellaneous (specify) 1. _____ 2. _____ 3. _____ 4. _____	_____ _____ _____ _____
I. Residue Disposal 1. Residue Hauling 2. Residue Disposal	_____ _____
J. Property Taxes	_____
K. Direct Operating Costs (A-J)	_____
L. Indirect Operating Costs (Management Fee Profit or Other)	_____
M. Total (K+L) Materials Recovery and Transfer Facility Base Operation and Maintenance Charge	_____

**FORM I**

**REVENUE PROPOSAL FORM**  
**RECOVERED MATERIALS REVENUE**

	Quantity Recovered (TPY)	Market Value (\$/Ton)	Materials Revenues (1991 dollars)
1. Cardboard	_____	_____	_____
2. Paper			
a. High grade	_____	_____	_____
b. Mixed	_____	_____	_____
3. Newsprint	_____	_____	_____
4. Glass	_____	_____	_____
5. Plastics			
a. PET	_____	_____	_____
b. HDPE	_____	_____	_____
c. LDPE	_____	_____	_____
6. Aluminum cans	_____	_____	_____
7. Tin/Bi-metal cans	_____	_____	_____
8. Ferrous metals	_____	_____	_____
9. Other metals	_____	_____	_____
10. Wood chips	_____	_____	_____



**FORM I**  
**(Continued)**  
**REVENUE PROPOSAL FORM**  
**RECOVERED MATERIALS REVENUE**

	Quantity Recovered (TPY)	Market Value (\$/Ton)	Materials Revenues (1991 dollars)
11. Compost	_____	_____	_____
a. Yard Waste	_____	_____	_____
b. MSW	_____	_____	_____
12. Pellets	_____	_____	_____
13. Other	_____	_____	_____
<b>Total Revenues</b>	_____	_____	_____

May 28, 1991  
Council Item 3.24  
Jr. Comm. Item 7

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9  
10

APPENDICES

13

to the

15

MATERIALS RECOVERY SERVICE AGREEMENT

17

between

19

THE CITY OF SACRAMENTO, CALIFORNIA

21

and

23

[COMPANY]

25

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27  
28

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**APPENDIX 1**  
**FACILITY SITE CRITERIA**

The Company shall use the following guidelines in establishing the Facility Site. The Company should be aware that additional performance or siting standards could be established during land use permitting and environmental review of the individual facilities.

1. The proposed Facility Site shall be compatible with local land use and zoning requirements.
2. The proposed Facility Site shall be capable of receiving all state and local permits, including certification in compliance with CEQA.
3. The proposed Facility Site shall be located in the City of Sacramento.
4. The proposed Facility Site shall be within 50 miles of both the Sacramento County and Yolo County landfills.
5. The proposed Facility Site shall have as little adverse impact on the City's centroid of collection services as possible. The proposed Facility Site shall not result in a degradation of the existing waste/recyclable collection services.
6. The proposed Facility Site shall be easily accessed from major transportation routes. Ingress and egress to the proposed Facility Site shall not create major vehicular or pedestrian conflicts.
7. The proposed Facility Site shall be located such that residential streets need not be used to access the site. The Company should consider and identify aspects of the proposed Facility Site which fulfill the City's objectives for minimizing transportation costs from collection areas and for providing good access in an area of compatible land use.

8. The proposed Facility Site shall be devoid of Hazardous Waste and Hazardous Substances in excess of those allowed by the EPA, the Regional Water Quality Control Board (RWQCB), the California Department of Health Services (DOHS), or other applicable agency. Any Hazardous Waste and Hazardous Substances on the proposed Facility Site shall be removed as directed by the RWQCB, DOHS or other applicable agency.
9. The proposed Facility Site shall be located outside the 100 year floodplains.
10. The proposed Facility Site shall not be located in an area that is a known active fault zone.
11. The proposed Facility Site shall not contain, or be located adjacent to sites which contain, sensitive species or their habitat, or contain significant amounts (defined as more than one acre) of wetlands or riparian habitat.
12. The proposed Facility Site shall not be located on sites which contain significant archaeological or historical resources.
13. The proposed Facility Site shall have topographical, soil and geotechnical characteristics which allow safe and economical construction and operation of the Facility.

APPENDIX 2

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DEVELOPMENT PERIOD MILESTONE SCHEDULE

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## APPENDIX 2

### DEVELOPMENT PERIOD MILESTONE SCHEDULE

The development period shall include all the milestone activities identified in Table 2-1.

Table 2-1

Item	Days After Contract Award*	Milestone
1	____ days following the Contract Date	Facility Site Control (subsection 3.1(1) of the Agreement)
2	____ days following the Contract Date	Facility Site Environmental Audit (subsection 3.1(5) of the Agreement) and Special Use Permit Application and fee Payment (subsection 3.1(8) of the Agreement).
3	____ days following City certification of the environmental impact report on this Project under CEQA	Legal Entitlements (subsection 3.1(16) of the Agreement)
4	____ days following completion of the milestone identified in item (3) immediately above	Binding Construction Financing Commitment (subsection 3.1(17) of the Agreement)
5	____ days following the Contract Date	All milestones in Section 3.1 of the Agreement completed

\*To be completed by Company as part of Proposal submitted.

**APPENDIX 3**

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**CONSTRUCTION PERIOD MILESTONE SCHEDULE**

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## APPENDIX 3

### CONSTRUCTION PERIOD MILESTONE SCHEDULE

The Scheduled Acceptance Date shall be \_\_\_\_\_ [TO BE BID] calendar days following the Start Construction Date, as adjusted due to Uncontrollable Circumstances, City Breach or City Change Order. The Scheduled Acceptance Date includes all time required for design, construction, shakedown and Acceptance Tests, plus an allowance of 30 days for Acceptance Test report preparation by the Company and 30 days for Acceptance Test report review by the City.

The Construction Period shall include all the milestone activities identified in Table 3-1, which are expected to be completed on the Schedule indicated.

Table 3-1

Item	Months After Contract Award*	Milestone
1	---	Predesign meeting
2	---	15% progress design review meeting
3	---	30% progress design review meeting
4	---	60% progress design review meeting
5	---	90% progress design review meeting and delivery of design package for City 5-week review
6	---	Engineering complete & final design review meeting
7	---	Building permits obtained
8	---	Facility Site mobilization
9	---	Equipment and building foundations complete
10	---	Achieve Mechanical Completion
11	---	City approval of Acceptance Test Procedures
12	---	Achieve Final Completion
13	---	City Acceptance of Facility and start date of the Operating Agreement

---

\*To be completed by Company as part of Proposal submitted.

APPENDIX 4

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DESIGN REQUIREMENTS

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**APPENDIX 4**  
**DESIGN REQUIREMENTS**

The minimum design requirements applicable to the Facility are as follows and do not replace or supersede any other state or local regulations.

1. The Facility's infrastructure and Facility Site exterior shall comply with the requirements of Sacramento City's "Design and Procedures Manual."
2. The City requires that the Facility be designed to accept and process a projected 795,500 Tons of Acceptable Waste per Contract Year. This tonnage includes a possible 23,400 Tons of Acceptable Recyclable Materials, 70,100 Tons of Acceptable Yardwaste and 702,000 Tons of Acceptable Mixed Waste. In addition, the Facility must be designed to accept Acceptable Household Hazardous Waste to the extent provided in the Agreement.

The Company is required to describe how this capacity might be expanded should the City determine that the facility needs to be expanded during the term of service.

3. The Facility shall:
  - a. Receive Sacramento City Acceptable Waste 312 days per year.
  - b. Receive Acceptable Waste ten hours per day Monday through Friday; and 5 hours on Saturdays.
  - c. Have a minimum storage capacity of 6,750 Tons of Acceptable Waste (3 day's storage).
4. The receiving and processing areas must be enclosed to minimize fugitive debris, dust, and odor emissions. The receiving area shall be capable of accommodating three days of input.
5. The Facility must provide sufficient queuing space for City and other delivery vehicles. Queuing on City streets is not acceptable. The Facility must be designed to minimize

traffic impacts at the site, facilitate delivery vehicle access, and minimize delivery vehicle turnaround times to no more than 15 minutes, taking into account the arrival of collection vehicles at peak arrival rates.

6. The Facility must be designed and constructed to comply with Applicable Law and with all applicable industrial codes and all applicable code requirements of national technical societies, e.g. American Society of Mechanical Engineers, either as stated or as is standard in industry practice.
7. Adequate fencing and barriers must be provided to ensure that blowing debris and waste are confined to the Facility Site and to provide visual screening of operations from roadways and neighboring properties.
8. The Facility must include a scale(s), an enclosed scale house, and provide for automatic weighing with telemetry to a site specified by the City and recording of actual tonnage received. At a minimum, the recorded data must indicate the solid waste source, time of receipt, and total tonnage delivered. Records shall also be maintained for all materials received, used, and converted for reuse, and all materials going to the Designated Disposal Site.
9. The Facility is expected to include a MRF Building, Administrative Building, Buy-back Building and Truck Maintenance Building.
10. The Facility should include, as options, a Household Hazardous Waste Building and Composting Building.
11. The Facility must be designed to accommodate good housekeeping practices. To minimize internal and external dust, the Company must supply a suitable dust collection system which will enable the Facility to meet the Dust Control Guarantee. The Company must also supply a fire control system and provide for vector control. The Facility shall be designed to comply with all local NPDES regulations to prevent

off-site migration of contaminated storm water and/or waste water and on-site percolation of water into the soil.

12. The Facility must be designed to minimize odors, especially the migration of odors off-site to adjacent property so as to enable the Facility to meet the Odor Control Guarantee.
13. The Facility shall be designed to ensure that noise at the property line meets all applicable day and night standards as specified in the City of Sacramento's noise ordinance so as to enable the Facility to meet the Noise Control Guarantee.
14. The Facility must not detract from the aesthetics of the surrounding area. It shall include the following:
  - a. Enclosed facilities.
  - b. The use of building materials compatible with the surrounding area.
  - c. The facility landscape shall include vegetation ridge lines to limit views of the interior property.
15. The Company must submit conceptual design specifications consistent with the requirements of this section, that includes the following:
  - a. A preliminary Facility Site layout noting buildings, vehicle access and egress, traffic flow, vehicle parking, and equipment storage areas.
  - b. General Facility arrangement drawings, including major equipment locations.
  - c. Architectural treatment, including an artist's rendition.
  - d. Process description with a mass balance diagram, as well as a critical path diagram for the Facility completion.
  - e. Outline Specifications.
  - f. Narrative description.

The Company shall complete a final design based on its proposed preliminary design. Design drawings will be subject to review by the City, in accordance with Appendix 5,



at the 15-30-60-90 percent and final design phases to ensure conformance of such drawings to the Design Requirements.

16. Upon completion of Facility construction and start-up, the Facility will be subject to Acceptance Tests to verify that it is capable of operating in compliance with the design requirements set forth herein. Shakedown and Acceptance Testing is the responsibility of the Company. Monitoring of Shakedown and Acceptance Testing is conducted by the City in accordance with Appendix 6.
17. The Facility shall have an educational area for visitors, including a showroom with overhead projector, slide projector, etc.
18. The Facility shall have space for child care for its employees' children. This condition may be waived by the City upon Company participation in a City approved child care provision alternative.

#### DESIGN REQUIREMENTS RELATED TO COMPOSTING

A facility for composting shall:

1. Typically receive yard waste between the hours to 6 a.m. and 4 p.m., Monday through Friday. Extended facility hours on Monday-Saturday shall be 6 a.m. to 7 p.m. during peak collection periods.
2. Provide sufficient queuing space for City and public citizen delivery vehicles. Queuing on City streets is not acceptable. The facility must be designed to minimize traffic impacts at the site, facilitate delivery vehicle access, and minimize delivery vehicle turnaround times to no more than 15 minutes, taking into account the arrival of collection vehicles at peak arrival rates.
3. Have a receiving and processing areas that minimizes fugitive debris, dust, and odor emissions. The receiving area shall be capable of accommodating three days of input of yard waste.

4. Have a fire control system compatible with the requirements of the Sacramento Fire Department and provide for vector control. The facility shall be designed to comply with local NPDES standards and prevent off-site migration of contaminated storm water and/or waste water and on-site percolation of water into the soil.
5. Be capable of processing 250 tons of yard waste each day, and the vendor shall specify how he would propose to accommodate 350 tons per day for six weeks in November/December of each year. The 350 tons per day accommodation shall not include additional facilities or permanent equipment. Yard waste shall not be stockpiled for more than two days before processing.
6. Sufficient equipment for the efficient receipt, handling, and loading of residue/rejects must be provided. The facility shall incorporate designated storage facilities and receiving areas.
7. The facility must be operated to ensure that yard waste is only stored as specified. Storage is only acceptable to the extent that satisfactory odor, vector, dust, and fire control measures are employed to eliminate nuisance, and potential health and safety problems.
8. The vendor must submit a conceptual design proposal consistent with the requirements specified in this section that includes the following:
  - a. A preliminary site layout noting buildings, vehicle access and egress/ingress, traffic flow, and vehicle parking and equipment storage areas.
  - b. General facility arrangement drawings, including the location of major equipment.
  - c. Landscaped berm adjacent to any public roadways.
  - d. List of specific equipment, including make/model/number of each.
9. Receive yard waste as specified in Requirement 1. The facility shall have the capability to create an inventory of at least 100 tons of unprocessed yard trimmings.
  - a. The facility shall include an area separate from the primary tipping area where individuals may safely deposit yard waste from small vehicles.
  - b. The facility shall provide an impervious concrete pad and all-weather access to the primary tipping area.

10. Be equipped with the necessary laboratory instruments and equipment to carry out the following routine composting process tests:

- Measuring of moisture content.
- Temperature readings.
- Cone calorimetry analysis.
- Nitrogen/nitrate analysis.
- Potassium analysis.
- Phosphorus analysis.
- pH metering.

All special tests may be done by external laboratories.

The proposer shall include, in the facility design processing equipment with associated structures and utilities to assure the finished compost product can meet or exceed the following physical and chemical specifications:

1. Particle size distribution shall be as small as possible, but the maximum allowable finished compost product particle size shall be 3/4 Inch.
2. Moisture Content -- The finished compost product shall have a moisture content within the range of 35-50 percent by weight. The bulk specific weight is expected to be in the range of 900 to 1,500 pounds per cubic yard.
3. Sterilization -- the proposer shall guarantee that the process ensures destruction of pathogenic organisms to the degree acceptable under the applicable regulations.
4. pH -- The pH of the finished compost product shall range between 6.5 to 8.0 units.
5. Degree of Stabilization -- The finished compost product shall be a fully stabilized residual organic material. Stabilization shall be sufficient when the reduction of organic matter has reached the point where anaerobic or odorous conditions are not produced to such an extent that malodor interferes with storage or end use of the finished compost product.

The oxygen respiration rate of the finished compost product shall be less than 100 milligrams per kilogram per hour, measured in a sample that has been kept at a moisture content of 50 percent for seven consecutive days prior to testing. The test shall be conducted at 50 percent moisture and 68°F over 24 hours.

or:

The breakdown of carbon shall be less than five grams carbon per kilogram dry matter over a 24-hour period measured as carbon dioxide produced from a sample that has been kept at 50 percent moisture over seven consecutive days prior to testing. The test shall be conducted at 50 percent moisture and 68°F over 24 hours.

The samples should show that nitrate (NO<sub>3</sub>) is present, and a representative analysis of the compost should be similar to the attached soil and plant laboratory analysis.

6. Residue -- The residue from the screening operation(s) shall not amount to more than 20 percent by weight of the acceptable processed yard trimmings, nor shall it contain more than 50 percent of organic matter measured by dry weight. The determination of the organic content of the rejects shall be completed as an average of several samples weighted and dried at 220°F over 24 hours. The textiles and plastics shall be removed and weighed and the remaining sample heated to 1,100°F over 24 hours. After screening through a mesh of 3/32 Inch square, the material larger than the screen openings shall be deemed "inorganic" and its weight added to the previously weighed textiles and plastics. The total weight shall exceed 50 percent of the total dry weight of the sample.

The vendor shall include, in the facility, design, processing equipment with associated structure and utilities to assure that any mulch products can meet or exceed the following physical specifications:

1. Heat Treatment -- The facility shall be capable of ensuring that the particles in the compost have been subjected to a temperature of 131°F for three days.

CITY OF SACRAMENTO SOLID WASTE DIVISION  
 921 Tenth Street - Suite 500  
 Sacramento, CA 95814-2715

May 2, 1991  
 Lab No. 42903

**SOIL FERTILITY AND  
 MICRONUTRIENT ANALYSIS  
 (A01 OR A17)**

Sample #	Half Sat. %	pH	Parts Per Million Dry Soil										Sat. Extract		SAMPLE DESCRIPTION	
			ECe	NO <sub>3</sub> -N	NH <sub>4</sub> -N	PO <sub>4</sub> -P	K	Ca	Mg	Cu	Zn	Mn	Fe	B ppm		SO <sub>4</sub> Me/l
1	75			29	4	361	1188	4503	1633	4	47	41	87	0.71		Finished Compost Sample rec'd: 4-24-91

Half Saturation % = approx. field moisture capacity. Salinity = ECe (mmhos/cm @ 25 deg. C.) by sat. extract method. Major elements by sodium acetate and sodium bicarbonate extraction. Micronutrients by DTPA extraction except boron by saturation extraction.

\*\*\* means below the detection limit for the element.

**ORGANIC AMENDMENT ANALYSIS  
 (A07)**

Sample #	pH	ECe	H <sub>2</sub> O % as Rec'd	Bulk Density lbs/yd3	Org %	Values based upon dry weight						Total Nitrogen %	H+ Soluble Iron %	Half Saturation %
						percent passing								
						9.51 mm	6.35 mm	4.75 mm	2.38 mm	1.00 mm	.500 mm			
1	8.0	4.1	27.6	1082	41.6	86.4	84.1	79.1	70.3	52.2	34.4	1.12	0.150	

Half Saturation % = approx. field moisture capacity. ECe (mmhos/cm @ 25 deg. C.) by saturation extract method.

APPENDIX 5

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DESIGN AND CONSTRUCTION MONITORING PROTOCOL

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**APPENDIX 5**  
**DESIGN AND CONSTRUCTION MONITORING PROGRAM**  
**[BASIC PRINCIPLES]**

General

The City of Sacramento shall have the right to monitor the design and construction activities of the Company, including but not limited to subcontractors and vendors. Monitoring will be conducted by the City Engineer or other designated representative. The purpose of monitoring will be to confirm process design adequacy, equipment selection, material and workmanship quality, and the project schedule. The cost of monitoring shall be allocated in accordance with the Agreement except for monitoring costs associated with errors or delays by the Company, which shall be borne by the Company.

All communication between the Company and the City related to design and construction monitoring shall be coordinated the Service Coordinators. The City may require that the construction site manager and Company project engineer participate in City site visits. The City shall have unlimited access to the site at any time. Design and construction monitoring shall be in addition to and coordinated with the normal state and local permitting and inspection process.

Monitoring Requirements

It shall be the responsibility of the Company to keep the City informed of detailed project status during all phases of design, procurement and construction. One requirement shall be the submission of a written monthly report which includes current updates for engineering, procurement, construction status and a detailed project schedule. Another requirement will be for at least five design reviews with the City Engineer or other designated representative. The review shall include all process calculations, specifications and drawings. The submitted design package will contain enough information to allow the reviewer to confirm traffic patterns, waste flow material balances and separation efficiencies as well as building and

equipment layouts. The waste flow material balance shall provide estimates of throughputs at each point in the system including but not limited to inbound and outbound vehicles, loaders, conveyors, sorters, separators, bins and balers. Minimum, nominal and peak loading conditions shall be considered.



APPENDIX 6

147

ACCEPTANCE TEST PROCEDURES AND STANDARDS

149

## **APPENDIX 6**

### **ACCEPTANCE TEST PROCEDURES AND STANDARDS**

Appendix 6 presently contains general guidelines relating to the Acceptance Testing of the Facility. The City expects to develop more detailed Acceptance Testing principles prior to execution of the Agreement. The detailed Acceptance Testing principles will contain separate testing requirements for each of the Recyclable Materials Processing Train, Mixed Waste Processing Train, Yardwaste Processing Train and the Household Hazardous Waste Processing Train.

#### **General**

The City shall have the right to monitor all shakedown and testing activities of the Company, including but not limited to subcontractors and vendors. City startup and test monitoring shall be conducted by the City Engineer or other designated representative. The purpose of monitoring will be to confirm process design adequacy and the validity of Acceptance Tests. Acceptance Test reports prepared by the Company shall be subject to review by the City Engineer in accordance with Article V.

The Company shall notify the City of its intention to begin the Acceptance Testing and submit detailed written procedures for conducting the tests. The City shall approve or reject the Company's test procedures in writing at the times specified in Article V. If approved, the Acceptance Test will be conducted in accordance therewith. If unacceptable, the City will document deficiencies in writing. The Company shall revise the Acceptance Test procedures to accommodate reasonable requests of the City, and resubmit for review.

All communication between the Company and the City related to shakedown and Acceptance Testing shall be coordinated through the Service Coordinator designated for each organization. The managers of shakedown, testing and operations may be required to participate in City Facility Site visits. The Company is required to provide three Business Days' advance notice of all test events. Failure to provide proper notice may be grounds

for rejecting test results. The City Engineer or designated representative shall witness all Acceptance Testing. Acceptance Test monitoring shall be in addition to and concurrent with the normal state and local permitting and inspection process. Failure of the City to exercise its right to reject test results will not imply that state and local requirements have been satisfied.

During each Acceptance Test, the Company shall: (1) cause the Facility to operate in a normal mode with regard to operating hours and staffing; (2) cause all operating parameters to be within normal operating limits; and (3) operate the Facility in compliance with Applicable Law.

#### Monitoring Requirements

It shall be the responsibility of the Company to keep the City informed of detailed project status during all phases of shakedown and testing. The minimum requirement shall be a weekly telephone report in which the topics of capacity, reliability, noise, fugitive dust and product quality are discussed. A second requirement will be for a written report for each successfully completed test. Each report will contain enough information to allow the reviewer to determine traffic patterns, waste flow material balances, separation efficiencies, utility usage and product qualities where applicable. The report shall compare minimum, nominal, and peak design conditions with the actual results. The City will review and approve or reject Acceptance Test results within the period provided in Article V. Allowance for Acceptance Testing and review of test results shall be included in the Scheduled Acceptance Date as proposed by the Company.

#### Acceptance Testing General Requirements

The Acceptance Test shall be composed of individual tests which will determine the ability of the Facility to perform in accordance with the Performance Guarantees described in Appendix 13. Each test will be comprised of three parts: (1) a Measurement Procedure; (2) the recording of measurements obtained in accordance with the Measurement Procedure

in the Performance Test Logbook; and (3) a comparison of the measurements recorded in the Performance Test Logbook to the applicable Acceptance Standard.

The Company shall make all preparations and furnish all operating personnel, materials, fuel, and utilities required for the Acceptance Test. The Company shall furnish, at its expense, the necessary service representatives and test engineers required for all such tests and the necessary test instrumentation.

Acceptance test procedures must be designed to assure compliance with the Acceptance Standard. The procedures must be designed to verify nominal and peak capacities for inbound and outbound vehicles and waste. Separate test procedures shall be provided for each major process system, or subsystem including but not limited to the municipal solid waste processing system, including mixed waste, mechanical and manual sorting stations, wood chipping system, baler operations, composting system, curbside recyclables sorting system and public dropoff facilities. All processes within individual systems must be tested concurrently during each Acceptance Test. The entire Facility must operate at nominal capacity while individual systems are tested. The Acceptance Testing shall demonstrate the ability to operate in a bypass mode during subsystem process outages of up to 5 days, in a manner consistent with the Service Agreement. The detailed test procedures provided by the Company shall identify pass/fail criteria for each component of the Facility including but not limited to truck scales, storage areas, rolling stock, conveyors, separators, bins and balers.

#### Throughput Capacity Testing

The throughput capacity test shall demonstrate that the Facility is capable of processing 54,000 Tons of Acceptable Mixed Waste (24 operating days at 2250 TPD), 2,160 Tons of Acceptable Recyclable Materials (24 operating days at 90 TPD) and 8,400 Tons of Acceptable Yardwaste (24 operating days at 350 TPD) during a 28 day Acceptance Test period, using operating shift of eight hours. During this period major maintenance or

retrofit would not be allowed. Minor maintenance may be provided during any four hours of each operating day.

Daily throughput performance shall be computed individually for the Recyclable Material Processing Train and the Mixed Waste Processing Train as follows:

$$\frac{\text{Total of Acceptable Waste from the test period from Test Logbook}}{\text{Total number of days of input}} = \text{Daily throughput performance in tons per day}$$

If the daily throughput performance is equal to or greater than \_\_\_ tons per day the performance requirement with respect to daily throughput shall have been met provided that no single day throughput exceeds \_\_\_ tons per day for more than two days.

The materials processing performance will be determined based on the demonstrated ability of the Facility to convey and process the daily waste within specified operating time limits. The materials processing capacity shall have been met if the daily throughput capacity has been met and the hours of operation of the total operating time of the feed conveyors does not exceed an average of 8 hours per day.

The waste receiving performance shall be based on the demonstrated ability of the Facility to receive the required waste quantity. The waste receiving capacity shall have been met if on any two days during the test period the facility receives \_\_\_ tons or greater of waste provided that:

- (1) The first and last waste delivery as recorded on Test Logbook does not fall outside of the normal waste receiving hours as defined in the Agreement.
- (2) Waste deliveries do not cause excessive delays, vehicle congestion, or otherwise disrupt the normal operation of the facility.

### Total Materials Recovery Testing

The objective of the total materials recovery rate test is to determine if the Facility is capable of recovering a minimum quantity of Recovered Materials from the Acceptance Waste delivered to the Facility, which is equal to or greater than the recovered materials Performance Guarantees in Appendix 13.

During each separation process, the recovered materials will be placed in individually marked bins, segregating each material. Ferrous material recovered from each point in the process train will be weighed at the end of each test date and the individual weights entered in Performance Test Logbook and totaled.

Net weights of all other Recovered Materials shall also be measured and entered at the end of each test date and the Performance Test Logbook. Addition of these individual material weights shall give the Total Recovered Materials.

Each Recovered Materials performance shall be computed as follows:

$$\frac{\text{Total of materials recovered}}{\text{Total of Acceptable Waste for the Test Period}} \times 100 = \text{Materials Performance } (\%)$$

### Residue Generation Testing

The objective of the residue generation test is to determine if the Facility is capable of operating at or below the maximum process Residue Generation Guarantee, defined in Appendix 13, when the Facility is processing the daily throughput of Acceptable Waste.

Residue is generated from the picking lines, screening and final Recovered Recyclable Materials processing operations. Residue from each operation shall be placed in specifically marked bins and weighed during each test day. The data shall be entered in the log book and summed to give total residue.



start-up period, the Company shall assume all responsibilities associated with the operations and testing of the Yardwaste Processing Train. The start-up period shall be for a minimum of six consecutive calendar months from September to February. The proposal shall provide a brief narrative description of the start-up period and the acceptance testing schedule. The description shall include activities undertaken, level of effort, critical path timelines, delivery dates, and key vendor personnel involved in the testing.

#### Throughput Capacity Test

The Yardwaste Processing Train shall be operated in a manner consistent with expected day-to-day, long-term operations of the Yardwaste Processing Train. All equipment and accessories shall perform in their normal mode of operation. The Yardwaste Processing Train's guaranteed throughput capacity shall be tested during a 100-consecutive-working-day period. Throughout this period, the Yardwaste Processing Train shall receive and process yard waste

during the daily operating hours. In addition, only normally scheduled maintenance activities shall be allowed. If an unanticipated Yardwaste Processing Train shut-down event occurs during the guaranteed throughput capacity testing period, the unscheduled maintenance activity shall be completed and the guaranteed throughput capacity test shall be resumed. Note that time associated with unscheduled maintenance activities shall be included in the 100 consecutive working days. Processing equipment shall be equipment shall be operated according to the proposed schedule for long-term day-to-day operations. Final compost product processing equipment shall be tested over a minimum of 12 working days, when partially stabilized material is accumulated in the curing area. The 12 working days shall be at the guaranteed throughput capacity. For the purposes of determining the guaranteed throughput capacity, the actual tons of processible yard trimmings processed shall be measured. Additional data for the weight of process residue shall be recorded to verify that individual processing steps are operated at or above the guaranteed throughput capacity.

#### Residue Test



The residue test shall be performed to establish the total weight of the residue and the content of organic matter in the material to be taken to a landfill. The test shall be conducted simultaneously as the guaranteed throughput capacity and shall be based on the same number of days and conditions.

#### Reject Test

The reject test shall be performed to establish the weight of materials removed from the incoming yard waste as non-processible materials.

#### Processible Yard Waste Test

Yard waste not processed shall be measured to establish the weight of materials having to be landfilled without being processed.

#### Environmental Test

The Yardwaste Processing Train shall be tested in accordance with the procedures set forth in federal, state, and local regulations to determine compliance with the environmental guarantees and pertinent environmental regulations. During all environmental testing, equipment shall be operated at the guaranteed throughput capacity.

- a. Current Regulations -- Testing shall be performed on random samples of the finished compost product. Regulation pollutant concentrations (i.e., PCB, organic pesticides, cadmium, chromium, copper, lead, mercury, nickel, and zinc) and containment particle size distribution shall be measured. Samples shall be analyzed to assure the finished compost product meets the additional end product requirements. Specific testing shall, however, be pursuant to California and federal requirements. The Yardwaste Processing Train may be tested to demonstrate compliance with relevant dust control, odor control, noise emissions, statutes, rules and regulations. Emissions shall be determined in accordance with standard methods and testing procedures.
- b. Testing Sequence -- The environmental test may be conducted either after the facility has successfully passed the facilities guaranteed throughput capacity test and the residue specification test or at the same time. If the Yardwaste

Processing Train fails to pass the environmental test and modifications are made to the processing equipment to attain compliance, then the guaranteed throughput capacity test and the maximum reject product test shall be repeated and compliance proven. If changes are made to dust or odor emission controls systems only, then the environmental tests shall be repeated.

#### Compost Quality Test

The compost quality test shall be performed to establish the efficiency of the biological process of the system. The test shall be performed on samples taken at different depths of the final processing step and should cover the whole or the cross sectional areas of a pile where material of the same age is available. The samples shall be taken during the week commencing after the time the Company has specified as necessary for the product to reach maturity has expired and during each of the following six weeks. The tests shall be performed during the time remaining of the six months performance testing period after the time stipulated for maturation has elapsed. A minimum of five samples shall be analyzed every week for a total of six weeks. Each of the samples shall be made up from a mixture of five samples taken at the appropriate level and after removal of large foreign matters. The mixture shall weigh at least 160 ounces and each of the five samples shall weigh approximately 16 ounces. The remainder of the samples shall be kept for reference, each packed in a plastic bag, and marked, until the acceptance test is successfully completed. The five samples shall each be subjected to all the test prescribed in Section 3.

#### Retesting

If the Yardwaste Processing Train fails to attain compliance with the guarantees given in the proposal and the Company elects to perform additional work on the project to attain compliance, all of the tests specified above shall be repeated at \_\_\_\_\_ request.

#### Environmental Testing

Environmental compliance testing shall be conducted in a manner consistent with the requirements of the permit to operate and shall be witnessed and approved by the local

regulatory agency. This testing is expected to verify fugitive dust, odor and noise emission limitations.

Acceptable Household Hazardous Waste Handling Test

[TO BE SUPPLIED BY PROPOSERS]

APPENDIX 7  
REGULATORY FRAMEWORK

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**APPENDIX 7**  
**REGULATORY FRAMEWORK**  
**CITY OF SACRAMENTO MATERIALS RECOVERY FACILITY**

The Regulatory Framework and permits described in this Appendix 7 are provided for informational purposes. As provided in the Service Agreement, the Company is responsible for obtaining and maintaining all required permits, including permits which are required but are not listed here, (if any).

**FEDERAL**

**Permit or Regulatory Review**

**Reviewing Agency**

Army Corps of Engineers

**Initial Permit to be Acquired By**

Company

**Permit Related Concerns**

Wetlands, endangered species, fish and wildlife, and cultural resources

**Permit Transfer Process**

Submit a request for transfer of permits to new ownership; new permits will not be necessary

**Permit or Regulatory Review**

**Reviewing Agency**

Fish and Wildlife

**Initial Permit to be Acquired By**

Company

**Permit Related Concerns**

Plant and animal life, erosion, and turbidity

**Permit Transfer Process**

Permits do not require transfer unless additional alterations of streambeds are planned.

**Permit or Regulatory Review**

FAA form 7460-1, Notice of Construction, Objects Affecting Navigable Airspace.

**Reviewing Agency**

Aviation Administration

**Initial Permit to be Acquired By**

Company

**Permit Related Concerns**

Airspace

**Permit Transfer Process**

Permit is for construction phase only, so no transfer is necessary.

## **STATE**

### **Permit or Regulatory Review**

Solid Waste Facilities Permit -- accompanied by the Report of Station Information.

#### **Reviewing Agency**

CIWMB

#### **Initial Permit to be Acquired By**

Company

#### **Permit Related Concerns**

Concurs with LEA who issues permit.

#### **Permit Transfer Process**

The owner is defined as the person or persons owning the fee interest in the property and owning any leasehold interest in the property. A notice of change of ownership will have to be submitted when the owner changes.

### **Permit or Regulatory Review**

Notice of Intent/Notification of Proposed Facilities

#### **Reviewing Agency**

CIWMB

#### **Initial Permit to be Acquired By**

Company

#### **Permit Transfer Process**

Notice is for new facilities only, so no transfer is necessary.



### **Permit or Regulatory Review**

Authorization to Operate a Household Hazardous Waste (HHW) Facility

Reviewing Agency

DHS

Initial Permit to be Acquired By

Company

### **Permit Transfer Process**

Regulations are currently being drafted. HHW facilities will be operated under a "Permit by Rule" (PDR). The intent to operate will probably be transferable to new ownership by submitting a change of ownership form of some type.

### **Permit or Regulatory Review**

Title 22 Activities: Generator Status

Reviewing Agency

DHS

Initial Permit to be Acquired By

Company

### **Permit Related Concerns**

Classification and handling of hazardous waste

### **Permit Transfer Process**

The owner or operator of a HHW facility assumes the responsibility of generator. Regulations defining generator responsibilities are being developed. They will probably include some type of renotification or official transfer for changing the generator. The City and company can share responsibility or have one of the parties solely responsible. This issue will have to be negotiated by the City and company and put into the Agreement. However, when a public entity is generator for a HHW facility, the facility is exempt from fees (disposal taxes and notification fees). Exemption also applies if generator status is jointly held by the City and company.

**Permit or Regulatory Review**

Title 22 Activities: Certificate of transfer

Reviewing Agency

DHS

Initial Permit to be Acquired By

Company

Permit Related Concerns

Hazardous waste handling

Permit Transfer Process

The company will either initially need to hire a third party hauler to remove HHW from the site or need to register for a Certificate of Transfer (Hauler's Permit). Upon property transfer, either the City, company, or a third party can transfer the waste. A new Certificate of Transfer will need to be filed and applied for whenever a new hauler is used.

**Permit or Regulatory Review**

Authority to Construct

Reviewing Agency

AQMD

Initial Permit to be Acquired By

Company

Permit Related Concerns

Air quality

Permit Transfer Process

Permit is for construction phase only, so no transfer is necessary.

**Permit or Regulatory Review**

Permit to Operate

Reviewing Agency

AQMD

Initial Permit to be Acquired By

Company

Permit Related Concerns

Air quality

Permit Transfer Process

Change of ownership papers should be filed upon property transfer.

**Permit or Regulatory Review**

Variances or modifications to existing permits

Reviewing Agency

AQMD

Initial Permit to be Acquired By

Company

Permit Related Concerns

Air quality

Permit Transfer Process

Permit modifications may be necessary either before or after property transfer. They should be submitted by whoever the facility owner is.

**Permit or Regulatory Review**

NPDES Permit

Reviewing Agency

RWQCB

Initial Permit to be Acquired By

Company

Permit Related Concerns

Surface and groundwater quality

Permit Transfer Process

NPDES permits need to be renewed every five years or when a major change in operation occurs. The change of ownership can be filed with the five year renewal or administratively filed with the RWQCB during the five year permit period.

**Permit or Regulatory Review**

Permit to construct

Reviewing Agency

Department of Fish & Game

Initial Permit to be Acquired By

Company

Permit Related Concerns

Stream flow

Permit Transfer Process

Permit is for design and construction only. No need to transfer.

## **REGIONAL**

### **Permit or Regulatory Review**

Solid Waste Facility Permit

Reviewing Agency

County Public Works Department

Initial Permit to be Acquired By

Company

Permit Related Concerns

Coordinated with CIWMB

Permit Transfer Process

The owner is defined as the person or persons owning the fee interest in the property and owning any leasehold interest in the property. A notice of change of ownership will have to be submitted when the owner changes.

### **Permit or Regulatory Review**

Solid Waste Management Plan

Reviewing Agency

LEA

Initial Permit to be Acquired By

Company

Permit Related Concerns

Compliance with plan no longer mandatory

Permit Transfer Process

No transfer is necessary since operation will be unchanged.

**Permit or Regulatory Review**

Sewer Use

Reviewing Agency

City or County Sanitation District

Initial Permit to be Acquired By

Company

Permit Related Concerns

Varies by treatment facility

Permit Transfer Process

Upon filing of property transfer with the County or City, sewer billing will automatically be transferred to the City.

**LOCAL**

**Permit or Regulatory Review**

Use Permit (special permit)

**Reviewing Agency**

City of Sacramento

**Initial Permit to be Acquired By**

Company

**Permit Transfer Process**

No transfer is necessary since the permit is for land use.

**Permit or Regulatory Review**

Grading and Erosion Permit

**Reviewing Agency**

City of Sacramento

**Initial Permit to be Acquired By**

Company

**Permit Transfer Process**

Permit is for design and construction phase only.

**Permit or Regulatory Review**

**Building Permit**

**Reviewing Agency**

City of Sacramento

**Initial Permit to be Acquired By**

Company

**Permit Related Concerns**

**Permit Transfer Process**

Permit is for design and construction phase only.

**Permit or Regulatory Review**

**Hazardous Materials Storage Permit**

**Reviewing Agency**

Local Fire District

**Initial Permit to be Acquired By**

Company

**Permit Transfer Process**

Permit should be transferable with change of ownership documents.



**CEQA COMPLIANCE**

**Final CEQA COMPLIANCE**

Final EIR

Reviewing Agency

City of Sacramento

**Application and Payment by:**

Company

**Permit Transfer Process**

No transfer will be necessary after document submittal.

**COUNTY SOLID WASTE MANAGEMENT BOARD**

**Permit or Regulatory Review**

Local verification of conformance

Reviewing Agency

County Department of Public Works

**Initial Permit to be Acquired By**

Company

**Permit Related Concerns**

No longer required as part of Solid Waste Facilities Permit

**Permit Transfer Process**

No transfer will be necessary.

APPENDIX 8

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REQUIRED CONSTRUCTION PERIOD INSURANCE

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## APPENDIX 8

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### REQUIRED CONSTRUCTION PERIOD INSURANCE

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1. Insurance Coverage. The Company shall obtain, pay for and maintain the insurance coverages listed below with respect to the construction of the Facility from the Construction Date until the Purchase Date without any reimbursement obligation on the part of the City: 184  
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(a) workers' compensation insurance required by Applicable Law covering all of the employees of the Company. In addition, the Company shall require all subcontractors to provide workers' compensation insurance for any employee of the subcontractor not covered by the Company's workers' compensation insurance; 194  
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(b) employer's liability insurance in the amounts and under the terms and conditions required by California law; 202  
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(c) comprehensive general liability insurance with coverage for premises operations, completed operations, explosion and collapse, independent contractors, broad form property damage, contractor liability, and personal injury liability with a combined single limit of at least \$10,000,000 for bodily injury and for property damage; 207  
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(d) comprehensive automobile liability insurance with a combined single limit of at least \$1,000,000 per occurrence with a rider for nonowned automobile and hired car coverage; 217  
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(e) an umbrella "builder's all-risk" policy covering loss, damage or destruction to the Facility (including all equipment) caused by physical damage in an amount equal to the full replacement value of the Facility with a deductible amount of \$1,000; 223  
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(f) fire and casualty insurance shall be maintained for the full replacement value of the Facility; and 231  
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(g) owners and contractors protective liability insurance with a combined single limit of at least \$1,000,000 and with a deductible amount of \$1,000. 235  
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2. Additional Insured. The Company shall name the City as an additional insured during the Construction Period on all property insurance policies required pursuant to this Appendix 8 (other than paragraphs 1(a) and (b) hereof), as its respective 241  
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interest may appear in accordance with the Transaction Agreements.	248 248
All insurance policies shall hold the City free and harmless from all subrogation rights of the insurer.	254 254
3. <u>Insurance Certificates.</u> Insurance, and any renewals thereof, shall be evidenced by certificates of insurance issued or countersigned by a duly authorized representative of the issuer and delivered to the City for its approval prior to the Construction Date or, in the case of a renewal, as reasonably provided by the insurer. The certificates of insurance shall provide for 30 days written notice to the City, of cancellation, intent not to renew, or reduction in its coverage by the insurance company.	257 259 260 262 264 265 268 269 269
4. <u>Non-Recourse Provision.</u> All insurance policies shall provide that the insurers shall have no recourse against the City for payment of any premium or assessment and shall contain a severability of interest provision with regard to mutual coverage liability policies. The coverages provided by mutual coverage liability insurance policies required pursuant to this Agreement shall be the primary source of any restitution or other recovery for any injuries to or death of persons or loss or damage to property incurred as a result of an action or inaction of the Company or its Subcontractors, of their respective suppliers, employees, agents, representatives, or invitees, that fall within these coverages and also within the coverages of any liability insurance or self-insurance program maintained by the City.	272 273 275 277 279 280 282 283 285 286 290 291 291 291
5. <u>Subcontractors.</u> The Company shall be responsible for ensuring that all Subcontractors of the Company working on the Facility Site secure and maintain all insurance coverages (including workers' compensation insurance) and other financial sureties required by California law in connection with their presence and the performance of their duties at or concerning the Facility. It is understood by the Company and the City that the Company's employees are not employees of the City and that the City's employees are not employees of the Company.	294 295 297 299 300 301 302 304 304
6. <u>Specific Provisions for Workers' Compensation Coverage.</u> Workers' Compensation insurance shall be in accordance with the requirements of California, as amended from time to time.	306 308 309 309
7. <u>Changes in Insurance Coverage.</u> The Company shall use its best efforts to obtain such additional insurance as the City may request from time to time, and the costs of such additional insurance shall be a Pass Through Cost to the City. The	313 315 316 318

insurance listed in this Appendix 8 are the minimum coverages 319  
permitted. 320

8. Qualifications of Insurers. To the extent 323  
reasonably available, the Company shall obtain the insurance set 324  
forth herein with insurance companies that carry a Best's "A7" or 326  
equivalent rating. In addition, insurance must be obtained from 328  
insurers licensed by the [California Insurance Department] and 330  
may not be obtained or maintained with insurers which are 330  
prohibited from conducting business in the State of California. 331

APPENDIX 9

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REQUIRED OPERATION PERIOD INSURANCE

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## APPENDIX 9

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### REQUIRED OPERATION PERIOD INSURANCE

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1. Insurance Coverage. The Company shall obtain, pay for and maintain the insurance coverages listed below with respect to the operation of the Facility from the Purchase Date through the entire term (including renewals) of the Agreement:

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(a) worker's compensation insurance required by law covering all of the employees of the Company. In addition, the Company shall require all subcontractors to provide workers' compensation insurance for any employee of the subcontractor not covered by the Company's workers' compensation insurance;

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(b) employer's liability insurance in the amounts and under the terms and conditions required by California law;

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(c) comprehensive general liability insurance with coverage for premises operations, completed operations, products liability, explosion and collapse, independent contractors, broad form property damage, contractor liability, and personal injury liability with a combined single limit of at least \$10,000,000 for bodily injury and for property damage and with no deductible;

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(d) comprehensive automobile liability insurance with a combined single limit of at least \$1,000,000 per occurrence with a rider for nonowned automobile and hired car coverage and with no deductible;

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(e) fire and casualty insurance shall be maintained for the full replacement value of the Facility with a deductible amount of \$2,500 per occurrence; and

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(f) owners and contractors protective liability insurance with a combined single limit of \$1,000,000.

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2. Additional Insureds. The Company shall name the following as additional insureds (the "Additional Insureds") on all insurance policies required pursuant to this Appendix 9 (other than paragraphs 1(a) and (b) hereof), as their respective interests may appear in accordance with the Transaction Agreements to which they are a party:

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(a) the City and

414

(b) the trustee acting under any Facility Obligations.

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All insurance policies shall hold the City and the trustee free and harmless from all subrogation rights of the insurer.	423 423
3. <u>Insurance Certificates.</u> Insurance, and any renewals thereof, shall be evidenced by certificates of insurance issued or countersigned by a duly authorized representative of the issuer and delivered to each Additional Insured for its approval 30 days prior to the Purchase Date or, in the case of a renewal, as reasonably provided by the insurer. The certificates of insurance shall require 30 days written notice to each Additional Insured of cancellation, intent not to renew, or reduction in its coverage by the insurance company.	427 429 430 433 435 437 438 440 440
4. <u>Non-Recourse Provision.</u> All insurance policies shall provide that the insurers shall have no recourse against any Additional Insureds for payment of any premium or assessment and shall contain a severability of interest provision in regard to mutual coverage liability policies. The coverages provided by mutual coverage liability insurance policies required pursuant to this Agreement shall be the primary source of any restitution or other recovery for any injuries to or death of persons or loss or damage to property incurred as a result of an action or inaction of the Company or its Subcontractors, of their respective suppliers, employees, agents, representatives, or invitees, that fall within these coverages and also within the coverages of any liability insurance or self-insurance program maintained by the City.	444 445 447 449 450 451 453 454 456 457 461 462 462 462
5. <u>Subcontractors.</u> The Company shall be responsible for ensuring that all Subcontractors that are working on the Facility Site secure and maintain all insurance coverages (including workers' compensation insurance) and other financial sureties required by California law in connection with their presence and the performance of their duties at or concerning the Facility. It is understood by the Company and the City that the Company's employees are not employees of the City and that the City's employees are not employees of the Company.	465 467 469 470 471 473 474 476 476
6. <u>Specific Provisions for Workers' Compensation Coverage.</u> Workers' Compensation insurance shall be in accordance with the requirements of California law, as amended from time to time.	478 480 481 481
7. <u>Changes in Insurance Coverage.</u> The Company shall use its best efforts to obtain such additional insurance as the City may request from time to time, and the costs of such additional insurance shall be a Pass Through Cost to the City. The insurance listed in this Appendix 9 are the minimum coverages permitted.	485 487 488 490 492 493



8. Qualifications of Insurers. To the extent reasonably available, the Company shall obtain the insurance set forth herein with insurance companies that carry a Best's "A7" or equivalent rating. In addition, insurance shall be obtained from an insurer licensed by the [California Insurance Department] and may not be obtained or maintained with insurers which are prohibited from conducting business in the State of California.

9. Continuity of Insurance Coverage. The Company must procure Required Operation Period Insurance in a manner so as to avoid any gaps in coverage between the Required Construction Period Insurance Coverage and the Required Operation Period Insurance Coverage.

APPENDIX 10  
PURCHASE PRICE INDEX

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524

# APPENDIX 10

533

## PURCHASE PRICE INDEX

535

[PROVIDED FOR ILLUSTRATIVE PURPOSES]  
[TO BE BID]

539

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The Purchase Price Index shall be the sum of the following:

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546

(a) [.00] times the Engineering News Record (ENR) 20-City Average Building Index; plus

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551

(b) [.00] times the Consumer Price Index; plus

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(c) [.00] times Final Producer Price Index Material Index as published by the U.S. Department of Labor entitled "PPI"; plus

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(d) [.00] times The Final Labor Index for Standard Industrial Classification (SIC) \_\_\_\_\_ as published by the U.S. Department of Labor, Bureau of Labor Statistics "Employment and Earnings Report".

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Note: the sum of the factors by which the various components of the Purchase Price Index are multiplied may not exceed 1.0.

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APPENDIX 11  
OPERATION PRICE INDEX

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APPENDIX 11	590
OPERATION PRICE INDEX	592
[PROVIDED FOR ILLUSTRATIVE PURPOSES]	594
[TO BE BID]	595
The Operation Price Index shall be the sum of the following:	599
(a) [.00] times the Consumer Price Index for all Urban Consumers (CPI-U) U.S. City Average as published by the U.S. Bureau of Labor Statistics; plus	604 605 606
(b) [.00] times The Average Hourly Earning of Production Workers on Manufacturer's Payrolls Index reported for the Sacramento, California area as published by the U.S. Department of Labor, Bureau of Labor Statistics "Employment and Earnings Report"; plus	609 611 613 615 615
(c) [.00] times the [Published Index].	618
Note: the sum of the factors by which the various components of the Operation Price Index are multiplied may not exceed 1.0.	622 623

APPENDIX 12  
TRANSPORTATION PRICE INDEX

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APPENDIX 12

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TRANSPORTATION PRICE INDEX

643

[PROVIDED FOR ILLUSTRATIVE PURPOSES]  
[TO BE BID]

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The Transportation Price Index shall be the sum of the following:

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651

(a) [.00] times [Fuel Related Index]; plus

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(b) [.00] times the [Rolling Stock Related Index]; plus

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(c) [.00] times [Published Index].

661

Note: the sum of the factors by which the various components of the Transportation Price Index are multiplied may not exceed 1.0.

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APPENDIX 13  
LONG TERM PERFORMANCE GUARANTEES

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**APPENDIX 13**  
**LONG TERM PERFORMANCE GUARANTEES**

In addition to acceptance tests and conditions of this Agreement the Company shall provide to the City eight long term performance guarantees.

1. Standard Contractors Guarantee

The first is a minimum two year guarantee on all equipment, parts and labor. Equipment vendor standard warranties of no less than two year shall be passed through to the City after acceptance and diligently managed by the Company.

2. Recyclable Materials Guarantees

A. Recyclable Materials Throughput Guarantee: The Company shall receive and process through the Recyclable Materials Processing Train a minimum average of \_\_\_\_\_ [to be bid] tons of Acceptable Recyclable Materials per calendar day calculated on a rolling 90 day basis.

B. Recyclable Materials Residue Quantity Guarantee: The total amount of Recyclable Materials Process Residue in any rolling 90 day period shall not exceed \_\_\_\_\_ [to be bid] of the Acceptable Recyclable Materials processed during such rolling 90 day period.

3. Mixed Waste Guarantees

A. Mixed Waste Throughput Guarantee: The Company shall receive and process through the Mixed Waste Processing Train a minimum average to \_\_\_\_\_ [to be bid] tons of Acceptable Mixed Waste per calendar day calculated on a rolling 90 day basis.

B. Mixed Waste Recovery Efficiency Guarantee: The Company shall provide the following minimum recovery rates for each product listed below. The Efficiency Guarantees shall be calculated on a rolling 90 day basis in accordance with Appendix 13 of the Agreement.

- |      |         |   |
|------|---------|---|
| (i)  | _____ % | of the total incoming Newspaper           |
| (ii) | _____ % | of the total incoming Corrugated boxboard |

(iii)	—%	of the total incoming PET
(iv)	—%	of the total incoming HDPE
(v)	—%	of the total incoming other plastics
(vi)	—%	of the total incoming Aluminum Cans
(vii)	—%	of the total incoming other aluminum
(viii)	—%	of the total incoming Tin Cans
(ix)	—%	of the total incoming other ferrous
(x)	—%	of the total incoming non ferrous metals
(xi)	—%	of the total incoming Glass
(xii)	—%	of the total incoming [other products bid by vendor]

With respect to (xii), the Company should describe in detail the materials to be extracted, and how measurement is to be made.

C. **Mixed Waste Aggregate Recovery Efficiency Guarantee:** The Company shall recover Recovered Mixed Waste Materials (aggregate for all Classes of Recovered Mixed Waste Materials) in each Contract Year in an amount at least equal to \_\_\_\_\_% [TO BE BID] of the Acceptable Mixed Waste processed in such Contract Year.

#### 4. **Yardwaste Guarantees**

A. **Yardwaste Throughout Guarantee:** The Company shall receive and process through the Yardwaste Processing Train a minimum average of [to be bid] tons of Acceptable Yardwaste per calendar year day calculated on a rolling 90 day basis.

B. **Yardwaste Residue Quantity Guarantee:** Yardwaste Process Residue shall not contain any Acceptable Yardwaste other (i) the non-compostible fraction thereof plus (ii) \_\_\_\_\_% [TO BE BID]% of the compostible fraction of the Yardwaste processed at the Facility.

#### 5. **Recovered Product Quality Guarantee**

##### A. **Recovered Recyclable Materials Quality Guarantee**

###### **Paper Quality**

Newspaper processed at the Facility shall meet or exceed the current standard specification for Grade (6) News and the Facility shall be capable of producing Grade (8) Special News Deink Quality as defined by the Paper Stock Standards and Practices, Circular

PS 90, as published by the Paper Stock Institute of America except that the Company shall not be required to produce Grade (8) News but may do so at its sole discretion. Products that meet or exceed the secondary material market specifications as defined by the Paper Stock Institute of America shall be produced for Corrugated (Grade 11) and High Grade (Grade 38) paper (white and color ledger). Magazines shall be sorted and marketed in accordance with current market specifications. In cases where requirements conflict, the most stringent shall apply.

#### Glass Quality

The Facility shall meet or exceed the following specifications:

- Processed glass shall contain soda lime silica glass only. The following types of glass are not acceptable: ceramic materials, refractory, wired glass, laminated glass, fiberglass, mineral wool, wool glass, light bulbs or tubes, borosilicates, glass blocks or bricks, insulators and other industrial glasses, and window glass.
- The System shall produce industry acceptable products that meet or exceed the secondary material market specifications. Product quality shall meet or exceed Technical Services Standard #700 010 01 from Anchor Glass Container for Purchased Unprocessed Cullet, as follows:

Flint: 95% minimum Flint, 0.5% maximum Green

Amber: 90% minimum Amber

Emerald Green: 90% minimum Green

Georgia Green: 90% minimum Georgia Green

Cullet should be dry and stored in a dry location.

Cullet shall be covered during transport between the facility site and the glass plant.

- Mixed glass shall meet or exceed industry standards for use as an aggregate in the production of glassphalt or for road base. The gradation requirement is that all (100%) mixed glass must be equal to or less than 1/2" and, for conservative measure, should be able to pass through a 3/8" sieve. No more than 1.2% should be able to pass through a No. 200 sieve.

#### Aluminum Quality

The Facility shall produce products that meet or exceed secondary material market specifications as defined by the Institute of Scrap Recycling Industries Scrap Specifications Circular 1990, Guidelines for:

- Densified or Baled Aluminum Used Beverage Can (UBC) Scrap, including aluminum food cans;
- Densified or Baled Old Aluminum Foil; and
- Densified or Baled Mixed Old Alloy Sheet Aluminum.

Tin Can Quality

Processed Ferrous Cans shall meet the following specifications:

- The system shall produce a product that meets or exceeds secondary material market specifications. Quality shall meet or exceed specifications prepared by the Institute of Scrap Recycling Industries Scrap Specification Circular 1990.
- Specifications shall apply to baled and densified material.

Plastic Quality

The Facility shall produce products that meet or exceed the following secondary material market specifications:

- The HDPE processing component shall produce baled products which are 24" to 40" by 30" to 55" by 40" to 84" in size and 500 to 1,500 pounds in weight. Non-HDPE contamination shall not exceed three percent (3%) by weight. Total contamination shall not exceed three percent (3%) by weight.
- The PET processing component shall produce baled products which are 24" to 40" by 30" to 55" by 40" to 84" in size and 500 to 1,500 pounds in weight. Non-PET contamination shall not exceed three percent (3%) by weight. Total contamination shall not exceed three percent (3%) by weight.

B. Mixed Waste Product Quality Guarantee: The Recovered Mixed Waste Materials shall conform to the product quality standards (for individual Recovered Mixed

Waste Materials based on the delivery of Mixed Waste in accordance with Appendix 15 of the Agreement) described in Appendix 13 of the Agreement.

C. Compost Quality Guaranty: The Compost produced at the Facility shall conform to the following specifications:

(i) The compost shall be free of pathogenic materials and maintained daily in an inbed temperature of no less than 130° Fahrenheit.

(ii) The pH shall be no less than 6.5 nor more than 8.0.

(iii) The moisture content shall not exceed 45%.

(iv) The particle size for all cured compost shall be no greater than the following based on particle size determined by analysis of representative composite samples passing through square hold screens:

<u>Particle Size</u>	<u>Weight (%)</u>
1/4" minus	95% of all cured compost
3/8" minus	100% of all cured compost

(v) All cured compost shall meet the criteria as defined in the Food and Agricultural Code Section 14, 512 for Commercial Fertilizer. The Company shall obtain a fertilizer certificate from the California Department of Agriculture. It is anticipated that extensive laboratory testing for heavy metals, pesticides and hydrocarbons will be required prior to the issuance of a certificate. The fertilizer certificate shall be obtained with 90 days of Project Acceptance.

(vi) Inerts in the cured compost shall be no greater than:

1. 2.0% dry weight for glass
2. 2.0% dry weight for plastic
3. 0.5% dry weight for total metals
4. 5.0% dry weight for total inerts

(vii) The wet respiration rate shall be 100 mg O<sub>2</sub>/kg/hr or less.

(viii) Seed germination shall not exceed an acceptable control sample within an accuracy of (+/-) 5%.

(ix) Metals in the Compost shall not exceed the following levels: (mg/kg, dry weight basis):

Cadmium	_____
Copper	_____

Lead	_____
Nickel	_____
Zinc	_____
Chromium	_____
Mercury	_____
Arsenic	_____

(x) Pesticides and PCBs in the Compost shall not exceed the following levels (mg/kg, dry weight basis):

Alorin	_____
Chlordane	_____
Dielorin	_____
Endrin	_____
Heptacor	_____
Heptaclor Erpoxide	_____
Lindane	_____
Methoxchlor	_____
Murex	_____
P, P <sup>1</sup> - TDE(DDD)	_____
P, P <sup>1</sup> - DDT	_____
P <sup>1</sup> , P <sup>1</sup> - DDE	_____
Toxaphene	_____
Total Polychlorinated Biphenals	_____

6. Household Hazardous Waste Throughput Guarantee (Section 8.3):

The Company shall receive, handle, segregate, store, transport and dispose of all Acceptable Household Hazardous Waste received at the Facility in accordance with Applicable Law.

7. Odor Control Guarantee

The Company shall minimize the emission of odors from the Facility and shall be in compliance with the requirements of the Regional Air Quality Control Board.

8. Cleanliness Guarantee

The Company shall not stockpile Compost on the Facility Site for a period exceeding \_\_\_\_ months. The Company shall not stockpile Unacceptable Waste or Bypass Acceptable Waste for a period exceeding six days. The Facility Site shall be maintained in a neat and orderly fashion with all waste stockpiled within enclosures. The design and operation of all

enclosures, with respect to fugitive dust, shall be satisfactory to the Regional Air Quality Control Board.

Company shall clean all access roads within one half mile of the project site, of litter on a daily basis.

9. Noise Control Guarantee

The Facility shall not be operated in any manner which would violate local noise ordinances.

10. Dust Control Guarantee

The Facility shall be operated in a manner so as to minimize dust on and about the Facility Site. [Specific requirements to be developed.]

APPENDIX 14

683

ACCOUNTING PROCEDURES FOR DETERMINING PRODUCTION  
OF RECOVERED PRODUCTS

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686



APPENDIX 14	695
ACCOUNTING PROCEDURES FOR DETERMINING PRODUCTION OF RECOVERED PRODUCTS	697 698
[PROVIDED FOR ILLUSTRATIVE PURPOSES]	700 701
The Company shall have its Independent Public Accountants (the "Accountants") perform the procedures set forth in this Appendix 14 to the accounting records of the Company.	704 707 707
The Company shall furnish the City with an annual agreed upon procedures report prepared by the Accountants based on these procedures within 120 days after the end of each Contract Year.	710 712 714
1. <u>Annual Material Reconciliation</u>	718
a. The Accountants shall observe the physical inventory of scrap as of the first business day and the last business day of the Contract Year, review the Company's summarization of inventory quantities and determine whether such amounts materially support the totals included on the annual inventory reconciliation.	722 723 725 726 728 729
b. The Accountants shall test whether the accumulation of the total material receipts, sales, rejected deliveries, bypassed receipts, residue disposed of and other adjustments agree with such amounts stated in the monthly operating reports prepared during the Contract Year.	732 732 733 734 735 735
2. <u>Monthly Material Reconciliation</u>	737
The Accountants shall select one monthly material reconciliation during the period and perform the following:	741 742
a. Review the beginning and end of month inventory amounts and determine whether such amounts are supported by physical inventory records and worksheets.	746 748 750
b. Determine whether the total material receipts, rejects, bypass sales and residue stated in the monthly materials inventory reconciliation materially agree with the scale summary report for the month selected.	754 755 755 756
(1) Review the monthly scale summary report for clerical accuracy by review of the supporting daily scale reports for the month.	762 765 765

<u>(2)</u>	Select 2 daily scale reports and select 5 scalings from each report and determine whether such reports agree with supporting weight tickets. The Accountants shall also select 5 separate weight tickets from the daily file of weight tickets and determine whether such tickets were properly included in the respective daily scale reports.	768 769 771 771 772 773 774
<u>c.</u>	Determine whether the total material receipts of the statistical conventional system as reported on the monthly materials reconciliation materially agree with the totals of the beverage distributor billing reports for the period.	777 778 778 780 781
<u>3.</u>	<u>Site Visits and Observation</u>	783
<u>a.</u>	The Accountants shall make five unannounced visits to the facility during each Contract Year to observe operating procedures.	787 787 788
<u>b.</u>	On each of the above visits, the Accountants shall observe (3) or more scalings of receipts or shipments and determine whether or not there was proper documentation and recording of each transaction. The Accountant shall subsequently determine whether such information agrees with the daily weight scale report for each respective date.	792 793 794 795 796 796 796
<u>4.</u>	<u>Review of Monthly Service Fee</u>	798
<u>a.</u>	The Accountant shall review the determination of the monthly service fee for the month previously selected at step 2 above (Monthly Material Reconciliation) by reference to the service fee formula as stated in Section 11.1 of the Agreement and determine whether each component of the formula is reasonably supported by documentation as follows:	803 804 806 807 809 809 810
<u>(1)</u>	Base Operation and Maintenance Charge - determine whether this amount agrees directly with the amount specified in subsection 11.1(B), respectively, of the Service Agreement;	814 815 816 816
<u>(2)</u>	Excess Recyclable Materials Processing Charge, Excess Mixed Waste Processing Charge, Excess Yardwaste Processing Charge - review the computations as specified in subsections 11.1(C), (D) and (E), respectively, and determine whether the tonnages for the current month are supported by records and review the average tonnage computation for general reasonableness;	820 822 823 825 826 828 829 829

(3)	Waste <u>D</u> iversion Charge - determine whether the amount <u>a</u> grees directly with the amount <u>s</u> pecified in subsection 11.1(H) <u>o</u> f the Agreement;	833 834 835
(4)	Allowable <u>R</u> esidue Hauling Charge - determine whether amount <u>a</u> grees directly with the amount <u>s</u> pecified in subsection 11.1(I) of the Agreement <u>r</u> econcile <u>T</u> onnage hauled as <u>r</u> eported in the monthly materials <u>r</u> econciliation report;	838 838 840 842 843
(5)	Pass Through Costs - determine whether amount <u>a</u> grees with the total of individual <u>c</u> osts or <u>i</u> nvoices for the period. <u>C</u> osts or <u>i</u> nvoices shall be further reviewed for general <u>r</u> easonableness in relation to the terms <u>s</u> pecified <u>i</u> n subsection 11.1(J) <u>o</u> f the Agreement;	846 848 850 851 852 853
(6)	<u>R</u> ecyclable <u>M</u> aterials Recovered Materials Revenue Charge, <u>M</u> ixed Waste Recovered Materials Revenue Charge, <u>a</u> nd Compost Revenue Charge - materially <u>r</u> eview the computation of this Revenue Charge by reference to subsections 11.1(K), (L), (M) of the Agreement <u>a</u> nd the supporting detail of revenues for the period. The Accountant shall <u>r</u> eview the accumulation of revenues by selecting 2 sales of each different <u>R</u> ecovered Materials <u>f</u> rom the monthly sales listing <u>a</u> nd determine whether the listed information <u>a</u> grees with the supporting <u>i</u> nvoice, <u>s</u> ales order and related weigh ticket.	856 857 858 860 860 861 863 863 865 866 867 868
(7)	Excess Residue Credit - review the computation of the credit by reference to subsection 11.1(O) of the <u>o</u> f the Agreement and review the residue generated as reported in the monthly <u>m</u> aterials reconciliation report;	871 871 872 873 873
(8)	Lost Revenue Credit - <u>r</u> eview the computation of the credit <u>b</u> y reference to subsection 11.1(P) <u>a</u> nd Article IX of the Agreement and review supporting documentation with respect to Unmarketed Recovered Materials for the period;	876 878 879 879 879
(9)	Performance <u>L</u> iquidated Damages - review the computation of the damage amount by reference to Section 8.3 and 8.4 of the Service Agreement <u>a</u> nd items (7) and (8) above as applicable;	882 882 883 883
(10)	Uncontrollable <u>C</u> ircumstances Cost Credit Charge - materially review the computaion of the credit amount by reference to subsection 11.1(Q) of the	886 887 887

Agreement and review of applicable supporting 887  
documentation for general reasonableness. 887

(11) Benefits Accruing Due to Public Ownership - review 890  
the computation of the credit by reference to 892  
subsection 11.1(R). 892

(12) All Other Service Fee Adjustments - review the 896  
computation of any other adjustment to the Service 896  
Fee by reference to subsection 10.1(Q) of the 897  
Agreement and determine whether such adjustments 897  
are supported by the appropriate documentation. 898

The procedures above are intended to illustrate the 900  
conceptual testing and reporting to be performed. Such 902  
procedures and reporting may be subject to minor modification as 903  
needed to more fully conform with the actual operating system as 903  
implemented. 903

Sacramento Materials Recovery Facility	907
Form of Monthly Materials Reconciliation	908
[PROVIDED FOR ILLUSTRATIVE PURPOSES]	910

	Recyclable Materials	Mixed Waste	Compost	Total	
					914
					915
Beginning Inventory	(1)	(1)	(1)	x,xxx	917
Receipts:					919
Total Loads	(2)	(2)	(2)	x,xxx	920
(Rejected Loads)	(2)			<x,xxx>	921
(Bypass)	(2)			<x,xxx>	922
(Scrap Sales)	(2)	(2)	(2)	<x,xxx>	924
(Compost Sales)					926
(Residue and Rejects)					928
(Ending Inventory)	(1)	(1)	(1)	<x,xxx>	930
Difference	x	x	x	xx	933
As % tons Processed	x.x%	x.x%	x.x%	x.x%	936

Legend: 939

(1) Data obtained from monthly plant physical inventory. 942

(2) Data obtained from summary month end scale report; actual physical scale weights for the respective commodities. 946  
946

Note - Inasmuch as certain materials are commingled upon processing, sales and inventory for those recyclables shall be determined by allocation in accordance with their respective receipts, net of residue and rejects. 950  
952  
952  
952

APPENDIX 15

960

COLLECTION, DELIVERY AND RECEIVING STANDARDS

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APPENDIX 15	970
COLLECTION, DELIVERY AND RECEIVING STANDARDS	972
[PROVIDED FOR ILLUSTRATIVE PURPOSES; TO BE REVISED]	974 975
I. STANDARDS FOR ACCEPTABLE RECYCLABLE MATERIALS	981
A. General:	984
1. Paper and Mixed Recyclables shall be relatively free of food contaminants.	987 988
2. Mixed Recyclables shall be delivered loose and not packaged in any type of container (for the calculation of Reject percentages the entire weight of the container and the Mixed Recyclables in the container shall be considered Rejects).	990 992 994 995 996
Example: 10 lbs. of Mixed Recyclables packaged in a plastic bag would be considered 5% Rejects when delivered as part of a 200 lb. load.	998 1000 1001
3. Paper shall not be in plastic bags or bundled in any way other than paper bags or tied with string (for the calculation of Reject percentages the entire weight of the non-allowable bundles shall be Rejects).	1004 1005 1007 1007
Example: 30 lbs. of Newspaper bundled in a plastic bag would be considered 5% Rejects when delivered as part of a 600 lb. load.	1009 1011 1011
4. Mixed Recyclables that are delivered as part of the Paper stream and Paper delivered as part of the mixed Recyclable stream shall be considered Unauthorized Materials.	1013 1015 1017 1017
5. Mixed Recyclables, excluding Tin Cans, PET and HDPE, shall not be intentionally crushed.	1019 1021
6. The allowable percentage of Unauthorized Materials that constitute a Rejected Delivery shall apply to Mixed Recyclables and Paper individually even if delivered on the same vehicle.	1023 1025 1027 1027
7. Recyclable Material may contain up to 6% Unauthorized Material (except) for those cases specifically identified herein without additional Company	1029 1031 1032

compensation. This percentage shall apply to Mixed 1033  
Recyclables and Paper individually even if delivered on 1035  
the same vehicle. 1035

8. Unacceptable Waste 1037

Wastes not accepted at the facility include but are not 1040  
limited to: 1040

Mixed Municipal Solid Waste	Human Wastes	1044
Agricultural Waste Materials	Junk Vehicles	1045
Dead Animals	Mattresses/Bedsprings	104
Dirt	Noxious Materials	1047
Drums	Regulated Medical Waste	1
Dust	Rocks and Rubble	1049
Fly and Bottom Ashes	Steel Cable	1050
Hardened Gears/Shafts	Street Sweepings	1051
Hazardous Waste	Toxic Wastes	1052
Hot Loads	Whole Tires	1053
Construction and Demolition Debris	Yard Waste	1054
Ceramics	Pyrex	1055
Plate Glass	Mirrors	1056

B. Vehicles: 1060

1. Vehicles making deliveries to the Facility must be 1063  
maintained in a manner that minimizes noise, odor, 1065  
litter and debris. 1065

2. Vehicles making deliveries to the Facility must be 1067  
Acceptable Vehicles. 1068

3. Recyclable Materials will not be accepted unless the 1070  
waste is appropriately covered, tarped or confined in 1072  
the vehicle transporting the waste. 1073

4. Vehicle Identification: Each vehicle is to be marked 1075  
(lettered) with the firm's name as is on file with the 1077  
City and such other vehicle identification as authorized 1079  
by the City from time to time. If the vehicle does not 1081  
display the firm's name, an occupant must show a form of 1082  
employee identification proving association with the 1084  
firm. 1084

Absent such proof of identification with the charge 1086  
customer firm, the occupant must present to the 1088  
weighmaster an original City approved form for each 1090  
transaction. 1090



C. Vehicle Specific Delivery Standards:	1092
Recyclable Materials collected from residences shall be delivered to the Facility by Acceptable Vehicles in a manner which (1) does not commingle Paper with Mixed Recyclables, (2) may commingle any class of paper with all other classes of paper, and (3) may commingle any class of Mixed Recyclables with all other classes of Mixed Recyclables. Any delivery of residential Recyclable Materials may contain up to 6% Unauthorized Materials without additional Company compensation subject to Cost Substantiation.	1094 1096 1098 1100 1101 1103 1105 1107 1107
D. Commercial, Industrial and Institutional Recyclable Materials:	1110 1111
1. Recyclable Materials collected from commercial, industrial and institutional generators which are collected in routing patterns which include several such generating sources and which are transported in compartmentalized, non-compacting Acceptable Vehicles shall be delivered to the Facility in the manner described above as applicable to deliveries of Recyclable Materials from residences. Any such delivery may contain up to 6% Unauthorized Materials without additional Company compensation.	1115 1117 1118 1119 1121 1123 1123 1126 1128 1128
2. Mixed Recyclables may be delivered in any noncompacting Acceptable Vehicle. This material may contain up to 6% Unauthorized Material without additional Company compensation.	1130 1132 1134 1134
3. Paper except as otherwise stated herein shall be delivered source separated in any Acceptable Vehicle and may contain up to 5% other paper and 2% Unauthorized Materials without additional Company compensation.	1136 1138 1140 1141
E. Scale House Computer Recordkeeping Standards	1143
The Company shall install and operate in its scalehouse a computerized recordkeeping system that shall meet the following requirements.	1145 1147 1147
A three (3) sheet delivery ticket (Company-original, Customer-tissue copy, City-hard copy) shall be generated for each delivery vehicle with the following information as a minimum:	1149 1151 1153
- City of Sacramento Logo;	1156
- City of Sacramento Division of Solid Waste Address;	1157
- Unique Sequential No.;	1158

- Customer Name;	1159
- Vehicle Identification and/or License No.;	1160
- Date;	1161
- Time;	1162
- Gross Weight of Loaded Vehicle (Lbs.);	1163
- Tare Weight (Lbs.); and	1164
- Net Delivery of Recyclable Materials (Lbs.).	1165
<u>The City shall be provided with tabulation summaries of</u>	1169
<u>delivery tickets sorted by customer.</u>	1170
<u>A three (3) sheet delivery ticket (Contractor-original,</u>	1172
<u>Materials Purchaser-tissue copy, City-hard copy) shall be</u>	1174
<u>generated for each motor vehicle shipping Recovered Materials to</u>	1176
<u>market with the following information:</u>	1176
- City of Sacramento Logo;	1180
- City of Sacramento Division of	1181
Solid Waste Address;	1182
- Unique Sequential No.;	1183
- Vehicle ID No./License;	1184
- Material Class (Rejects,	1185
Recovered Material, Residue);	1186
- Load Contents Destination;	1187
- Departure Date;	1188
- Departure Time;	1189
- Gross Weight Empty Vehicle (Lbs.);	1190
- Weight of Full Vehicle (Lbs.); and	1191
- Net Weight of Materials (Lbs.).	1192
<u>The vehicle ticket will be generated just prior to the</u>	1196
<u>vehicle exiting the Facility in order to obtain the most actual</u>	1198
<u>information. The City shall be provided with tabulation</u>	1201
<u>summaries sorted by class and by Materials Purchaser.</u>	1201
II. STANDARDS FOR ACCEPTABLE MIXED WASTE	1205
[SUPPLY]	1206
III. STANDARDS FOR ACCEPTABLE YARDWASTE	1208
[SUPPLY]	1209

APPENDIX 16

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WASTE SCREENING PROGRAM

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**APPENDIX 16**  
**WASTE SCREENING PROGRAM**

[Detailed waste screening procedure to be developed]

The Company shall operate any load checking and screening program required by Applicable Law. Once Unacceptable Waste has been detected, the Company shall handle, transport and dispose of such Unacceptable Waste in the following manner:

- a. The active operation of unloading and processing Waste shall be suspended in the immediate vicinity of the identified Unacceptable Waste. Normal operation may resume only after the Unacceptable Waste has been rerouted. Safety measures shall be instituted as necessary.
- b. If the vehicle that transported the Unacceptable Waste can be identified and is still at the Facility, the Company's employee shall record the license number and any other identifying signs or features of the vehicle, and shall request the operator of the vehicle to remain at the Facility, and shall immediately notify appropriate agencies as designated by the City. The Company employee shall endeavor to get the operator of the vehicle that delivered the unacceptable waste to take appropriate actions to properly dispose of the Unacceptable Waste.
- c. If the vehicle that delivered the Unacceptable Waste cannot be identified, or the vehicle leaves the Facility, the Company, unless otherwise directed by the City, shall arrange for proper disposal of the Unacceptable Waste.
- d. The Company shall provide a written report on each discovery of Unacceptable Waste. The report shall include documentation of interviews with appropriate Company employees and others who witnessed the illegal dumping and/or discovered the Unacceptable Waste. The written report shall include descriptions of the suspected vehicle(s), operators of the vehicles, and other information necessary for the County

to determine the vehicle which delivered the material and recover the disposal costs. If the vehicle leaves the Facility with Unacceptable Waste on board for any reason, the identity and description of the vehicle and material shall be logged. Attempts will be made by the Company to match any materials found abandoned with the log entries. The Company agrees to cooperate and make employees available for any investigation, civil litigation or criminal proceedings regarding the delivery of Unacceptable Waste.

- e. If any attempt is made to dispose of any barrels or other similar containers at the Facility, Company employees shall exert their diligent efforts to direct such individuals or entities attempting to make such disposal to a designated location within the Facility so that the Company may inspect the contents of the containers for Unacceptable Waste.

APPENDIX 17  
REQUIRED PERIODIC MAINTENANCE  
[TO BE DEVELOPED]

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APPENDIX 18

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SPARE PARTS REQUIREMENTS

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## APPENDIX 18

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### SPARE PARTS REQUIREMENTS

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The items listed on the following pages are the equipment components which will be acquired by the City on the Purchase Date as part of the Fixed Purchase Price as spare parts inventory. However, if the Company substitutes an item or items of equipment, subject to approval in accordance with Appendix 4, then the Company may substitute spare parts which will perform essentially the same function as those listed.

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EXAMPLE

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[MANUFACTURER]

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[EQUIPMENT]

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RECOMMENDED SPART PARTS KIT

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Part Number

Description

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**APPENDIX 19**

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**OPERATING, MAINTENANCE AND MARKETING GUIDELINES**

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# APPENDIX 19

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## OPERATING, MAINTENANCE AND MARKETING GUIDELINES

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### 1. OPERATIONAL PERFORMANCE STANDARDS AND GOALS

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The Company's management and operation of the Facility shall provide for efficiency of operation, cost control, and output consistent with established standards, while providing the workers with a clean and safe environment.

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The operational goals of the facility concern the efficient operation of the facility. These goals are:

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- To receive the materials in such a way that the turn-around time for each truck is minimized to the extent practicable and that all materials delivered to the facility are processed in a timely manner.

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- To have an inspection system for the materials in each truck that will tie into the weighing system and to create a load tracking method in the event that unacceptable materials are received.

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- To maintain a continuous flow of materials in each processing line.

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- To staff the manual sorting stations such that the individual sorter can work at his highest potential. Staffing will be optimized so that the material flow to any given piece of equipment or station is not hindered.

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- To provide an ongoing quality inspection program of all sorting and processing systems. This program will interface with plant management and workers to achieve more efficient process control.

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- To schedule outgoing material shipments to achieve a smooth flow of material to the final consumer, while maintaining on-site plant inventory levels below maximum allowable limits.

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- To set up reporting and tracking systems between the Company and the City.

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- To implement a system of preventive maintenance so as to minimize breakdowns.

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-	To <u>sort</u> incoming materials in order to maximize its value for re-sale while maintaining Facility operating <u>efficiency</u> .	1380 1381 1382
-	To <u>operate</u> the Facility in an environmentally sound manner consistent with applicable local, State or Federal <u>regulations</u> .	1386 1387 1388
-	To <u>have</u> written and practiced procedures and <u>back-up</u> plans for <u>contingencies</u> and emergencies such as equipment <u>failure</u> , injury, fire <u>and</u> hazardous materials receipt.	1392 1393 1395 1395
-	To <u>provide</u> a clean and safe working environment.	1398
-	To <u>provide</u> ongoing safety training for employees.	1401
-	To <u>make</u> use of economically disadvantaged or disabled workers, as <u>appropriate</u> , and as referred by the City.	1404 1406 1406

## 2. OPERATING PLAN

The final Operating Plan shall be prepared by the Company during the construction period and shall specify how the Company intends to <u>fulfill</u> its responsibilities to manage the operation and maintenance of the Facility. The Company shall be responsible for staffing the Facility and <u>handling</u> and processing all Acceptable Waste by Waste Type <u>delivered</u> during scheduled Facility <u>receiving</u> hours. The Operating Plan shall specify how the Company will sort, load and <u>remove</u> Recovered Products in a safe, sanitary and workmanlike <u>manner</u> .	1410 1412 1414 1416 1417 1419 1421 1424 1425
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The Operating Plan shall address compliance with all municipal, State and Federal laws and regulations including, but not limited to, the <u>storage</u> , transportation or disposal of Recovered Products, Process Residue and Hazardous Waste. Process chemicals and fuel, if any, and wastewater shall be handled in a manner that will not cause a <u>nuisance</u> or create <u>unsanitary</u> conditions or result in contamination to the <u>environment</u> .	1427 1429 1431 1435 1437 1439 1440
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In addition to the topics discussed above, the Operating Plan shall include, but <u>not</u> be limited to:	1442 1444
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-	A <u>schedule</u> for basic operation and <u>maintenance</u> activities;	1448 1448
-	A <u>plan</u> for operating the Facility <u>under</u> the range of tonnage throughputs anticipated during the	1452 1453

Operating Period including sorting procedures and criteria;	1454 1454
- A <u>schedule</u> for marketing Recovered Materials <u>and</u> Compost;	1458 1458
- A <u>plan</u> for removal of Process Residue, bypassed <u>Recyclable Waste</u> , <u>and</u> a procedure for handling <u>Hazardous Waste</u> ;	1461 1463 1465
- A <u>description</u> of plans for accommodating visitors, including school field <u>trips</u> ;	1468 1470
- An <u>organization chart</u> with job description and <u>staffing requirements</u> for <u>all personnel</u> who will be directly employed at the <u>Facility</u> ;	1473 1475 1476
- <u>Procedures and methods</u> for personnel hiring, <u>training and supervision</u> ;	1479 1480
- <u>Inspection procedures</u> for all incoming <u>Recyclable Materials and Yardwaste</u> ;	1484 1485
- <u>Operation and maintenance</u> of all equipment <u>necessary to accept, account for, process, store, market and ship all Acceptable Recyclable Materials, Acceptable Commercial Waste, Acceptable Mixed Waste, Acceptable Yardwaste, Recovered Products, Process Residue, and Hazardous Waste</u> ;	1488 1490 1491 1493 1495 1497
- <u>Inspection of Recovered Materials</u> to insure <u>compliance with applicable specifications</u> ;	1500 1502
- <u>Recordkeeping, including preparation and maintenance of all journals, ledgers, accounts, records, receipts, checkbooks, financial documents, and reports, including personnel records and payrolls</u> ;	1505 1507 1508 1509 1510
- <u>Provision of agreed upon procedures</u> for the <u>Facility prepared by a Certified Public Accounting (C.P.A.) firm acceptable to the City; and</u>	1513 1515 1516
- <u>Inspection, Acceptance, &amp; Rejection Procedures.</u>	1520
<u>The Operating Plan shall also discuss procedures for all routine and long-term maintenance of Facility equipment and downtime associated with the maintenance program.</u>	1522 1524 1526

<u>3. RECYCLABLE MATERIAL PROCESSING STANDARDS</u>	1528
<u>The Company shall arrange its processing schedule so that Acceptable Recyclable Materials, Acceptable Mixed Waste and Acceptable Commercial Waste shall be normally processed within one working day after receipt.</u>	1530 1533 1535 1535
<u>4. FACILITY MAINTENANCE STANDARDS</u>	1537
<u>During the Operation Period the Company shall maintain the processing Trains and all equipment associated with the Facility at the performance level of the successful Acceptance Test. In addition, the Company shall be responsible for maintenance of the exterior of the Facility as well as parking lots and access roads at the Facility Site.</u>	1539 1541 1543 1544 1545 1547
<u>The Company shall establish a routine preventive maintenance schedule that meets or exceeds equipment manufacturer's recommendations. Written maintenance instructions shall be included in the Operating Plan and a written system shall be established to schedule and log required maintenance (e.g., software, work orders, tagging, or visit-cards).</u>	1549 1551 1553 1554 1555 1557
<u>5. OPERATION AND MAINTENANCE MANUALS</u>	1559
<u>The Company shall develop an Operation and Maintenance Manual for the Facility in accordance with Section 8.3 of the Agreement. The purpose of the Operation and Maintenance Manual is to provide the overall background and guidance necessary for proper Facility operation. This document shall be in addition to and supplement the manufacturer's operation and maintenance manuals supplied for all Facility mechanical equipment.</u>	1561 1564 1565 1567 1569 1571 1572
<u>The following major processes and operations shall be addressed for each of the following processing trains: Acceptable Recyclable Materials, Acceptable Mixed Waste, Acceptable Commercial Waste and Acceptable Yardwaste:</u>	1574 1577 1579 1580
- tipping area;	1583
- processing;	1584
- Recovered Product removal and storage area	1585
<u>For each process, the following information shall be provided:</u>	1589
- Process description, layout and schematic process diagram;	1592 1593
- Design criteria;	1594
- List of process equipment and specifications;	1595
- Process start-up, shut-down and typical	1596

operating procedures;	1597
- Process monitoring, control and sampling;	1598
- Routine operator duties;	1599
- Troubleshooting procedures;	1600
- Preventive maintenance procedures and schedules;	1601
- Emergency conditions and response plan;	1602
- Safety procedures; and	1603
- Housekeeping procedures.	1604
Two (2) bound copies of the Facility Operation and Maintenance Manual shall be provided to the City and two (2) bound copies shall be maintained at the Facility. The Facility Operation and Maintenance Manual shall be updated as necessary to reflect actual operating and maintenance requirements.	1607 1609 1611 1613 1614
A complete list of personnel required for Facility operation shall be included. For each position, the necessary qualifications (i.e., education, licenses, skills, etc.), and a complete job description including documentation of responsibilities and duties shall be provided.	1616 1618 1620 1620 1622
One (1) copy of the manufacturer's operation and maintenance manuals for all equipment and manufacturer supplied systems shall also be provided with each Facility Operation and Maintenance Manual. These manufacturer's operation and maintenance manuals shall include:	1624 1626 1628 1629 1630
- Equipment or System Description;	1633
- Shop Drawings;	1634
- Maintenance and lubrication requirements (including all component parts that may require servicing);	1639 1640
- Assembly drawings (for all field replaceable assemblies);	1644
- Support or Appurtenant Equipment Information; and	1645
- Recommended Spare Part and Lubricant Inventory;	1648
Preliminary versions of the Facility Operating and Maintenance Manual, and manufacturer's manuals, shall be submitted to the City for review prior to Facility start-up and Acceptance Testing.	1650 1652 1652
The Company shall provide "as-built" drawings for the entire Facility.	1654 1654
The Operations and Maintenance Manual shall include comprehensive descriptions of and operating procedure for all building systems including, without limitation, all heating and cooling electrical and plumbing systems.	1656 1657 1658 1658
6. RECOVERED PRODUCTS MARKETING STANDARDS	1660

The Company shall be responsible for all aspects of marketing Recovered Products, including processing Acceptable Recyclable Materials, Acceptable Mixed Waste, Acceptable Commercial Waste and Acceptable Yardwaste and producing Recovered Materials in conformance with applicable specifications, arranging buyers for Recovered Materials, entering into either long-term contracts or spot market agreements to sell Recovered Materials and maintaining records of all transactions. The Company shall maximize the value of Recovered Products consistent with other requirements of the Facility. The Company shall also be responsible for properly storing, packaging and transporting Recovered Products. All Recovered Products shall be removed or sold in accordance with Article IX of the Agreement. All outgoing materials shall be weighed by the Company. Complete and accurate records of all sales and transportation accounts and transactions shall be maintained by the Company as well.

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The Company shall prepare a detailed Marketing Plan that shall be employed by the Company to reliably sell Recovered Products in accordance with established market indices. The Marketing Plan shall be submitted in accordance with Section 9.1 of the Agreement. The Company shall implement the Marketing Plan upon satisfactory completion of the Acceptance Test.

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In preparing the Marketing Plan, the Company shall investigate available markets and formulate contingency plans to address fluctuating market conditions and changing product specifications. The following information, at a minimum, must be submitted to City as part of the Recovered Products Marketing Plan required by Section 9.1 of the Agreement.

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A. Statement of Recovered Products Marketing Policy 1712

The Plan shall include a statement of overall policy concerning materials marketing goals, objectives and means.

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B. Organization of Marketing Function 1719

The Plan shall include a detailed description of the organization of the marketing function. Said description shall include at the minimum a flow diagram of the function and copies of forms and reports inherent to the function. Specific individuals and responsibilities shall be identified.

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C. Identification of Specific Markets 1732

The Plan shall include a preferred markets listing ("PML"). Said listing will include at least two

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final consumers of each material and sufficient detail concerning that purchaser (including price list) to facilitate the sale of materials to that purchaser. The Plan shall include a mechanism whereby additional names will be added to the PML by either the Company or the City as well as the following criteria for inclusion in the PML.	1741 1742 1743 1745 1746 1747 1749
- Its compatibility with the material specification of the Facility's finished product and the City's recycling programs and policies.	1753 1754 1755 1755
- The location where material must be delivered or the ability of the buyer to price material FOB the Facility.	1759 1760 1760
- The credit worthiness of the buyer as determined by the Company's accounting policy.	1764 1765
- The history of any business relationship which the Company, its employees, or the City and its employees has had with the buyer.	1769 1770 1771
- The Plan shall also include a statement that it is the goal and obligation of the Company to attempt to increase the number of names on the PML.	1775 1776 1778 1778
<u>D.</u> Marketing Meetings	1780
The Plan shall discuss a process whereby the Company and the City formally meet on a quarterly basis (and additionally if necessary) to review and discuss marketing issues including pricing, contracts for sale of materials, quality control, and trends.	1783 1785 1787 1788 1789 1789
<u>E.</u> Marketing Strategy	1791
The Plan will detail the marketing strategy to be employed by the Company and include the following elements:	1794 1796 1796
- Identifying all viable markets;	1800
- Soliciting specifications, pricing and contract proposals from any parties wishing to provide them;	1804 1805 1805

-	Soliciting <u>t</u> ransportation <u>c</u> osts for each commodity;	1809 1809
-	Negotiating <u>w</u> ith selected <u>c</u> onsumers;	1813
-	Monitoring <u>a</u> ll transportation <u>a</u> nd sales agreements; and	1817 1817
-	Reviewing <u>a</u> greements as they <u>m</u> ay expire resulting in additional <u>s</u> pecifications, pricing or contract proposals.	1821 1822 1822
<u>F.</u>	Facility Notification	1824
	<u>T</u> he <u>P</u> lan shall detail the procedures whereby <u>F</u> acility management is <u>n</u> otified of all material sales and transportation <u>a</u> greements on a timely <u>b</u> asis to insure proper compliance with these <u>a</u> greements.	1827 1829 1830 1831 1832
<u>G.</u>	Material Shipments	1834
	<u>T</u> he <u>P</u> lan shall include a preferred transportation <u>l</u> isting. Said listing shall include at least two transportation options for the shipment of <u>e</u> ach commodity from the Facility to each final <u>c</u> onsumer on the PML. <u>S</u> ufficient detail shall exist for each transportation option so as to <u>f</u> acilitate the movement of materials. The Plan shall also detail the procedures whereby shipments of materials are <u>s</u> cheduled.	1837 1839 1841 1842 1843 1845 1846 1847 1848
<u>H.</u>	Quality Control	1850
	<u>T</u> he <u>P</u> lan shall include the procedures whereby <u>m</u> aterial quality control <u>i</u> s maintained and include the following:	1853 1855 1855
-	Material specifications;	1858
-	Training;	1859
-	Ongoing Quality Training;	1860
-	On Line Quality Control;	1861
-	Inventory Inspection;	1862
-	Shipment Inspection; and	1863
-	Quality Deviance Notification and Procedures.	1864
<u>I.</u>	Contingency for Severe Market Depressions	1867
	<u>T</u> he <u>P</u> lan shall detail the procedures and <u>o</u> bligations of the Company in the event of a severe market depression. Included <u>w</u> ithin the Plan shall	1870 1872 1873

be the process whereby the City is notified of such 1875  
an event. Additionally, the Plan shall provide the 1876  
initial planning necessary for the emergency 1878  
storage of materials in the event of a severe 1879  
market depression. 1879

The Company shall update and revise the Marketing Plan 1881  
annually in order to identify the upcoming year's marketing 1883  
efforts and to estimate marketing revenues and costs for the 1885  
subsequent year. This updated Plan shall be furnished to the 1886  
City not later than October 1st of each year. 1887

APPENDIX 20

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COMPOST TESTING AND TRACKING PROGRAM

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APPENDIX 21

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UTILIZATION OF MINORITY AND WOMEN'S  
BUSINESS ENTERPRISES

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[CITY]

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**TRANSACTION AGREEMENT FORMS**

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TRANSACTION AGREEMENT FORM A  
FORM OF GUARANTY AGREEMENT

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FORM OF GUARANTY AGREEMENT

1934

from

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Resource Recycling Technologies, Inc.

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to

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City of Sacramento, California

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Dated

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# FORM OF GUARANTY AGREEMENT

2022

THIS GUARANTY AGREEMENT is made and dated as of \_\_\_\_\_, from \_\_\_\_\_, a [corporation] organized and existing under the laws of the State of \_\_\_\_\_ (together with any permitted successors and assigns hereunder, the "Guarantor"), to the City of Sacramento (the "City").

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## RECITALS

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The City and \_\_\_\_\_ (the "Company"), a California corporation, have entered into a Materials Recovery Facility Construction, Purchase and Operation Agreement dated \_\_\_\_\_ (the "Agreement") whereby the City has agreed to deliver certain recyclable materials and the Company has agreed to design, construct and operate a materials recycling and processing facility (the "Facility"), all as more particularly described therein.

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[The Company is a subsidiary of the Guarantor.]

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The City will enter into the Agreement only if the Guarantor guarantees the performance by the Company of all of the Company's responsibilities and obligations under the Agreement as set forth in this Guaranty Agreement ("the Guaranty").

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This Guaranty is entered into by the Guarantor solely and exclusively for the benefit of the City and the holders of any Facility Obligations.

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In order to induce the execution and delivery of the Agreement by the City and the purchase of any Facility Obligations by the purchasers thereof, and in consideration thereof, the Guarantor agrees as follows:

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ARTICLE I

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DEFINITIONS AND INTERPRETATION

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SECTION 1.1. DEFINITIONS. For the purposes of this Guaranty, the following words and terms shall have the respective meanings set forth as follows. Any capitalized word or term used but not defined herein is used as defined in the Agreement.

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"Obligations" means the amounts payable by, and the covenants and agreements of, the Company pursuant to the express terms of the Agreement and guaranteed hereby.

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"Transaction Agreement" means any agreement entered into by the Company or the City in connection with the transactions contemplated by the Agreement, including, without limitation, the Facility Obligation Transaction Agreement.

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SECTION 1.2. INTERPRETATION. In this Guaranty, unless the context otherwise requires:

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(A) References Hereto. The terms "hereby," "hereof," "herein," "hereunder" and any similar terms refer to this Guaranty, and the term "hereafter" means after, and the term "heretofore" means before, the date of execution and delivery of this Guaranty.

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(B) Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

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(C) Persons. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

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(D) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Guaranty shall be solely for convenience of reference and shall not constitute a part of this Guaranty, nor shall they affect its meaning, construction or effect.

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(E) Entire Agreement. This Guaranty constitutes the entire agreement between the parties hereto with respect to the transactions contemplated by this Guaranty. Nothing in this Guaranty is intended to confer on any person other than the Guarantor, the City and their permitted successors and assigns

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hereunder any rights or remedies under or by reason of this  
Guaranty. 2185  
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(F) Counterparts. This Guaranty may be executed in any  
number of original counterparts. All such counterparts shall  
constitute but one and the same Guaranty. 2189  
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(G) Applicable Law. This Guaranty shall be governed by  
and construed in accordance with the applicable laws of the State  
of California. 2195  
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(H) Severability. If any clause, provision, subsection,  
Section or Article of this Guaranty shall be ruled invalid by any  
court of competent jurisdiction, the invalidity of any such  
clause, provisions, subsection, Section or Article shall not  
affect any of the remaining provisions hereof, and this Guaranty  
shall be construed and enforced as if such invalid portion did  
not exist provided that such construction and enforcement shall  
not increase the Guarantor's liability beyond that expressly set  
forth herein. 2201  
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(I) Approvals. All approvals, consents and acceptances  
required to be given or made by any party hereto shall be at the  
sole discretion of the party whose approval, consent or  
acceptance is required. 2222  
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(J) Payments. All payments required to be made by the  
Guarantor hereunder shall be made in lawful money of the United  
States of America. 2229  
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ARTICLE II

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REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR

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SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR. The Guarantor hereby represents and warrants that:

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(1) Existence and Powers. The Guarantor is duly organized and validly existing as a [corporation] under the laws of the State of [\_\_\_\_], with full legal right, power and authority to enter into and perform its obligations under this Guaranty.

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(2) Due Authorization and Binding Obligation. The Guarantor has duly authorized the execution and delivery of this Guaranty, and this Guaranty has been duly executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms.

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(3) No Conflict. Neither the execution or delivery by the Guarantor of this Guaranty nor the performance by the Guarantor of its obligations hereunder (1) conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Guarantor, (2) conflicts with, violates or results in a breach of any term or condition of the Guarantor's corporate charter or by-laws or any judgment, decree, agreement or instrument to which the Guarantor is a party or by which the Guarantor 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 the Guarantor.

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(4) No Governmental Approval Required. No approval, authorization, order or consent of, or declaration, registration or filing with any governmental authority is required for the valid execution and delivery by the Guarantor of this Guaranty, except such as shall have been duly obtained or made.

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(5) No Litigation. There is no action, suit or other proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the Guarantor's best knowledge, threatened against the Guarantor which has a likelihood of an unfavorable decision, ruling or finding that would materially and adversely affect the validity or enforceability of this Guaranty or any other agreement or instrument entered into by the Company, or the Guarantor in connection with the transactions contemplated hereby, or which

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would materially and adversely affect the performance by the  
Guarantor of its obligations hereunder or by the Guarantor under  
any such other agreement or instrument.

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(6) No Legal Prohibition. The Guarantor has no  
knowledge of any Applicable Law in effect on the date as of which  
this representation is being made which would prohibit the  
performance by the Guarantor of this Guaranty and the  
transactions contemplated hereby.

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(7) Consent to Agreements. The Guarantor is fully aware  
of and consents to the terms and conditions of the Agreement.

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(8) Consideration. This Guaranty is made in furtherance  
of the purposes for which the Guarantor has been organized, and  
the assumption by the Guarantor of its obligations hereunder will  
result in a direct and material financial benefit to the  
Guarantor.

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ARTICLE III

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GUARANTY COVENANTS

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SECTION 3.1. GUARANTY TO THE CITY. The Guarantor hereby absolutely, presently, irrevocably and unconditionally guarantees to the City (1) the full and prompt payment when due of each and all of the payments required to be credited or made by the Company under the Agreement (including all amendments and supplements thereto) to, or for the account of, the City or otherwise and (2) the full and prompt performance and observance of each and all of the covenants and agreements required to be performed and observed by the Company under the Agreement, subject, however, to all of the limitations and restrictions on liability of the Company and conditions precedent as set forth in the Agreement.

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SECTION 3.2. RIGHT OF CITY TO PROCEED AGAINST GUARANTOR. This Guaranty shall constitute a guaranty of payment and of performance and not of collection, and the Guarantor specifically agrees that in the event of a failure by the Company to pay or perform any Obligation guaranteed hereunder, the City shall have the right to proceed first and directly against the Guarantor under this Guaranty and without proceeding against the Company or exhausting any other remedies against the Company which the City may have. Without limiting the foregoing, the Guarantor agrees that it shall not be necessary, and that the Guarantor shall not be entitled to require, as a condition of enforcing the liability of the Guarantor hereunder, that the City (1) file suit or proceed to obtain or assert a claim for personal judgment against the Company, (2) make any other effort to obtain payment or performance of the Obligations from the Company other than providing the Company with any demands or notice as may be required by the terms of the Agreement or Applicable Law, (3) foreclose against or seek to realize upon any security for the Obligations or (4) exercise or assert any other right or remedy to which the City is or may be entitled in connection with the Obligations or any security therefor or any other guarantee thereof, except to the extent that any such exercise or assertion of such other right or remedy may be a condition precedent to the Obligations of the Company or to the enforcement of remedies under the Agreement. Upon any unexcused failure by the Company in the payment or performance of any Obligation and the giving of such notice or demand, if any, to the Company as may be required in connection with such Obligation, the liability of the Guarantor shall be effective and shall immediately be paid or performed.

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<u>SECTION 3.3. GUARANTY ABSOLUTE AND UNCONDITIONAL.</u> The	2426
obligations of the Guarantor hereunder are absolute, present,	2427
irrevocable and unconditional and shall remain in full force and	2429
effect until the Company shall have fully discharged the	2430
Obligations in accordance with their respective terms, and shall	2432
not be subject to any counterclaim, set-off, deduction or defense	2434
(other than full and strict compliance with, or release,	2437
discharge or satisfaction of, such Obligations) based on any	2442
claim that the Guarantor may have against the Company, the City	2445
or any other person. Without limiting the foregoing, the	2447
obligations of the Guarantor hereunder shall not be released,	2448
discharged or in any way affected (except to the extent that the	2450
Company's Obligations are released, discharged or affected) by	2452
reason of any of the following (whether with or without notice	2454
to, knowledge by or further consent of the Guarantor):	2455
(1) the extension by the City of the time for payment or	2461
performance and discharge by the Company of any of the	2462
Obligations, the extension or renewal of this Guaranty or the	2466
Agreement;	2466
(2) any exercise or failure, omission or delay by the	2470
City in the exercise of any right, power or remedy conferred	2473
on the City with respect to this Guaranty or the Agreement;	2474
(3) any transfer or assignment of rights or obligations	2477
under the Agreement or under any other Transaction Agreement	2479
by any party thereto, or any assignment, conveyance or other	2481
transfer of any of their respective interests in the Facility	2482
or in, to or under any of the Transaction Agreements;	2483
(4) any assignment for the purpose of creating a	2487
security interest or mortgage of all or any part of the	2488
respective interests of the Company, the City or any other	2490
person in any Transaction Agreement or in the Facility;	2491
(5) any compromise, settlement, release, waiver,	2495
renewal, extension, indulgence, amendment, change or	2498
modification in respect to any of the Obligations or the	2498
release or discharge of the Company from the performance or	2499
observance of any of the Obligations by operation of law;	2499
(6) any compromise, settlement, release, extension,	2503
indulgence, waiver, renewal, amendment, change or	2507
modification in respect of any of the terms or conditions of	2508
any Transaction Agreement;	2508
(7) any failure of title with respect to all or any part	2512
of the respective interests of any person in the Facility	2513
Site or the Facility;	2513



(8) the <u>voluntary</u> or <u>involuntary</u> liquidation,	2516
<u>dissolution</u> , <u>sale</u> or other disposition of all or	2518
<u>substantially all</u> the assets, <u>marshalling</u> of assets and	2521
<u>liabilities</u> , <u>receivership</u> , <u>insolvency</u> , <u>bankruptcy</u> , <u>assignment</u>	2525
for the benefit of creditors, <u>reorganization</u> , <u>moratorium</u> ,	2527
<u>arrangement</u> , <u>composition</u> with creditors or <u>readjustment</u> of,	2529
or other similar proceedings against the Company, the	2531
<u>Guarantor</u> or any other party to the Transaction Agreements,	2532
or any of the property of any of them, or any allegation or	2535
<u>contest</u> of the validity of this Guaranty or any other	2538
Transaction Agreement in any such proceeding (it is	2540
specifically understood, <u>consented</u> and <u>agreed</u> to that, to the	2542
extent permitted by law, this Guaranty shall remain and	2544
<u>continue</u> in full force and effect and shall be enforceable	2546
against the Guarantor to the same extent and with the same	2549
force and effect as if any such proceeding had not been	2551
<u>instituted</u> , it being the intent and purpose of this Guaranty	2553
that the Guarantor shall and does hereby <u>waive</u> all rights and	2556
<u>benefits</u> which might accrue to it by reason of any such	2557
proceeding);	2557
(9) any <u>sale</u> or other transfer by the Guarantor or any	2561
<u>Affiliate</u> of any of the capital stock or other interest of	2563
the Guarantor or any Affiliate in the Company now or	2566
hereafter owned, <u>directly</u> or <u>indirectly</u> , by the Guarantor or	2568
any Affiliate, or any change in composition of the <u>interests</u>	2570
in the Company;	2570
(10) any <u>failure</u> on the part of the Company for any	2574
reason <u>to</u> <u>perform</u> or <u>comply</u> with any agreement with the	2576
Guarantor;	2576
(11) any <u>release</u> or <u>impairment</u> of the security pledged	2580
in connection with any <u>Facility Obligation</u> , or any	2583
<u>furnishing</u> or acceptance of any additional security;	2583
(12) the <u>release</u> , <u>substitution</u> or <u>replacement</u> in	2587
accordance with the terms of the <u>Agreement</u> of the Facility	2589
<u>Obligations</u> of any property subject thereto or any	2591
<u>redelivery</u> , <u>repossession</u> , <u>surrender</u> or <u>destruction</u> of any	2593
such property, in whole or in part or legal inability of the	2595
Company to obtain any or all anticipated <u>benefits</u>	2597
contemplated by the Transaction Agreements as a result of any	2598
such <u>redelivery</u> , <u>repossession</u> , <u>surrender</u> or <u>destruction</u> , or	2599
<u>for</u> any other reason;	2600
(13) any <u>failure</u> of any party to the Transaction	2603
Agreements to <u>mitigate</u> damages <u>resulting</u> from any default	2604
under any Transaction Agreement;	2604

(14) the merger or consolidation of any party to the Transaction Agreements into or with any other person, or any sale, lease, transfer, abandonment or other disposition of any or all of the property of any of the foregoing to any person;	2607 2609 2610 2612 2612
(15) any legal disability or incapacity of any party to the Transaction Agreements;	2616 2616
(16) the fact that entering into any Transaction Agreement by any party thereto was invalid or in excess of the powers of such party;	2619 2620 2621
(17) the fact that the rights of any person as against any party to the Transaction Agreements have become barred by any applicable statute of limitation or otherwise; or	2624 2625 2626
(18) the waiver by the City of the payment, performance or observance by the Company or any other person of the terms and conditions contained in any Transaction Agreement, or any default thereunder;	2630 2631 2633 2633
(19) any limitation on the liability or obligations of any party to the Transaction Agreements under any Transaction Agreement which may now or hereafter be imposed by any statute, regulation or rule of law, or any termination, cancellation, frustration, invalidity or unenforceability, in whole or in part, of any Transaction Agreement or any term thereof;	2636 2637 2638 2639 2640 2641 2641
(20) the invalidity of any security or payment for any reason whatsoever (including avoidance with respect to the Company under any enactment relating to bankruptcy, insolvency, reorganization or similar proceedings);	2644 2645 2646 2647
(21) any order directing any person to pay any sum in the bankruptcy, insolvency, reorganization or similar proceedings in respect of the Company;	2650 2652 2652
(22) any release, settlement, discharge or arrangement which may have been given or made on the faith of any payment made by the Company;	2655 2657 2657
(23) any other legal limitation, disability or incapacity (including, without limitation, invalidity or unenforceability of any of the remedies set forth in any Transaction Agreement);	2660 2662 2663 2663
(24) any other circumstance which might constitute a legal or equitable discharge or defense of a surety or a guarantor; or	2666 2667 2667

(25) any other occurrence whatsoever, whether similar or  
dissimilar to the foregoing. 2671  
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Should any money due or owing under this Guaranty not be 2674  
recoverable from the Guarantor due to any of the matters 2676  
specified in subparagraphs (1) through (25) above, then, in any 2678  
such case, such money, together with all additional sums due 2680  
hereunder, shall nevertheless be recoverable from the Guarantor 2682  
as though the Guarantor were principal debtor in respect thereof 2684  
and not merely a guarantor and shall be paid by the Guarantor 2687  
forthwith. 2687

SECTION 3.4. WAIVERS BY THE GUARANTOR. The Guarantor 2690  
hereby unconditionally and irrevocably waives: 2691

(1) notice from the City of its acceptance of this 2696  
Guaranty; 2696

(2) any right to require notice as a condition to the 2699  
enforcement of its obligations, including notice of any of 2701  
the events referred to in Section 3.3 hereof; 2701

(3) all notices which may be required by statute, rule 2705  
of law or otherwise to preserve any rights against the 2706  
Guarantor, including, without limitation, presentment to or 2708  
demand of payment from the Company with respect to the 2710  
Obligations, and notice to the Company of default or protest 2711  
for nonpayment or failure by the Company to perform and 2713  
comply with the Obligations; 2713

(4) all defenses which may now or hereafter exist by 2716  
virtue of any statute of limitation, stay, valuation, 2718  
moratorium or similar law in any way limiting or restricting 2719  
the liability of the Guarantor hereunder; 2719

(5) any right to require a proceeding first against the 2722  
Company or any other person or the security provided by or 2724  
under any Transaction Agreement; 2724

(6) any requirement that the Company or any other person 2727  
be joined as a party to any proceeding for the enforcement of 2729  
any term of any Transaction Agreement; 2729

(7) the filing of claims by the City in the event of the 2733  
receivership or bankruptcy of the Company; 2736

(8) all demands upon the Company or any other person and 2741  
all other formalities the omission of any of which, or delay 2743  
in performance of which, might, but for the provisions of 2746  
this Section 3.4, by rule of law or otherwise, constitute 2748  
grounds for relieving or discharging the Guarantor in whole 2749

or in part from its absolute, present, irrevocable, unconditional and continuing obligations hereunder, it being the intention of the Guarantor that its obligations hereunder shall not be discharged except by payment and performance and then only to the extent of such payment and performance; and

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(9) any requirement to mitigate damages resulting from any default under any Transaction Agreement.

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SECTION 3.5. PAYMENT OF COSTS AND EXPENSES. The Guarantor agrees to pay the City on demand all reasonable costs and expenses, legal or otherwise (including counsel fees), incurred by or on behalf of the City in enforcing or attempting to enforce payment or performance and observance of the Obligations against the Company or in enforcing or attempting to enforce the covenants and agreements of the Guarantor under Section 3.1 hereof, whether by suit or otherwise.

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SECTION 3.6. SUBORDINATION OF RIGHTS. The Guarantor agrees that any right of subrogation or contribution which it may have at any time against the Company as a result of any payment or performance hereunder is hereby fully subordinated to the rights of the City hereunder and under the Transaction Agreements and that the Guarantor shall not recover or seek to recover any payment made by it hereunder from the Company until the Company and the Guarantor shall have fully and satisfactorily paid or performed and discharged the Obligations.

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SECTION 3.7. SEPARATE OBLIGATIONS; REINSTATEMENT. The obligations of the Guarantor to make any payment or to perform and discharge any other duties, agreements, covenants, undertakings or obligations hereunder shall (1) to the extent permitted by applicable law, constitute separate and independent obligations of the Guarantor from its other obligations under this Guaranty, (2) give rise to separate and independent causes of action against the Guarantor and (3) apply irrespective of any indulgence granted from time to time by the City. The Guarantor agrees that this Guaranty shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Company is rescinded or must be otherwise restored by the City, whether as a result of any proceedings in bankruptcy or reorganization or otherwise.

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SECTION 3.8. CONSENT TO ASSIGNMENT. The Guarantor acknowledges that in connection with the issuance of Facility Obligations, the City may elect to assign certain provisions of the Agreement to a trustee for the benefit of the holders of Facility Obligations, that the Guarantor hereby consents to such assignment, and that, to the extent the Company fails to make any payment or perform any obligation under the assigned provisions, the Guarantor shall make such payment or perform such obligation

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directly to the trustee. The Company also acknowledges the trustee as a third party beneficiary of the Guaranty to the extent necessary to permit the trustee to enforce the Guarantor's performed of the assigned provisions.

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SECTION 3.9. TERM. This Guaranty shall remain in full force and effect from the date of execution and delivery hereof until all of the Obligations of the Company have been fully paid and performed.

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## ARTICLE IV

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### GENERAL COVENANTS

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SECTION 4.1. MAINTENANCE OF CORPORATE EXISTENCE. (A) Consolidation, Merger, Sale or Transfer. The Guarantor covenants that during the term of this Guaranty it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it; provided, however, that the Guarantor may consolidate with or merge into another entity, or permit one or more other entities to consolidate with or merge into it, or sell or otherwise transfer to another entity all or substantially all of its assets as an entirety and thereafter dissolve if (1) the successor entity (if other than the Guarantor) (a) assumes in writing all the obligations of the Guarantor hereunder and, if required by law, is duly qualified to do business in the State, and (b) delivers to the City an opinion of counsel to the effect that its obligations under this Guaranty are legal, valid, binding and enforceable subject to applicable bankruptcy and similar insolvency or moratorium laws and (2) any such transaction does not result in reduction in the net worth or credit rating of the Guarantor determined in accordance with generally accepted accounting principles.

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(B) Continuance of Obligations. If a consolidation, merger or sale or other transfer is made as permitted by this Section 4.1, the provisions of this Section 4.1 shall continue in full force and effect and no further consolidation, merger or sale or other transfer shall be made except in compliance with the provisions of this Section 4.1. No such consolidation, merger or sale or other transfer shall have the effect of releasing the Guarantor.

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SECTION 4.2. ASSIGNMENT. Without the prior written consent of the City, this Agreement may not be assigned by the Guarantor, except pursuant to Section 4.1 hereof.

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SECTION 4.3. QUALIFICATION IN CALIFORNIA. The Guarantor agrees that, so long as this Guaranty is in effect, if required by law, the Guarantor will be duly qualified to do business in the State.

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SECTION 4.4. AGENT FOR SERVICE. The Guarantor irrevocably: (1) agrees that any suit, action or other legal proceeding arising out of this Guaranty may be brought in the courts of the State of California or the courts of the United States located within the State of California; (2) consents to

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the jurisdiction of each such court in any such suit, action or proceeding and (3) waives any objection which it may have to the laying of the venue of any such suit, action or proceeding in any of such courts. During the term of this Guaranty, the Guarantor irrevocably designates the Secretary of State of the State of California and the Company as its agents to accept and acknowledge in its behalf service of any and all process in any such suit, action or proceeding brought in any such court and agrees and consents that any such service of process upon either agent shall be taken and held to be valid personal service upon the Guarantor whether or not the Guarantor shall then be doing, or at any time shall have done, business within the State of California, and that any such service of process shall be of the same force and validity as if service were made upon the Guarantor according to the laws governing the validity and requirements of such service in such state, and waives all claims of error by reason of any such service. Such agents shall not have any power or authority to enter any appearance or to file any pleadings in connection with any suit, action or other legal proceeding against the Guarantor or to conduct the defense of any such suit, action or any other legal proceeding.

SECTION 4.5. BINDING EFFECT. This Guaranty shall inure to the benefit of the City and its permitted successors and assigns and shall be binding upon the Guarantor and its successors and assigns.

SECTION 4.6. AMENDMENTS, CHANGES AND MODIFICATIONS. This Guaranty may not be amended, changed or modified or terminated and none of its provisions may be waived, except with the prior written consent of the City and of the Guarantor.

SECTION 4.7. NOTICES. Any notices or communications required or permitted hereunder shall be in writing and shall be sufficiently given if faxed, telecopied, telexed or cabled (in any such case with acknowledgment of receipt), delivered in person, or sent by certified or registered mail, return receipt requested, postage prepaid, to the following addresses, or to such other addresses as any of the recipients may from time to time designate by notice given in writing.

If to the Guarantor:

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If to the City:

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with copies to:

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IN WITNESS WHEREOF, the Guarantor has caused this 3030  
Guaranty to be executed in its name and on its behalf by its duly 3033  
authorized officer as of the \_\_\_\_\_ day of \_\_\_\_\_, 1991. 3033

[GUARANTOR] 3037

By \_\_\_\_\_ 3039  
Printed Name: 3040  
Title: 3041

TRANSACTION AGREEMENT FORM B

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FORM OF PERFORMANCE BOND

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FORM OF PERFORMANCE BOND

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KNOW ALL MEN BY THESE PRESENTS:

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That \_\_\_\_\_ as Principal (the  
"Company") and \_\_\_\_\_  
and \_\_\_\_\_  
(collectively referred to as the "Sureties") are held and firmly  
bound unto CITY OF SACRAMENTO, CALIFORNIA (the "City") in the  
penal sum of \_\_\_\_\_ dollars plus an amount for estimated  
Fixed Purchase Price Adjustments (\$ \_\_\_\_\_)], lawful money  
of the United States of America, for the payment of which said  
sum of money well and truly to be made, we, and each of us, bind  
ourselves, our successors and assigns, jointly and severally,  
firmly by these presents PROVIDED, that we the Sureties bind  
ourselves in such sum "jointly and severally" as well as  
"severally only" for the purpose of allowing a joint action or  
actions against any or all of us and for all other purposes, each  
surety binds itself jointly and severally to the City for the  
payment of such sums as to which the Sureties may become  
obligated to pay under this Performance Bond.

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WHEREAS, the Company has entered into the Materials  
Recovery Facility Construction, Purchase and Operation Agreement,  
dated as of \_\_\_\_\_, with the City to design,  
install, start-up, perform Acceptance Testing and obtain  
acceptance of a materials recycling and processing facility in  
accordance with the terms of said contract for the processing of  
recyclable materials into marketable industrial feedstocks, which  
contract is by reference made a part hereof, and is hereinafter  
referred to as the Agreement.

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WHEREAS, this Performance Bond is entered into by the  
Sureties solely and exclusively for the benefit of the City and  
may be enforced against the Sureties by the City.

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NOW, THEREFORE, the condition of this obligation is such  
that, if the Company shall promptly and faithfully perform all of  
the Company's obligations under the Agreement through completion  
of construction of the Facility and Acceptance of the Facility  
excluding liability for failure to pass Acceptance Testing then  
this obligation shall be null and void, otherwise it shall remain  
in full force and effect.

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1. The Sureties hereby waive notice of any alteration  
or extension of time made by the City.

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2. Whenever the Company shall be, and shall be  
declared by the City to be, in default under the Agreement, the  
Owner having performed the City's material obligations  
thereunder, the Sureties shall promptly remedy the default  
whatever it may be or shall promptly:

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- a. Perform the Agreement in accordance with all of its terms and conditions or 3136  
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- b. Obtain bids for submission to the Owner for 3140  
performing the Agreement in accordance with its 3141  
terms and conditions, and upon mutual determination 3142  
by the City and the Sureties of the lowest 3143  
responsible bidder, arrange for a contract between 3144  
such bidder and the City and make available as work 3144  
progresses (even though there will be a default or 3145  
a succession of defaults under the contract or 3146  
contracts for performance arranged under this 3146  
paragraph) sufficient funds to pay the costs of 3147  
performance of the Agreement, less the unpaid 3148  
balance of the contract price; but not exceeding, 3149  
including other costs and damages for which the 3150  
Sureties may be liable to City hereunder, the 3152  
amount set forth in the first paragraph hereof. 3152  
Notwithstanding the Company's obligations under any 3153  
provisions of the Agreement, it is understood that 3154  
any payment made by the Surety in good faith under 3155  
this bond shall reduce the penal sum by a like 3155  
amount. The term "balance of the contract price" 3156  
as used in this paragraph, shall mean the total 3157  
amount due and payable by the City to the Company 3157  
under the Agreement and any amendments thereto, 3158  
less the amount paid by the City to the Company in 3159  
accordance with the terms of the Agreement. 3160

3. Any suit under this bond must be instituted before 3162  
the expiration of two (2) years from the date on which final 3163  
payment under the Agreement falls due. 3163

4. Any notice of default, complaint or other 3166  
communication shall be sent to each of the Sureties by the City 3167  
at the address set forth above, provided that receipt of such 3169  
notice by one of the Sureties shall be deemed notice to all of 3171  
the Sureties. 3171

5. The Surety hereby waives notice of any change, 3173  
including changes of time, to the Agreement or to related 3175  
subcontracts, purchase orders and other obligations. 3176

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 3178  
199\_. 3178

IN PRESENCE OF: \_\_\_\_\_ 3181  
Principal 3182

By: \_\_\_\_\_ 3184  
Name: \_\_\_\_\_ 3185  
Title: \_\_\_\_\_ 3186

---

Surety

3188  
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---

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

3191  
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---

Surety

3195  
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By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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TRANSACTION AGREEMENT FORM C

3206

FORM OF LABOR AND MATERIALS PAYMENT BOND

3208

FORM OF LABOR AND MATERIALS PAYMENT BOND

3218

KNOW ALL MEN AND WOMEN BY THESE PRESENTS: that  
\_\_\_\_\_, as Principal, (the  
"Principal"), and \_\_\_\_\_, as Surety, (the "Surety"),  
are held and firmly bound unto the CITY OF SACRAMENTO,  
CALIFORNIA, as Obligee, (the "City"), for the use and benefit of  
claimants as hereinbelow defined, in the amount of [the Fixed  
Purchase Price plus a reasonable amount to be determined by the  
parties for estimated Fixed Purchase Price Adjustments  
(\$ \_\_\_\_\_)], for the payment whereof Principal and Surety  
bind themselves, their heirs, executors, administrators,  
successors and assigned, jointly and severally, firmly by these  
presents.

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WHEREAS, Principal has by written agreement dated  
\_\_\_\_\_, 199\_ entered into a contract with City for the  
design, construction and operation of a Materials Recycling and  
Processing Facility in accordance with drawings and  
specifications prepared by Principal which is by reference made a  
part hereof, and is hereinafter referred to as the Agreement.

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NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such  
with respect to City that if the Principal shall promptly make  
payment to all claimants hereinafter defined, for all labor and  
materials used or reasonably required for use in the performance  
of the Agreement then this obligation shall be void; otherwise it  
shall remain in full force and effect, subject, however, to the  
following conditions:

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1. A claimant is defined as one having a direct contract  
with the Principal, or with a Subcontractor of the  
Principal for labor, materials, or both, used or  
reasonably required for use in the performance of the  
Agreement, labor and materials being construed also to  
include that part of water, gas, power, light, heat,  
oil, gasoline, telephone service or rental of equipment  
directly applicable to the Agreement.

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2. The above named Principal and Surety hereby jointly and  
severally agree with the City that every claimant as  
herein defined, who has not been paid in full before the  
expiration of a period of ninety (90) days after the  
date on which the last of such claimant's work or labor  
was done or performed, or materials were furnished by  
such claimant, may sue on this bond for the use of such  
claimant, prosecute the suit to final judgment for such  
sum or sums as may be justly due claimant, and have  
execution thereon. The City shall not be liable for the  
payment of any costs or expense of any suit.

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3. No suit or action shall be commenced hereunder by a claimant: 3273  
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- a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: the Principal, the City or the Surety above named, within one hundred and twenty (120) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, City or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer. 3277  
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- b) After the expiration of one (1) year following the date on which Principal ceased work on said Agreement or after the expiration of one (1) year following the date of completion of the Facility, whichever is later, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law. 3298  
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- c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part hereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere. 3306  
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4. The Surety hereby waives notice of any change, including changes of time, to the Agreement or to related subcontracts, purchase orders and other obligations. 3314  
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5. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made. 3319  
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6. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

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Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_,  
199\_.

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[COMPANY]

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\_\_\_\_\_  
Witness

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By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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\_\_\_\_\_  
Witness

\_\_\_\_\_  
Surety

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\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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TRANSACTION AGREEMENT FORM D

3354

FORM OF CONSTRUCTION PERIOD LETTER OF CREDIT

3356

FORM OF PRE-PURCHASE LETTER OF CREDIT  
(To be Issued by a State Bank  
or by a National Banking Association)

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Issuance Date: \_\_\_\_\_

3371

Irrevocable Letter  
of Credit No.: \_\_\_\_\_

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Gentlemen:

3376

We hereby establish our Irrevocable Letter of Credit No. \_\_\_\_\_  
in favor of the City of Sacramento, California (the  
"City") at the request and for the account of [Vendor] ("the  
Company"), up to the aggregate amount of \_\_\_\_\_ dollars  
(U.S.\$00,000,000.00) available for payment against your draft at  
sight on [name bank] and accompanied by your signed statement as  
follows:

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"I certify that the amount of this drawing  
represents amounts due and owing to the City  
of Sacramento, California (the "City")  
pursuant to the Materials Recovery Facility  
Construction, Purchase and Operation  
Agreement, between the City and [Vendor] (the  
"Company"), dated \_\_\_\_\_, 1991 (the  
"Agreement"), by reason of the Company's  
failure to achieve Acceptance of the Facility  
prior to the expiration of the Extension  
Period or by reason of abandonment by the  
Company of performance of its obligations  
under the Agreement resulting in termination  
of the Agreement by the City for an Event of  
Default and by reason of the Company's failure  
to pay the City amounts due and owing under  
the Agreement when and as due."

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This Letter of Credit will expire at the counters of  
[name of the bank] on \_\_\_\_\_, 199\_ [Initial one year  
period]. This Letter of Credit will be automatically renewed for  
one (1) additional one year period unless we notify you at least  
thirty (30) days before \_\_\_\_\_, 199\_, or any  
subsequent expiration date, of our intention not to renew the  
Letter of Credit, in which event the full aggregate amount of  
this Letter of Credit will be available for payment against your  
draft at sight on us presented prior to the current expiration  
date and accompanied by your signed statement as follows: "I  
certify that the Agreement dated \_\_\_\_\_ (the  
"Agreement") between the City and the Company, remains fully  
operative and the amount drawn represents the amount necessary to

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secure the City against the damages or expenses that may be  
incurred by it by reason of the Company's default under or breach  
of such Agreement."

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We hereby engage with you that your draft drawn under  
and in compliance with the terms of this credit will be honored  
by us.

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This credit is subject to the Uniform Customs and  
Practices for Documentary Credits (1983 Revision) International  
Chamber of Commerce, Publication No. 400.

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Very truly yours,

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Authorized Signature [for Bank]

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TRANSACTION AGREEMENT FORM E

3464

FORM OF OPERATION PERIOD LETTER OF CREDIT

3466

FORM OF OPERATION PERIOD LETTER OF CREDIT  
(To be Issued by a California Bank  
or by a National Banking Association)

Issuance Date: \_\_\_\_\_

Irrevocable Letter  
of Credit No.: \_\_\_\_\_

Gentlemen:

We hereby establish our Irrevocable Letter of Credit No. \_\_\_\_\_ in favor of the City of Sacramento, California (the "City") at the request and for the account of [VENDOR] (the "Company"), up to the aggregate amount of \_\_\_\_\_ dollars (U.S. \$0,000,000.00) available for payment against your draft at sight on [name of bank] and accompanied by your signed statement as follows:

"I certify that the amount of this drawing represents amounts due and owing to the City of Sacramento, California (the "City") pursuant to the Materials Recovery Facility Construction, Purchase and Operation Agreement between the City and [VENDOR] (the "Company"), dated \_\_\_\_\_, 1991 (the "Agreement"), by reason the Company's failure to pay such amount when and as due, or because the Company has materially breached the terms of such Agreement."

This Letter of Credit will expire at the counters of [name of Bank] on \_\_\_\_\_, 199\_.

This Letter of Credit will be automatically renewed for up to [term of Agreement] additional consecutive one year periods unless we notify you at least thirty (30) days before \_\_\_\_\_, 199\_, or any subsequent expiration date, of our intention not to renew the Letter of Credit, in which event the full aggregate amount of this Letter of Credit will be available for payment against your draft at sight on us presented prior to the current expiration date and accompanied by your signed statement as follows: "I certify that the Agreement dated \_\_\_\_\_ (the "Agreement") between the City and the Company, remains fully operative and the amount drawn represents the amount necessary to secure the City against the damages or expenses that may be incurred by it by reason of the Company's default under or breach of such Agreement."

We hereby engage with you that your draft drawn under  
and in compliance with the terms of this credit will be honored  
by us.

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This credit is subject to the Uniform Customs and  
Practices for Documentary Credits (1983 Revision) International  
Chamber of Commerce, Publication No. 400.

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Very truly yours,

3554

Authorized Signature [for Bank]

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TRANSACTION AGREEMENT FORM F

3564

FORM OF WAIVER OF CERTAIN FEDERAL TAX CLAIMS

3566



## FORM F

3574

## FORM OF WAIVER OF CERTAIN FEDERAL TAX CLAIMS

3576

## DEPRECIATION AND THE INVESTMENT TAX CREDIT

3578

Name(s) and Address(es)

Employer Identification

3583

of Taxpayer(s):

Number(s):

3585

To: Commissioner of Internal Revenue

3589

The taxpayer(s) identified above hereby submit(s) this election dated \_\_\_\_\_ to waive irrevocably any rights (it) (they) they might otherwise have had, but for this election, to claim depreciation deductions under Section 167 and the investment tax credit under Section 38 of the Internal Revenue Code of 1986 (the "Code") in connection with the following property and the equipment located thereon:

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## (FACILITY DESCRIPTION)

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The purpose of this waiver is to establish in part the conditions under which certain tax-exempt obligations may be issued to finance the facility described above without regard to the volume cap limitations imposed on private activity bonds under Section 146 of the Code. For the purpose of computing the taxpayers' federal income tax for all taxable years beginning after \_\_\_\_\_, the taxpayer(s) agree(s) as follows:

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1. No depreciation deductions shall be claimed under the provisions of Section 167 of the Code.

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2. No investment tax credit shall be claimed under the provisions of Section 38 of the Code.

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3. The elections set forth in Paragraphs 1 and 2 above shall be Irrevocable.

Date: \_\_\_\_\_, 199\_

ATTEST:

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

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STATE OF CALIFORNIA :

SS:

COUNTY OF SACRAMENTO :

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On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before  
me personally came \_\_\_\_\_ to me known, who being  
duly sworn, did depose and say that [s]he resides in  
\_\_\_\_\_ ; that [s]he is the

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\_\_\_\_\_ of \_\_\_\_\_, the  
Corporation described herein and which executed the foregoing  
instrument; and that [s]he knows the Seal of said Corporation;  
that the seal affixed to the instrument is such Corporate Seal;  
that it was so affixed by order of the Board of Directors of said  
Corporation and that [s]he signed his [her] name thereto by like  
order.

\_\_\_\_\_  
Notary Public

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3658

TRANSACTION AGREEMENT FORM G  
FORM OF TECHNOLOGY SUPPLY AGREEMENT

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FORM OF TECHNOLOGY SUPPLY AGREEMENT

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TECHNOLOGY SUPPLY AGREEMENT  
OF [TECHNOLOGY SUPPLIER]

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THIS AGREEMENT, is made as of this \_\_\_\_\_ day of \_\_\_\_\_,  
199\_, by \_\_\_\_\_ for the benefit of The City of \_\_\_\_\_  
Sacramento, California (the "City").

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WHEREAS, \_\_\_\_\_ (the "Company")  
has executed a Materials Recovery Facility Construction, Purchase  
and Operation Agreement dated \_\_\_\_\_, 199\_ (the "Agreement"),  
with the City for a materials recovery and processing facility  
(the "Facility") and services, incorporating the [TECHNOLOGY  
SUPPLIER'S] [equipment design];

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WHEREAS, the City shall issue equipment to finance a  
portion of the costs necessary for the construction of the  
Facility;

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WHEREAS, [TECHNOLOGY SUPPLIER] will make available  
certain proprietary components of such Facility Obligations;

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WHEREAS, the Company has agreed to waive any right at  
law or in equity it may have to restrict the City from  
contracting directly with [TECHNOLOGY SUPPLIER] in the event the  
Agreement is terminated by the City, so that the [TECHNOLOGY  
SUPPLIER EQUIPMENT] and related proprietary components and know-  
how shall continue to be available to the City in the event the  
Agreement is terminated by the City or the Company is terminated  
and replaced with a substitute vendor (the "Substitute");

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WHEREAS, it is in the interest of [TECHNOLOGY SUPPLIER]  
that the City enter into the Agreement with the Company and that  
the City issue the Facility Obligations;

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WHEREAS, the City is willing to enter into the Agreement  
in consideration of the foregoing and other good and valuable  
consideration;

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NOW, THEREFORE, to induce the City to enter into this  
Agreement, in consideration of the foregoing and other good and  
valuable consideration; [TECHNOLOGY SUPPLIER] agrees as follows:

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1. In the event the City terminates the Agreement, or in  
the event the Agreement is assigned to a third party with the  
consent of the City pursuant to its terms, [TECHNOLOGY SUPPLIER]  
will continue to make its technology, proprietary components and  
know-how available to the City on terms and conditions no less

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favorable than those prevailing to its customers generally prior to any termination or assignment described above. 3753  
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2. This Technology Supply Agreement shall 3758  
continue in full force and effect during the term of the 3759  
Agreement. In the event that the Agreement is terminated or 3763  
assigned prior to its expiration this Technology Supply Agreement 3764  
shall continue in full force and effect until the date upon which 3766  
the Agreement and any applicable renewal terms would have expired 3768  
by its terms had it not been so terminated. 3769

3. [TECHNOLOGY SUPPLIER] understands that this Agreement 3773  
may be assigned directly or as collateral by the City to the 3776  
trustee for the benefit of holders of any Facility Obligations, 3776  
the proceeds of which are to be used to finance the Facility, and 3780  
hereby consents to such assignment. 3780

IN WITNESS THEREOF, [TECHNOLOGY SUPPLIER] has executed 3782  
this instrument the day and year first above written. 3783

WITNESS: 3786

[TECHNOLOGY SUPPLIER] 3788

By: \_\_\_\_\_ 3790

May 28, 1991

Council Item 3.24

Jt. Comm. Item 7

HDW Draft  
May 24, 1991  
Privileged and Confidential  
For Discussion Purposes Only

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MATERIALS RECOVERY FACILITY  
CONSTRUCTION, SALE AND OPERATION AGREEMENT

11  
12

between

14

THE CITY OF SACRAMENTO, CALIFORNIA

16

and

18

\_\_\_\_\_

20

Dated

22

\_\_\_\_\_, 1991

24

\_\_\_\_\_

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MATERIALS RECOVERY FACILITY  
CONSTRUCTION, SALE AND OPERATION AGREEMENT

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THIS MATERIALS RECOVERY FACILITY CONSTRUCTION, SALE AND  
OPERATION AGREEMENT is made and dated \_\_\_\_\_, 1991 between  
the City of Sacramento, a municipal corporation of the State of  
California (the "City"), and \_\_\_\_\_, a corporation  
organized and existing under the laws of the State of \_\_\_\_\_  
(the "Company").

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RECITALS

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On August 29, 1989 the City adopted Resolution No. 89-  
885 establishing a goal of diverting 30% of the municipal solid  
waste generated in the City from landfills by 1992, 40% by 1995  
and 70% by 1999.

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The City has determined that implementing a program of  
materials recovery through a central processing facility, (1) is  
an environmentally and economically acceptable and long-term  
means of solid waste disposal, (2) will recover resources from  
the solid waste stream, (3) is in furtherance of the public  
health, welfare and safety, and (4) will assist the City in  
meeting its solid waste recycling and landfill diversion goals.

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The California Integrated Waste Management Act of 1989  
(Division 30 of the California Public Resources Code) (the "Act")  
provides a comprehensive legislative, regulatory and  
administrative framework for the management and disposal of solid  
waste in the State of California.

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The purpose of the Act is to reduce, recycle, reuse and 92  
compost solid waste generated in the State to the maximum extent 93  
feasible in order to reduce the amount of solid waste that must 94  
be disposed of by transformation and land disposal. 95

The Act declares that the responsibility for solid waste 98  
management is a shared responsibility between the State and local 99  
governments, and that it is in the public interest for the State 102  
to authorize and require local agencies to make adequate 103  
provision for solid waste handling. 104

The Act further declares that the City may determine (1) 107  
aspects of solid waste handling which are of local concern 107  
(including the level of services, charges and fees, and the 110  
nature, location and extent of providing solid waste handling 111  
services) under terms and conditions prescribed by the governing 112  
body of the City by resolution or ordinance, and (2) whether the 114  
services are to be provided by means of nonexclusive, partially 116  
exclusive or wholly exclusive franchise, contract, license, 118  
permit or otherwise, either with or without competitive bidding. 121

The Act requires the County of Sacramento (the "County") 124  
to prepare and submit to the Board a countywide integrated waste 125  
management plan, which includes a City source reduction and 126  
recycling element prepared and adopted by the City and a 128  
countywide siting element prepared by the County identifying 129  
areas for the location of new solid waste disposal facilities. 130

The City source reduction and recycling element under 133  
the Act must include an implementation schedule which shows that 134

the City will divert 25% of all solid waste from landfill 135  
facilities by January 1, 1995, and 50% of all solid waste from 137  
landfill facilities by January 1, 2000, through source reduction, 138  
recycling and composting activities. 139

Countywide integrated waste management plans are 141  
required under the Act to be approved (1) by the County and a 143  
majority of the cities within the County which contain a majority 145  
of the population of the incorporated areas of the County, and 146  
(2) by the Board, for compliance with the Act. 147

Administrative civil penalties may be imposed by the 150  
Board in the amount of not more than \$10,000 per day on the City 150  
if the Board finds that the City has failed to implement its 152  
source reduction and recycling element of the countywide 153  
integrated waste management plan. 153

The City has determined, in order to seek to meet the 157  
recycling and waste diversion goals adopted by the City and 159  
mandated by the Act, that a materials recovery facility with the 161  
capacity to receive and process an average of 2250 tons per day 162  
of recyclable materials, mixed waste, yardwaste and household 165  
hazardous waste generated within the City and delivered by the 167  
City and private haulers (the "Facility") should be constructed 169  
and operated by a private company and purchased by the City upon 170  
its completion and acceptance. 171

On October 18, 1989, the City issued a request for 175  
qualifications and technical information (the "RFQ") to private 177  
vendors who could qualify as full service contractors to enter 178



into a long-term contract to site, design, construct, shakedown, 181  
acceptance test, operate and maintain the Facility. The intent 184  
of the RFQ was to identify specific waste management systems as 186  
alternatives to the option of direct waste hauling to the County 189  
landfill and to identify prequalified interested vendors. 191

The City's selection committee evaluated responses to 195  
the RFQ and identified six vendors that met the objectives 197  
specified in the RFQ. On April 23, 1990 the City issued a 200  
request for proposals (the "RFP") to the six pre-qualified 202  
vendors. Proposals were received on July 6, 1990 from three of 204  
the six pre-qualified vendors. Proposal clarifications were 206  
conducted with the three vendors submitting proposals commencing 209  
in June, 1991. 209

Upon an evaluation of all proposals submitted in 211  
response to the RFP and of the final offers submitted by the 213  
proposers following proposal clarifications, the City selected 216  
the proposal by the Company as the most favorable, based on net 219  
cost, experience, technical design, materials recovery and waste 220  
diversion efficiency, environmental considerations, financial 222  
reliability, contractual risk assumption, overall system 224  
reliability and other evaluation factors. 224

\_\_\_\_\_ (the "Guarantor") will 228  
unconditionally guarantee the performance of the Company's 229  
obligations under this Agreement pursuant to the Guaranty 231  
Agreement executed concurrently herewith. 231

<u>The Facility will be constructed on land (the "Facility</u>	234
<u>Site") located in the City to be identified and determined in</u>	236
<u>accordance with this Agreement.</u>	236
<u>The Company will site, permit, design and obtain</u>	239
<u>construction financing for the Facility during the development</u>	240
<u>period, and will construct, shake-down and acceptance test the</u>	241
<u>Facility during the construction period. During the development</u>	243
<u>and construction periods the Facility will be owned by the</u>	244
<u>Company.</u>	244
<u>The City will purchase and own the Facility and the</u>	246
<u>Facility Site following the completion of construction, passage</u>	249
<u>of the acceptance tests, and the satisfaction of related purchase</u>	250
<u>conditions.</u>	250
<u>The Company will operate, maintain and manage the</u>	253
<u>Facility for a 20 year term following its purchase by the City,</u>	255
<u>subject to City optional termination rights every five years.</u>	257
<u>Materials and compost produced by the Company at the</u>	260
<u>Facility will be diverted from landfill and marketed by the</u>	262
<u>Company for recycling and reuse purposes.</u>	263
<u>Residue remaining from the processing of recyclable</u>	267
<u>materials, mixed municipal solid waste and yardwaste in the</u>	271
<u>Facility will be transported by the Company to a disposal site to</u>	275
<u>be arranged for from time to time by the City in accordance with</u>	277
<u>this Agreement. The disposal site is currently expected to be</u>	278
<u>Sacramento County's Kiefer Boulevard Landfill.</u>	279

Payment of the purchase price of the Facility and the 283  
Facility Site will be made from the proceeds of obligations 284  
secured by the City solid waste enterprise fund, and service fees 288  
payable by the City for the operation of the Facility will be 289  
made from revenues generated by the City solid waste enterprise 292  
fund. There shall be no recourse to the general funds or general 294  
credit of the City for the payment of any amount due or claims 297  
made hereunder. 297

The City desires to receive, and the Company desires to 301  
provide, solid waste processing, materials recovery, product 304  
marketing and residue transportation services under the terms of 305  
this Agreement. 306

A resolution determining this Agreement to be in the 310  
public interest and authorizing its execution and delivery was 311  
duly adopted by the City Council by a vote of a majority of the 314  
council members on \_\_\_\_\_, 1991. 314

The execution and delivery of this Agreement by the 318  
Company has been duly authorized by all necessary corporate 319  
action. 319

It is, therefore, agreed as follows: 321

ARTICLE I

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DEFINITIONS AND INTERPRETATION

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SECTION 1.1. DEFINITIONS. As used in this Agreement,  
the following terms shall have the meanings set forth below:

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"Acceptable Household Hazardous Waste" means waste  
materials determined by the Board, the Department of Health  
Services (DHS), the State Water Resources Control Board (SWRCB),  
or the Air Resources Board (ARB) to be:

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(1) Of a nature that they must be listed as hazardous  
in State statutes and regulations;

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(2) Toxic/ignitable/ corrosive/reactive; and

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(3) Carcinogenic/ mutagenic/teratogenic, which are

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discarded from households as opposed to businesses.

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Acceptable Household Hazardous Waste shall not include  
Unacceptable Waste.

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"Acceptable Mixed Waste" means all materials and  
substances discarded or rejected as being spent, useless,  
worthless or in excess to the owners at the time of such discard  
or rejection and which are normally disposed of, and collected  
from, residential, commercial, industrial, governmental and  
institutional establishments by the City and by private haulers,  
except that Acceptable Mixed Waste shall not include Unacceptable  
Waste.

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"Acceptable Recyclable Materials" means the following	373
Classes of materials derived from or destined to become municipal	375
solid waste:	375
<u>Mixed Recyclables:</u>	377
(1) Glass: new and used glass food and beverage	381
containers, including clear (flint), green and brown	383
(amber) colored glass bottles.	384
(2) Aluminum Cans: food and beverage containers made	388
wholly of aluminum.	389
(3) Tin Cans: metallic food and beverage containers.	392
Tin cans include cans made of tin plated steel and bi-	395
metal cans.	395
(4) PET (polyethylene terephthalate) plastic: plastic	399
beverage containers made primarily of polyethylene	399
terephthalate, including HDPE plastic base cups.	402
(5) HDPE (high density polyethylene) plastic: plastic	407
bottles manufactured from high density polyethylene	409
which formerly contained food products, beverages,	410
soaps, or detergents.	410
<u>Paper:</u>	412
(6) Newspaper: newspapers, supplements, advertising and	416
inserts, all of which would have been included with the	417
newspaper.	417
(7) Corrugated Paper: corrugated paper and boxes having	420
liners of either test liner, jute or kraft, but not	422
including more than 1% wax-coated or poly-coated boxes.	423

(8) Magazine and Glossy Stock: <u>magazines</u> and other	426
glossy publications, <u>as</u> defined by PS-90.	427
(9) High Grade Paper: <u>clean</u> , dry office paper, <u>including</u>	431
computer printout ( <u>CPO</u> ), white ledger, and colored	433
<u>ledger</u> grades, <u>as</u> defined by PS-90.	435
<u>Acceptable</u> Recyclable Materials also shall <u>include</u> any other	439
recyclable waste materials <u>so</u> designated and agreed to by the	440
parties, <u>and</u> shall not include Unacceptable Waste.	441
"Acceptable Waste" means <u>Acceptable</u> Recyclable	444
Materials, <u>Acceptable</u> Mixed Waste, <u>Acceptable</u> Household Hazardous	446
Waste <u>and</u> <u>Acceptable</u> Yardwaste, <u>if</u> properly <u>delivered</u> to the	449
appropriate area of the Facility <u>designed</u> to receive, <u>process</u> and	451
dispose of each such Waste Type.	451
"Acceptable Yardwaste" means <u>leaves</u> , grass cuttings,	454
<u>garden</u> trimmings, weeds and roots <u>from</u> which dirt has been	456
removed, <u>and</u> shubbery and tree trimmings of which no single piece	458
exceeds 36 inches in length, <u>4</u> inches in diameter or 40 pounds in	459
weight, <u>except</u> that Acceptable Yardwaste shall <u>not</u> include	461
Unacceptable Waste.	461
"Acceptance" means <u>demonstration</u> by the Company <u>in</u>	465
accordance with <u>Article</u> V hereof <u>that</u> <u>the</u> Acceptance Tests have	468
been performed <u>so</u> as to demonstrate that <u>the</u> <u>Acceptance</u> Standard	471
<u>has</u> been achieved.	472
"Acceptance Date" <u>means</u> the date on which Acceptance <u>of</u>	476
the Facility <u>occurs</u> or <u>is</u> deemed to have occurred <u>under</u> Article V	479
hereof.	479

"Acceptance Standard" means <u>the</u> Acceptance Standard <u>for</u>	483
Facility Acceptance as set <u>forth</u> in Appendix 6 hereto.	484
"Acceptance Tests" <u>or</u> "Acceptance Testing" <u>means</u> the	488
tests <u>for</u> Acceptance described <u>in</u> Appendix 6 hereto.	490
"Act" means <u>the</u> California Integrated Waste Management	493
Act of 1989 ( <u>Division</u> 30 of the California Public Resources	494
Code), <u>as</u> amended, supplemented, <u>superceded</u> and replaced from	496
time to time.	496
"Affiliate" means <u>any</u> person, corporation or other	500
entity <u>directly</u> or indirectly <u>controlling</u> or controlled by	502
another person, <u>corporation</u> or other entity or under direct or	503
indirect <u>common</u> control with such person, <u>corporation</u> or other	505
entity.	505
"Agreement" means <u>this</u> Materials Recovery Facility	508
<u>Construction</u> , Sale and Operation Agreement between the <u>Company</u>	510
and the City, <u>including</u> the Appendices <u>and</u> Transaction Agreement	512
Forms appended <u>hereto</u> , <u>as</u> the same may be amended <u>or</u> modified	515
<u>from</u> time to time in accordance <u>herewith</u> .	517
"Allowable Residue" <u>means</u> all <u>Residue</u> other than Excess	521
Residue.	521
"Annual Operating Plan" means <u>the</u> annual operating plan	524
established, <u>adopted</u> and revised in accordance <u>with</u> subsection	526
8.5(A) hereof.	526
"Annual Settlement Statement" has <u>the</u> meaning specified	529
in <u>subsection</u> 11.5 hereof.	530

"Appendix" means an appendix to this Agreement, as the same may be amended or modified from time to time in accordance with the terms hereof.

"Applicable Law" means any law, rule, regulation, requirement, guideline, permit or order of any federal, State or local agency, court or other governmental body having jurisdiction, applicable from time to time to the siting, design, acquisition, construction, equipping, financing, ownership, possession, shakedown, testing, operation or maintenance of the Facility, the Designated Disposal Facility, or any other transaction or matter contemplated hereby (including any of the foregoing which concern health, safety, environmental protection, mitigation monitoring plans, building codes, non-discrimination and the payment of prevailing and minimum wages, and further including the County Integrated Management Plan).

"Baseline Acceptable Waste Tonnage" means 468,000 Tons of Acceptable Mixed Waste per Contract Year, 18,720 Tons of Acceptable Recyclable Materials per Contract Year, 78,000 Tons of Acceptable Yardwaste per Contract Year, and unlimited amounts of Acceptable Household Hazardous Waste per Contract Year.

"Billing Period" means each calendar month in each Contract Year, except that (1) the first Billing Period shall begin on the Acceptance Date and shall continue to the last day of the month in which the Acceptance Date occurs and (2) the last Billing Period shall end on the last day of the Term of this Agreement. Any computation made on the basis of a Billing Period



shall be adjusted on a pro rata basis to take into account any 591  
Billing Period of less than the actual number of days in the 592  
month to which such Billing Period relates. 593

"Billing Statement" has the meaning specified in 596  
subsection 11.3(A) hereof. 596

"Board" means the California Integrated Waste Management 599  
Board. 599

"Bypass Acceptable Waste" means the aggregate of any 601  
Recyclable Materials Throughput Shortfall, Mixed Waste Throughput 603  
Shortfall, Yardwaste Throughput Shortfall and Household Hazardous 605  
Waste Throughput Shortfall. 605

"Bypass Waste Disposal Guarantee" means the covenants of 608  
the Company set forth in subsection 8.3 hereof. 609

"Capital Improvement" means any repair, replacement, 612  
improvement, alteration or addition to the Facility or any part 614  
thereof (other than any repair, replacement, improvement, 616  
alteration or addition constituting normal maintenance of the 617  
Facility). 617

"Capital Improvement Cost" means the cost of any Capital 620  
Improvement which the Company reasonably incurs hereunder and 622  
proves by Cost Substantiation including, without limitation, 622  
expenditures for material, equipment, labor, and services 625  
supplied by architects, engineers and Subcontractors, expenses 628  
related to managing and administering the Capital Improvement and 629  
an allowance for reasonable overhead, any related interest or 632  
other financing costs, and, with respect to Capital Improvements 634

undertaken as a result of City Breach, City Change Order or City election, a reasonable profit. 637 638

"CEQA" means the California Environmental Quality Act, codified at Cal. Pub. Res. Code §21,000 et seq. (West 1986 & Supp 1991) as amended or superseded, and the regulations promulgated thereunder. 641 642 644 644

"CERCLA" means the Comprehensive Environmental Responsibility Compensation and Liability Act, 42 U.S.C.A. § 9601 et seq. (West 1983 & Supp. 1989), as amended or superseded, and the regulations promulgated thereunder. 646 648 650 650

"Change in Law" means any of the following events or conditions which has a material and adverse effect on the performance by the parties of their respective obligations under this Agreement (except for payment obligations), or on the siting, acquisition, permitting, design, construction, equipping, start-up, testing, operation or maintenance of the Facility: 653 657 658 661 664 666

(1) the enactment, adoption, promulgation, issuance, modification or written change in administrative or judicial interpretation on or after the Contract Date of any federal, State or local law, regulation, rule, requirement, guideline, ruling or ordinance; 670 671 673 676 677

(2) the order or judgment of any federal, State or local court, administrative agency or governmental officer or body, on or after the Contract Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the 680 681 683 685 686

Company or of the City, whichever is asserting the occurrence 688  
of a Change in Law; provided, however, that the contesting in 691  
good faith or the failure in good faith to contest any such 692  
order or judgment shall not constitute or be construed as 694  
such a willful or negligent action, error or omission or lack 695  
of reasonable diligence; or 695

(3) the denial of an application for, delay in the 698  
review, issuance or renewal of, or suspension, termination, 701  
interruption, imposition of a new or more stringent condition 703  
in connection with the issuance, renewal or failure of 704  
issuance or renewal on or after the Contract Date of any 706  
Legal Entitlement to the extent that such denial, delay, 707  
suspension, termination, interruption, imposition or failure 709  
materially and adversely interferes with the performance of 712  
this Agreement, if and to the extent that such denial, delay, 713  
suspension, termination, interruption, imposition or failure 715  
is not the result of willful or negligent action, error or 717  
omission or a lack of reasonable diligence of the Company or 719  
of the City, whichever is asserting the occurrence of a 721  
Change in Law; provided, however that the contesting in good 723  
faith or the failure in good faith to contest any such 724  
denial, delay, suspension, termination, interruption, 726  
imposition or failure shall not be construed as such a 729  
willful or negligent action, error or omission or lack of 731  
reasonable diligence. 731

Any event or circumstance which would otherwise constitute a 735  
Change in Law shall not be deemed to be material and adverse to 737  
either party hereunder, and shall not constitute an 739  
Uncontrollable Circumstance, to the extent that such event or 741  
circumstance imposes obligations which are specifically or by 743  
reasonable inference to be performed or borne by the affected 744  
party by the terms of this Agreement. A "Change in Law" shall 745  
not include (1) a change in any Applicable Law pertaining to 746  
Taxes, (2) the imposition of mitigation monitoring requirements 749  
under any Applicable Law pertaining to the environment, or (3) a 752  
change in any Applicable Law pertaining to or affecting the 754  
marketing or disposal of Recovered Products, including the 755  
repeal, amendment or modification of any such Applicable Law 757  
which, as of the Contract Date or any subsequent date creates 759  
markets or supports prices for Recovered Products which markets 761  
or prices would not exist or which would be less favorable in the 763  
absence of such an Applicable Law. 763

"Change Order" means a written order issued by the City 767  
to the Company after execution of this Agreement, authorizing or 768  
requiring: 768

(1) Extra Construction Work, or deleted or omitted 772  
Work, pursuant to Section 4.7 hereof; 773

(2) an extension of time under subsection 4.7(E) 776  
hereof; 776

(3) an increase or reduction in the Purchase Price; or 779

(4) any other change in this Agreement prior to the 782  
Acceptance Date (including any change in the Design 784  
Requirements). 784

"City" means the City of Sacramento, California. 786

"City Acceptable Waste", when used with respect to any 790  
particular Waste Type or all Waste Types, shall mean Acceptable 793  
Waste of any or all such Waste Types which is generated within 795  
the City's geographical limits regardless of whether delivery to 797  
the Facility is arranged by the City, the Company, a Registered 800  
Hauler or other person. 800

"City Breach" means any breach, failure, non-performance 804  
or non-compliance by the City with its obligations hereunder 805  
caused by any willful or negligent act, error or omission by the 808  
City, its officials, agents, employees, representatives, 810  
independent contractors or subcontractors of any tier which 812  
materially and adversely prevents or delays the Company from 813  
performing its obligations under the terms of this Agreement. 814

"City Engineer" means (1) the Director of Public Works | 818  
of the City or any other employee of the City designated by the | 820  
City, or (2) a nationally recognized consulting engineer or firm | 822  
of consulting engineers licensed in the State of California, | 825  
having experience with respect to the design, construction, | 827  
testing, operation and maintenance of solid waste disposal and | 828  
materials recovery facilities, which is designated as the City 831  
Engineer for the purposes of this Agreement from time to time in 833  
writing by the City. 833

"City Indemnified Parties" has the meaning specified in subsection 14.5(A) hereof. 835  
835

"City Landfill" means the sanitary landfill owned and operated by the City located at 28th and A Streets in the City of Sacramento. 839  
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"City Property" means any structures, improvements, equipment, fire alarm systems, water mains, hydrants, hydrant connections, duct lines, lamps, lampposts, monuments, sidewalks, curbs, trees or any other systems, fixtures, or real or personal property owned, leased, operated, maintained, or occupied by the City. 844  
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"Claims Statement" means a verified written statement of each and every alleged claim of any kind whatsoever of the Company (and all persons claiming by, through, or under the Company) in any way connected with, or arising out of the Construction Work, the Operation Services or this Agreement, which sets forth in detail with respect to each such claim: 855  
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(1) the total amount of the claim; 866

(2) a specific and detailed description of all the Company's grounds for the claim, relating the dollar amount claimed to the events giving rise to the claim; 869  
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(3) an itemized and detailed statement of the dates, costs, and quantities of labor, material, and other elements included in the claim; and 875  
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(4) all other information which the Company deems relevant to the alleged claim. 880  
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"Class," when used with respect to Recovered Recyclable 886  
Materials, Recovered Mixed Waste Materials and Compost means one 889  
of the several particular types or classes of Recovered 892  
Recyclable Materials, Recovered Mixed Waste Materials or Compost 893  
including, as appropriate, subclasses of materials as set forth 898  
in the definition thereof and in Appendix 13 hereto. 899

"Cleanliness Guarantee" has the meaning specified in 902  
Appendix 13 hereto. 902

"Close-Out Requirements" means the Company's obligations 905  
for closing-out the Construction Work and completing 907  
documentation of the Construction Work pursuant to this Agreement 908  
(including such matters as submittal of "as-built" (or record) 910  
drawings, as-built surveys, and manuals; clean-up and removal of 913  
construction materials and debris from the Facility Site; and all 917  
other matters which this Agreement requires the Company to do and 918  
perform as part of the completion and winding-up of the Company's 920  
Construction Work obligations.) 920

"Collection, Delivery and Receiving Standards" means the 923  
standards for the collection, delivery and receiving of 925  
Authorized Materials set forth in Appendix 15 hereto. 926

"Company" means \_\_\_\_\_ and its 930  
successors or assigns permitted hereunder. 932

"Company Breach" means any breach, failure, non- 937  
performance or non-compliance by the Company with its obligations 939  
hereunder caused by any willful or negligent act, error or 941  
omission by the Company, its officials, agents, employees, 943

representatives <u>or</u> independent contractors or Subcontractors of	944
any tier that materially and adversely prevents <u>or</u> delays <u>the</u>	947
City from performing <u>its</u> obligations <u>under</u> the terms of this	949
Agreement.	949
<u>"Company Construction Superintendent"</u> <u>has</u> the meaning	952
specified in subsection 4.3(B) hereof.	952
<u>"Company Indemnified Parties"</u> <u>has</u> <u>the</u> meaning specified	955
in subsection 14.5(B) hereof.	955
<u>"Compost"</u> means the humus-like, <u>cured</u> and highly	958
stabilized product which results from the composting process	958
<u>applied</u> in sequential stages <u>to</u> the organic substrate of	960
Acceptable Yardwaste <u>by</u> the Yardwaste Processing Train <u>in</u>	962
accordance with this Agreement.	962
<u>"Compost Market"</u> <u>means</u> all potential Compost Purchasers	965
<u>constituting</u> the market <u>from</u> time to time for Compost.	967
<u>"Compost Purchaser"</u> <u>means</u> a buyer or his or her agent	970
who purchases <u>Compost</u> for value or barter for use in a lawful	971
<u>land</u> application other than landfilling or indefinite storage.	972
<u>"Compost Purchase Agreement"</u> <u>means</u> a contract or other	975
arrangement <u>between</u> the Company and a Compost Purchaser <u>for</u> the	977
purchase of Compost.	977
<u>"Compost Quality Guarantee"</u> <u>has</u> the meaning specified in	980
Appendix 13 hereto.	980
<u>"Compost Sales Revenues"</u> <u>means</u> all monies and the value	983
of all goods received in a <u>barter</u> exchange for the sale <u>and</u>	985
delivery of Compost, <u>less</u> an amount equal to the cost, <u>if</u> any,	987



incurred by the Company in transporting <u>the</u> Compost <u>to</u> the	990
Compost Purchasers.	990
"Compost Specifications" <u>has</u> the meaning set forth in	993
Appendix 13 hereto.	993
"Construction Period" <u>means</u> the period from and	996
including <u>the</u> Start Construction Date <u>to</u> and including the day	998
preceding the Acceptance Date.	998
"Construction Period Letter of Credit" <u>has</u> the meaning	1001
specified in subsection 14.3 hereof.	1001
"Construction Work" shall <u>include</u> the Original	1004
Construction Work <u>and</u> all Extra Construction Work. <u>Construction</u>	1006
Work means everything required <u>to</u> be furnished and done for and	1007
relating to the <u>Project</u> by <u>the</u> Company pursuant to this Agreement	1009
<u>during</u> the Construction Period. " <u>Construction Work</u> " shall	1011
include the employment and <u>furnishing</u> of all labor, <u>materials</u> ,	1013
equipment, supplies, tools, <u>scaffolding</u> , transportation,	1014
insurance, <u>temporary</u> facilities, and other things and <u>services</u> of	1016
every kind whatsoever necessary for the <u>full</u> performance and	1017
completion of <u>the</u> Company's <u>permitting</u> , <u>design</u> , engineering,	1020
<u>construction</u> , <u>shakedown</u> , Acceptance Testing, <u>and</u> related	1023
obligations <u>during</u> the Construction Period <u>under</u> this Agreement,	1025
<u>including</u> all completed structures, <u>assemblies</u> , fabrications,	1027
acquisitions and installations, all commissioning and testing,	1027
<u>and</u> all of the Company's administrative, <u>accounting</u> ,	1029
record-keeping, notification <u>and</u> similar responsibilities of	1030
<u>every</u> kind whatsoever under this Agreement pertaining to such	1031

obligations. A reference to "Construction Work" shall mean any 1033  
part and all of the Construction Work" unless the context 1034  
otherwise requires. 1034

"Contract Date" means the date of delivery of this 1037  
Agreement as executed by the parties hereto. 1037

"Contract Year" means the calendar year commencing on 1040  
January 1 in any year and ending on December 31 of that year; 1043  
provided, however, that the first Contract Year shall commence on 1046  
the Acceptance Date and shall end on December 31 of that year, 1048  
and the last Contract Year shall commence on January 1 prior to 1051  
the date this Agreement expires or is terminated, whichever is 1053  
appropriate, and shall end on the last day of the Term of this 1055  
Agreement or the effective date of any termination, whichever is 1057  
appropriate. Any computation made on the basis of a Contract 1059  
Year shall be adjusted on a pro rata basis to take into account 1062  
any Contract Year of less than 365/366 days. 1063

"Cost Substantiation" or "Cost Substantiated" means, 1067  
with respect to any cost reasonably incurred or to be incurred by 1071  
the Company which is directly or indirectly chargeable in whole 1074  
or in part to the City hereunder, delivery to the City of a 1076  
certificate signed by an authorized engineering officer and an 1079  
authorized financial officer of the Company, setting forth the 1082  
amount of such cost and the provisions of this Agreement under 1084  
which such cost is properly chargeable to the City, stating that 1086  
such cost is a fair market price for the service or materials 1089  
supplied or to be supplied and that such services and materials 1091

are reasonably required pursuant to this Agreement, and 1093  
 accompanied by copies of such documentation as shall be necessary 1095  
to reasonably demonstrate that the cost as to which Cost 1097  
 Substantiation is required has been or will be paid or incurred. 1098  
Such documentation shall include reasonably detailed information 1101  
concerning (1) all Subcontracts, (2) the amount and character of 1103  
 materials furnished, the persons from whom purchased, the amounts 1105  
 payable therefor and related delivery and transportation costs 1107  
 and any sales or personal property taxes, (3) a statement of the 1109  
 equipment used and any rental payable therefor, (4) Company 1110  
 worker hours, duties, wages, salaries, benefits, assessments, 1111  
taxes and premiums, and (5) Company profit and overhead (as 1112  
 applicable), administration, bonds, insurance, and other 1115  
 expenses. Any Cost Substantiation required with respect to costs 1117  
reasonably incurred by the City which are directly or indirectly 1119  
 chargeable in whole or in part to the Company hereunder shall 1121  
 include similarly detailed information, and shall be certified by 1123  
 an authorized administrative and financial official of the City. 1124  
"Cost-Shared Uncontrollable Circumstance" means all 1127  
 Uncontrollable Circumstances. 1127  
"County Landfill" means the County's Kiefer Boulevard | 1130  
 Landfill. | 1130  
"County Plan" means the integrated waste management plan 1133  
 of the County as in effect from time to time and approved by the 1135  
 Board under the Act. 1136

"Deliverable Material" means all or any part of any plan, drawing, design, specification, shop drawing, sample, report, software, study, survey, parts, lists, papers, or data, regardless of medium, required by Appendix 5 hereto or otherwise by this Agreement to be prepared by or for the Company for delivery to the City as part of the Construction Work.

"Design Requirements" means the Design Requirements for the Facility set forth in Appendix 4 hereto, as the same may be changed or modified in accordance with this Agreement.

"Designated Disposal Site" means the County Landfill or one or more other landfills or other solid waste management or disposal facilities designated by the City from time to time pursuant to Section 9.5 hereof for the disposal of Residue by the Company hereunder from processing operations at the Facility.

"Development Period" means the period from and including the Contract Date to and including the day preceding the Start Construction Date.

"Development Work" means everything required to be furnished and done for and relating to the Project by the Company pursuant to this Agreement during the Development Period.

"Development Work" shall include the employment and furnishing of all labor, materials, equipment and services of every kind whatsoever necessary for the full performance and completion of the Company's site identification, investigation and acquisition, permitting, construction financing and related obligations during the Development Period, and all of the Company's administrative,

accounting, <u>record-keeping</u> , notification <u>and</u> similar	1188
responsibilities of every kind <u>whatsoever</u> under this Agreement	1189
pertaining to <u>such</u> obligations. A reference to "Development	1191
Work" <u>shal</u> mean "any part and all of the Development Work" <u>unless</u>	1193
the context otherwise requires.	1193
<u>"Downgrade"</u> means acceptance by a Recovered Product	1196
Purchaser <u>of</u> a Load of Recovered Products <u>at</u> a price per weight	1198
unit which is below <u>the</u> offering price for the stated Recovered	1199
Products at the <u>applicable</u> Recovered Product Quality Guarantee.	1200
<u>"Dust Control Guarantee"</u> <u>has</u> the meaning specified in	1203
Appendix 13 hereto.	1203
<u>"Encumbrances"</u> means <u>any</u> Lien, <u>lease</u> , mortgage, <u>security</u>	1208
interest, <u>charge</u> , judgment, <u>judicial</u> award, <u>attachment</u> or	1211
encumbrance <u>of</u> any kind <u>with</u> respect to the Facility, <u>other</u> than	1214
Permitted Encumbrances.	1214
<u>"Event of Default"</u> has <u>the</u> meaning <u>specified</u> in Sections	1218
12.2 and 12.3 hereof.	1218
<u>"Excess Acceptable Waste"</u> means Acceptable Waste in	1221
amounts <u>exceeding</u> the Throughput Guarantees.	1222
<u>"Excess Mixed Waste Process Residue"</u> means the amount,	1225
<u>if</u> any, <u>by</u> which Mixed Waste Process Residue <u>in</u> any period of	1228
measurement exceeds the allowable amount under the <u>Mixed</u> Waste	1229
Recovery Efficiency Guarantees <u>and</u> the Mixed Waste Aggregate	1230
Efficiency Guarantee.	1230
<u>"Excess Recyclable Materials Process Residue"</u> means the	1233
amount, <u>if</u> any, <u>by</u> which Recyclable Materials Process <u>Residue</u> in	1236

any period <u>of</u> measurement exceeds the allowable <u>amount</u> under the	1238
Recyclable Materials Residue Quantity Guarantee.	1238
<u>"Excess Residue"</u> means Excess Recyclable Materials	1241
Process Residue, <u>Excess Mixed Waste Process Residue</u> and Excess	1243
Yardwaste Residue.	1243
<u>"Excess Yardwaste Process Residue"</u> means the amount, <u>if</u>	1247
any, <u>by</u> which Yardwaste Process Residue in any period <u>of</u>	1249
measurement <u>exceeds</u> the allowable amount under the Yardwaste	1250
Residue Quantity Guarantee.	1250
<u>"Extension Period"</u> means <u>the</u> period commencing on the	1253
day <u>after</u> the Scheduled Acceptance Date and <u>ending</u> 180 days of	1255
following <u>the</u> Scheduled Acceptance Date <u>or</u> , in the event of one	1257
or more delays <u>caused</u> by Uncontrollable Circumstances <u>or</u> City	1259
Breach, <u>the</u> date which is the next business day <u>following</u> the	1261
date calculated by adding to such ending date <u>the</u> aggregate	1262
number of days of such delay.	1262
<u>"Extra Construction Work"</u> means any Construction Work	1265
ordered by the City in addition <u>to</u> the Original Construction	1266
Work.	1266
<u>"Extra Payment"</u> means payment due the Company <u>as</u> <u>a</u> Fixed	1270
Purchase Price Adjustment <u>for</u> Extra Construction Work, <u>computed</u>	1272
in accordance with subsection 4.7(B) hereof.	1272
<u>"Facility"</u> means <u>the</u> materials recycling, <u>processing</u> and	1277
composting <u>facility</u> ( <u>including</u> the Recyclable Materials	1279
Processing Train, <u>the</u> Mixed Waste Processing Train, <u>the</u> Yardwaste	1281
Processing Train <u>and</u> the Household Hazardous Waste Train) <u>and</u> all	1283

roadways, landscaping, improvements, appurtenant structures, 1284  
additions, replacements and other Capital Improvements thereto 1286  
and machinery and equipment therefor, all as more particularly 1287  
described in the Design Requirements, to be constructed and 1288  
installed on the Facility Site, purchased by the City, and 1291  
operated and maintained by the Company pursuant to this 1292  
Agreement. 1292

"Facility Obligations" means any obligations issued 1296  
under the Facility Obligation Transaction Agreements to finance 1297  
the Facility. 1297

"Facility Obligation Transaction Agreements" means all 1300  
resolutions, ordinances, indentures, and agreements pursuant to 1302  
which the City issues Facility Obligations. 1303

"Facility Operation and Maintenance Manual" has the 1306  
meaning set forth in subsection 7.1(C) hereof. 1307

"Facility Site" means the real property located in the 1311  
City upon which the Facility is to be constructed, which shall be 1313  
located and approved pursuant to the provisions of Article III 1316  
hereof. 1316

"Fees-And-Costs" means reasonable fees and expenses of 1319  
employees, attorneys, architects, engineers, expert witnesses, 1320  
contractors, consultants and other persons, and costs of 1321  
transcripts, printing of briefs and records on appeal, copying 1323  
and other reimbursed expenses, and expenses of any Legal 1324  
Proceeding. 1324

"Final Completion" has the meaning <u>s</u> pecified in Section 5.5 hereof.	1327
"Final Determination" <u>m</u> eans a judgment, order, or other <u>d</u> etermination in any Legal Proceeding which has become final <u>a</u> fter all appeals or after the expiration of all time for appeal.	1330
"Final Punch List" <u>h</u> as the meaning specified in subsection 5.5(A) hereof.	1331
"Fixed Purchase Price" <u>h</u> as the meaning specified in Section 6.3 hereof.	1332
"Fixed Purchase Price Adjustment" <u>h</u> as the meaning specified in Section 6.3 hereof.	1335
"Guarantor" means _____ and its <u>s</u> uccessors and assigns permitted under the Guaranty Agreement.	1335
"Guaranty Agreement" or "Guaranty" means <u>t</u> he Guaranty Agreement <u>t</u> o be entered into concurrently herewith <u>f</u> rom the Guarantor <u>t</u> o the City <u>s</u> ubstantially <u>i</u> n the form provided <u>i</u> n the Transaction Agreement Forms, <u>a</u> s the same may be amended from <u>t</u> ime to time in accordance therewith.	1338
"Hazardous Substance" <u>h</u> as the meaning given such term <u>i</u> n CERCLA, <u>t</u> he Carpenter-Presley-Tanner Hazardous Substance <u>A</u> ccount Act, ( <u>C</u> alifornia Health and Safety Code §25300 et seq.) ( <u>W</u> est 1984 & Supp. 1991), <u>a</u> nd <u>T</u> itles 22 and 26 of the California Code of Regulations <u>a</u> nd other <u>r</u> egulations promulgated thereunder.	1341
"Hazardous Waste" means <u>(a)</u> any waste which by reason of its <u>q</u> uality, concentration, <u>c</u> omposition <u>o</u> r physical, chemical <u>o</u> r infectious characteristics <u>m</u> ay do either of the following: cause,	1342



or significantly contribute to, an increase in mortality or an  
 increase in serious irreversible, or incapacitating reversible,  
illness, or pose a substantial threat or potential hazard to  
 human health or the environment when improperly treated, stored,  
 transorted or disposed of or otherwise mismanged, or any waste  
 which is is defined or regulated as a hazardous waste, toxic  
 substance, hazardous chemical substance or mixture, or asbestos  
 under Applicable Law, as amended from time to time including, but  
 not limited to: (1) the Resource Conservation and Recovery Act  
and the regulations contained in 40 CFR Parts 260-281; (2) the  
 Toxic Substances Control Act (15 U.S.C. Sections 2601 et seq.)  
and the regulations contained in 40 CFR Parts 761-766; (3) the  
 California Health and Safety Code, §25117. (West 1984 & Supp.  
 1991); (4) the California Public Resources Code, §40141; and (5)  
 future additional or substitute federal, State or local laws  
 pertaining to the identification, treatment, storage or disposal  
of toxic substances or hazardous wastes; or (b) radioactive  
 materials which are source, special nuclear or by-product  
material as defined by the Atomic Energy Act of 1954 (42 U.S.C.  
 Section 2011 et seq.) and the regulations contained in 10 CFR  
 Part 40; provided, however, that Hazardous Waste shall not  
 include Acceptable Household Hazardous Waste.

"Hazardous Waste Disposal Guarantee" means the covenants  
 and guarantees of the Company set forth in Section 9.8 hereof.

"Household Hazardous Waste Throughput Guarantee" has the  
 meaning specified in Section 8.3 hereof.

"Household Hazardous Waste Throughput Shortfall" has the 1427  
meaning specified in subsection 8.3(D) hereof. 1428

"Household Hazardous Waste Train" means the portion of | 1431  
the Facility constituting the train for the handling and transfer | 1434  
of Household Hazardous Waste, including equipment, machinery, 1436  
improvements and related receiving, handling and storage areas. 1438

"Independent Engineer" means a nationally recognized 1441  
engineer or firm of engineers having experience with respect to 1442  
the design, construction, testing, operation and maintenance of 1443  
solid waste disposal and materials recovery facilities, which is 1444  
selected by the parties for mediation purposes pursuant to 1444  
Section 12.10 hereof. 1444

"Initial Term" has the meaning set forth in Section 13.1 1447  
hereof. 1447

"Insurance Requirement" means any rule, regulation, 1450  
code, or requirement issued by any fire insurance rating bureau 1452  
or any body having similar functions or by any insurance company 1454  
which has issued a policy of Required Construction Period 1455  
Insurance Coverage or Required Operation Period Insurance under 1456  
this Agreement, as in effect during the term hereof. 1457

"Interim Operations" means Facility operations conducted 1460  
during the Interim Operations Period. 1460

"Interim Operations Period" means the period beginning 1463  
on the commencement of shakedown operations and ending on the 1464  
Purchase Date. 1464

"Labor and Materials Bond" means the bond, in an amount equal to the Purchase Price which guarantees the Company's timely payment for all labor, materials, supplies, implements, and machinery and equipment to be furnished with respect to the Facility.

"Law Compliance Guarantee" means the covenants and guarantees of the Company set forth in Section 7.4 hereof and Appendix 13 (Law Compliance) hereto.

"Legal Entitlement" means all permits, licenses, approvals, authorizations, consents and entitlements of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person specifically with respect to the Project or the performance of any obligation under this Agreement or the matters covered hereby.

"Legal Proceeding" means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Agreement.

"Lien" means any and every lien against the Facility the Facility Site, the Construction Work, the Operation Services or against any monies due or to become due from the City to the Company under this Agreement, for or on account of the Construction Work or the Operation Services, including without limitation mechanics', materialmen, laborers and lenders liens.

"Load" means the standard size bulk shipment of Recovered Products as sent to the Secondary Materials Market.

"Loss-and-Expense" means any and all loss, liability, 1516  
obligation, damage, delay, penalty, judgment, deposit, cost, 1518  
expense, claim, demand, charge, tax, or expense, including all 1520  
Fees-And-Costs, except as excluded or limited by Section 12.8 1521  
hereunder or otherwise by this Agreement. 1522

"Marketing Plan" has the meaning set forth in Section 1525  
9.1 hereof. 1525

"Material Sales Revenues" means all monies and the value 1527  
of all goods received in a barter exchange for the sale and 1529  
delivery of Recovered Materials, less an amount equal to the 1531  
cost, if any, incurred by the Company in transporting the 1534  
Recovered Materials to the Materials Purchasers. 1534

"Materials Purchase Agreement" means a contract or 1537  
arrangement between the Company and a Materials Purchaser for the 1539  
purchase of Recovered Materials. 1539

"Materials Purchaser" means a buyer or his or her agent 1542  
who purchases Recovered Materials for value or barter for 1542  
recycling or reuse purposes. 1542

"Mechanical Completion" has the meaning specified in 1545  
Section 5.2 hereof. 1546

"Mixed Recyclables" has the meaning specified in the 1549  
definition of Recyclable Materials herein. 1550

"Mixed Waste Aggregate Recovery Efficiency Guarantee" 1552  
has the meaning set forth in Appendix 13 hereto. 1553

"Mixed Waste Process Residue" means that portion of 1556  
Acceptable Mixed Waste which is accepted and processed at the 1558

Facility <u>by</u> the Mixed Waste Processing Train <u>but</u> is not converted	1560
<u>into</u> Recovered Mixed Waste Materials.	1561
<u>"Mixed Waste Processing Train"</u> means <u>the</u> portion of the	1564
Facility <u>constituting</u> the train for the processing <u>of</u> Acceptable	1566
Mixed Waste, <u>including</u> the Acceptable Mixed Waste processing	1567
<u>equipment</u> , machinery, <u>improvements</u> and related receiving,	1569
<u>handling</u> and storage areas.	1570
<u>"Mixed Waste Product Quality Guarantee"</u> <u>has</u> the meaning	1573
specified in Appendix 13 hereto.	1573
<u>"Mixed Waste Recovery Efficiency Guarantees"</u> <u>has</u> the	1576
meaning specified <u>in</u> Appendix 13 hereto.	1577
<u>"Mixed Waste Throughput Guarantee"</u> <u>has</u> the meaning	1580
specified in Section 8.3 hereof.	1580
<u>"Mixed Waste Throughput Shortfall"</u> <u>has</u> the meaning	1583
specified in <u>subsection</u> 8.3(B) hereof.	1584
<u>"Noise Control Guarantee"</u> <u>has</u> the meaning specified <u>in</u>	1588
Appendix 13 hereto.	1588
<u>"Non-City Acceptable Waste"</u> <u>means</u> any Acceptable Waste	1591
not generated within the City's geographical limits.	1591
<u>"Notice to Proceed"</u> <u>has</u> the meaning specified in Section	1594
4.2 hereof.	1594
<u>"Odor Control Guarantee"</u> <u>has</u> the meaning specified in	1597
<u>Appendix</u> 13 hereto.	1598
<u>"Operating Day"</u> <u>means</u> each calendar day, <u>including</u>	1602
holidays, <u>other</u> than Sundays.	1603

"Operation Period" means the period from and including 1606  
the Purchase Date to and including the last day of the Term of 1608  
this Agreement. 1608

"Operation Price Index" has the meaning specified in 1611  
Appendix 11 hereto. 1611

"Operation Services" means everything required to be 1613  
furnished and done for and relating to the Facility by the 1616  
Company pursuant to the Agreement during the Operations Period, 1618  
except Construction Work. Operation Services shall include the 1620  
employment and furnishing of all labor, materials, equipment, 1621  
supplies, tools, storage, transfer, transportation, insurance, 1623  
marketing, sales, delivery and other things and services of every 1624  
kind whatsoever necessary for the full performance and completion 1625  
of the Company's operation, maintenance, processing, composting 1626  
and related obligations under this Agreement, and all of the 1627  
Company's administrative, accounting, record-keeping, 1629  
notification and similar responsibilities of every kind 1630  
whatsoever under this Agreement pertaining to such obligations. 1631  
A reference to "Operation Services" shall mean "any part and all 1632  
of the Operation Services" unless the context otherwise requires. 1633

"Original Construction Work" means all Construction Work 1636  
required under this Agreement as of the Contract Date. 1637

"Overdue Rate" means the maximum rate of interest 1640  
permitted by the laws of the State, if applicable, or the Prime 1643  
Rate plus 1%, whichever is lower. 1645

"Paper" has the meaning specified in the definitions of	1648
<u>Acceptable Recyclable Materials</u> herein.	1649
"Performance Bond" means the bond, in an amount <u>equal</u> to	1652
the Purchase Price, which guarantees the Company's full <u>and</u>	1653
faithful performance of the Construction Work <u>to</u> be performed	1654
hereunder in accordance <u>with</u> all requirements hereof.	1655
"Performance Guarantees" <u>means</u> each of the following	1658
guarantees <u>defined</u> as indicated herein:	1659
<u>Recyclable Materials Guarantees</u>	1662
Recyclable Materials Throughput Guarantee (Section 8.3)	1665
Recyclable Materials Residue Quantity Guarantee	1668
(Appendix 13)	1669
<u>Mixed Waste Guarantees</u>	1672
Mixed Waste Throughput Guarantee (Section 8.3)	1674
Mixed Waste Recovery Efficiency Guarantees (Appendix 13)	1677
Mixed Waste Aggregate Recovery Efficiency Guarantee	1680
(Appendix 13)	1681
<u>Yard Waste Guarantees</u>	1684
Yardwaste Throughput Guarantee (Section 8.3)	1686
Yardwaste Residue Quantity Guarantee (Appendix 13)	1688
<u>Recovered Product Quality Guarantees</u>	1690
Recyclable Materials Product Quality Guarantee	1693
(Appendix 13)	1694
Mixed Waste Product Quality Guarantee (Appendix 13)	1697
Compost Quality Guarantee (Appendix 13)	1699
<u>Household Hazardous Waste Guarantee</u>	1701
Household Hazardous Waste Throughput Guarantee	1704
(Section 8.3)	1705
<u>Environmental Guarantees</u>	1708
Law Compliance Guarantee (Section 7.4, Appendix 13)	1710
Noise Control Guarantee (Appendix 13)	1712
Odor Control Guarantee (Appendix 13)	1714

Dust Control Guarantee (Appendix 13)	1716
<u>Cleanliness Guarantee (Appendix 13)</u>	1718
<u>Marketing and Disposal Guarantees</u>	1720
<u>Bypass Waste Disposal Guarantee (Section 8.3)</u>	1722
<u>Recovered Product Marketing Guarantee (Sections 9.1, 9.2, 9.3 and 9.4)</u>	1725
<u>Reject Disposal Guarantee (Section 9.5)</u>	1726
<u>Residue Disposal Guarantee (Section 9.6)</u>	1729
<u>Hazardous Waste Disposal Guarantee (Section 9.8)</u>	1731
<u>"Performance Obligations" means the obligations of the</u>	1733
<u>Company set forth in Section 8.4 hereof in the event of unexcused</u>	1737
<u>non-compliance with the Performance Guarantees.</u>	1739
<u>"Permitted Encumbrance" means (1) any mortgage or</u>	1740
<u>security interest on the Project given to secure any construction</u>	1743
<u>loan for the Project obtained by the Company, which mortgage or</u>	1744
<u>security interest may be outstanding only during the Development</u>	1747
<u>Period and the Construction Period, (2) utility, access and other</u>	1748
<u>easements and rights of way that will not interfere with or</u>	1751
<u>impair the value or use of the Project as herein provided, and</u>	1753
<u>(3) any mechanic's, laborer's, materialman's, supplier's or</u>	1756
<u>vendor's lien or right in respect thereof if payment is not yet</u>	1757
<u>due and payable and for which statutory lien rights exist.</u>	1759
<u>"Plant Manager" has the meaning specified in subsection</u>	1760
<u>7.1(B) hereof.</u>	1763
<u>"Prime Rate" means the interest rate announced from time</u>	1763
<u>to time by Bank of America, N.A. or any successor thereto as its</u>	1767
<u>"prime rate."</u>	1769



"Process Train" means the Recyclable Materials Process Train, the Mixed Waste Process Train, the Yardwaste Process Train and the Household Hazardous Waste Process Train, as applicable.	1772 1774 1775
"Program" means the City of Sacramento residential recycling program as it may be managed, operated and modified by the City from time to time.	1778 1780 1780
"Prohibited Medical Waste" means any medical or infectious waste prohibited or restricted under Applicable Law from being received or processed by the Facility.	1783 1783 1784
"Project" means the Facility and the Facility Site.	1788
"PS-90" means the "Scrap Specifications Circular 1990; Guidelines for Paper Stock: PS-90" published by the Paper Stock Institute of Scrap Recycling Industries, Inc.	1791 1793 1793
"Purchase Period" means the period from and including the Acceptance Date to and including the date preceding the Purchase Date.	1796 1797 1797
"Purchase Price" means the sum of the Fixed Purchase Price and the Fixed Purchase Price Adjustments, as adjusted by Change Orders.	1800 1802 1802
"Purchase Price Index" has the meaning specified in Appendix 10 hereto.	1805 1805
"Rating Service" means Moody's Investors Service, Inc. Standard and Poor's Corporation or any of their successors.	1809 1811
"Receiving Hours" has the meaning set forth in subsection 8.6(A) hereof.	1813 1813

"Recovered Household Hazardous Waste Materials" means	1816
<u>recyclable</u> materials contained <u>in</u> Acceptable Household Hazardous	1818
Waste <u>that</u> have been recovered by the Household Hazardous Waste	1819
Processing Train <u>and</u> marketed <u>in</u> accordance with this Agreement	1821
and the <u>requirements</u> of Materials Purchasers.	1822
"Recovered Materials" means Recovered Recyclable	1825
Materials, <u>Recovered</u> Mixed Waste Materials, <u>and</u> Recovered	1827
Household Hazardous Waste Materials.	1827
"Recovered Mixed Waste Materials" means <u>recyclable</u>	1831
materials contained in Acceptable Mixed Waste <u>that</u> have been	1832
recovered by the Mixed Waste Processing Train and <u>processed</u> into	1833
marketable form in accordance with <u>this</u> Agreement and the	1834
requirements of Materials Purchasers.	1834
"Recovered Mixed Waste Materials Product Quality	1836
Guarantee" <u>has</u> the meaning specified in Appendix 13 hereto.	1837
"Recovered Products" means Recovered Materials and	1840
Compost.	1840
"Recovered Product Market" means the Secondary Materials	1843
Market and <u>the</u> Compost Market.	1844
"Recovered Product Marketing Guarantee" means the	1847
covenants and guarantees of the Company <u>set</u> forth in Sections	1848
9.1, 9.2, 9.3 and 9.4 hereof.	1848
"Recovered Product Purchase Agreements" means Materials	1851
Purchase Agreements and <u>Compost</u> Purchase Agreements.	1852
"Recovered Product Purchasers" means Materials	1855
Purchasers <u>and</u> Compost Purchasers.	1856

"Recovered Product Quality Guarantee" means the	1859
Recovered Recyclable Materials Product Quality Guarantee, the	1860
Recovered Mixed Waste Materials Product Quality Guarantee, and	1861
the Compost Quality Guarantee, as applicable.	1862
"Recovered Product Sales Revenues" means Materials Sales	1865
Revenues and Compost Sales Revenues.	1866
"Recovered Recyclable Materials" means Source-Separated	1869
Recyclable Materials that have been received and processed by the	1870
Recyclable Materials Processing Train into marketable form in	1871
accordance with this Agreement and the requirements of Materials	1873
Purchasers.	1873
"Recovered Recyclable Materials Product Quality	1875
Guarantees" has the meaning specified in Appendix 13 hereto.	1876
"Recyclable Materials Process Residue" means that	1879
portion of Acceptable Recyclable Materials which is accepted and	1882
processed at the Facility by the Recyclable Materials Processing	1882
Train but is not converted to Recovered Materials due to	1884
spoilage, breakage, wastage or other effects of processing.	1885
"Recyclable Materials Processing Train" means the	1888
portion of the Facility constituting the train for the processing	1889
of Acceptable Recyclable Materials, including the Acceptable	1891
Recyclable Materials processing equipment, machinery,	1893
improvements and related receiving, handling and storage areas.	1894
"Recyclable Materials Residue Quantity Guarantee" has	1897
the meaning specified in Appendix 13 hereto.	1898

"Recyclable Materials Throughput Guarantee" <u>has</u> the meaning specified in Section 8.3 hereof.	1901
"Recyclable Materials Throughput Shortfall" <u>has</u> the meaning specified in subsection 8.3(A) hereof.	1904
"Rejected Deliveries" means <u>deliveries</u> of <u>materials</u> intended to constitute <u>Acceptable Recyclable Materials</u> which <u>are</u> rejected at the Facility <u>as</u> a whole prior to processing in accordance with Article VIII hereof.	1908
"Reject Disposal Guarantee" <u>means</u> the covenants and guarantees <u>of</u> the Company set forth in Section 9.5 hereof.	1910
"Rejected Load" <u>means</u> a Load of Recovered Products that <u>a</u> Recovered Products Purchaser refuses to accept.	1911
"Rejects" means <u>waste materials</u> other than Acceptable Recyclable Materials <u>which</u> are contained within Acceptable Recyclable Materials accepted <u>at</u> the Facility by the Company <u>and</u> which are segregated from Acceptable Recyclable Materials prior to or during processing.	1913
"Registered Hauler" means <u>any</u> person registered with the <u>City</u> and authorized by the <u>City</u> to deliver waste to the <u>Facility</u> <u>whose</u> <u>name</u> appears on the list of Registered Haulers <u>or</u> who is otherwise directed by the City to deliver <u>Acceptable Waste</u> to the Facility <u>from</u> any source, <u>whether</u> within or outside the City, <u>and</u> whose authorization is made evident to the Company by a pass, vehicle sticker or other method designated by the City to identify <u>waste</u> haulage vehicles. <u>Registered Haulers</u> shall	1916

<u>include City employees operating City collection vehicles</u>	1944
<u>delivering Acceptable Waste to the Facility.</u>	1944
<u>"Renewal Term" has the meaning specified in Section 13.3</u>	1947
<u>hereof.</u>	1947
<u>"Removal Vehicle" means any vehicle or rolling stock</u>	1950
<u>operated by the Company or any Subcontractor for the</u>	1952
<u>transporation of Recovered Products or Residue produced by the</u>	1954
<u>Facility.</u>	1954
<u>"Required Construction Period Insurance" has the meaning</u>	1957
<u>specified in Appendix 8 hereto.</u>	1957
<u>"Required Operation Period Insurance" has the meaning</u>	1960
<u>specified in Appendix 9 hereto.</u>	1960
<u>"Residue" means Recyclable Materials Process Residue,</u>	1963
<u>Mixed Waste Process Residue and Yardwaste Process Residue.</u>	1965
<u>"Residue Disposal Guarantee" means the covenants and</u>	1968
<u>guarantees of the Company set forth in Section 9.6 hereof.</u>	1969
<u>"Resource Conservation and Recovery Act" or "RCRA" means</u>	1973
<u>the Resource Conservation and Recovery Act, 42 U.S.C.A. § 6901 et</u>	1973
<u>seq. (West 1983 &amp; Supp. 1989), as amended and superseded.</u>	1975
<u>"Scheduled Acceptance Date" means the day _____ [TO</u>	1978
<u>BE BID] consecutive calendar days following the Start</u>	1979
<u>Construction Date, as adjusted due to Uncontrollable</u>	1980
<u>Circumstances, City Breach, or City Change Order.</u>	1981
<u>"Secondary Materials Market" means all potential</u>	1984
<u>Materials Purchasers constituting the market from time to time</u>	1985
<u>for a particular Class of Recovered Materials.</u>	1986

<u>"Service Coordinator"</u> means <u>the</u> service coordinator for	1989
either party <u>designated</u> pursuant to subsection 8.5(B) hereof.	1990
<u>"Service Fee"</u> , <u>and</u> each of the following <u>components</u>	1994
<u>thereof</u> , <u>have</u> the meanings as described <u>to</u> such terms in Section	1997
11.1 hereof:	1997
<u>Base</u> Operation and Maintenance Charge	1999
<u>Excess</u> Recyclable Materials Processing Charge	2001
<u>Excess</u> Mixed Waste Processing Charge	2003
<u>Excess</u> Yardwaste Processing Charge	2005
<u>Allowable</u> Residue Hauling Charge	2007
<u>Waste</u> Diversion Charge	2009
<u>Pass</u> Through Cost Charge	2011
<u>Recovered</u> Recyclable Materials Charge	2013
<u>Recovered</u> Mixed <u>Waste</u> Materials Revenue Charge	2016
<u>Recovered</u> Household <u>Hazardous</u> Waste Materials	2019
Revenue Charge	2019
<u>Compost</u> Revenue Charge	2021
<u>Excess</u> Residue Credit	2023
<u>Lost</u> Revenue Credit	2025
<u>Performance</u> Liquidated Damages Credit	2027
<u>Uncontrollable</u> <u>Circumstance</u> Credit or Charge	2030
<u>Benefits</u> Accruing from Public Ownership	2032
<u>All</u> Other Service Fee Adjustments	2034
<u>"Source Separated"</u> means Acceptable Recyclable Materials	2036
<u>that</u> are separated by type either <u>prior</u> to or at the time <u>of</u>	2039
collection and then delivered <u>to</u> the Facility thus separated.	2040

"Solid Waste Enterprise Fund" means the solid waste enterprise fund established and held by the City separate from its other funds and accounts for receipts and disbursements in connection with the System.

"Start Construction Date" means the first date on which all of the Start Construction Date Conditions shall be satisfied or waived, as agreed to in writing by the parties pursuant to Section 3.3 hereof.

"Start Construction Date Conditions" has the meaning specified in Section 3.2 hereof.

"State" means the State of California.

"Subcontract" means an agreement between the Company and a Subcontractor, or between two Subcontractors, as applicable.

"Subcontractor" means every person (other than employees of the Company) employed or engaged by the Company or any person directly or indirectly in privity with the Company (including every sub-subcontractor of whatever tier) for any portion of the Construction Work or Operation Services, whether for the furnishing of labor, materials, equipment, services, or otherwise.

"System" means the City of Sacramento solid waste management system, including the Facility, the City Landfill, any other City owned, operated or contracted recycling, transfer and disposal facilities or services, and all other facilities or contractual arrangements of the City used to provide municipal

solid waste management services for solid waste generated in the 2088  
City. 2088

"System Operating Expenses" means all costs and expenses 2091  
incurred in connection with the operation, maintenance and 2094  
administration of the System, including without limitation 2095  
payment of the Service Fee and all other amounts due to the 2097  
Company hereunder not of a capital nature, all costs of the City 2099  
incurred in operating the City Landfill and disposing of solid 2100  
waste and Residue at a Designated Disposal Site and payments with | 2102  
respect to reasonably required operation reserves. | 2102

"System Revenues" means all revenues derived by the City 2106  
in connection with the operation of the System. 2106

"Tax" means any tax, fee, levy, duty, impost, charge, 2111  
surcharge, assessment or withholding, or any payment in lieu 2113  
thereof, and any related interest, penalties or additions to tax. 2117

"Technology Supply Agreements" means (1) the Processing 2120  
Technology Supply Agreement to be entered into between 2120  
\_\_\_\_\_ (as owner of the processing technology to 2122  
be used in the Mixed Waste Processing Train) and the City, 2126  
substantially in the form set forth the Transaction Agreement 2127  
Forms, and (2) the Composting Technology Supply Agreement to be 2128  
entered into between \_\_\_\_\_ (as owner of the composting 2129  
technology to be used in the Yardwaste Processing Train) and the 2131  
City, substantially in the form set forth in the Transaction 2132  
Agreement Forms, as each may be amended or modified from time to 2133  
time in accordance therewith. 2134



"Term" has the meaning set forth in Section 13.1 hereof.	2137
"Termination Date" has the meaning set forth in Section 12.4 hereof.	2140
"Throughput Guarantee" means the Recyclable Materials Throughput Guarantee, the Mixed Waste Throughput Guarantee, the Yardwaste Throughput Guarantee and the Household Hazardous Waste Throughput Guarantee.	2140
"Throughput Performance Liquidated Damages" means the amounts so designated which are calculated in accordance with subsection 8.3(H) hereof.	2143
"Ton" means a "short ton" of 2,000 pounds.	2145
"Tonnage" means Tons of Acceptable Waste, Residue or Recovered Products, as applicable.	2146
"Transaction Agreement" means any agreement entered into by any person in connection with the transactions contemplated by this Agreement including, without limitation, any Facility Obligations Transaction Agreement and Recovered Product Agreements.	2149
"Transaction Agreement Form" means any of the Transaction Agreement forms appended to this Agreement, as the same may be amended from time to time in accordance with the terms hereof.	2150
"Unacceptable Waste" means Hazardous Waste; Prohibited Medical Waste; dead animals over 10 pounds in weight; loads of fly and bottom ash, foundry sand, rocks, rubble; explosives, ordnance, highly flammable substances, and noxious materials and	2154
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lead-acid batteries; drums and closed containers (unless washed, 2188  
ends removed, and crushed); liquid waste, oil, sludges and human 2190  
wastes; large items of machinery and equipment from commercial or 2192  
industrial sources, such as hardened gears, shafts, motor 2195  
vehicles or major components thereof, agricultural equipment, 2196  
trailers, marine vessels and steel cable; hot loads; loads of 2200  
whole tires; loads of mattresses and bedsprings; any object 2202  
larger than four feet square; and any waste which the Facility is 2204  
prohibited from receiving under Applicable Law (except that 2206  
Unacceptable Waste shall not include Acceptable Household 2207  
Hazardous Waste). 2207

"Uncontrollable Circumstance" means any of the following 2209  
acts, events or conditions, whether affecting the Facility, the 2209  
City, the Company, or any of the City's subcontractors or the 2210  
Company's Subcontractors' to the extent that it materially and 2211  
adversely affects the ability of either party to perform any 2211  
obligation under the Agreement (except for payment obligations), 2212  
if such act, event or condition is beyond the reasonable control 2214  
and is not also the result of the willful or negligent act, error 2215  
or omission or failure to exercise reasonable diligence on the 2216  
part of the party relying thereon as justification for not 2218  
performing an obligation or complying with any condition required 2219  
of such party under the Agreement; provided, however, that the 2221  
contesting in good faith or the failure in good faith to contest 2221  
such action or inaction shall not be construed as willful or 2222

negligent action or a lack <u>of</u> reasonable diligence of either	2223
<u>party</u> :	2224
<u>(1)</u> an act of God (but not <u>including</u> reasonably	2228
anticipated weather <u>conditions</u> for the geographic area of the	2229
Facility), landslide, <u>lightning</u> , <u>earthquake</u> , fire, explosion,	2231
<u>flood</u> , sabotage or similar occurrence, acts of a public	2232
enemy, <u>extortion</u> , war, blockade or insurrection, riot <u>or</u>	2234
civil disturbance;	2234
<u>(2)</u> a Change in Law; and	2236
<u>(3)</u> the failure <u>of</u> any appropriate federal, State, <u>City</u>	2240
or local public agency <u>or</u> private utility having operational	2241
jurisdiction <u>in</u> the area in which the Facility is located <u>to</u>	2243
provide and maintain Utilities <u>to</u> the Facility <u>Site</u> which are	2245
required for the construction, shakedown, testing <u>or</u>	2246
operation of the Facility;	2246
<u>It</u> is specifically <u>understood</u> <u>that</u> none of the following acts or	2250
conditions <u>shall</u> constitute Uncontrollable Circumstances, <u>and</u>	2252
shall not entitle <u>the</u> Company to any price, <u>fee</u> , schedule or	2254
other adjustments <u>or</u> relief hereunder: <u>(a)</u> general economic	2256
conditions, <u>interest</u> or inflation <u>rates</u> , <u>or</u> currency fluctuation;	2259
<u>(b)</u> changes in the financial <u>condition</u> of the City, <u>the</u> Company,	2262
<u>the</u> Guarantor, any <u>of</u> their Affiliates or any Subcontractor	2264
<u>affecting</u> their ability <u>to</u> perform their respective obligations;	2266
<u>(c)</u> the consequences of error, <u>neglect</u> or omissions <u>by</u> the	2269
Company, <u>the</u> Guarantor, <u>any</u> of their Affiliates or any	2271
Subcontractor of their tier <u>in</u> the design, <u>construction</u> or	2273

operation of the Facility of <u>in</u> the performance of any other work	2274
hereunder, (d) the <u>failure</u> of the Company to secure patents or	2275
licenses in connection with the technology <u>necessary</u> to perform	2276
<u>its</u> obligations hereunder, (e) union or labor work rules,	2278
<u>requirements</u> or demands which have the effect of increasing the	2279
number of employees <u>employed</u> at the Facility or otherwise	2281
increasing the cost or burden to the Company <u>of</u> constructing,	2282
<u>operating</u> and maintaining the Facility, <u>marketing</u> Recovered	2284
Products or disposing of Residue; (f) strikes, work stoppages or	2285
other labor disputes <u>or</u> disturbances occurring with respect to	2286
any activity <u>performed</u> or to be performed on or off the Facility	2287
Site <u>by</u> the Company or any of the Company's Subcontractor or	2288
suppliers, <u>whether</u> during development, construction <u>or</u>	2290
operations; (g) any failure of any Subcontractor or supplier to	2291
furnish <u>labor</u> , materials, service <u>or</u> equipment for any reason;	2293
(h) equipment failure; (i) any <u>impact</u> of prevailing wage law,	2295
<u>customs</u> or practices on the Company's construction, operation,	2296
transportation or marketing <u>costs</u> ; (j) the existence or non-	2298
existence of markets <u>for</u> Recovered Products, <u>the</u> necessity of	2300
incurring expense <u>to</u> market or dispose of Unprofitable Recovered	2301
Products <u>or</u> the prices, <u>quality</u> requirements, transportation	2303
distances or other <u>terms</u> , conditions or other factors affecting	2304
the <u>availability</u> of Secondary Materials Markets <u>or</u> willingness of	2306
Materials Purchasers <u>to</u> accept delivery of Recovered Products;	2307
(k) the existence <u>or</u> discovery of any surface <u>or</u> subsurface	2310
condition <u>at</u> the Facility Site <u>or</u> any proposed Facility Site	2312

(including Hazardous Waste, Hazardous Substances or 2314  
archaeological finds); (l) any increase for any reason in the 2316  
rates charged for the use of Utility services; (m) any increase 2317  
for any reason in premiums charged by the Company's insurers or 2317  
the insurance markets generally for the Required Construction 2319  
Period Insurance; or the Required Operation Period Insurance or 2321  
(n) any act, event or circumstance occurring outside of the 2321  
United States. 2321

"Unprofitable Compost" means Compost, whether or not it 2324  
satisfies the applicable Compost Specifications set forth in 2326  
Appendix 13 hereto or the other requirements of this Agreement, 2327  
which, taking into account associated costs (including 2330  
transportation and disposal costs incurred) and revenues, is sold 2332  
or disposed of at a net economic loss. 2333

"Unprofitable Recovered Materials" means any Recovered 2336  
Materials, whether or not they satisfy the applicable Recovered 2338  
Materials Design Requirements set forth in Appendix 13 hereto and 2339  
or the other requirements of the Agreement which, taking into 2342  
account all associated costs (including transportation and 2344  
disposal costs incurred) and revenues, are sold disposed of at a 2346  
net economic loss. 2346

"Unprofitable Recovered Products" means Unprofitable 2349  
Recovered Materials and Unprofitable Compost. 2350

"USEPA" or "EPA" means the United States Environmental 2353  
Protection Agency. 2353

"Utilities" means any and all utility services and 2357  
installations whatsoever (including gas, water, sewer, 2358  
electricity, telephone, and telecommunications), and all piping, 2360  
wiring, conduit, and other fixtures of every kind whatsoever 2362  
related thereto or used in connection therewith. 2363

"Waste Type" means each of the types of waste 2366  
constituting Acceptable Waste as set forth in the definition 2367  
thereof. 2367

"Yardwaste Process Residue" means that portion of 2370  
Acceptable Yardwaste which is accepted and processed at the 2371  
Facility by the Yardwaste Processing Train but is not converted 2373  
into Compost. 2373

"Yardwaste Processing Train" means the portion of the 2377  
Facility constituting the train for the processing of Acceptable 2379  
Yardwaste, including the Acceptable Yardwaste processing and 2381  
composting equipment, machinery, improvements and related 2384  
receiving, handling and storage areas. 2385

"Yardwaste Residue Quantity Guarantee" has the meaning 2388  
specified in Appendix 13 hereto. 2388

"Yardwaste Throughput Guarantee" has the meaning 2391  
specified in Section 8.3 hereof. 2391

"Yardwaste Throughput Shortfall" has the meaning 2394  
specified in subsection 8.3(C) hereof. 2394

SECTION 1.2. INTERPRETATION. In this Agreement, unless 2400  
the context otherwise requires: 2401

(A) <u>References Hereto.</u> The terms "hereby," "hereof,"	2404
"herein," "hereunder" and <u>any</u> similar terms refer to this	2405
<u>Agreement</u> , and the <u>term</u> "hereafter" means after, and the <u>term</u>	2408
"heretofore" means <u>before</u> , the Contract Date.	2409
(B) <u>Gender and Plurality.</u> Words of the masculine	2412
gender <u>mean</u> and include correlative words of the feminine and	2413
<u>neuter</u> genders and words importing the singular number <u>mean</u> and	2415
include <u>the</u> plural number and vice versa.	2416
(C) <u>Persons.</u> Words importing persons <u>include</u> firms,	2420
companies, associations, general partnerships, limited	2420
<u>partnerships</u> , trusts, business trusts, corporations <u>and</u> other	2422
legal entities, including public bodies, as well as individuals.	2423
(D) <u>Headings.</u> The <u>table</u> of contents and <u>any</u> headings	2428
preceding the <u>text</u> of the Articles, Sections and subsections <u>of</u>	2430
this Agreement <u>shall</u> be solely for convenience of reference and	2431
<u>shall not</u> constitute a part of this Agreement, nor <u>shall they</u>	2433
affect its meaning, construction or effect.	2433
(E) <u>Entire Agreement.</u> This Agreement contains <u>the</u>	2437
entire agreement between the parties hereto with <u>respect</u> to the	2438
transactions contemplated by this Agreement and <u>nothing</u> in this	2439
Agreement <u>is</u> intended to confer on any person other than the	2440
parties hereto and <u>their</u> respective permitted successors <u>and</u>	2442
assigns hereunder <u>any</u> rights or <u>remedies</u> under or by reason of	2444
this <u>Agreement</u> . <u>Without</u> limiting the generality <u>of</u> the	2447
foregoing, this Agreement shall <u>completely</u> and fully supersede	2448
all other understandings and <u>agreements</u> among the parties with	2449

respect to such transactions, including those contained in the 2451  
City's RFP for the Facility, the proposal of the Company 2452  
submitted in response thereto, and any amendments or supplements 2453  
to such request or to such proposal. 2454

(F) Adequacy of Price and Schedule. The Company has 2457  
reviewed carefully the Design Requirements and all other 2457  
documents forming part of this Agreement, as existing on the 2458  
Contract Date. Subject to the terms of this Agreement, the 2460  
Company agrees that it can perform the Construction Work for the 2460  
Purchase Price as required under the Design Requirements and can 2462  
achieve Acceptance on or before the Scheduled Acceptance Date. 2463

(G) Completeness of Design Requirements. The Design 2466  
Requirements and all other documents forming part of this 2466  
Agreement are intended to supplement each other. The Design 2469  
Requirements are intended to include the basic design principles, 2469  
concepts and requirements for the Construction Work but do not 2470  
include the detailed design or indicate or describe each and 2471  
every item required for full performance of the physical 2471  
Construction Work. The Company agrees to perform all necessary 2475  
detailed design work and to furnish and perform, without 2477  
additional compensation of any kind, all Construction Work 2477  
indicated on, or reasonably inferable from, any one such document 2478  
as if required by all other documents and Design Requirements 2479  
relating thereto. 2479

(H) Representative Detail. All indications, notations, 2482  
schedules, or details in this Agreement specifically applicable 2483



to one or a number of similar situations, materials or processes, 2483  
or shown as typical or representative, shall apply to all similar 2484  
situations, materials, or processes, wherever appearing in the 2485  
Construction Work, unless this Agreement clearly requires a 2485  
contrary result. A typical or representative detail indicated on 2487  
the Design Requirements shall be the standard of workmanship and 2488  
material in all corresponding parts of the Construction Work. 2488  
Where necessary, and where inferable from the Design 2489  
Requirements, the Company shall adapt such representative detail 2490  
for all corresponding parts of the Construction Work. 2490

(I) Standards of Workmanship and Materials. Any 2493  
reference in this Agreement to materials, equipment, systems or 2493  
supplies (whether such references are in lists, notes, design 2494  
requirements, schedules, or otherwise) shall be construed to 2495  
require the Company to furnish the same in accordance with the 2495  
grades and standards indicated in this Agreement. Where this 2497  
Agreement does not specify any explicit quality or standard for 2499  
materials or workmanship, the Company shall use only workmanship 2500  
and new materials of a quality consistent with that of 2501  
workmanship and materials specified elsewhere in the Design 2502  
Requirements, and the Design Requirements are to be interpreted 2503  
accordingly. 2503

(J) Technical Standards and Codes. References in this 2507  
Agreement to all professional and technical standards, codes, and 2507  
design requirements are to the most recent published professional 2508  
and technical standards, codes, and design requirements of the 2509

institute, organization, association, authority or <u>society</u>	2510
specified, <u>all</u> as in effect as of <u>the Contract Date</u> . <u>Unless</u>	2514
otherwise specified to the contrary, (1) all such professional	2514
and technical <u>standards</u> , codes, and design requirements shall	2515
apply as if incorporated in the <u>Design Requirements</u> , and (2) if	2516
any material revision occurs, <u>to</u> the Company's knowledge, <u>after</u>	2518
the <u>Contract Date</u> , <u>and</u> prior to <u>completion</u> of the applicable	2521
Construction Work, the Company shall notify the City Engineer.	2521
<u>If</u> so directed <u>by</u> the City Engineer, the Company shall perform	2523
the applicable Construction Work in accordance with the revised	2523
professional and technical standard, code, or specification <u>as</u>	2525
long as the Company is compensated, <u>subject</u> to Cost	2526
Substantiation, <u>for</u> any additional cost <u>or</u> expense attributable	2528
to any such revision.	2528
<u>(K) Costs and Cost Substantiation.</u> <u>The Fixed Purchase</u>	2531
Price <u>and</u> the Service Fee <u>(except</u> the Pass Through Cost Charge	2533
elements <u>thereof</u> ) <u>have</u> been negotiated by the parties <u>and</u> fixed	2536
by the terms of this Agreement. <u>Any</u> other cost proposed or	2537
incurred by the Company <u>which</u> is directly or indirectly	2538
<u>chargeable</u> to the City in whole <u>or</u> in part hereunder shall be the	2540
<u>fair</u> market price <u>for</u> the good or service provided, or, <u>if</u> there	2543
is no market, shall be a just and reasonable price. <u>The</u> Company	2544
shall provide Cost Substantiation for all such other costs	2544
invoiced to the City hereunder, <u>and</u> for all estimates and	2545
quotations furnished to the City <u>hereunder</u> for the purpose of	2546
negotiating a price <u>for</u> Extra Construction Work, <u>Capital</u>	2548

Improvements, additional operation services or other additional 2548  
work necessitated on account of Uncontrollable Circumstances, 2549  
City Breach or City Change Order. 2550

(L) Processing of Waste. The terms "process," 2553  
"processed," "processing" and any similar terms, when used with 2555  
respect to Acceptable Waste, shall mean and refer to the 2556  
operation of the Facility to receive, handle, prepare and process 2557  
Acceptable Waste and (as applicable by Waste Type) recover 2560  
Recovered Products and produce Compost therefrom, all in 2561  
accordance with this Agreement and the terms hereof applicable to 2563  
each Waste Type. 2563

(M) References to Days. All references to days herein 2567  
are to calendar days, including Saturdays, Sundays and holidays, | 2568  
except as otherwise specifically provided. | 2569

(N) Counterparts. This Agreement may be executed in 2572  
any number of original counterparts. All such counterparts shall 2574  
constitute but one and the same Agreement. 2575

(O) Applicable Law. This Agreement shall be governed 2578  
by and construed in accordance with the applicable laws of the 2580  
State of California. 2580

(P) Severability. If any clause, provision, 2583  
subsection, Section or Article of this Agreement shall be ruled 2584  
invalid by any court of competent jurisdiction, then the parties 2585  
shall: (1) promptly meet and negotiate a substitute for such 2587  
clause, provision, section or Article which shall, to the 2588  
greatest extent legally permissible, effect the intent of the 2589

parties therein; (2) if necessary or desirable to accomplish item 2590  
(1) above, apply to the court having declared such invalidity for 2591  
a judicial construction of the invalidated portion of this 2592  
Agreement; and (3) negotiate such changes in, substitutions for 2594  
or additions to the remaining provisions of this Agreement as may 2596  
be necessary in addition to and in conjunction with items (1) and 2596  
(2) above to effect the intent of the parties in the invalid 2597  
provision. The invalidity of such clause, provision, subsection, 2599  
Section or Article shall not affect any of the remaining 2600  
provisions hereof, and this Agreement shall be construed and 2602  
enforced as if such invalid portion did not exist. 2604

(Q) Defined Terms. The definitions set forth in 2607  
Section 1.1 hereof shall control in the event of any conflict 2608  
with the definitions used in the recitals hereto. 2609

ARTICLE II

REPRESENTATIONS AND WARRANTIES

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE

CITY. The City represents and warrants that:

(A) Existence and Powers. The City is a municipal corporation of the State of California validly existing under the Constitution and laws of the State, with full legal right, power and authority to enter into and perform its obligations under this Agreement.

(B) Due Authorization and Binding Obligation. The City has duly authorized the execution and delivery of this Agreement. This Agreement has been duly executed and delivered by the City and constitutes a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally.

(C) No Conflict. Neither the execution nor the delivery by the City of this Agreement nor the performance by the City of its obligations hereunder nor the consummation by the City of the transactions contemplated hereby (1) conflicts with, violates or results in a breach of any law or governmental regulation applicable to the City or (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement or instrument to which the City is a party or

by which the City or any of its properties or assets are bound, 2662  
or constitutes a default under any such judgment, decree, 2663  
agreement or instrument. 2664

(D) No Litigation. There is no action, suit or other 2667  
proceeding as of the Contract Date, at law or in equity, before 2669  
or by any court or governmental authority, pending or, to the 2671  
City's best knowledge, threatened against the City which is 2673  
likely to result in an unfavorable decision, ruling or finding 2674  
which would materially and adversely affect the validity or 2675  
enforceability of this Agreement or any other agreement or 2678  
instrument to be entered into by the City in connection with the 2679  
transactions contemplated hereby, or which would materially and 2681  
adversely affect the performance by the City of its obligations 2682  
hereunder or under any such other agreement or instrument. 2683

(E) No Legal Prohibition. The City has no knowledge of 2686  
any Applicable Law in effect on the date as of which this 2687  
representation is being made which would prohibit the performance 2691  
by the City of this Agreement and the transactions contemplated 2692  
hereby. 2692

SECTION 2.2. REPRESENTATIONS AND WARRANTIES OF THE 2696  
COMPANY. The Company hereby represents and warrants that: 2698

(A) Existence and Powers. The Company is duly 2701  
organized and validly existing as a corporation under the laws of 2703  
the State of California, with full legal right, power and 2705  
authority to enter into and perform its obligations under this 2706  
Agreement. 2706

(B) Due Authorization and Binding Obligation. The Company has duly authorized the execution and delivery of this Agreement. This Agreement has been duly executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally.

(C) No Conflict. Neither the execution nor the delivery by the Company of this Agreement nor the performance by the Company of its obligations hereunder (1) conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Company, (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 the Company) or instrument to which the Company is a party or by which the Company 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 the Company.

(D) No Litigation. There is no action, suit or other proceeding as of the Contract Date, at law or in equity, before or by any court or governmental authority, pending or, to the Company's best knowledge, threatened against the Company which is

likely to result in an unfavorable decision, ruling or finding 2756  
which would materially and adversely affect the validity or 2757  
enforceability of this Agreement or any other agreement or 2759  
instrument entered into by the Company in connection with the 2762  
transactions contemplated hereby, or which would materially and 2763  
adversely affect the performance by the Company of its 2764  
obligations hereunder or by the Company under any such other 2767  
agreement or instrument. 2767

(E) No Legal Prohibition. The Company has no knowledge 2770  
of any Applicable Law in effect on the date as of which this 2773  
representation is being made which would prohibit the performance 2775  
by the Company of this Agreement and the transactions 2777  
contemplated hereby. 2777

(F) Patents and Licenses. The Company and its 2780  
Affiliates own or possess all patents, rights to patents, 2781  
trademarks, copyrights and licenses necessary for the performance 2782  
by the Company of this Agreement and the transactions 2783  
contemplated hereby, without any known material conflict with the 2784  
rights of others. 2784

(G) Information Supplied by the Company. The 2787  
information supplied by the Company in all submittals made in 2788  
response to the RFQ and the RFP and all post-proposal submittals 2790  
is correct and complete in all material respects. 2791



ARTICLE III

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DEVELOPMENT OF THE FACILITY

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SECTION 3.1. START CONSTRUCTION DATE CONDITIONS. The following conditions shall constitute the "Start Construction Date Conditions," each of which must be satisfied by the Company at its cost, expense and risk or waived by the City in its sole discretion in order for the Start Construction Date to occur:

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(1) Facility Site Control. The Company shall have obtained control of the Facility Site, either through acquiring a valid, binding and enforceable option to purchase the Facility Site or through direct purchase of the Facility Site. The Facility Site shall conform to the Facility Site Criteria, shall not be subject to Encumbrances, and shall be suitable for all purposes of this Agreement.

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(2) Facility Site Title. The Company shall have obtained good and marketable title to the Facility Site free and clear of any Encumbrances.

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(3) Title Insurance. The Company shall have obtained an ALTA title insurance policy with a land title insurance company acceptable to the City insuring title to the Facility Site free and clear of any Encumbrances.

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(4) Easements. The Company shall have received all easements or other interests in real property as may be necessary in order to provide Utilities and to enable the

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Company to perform <u>the</u> Construction Work <u>and</u> Operation	2856
Services.	2856
<u>(5) Environmental Audit.</u> The Company shall have	2860
conducted <u>an</u> environmental audit <u>of</u> the Facility Site and	2862
such <u>audit</u> shall have shown <u>the</u> Facility Site to be free of	2864
Hazardous Waste <u>and</u> Hazardous Substances. The audit form and	2866
the audit report <u>shall</u> be acceptable to the City.	2867
<u>(6) Survey.</u> The Company shall have conducted a	2871
physical survey of the <u>Facility</u> Site <u>and</u> shall have prepared	2874
a legal description <u>of</u> the Facility Site <u>based</u> thereon.	2876
<u>(7) Site-Related Investigations.</u> The Company shall	2880
have conducted such administrative, <u>engineering</u> <u>and</u> legal	2882
investigations as may be required <u>to</u> assure that the Facility	2883
Site <u>conforms</u> to the Facility Site Criteria <u>set</u> forth in	2885
Appendix 1 hereto.	2885
<u>(8) Special Use Permit Application and Fee Payment.</u>	2887
The Company shall have submitted <u>a</u> complete application	2890
package to the City for a special use permit, <u>shall</u> have paid	2891
the City <u>all</u> fees, <u>costs</u> and charges due the City in	2893
connection therewith ( <u>including</u> fees required for the CEQA	2894
process), <u>and</u> shall have executed a full and unconditional	2895
<u>waiver</u> and release of the City for reimbursement of such	2896
fees, <u>costs</u> and charges for any cause whatsoever.	2897
<u>(9) Site Conditions.</u> The Company <u>shall</u> have made all	2901
soil test borings, <u>all</u> Facility Site inspections and site	2902
history <u>reviews</u> necessary under good construction and	2903

engineering practice as preparation <u>for</u> excavation and	2904
construction hereunder <u>and</u> in order for the Company to assume	2905
the risk <u>of</u> all surface and subsurface conditions without	2906
increase <u>in</u> the Purchase Price on account thereof.	2907
(10) <u>Land Use Proceedings</u> . The <u>Company</u> shall have	2911
conducted all zoning, <u>planning</u> and land use proceedings	2912
<u>before</u> appropriate governmental boards <u>and</u> bodies necessary	2914
in order to obtain, <u>designate</u> and provide for the lawful <u>use</u>	2916
of the Facility Site <u>for</u> the purposes of this Agreement.	2917
(11) <u>Company Facility Site Certification</u> . The <u>Company</u>	2921
shall have certified to the City <u>that</u> the Company's agents	2922
and representatives have visited, <u>inspected</u> and are familiar	2923
with the Facility Site, <u>its</u> physical conditions relevant <u>to</u>	2925
the obligations of the Company pursuant to this Agreement,	2925
<u>including</u> surface and subsurface conditions, <u>normal</u> and usual	2927
soil conditions, <u>roads</u> , utilities, <u>topographical</u> conditions	2929
<u>and</u> air and water quality conditions; <u>that</u> the Company is	2931
familiar with all Facility Site, <u>local</u> and other conditions	2932
<u>which</u> may be material to the Company's performance of its	2933
obligations under this Agreement ( <u>including</u> , but not limited	2934
to transportation; <u>seasons</u> and climate; <u>access</u> , availability,	2936
<u>disposal</u> , handling and storage of materials <u>and</u> equipment;	2938
<u>and</u> availability and quality of labor and Utilities), <u>and</u> has	2940
received and reviewed all information regarding the Facility	2940
Site <u>provided</u> to it or obtained in the course of performing	2941
<u>its</u> obligations hereunder; <u>and</u> that based on the foregoing,	2943

the Company is not aware of any condition which would make 2945  
the Facility Site unsuitable for the construction and 2946  
operation of the Facility in accordance herewith. 2947

(12) Applicable Law Compliance. The Company shall have | 2951  
complied with all other requirements of CEQA, the Act and | 2954  
Applicable Law pertaining to the activities constituting the 2956  
Start Construction Date Conditions. 2956

(13) Zoning. A zoning ordinance, or a variance or | 2962  
special exception thereto, shall then be effective which | 2963  
permits the construction of the Facility on the Facility 2965  
Site. 2965

(14) Utilities. All Utilities required to construct and | 2969  
operate the Facility shall then be available to the Facility | 2971  
Site in the capacities required hereunder, as evidenced by 2973  
letters from the providers of such Utilities confirming such 2974  
availability. 2974

(15) Design Drawings. The Company shall have provided | 2978  
to the City all plans, specifications, blueprints, drawings | 2979  
and other design documents prepared prior to the Start 2980  
Construction Date for permitting, regulatory, financing, 2982  
bonding, credit enhancement or insurance purposes. 2983

(16) Legal Entitlements. All applicable Legal | 2987  
Entitlements required under the provisions of the Act and | 2990  
other Applicable Law and which are necessary for the | 2993  
commencement of construction of the Facility (including, as | 2995  
applicable, those set forth in Appendix 7 hereto) shall have 2997

been duly obtained by the Company in form and substance 2997  
satisfactory to the City, and shall be final, in full force 3000  
and effect, and not under appeal or subject to further 3001  
appeal. 3001

(17) Binding Construction Financing Commitment. The 3004  
Company shall have paid the commitment fee for, and shall 3008  
have obtained, based on its own credit or the credit of the 3010  
Guarantor, a binding commitment to provide construction 3012  
financing for the Facility from a financing institution 3014  
acceptable to the City in a committed amount not less than 3017  
the Purchase Price, the terms of which shall be acceptable to 3020  
the City and sufficient to assure that the Construction Work 3022  
is completed on a timely basis in accordance with the 3025  
requirements of this Agreement. 3025

(18) Construction Loan Documents. Copies of the 3029  
construction loan agreement, mortgage, security agreement and 3032  
all related financing commitment documentation shall have 3035  
been furnished to the City and shall contain terms acceptable 3037  
to the City. 3037

(19) Construction Bonds. The Company shall have 3042  
obtained and delivered to the City a Performance Bond and a 3043  
Labor and Materials Payment Bond substantially in the form 3044  
set forth in the Transaction Agreement Forms. 3045

(20) Construction Period Letter of Credit. The Company 3049  
shall have obtained and delivered to the City a Construction 3050

Period Letter of Credit substantially in the form set forth | 3051  
in the Transaction Agreement Forms. | 3051

(21) Technology Supply Agreements. The Company shall | 3055  
have delivered to the City the executed Technology Supply | 3056  
Agreements, and the Technology Supply Agreements shall be in | 3057  
full force and effect. | 3057

(22) Guaranty Agreement Confirmation. The Guarantor | 3061  
shall have executed and delivered a confirmation to the City | 3063  
that the Guaranty Agreement as executed on the Contract Date | 3064  
remains in full force and effect. | 3065

(23) Required Construction Period Insurance. The | 3068  
Company shall have submitted to the City certificates of | 3070  
insurance for all Required Construction Period Insurance | 3070  
specified in Appendix 8 hereto. | 3071

(24) Tax Claim Waiver. The Company, in order to | 3076  
establish in part the conditions under which Facility | 3077  
Obligations may be issued to finance the Facility without | 3078  
regard to the volume cap limitations imposed on private | 3079  
activity bonds under Section 146 of the Internal Revenue Code | 3081  
of 1986, as amended, shall have executed and filed with the | 3083  
Internal Revenue Service the waiver of certain federal tax | 3084  
claims in the form set forth in Transaction Agreement Form G. | 3086

(25) Documents Evidencing Required Activities. The | 3089  
Company shall have provided to the City copies of all | 3091  
documents, records, reports and proceedings conducted, | 3092  
prepared or obtained with respect to or evidencing the | 3095

Company's activities pursuant to subsections 3.1(A) and 3098  
3.1(B) hereof. 3099

(26) Representations. The representations of the 3103  
Company set forth in Section 2.2 hereof shall be true and 3104  
correct in all material respects as of the Start Construction 3105  
Date as if made on and as of the Start Construction Date, and 3107  
the Company shall have delivered to the City a certificate of 3108  
an authorized officer to that effect. 3108

(27) Acceptability and Effectiveness of Documents. All 3111  
of the documents, instruments and agreements identified in 3114  
this Section shall be in form and substance reasonably 3115  
satisfactory to the City (it being agreed that any such 3116  
document, instrument or agreement the form of which is set 3119  
forth in a Transaction Agreement Form on the Contract Date 3119  
that is executed and delivered in substantially such form is 3120  
and shall be deemed to be in form and substance satisfactory 3122  
to the City) and shall be valid, in full force and effect and 3124  
enforceable against each party thereto on the Start 3125  
Construction Date. No such document, instrument or agreement 3127  
shall be subject to the satisfaction of any outstanding 3127  
condition precedent except those expressly to be satisfied 3129  
after the Start Construction Date, no party to any such 3131  
document, instrument or agreement shall be in default or 3134  
imminent default thereunder, and the City shall have received 3135  
such certificates or other evidence reasonably satisfactory 3136

to it of such facts as the City shall have reasonably 3136  
requested. 3136

(28) Financial Condition. Since the Contract Date, | 3140  
there shall not have occurred any change, financial or | 3142  
otherwise, in the condition of the Company or the Guarantor 3143  
that would, in the opinion of the City, materially and 3146  
adversely affect the ability of the Company to perform this 3148  
Agreement, the Guarantor to perform the Guaranty, or the 3149  
Company or the Guarantor to perform any Transaction Agreement 3150  
entered into or to be entered into by the Company or the 3152  
Guarantor pursuant to this Agreement. 3152

(29) Legal Proceeding. Unless counsel acceptable to the | 3157  
City has determined that the Legal Proceeding has no merit, | 3158  
there shall be no Legal Proceeding, at law or in equity, 3161  
before or by any court of governmental authority, pending or 3163  
threatened, which challenges, or might challenge, directly or 3166  
indirectly, (a) the authorization, execution, delivery, 3168  
validity or enforceability of this Agreement or any other 3171  
Transaction Agreement, (including, without limitation, the 3174  
portions of the Plan material to this Agreement) entered into 3176  
or adopted by the City or the Company, the Guarantor or their 3177  
Affiliates in connection with the transactions contemplated 3178  
hereby, (b) the ownership of the Facility by the Company or 3180  
the Company's right to transfer ownership of the Facility to 3181  
the City, or (c) the right or power of the City to purchase 3182  
the Facility or incur the Facility Obligations. 3183



(30) Counsel Opinions. The City shall have received | 3187  
such favorable opinions of counsel for the Company and for the | 3189  
other parties to the agreements to be entered into in connection | 3191  
with the transactions contemplated hereby, in customary form for | 3192  
financing transactions, as to the matters of law covered by the | 3193  
representations of the Company set forth in Section 2.2 hereof | 3195  
and similar matters of law with respect to such other agreements | 3196  
and as to such other matters of law as the City may reasonably | 3197  
request, together with appropriate certified authorizing | 3198  
resolutions and incumbency certificates to the extent reasonably | 3199  
available. | 3199

SECTION 3.2. COMPANY DEVELOPMENT OBLIGATIONS. (A) | 3203  
Obligation to Proceed. Promptly following the Contract Date, the | 3206  
Company shall proceed at its own cost and expense to exercise | 3208  
good faith and due diligence in order to satisfy all of the Start | 3211  
Construction Date Conditions continuously, expeditiously and as | 3213  
soon as practicable. The Company shall bear all cost, expense | 3215  
and risk associated with such activities, notwithstanding their | 3217  
duration or scope or the filing of any Legal Proceedings with | 3219  
respect thereto. | 3219

(B) Required Development Milestone Completion Dates. | 3221  
Without limiting the Company's obligations under subsection | 3222  
3.2(A) hereof, the Company shall meet, complete and satisfy in | 3225  
full the following Development Period milestones by the dates | 3226  
indicated: | 3226

<u>Milestone</u>	<u>Guaranteed Completion Date</u>	3232 3233
(1) Site Control Acquisition (subsection 3.1(A)(1))	_____ days following the Contract Date	3236 3237
(2) Completed Application for Special Use Permit Received by City, and all Related Fees (including fees required for the CEQA process) Paid (subsection 3.1(A)(8))	_____ days following the Contract Date	3239 3240 3241 3242 3243 3244 3245 3246 3247
(3) All Legal Entitlements Required for Construction Obtained (subsection 3.1(A)(16))	_____ days following City certification of the environmental impact report on the Project under CEQA	3250 3251 3252 3253 3254
(4) Binding Commitment Letter to Provide Construction Financing Obtained, and Fee Paid (subsection 3.1(A)(17))	_____ days following the completion of the milestone identified in item (3) immediately above	3256 3257 3258 32 3260
(5) All Milestones Specified in subsection 3.1(A) Completed and Effective	_____ days following the Contract Date	3262 3263 3264

(C) Conditions to Legal Entitlements. The Company 3272

shall use all its best efforts in applying for any Legal 3273

Entitlement required to commence construction hereunder to assure 3275

that the terms and conditions thereof are consistent with the 3275

Company's obligations hereunder. Within 10 days of the receipt 3277

of information as to proposed conditions or requirements to be 3280

contained in any draft or final Legal Entitlement, the Company 3281

shall provide the City with written notice of its determination 3282

and reasoning as to whether and why the terms and conditions of 3284

any such draft or final Legal Entitlement are more stringent than 3287

those of the Performance Guarantees or any other obligation 3287  
contained in this Agreement. In the event the Company claims 3289  
that such Legal Entitlement contains conditions or requirements 3292  
which are more stringent than those of the Performance Guarantees 3293  
or any other obligation contained in this Agreement and 3295  
constitutes a Change in Law, the Company shall provide the City 3297  
with notice and information required pursuant to Section 14.4 3299  
hereof. 3299

(D) No City Obligation to Approve Site. The City shall | 3302  
not be obligated in any manner, notwithstanding any other | 3304  
provision of this Agreement, to approve any Facility Site | 3306  
proposed by the Company during the Development Period. The City | 3308  
retains all approval rights it has under Applicable Law with | 3308  
respect to any Facility Site proposed by the Company during the | 3310  
Development Period. | 3310

SECTION 3.3. CLOSING OF THE DEVELOPMENT PERIOD. The 3313  
Company shall give the City prompt notice when each Development 3314  
Period milestone specified in Section 3.2 has been achieved. 3315  
Upon the satisfaction of all of such Development Period 3316  
milestones, the parties shall hold a formal closing acknowledging 3317  
such satisfaction and certifying that the Start Construction Date 3318  
has occurred. The closing shall take place at a time and place 3319  
in the City of Sacramento designated by the City. Original or 3321  
certified copies of all of the documents or instruments 3321  
constituting or evidencing satisfaction of the Start Construction 3323  
Date Conditions shall be furnished to the City prior to or on the 3324

Start Construction Date. Upon the occurrence of the Start 3325  
Construction Date the City shall issue a Notice to Proceed and 3327  
the Company shall immediately proceed with the Construction Work 3327  
as provided in Section 4.2 hereof. 3327

SECTION 3.4. CITY SUSPENSION AND TERMINATION OPTIONS 3330  
DURING THE DEVELOPMENT PERIOD. (A) City Termination for Failure 3332  
to Achieve Certain Development Milestones. The City shall have 3333  
the right during the Development Period to terminate this 3334  
Agreement and its obligation to purchase the Project without 3335  
liability to the Company upon or following any failure of the 3337  
Company to achieve any of the Development Period milestones 3338  
specified in subsection 3.2(B) hereof by the required dates. The 3340  
Company acknowledges that such milestone completion dates are 3341  
fixed, determined and not subject to extension and that any 3343  
failure by the Company to achieve such milestones by the required 3343  
date shall not be excused for any reason whatsoever, including 3346  
any act or circumstance within or outside the Company's control. 3347  
Upon any such termination the City shall have the right 3349  
immediately to draw on the Development Period Letter of Credit in 3351  
its full stated amount as and for liquidated damages to the City 3352  
for such failure by the Company. The parties acknowledge that 3353  
the City's actual damages for the Company's failure to meet the 3355  
Development Period milestones by the required dates would be 3356  
difficult or impossible to ascertain, and that the liquidated 3358  
damages provided for in this subsection are intended to place the 3359  
City in the same economic position it would have been in had the 3360

Company achieved the Development Period Milestones by the  
required dates, and shall constitute the only damages for any  
such failure, regardless of legal theory. In the event of any  
full or partial dishonor for any reason by the credit bank  
issuing the Development Period Letter of Credit upon a drawing  
hereunder by the City, the Company shall immediately become  
liable to the City for any amount so dishonored.

(B) Certain City Termination Options During the  
Development Period. The City shall have the right to terminate  
this Agreement in its sole discretion at any time during the  
Development Period, without payment of any termination fee or  
other liability to the Company if there is any Change in Law or  
other Uncontrollable Circumstance occurring after the Contract  
Date which would (after giving effect to any provision of this  
Agreement which may require the City to bear the burden of such  
Change in Law or other Uncontrollable Circumstance) (1) impose  
permit conditions or other legal requirements on Facility  
operations which, in good faith judgment of the City, cannot  
reasonably be expected to be complied with, (2) materially and  
adversely affect the availability of solid waste disposal and  
materials recovery, product marketing or residue transportation  
service to the City hereunder or the ability of the City to  
perform its obligations hereunder or under any Transaction  
Agreement entered or to be entered into by the City pursuant ot  
this Agreement, or (3) increase the total cost to the City of  
waste disposal and materials recovery utilizing the Facility and

the Designated Disposal Facility (including without limitation 3402  
costs associated with the Service Fee, payments due on Facility 3404  
Obligations and payments to the owner or operator of the 3406  
Designated Disposal Facility in the first full Contract Year) by 3408  
more than 20% of such total cost expected as of the Contract Date 3408  
to be paid by the City hereunder in the first full Contract Year, 3410  
as determined by the City in good faith. 3411

(C) City Suspension Option During the Development 3413  
Period. The City shall have the right at any time prior to the 3417  
Start Construction Date, exercisable in its sole discretion for 3419  
any reason by written notice to the Company and without 3421  
terminating this Agreement, to suspend the obligation of the 3423  
Company to seek the fulfillment of the Start Construction Date 3424  
Conditions. Upon any such suspension, the City shall reimburse 3426  
the Company, subject to Cost Substantiation, for 50% of any 3428  
expenses paid or incurred to third parties which are not 3429  
Affiliates of the Company from the Contract Date to the 3432  
suspension date hereunder, which are incurred solely for the 3434  
purposes of the Project and for no other reason, and which are 3437  
directly related to the performance of its obligations which are 3438  
necessary or appropriate to be performed prior to the Start 3439  
Construction Date ("Reimbursable Expenses"). Reimbursable 3441  
expenses shall not include any direct costs of the Company, 3443  
including without limitation labor, materials, overhead or profit 3445  
of the Company. The Company shall not be further obligated 3447  
during the suspension to seek to fulfill the Start Construction 3450

Date Conditions. The City may in its sole discretion at any time 3451  
thereafter, upon written notice to the Company, reinstate the 3454  
obligations of the Company to fulfill the Start Construction Date 3454  
Conditions, and thereupon the obligations of the Company as to 3456  
the Start Construction Date Conditions shall resume. If the City 3457  
does not reinstate the obligation of the Company to seek to 3459  
fulfill the Start Construction Date Conditions within three years 3460  
following the suspension, the Company may at any time thereafter 3462  
terminate this Agreement upon written notice to the City. 3463

(D) City General Termination Option Prior to Start 3465  
Construction Date. The City shall have the right at any time 3467  
prior to the Start Construction Date (including during any period 3469  
of suspension), exercisable in its sole discretion for any reason 3470  
by written notice to the Company, to terminate this Agreement. 3473  
Upon any such termination, the City shall pay the Company an 3476  
amount equal to 100% of its Reimbursable Expenses. In the event 3477  
the City terminates this Agreement after having previously 3477  
exercised its right of suspension under subsection 3.1(G) hereof, 3479  
the City shall pay the Company an additional amount equal to 50% 3481  
of its Reimbursable Expenses. All documents, reports, 3483  
proceedings, books and records constituting the Development Work 3484  
shall immediately become the property of the City and shall be | 3486  
delivered to the City prior to the making of any such termination | 3488  
payment. | 3488

(E) Cost Records and Reporting. During the Development 3491  
Period the Company shall prepare and maintain proper, accurate 3493

and complete books and records of the cost and description of the 3495  
permitting and other Development Work which the Company has 3496  
performed since the Contract Date which is directly related to 3498  
the Company's obligations under this Agreement, the cost of which 3500  
would be the responsibility of the City if the City were to elect 3501  
to suspend or terminate this Agreement pursuant to subsections 3502  
3.7(C) or 3.7(D). The Company shall submit such books and 3504  
records to the City on a quarterly basis after the Contract Date 3506  
until either the City exercises its right to suspend or terminate 3509  
this Agreement or until the Start Construction Date occurs, 3510  
whichever is earlier. Within 45 days of receipt of such 3513  
information the City will advise the Company as to whether and to 3516  
what extent the City disputes such information contained in such 3519  
books and records. 3519



ARTICLE IV

3523

CONSTRUCTION OF THE FACILITY

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SECTION 4.1. AGREEMENT TO DESIGN AND CONSTRUCT.

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(A) Commencement of Design and Construction. Immediately  
following the Start Construction Date and receipt of a Notice to  
Proceed, the Company shall undertake, perform, and complete the  
Construction Work at its sole cost, expense and risk in  
accordance with all of the provisions and requirements of this  
Agreement. The Company shall commence the preparation of the  
Facility Site, the disposal of any debris thereon and any soil  
excavated therefrom, and the design and construction of the  
Facility in accordance with the Design Requirements promptly,  
shall proceed with due diligence to cause the Facility to be  
designed and constructed in accordance with the Design  
Requirements, shall cause Facility shakedown operations to occur,  
and shall cause the Facility to be tested for Acceptance in  
accordance with this Agreement all so that the Facility is  
suitable and adequate for the purpose of receiving and processing  
Acceptable Waste and producing Recovered Products in accordance  
with this Agreement. Subcontracts entered into by the Company  
for the construction of the Facility shall neither supercede nor  
abrogate any of the terms or provisions of this Agreement.  
Laydown and staging areas for construction materials shall be  
located on the Facility Site consistent with the provisions of

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Appendix 1 hereto, or at other locations arranged and paid for by the Company.

(B) Design. The Company shall have sole and exclusive responsibility for the design of the Facility hereunder and the preparation of all plans, specifications, drawings, blueprints and other design documents necessary or appropriate to the Construction Work. All such design documents shall comply strictly with the Design Requirements. The City and the City Engineer shall have the right to review such design documents as provided in Section 4.4 hereof and Appendix 5 hereto. Architects and engineers engaged by the Company for Facility design services shall be licensed to practice in the State and shall be experienced and qualified to perform such services.

(C) Changes to Design Requirements. The Company acknowledges the City's material interest in each provision of the Design Requirements and, notwithstanding the Performance Guarantees of the Company and associated Performance Obligations, agrees that no change shall be made to the Design Requirements pertaining to the Facility without the prior written approval of the City, which approval may be withheld in its sole discretion.

(D) Construction Costs and Financing. The Company shall pay directly all costs and expenses of the Construction Work of any kind or nature whatsoever, without payment or reimbursement from the City except through payment of the Purchase Price on the Purchase Date upon satisfaction of the Purchase Date Conditions. Such costs and expenses, without

limiting the generality of the foregoing, shall include all costs 3622  
of Facility Site acquisition; permitting and regulatory 3623  
compliance; obtaining and maintaining construction financing 3625  
(including all commitment and loan fees, points and appraisal 3627  
fees); Taxes; securing performance bonds and letters of credit; 3628  
payments due under contracts with subcontractors or otherwise for 3629  
all labor and materials; legal, financial, engineering, 3631  
architectural and other professional services; general supervision 3632  
of all design and construction; preparation of schedules, budgets 3634  
and reports; keeping all accounts and cost records; consulting 3636  
with the City and the City Engineer during Development Period and 3636  
the Construction Period; and all other costs of satisfying the 3637  
Purchase Date Conditions. 3637

(E) Construction Practice. Unless the Design 3642  
Requirements expressly provide otherwise, and subject to the 3643  
City's right pursuant to this Agreement to modify or direct 3645  
otherwise, the Company shall perform the Construction Work in 3646  
accordance with generally accepted construction practice and 3648  
shall have exclusive responsibility for all construction means, 3650  
methods, techniques, sequences, and procedures necessary or 3651  
desirable for the correct, prompt, and orderly prosecution and 3652  
completion of the Construction Work as required by this 3653  
Agreement. The responsibility to provide the construction means, 3654  
methods, techniques, sequences and procedures referred to above 3655  
shall include the obligation of the Company to provide the 3656  
following construction requirements: (1) temporary power and 3657

light, (2) temporary offices and construction trailers, 3658  
 (3) required design certifications, (4) required approvals, 3660  
 (5) weather protection, (6) site clean-up and housekeeping, 3662  
 (7) construction trade management, (8) temporary parking, 3664  
 (9) safety and first aid facilities, (10) correction of defective 3666  
 work or equipment, (11) Subcontractors' insurance, (12) storage 3668  
 areas, (13) workshops and warehouses, (14) temporary fire 3670  
 protection, (15) site security, (16) temporary utilities, 3672  
 (17) potable water, (18) phone, (19) sanitary, (20) gas, 3676  
 (21) Subcontractor and vendor qualification, (22) receipt and 3678  
 unloading of delivered materials and equipment, (23) erection 3679  
 rigging, (24) temporary supports, and (25) construction 3681  
 coordination. 3681

(F) Measurements. The Company shall be responsible for 3684  
 all measurements required for execution of the Construction Work 3685  
 to the exact position and elevation as required by this 3686  
 Agreement. The Company shall follow dimensions set forth in this 3688  
 Agreement and in such cases shall not determine dimensions of the 3689  
 Construction Work by scale. Before executing any Construction 3690  
 Work, the Company shall verify all measurements by inspection or 3692  
 examination at the Facility Site. The Company acknowledges that 3694  
 the Design Requirements do not necessarily show all variations in 3695  
 alignment, elevation, and detail required to avoid interference 3696  
 or satisfy architectural and structural limitations, and the 3698  
 Company assumes responsibility for the proper and correct 3698  
 construction of the Facility. 3699

(G) Legal Entitlements Necessary for Construction. The 3702  
Company, at its own cost and expense, shall make all filings, 3705  
applications and reports necessary to obtain and maintain all 3706  
Legal Entitlements required to be made, obtained or maintained 3708  
under Applicable Law in order to continue the construction, 3712  
shakedown and testing of the Facility, including those set forth 3714  
in Appendix 7 hereto. 3714

(H) Construction Period Insurance. The Company shall 3717  
at its sole cost and expense obtain and maintain the Required 3720  
Construction Period Insurance from the Start Construction Date 3721  
until the Purchase Date in accordance with Appendix 8 hereto. If 3725  
the Company fails to pay any premium for Required Construction 3726  
Period Insurance, or if any insurer cancels or materially and 3727  
adversely modifies any Required Construction Period Insurance and 3730  
the Company fails to obtain replacement coverage so that the 3731  
Facility remains insured on a continuous basis, then, at the 3733  
City's election (but without any obligation to do so), the City 3735  
may pay such premium or procure similar insurance coverage from 3736  
another company or companies and upon such payment by the City 3738  
the amount thereof shall be deducted from the Purchase Price. 3739  
The Company shall not perform Construction Work, or allow any of 3741  
the Company's or any Subcontractor's employees on the Facility 3743  
Site, during any period when any policy of Required Construction 3745  
Period Insurance is not in effect. The Company shall comply with 3748  
all applicable Insurance Requirements and take all steps 3749  
necessary to assure the Facility remains continuously insured in 3750

accordance with the requirements of this Agreement during the 3752  
Term hereof and that no gaps in coverage occur between the 3753  
Required Construction Period Insurance and the Required Operation 3754  
Period Insurance. Should any such gap in coverage occur, the 3755  
Company shall bear, indemnify and defend the City against any 3759  
Loss-and-Expense arising out of the failure of the Company to 3760  
provide such continuous insurance coverage. 3760

(I) Compliance With Law and Equipment Operating 3762  
Requirements. In designing, constructing, shaking-down and 3763  
testing the Facility, the Company shall comply with Applicable 3765  
Law, shall construct and operate all processing, air and water 3768  
pollution control, residue handling, and other systems comprising 3769  
the Facility in accordance with good engineering practice and 3771  
applicable equipment manufacturer's design requirements and 3771  
recommendations, and shall observe the same safety standards as 3773  
are set forth in Section 7.3 hereof with respect to the operation 3774  
of the Facility. 3775

(J) Engagement of City Engineer. The Company shall 3778  
fully cooperate with any City Engineer designated by the City to 3780  
assist the City in connection with this Agreement. The services 3782  
of the City Engineer may include but shall not be limited to the 3784  
following: review and monitor construction progress; determine 3788  
the completion of the Construction Work and review the payment of 3791  
the Purchase Price to the Company pursuant hereto; review 3793  
proposed changes to the Design Requirements; review Facility 3795  
drawings, plans and design requirements available to the City 3796

hereof for compliance with the Design Requirements; perform the 3798  
 services specified in the design review program set forth in 3799  
 Appendix 5 hereto; monitor the Acceptance Tests undertaken by the 3800  
 Company to determine whether the Acceptance Standard has been 3802  
 satisfied; review the validity of the Company's written notice 3804  
 that an Uncontrollable Circumstance has occurred; review the 3805  
 Company's submissions with respect to Capital Improvements to the 3807  
 Facility pursuant to Article X hereof; review and advise the City 3809  
 with respect to material changes to the Facility during the Term 3810  
 of this Agreement; and provide certifications as required hereby 3812  
 and by the Facility Obligation Transaction Agreements. It is 3814  
 understood that the services intended to be provided by the City 3815  
 Engineer shall be of an observational and review nature only, 3815  
 unless additional inspection testing or monitoring services are 3816  
 requested by the City pursuant to subsection 4.4(C) hereof, and 3818  
 that the City Engineer shall not have authority to interfere with 3820  
 or halt construction or to require changes to the Design 3820  
 Requirements or the Company's plans and specifications made in 3822  
 accordance therewith. The Company agrees to cooperate with all 3823  
 reasonable requests made by the City Engineer in connection with 3825  
 the performance of such duties for the City. The fees of the 3826  
 City Engineer shall constitute a System Operating Expense, except 3828  
 that the Company shall reimburse the City for any services 3830  
 performed by the City Engineer after the Scheduled Acceptance 3832  
 Date in connection with more than one Acceptance Test or in 3834  
 connection with the repetition of any portion of the initial 3836

Acceptance Test unless and to the extent any such additional 3837  
Acceptance Tests are required as a result of Uncontrollable 3838  
Circumstances or City Breach. Furthermore, the Company shall 3840  
reimburse the City for one half of the costs of any services 3842  
performed by the City Engineer prior to the Scheduled Acceptance 3844  
Date in connection with repetition of any portion of the initial 3845  
Acceptance Tests if the repetition of such tests is required by 3845  
the Board or any other governmental or regulatory body for the 3848  
Company to show that a permit condition has been met. 3850

SECTION 4.2. COMMENCEMENT OF WORK. (A) Notice to 3855  
Proceed. The City shall give the Company a written Notice to 3856  
Proceed ("Notice to Proceed") on the Start Construction Date, 3858  
which shall require the Company to immediately commence the 3860  
Construction Work. Thereafter, the Company shall perform the 3862  
Construction Work continuously and expeditiously so as to 3864  
achieve Acceptance on or before the Scheduled Acceptance Date. 3866

(B) Time. The time for the Company's performance of 3869  
the Construction Work shall be computed from the Start 3871  
Construction Date. The Company's failure to achieve Acceptance 3872  
on or before the Scheduled Acceptance Date will result in 3876  
assessment of liquidated damages under Article V hereof. 3878

(C) Effect of Progress Schedule. The Company shall | 3881  
submit to the City Engineer a monthly progress report detailing | 3884  
work accomplished and an updated schedule which reflects any | 3887  
change in the Company's estimated construction progress schedule 3887  
from that set forth in Appendix 3 hereto. The Company agrees 3890



that the Company's submission of the monthly progress schedule 3891  
(or any revised progress schedule) is for the City's information. 3893  
only; and the City's acceptance of the monthly progress schedule. 3894  
(or any revised progress schedule) shall not bind the City or the 3896  
Company in any manner. Thus, the City Engineer's acceptance of | 3897  
the monthly progress report and schedule (or any revised monthly | 3898  
progress report and schedule) shall not imply that the City: | 3899

(1) approves the Company's proposed staffing or 3903  
scheduling of the Construction Work; 3904

(2) agrees or guarantees to the Company or any other 3907  
person that the Company has the capacity or ability to 3909  
complete the Construction Work in accordance with the 3910  
progress schedule, or that the Construction Work can or will 3912  
be completed in accordance with the monthly progress 3912  
schedule; or 3912

(3) consents to any changes in scheduling, or agrees to 3916  
any extension of time, unless the City agrees specifically in 3919  
writing to the applicable change. 3920

SECTION 4.3. PERSONNEL. (A) Personnel Performance. 3925

The Company shall enforce strict discipline and good order at all 3927  
times among the Company's employees and all Subcontractors. All 3928  
persons engaged by the Company for Construction Work shall have 3930  
requisite skills for the tasks assigned. The Company shall 3932  
employ or engage (and pay all fees and costs of) engineers and 3934  
other consultants to perform all engineering and other services 3935  
specified in this Agreement and as required for the layouts, 3936

locations, and levels of the Construction Work. Each such 3938  
engineer and consultant shall have current professional 3939  
registration or certification to practice in the State (if 3941  
required by law). All persons assigned to the Construction Work 3942  
by the Company shall perform in an industry-accepted manner and 3946  
shall have requisite skills for the tasks assigned, and shall 3948  
cooperate with the City Engineer and City employees. 3949

(B) Payment of Prevailing Wages. The Company shall 3952  
take all action necessary directly and through its Subcontractors 3953  
to assure that all laborers performing services in connection 3955  
with the Construction Work which would be paid prevailing wages 3956  
under Applicable Law if the City owned and financed the project 3958  
during the Construction Period are paid wages equal to such 3959  
prevailing wages whether or not such legal prevailing wage 3960  
requirements are held to be applicable to the Construction Work. 3961

(C) Company Construction Superintendent. The Company 3964  
shall designate an employee of the Company or any Affiliate of 3965  
the Company (the "Company Construction Superintendent") who shall 3967  
be present on the Facility Site with any necessary assistants on 3968  
a full time basis when the Company or any Subcontractor is 3970  
performing Construction Work on the Facility Site. The Company 3972  
Construction Superintendent shall, among other things: 3974

(1) be familiar with the Construction Work and all 3979  
requirements of this Agreement; 3979

(2) coordinate the Construction Work and give the 3982  
Construction Work regular and careful attention and 3983  
supervision; 3983

(3) maintain a daily status log of the Construction 3986  
Work; and 3987

(4) attend monthly construction progress meetings with | 3991  
the City and the City Engineer. | 3991

The Company shall deliver to the City Engineer every month | 3994  
updated integrated project schedules for the Construction Work, 3996  
and shall provide all of the Deliverable Materials required to be 3997  
provided under Appendix 5 hereto at the times specified therein. 3999  
The Company may change the person assigned as Company 4001  
Construction Superintendent from time to time upon reasonable 4002  
prior notice to the City. 4003

(D) Labor Disputes. The Company shall have exclusive 4006  
responsibility for disputes or jurisdictional issues among unions 4008  
or trade organizations representing employees of the Company or 4010  
its Subcontractors, whether pertaining to organization of the 4011  
Construction Work, arrangement or subdivision of the Design 4013  
Requirements, employee hiring, or any other matters. The City 4016  
shall have no responsibility whatsoever for any such disputes or 4017  
issues. 4017

SECTION 4.4. DESIGN REVIEW, OBSERVATIONS, TESTING AND 4021  
UNCOVERING OF WORK. (A) Observations and Design Review Program. 4022  
During the progress of the Construction Work through Acceptance, 4023  
the Company shall at all times during normal working hours afford 4026

the City, the City Engineer. and all City consultants every 4027  
reasonable opportunity for observing all Construction Work at the 4029  
Facility Site, and shall comply with the Design and Construction 4031  
Review Program constituting Appendix 5 hereto. During any such 4034  
observation, all representatives of the City and the City's 4036  
consultants shall comply with all reasonable safety and other 4037  
rules and regulations applicable to presence in or upon the 4038  
Facility Site or the Facility, including those adopted by the 4040  
Company, and shall in no material way interfere with the 4041  
Company's performance of any Construction Work. The Company 4044  
shall provide the City and the City Engineer with general 4045  
arrangement drawings of the Facility, shall provide the City and 4047  
the City Engineer with six copies of the construction design 4048  
drawings, blueprints, detailed plans and design requirements and 4050  
of all other Deliverable Materials, including manufacturing and | 4052  
shop drawings. | 4053

(B) Tests. The Company shall conduct all tests of the 4057  
Construction Work (including shop tests) or inspections required 4059  
by the Design Requirements or by Applicable Law or Insurance 4059  
Requirements. The Company shall give the City Engineer and City 4060  
consultants affected by (or necessary to) the conduct or result 4062  
of the test or inspection reasonable advance notice of tests or 4064  
inspections prior to the conduct thereof; provided, however, that 4066  
in no event shall the inability, failure, or refusal to attend or 4069  
be present of the City Engineer or any City consultant at or 4070  
during any such test or inspection delay the conduct of such test 4071

or inspection or the performance of the Construction Work. If 4072  
required by Applicable Law or Insurance Requirements, the Company 4074  
shall engage a registered engineer or architect at its sole cost 4077  
and expense to conduct or witness any such test or inspection. 4079  
All analyses of test samples shall be conducted by persons 4082  
appearing on lists of laboratories authorized to perform such 4083  
tests by the State or federal agency having jurisdiction or, in 4086  
the absence of such an authorized list in any particular case, 4087  
shall be subject to the approval of the City, which shall not be 4089  
withheld unreasonably. Acceptance Testing of the performance of 4090  
the completed Facility shall be conducted in accordance with 4091  
Appendix 6 hereto. 4091

(C) City Observations, Inspections and Tests. The 4094  
City, its employees, agents, representatives and contractors 4095  
(which may be selected in the City's sole discretion), and all 4097  
governmental agencies having lawful jurisdiction, may at any 4098  
reasonable time conduct such on-site observations and 4099  
inspections, and such civil, structural, mechanical, electrical, 4100  
chemical, or other tests as the City Engineer deems necessary or 4101  
desirable to ascertain whether the Construction Work complies 4102  
with this Agreement. The City will pay for a test, observation 4103  
or inspection requested by the City Engineer, the City and any 4105  
governmental agencies and incur any costs (through and only 4107  
through a Purchase Price Adjustment) related to any delay in 4108  
performing the Construction Work caused by such test or 4109  
inspection (and not required under subsection 4.4(B) hereof or as 4110

Extra Construction Work under Section 4.7 hereof), and the test, 4112  
observation or inspection shall be treated as an Uncontrollable 4113  
Circumstance hereunder the cost of which shall be borne by the 4114  
City (through and only through a Purchase Price Adjustment), 4115  
unless such test, observation or inspection reveals a material 4117  
failure of the Construction Work to comply with this Agreement or 4120  
Applicable Law, in which event the Company shall bear all 4122  
reasonable costs and expenses of such observation, inspection or 4124  
test and of any such delays. 4125

(D) Certificates and Reports. The Company shall secure 4128  
and deliver to the City Engineer promptly, at the Company's sole 4129  
cost and expense, all required certificates of inspection, test 4131  
reports, work logs, or approvals with respect to the Construction 4132  
Work as and when required by the Design Requirements or by 4133  
Applicable Law or Insurance Requirements. 4134

(E) Taking Apart, Uncovering and Replacing Construction 4136  
Work. The Company shall give the City reasonable notice of its 4137  
upcoming schedule with respect to the covering and completion of 4139  
any Construction Work. The City shall give the Company 4141  
reasonable notice of any intended inspection or testing of such 4142  
Construction Work in progress prior to its covering or 4143  
completion, which notice shall be sufficient to afford the City 4145  
and the City Engineer a reasonable opportunity to conduct a full 4147  
inspection of such Construction Work. At the City's written 4148  
request, the Company shall take apart or uncover for inspection 4150  
or testing any previously-covered or completed Construction Work; 4151

provided, however, that the City's right to make such requests 4154  
shall be limited to circumstances where there is a reasonable 4155  
basis for concern by the City that the disputed Construction Work 4155  
conforms with the requirements of this Agreement. The cost of 4157  
uncovering, taking apart, or replacing such Construction Work 4159  
along with the costs related to any delay in performing 4160  
Construction Work caused by such actions, shall be borne as 4163  
follows: 4163

(1) by the Company, if such Construction Work has been 4168  
covered prior to any observation or test required by the 4168  
Design Requirements or by Applicable Law or Insurance 4170  
Requirements or if such Construction Work has been covered 4171  
prior to any observation or test as to which the City has 4172  
provided reasonable advance notice hereunder and 4172

(2) in all other cases, as follows: 4175

(a) by the Company, if such observation or test 4180  
reveals that the Construction Work does not comply with 4181  
this Agreement or 4181

(b) by the City (through and only through a 4185  
Purchase Price Adjustment), if such observation or test 4186  
reveals that the Construction Work complies with this 4187  
Agreement. 4187

In the event such Construction Work is revealed to comply with 4189  
this Agreement, the delay caused by such observation or test 4191  
shall be treated as having been caused by an Uncontrollable 4192  
Circumstance and any costs incurred with respect to such 4194

observation or test shall be borne by the City (through and only 4196  
through a Fixed Purchase Price Adjustment). 4196

(F) Meetings and Design and Construction Review. 4199

During the Construction Period, the Company, the City and the 4201  
City Engineer shall conduct meetings on a monthly basis. At such 4203  
meetings discussions will be held concerning all aspects of 4204  
Facility construction including, but not limited to construction 4205  
schedule, progress payments, Extra Construction Work, shop 4207  
drawings, progress photographs, and any soil boring data and shop 4208  
test results. Monthly reports containing all relevant 4209  
information shall be prepared by the Company and provided to the 4211  
City and the City Engineer at least five days prior to each 4213  
monthly meeting. The Company shall also attend any on-call 4215  
meeting, which may be required by the City from time to time in 4217  
connection with the Construction Work. The Company shall provide 4219  
to the City monthly, for its planning, budgeting and financing 4221  
purposes, estimates of the commencement date for shakedown 4223  
operations; the date upon which the Acceptance Tests will 4225  
commence and the Acceptance Date. The Company shall have no 4226  
liability for any change in any of such estimates, but shall use 4228  
reasonable efforts to keep the City informed of material changes 4229  
in any of such estimates. 4229

SECTION 4.5. CORRECTION OF WORK. (A) Correction of 4235  
Non-Conforming Construction Work. The Company at its sole cost 4237  
and expense shall complete, repair, replace, restore, rebuild and 4240



correct promptly any Construction Work which does not conform 4241  
with the requirements of this Agreement. 4241

(B) Elective Acceptance of Defective Construction Work. 4243

The City may elect by Change Order, at the Company's request, to 4247  
accept non-conforming Construction Work and charge the Company 4248  
(by a reduction in the Purchase Price) for the amount agreed upon 4251  
by the parties by which the value of the Company's services or 4253  
Construction Work has been reduced. 4253

(C) Relation to Other Obligations. The obligations 4256  
specified in subsection 4.5(A) hereof establish only the 4258  
Company's specific obligation to correct the Construction Work 4260  
and shall not be construed to establish any limitation with 4261  
respect to any other obligations or liabilities of the Company 4263  
under this Agreement. This Section 4.5 is intended to supplement 4264  
(and not to limit) the Company's obligations under the Acceptance 4267  
Test Procedures and Standards, the Performance Guarantees and any 4268  
other provision of this Agreement or Applicable Law. 4270

SECTION 4.6. DAMAGE TO THE CONSTRUCTION WORK. 4274

(A) Damage Prevention. From the Start Construction Date until 4276  
Acceptance (or whenever earlier or later performing Construction 4277  
Work on the Facility Site), the Company shall use care and 4280  
diligence, and shall take precautions to protect the Construction 4281  
Work and all City Property and property of other persons 4283  
(including any materials, equipment, or other items furnished by 4285  
the City) from damage prior to the Purchase Date. For such 4287  
purpose, the Company shall provide security guards, protective 4290

features (such as tarpaulins, boards, boxing, frames, canvas 4291  
guards, and fireproofing), and other safeguards to the extent 4293  
necessary and proper in the performance of the Construction Work. 4295

(B) Restoration. In case of damage to the Construction 4298  
Work, and regardless of the extent thereof or the estimated cost 4299  
of restoration, and whether or not any insurance proceeds are 4300  
sufficient or available for the purpose, the Company shall 4302  
promptly undertake and complete restoration of the damage to 4303  
Construction Work to the character and condition existing 4305  
immediately prior to the damage in accordance with the 4307  
construction procedures set forth herein, as applicable, at the 4308  
Company's sole cost and expense. 4308

(C) Notice and Reports. The Company shall notify the 4312  
City and the insurers under any risk insurance and all applicable 4313  
Required Construction Period Insurance of any damage to the 4315  
Construction Work, or any accidents on the Facility Site, as 4317  
promptly as reasonably possible after the Company learns of any 4317  
such damage or accidents; and, as soon as practicable after 4318  
learning of any such occurrence, the Company shall submit a full 4319  
and complete written report to the City Engineer and the City. 4320  
The Company shall also submit to the City Engineer and the City 4321  
copies of all accident and other reports filed with (or given to 4323  
the Company by) any insurance company, adjuster, or government 4325  
entity. 4325

SECTION 4.7. CHANGE ORDERS AND EXTRA WORK. (A) Right 4330  
to Issue Change Orders. The City, subject to the provisions of 4332

subsection 4.7(F) hereof, may issue Change Orders pertaining to  
any and all aspects of the Construction Work at any time and for  
any reason whatsoever, whether and however such Change Orders  
revise this Agreement, add Extra Construction Work or omit  
Construction Work.

(B) Extra Construction Work. The Company shall, except  
to the extent excused under subsection 4.7(F) hereof, undertake  
and complete promptly all Extra Construction Work authorized  
under this Section. The Company shall not perform any Extra  
Construction Work without a Change Order authorized by the City.  
The Company shall be entitled to additional compensation for  
Extra Construction Work, determined in accordance with this  
Section ("Extra Payment").

(C) Extra Construction Work Caused by Company Breach.  
The Company shall not be entitled to any Extra Payment for any  
Extra Construction Work, or any reduction in the Purchase Price  
resulting from omitted Construction Work, if and to the extent  
required by reason of any Company Breach.

(D) Cost Reductions from Change Orders. The Purchase  
Price shall be reduced if and to the extent that any Change  
Order, whether for omitted Construction Work or otherwise,  
results in any reduction in the Company's cost of the  
Construction Work.

(E) Proposal for Extra Construction Work. If the City  
requires Extra Construction Work involving items of Construction  
Work for which the Company has unit prices, the Extra Payment

shall be determined in accordance with such unit prices, plus 4369  
 additional labor and engineering costs as required and subject to 4370  
 Cost Substantiation. In other cases, the City may request the 4372  
 Company to submit a lump-sum price for Extra Construction Work 4372  
covered by any proposed Change Order. In response, within five 4374  
 days after receipt of any such request (unless a longer or 4375  
 shorter period is specified or is reasonably required by the 4377  
 Company taking into account the scope and complexity of the 4378  
 proposed Change Order), the Company shall submit a written 4379  
 quotation on a lump-sum basis (or on a unit-price basis if unit 4382  
 prices for the items involved were previously set forth in this 4385  
 Agreement or are appropriate to the proposed Extra Construction 4387  
 Work). The Company shall include with each quotation Cost 4389  
 Substantiation therefor and, with respect to any Extra 4391  
 Construction Work necessitated by Uncontrollable Circumstances, 4391  
the Company agrees to forego any profit with respect thereto. 4392  
Any such quotation shall be deemed the Company's offer to the 4394  
 City, binding for 30 days, to perform the Extra Construction Work 4396  
 at the price quoted. In addition, each quotation shall include 4398  
 the effect, if any, of the Extra Construction Work on the 4399  
 progress schedule, the Performance Guarantees, the Scheduled 4403  
 Acceptance Date, the Purchase Price, the Service Fee and any of 4406  
 the other obligations of the Company under this Agreement. | 4407

(F) Conditions to Obligation to Proceed. The parties | 4410  
 shall promptly proceed to negotiate in good faith to reach 4411  
 agreement on the price to be paid the Company for the Extra 4412

Construction Work and on the effect of the Extra Construction 4413  
Work on any other obligations of the Company under this 4414  
Agreement. The Company acknowledges that it shall not be 4416  
entitled to seek nor shall it receive a price for the Extra 4417  
Construction Work which is in excess of the fair market price for 4418  
such Extra Construction Work, whether such work is to be 4420  
performed solely by the Company or by a Subcontractor under the 4421  
Company's superintendence. The Company shall not be obligated to 4422  
proceed with the Extra Construction Work except following 4423  
agreement as to the price to be paid therefor and as to any 4424  
adjustments to the Performance Guarantees and its other 4425  
obligations hereunder which are necessitated by the Change Order 4426  
requiring the Extra Construction Work. Payments for Extra 4428  
Construction Work shall be made only as a Fixed Purchase Price 4429  
Adjustment. In order to be entitled to such payments, the 4432  
Company shall submit all Cost Substantiation information to the 4435  
City, with a copy to the City Engineer, on a monthly basis; for 4436  
amounts specified in this subsection 4.7(F) as they are incurred. 4437  
No such work shall impair the ability of the Company to meet the 4439  
Performance Guarantees, comply with any other term or condition 4440  
of this Agreement, affect any right of the Company or impose any 4441  
additional liability or obligation on the Company under this 4442  
Agreement; but the Company shall have no right of objection with 4443  
respect to such work if the City affords the Company price, 4444  
schedule and any other relief hereunder agreed to by the parties 4446  
to be necessary to avoid any such impairment. 4447

(G) Disputed Work. If the Company is of the opinion 4450  
that any Construction Work which it elects to perform in the 4451  
absence of any agreement under subsection 4.7(F) is Extra 4452  
Construction Work and not Original Construction Work ("Disputed  
Work"), the Company shall give the City and the City Engineer a 4453  
written notice of dispute before commencing the Disputed Work. 4455  
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(H) Notice; Waiver. The Company shall give reasonable 4460  
advance notice to the City Engineer in writing of the scheduling 4463  
of all Extra Construction Work and all Disputed Work. The 4464  
Company's failure to give such written notice of Disputed Work 4464  
under this Section shall constitute a waiver of Extra Payment, 4467  
any extension of time, and all other Loss-and-Expense whatsoever 4469  
relating to the particular Disputed Work. 4470

SECTION 4.8. PROJECT OWNERSHIP. (A) Ownership. The 4477  
Company shall own the Project until the City purchases the 4479  
Project on the Purchase Date in accordance with Article VI 4479  
hereof, whereupon ownership of the Project shall be transferred 4481  
to and vested fully in the City. 4481

(B) Risk of Loss. Risk of loss of the Project and of 4484  
all equipment, materials and supplies used or consumed in the 4486  
Construction Work shall rest solely with the Company during the 4487  
Development Period and the Construction Period. 4487

(C) Prohibition on Sale. The Company, during the 4491  
period it owns the Project under this Section, shall not sell, 4494  
convey, transfer or assign its ownership interest in the Project 4495  
to any other person under any circumstances whatsoever. 4495

(D) Encumbrances. The Company, during the Term of this Agreement, shall not create or allow any Encumbrance to arise on or against the Project. If any such Encumbrance is created or arises, the Company shall immediately at its cost and expense cause the Encumbrance to be discharged or, during the Development Period and the Construction Period, to be fully bonded to the satisfaction of the City.

SECTION 4.9. DELIVERABLE MATERIAL. (A) Property of the City. The Design Requirements and all other documents forming part of this Agreement shall be and remain the property of the City. As the Construction Work progresses (or upon the termination of the Company's right to perform the Construction Work), the Company shall deliver to the City all Deliverable Material described in the schedule set forth in Appendix 5 hereto. If any Deliverable Material, process or equipment utilized in the Construction Work is patented or copyrighted by other persons (or is or may be subject to other protection from use or disclosure), the City shall upon and following the Purchase Date have a royalty-free perpetual license to use the same, but solely for purposes of the ownership, construction, and operation of the Facility. However, if the Company does not have the right to grant such a license, the Company shall use its best efforts to obtain for the City such rights of use as the City may request, without separate or additional compensation, whether such Deliverable Material, process or equipment is patented or copyrighted or becomes subject to other protection from use

before, during or after performance of the Construction Work. 4540

Subject to Section 14.7 hereof with respect to proprietary 4541

information provided by the Company, the City shall have the 4544

right from and after the Purchase Date to use (or permit use of) 4546

all such Deliverable Material, process or equipment, all oral 4549

information whatsoever received by the City in connection with 4550

the Construction Work, and all ideas or methods represented by 4550

such Deliverable Material, process or equipment, without | 4552

additional compensation. | 4552

(B) Substitutes for Deliverable Material, Process or | 4554

Equipment. If the City is enjoined from using any Deliverable | 4555

Material, process or equipment (or any affected Construction 4556

Work) from and after the Purchase Date for reasons other than 4558

Uncontrollable Circumstances or City Breach, the City may, at the 4559

City's option, require the Company to provide, at the Company's 4560

expense, substitutes for the Deliverable Material, process or 4560

equipment (and any affected Construction Work) for purposes 4562

permitted hereunder, without violating such injunction or any 4563

other patent, copyright, trade secret or protection from use or 4564

disclosure. If the Company fails to do so, the Company shall, at 4565

the Company's expense, refund the cost of the offending 4566

Deliverable Material, process or equipment (or affected 4567

Construction Work) to the City and take such steps as may be 4568

necessary to ensure compliance by the City with such injunction, 4569

to the satisfaction of the City. 4569



ARTICLE V

4576

ACCEPTANCE OF THE FACILITY

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SECTION 5.1. SHAKEDOWN OPERATIONS. (A) Notice. The Company shall give the City (1) at least 90 days' prior written notice of the expected date of commencement of shakedown operations at the Facility, which notice shall include an estimate of the quantities of Acceptable Waste by Waste Type required for such operations and a projected delivery schedule with respect thereto, and a certification (to be confirmed as of the date shakedown operations commence) that the Company is in full compliance with the terms of this Agreement, and that the Facility is in compliance with all of the conditions of all permits applicable to the Facility and other Applicable Law. The Company may modify such waste delivery and test schedules from time to time on reasonable prior notice to the City; provided, however, that if any such modification causes any additional expense to the City or to Registered Haulers, whether as a result of schedule dislocations or otherwise, the Company shall reimburse the City the amount of any such expense.

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(B) Deliveries for Shakedown. The City shall deliver or cause to be delivered to the Facility Acceptable Waste by Waste Type in such quantities and upon such schedules as may reasonably be requested by the Company for the purposes of conducting shakedown operations. During the period of shakedown operations, the Company shall retain any Recovered Product

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Revenues, and the Company shall not receive the Service Fee or 4631  
any other compensation from the City for any processing or 4632  
disposal service which such shakedown operations may provide. 4634  
The Company at its cost and expense shall dispose of any 4637  
unmarketed Recovered Products, and shall transport to a 4639  
Designated Disposal Facility all Unacceptable Waste, Rejects and 4641  
Residue which are generated during shakedown operations. The 4644  
City shall pay the cost of disposal of such Unacceptable Waste, 4645  
Rejects and Residue directly to the owner or operator of the 4648  
Designated Disposal Facility. 4648

(C) Failure of Deliveries for Shakedown Operations. The 4651  
City's obligation to deliver Acceptable Waste for shakedown 4652  
operations shall extend only to substantially all of the actual 4653  
quantities of Acceptable Waste which would otherwise be delivered 4655  
to the City Landfill or a Designated Disposal Site for disposal 4658  
on each day on which shakedown operations are conducted. Upon 4661  
any failure of the City to provide such deliveries, unless 4663  
excused by Uncontrollable Circumstances or Company Breach, the 4665  
Scheduled Acceptance Date shall be extended by the number of days 4665  
of any such failure which occurs prior to the Scheduled 4667  
Acceptance Date. 4667

SECTION 5.2. MECHANICAL COMPLETION. "Mechanical 4671  
Completion" shall occur when all of the following conditions have 4672  
been satisfied: 4672

(1) the authority to operate the Facility contained in 4677  
the permits issued with respect to the Facility has not been 4679

withdrawn, revoked, superceded, suspended or materially 4680  
impaired or amended; 4680

(2) the Company is authorized, on a temporary or 4683  
permanent basis, to operate the Facility under Applicable 4684  
Law; 4684

(3) all Utilities specified or required under this 4687  
Agreement are connected and functioning properly; 4687

(4) the Company and the City Engineer have agreed in 4690  
writing upon a preliminary punch list; 4690

(5) the City Engineer has approved in writing, such 4694  
approval not to be unreasonably withheld, a certification by 4695  
the Company that all Construction Work, excepting the items 4697  
on the preliminary punch list and the Close-Out Requirements, 4697  
is complete and in all respects is in compliance with this 4698  
Agreement; 4698

(6) the Company has delivered to the City the draft 4701  
Operations and Maintenance Manual required to be delivered by 4703  
subsection 7.1(C) hereof. 4703

(7) the Company shall have submitted and the City shall 4707  
have reviewed and approved a Marketing Plan that (a) reflects 4709  
prevailing and predicted conditions in the Secondary 4710  
Materials Markets, (b) details a strategy by which the 4711  
Company shall sell or exchange for value all Recovered 4713  
Products expected to be produced at the Facility; and (c) 4715  
otherwise complies with the Marketing Plan criteria set forth 4716  
in Appendix 19 hereto. 4716

(8) the Company has submitted written certification that all of the foregoing conditions have been satisfied; and the City has approved the Company's certification which approval shall be effective as of the date of the Company's certification.

SECTION 5.3. ACCEPTANCE TESTING. (A) Notices. The Company shall give the City at least 21 days' prior written notice of the expected initiation of Acceptance Tests, the projected Acceptance Test schedule in accordance with the Acceptance Test Procedures and Standards set forth in Appendix 6 hereto and the testing plan prepared pursuant to subsection 5.3(B) hereof, and the quantities of Acceptable Waste by Waste Type required for the performance of such Acceptance Tests. The Company may modify such waste delivery and test schedules from time to time on reasonable prior notice to the City; provided, however that if any such modification causes any additional expense to the City or to Registered Haulers whether as a result of schedule dislocations or otherwise, the Company shall reimburse the City the amount of any such expense. The Company shall not commence the Acceptance Tests until Mechanical Completion has occurred and the Company has conducted shakedown operations for a least 30 days at 80% of the maximum continuous rating of each Processing Train.

(B) Testing Plan. At least 180 days before the earlier of the Scheduled Acceptance Date or the date on which the Company plans to begin Acceptance Testing, the Company shall prepare and

submit to the City a detailed Acceptance Test plan. The plan 4765  
shall define a test program for each objective described in 4766  
Appendix 6 hereto and shall set forth in detail all procedures to 4767  
be used, all specific measurements to be made, the proposed usage 4769  
of permanent and temporary instrumentation, the organization of 4770  
the test team, the testing schedule (including the estimated 4772  
date, time and duration of each test) and the Facility operating 4774  
and maintenance schedule during testing. The testing plan shall 4776  
also make provision for measuring and determining the throughput 4777  
of each Processing Train, the Recovered Product producing and 4780  
Residue disposal capacities of the Facility, and the 4783  
determination of the compliance of the Facility with the terms of 4784  
Applicable Law. Such plan shall in all respects conform to the 4785  
requirements of Appendix 6 hereto. If the Company and the City 4787  
are unable to agree upon a testing plan within 60 days of such 4788  
submission, such inability to agree shall be deemed to be an 4789  
engineering dispute subject to mediation as provided in Section 4791  
12.10 hereof. 4791

(C) Conduct of Acceptance Tests. At least seven days 4794  
prior to the commencement of Acceptance Testing, the Company will 4796  
certify to the City that it is ready to begin Acceptance Testing 4797  
and shall submit evidence supporting such certification. After 4800  
the pre-Acceptance Test start-up operation period (as set forth 4802  
in Appendix 6), the Company shall conduct Acceptance Tests in 4804  
accordance with Appendix 6 hereto and in accordance with the 4805  
testing plan prepared pursuant thereto at no cost or expense to 4807

the City. The Company shall permit the designated 4809  
representatives of the City and the City Engineer to inspect the 4811  
preparations for Acceptance Tests and to be present for the 4812  
conduct of Acceptance Tests for purposes of ensuring compliance 4813  
with the testing plan and the integrity of the Acceptance Test 4814  
results. Each Processing Train comprising the Facility shall be 4816  
tested for Acceptance concurrently with each other Processing 4817  
Train in accordance with Appendix 6 hereto, and Acceptance of the 4820  
Facility will not occur until Acceptance of all Processing Trains 4822  
has occurred hereunder. If in the event that the Company is 4825  
required to perform the Acceptance Tests more than once due to 4827  
the failure of the Company to achieve the Acceptance Standard, or 4829  
due to the repetition or extension of the Acceptance Tests, the 4831  
Company shall be responsible for any fees and expenses payable by 4833  
the City to the City Engineer and other staff administrative 4835  
costs of the City in connection therewith. 4836

(D) Deliveries for Testing. The City shall deliver or 4839  
cause to be delivered to the Facility Acceptable Waste by Waste 4841  
Type in such quantities and upon such schedules as may reasonably 4842  
be requested by the Company for the purposes of conducting the 4843  
Acceptance Tests. During the period of Acceptance Testing, the 4847  
Company shall retain any Recovered Product Revenues, and the 4849  
Company shall not receive the Service Fee or any other 4851  
compensation from the City for any processing or disposal service 4853  
which such Acceptance Testing may provide. The Company at its 4855  
cost and expense shall dispose of any unmarketed Recovered 4856

Products, and shall transport to a Designated Disposal Facility 4857  
all Unacceptable Waste, Rejects and Residue which are generated 4860  
during the Acceptance Tests. 4860

(E) Failure of Deliveries for Acceptance Testing. The 4863  
parties acknowledge that, depending upon the season in which 4865  
Acceptance Tests are conducted, it may be necessary for the City 4866  
to marshal Non-City Acceptable Waste for delivery to the Facility 4868  
in order to furnish Acceptable Waste in the aggregate Tonnage 4871  
necessary to conduct the Acceptance Tests on the scale stipulated 4873  
in Appendix 6 hereto. If the aggregate daily Tonnage of 4875  
Acceptable Waste available for the commencement of Acceptance 4876  
Tests and processed by the Facility during the Acceptance Test 4878  
period is less than the aggregate Tonnage required, the City 4881  
shall have the right to elect either to (1) accept the Acceptance 4881  
Test results based on actual throughput, in which case the 4883  
Acceptance Test standard for throughput capacity shall be the 4883  
actual Tonnage processed, or (2) require the Acceptance Test to 4885  
be delayed or repeated, in which event (a) the Scheduled 4886  
Acceptance Date shall be extended by the number of days of a 4887  
delay or required to begin or repeat the Acceptance Test, and (b) 4889  
the costs of conducting the subsequent Acceptance Test and any 4889  
costs directly attributable to the delay shall be borne by the 4890  
City, subject to Cost Substantiation. The Acceptance Tests shall 4892  
be repeated as often as necessary in accordance with this 4892  
subsection if required due to unavailability of Acceptable Waste, 4894  
and no such unavailability shall impair the right of the City to 4896

require the Company to demonstrate that Acceptance has occurred 4897  
hereunder based on the Acceptance Tests. 4898

SECTION 5.4: ACCEPTANCE AND EXTENSION PERIOD. (A) Test 4904  
Report. Within 30 days after the completion of the Acceptance 4907  
Tests, the Company shall furnish the City and the City Engineer 4912  
with a certified written report describing (1) the Acceptance 4914  
Tests conducted, (2) the results of each Acceptance Test, and 4916  
(3) certifying as to the level to which the Acceptance Standard 4918  
relating thereto has been satisfied. The written test report 4921  
shall include copies of the original data sheets, log sheets and 4923  
all calculations used to determine performance during the 4924  
Acceptance Tests. 4924

(B) Concurrence or Disagreement with Test Results. If 4927  
the Company certifies in its written report delivered pursuant to 4929  
subsection 4.2(A) hereof that the Acceptance Standard has been 4930  
achieved, the City shall determine, within 30 days of its receipt | 4934  
of such report, whether it concurs in such certification. If the | 4937  
City indicates in writing that it concurs with the Company's 4939  
certification, the Facility shall be deemed to have achieved 4940  
Acceptance and the Acceptance Date shall be deemed to have been 4943  
established as of the date of the City's concurrence. If the 4945  
City fails to respond to the Company's certification within 30 | 4946  
days of receipt thereof, then the City shall be deemed to have | 4948  
concurred with the Company's certification of the Acceptance Test | 4949  
results, the Acceptance Date shall be deemed to be established, 4950  
as of the expiration of such 30 day period. If the City | 4953



determines at any time during such 30-day review period that it | 4956  
does not concur with such certification, the City shall | 4957  
immediately send written notice to the Company of the basis for 4959  
its disagreement. In making any determination provided for under 4961  
this subsection, the City may rely, to the extent it deems 4963  
necessary or appropriate, upon information and reports supplied 4964  
by the City Engineer. 4964

(C) Extension Period. If Acceptance shall not have 4967  
occurred on or before the Scheduled Acceptance Date, the Company 4969  
shall be entitled to conduct or repeat the Acceptance Tests at 4971  
its sole cost and expense in order to secure Acceptance of the 4975  
Facility during the Extension Period, subject to the City's 4978  
ability to deliver Acceptable Waste after receiving reasonable 4981  
notice of the need therefor in accordance with subsection 5.3(D) 4982  
hereof for such purposes. 4983

(D) Termination for Failure to Meet Minimum Acceptance 4985  
Standard. If, as of the last day of the Extension Period, the 4988  
Acceptance Tests have not been conducted or have failed to 4989  
demonstrate that the Facility operates at a standard equal to or 4990  
greater than the Acceptance Standard due to reasons other than 4993  
Uncontrollable Circumstances or City Breach, an Event of Default 4996  
by the Company will be deemed to have occurred under subsection 4998  
12.4 hereof notwithstanding any absence of notice, cure 5000  
opportunity or other procedural rights accorded the Company 5001  
thereunder, and the City shall have the right to terminate this 5002  
Agreement pursuant to subsection 12.2(B) hereof upon written . 5004

notice to the Company. Upon any such termination, the City shall have all of the rights provided in Article XII hereof upon a termination of the Company for cause.

(E) Acceptance Requires Operating Permit. In no event shall the Acceptance Date be deemed to have been finally established under this Agreement until the City has received from all appropriate regulatory agencies final authority for the Company to operate the Facility.

SECTION 5.5. FINAL COMPLETION. (A) Final Punch List. The Company shall submit to the City Engineer, for purposes of demonstrating Final Completion, a Final Punch List when the Company believes that the Construction Work has been substantially completed in compliance with this Agreement so as to allow for the preparation of the Final Punch List, identifying any discrepancies from the preliminary punch list prepared for the purposes of demonstrating Mechanical Completion. The "Final Punch List" shall be a statement of repairs, corrections and adjustments to the Construction Work, and incomplete aspects of the Construction Work which:

(1) the Company can complete before the Purchase Date and with minimal interference to the occupancy, use and lawful operation of the Facility; and

(2) would represent, to perform or complete, a total cost of not more than one percent (1%) of the Fixed Purchase Price (unless the City determines that a higher percentage is appropriate).

(B) Fixed Purchase Price Voucher and Claims Statement. 5052

The Company shall further prepare and submit to the City as soon 5056  
as practicable following the Acceptance Tests, for purposes of 5057  
demonstrating Final Completion, (a) a voucher for payment of the 5058  
Purchase Price, accompanied by a certificate of an authorized 5060  
officer of the Company certifying (1) the amount of the Fixed 5061  
Purchase Price which is payable to the Company, (2) the amount of 5063  
Fixed Purchase Price Adjustments which are to be added to or 5064  
deducted from the Fixed Purchase Price, together with Cost 5065  
Substantiation for such amounts, (3) that the Company is neither 5066  
in default under this Agreement nor in breach of any material 5067  
provision of this Agreement such that the breach would, with the 5069  
giving of notice or passage of time, constitute an Event of 5070  
Default, (4) that all Construction Work has been completed in 5074  
accordance herewith and with the Design Requirements, and (5) 5076  
Acceptance of the Facility has occurred, specifying the extent to 5077  
which each Acceptance Standard has been achieved, and (b) a 5079  
Claims Statement setting forth in detail all claims of every kind 5080  
whatsoever against the City connected with, or arising out of, 5082  
this Agreement or the Construction Work. The City Engineer shall 5084  
review the Company's certified voucher to the City for the 5085  
Purchase Price and the Company's Claims Statement, and within 30 5088  
days of receipt thereof shall verify or dispute in writing (or by 5090  
telecommunication promptly confirmed in writing) the Company's 5092  
certifications. If (1) the City Engineer determines that the 5093  
Company's certifications as to the Purchase Price and Claims 5095

Statement are correct and the City Engineer provides written 5096  
notice thereof to the Company and the City, or (2) the City 5099  
Engineer fails to verify or dispute the certifications within 30 5101  
days of receipt, thereupon the Company shall be entitled to 5103  
payment by the City on the Purchase Date as set forth in such 5104  
certifications. Disputes regarding the certification shall be 5107  
resolved in accordance with subsection 5.5(C) hereof. 5110

(C) Payment Dispute Procedures. If the City Engineer 5113  
pursuant to subsection 5.5(B) disputes the amount of the Purchase 5114  
Price or disputes any portion of the Claims Statement, the City 5117  
Engineer shall provide prompt written notice to the Company and 5118  
the City as to the City Engineer's reasons, in reasonable detail, 5120  
for such determination or the basis for such dispute. After 5122  
receiving such determination notice, the Company may make the 5123  
necessary re-calculations and corrections and resubmit the 5125  
certifications to the City Engineer, or the City Engineer may 5128  
agree on a revised amount, requisition or estimate, as 5130  
applicable, in which case the Company shall promptly notify the 5132  
City of such agreement and thereupon be entitled to payment as 5134  
revised. If the Company is unable to reach agreement with the 5135  
City Engineer, the Company may exercise its right to legally 5136  
contest the City Engineer's determination. Copies of any 5139  
resulting agreement shall be served upon the City. Any 5141  
proceedings undertaken to resolve a dispute arising under this 5142  
subsection shall immediately terminate if (1) the Company 5143  
demonstrates to the City Engineer its entitlement to payment as 5145

indicated in the certified voucher giving rise to the dispute, 5148  
and (2) the City Engineer concurs with such demonstration. The 5150  
Company shall not be entitled to payment of the amount so 5151  
vouchered and disputed except upon resolution of the dispute in 5154  
accordance with this subsection. Nothing contained in this 5156  
subsection shall be deemed to alter the rights of the parties, if 5158  
any, under Article XII hereof. 5159

(D) Final Completion. "Final Completion" shall occur 5162  
when all of the following conditions have been satisfied: 5163

(1) a certificate of occupancy has been issued for the 5168  
Facility. 5168

(2) the Acceptance Tests have been conducted, the 5172  
Acceptance Standard has been achieved, and Acceptance has 5173  
occurred. 5173

(3) all Construction Work (including all items on the 5177  
Final Punch List and all Close-Out Requirements) is complete 5179  
and in all respects is in compliance with this Agreement. 5180

(4) All spare parts required by Appendix 18 hereto have 5184  
been delivered and are in storage at the Facility. 5184

(5) the Company has delivered to the City all 5188  
Deliverable Materials required to be delivered prior to 5189  
Acceptance. 5189

SECTION 5.6. UNEXCUSED DELAY IN ACCEPTANCE DATE. (A) | 5194  
In the event Acceptance of the Facility is delayed beyond the 5196  
Scheduled Acceptance Date for any reason, the City shall 5198  
determine the appropriate disposal location and shall arrange for 5200

the transportation and disposal of all Acceptable Waste which 5201  
 would have been processed by the Facility had Acceptance occurred 5202  
 on or before the Scheduled Acceptance Date. If such delay is | 5204  
 caused by reasons other than Uncontrollable Circumstances or City | 5204  
 Breach, the Company shall pay the City liquidated damages of | 5206  
 \$20,000 for each calendar day of such period of unexcused delay | 5208  
 between the Scheduled Acceptance Date and the Acceptance Date, | 5209  
plus any amounts payable by the City to the owner or operator of | 5213  
 the Designated Disposal Facility due to the failure to deliver | 5214  
 Residue under applicable agreements. Such liquidated damage | 5216  
 payment obligations shall continue until (1) the Acceptance Date | 5219  
is achieved, or (2) the expiration of the Initial Term of this 5222  
 Agreement, or (3) termination of this Agreement pursuant to 5223  
 Article XII hereof and payment by the Company or City of any 5226  
 damages payable upon such termination, whichever first occurs. 5227  
If the Extension Period expires and the Acceptance Date has not 5228  
occurred for reasons other than Uncontrollable Circumstances or 5229  
 City Breach, the City or the Company shall have the right to 5231  
 terminate this Agreement as provided in subsection 5.4(E) hereof. 5232  
The Company may utilize the Facility to the extent of its 5235  
 permitted and available processing capacity to process Acceptable 5236  
 Waste during the Extension Period. No Service Fee or other 5237  
 compensation shall be paid the Company for any processing of 5239  
 Acceptable Waste during the Extension Period, and all costs of 5241  
 operation, maintenance and transportation of Rejects and Residue 5243  
shall be borne by the Company. The City shall pay directly any 5245

costs for the disposal of Rejects and Residue from any such 5247  
operations. 5247

(B) Interim Utilization of the Facility Does Not 5249  
Constitute Acceptance. Notwithstanding anything contained or 5250  
implied in this Section to the contrary, any interim utilization 5252  
of the Facility pursuant to this Section does not constitute 5254  
Acceptance of the Facility. Such Acceptance may only be achieved 5255  
pursuant to the provisions of Section 5.4 hereof. 5255

(C) Operations During Extension Period. During any 5258  
interim operations conducted pursuant to this Section, the 5260  
Company shall operate the Facility in accordance with the 5260  
provisions of Articles VII, VIII and IX hereof. 5260

SECTION 5.7. NO ACCEPTANCE, WAIVER OR RELEASE. Unless 5264  
another provision of this Agreement specifically provides to the 5265  
contrary, none of the following shall be construed as the City's 5267  
acceptance of any Construction Work which is defective, 5267  
incomplete, or otherwise not in compliance with this Agreement, 5269  
or as the City's release of the Company from any obligation, 5271  
guarantee, or warranty under this Agreement, or as the City's 5273  
extension of the Company's time for performance, or as an 5275  
estoppel against the City, or as the City's acceptance of any 5276  
claim by the Company: 5276

(1) The City's payment to the Company or any other 5280  
person of all or any portion of the Purchase Price; 5282

(2) the City's approval or acceptance of any drawings, 5285  
submissions, punch lists, other documents, certifications 5286

<u>(other than certificates relating to completion or Acceptance</u>	5287
<u>of the Facility), or Construction Work of the Company or any</u>	5288
<u>Subcontractor;</u>	5288
<u>(3) the City's review of (or failure to prohibit) any</u>	5293
<u>construction applications, means, methods, techniques,</u>	5294
<u>sequences, or procedures for the Construction Work;</u>	5294
<u>(4) the City's failure to include any item on any punch</u>	5298
<u>list or similar document;</u>	5298
<u>(5) the City's entry at any time on the Facility Site</u>	5302
<u>(including any area in which the Construction Work is being</u>	5303
<u>performed);</u>	5303
<u>(6) any inspection, testing, or approval of any</u>	5306
<u>Construction Work (whether finished or in progress) by the</u>	5308
<u>City Engineer, the City or any other person; or</u>	5309
<u>(7) the failure of the City, the City Engineer, or any</u>	5314
<u>City consultant to respond in writing to any notice or other</u>	5315
<u>communication of the Company.</u>	5315



ARTICLE VI

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PURCHASE AND SALE OF THE FACILITY

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SECTION 6.1. PURCHASE AND SALE OBLIGATIONS. The City  
agrees to purchase the Project and the Company agrees to sell the  
Project for the Purchase Price, subject to the terms and  
conditions hereof. The Purchase Date shall be established by  
mutual agreement of the parties on a date no earlier than 60 days  
nor later than 90 days following the satisfaction of all of the  
Purchase Date Conditions. The City shall pay the Company the  
First Installment of the Purchase Price on the Purchase Date.  
The Second Installment of the Purchase Price shall be paid to the  
Company on the Yardwaste Processing Train Purchase Date.

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SECTION 6.2. PURCHASE DATE CONDITIONS. The following  
conditions shall constitute the "Purchase Date Conditions," each  
of which must be satisfied by the Company at its cost, expense  
and risk in order for the Start Construction Date to occur:

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(1) Each of the Start Construction Date Conditions  
shall be and remain satisfied as of the Purchase Date.

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(2) Final Completion shall have occurred.

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(3) The Company shall have obtained and delivered to  
the City an Operation Period Letter of Credit substantially  
in the form set forth in the Transaction Agreement Forms.

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(4) The Company shall have submitted to the City  
certificates of insurance for all Required Operation Period  
Insurance specified in Appendix 9 hereto.

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(5) The Company shall have good and marketable title to the Facility and the Facility Site free and clear of any Encumbrances except those in favor of any construction lender, which shall be completely released by the lender on the Purchase Date.

(6) All applicable environmental and other governmental licenses, permits and approvals required under the provisions of the Act and other Applicable Law which are necessary for the permanent operation of the Facility (including those set forth in Appendix 7 hereto which are required for permanent operations), shall have been duly obtained by the Company in form and substance satisfactory to the City, and shall be final, in full force and effect, and not subject to further appeal and shall have been transferred to the City (if applicable).

(7) There shall be no Event of Default by the Company under this Agreement or by the Guarantor under the Guaranty, or event which with the giving of notice or the passage of time would constitute an Event of Default by the Company hereunder or an Event of Default by the Guarantor under the Guaranty.

SECTION 6.3. PAYMENT OF THE PURCHASE PRICE. (A)  
Purchase Price Generally. The Company shall be entitled to receive the Purchase Price for the Project on the Purchase Date in accordance with the terms of this Article. The Purchase Price shall be the sum of the Fixed Purchase Price and the Fixed

Purchase Price Adjustments, as adjusted by Change Orders. 5409  
Payment of the Purchase Price shall be made by the City solely 5411  
from the sources indicated in Section 14.1 hereof. The Purchase 5413  
Price shall be the only compensation by the City to the Company 5414  
for the Project or the Construction Work. 5415

(B) Fixed Purchase Price. The Fixed Purchase Price is 5418  
an amount equal to (1) \$ \_\_\_\_\_ [TO BE BID] multiplied by (2) | 5421  
a fraction, the denominator of which is the Purchase Price Index | 5421  
for the month of \_\_\_\_\_, 1992 and the numerator of which is the 5422  
Purchase Price Index for the month in which the Start 5423  
Construction Date occurs; provided, however, that the Purchase 5425  
Price Index for the month in which the Start Construction Date 5426  
occurs shall be pro-rated such that the Fixed Purchase Price 5426  
escalates only through the Start Construction Date and not 5427  
through such entire month. The Purchase Price shall be divided | 5429  
into two installments. The first installment shall equal \_\_\_\_% | 5432  
of the Purchase Price. The second installment shall be that | 5435  
portion of the Purchase Price allocable to the Yardwaste | 5437  
Processing Train and shall equal \_\_\_\_% of the Purchase Price. | 5438  
[PERCENTAGES TO REFLECT COMPANY'S PURCHASE PRICE BREAKDOWN]. | 5439

(C) Fixed Purchase Price Adjustments. The following 5443  
items shall constitute Fixed Purchase Price Adjustments, for 5445  
which the Company shall provide Cost Substantiation: 5445

(1) Extra Payments due pursuant to Section 4.7 hereof; 5449  
(2) Any other costs incurred or savings achieved by the 5453  
Company with respect to the construction of the Facility which 5455

are, by the specific <u>terms</u> of this Agreement, <u>to</u> be treated <u>as</u> a	5459
Fixed Purchase Price Adjustment;	5459
<u>(3)</u> A credit to the City <u>in</u> an amount equal to the sum	5462
of:	5462
<u>(a)</u> any <u>amounts</u> which are permitted under this Article	5466
hereof <u>to</u> be withheld from the Purchase Price;	5467
<u>(b)</u> any <u>delay</u> liquidated damages which are payable	5470
under Article V hereof;	5470
<u>(c)</u> any <u>indemnification</u> amounts <u>which</u> are due the City	5474
under Section 14.5 hereof;	5475
<u>(d)</u> any <u>other</u> deductions which are required or	5478
authorized by <u>Applicable</u> Law;	5479
<u>(e)</u> any <u>portion</u> of the Purchase Price with respect to	5482
which documents to be delivered in connection therewith are	5482
not <u>correct</u> and complete;	5483
<u>(f)</u> any <u>portion</u> of the Purchase Price with respect to	5486
which any person has <u>asserted</u> a Lien <u>resulting</u> from the acts,	5488
<u>errors</u> or omissions of the Company <u>in</u> performing the	5490
Construction Work <u>if</u> such Lien remains unreleased or	5491
unbonded; and	5491
<u>(g)</u> any <u>payments</u> with respect to which any person has	5494
asserted <u>in</u> a Legal Proceeding <u>a</u> claim against the City	5496
involving any matter <u>for</u> which the Company has agreed to	5497
indemnify <u>the</u> City under Section 14.5 hereof, <u>and</u> in the	5499
City's reasonable judgment <u>the</u> Required Construction Period	5500
Insurance <u>may</u> not cover the matter, <u>or</u> the claim <u>(together</u>	5503

with all prior claims) exceeds the coverages of applicable  
Required Construction Period Insurance.

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(D) Limitation on Payments for Facility Costs. The  
Company agrees that the Purchase Price shall be the Company's  
entire compensation and reimbursement for the performance of the  
Development Work and the Construction Work. In no event shall  
the Company be entitled to any payment for Facility costs in  
excess of the Purchase Price, notwithstanding any cost overruns,  
except for additional amounts payable to the Company in  
accordance herewith on account of Uncontrollable Circumstances,  
City Breach or Change Orders. The Company shall pay for or  
finance any such excess Facility costs which are the Company's  
responsibility in any manner it chooses without reimbursement  
from or other claim upon the City or the System.

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SECTION 6.4. CLOSING. (A) Documentation. The formal  
closing of the purchase and sale of the Facility and the Facility  
Site shall take place on the Purchase Date at a time and place in  
the City of Sacramento designated by the City. The following  
documents shall be delivered to the City at the closing:

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(1) Deed. A warranty deed from the Company acceptable  
to the City, in recordable form, conveying to the City good and  
marketable title to the Facility and the Facility Site free and  
clear of all Encumbrances, together with proof acceptable to the  
City of the absence of such Encumbrances;

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(2) Bill of Sale. A warranty bill of sale from the  
Company conveying to the City title to all machinery, equipment,

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fixtures and rolling stock constituting part of the Facility free 5554  
and clear of all Encumbrances. 5554

(3) Construction Loan Discharge and Release. A full 5557  
discharge and release of all mortgages, security interests and 5558  
other Encumbrances by all construction lenders (including 5560  
Affiliates of the Company) in connection with the Construction 5561  
Work. 5561

(4) Survey. An as-built legal survey of the Project, 5564  
based on a physical inspection of the Facility Site, by a 5566  
surveyor licensed in the State. 5566

(5) Company Certificate of Completion and Acceptance. 5568  
A certificate of the Company stating that Final Completion and 5570  
Acceptance of the Facility has occurred. 5570

(6) City Engineer Certificates of Completion and 5572  
Acceptance. A certificate of the City Engineer stating that 5573  
Final Completion and Acceptance of the Facility has occurred. 5574

(7) Company Operating Legal Entitlements. Copies of 5577  
all Legal Entitlements required in order for the Company to 5579  
perform the Operation Services, identifying the Company as the 5581  
permittee, licensee or party receiving the required approval. 5582

(8) City Operating Legal Entitlements. Appropriate 5585  
instruments of transfer, assignment, issuance or reissuance of 5586  
all Legal Entitlements required to be held by the City as 5589  
Facility owner subsequent to the Purchase Date, in the capacity 5590  
of permittee, licensee or approved party, in order for the 5592  
Operation Services to be performed. 5592

(9) <u>As-Built Drawings.</u> A final and complete	5595
reproducible set of as-built or record drawings in a size and	5596
form required by the City and as required by the Design	5597
Requirements.	5597
(10) <u>Equipment Warranties and Manuals.</u> All warranties	5600
of machinery, equipment, fixtures and rolling stock constituting	5602
a part of the Facility, or an unconditional assignment thereof to	5604
the City, together with copies of all related operating manuals	5605
supplied by the equipment supplier.	5606
(11) <u>Assignment of Warranties.</u> An assignment by the	5609
Company of all warranties and guarantees received from	5610
subcontractors and suppliers of equipment, fixtures and rolling	5611
stock, to the extent assignable.	5612
(12) <u>Title Insurance.</u> An owner's title insurance policy	5615
in standard ALTA form insuring the City's title to the Facility	5616
Site in an amount equal to the Purchase Price and showing the	5617
City's title to the Facility Site to be free and clear of all	5618
mechanic's liens and other encumbrances.	5618
(B) <u>Financing the Purchase Price.</u> The City shall be	5621
obligated to provide funds for the payment of the Purchase Price	5622
only from Facility Obligations issued and secured in the manner	5623
contemplated by Section 14.1 hereof. The Company shall, at its	5625
cost and expense, provide all assistance which may reasonably be	5626
requested by the City and which requires the Company's	5628
participation in connection with the issuance of such Facility	5628
Obligations.	5628

(C) Possession, Occupancy and Use. On and after the Purchase Date the Company shall deliver and the City as owner shall have possession, use and control of the Project. The City shall make the Project available to the Company on and after the Purchase Date for the purpose of providing the Operation Services, subject to the terms and conditions hereof, and the Facility Site shall be used by the Company solely for such purpose.

SECTION 6.5. PAYMENT OF THE SECOND INSTALLMENT OF THE PURCHASE PRICE. The second Installment of the Purchase Price shall be payable to the Company on the Yardwaste Processing Train Purchase Date. The Yardwaste Processing Train Purchase Date shall be a date determined by the parties within 60 to 90 days following satisfaction of the extended Yardwaste Processing Train Acceptance Tests as set forth in Appendix 6 hereto.

SECTION 6.6. WARRANTIES AND REMEDIES FOR BREACH. (A) Warranties. Without limiting any of its other obligations hereunder, the Company warrants that, for a period extending from the Start Construction Date through the date which is two years following the Purchase Date (or for any longer warranty period given by any manufacturer or Subcontractor with respect to particular components of the Construction Work), the Construction Work shall, without limitation:

(1) conform in all respects to this Agreement, including the Design Requirements contained in Appendix 4 hereto;



(2) be free from patent and latent defects in design, 5671  
material or workmanship; 5671

(3) incorporate only new materials and equipment; and 5674

(4) be free of Encumbrances. 5677

The foregoing warranties shall apply to the Facility structure 5680  
and individual items of machinery and equipment, and not to the 5682  
receiving or processing of waste taken as a whole, the 5684  
performance of which shall be determined by the Acceptance 5684  
Standards, Performance Guarantees and associated liquidated, non- 5686  
performance and termination damages hereunder. 5686

(B) Remedies for Breach of Warranty. If any breach of 5690  
warranty occurs under this Section 6.6, the Company shall notify 5691  
the City thereof in writing within a reasonable time after the 5693  
same has been discovered by the Company, and, regardless of which 5695  
party discovers the breach of warranty: 5695

(1) If the breach of warranty concerns a portion of the 5699  
Construction Work, including materials, equipment or 5700  
workmanship, then the Company shall at its sole cost and 5701  
expense either, at its option, repair or replace that portion 5702  
of the Construction Work found to be defective. Such costs 5704  
and expenses shall include labor, parts, equipment, 5705  
materials, supplies, freight and storage incurred in 5706  
connection with such breach of warranty. Any such repair or 5707  
replacement shall be accomplished in accordance with the 5708  
Design Requirements and shall be further warranted for an 5710  
additional period from the date the repair or replacement is 5711

effectuated such that the total warranty period applicable to 5712  
such portion of the Construction Work (excluding the period 5713  
of repair) measured from the Acceptance Date is two years. 5714  
In addition, the Company shall use its best efforts to obtain 5717  
equivalent additional warranties from any manufacturer or 5720  
Subcontractor responsible with respect to the defective 5721  
Construction Work. 5721

(2) If the breach is of the warranty set forth in 5724  
subsection 6.6(A)(4) hereof relating to Encumbrances, then 5725  
the Company shall cause the Encumbrance to be discharged 5726  
promptly after receipt of notice thereof. 5727

SECTION 6.7. AUDIT, BOOKS AND RECORDS. (A) Audit. 5732

All payments whatsoever by the City to the Company and all 5734  
Construction Work of the Company shall be subject to audit by the 5735  
City at any time, whether before or after the Purchase Date. 5736

(B) Construction Books and Records. The Company shall 5740  
prepare and maintain proper, accurate and complete books and 5740  
records regarding the Construction Work and all other 5741  
transactions related to the permitting, design, construction, 5742  
shakedown and testing of the Facility, including all books of 5747  
account, bills, vouchers, invoices, personnel rate sheets, cost 5748  
estimates and bid computations and analyses, Subcontracts, 5749  
purchase orders, time books, daily job diaries and reports, 5750  
correspondence, and any other documents showing all acts and 5751  
transactions in connection with or relating to or arising by 5752  
reason of the Construction Work, this Agreement, any Subcontract 5754

or any operations or transactions in which the City has or may 5755  
have a financial or other material interest hereunder. The 5757  
Company shall produce such construction books and records (except 5758  
for the Company's financial ledgers and statement) for 5759  
examination and copying in connection with the costs of Change 5761  
Orders, Extra Construction Work, Uncontrollable Circumstance 5763  
costs, or other costs in addition to the Fixed Purchase Price for 5765  
which the City may be responsible hereunder with respect to work 5767  
performed prior to the Purchase Date except with respect to costs 5768  
incurred in connection with work performed on a fixed price 5769  
basis. The Company shall keep and maintain all such construction 5770  
books and records for at least three years after the Purchase 5772  
Date, or such longer period during which any Legal Proceeding 5774  
with respect to the Facility commenced within three years of the 5775  
Purchase Date may be pending. 5776

ARTICLE VII

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FACILITY OPERATIONS

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SECTION 7.1. OPERATION. (A) Operation Generally.

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Commencing on the Acceptance Date, the Company shall operate and  
maintain the Facility in accordance with sound operating  
practice, the terms and conditions of this Agreement and the  
provisions of the Facility Operation and Maintenance Manual, and  
shall receive and process Acceptable Waste, produce and market  
Recovered Products and transport Residue for disposal in  
accordance with the Performance Guarantees applicable to such  
activities and the terms and provisions of this Agreement.

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(B) Plant Manager. The Company shall train the plant  
manager (the "Plant Manager") and other necessary operating staff  
of the Facility at its expense. The Plant Manager shall be hired  
at least 90 days prior to the start of the Acceptance Tests, and  
shall be trained in the operations of facilities of the Guarantor  
or its Affiliates similar to the Facility, so as to be proficient  
in the operations of the Facility at least 30 days before the  
start of the Acceptance Tests. The Company shall inform the City  
of the identity of the person serving from time to time as Plant  
Manager, and of the telephone numbers or other means by which  
such person may be contacted at the Facility Site. The Company  
shall also inform the City of the identity of the official of the  
Company and the Guarantor with senior supervisory responsibility  
from time to time for the Facility, and of the telephone numbers

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or other means by which such persons may be contacted. The 5835  
Company shall notify the City immediately of the appointment of 5836  
any new Plant Manager or Senior Supervisor. 5836

(C) Facility Operation and Maintenance Manual. The 5839  
Company shall provide to the City and the City Engineer five 5840  
copies of a draft Operation and Maintenance Manual within 12 5843  
months following the Start Construction Date, and a final Facility 5845  
Operation and Maintenance Manual on or prior to the Acceptance 5846  
Date. The Company shall review and discuss in good faith with 5848  
the City any aspect of the draft and final Facility Operation and 5849  
Maintenance Manual. The content of the Facility Operation and 5851  
Maintenance Manual shall be consistent with the terms and 5852  
provisions of this Agreement, shall contain a detailed 5853  
description of the waste processing and materials flow, shall 5856  
document preventive maintenance procedures and schedules, and 5857  
shall otherwise be sufficiently detailed to permit the Facility 5858  
to be operated and maintained by a third party reasonably 5858  
experienced in waste processing and materials recovery 5859  
operations. The City shall have the right to approve all 5861  
sampling, testing and measurement procedures and preventive 5863  
maintenance procedures and schedules contained in the Facility 5865  
Operation and Maintenance Manual, which approval shall not be 5866  
unreasonably withheld or delayed. The City shall not require any 5867  
change to the Facility Operation and Maintenance Manual which 5869  
conflicts with any requirement promulgated by the Board or any 5870  
other regulatory agency or contained in Applicable Law. 5871

Notwithstanding any such review and approval by and discussion 5873  
with the City, the preparation and timely updating of the 5874  
Facility Operation and Maintenance Manual shall remain the 5875  
responsibility of the Company. Neither the review of or comment 5877  
upon, nor the failure of the City or the City Engineer to comment 5880  
upon, the Facility Operation and Maintenance Manual shall relieve 5881  
the Company of any of its responsibilities under this Agreement, 5883  
be deemed to constitute a representation by the City or the City 5885  
Engineer that operating the Facility pursuant to the Facility 5887  
Operation and Maintenance Manual will cause the Facility to be in 5888  
compliance with this Agreement or Applicable Law, or impose any 5889  
liability upon the City or the City Engineer. The Company shall 5891  
prepare an operations and maintenance manual when, if and to the 5893  
extent required by the Board or under Applicable Law for 5895  
permitting purposes or otherwise containing such information as 5897  
required thereby, which manual may be identical to the Operations 5898  
and Maintenance Manual prepared for the City. The Company shall 5900  
bear all costs and expenses of performing the duties and 5901  
responsibilities set forth in the Facility Operation and 5902  
Maintenance Manual as prepared both for the purposes of this 5903  
Agreement and as may be required by the Board or for permitting 5905  
purposes. The Company shall keep the Operations and Maintenance 5907  
Manual current and supply the City with one unbound reproducible 5909  
and five bound copies of the draft and final Facility Operation 5910  
and Maintenance Manuals and with any updates, supplements or 5912  
revisions thereto. 5912

(D) Delivery of Drawings. The Company shall maintain 5915  
as-built or record drawings and documents at the Facility Site 5918  
for inspection by the City and the City Engineer. The Company 5920  
shall supply the City, in the same manner as the original 5921  
drawings, with revised drawings with respect to Capital 5923  
Improvements undertaken by the Company during the Term of the 5924  
Agreement. 5924

(E) Delivery of Manual on Termination. If this 5927  
Agreement is terminated due to an Event of Default by the 5927  
Company, or otherwise, the Company shall deliver to the City the 5929  
Facility Operation and Maintenance Manual with all revisions and 5930  
updates for use in connection with the operation and maintenance 5932  
of the Facility. 5932

SECTION 7.2. REPAIR, MAINTENANCE AND STAFFING. (A) 5937  
General. The Company at its own expense shall maintain the 5939  
Facility and the Facility Site in good working order and repair 5942  
and in a neat and orderly condition (including the cleanup of 5944  
litter and debris on a daily basis or more frequently as 5945  
required), shall conduct the required periodic maintenance of the 5946  
Facility consistent with Appendix 17 hereto and the Facility 5948  
Operation and Maintenance Manual, shall maintain a spare parts 5949  
inventory as provided in the Design Requirements and in Appendix 5951  
18 and shall maintain the aesthetic quality of the Facility and 5954  
the Facility Site as originally constructed and in accordance 5956  
with the Design Requirements. The Company shall provide or make 5957  
provisions for all labor, materials and equipment which are. 5958

necessary for the normal operation and maintenance of the 5959  
Facility, the marketing of Recovered Products and the 5962  
transportation of Residue for disposal. The Company shall at its 5965  
own cost and expense be responsible for providing major 5967  
maintenance and major repairs and replacements for machinery, 5969  
improvements and rolling stock constituting part of the Facility 5971  
during Term of this Agreement. No such major maintenance, repair 5973  
or replacement shall constitute a Capital Improvement for which 5974  
the City shall be financially responsible hereunder, except if 5976  
the need for major maintenance, repair or replacement arises due 5977  
to Uncontrollable Circumstances or City Breach. The Company 5978  
shall provide a report quarterly to the City and the City 5979  
Engineer detailing all repair and maintenance activities 5979  
performed on the Facility by the Company during the reporting 5980  
period. The City and the City Engineer shall have right to 5981  
conduct inspections of the Facility at any time in order to 5983  
assure that the Facility is being properly operated and 5983  
maintained in accordance with this Agreement. 5984

(B) Staffing and Personnel Training. The Company shall | 5987  
at its cost and expense staff the Facility during the Term of | 5990  
this Agreement with the appropriate number of hourly and salaried 5991  
employees consistent with good management practice. Prior to the | 5993  
Purchase Date, the Company shall submit to the City for its | 5994  
review and approval a personnel training program which the | 5995  
Company proposes to institute in order to ensure that the 5997  
Facility is operated in accordance with this Agreement and with 6000



good operating standards prevailing in the materials recovery 6001  
industry. Such personnel training program shall include any 6003  
personnel training guidelines, policies or procedures set forth 6004  
as of the Acceptance Date in (1) any permit or operator's 6005  
certificate required or issued by the Board, (2) any other 6006  
Applicable Law, and shall include standards for operator and 6008  
supervisor background, training and experience, instruction on 6010  
identifying potential Unacceptable Waste; safety and emergency 6012  
response training; general security procedures; and requirements 6013  
for operator certification by the American Society of Mechanical 6014  
Engineers or another equivalent certifying body. All costs of 6016  
complying with the personnel training program shall be borne by 6018  
the Company. 6018

SECTION 7.3. SAFETY. The Company shall maintain the 6023  
safety of the Facility at a level consistent with Applicable Law, 6024  
the Insurance Requirements, and solid waste management, 6026  
industrial and materials recovery plant practices. Without 6030  
limiting the foregoing, the Company shall at its cost and 6031  
expense: (1) take all reasonable precautions for the safety of, 6032  
and provide all reasonable protection to prevent damage, injury 6033  
or loss by reason of or related to the operation of the Facility 6034  
to, (a) all employees working at the Facility and all other 6035  
persons who may be involved with the operation or maintenance of 6036  
the Facility, (b) all visitors to the Facility, (c) all 6038  
machinery, materials and equipment under the care, custody or 6040  
control of the Company on the Facility Site, and (d) other 6042

property on the Facility Site, including trees, shrubs, lawns, 6043  
walks, pavements, roadways, structures and utilities; (2) 6044  
establish and enforce all reasonable safeguards for safety and 6044  
protection, including posting danger signs and other warnings 6045  
against hazards and promulgating safety regulations; (3) give all 6048  
notices and comply with all Applicable Laws, ordinances, rules, 6049  
regulations and lawful orders of any public authority having 6050  
jurisdiction relating to the safety of persons or property or 6051  
their protection from damage, injury or loss; (4) designate a 6053  
qualified and responsible employee at the Facility whose duty 6056  
shall be the supervision of plant safety, the prevention of fires 6058  
and accidents and the coordination of such activities as shall be 6059  
necessary with federal, State and City officials, and (5) operate 6061  
all equipment in a manner consistent with the manufacturer's 6062  
safety recommendations. 6062

SECTION 7.4. COMPLIANCE WITH APPLICABLE LAW. The 6066  
Company shall construct, operate and maintain the Facility, 6067  
market Recovered Products, transport Residue for disposal, and 6070  
otherwise perform all of its obligations hereunder in accordance 6071  
with Applicable Law, and shall cause all Subcontractors to comply 6073  
with Applicable Law. In the event that the Company or any 6075  
Subcontractor fails at any time to comply with Applicable Law, 6076  
then the Company shall immediately notify the City, remedy such 6079  
failure at its cost and expense, and bear all Loss-and-Expense of 6080  
either party and pay any resulting damages, fines, assessments, 6081

levies, impositions, penalties or other charges resulting 6084  
therefrom. 6084

SECTION 7.5. OPERATING LEGAL ENTITLEMENTS. The 6089  
Company, at its own expense, shall make all filings, applications 6092  
and reports necessary to obtain and maintain all Legal 6093  
Entitlements required to be made, obtained or maintained by each 6095  
under Applicable Law in order to operate the Facility during the 6098  
Operation Period, including those set forth in Appendix 5 hereto. 6099  
The Company, at its own expense, shall supply all data and 6100  
information in a timely manner, which may be required and which 6101  
is in the Company's knowledge or control, and shall take all 6104  
other action necessary or desirable in order to assist the City 6104  
in obtaining, maintaining, renewing, extending and complying with | 6106  
the terms of Legal Entitlements necessary during the Operation | 6109  
Period for the operation of the Facility. Where any Legal | 6111  
Entitlement or Applicable Law provides for a specific time period 6112  
between the end of a reporting period and the submission of a 6113  
report, the Company shall furnish the City shall all data 6114  
required in connection with the report within a time period which 6115  
constitutes one-third of the time between such dates. All data, 6116  
information and action shall be supplied and taken on a timely 6116  
basis considering the requirements of Applicable Law and the 6117  
responsibilities of the City as owner of the Facility. The data 6119  
and information supplied by the Company to the City and all 6119  
regulatory agencies in connection therewith shall be correct and 6120  
complete in all material respects, and the Company shall be 6121

responsible for any schedule and cost consequences which may 6121  
result from the submission of materially incorrect, incomplete or | 6123  
delayed information. The Company shall not submit any data or | 6125  
information directly to the regulatory agencies unless required | 6126  
to do so under Applicable Law or by the terms of an existing | 6126  
Legal Entitlement. The Company shall report immediately to the | 6127  
City all violations of the terms and conditions of any Legal | 6128  
Entitlement or Applicable Law pertaining to the Facility. | 6130

SECTION 7.6. ENVIRONMENTAL TESTING. The City shall 6134  
have the right, at any time, to re-test the Facility or to 6137  
require the Company to re-test the Facility for compliance with 6140  
the environmental any Performance Guarantee. Such tests shall be | 6143  
conducted in accordance with the procedures established hereunder | 6144  
for the conduct of the Acceptance Tests or as specified by any | 6146  
regulatory agency and if such test demonstrates that the Facility 6148  
is operating in accordance with such Performance Guarantee, then 6150  
the costs incurred by the Company in performing the test showing 6151  
such compliance shall be paid to the Company by the City as a 6153  
Pass Through Cost Charge. If such test shows that the Facility 6154  
is operating out of compliance with any such Performance 6155  
Guarantee, then the Company shall take all required corrective 6156  
action and the costs of the test showing the inability to comply 6159  
with the applicable Performance Guarantee shall be borne by the 6161  
Company unless such failure to comply is a result of an 6161  
Uncontrollable Circumstance, in which case the City shall pay to | 6163  
the Company 50% of the costs it incurred in performing the test | 6163

as a Pass Through Cost Charge. Testing shall be conducted in a 6165  
manner which minimizes interference with the Company's 6166  
performance of its obligations under this Agreement. 6167

SECTION 7.7. OPERATION PERIOD INSURANCE. Commencing | 6171  
with the Purchase Date and continuing throughout the remainder of | 6172  
the Term of this Agreement, the Company shall obtain and maintain 6174  
the Required Operation Period Insurance as specified in Appendix | 6176  
10 hereto and shall comply with all applicable Insurance 6178  
Requirements. Insurance coverage required pursuant to this 6179  
Section shall be maintained with generally recognized financially 6180  
responsible insurers reasonably acceptable to the City and 6182  
qualified and licensed to insure risks in the State. The cost of | 6184  
the Required Operation Period Insurance shall be paid by the | 6186  
Company, without reimbursement by the City. The City shall have | 6188  
the right, upon 90 days' notice to the Company, at any time at | 6191  
its expense to cancel or replace and obtain independently all or 6194  
any portion of the Required Operation Period Insurance as set | 6195  
forth in Appendix 9 hereto, and receive a reduction in the Base | 6198  
Operation and Maintenance Fee and the fees for processing Tonnage | 6199  
of Acceptable Waste in excess of the Baseline Acceptable Waste | 6200  
Tonnage equal to the insurance premiums then being paid by the | 6202  
Company for the Required Operation Period Insurance. | 6202

SECTION 7.8. ACCESS, INSPECTION AND VISITATION. The 6208  
City and its representatives shall have (1), at any time during 6210  
the Term of this Agreement, the right of access to the Facility 6211  
for any reasonable purpose, and (2) the right during normal 6212

business hours to take visitors through such portions of the 6215  
Facility as are suitable for such visitation. Such access to the 6217  
Facility shall be made available, and such visitation of the 6218  
Facility shall be conducted, in a manner which does not interfere 6220  
with the Company's performance of its obligations hereunder. 6222

SECTION 7.9. INFORMATION. (A) Information System. 6227

The Company shall on and after the Purchase Date establish and 6229  
maintain an information system to provide storage and ready 6230  
retrieval for City review and copying of Facility operating data, 6230  
including all information necessary to verify calculations made 6230  
pursuant to this Agreement. The Company shall use its best 6233  
efforts to assure that the information system installed for such 6235  
purposes is compatible with the City's information systems. 6237

(B) Books and Records. The Company shall prepare and 6240  
maintain proper, accurate and complete books, records and 6241  
accounts regarding the operations and financial or other 6243  
transactions related to the Facility to the extent necessary 6244  
(1) to enable the Company's independent auditors to prepare 6246  
financial statements regarding the operations of the Facility 6248  
certified in accordance with generally accepted accounting 6250  
principles, (2) to verify data with respect to any operations or 6254  
transactions in which the City has a financial or other material 6257  
interest hereunder, (3) to prepare periodic performance reports 6258  
and audited financial statements of the Facility as required 6262  
hereby. The Company shall, upon notice and demand from the City, 6264  
produce for examination and copying at the Company's office, by 6266

representatives of the City, all books of account, bills, 6269  
vouchers, invoices, personnel rate sheets, cost estimates and bid 6271  
computations and analyses, Subcontracts, purchase orders, time 6272  
books, daily job diaries and reports, correspondence, and any 6276  
other documents except for the Company's financial ledgers and 6276  
statements showing all acts and transactions in connection with 6278  
or relating to or arising by reason of the Operation Services, 6278  
this Agreement, any Subcontract or any operations or transactions 6281  
in which the City has or may have a financial or other material 6282  
interest hereunder, and shall produce such operation books and 6284  
records for examination, copying and audit in connection with the 6285  
costs of Change Orders, Extra Payments, Fixed Purchase Price 6287  
Adjustments, Pass Through Cost Charges, Uncontrollable 6288  
Circumstance costs, or any other costs other than the fixed 6289  
elements of the Service Fee for which the City may be responsible 6290  
hereunder with respect to work performed following Acceptance and 6292  
payment for which is subject to Cost Substantiation. The Company 6293  
shall keep the relevant portions of the books, records and 6295  
accounts maintained with respect to each Contract Year until at 6297  
least the third anniversary of the last day of each such Contract 6299  
Year and provide copies thereof to the City at its reasonable 6301  
request to the extent necessary to allow the City to determine to 6303  
its reasonable satisfaction the propriety of any request for 6304  
payment or charge hereunder. The provisions of this subsection 6306  
8.9(B) shall survive the termination of this Agreement. 6307

(C) Monthly Reports Generally. The Company shall  
 provide the City with monthly operations reports with the Billing  
Statement no later than 15 days after the end of each month,  
including the following operating data: (1) compilations of  
 daily records maintained pursuant to subsection 8.7(D) hereof,  
including a statement as to the amount and disposition by Waste  
Type of Acceptable Waste delivered to the Facility during the  
prior month; (2) a statement of the amount of Recovered Products  
produced, sold and disposed of during the prior month; the amount  
of Recovered Product Revenues billed and received pursuant to  
Recovered Product Purchase Agreements with respect thereto,  
detailed by Class of Recovered Product, and the estimated  
inventory of all such materials on hand at the Facility at the  
end of the Billing Period; (3) a statement as to the amounts and  
disposition of Unacceptable Waste, Unauthorized Materials,  
Rejects, Residue and Unprofitable Recovered Products delivered to  
or produced by the Facility, detailed by Class, Waste Type and  
other appropriate subcategory; (4) all compliance reports  
 required under the Act, in a format and on forms required by the  
Board and the City from time to time; (5) summaries of the weight  
records maintained pursuant to Section 8.7 hereof; (6) a  
projection of the available capacity of the Facility by Waste  
Type, for the current month; (7) a description of partial or  
 total shutdowns for maintenance and repairs during the prior  
 month and anticipated during the current month; (8) any adverse  
conditions which may be expected to arise during the current



month that may affect the ability of the Company to receive and 6362  
 process Acceptable Waste in accordance with the Performance 6363  
 Guarantees and the Annual Operating Plan; (9) the results of any 6365  
 regulatory or insurance inspections conducted during the prior 6367  
 month; (10) the quantities of electricity, natural gas, water and 6369  
 sewer and other utility services used during such Billing Period; 6370  
(11) all Pass Through Cost Charges paid by the Company during 6371  
 such Billing Period; (12) the results of any environmental tests 6372  
or monitoring procedures conducted by or at the direction of any 6374  
 federal, State, County or City environmental or health regulatory 6375  
 agency or pursuant to Section 7.6 hereof during the prior Billing 6377  
 Period, and copies of any reports or other submittals made to or 6378  
received from any such agency; and (13) any other data agreed to 6379  
 be furnished under the Annual Operating Plan. These reports 6380  
 shall present the data in a form reasonably acceptable to the 6381  
City and the City Engineer. In addition, each monthly report 6383  
 shall set forth with respect to the Material Recovery Facility 6384  
(1) a complete and detailed income and expense statement prepared 6385  
 in accordance with generally accepted accounting principles, (2) 6386  
 a description of employee staffing levels and job 6386  
 responsibilities, (3) a projection of revenues expected to be 6387  
 received or costs to be incurred during the following Billing 6388  
 Period from the sale or disposal of Recovered Products, and (4) 6389  
 any Company recommendations as to changes in Facility operations. 6391  
(D) Annual Reports. The Company shall furnish the 6395  
 City, within 60 days after the end of each Contract Year, an 6397

annual summary of the statistical data provided in the monthly 6398  
reports. The Company shall furnish the City, within 120 days 6400  
after the end of each Contract Year an annual agreed upon 6401  
procedures report prepared in accordance with Appendix 14 hereto, 6403  
and consolidating balance sheets and income statements (which 6405  
will include the respective statements of the Company) for the 6406  
Guarantor attached to the audited year end financial statements 6407  
reported upon by the Guarantor's independent public accountant. 6408  
If the Company selects accountants for such purposes who are not 6411  
a nationally recognized accounting firm (a "Big Six" accounting 6414  
firm), the Company's selection of accountants shall be subject to 6416  
the City's approval, which shall not be unreasonably withheld. 6419  
The Company shall also furnish the City with copies of the 6422  
Guarantor's quarterly and annual reports filed with the 6424  
Securities and Exchange Commission. 6424

(E) Access to Meters and Records. The Company shall 6427  
provide the City, its auditors and the City Engineer during 6428  
normal business hours, at any time, personal access to Facility 6430  
meters and personal and computer access to those records 6432  
necessary to substantiate the Service Fee, including records 6434  
comprising the information basis of the monthly reports to be 6435  
provided by the Company pursuant to subsection 7.9(C) hereof. 6436

ARTICLE VIII

6440

FACILITY PERFORMANCE

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SECTION 8.1. DELIVERY OF ACCEPTABLE WASTE BY THE CITY.

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(A) Acceptable Waste Delivery Rights. Beginning on the Purchase Date and throughout the Term of this Agreement, the City shall have the right but not the obligation to deliver or cause to be delivered weekly to the Facility Acceptable Waste in amounts up to the Throughput Guarantee applicable to each Waste Type in accordance with the standards set forth in Appendix 15 hereto. Deliveries in excess of the applicable Throughput Guarantee may be made by the City subject to the rights and obligations of the parties under Section 8.2 hereof. The City shall not be liable in damages or otherwise for any failure to deliver or cause any deliveries of Acceptable Waste or for the type, quantity or composition of Acceptable Waste delivered to the Facility. Deliveries shall be made by the City and by Registered Haulers without cost to the Company. The City shall cooperate with and assist the Company in preparing anticipated, non-binding annual delivery schedules.

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(B) Charges to Registered Haulers. For the services provided hereunder the Company shall be paid the Service Fee by the City as provided in Article XI hereof and shall not impose any charge for its own account on Registered Haulers. The City may from time to time establish fees or charges for the account of the City to be imposed upon Registered Haulers for the right

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to deliver Acceptable Waste to the Facility. The Company shall  
not handle any payment made by the Registered Haulers and shall  
not be responsible for billing Registered Haulers for deliveries  
to the Facility; provided, however, that the Company shall  
provide such billing and payment handling services upon 90 days'  
advance written request of the City and at the City's cost and  
expense, subject to Cost Substantiation. The Company shall, at  
the direction of the City given its sole discretion, deny access  
to the Facility to any Registered Hauler.

(C) Source Separation. Nothing in this Agreement shall  
be deemed to restrict the right of the municipalities, residents,  
businesses or organizations in the City to practice source  
separation for the recovery, recycling or composting of waste nor  
the right of the City to conduct, sponsor, encourage or require  
such source separation in connection with or independently from  
Facility operations. No reduction in the amount of Acceptable  
Waste generated in the City and delivered to the Facility by or  
on behalf of the City which may result from any such source  
separation or recycling program shall cause the City any  
liability hereunder. The existence of such a source separation  
or recycling program shall not limit or otherwise affect any  
Performance Guarantee of the Company hereunder, notwithstanding  
any change in the composition, content or character of the  
Acceptable Waste delivered to the Facility which may result from  
any such program.

<u>SECTION 8.2. RECEIPT OR REJECTION OF WASTE BY THE</u>	6530
<u>COMPANY. (A) Receiving and Processing of Acceptable Waste. The</u>	6532
Company shall receive and process at the Facility, <u>by</u> appropriate	6533
Waste Type <u>in</u> accordance with <u>the</u> Performance Guarantees and	6535
other requirements of <u>this</u> Agreement, <u>all</u> Acceptable Waste	6537
delivered to the Facility <u>by</u> or on behalf of the City <u>in</u> each	6539
Contract Year; <u>provided</u> , however, <u>that</u> the Company may refuse	6541
delivery of (1) any waste which is not delivered by the City <u>or</u>	6542
Registered Haulers, (2) any waste delivered at hours outside the	6543
Receiving Hours <u>and</u> mutually agreed upon times of delivery, (3)	6545
Unacceptable Waste, (4) any Acceptable Waste <u>which</u> cannot be	6547
processed at the Facility <u>on</u> account of a partial or complete	6549
shutdown caused by <u>Uncontrollable</u> Circumstances or City Breach,	6550
(5) any Waste Type delivered by or on behalf <u>of</u> the City <u>in</u> any	6553
period <u>in</u> excess of <u>the</u> <u>Throughput</u> Guarantee <u>applicable</u> to such	6557
Waste Type, (6) with respect <u>to</u> Acceptable Recyclable Materials,	6559
<u>any</u> delivery of Acceptable Recyclable Materials <u>which</u> is	6561
contaminated with Unauthorized Materials <u>to</u> such an extent that	6562
it is not <u>reasonably</u> processible <u>by</u> the Facility <u>and</u> which	6565
contains <u>materials</u> <u>other</u> than Acceptable Recyclable Materials <u>in</u>	6568
amounts in excess of 10% by weight <u>of</u> the tendered delivery, <u>and</u>	6570
(7) with respect to Acceptable Yardwaste, <u>any</u> delivery of	6571
Acceptable Yardwaste which is contaminated <u>with</u> Unauthorized	6572
Materials to such <u>an</u> extent that it is not reasonably processible	6573
by the Facility <u>and</u> <u>which</u> contains materials other than	6575
Acceptable Yardwaste <u>in</u> amounts in excess of 25% <u>by</u> weight of the	6577

tendered delivery. Notwithstanding the foregoing, the Company  
shall use its best efforts to accept all Acceptable Waste  
delivered to the Facility by or on behalf of the City.

(B) Shutdowns. If the operation of the Facility is  
temporarily reduced, curtailed or shut down for any reason so  
that the Company is unable to receive and process all or any  
portion of the Acceptable Waste scheduled to be processed in  
accordance with Sections 8.2 and 8.3 hereof, the Company shall at  
the earliest possible time advise the City as to the nature and  
probable duration thereof and the expected effect thereof on  
operations at the Facility.

(C). Bypass and Excess Acceptable Waste. In the event  
of any such shutdown, and regardless of cause, the City shall  
have the sole right to direct Registered Haulers to deliver  
Acceptable Waste which the Facility is unable to or fails to  
accept to an alternate waste disposal facility selected by the  
City. In the event that any such redirected Acceptable Waste is  
determined to be Bypass Acceptable Waste, the Company shall pay  
the City performance liquidated damages in an amount equal to  
\$150 per Ton for each Ton thereof ("Throughput Performance  
Liquidated Damages"). No liquidated damages shall be payable by  
the Company with respect to any such redirected Acceptable Waste  
which is determined to constitute Excess Acceptable Waste.

(D) Adequacy of Throughput Performance Liquidated  
Damages. The parties agree that the City's actual damages for  
the Company's failure to meet its Throughput Guarantees would be

difficult or impossible to ascertain and that, subject to the 6617  
provisions of Article XII hereof permitting termination of this 6618  
Agreement, the Throughput Performance Liquidated Damages provided 6619  
for in this Section are intended to place the City in the same 6621  
economic position it would have been in had the Company met the 6622  
Throughput Guarantees and shall constitute the only damages 6623  
payable by the Company for any such failure to perform, 6624  
regardless of legal theory. 6624

(E) Screening and Removal of Unacceptable Waste. The 6627  
City shall not knowingly deliver, and shall use all legal means 6629  
reasonably available to prevent the delivery of, Unacceptable 6631  
Waste to the Facility by the City or by Registered Haulers. The 6633  
Company and the City shall not knowingly receive, and the Company 6636  
shall use best efforts to prevent the receipt of, Unacceptable 6637  
Waste at the Facility. Each of the City and the Company shall 6639  
observe its respective obligations under the waste screening 6641  
program set forth in Appendix 16 hereto, regardless of whether or 6643  
to what extent the Facility is operating. Each party shall bear 6645  
the cost and expense of compliance with its respective 6646  
obligations under such waste screening program. The Company 6647  
shall update the waste screening program on an ongoing basis to 6649  
reflect the most prudent waste screening measures considered to 6651  
be good practice in the materials recovery industry at the time, 6652  
and shall cooperate in establishing and enforcing such additional 6654  
procedures as may be required to assure the safe and proper 6654  
conduct of Registered Haulers and drivers of delivery vehicles in 6655

the manner contemplated by this Agreement. The failure of either 6656  
party to perform any obligation required under the waste 6657  
screening program or under any other waste screening procedures 6658  
agreed to by the parties shall not relieve the other party from 6660  
performing its obligations under this Agreement unless such 6662  
obligations are specifically excused hereunder. The Company may 6663  
inspect all vehicles delivering waste to the Facility and all 6664  
waste delivered, before and after unloading, and may require that 6666  
the Registered Haulers remove from any vehicle delivering waste 6668  
to the Facility all items of waste which are Unacceptable Waste 6669  
or Rejects not required to be processed as part of Acceptable 6671  
Waste by Waste Type as defined herein. If the Company reasonably 6673  
determines that it would be impractical to remove such items, 6675  
then the Company shall have the right to refuse to accept the 6677  
entire delivery as constituting Unacceptable Waste. 6677

(F) Disposal of Segregated Unacceptable Waste. If the 6680  
Company receives delivery of any Unacceptable Waste and 6683  
segregates it prior to processing, the Company shall transport 6685  
such waste from the Facility to an alternative waste disposal 6687  
site designated by the City and dispose of such waste at the 6689  
alternative waste disposal site, or shall arrange for such 6690  
transportation and disposal. The City shall pay all costs and 6692  
expenses incurred in the transportation and disposal of 6693  
inadvertently received deliveries of Unacceptable Waste to or at 6695  
an alternative waste disposal site. The City and the Company 6696  
shall use their best efforts to identify any person responsible 6697



for delivery to or abandonment at the Facility of any 6697  
Unacceptable Waste and to require such person to bear all costs 6700  
and liabilities associated with the removal, transportation and 6700  
disposal thereof. The City and the Company shall take all 6703  
reasonable steps necessary to seek the enforcement of all 6704  
Applicable Law regarding such delivery. 6705

(G) Costs and Liabilities. In any Contract Year, the 6709  
Company shall pay the first \$75,000 of any costs not recovered 6710  
from Registered Haulers incurred in connection with the clean-up, 6710  
removal, transportation and disposal of any Unacceptable Waste 6711  
delivered to the Facility, and the City shall pay balance of such 6713  
costs in any Contract Year as a Pass Through Cost Charge; 6714  
provided, however, that the Company shall pay all such costs to 6715  
the extent incurred due to the negligent or willful act, error or 6717  
omission of the Company or its failure to follow the requirements 6718  
of Appendix 16 as they may change from time to time in order to 6720  
incorporate the most prudent waste screening measures considered 6721  
to be good practice in the materials recovery industry at the 6722  
time. 6722

(H) Hazardous Waste. The parties acknowledge that the 6725  
Facility has not been designed and is not intended to be used in 6726  
any manner or to any extent as a facility for the handling, 6727  
transportation, storage or disposal of Hazardous Waste. Neither 6730  
the Company nor the City shall countenance or knowingly permit 6731  
the delivery of Hazardous Waste to the Facility or the Facility 6731  
Site or the storage of Hazardous Waste at the Facility for more 6732

than 30 days. If the Company discovers that Hazardous Waste has  
been delivered to the Facility, it shall give immediate notice of  
such discovery to the City and the City shall immediately notify  
all other appropriate governmental authorities as required by  
Applicable Law. If the Company is unable to immediately notify  
the appropriate City officials of the discovery of Hazardous  
Waste at the Facility Site, then the Company shall immediately  
notify all other appropriate governmental authorities as required  
by Applicable Law. The Company shall, in the most expeditious  
manner possible in the circumstances, cause any Hazardous Waste  
delivered to the Facility to be cleaned up, removed from the  
Facility and transported to and disposed of at a landfill or  
other disposal site selected by the Company and approved by the  
City which is lawfully permitted to receive and dispose of such  
Hazardous Waste.

(I) Storage. All Acceptable Waste shall be safely and  
properly stored by Waste Type prior to removal and transfer to  
the processing equipment. No waste may be stored outside the  
tipping floor and the receiving area of the Facility, except  
during an emergency and then only in conformity with Applicable  
Law. The Company will expeditiously remedy any nuisance  
conditions, including, without limitation, any noise or odor  
constituting a nuisance.

SECTION 8.3. THROUGHPUT GUARANTEES. (A) Recyclable 6771  
Materials Throughput Guarantee. The Company shall receive and 6772  
process through the Recyclable Materials Processing Train, if 6773  
delivered or available for delivery by the Registered Haulers in 6773  
accordance with Section 8.2 hereof, a minimum average of 90 Tons | 6775  
of Acceptable Recyclable Materials per Operating Day calculated | 6776  
on a rolling 90-calendar day basis (the "Recyclable Materials | 6776  
Throughput Guarantee"). The difference between the Recyclable | 6778  
Materials Throughput Guarantee and the Tonnage of Acceptable 6778  
Recyclable Materials received and processed by the Company during | 6780  
the comparable rolling 90-calendar day period is referred to | 6781  
herein as a "Recyclable Materials Throughput Shortfall." The | 6783  
Recyclable Materials Throughput Guarantee shall apply 6784  
irrespective of relative Tonnages of the various types of 6785  
Recyclable Materials which may be delivered to the Recyclable 6786  
Materials Processing Train from time to time. 6786

(B) Mixed Waste Throughput Guarantee. The Company shall 6790  
receive and process through the Mixed Waste Processing Train, if 6791  
delivered or available for delivery by the Registered Haulers in 6791  
accordance with Section 8.2 hereof, a minimum average of 2,250 | 6792  
Tons of Acceptable Mixed Waste per Operating Day calculated on a | 6792  
rolling 90-calendar day basis (the "Mixed Waste Throughput | 6793  
Guarantee"). The difference between the Mixed Waste Throughput | 6794  
Guarantee and the Tonnage of Acceptable Mixed Waste received and | 6795  
processed by the Company during the comparable rolling 90- | 6796

calendar day period is referred to herein as a "Mixed Waste  
Throughput Shortfall." 6796 | 6796

(C) Yardwaste Throughput Guarantee. The Company shall 6799  
receive and process through the Yardwaste Processing Train, if 6800  
delivered or available for delivery by Registered Haulers in 6800  
accordance with Section 8.2 hereof, a minimum average of 350 Tons | 6802  
of Acceptable Yardwaste per Operating Day calculated on a rolling | 6803  
90-calendar day basis (the "Yardwaste Throughput Guarantee"). | 6803  
The difference between the Yardwaste Throughput Guarantee and the | 6804  
Tonnage of Acceptable Yardwaste received and processed by the 6805  
Company during the comparable rolling 90-calendar day period is | 6806  
referred to herein as a "Yardwaste Throughput Shortfall." | 6807

(D) Household Hazardous Waste Throughput Guarantee. The 6811-  
Company shall receive, handle, segregate, store, transport and 6814  
dispose of Acceptable Household Hazardous Waste in accordance 6815  
with Applicable Law, if delivered or available for delivery, all 6817  
Acceptable Household Hazardous Waste delivered by any City 6818  
resident in a non-commercial vehicle (the "Household Hazardous 6819  
Waste Throughput Guarantee"). The difference between the 6820  
Household Hazardous Waste Throughput Guarantee and the quantity 6821  
of Acceptable Household Hazardous Waste received and disposed of | 6822  
by the Company during any Billing Period is referred to herein as | 6824  
the "Household Hazardous Waste Throughput Shortfall." Deliveries | 6825  
shall be accepted from any person unless the City instructs the 6826  
Company to refuse specified deliveries based on the City's 6827  
disposal program for Acceptable Household Hazardous Waste as it 6829

may be in force from time to time. In performing its obligations 6830  
 under this Agreement with respect to Acceptable Household 6831  
 Hazardous Waste, the Company shall comply with all Applicable 6832  
 Law, and shall cause all Subcontractors to comply with Applicable 6833  
 Law, including Applicable Law governing transporters and the 6835  
 transportation of Acceptable Household Hazardous Waste. The 6837  
 Company's compensation for receiving, handling, segregating and 6838  
 storing Acceptable Household Hazardous Waste in quantities up to 6839  
 the Household Hazardous Waste Throughput Guarantee is included in 6840  
 the Base Operation and Maintenance Charge. The cost of 6841  
 transporting and disposing of Acceptable Household Hazardous 6841  
 Waste shall be paid by the City as a Pass Through Cost Charge. 6843  
The Company shall use its best efforts, at the City's request, to 6846  
 market Acceptable Household Hazardous Waste for recycling and 6847  
 reuse purposes. The Company shall receive the Household 6849  
 Hazardous Waste Recycling Charge component of the Service Fee, an 6850  
 amount equal to 20% of the Material Sales Revenues attributable 6851  
 to the marketing of any Recovered Household Hazardous Waste 6851  
 Materials and, where such Material Sales Revenues are negative, 6853  
an amount equal to the sum of such negative Material Sales 6855  
 Revenues plus 20% of the transportation and disposal costs avoided 6856  
by the City in marketing such Recovered Household Hazardous Waste 6858  
 Materials for recycling and reuse in lieu of disposing of such 6860  
 materials for purposes other than recycling or reuse. 6861  
(E) Determination of Tonnage Processed. As a convention 6865  
 for determining the Tonnage by Waste Type of Acceptable Waste 6865

processed for any period of calculation, the weighing records of 6866  
the Facility shall be utilized. For Acceptable Recyclable 6867  
Materials, the Tonnage processed shall be equal to the difference 6868  
between the Tonnage received by the Recyclable Materials 6869  
Processing Train and the Tonnage of Rejected Deliveries and 6870  
Excess Recyclable Materials Residue transported from the 6871  
Facility. For Acceptable Mixed Waste, the Tonnage processed 6872  
shall be equal to the difference between the Tonnage received by 6874  
the Mixed Waste Processing Train and the sum of the Tonnage of 6875  
Unacceptable Waste rejected at the Mixed Waste Processing Train 6876  
and the Tonnage of Excess Mixed Waste Residue transported from 6877  
the Facility. For Acceptable Yardwaste, the Tonnage processed 6879  
shall be equal to the difference between the Tonnage received by 6881  
the Yardwaste Processing Train and sum of Unacceptable Waste 6882  
rejected at the Yardwaste Processing Train and the Tonnage of 6883  
Excess Yardwaste Residue. 6883

SECTION 8.4. PERFORMANCE GUARANTEES AND PERFORMANCE 6887  
OBLIGATIONS. (A) Compliance and Remedies. The Company shall at 6889  
all times during the Term hereof comply with the Performance 6890  
Guarantees, except to the extent excused by Uncontrollable 6891  
Circumstances or City Breach. If the Company fails so to comply 6892  
with any Performance Guarantee, the Company shall at its own cost 6893  
and expense and without relief under any other Performance 6894  
Guarantee (1) promptly notify the City of any such non- 6894  
compliance, (2) promptly provide the City with copies of any 6895  
notices sent to or received from the USEPA, the Board or any 6896

other governmental or regulatory body with respect to any 6896  
violations of permit conditions or Applicable Law, (3) pay any | 6897  
applicable liquidated damages provided for herein, and any other | 6900  
resulting damages, fines, levies, assessments, impositions or | 6902  
other charges resulting therefrom, and (4) take any action | 6902  
(including without limitation making all repairs, replacements 6903  
Capital Improvements or operating changes) necessary in order to 6905  
comply with such Performance Guarantee, continue or resume 6906  
performance hereunder and eliminate the cause of, and avoid or 6906  
prevent recurrences of non-compliance with, such Performance 6907  
Guarantee. 6907

(B) Applicability of Performance Guarantees. The 6911  
Performance Guarantees shall apply, except to the extent excused 6911  
by Uncontrollable Circumstances or City Breach, (1) without any 6913  
allowance for scheduled or unscheduled downtime or maintenance, 6913  
which the Company acknowledges has been factored into each | 6914  
Performance Guarantee, (2) irrespective of the content, | 6915  
composition or character of the Waste Type of Acceptable Waste | 6916  
delivered to the Facility for processing, so long as such 6917  
Acceptable Waste conforms to the definition thereof contained 6918  
herein, (3) as to Acceptable Recyclable Materials, irrespective 6919  
of the type, volumes, quantities or material ratios of Acceptable 6920  
Recyclable Materials which are delivered to the Facility so long 6921  
as deliveries of Acceptable Recyclable Materials are within the 6921  
range set forth in Appendix 15 hereto, and (4) as to Acceptable 6923  
Yardwaste, irrespective of the yardwaste types, volumes, 6923

quantities and material ratios of Acceptable Yardwaste which is delivered to the Facility so long as deliveries of Acceptable Yardwaste are within the range set forth in Appendix 15 hereto.

SECTION 8.5. DELIVERY SCHEDULES, PROCEDURES AND REQUIREMENTS. (A) Annual Operating Plan. At least 30 days prior to the commencement of each Contract Year, the City and the Company shall establish an Annual Operating Plan for the delivery, screening, receipt and processing of Acceptable Waste at the Facility. The Annual Operating Plan also shall provide for such matters as the parties may mutually deem necessary or desirable in the implementation of this Agreement. The City and the Company may revise the Annual Operating Plan for the current Contract Year at any time by mutual consent. The Annual Operating Plan shall not limit the Company's obligation to receive and process Acceptable Waste delivered by the City in accordance with this Agreement.

(B) Service Coordinator. Each of the City and the Company shall designate in writing by the Start Construction Date a person to transmit instructions, receive information and otherwise coordinate service matters arising pursuant to this Agreement (each, a "Service Coordinator"). Either party may designate a successor or substitute Service Coordinator at any time by notice to the other party.

(C) Registered Haulers. The City will compile and provide the Company with the following information about all Registered Haulers: name and address; identification number; area



of collection and transportation; and status as a contract 6972  
operator or municipal or district hauler for the City. The City 6975  
shall require and shall cause all private Registered Haulers to 6978  
be reasonably insured. Registered Haulers shall include City 6979  
collection vehicles. 6979

(D) Delivery Procedures. Deliveries of Acceptable 6982  
Waste hereunder shall be substantially in accordance with written 6984  
procedures established by mutual consent of the parties pursuant 6986  
hereto, including particularly Appendix 15. Such delivery 6988  
procedures shall reflect the waste transportation and disposal 6989  
practices within the City and the Facility's design and operating 6991  
requirements, as in effect at the time of delivery, and shall not 6993  
unreasonably either impede the ability of the City to deliver or 6994  
cause the efficient delivery of all Acceptable Waste which the 6996  
Company is obligated to receive from the City hereunder or impair 6997  
the ability of the Company to receive and process such Acceptable 6999  
Waste in accordance with this Agreement. The delivery and 7000  
receipt of Acceptable Waste shall be arranged by the parties so 7001  
as to avoid delivery vehicle stacking on roadways outside the 7002  
Facility Site. The Company shall use its best efforts to operate 7004  
the Facility so that no vehicle delivering Acceptable Waste is 7007  
forced to remain in the Facility or on the Facility Site for more 7010  
than 15 minutes. 7010

(E) Spillage of Solid Waste. The Company shall comply 7014  
with the Cleanliness Guarantee and shall carry on its activities 7016  
in the Facility in such manner that solid waste will not blow, 7017

leak or spill on to the Facility Site or elsewhere, and the  
Company shall bear the cost of cleaning up and correcting any  
damage resulting from any blowing, leakage or spillage caused by  
its employees, agents or Subcontractors and shall make and file  
any reports with respect thereto required under this Agreement  
and Applicable Law. Nothing in this subsection shall limit the  
right of the Company to recover such costs from any Registered  
Hauler causing any spillage or damage or to restrict or prohibit  
access to the Facility by any repeated offender.

(F) Release of Hazardous Substances. The Company,  
after first notifying the City, shall be responsible to fulfill  
all notification or reporting requirements associated with any  
release of any substance into the environment from the Facility  
or the Facility Site as required by Applicable Law or by any  
licenses, permits and approvals issued by any regulatory agencies  
for the Facility, including, but not limited to, the notification  
or reporting of releases of Hazardous Substances. The Company  
shall prepare a memorandum evidencing such notification or  
reporting and provide copies thereof to the City, along with any  
documents provided to the relevant regulatory agency regarding  
such release.

SECTION 8.6. RECEIVING AND OPERATING HOURS.

(A) Receiving Hours. On and after the Acceptance Date, the  
Company shall keep the Facility open for receiving deliveries of  
Acceptable Waste every day of the year except Sundays, including  
all holidays: (1) from 6:00 A.M. until 6:00 P.M. Monday through

Friday, and 6:00 A.M. until 1:30 P.M. on Saturday (except that 7067  
receiving hours for the Household Hazardous Waste Train shall be | 7068  
from 8:00 A.M. to 3:00 P.M. on Saturday and on three other | 7069  
weekdays designated by the City from time to time) for general | 7070  
deliveries, and (2) during such additional hours as may be | 7071  
required to accommodate the usual special collection practices of 7073  
the City on account of any holiday or to accommodate the City's 7075  
disposal requirements on account of a special event, a natural 7077  
disaster, or an emergency condition (the "Receiving Hours"). The 7080  
Company shall, based on the operating history at the Facility, 7081  
provide the City with reasonable notice of anticipated additional 7082  
hours of operation which may be necessary and cost associated 7083  
with such additional hours of operations. The City shall 7085  
reimburse the Company for any additional labor costs pre-approved | 7088  
by the City, including overtime charges, incurred as a result of | 7090  
extending the Receiving Hours in accordance with item (2) above, | 7091  
except in the event of the extension of the Receiving Hours is 7093  
made at the request of the Company. 7093

(B) Operating Hours. On and after the Acceptance Date, 7097  
the Company shall operate the Facility on a continuous basis in a 7101  
manner which is consistent with the Performance Guarantees and 7102  
sound operating practice, except as affected by Uncontrollable 7103  
Circumstances. 7103

SECTION 8.7. WEIGHING RECORDS. (A) Measurement 7108  
Devices and Procedures. The City shall operate and maintain 7110  
truck scales, installed in accordance with Appendix 4 hereto and 7111

calibrated to the accuracy required by Applicable Law, to weigh 7113  
all vehicles delivering waste to and removing waste and 7115  
Recyclable Materials from the Facility. The City shall require 7118  
that each vehicle regularly delivering or removing waste 7119  
hereunder shall have a current and accurate tare weight 7120  
permanently indicated and conspicuously displayed on the exterior 7122  
of the vehicle in a location designated by the Company. The 7125  
Company in its reasonable discretion may require the revalidation 7127  
of the tare weight of any vehicle or the reweighing of unloaded 7128  
vehicles. Each loaded vehicle shall be weighed, indicating gross 7131  
weight, tare weight, date and time and vehicle identification on 7133  
a weight record. The Company and its agents shall have the right 7134  
to monitor weighing activities. 7135

(B) Scale Tolerances. The City shall on a routine 7138  
basis, at least once per month, check the accuracy of all scales 7141  
to assure a tolerance within the requirements of the Sacramento 7143  
County Weights and Measures Department. If upon conclusion of 7144  
testing, the test indicates that the scale did not meet the 7145  
accuracy requirements required by Applicable Law, any adjustments 7147  
of scale records actually recorded since the previous test will 7148  
be negotiated by the City and the Company, and payments due 7150  
hereunder shall be adjusted consistent with such adjustments of 7151  
scale records. If any of the scales are not within the 7153  
tolerances, the Company shall immediately contact a scale service 7156  
vendor to correct the matter. 7156

(C) Estimates During Incapacitation. To the extent 7159  
that weighing facilities are incapacitated or are being tested, 7161  
the City shall estimate the quantity of waste delivered on the 7162  
basis of truck volumes and estimated data obtained through 7163  
historical information. These estimates shall take the place of 7165  
actual weighing and shall be the basis for records during the 7166  
scale outage. 7166

(D) Weight Records. The City shall maintain daily 7170  
records of the number of Tons of waste delivered to the Facility, 7170  
the number of Tons of waste received, processed, rejected, 7174  
marketed and disposed of, including Acceptable Waste (by Waste 7177  
Type), Unacceptable Waste, Rejected Deliveries, Rejects, 7179  
Recovered Products (by Class), Residue (by type, Allowable and 7182  
Excess), Bypass Acceptable Waste, Excess Acceptable Waste, City 7185  
Waste and Non-City Waste, indicating, in each case and to the 7187  
extent practicable, the date and time of arrival or departure of 7189  
each vehicle transporting such waste, with appropriate 7191  
identification of each vehicle, and the disposition of all such 7192  
materials. All such records shall be in such form as the Company 7194  
shall reasonably request for billing and statistical purposes, 7195  
and the City shall maintain copies of all individual vehicle 7197  
delivery weight records for a period of at least six years. 7198

(E) Representative to Monitor Compliance. Each of the 7201  
City and the Company shall have the right, at its expense, to 7204  
station its representative at any weighing facilities maintained 7206

by the other to monitor the other's compliance with the 7208  
provisions of this Section 8.7. 7208

SECTION 8.8. NON-CITY ACCEPTABLE WASTE. 7213

(A) Prohibition on Receipt of Non-City Acceptable Waste. No 7215  
Non-City Acceptable Waste shall be knowingly received at the 7216  
Facility, notwithstanding the periodic capacity of the Facility 7219  
to process such waste due to seasonal fluctuations in the 7221  
delivery of City Acceptable Waste or other factors, except as 7223  
described in subsection 8.8(B) hereof. The Company and the City 7225  
shall cooperate in enforcing this restriction. 7226

(B) Waiver of Prohibition Rights. The City shall have 7229  
the right to deliver or arrange for the delivery of Non-City 7231  
Acceptable Waste to the Facility in accordance with the Plan and 7233  
other Applicable Law. In the event the City exercises the right 7235  
to deliver or arrange for the delivery of such waste, any Non- 7236  
City Acceptable Waste delivered to the Facility will be deemed to 7237  
constitute City Acceptable Waste for all purposes of this 7239  
Agreement. The City shall have the right in its sole discretion 7242  
to establish tipping fees for the delivery of any Non-City 7244  
Acceptable Waste, and any such tipping fees shall be the property 7246  
of the City. 7246

SECTION 8.9. ADDITIONAL OPERATION SERVICES. The City 7249  
may request the Company to perform additional operation services 7250  
from time to time in connection with this Agreement. Any such 7252  
request shall be submitted in writing and shall set forth a 7254  
proposed scope of services. The Company may, in its discretion, 7257

perform such additional operational services upon such terms <u>and</u>	7259
conditions <u>and</u> for such compensation, <u>subject</u> to Cost	7261
Substantiation, <u>as</u> may be negotiated between the parties. <u>This</u>	7263
Section shall not <u>be</u> construed to limit <u>the</u> right of the City to	7265
utilize contractors <u>other</u> than the Company to perform <u>additional</u>	7267
services.	7267

ARTICLE IX

7274

RECOVERED PRODUCT MARKETING,  
AND REJECTS AND RESIDUE DISPOSAL

7276  
7277

SECTION 9.1. RECOVERED PRODUCT MARKETING. (A)

7285

Marketing Plan. The Company shall prepare and submit to the City 7287  
a preliminary Marketing Plan not later than 180 days prior to the 7289  
Scheduled Acceptance Date. The City shall, within 30 days of 7291  
receipt, review and recommend revisions to the Marketing Plan, 7292  
and the Company shall submit to the City a final Marketing Plan 7294  
in accordance with Appendix 19 hereto not later than 120 days 7296  
prior to the Scheduled Acceptance Date. The final Marketing Plan 7297  
shall be subject to the City's approval, which shall not 7299  
unreasonably be withheld. The parties shall consult from 7302  
time-to-time as to any revisions to the Marketing Plan which may 7302  
be necessary or appropriate to take account of changes in the 7304  
Secondary Materials Market, Capital Improvements to the Facility, 7305  
changes in the Program, and the Company's marketing experience. 7306

(B) Marketing Responsibilities. The Company shall, not 7310  
later than 90 days prior to the Scheduled Acceptance Date, 7311  
commence marketing activities for the purpose of developing the 7313  
Secondary Materials Market for Recovered Products and securing 7314  
purchase commitments or Recovered Product Purchase Agreements to 7315  
sell and transport Recovered Products to Recovered Product 7316  
Purchasers on a continuing basis following Acceptance. 7317  
Throughout the Term of this Agreement, the Company shall: 7319



(1) Market Recovered Products produced by the Facility 7323  
with a Recovered Product Purchaser in accordance with the 7325  
Marketing Plan and secure terms of sale under Recovered 7328  
Product Purchase Agreements executed on an arms-length basis 7329  
with Recovered Product Purchasers which provide the highest 7332  
prices and most economical transportation costs; 7333

(2) Not market or dispose of Recovered Products for use 7337  
in a transformation facility (within the meaning of the Act) 7339  
or for any purpose other than recycling or re-use without the 7341  
approval of the City which may be withheld in its sole 7342  
discretion; except that the Company, without such approval, 7343  
may transform in a transformation facility in each Contract 7344  
Year Recovered Products in an amount up to 10% of amount of 7345  
Acceptable Waste processed by the Facility in that Contract 7346  
Year. [NOTE: THIS PARAGRAPH WILL BE ALTERED IF THE CITY 7348  
ELECTS NOT TO INCLUDE THE COMPOST FACILITY IN THE PROJECT]. 7348

(3) Not, in its sales and pricing arrangements, market, 7353  
sell or dispose of Recovered Products from the Facility on 7355  
terms or conditions which produce a benefit to the Company or 7357  
any Affiliate to the detriment to the City, which favor the 7358  
Company, the Guarantor; or any Affiliate of either over the 7358  
City, or which favor any other municipal or private customer 7360  
of the Company, the Guarantor or any Affiliate of either over 7363  
the City; 7363

(4) Weigh or cause to be weighed and transport or cause 7367  
to be transported Recovered Products from the Facility to 7368

Recovered Product Purchasers <u>in</u> accordance with applicable	7369
Recovered Product Purchase Agreements;	7369
<u>(5)</u> Perform its obligations <u>and</u> enforce its right to	7372
receive payments and performance due under <u>applicable</u>	7373
Recovered Product Purchase Agreements;	7373
<u>(6)</u> Use <u>its</u> best efforts to investigate, <u>research</u> ,	7377
develop <u>and</u> maintain the Secondary Materials Market for	7378
Recovered Products <u>produced</u> by the Facility;	7379
<u>(7)</u> Maintain <u>complete</u> and accurate records of all <u>sales</u>	7383
and transportation accounts and transactions <u>until</u> at least	7384
the sixth anniversary of the last <u>day</u> of the applicable	7385
Contract Year <u>(or</u> such long period as may be appropriate <u>to</u>	7387
account for any dispute then pending);	7387
<u>(8)</u> Furnish <u>the</u> City <u>promptly</u> with copies <u>of</u> all	7392
Recovered Product Purchase Agreements; <u>provided</u> , <u>however</u> ,	7394
<u>that</u> the Company shall, prior to the execution <u>of</u> any	7396
proposed <u>Recovered</u> Product Purchase Agreements <u>the</u> term of	7398
which exceeds 30 calendar days, <u>furnish</u> the City with a copy	7399
thereof for <u>City</u> approval, <u>which</u> approval shall not to be	7401
unreasonably withheld. <u>The</u> City must approve any such	7402
proposed Recovered Product Purchase Agreements within <u>15</u>	7403
business days of receipt. <u>Failure</u> of the City to respond	7404
within 15 calendar days <u>will</u> be deemed <u>approval</u> by the City.	7406
<u>The</u> Company and the City <u>may</u> use facsimile transmission <u>as</u> a	7409
means of providing <u>the</u> documentation required <u>pursuant</u> to	7411
this subsection;	7411

(9) Promptly notify the City of any Recovered Products 7415  
which have been rejected or downgraded by a Recovered Product 7417  
Purchaser as a result of the delivery's failure to meet the 7418  
requirements of a Recovered Product Purchase Agreement or of 7420  
the Secondary Materials Markets (including all Rejected Loads 7421  
and Downgraded Loads), maintain a record of any such 7423  
rejections and downgrades, and take all reasonable steps to 7425  
minimize future rejections of deliveries of Recovered 7427  
Materials; 7427

(10) Submit to the City a monthly report describing the 7431  
activities it has performed and the data it has recorded in 7433  
fulfillment of its obligations pursuant to this Section; and 7434

(11) Keep all records, provide all information and 7439  
complete all information forms required by the City and the 7440  
Board in connection with the City's compliance with the Act, 7442  
including particularly Recovered Product production, 7444  
marketing, disposal, recycling and re-use. 7445

(C) Recovered Product Sales Revenues. Revenues or 7448  
property derived from the sale or barter of Recovered Products 7449  
shall be the property of the City. The Company, acting as 7452  
fiduciary for the City, shall remit daily receipts from the sale 7453  
of Recovered Products to a bank account established and used 7455  
solely for such purposes at a bank selected by the Company 7456  
subject to the City's approval, which shall not unreasonably be 7459  
withheld. Any cost of establishing or maintaining the account 7460  
shall be paid from the daily receipts so deposited. The Company 7462

shall pay the accumulated receipts from such account to the City 7464  
on a weekly basis, as well as any interest earned on such 7466  
receipts prior to payment to the City. The Recovered Product 7467  
Sales Revenues so received by the City shall be the basis for the 7467  
Recovered Product revenue charges set forth in Section 11.1 as 7468  
element of the Service Fee. 7469

(D) Compost Testing and Tracking. The Company shall at 7472  
its cost and expense have the Compost tested by an independent 7474  
laboratory acceptable to the City, and shall report the test 7476  
results to the City, at the times and with respect to the 7479  
parameters set forth in Appendix 20 hereto. The Company shall 7480  
maintain a system acceptable to the City for the purpose of 7481  
monitoring and tracking the end use of Compost produced, marketed 7484  
and disposed of by the Facility. The monitoring and tracking 7485  
system shall include forms, based on the principles set forth in 7487  
Appendix 20 hereto, which shall permit the City to correlate 7489  
records of Compost batch quality testing maintained pursuant to 7491  
Appendix 20 hereto with monitoring and tracking records 7492  
identifying brokers, distributors, users and recipients of the 7493  
tested Compost. The Company shall market and permit the use of 7494  
Compost only in a manner which entitles the City to full waste 7495  
diversion credit for purposes of compliance with the Act. 7497

SECTION 9.2. UNPROFITABLE RECOVERED PRODUCTS. (A) The 7502  
Company acknowledges and agrees that a primary objective of this 7503  
Agreement is to minimize the amount of municipal solid waste 7505  
generated in the City which is disposed of by landfilling in any 7507

jurisdiction, to maximize the degree of compliance by the City 7509  
 with the Act, and to avoid the imposition of fines by the Board 7512  
 for any failure to achieve the waste diversion goals of the Act 7514  
 with respect to City Acceptable Waste. The Company accordingly 7516  
 agrees to bear the entire risk of, and have sole and absolute 7517  
 responsibility for, marketing for recycling and re-use all 7519  
 Unprofitable Recovered Products. Without limiting the generality 7520  
of the foregoing, the Company shall bear all transfer, 7522  
transportation, handling, storage and disposal costs, charges, 7525  
 taxes and liabilities associated with the marketing and disposal 7527  
 of Unprofitable Recovered Products in accordance with this 7528  
 Section. If necessary in connection with its covenants under 7531  
 this Section the Company shall make any payments and assume any 7533  
 liabilities, in either case without limitation as to amount, 7534  
which may be required from time to time to induce Recovered 7535  
 Product Purchasers to receive and assume possession and ownership 7537  
 of Unprofitable Recovered Products, including all transportation 7539  
 and other related costs; provided, however, that the City shall 7540  
 bear, as the Unmarketable Recovered Product Charge component of 7541  
 the Service Fee, an amount equal to 20% of any net revenue loss 7542  
 incurred by the Company in marketing Recovered Products 7543  
 (calculated separately for each Class, and on an annual basis). 7544  
The unavailability of profitable markets for the sale of 7545  
 Recovered Products shall not constitute an Uncontrollable 7547  
 Circumstance hereunder. The agreements of the Company in this 7548  
 Section shall apply notwithstanding the content, composition or 7550

character (physical, chemical or otherwise) of Acceptable Waste 7551  
delivered to the Facility for processing hereunder. 7552

(B) Assurance of Recycling or Re-Use. As part of its 7555  
monthly operating reports submitted pursuant to Subsection 7.9(C) 7556  
hereof, the Company shall certify to the City that all 7558  
Unprofitable Recovered Products marketed or disposed of by the 7559  
Company have been profitably or unprofitably marketed for 7560  
recycling or re-use purposes, and have been diverted from 7561  
landfill in a manner which will entitle the City to waste 7562  
diversion credit for such materials in accordance with the Act. 7562  
The Company shall use its best efforts to assure that any 7563  
Unprofitable Recovered Products marketed through brokers, 7565  
distributors or intermediaries other than the end-user are 7567  
ultimately used for recycling or re-use purposes by an end-user, 7567  
and shall furnish evidence satisfactory to the City that such is 7569  
the case. The Company shall not utilize any sites for the 7571  
interim storage of Unprofitable Recovered Products other than the 7573  
Facility Site without the City's advance written consent, which 7575  
may be withheld in the City's sole discretion. 7575

SECTION 9.3. DOWNGRADED OR REJECTED LOADS OF RECOVERED 7577  
PRODUCTS. In the event that a Materials Purchaser in the 7580  
Secondary Materials Market does not for any reason accept 7582  
delivery of any Load of Recovered Products at the Class specified 7583  
in the Performance Guarantees set forth in Appendix 13 hereto, 7584  
but does accept delivery of any Load of Recovered Products at a 7586  
grade lower than that specified in the Performance Guarantees set 7588

forth in Appendix 13 hereof, or such Load is delivered and 7589  
accepted by a different Materials Purchaser at the original or 7591  
lower grade, then the Company shall credit to the City, as the 7593  
Lost Revenues Credit Component of the Service Fee, an amount 7595  
equal to 100% of the additional Recovered Product Sales Revenues 7596  
that would have been received had the Load not been so Downgraded 7598  
or Rejected. The Company shall give the City written 7600  
notification of Rejection or Downgrading within three business 7601  
days after the Company receives notification thereof from a 7603  
Materials Purchaser. 7603

SECTION 9.4. TITLE TO AND LIABILITY FOR ACCEPTABLE 7605  
WASTE AND RECOVERED PRODUCTS. As between the parties, title to, 7608  
risk of damage or injury from, and liability for Acceptable Waste 7609  
shall pass to the Company upon the commencement of processing by 7610  
the Facility following the screening activities performed under 7611  
the Waste Screening Program set forth in Appendix 16 hereto. As 7613  
between the parties, title to, risk of damage or injury from, and 7615  
liability for Recovered Products shall at all times rest entirely 7616  
with the Company. Without limiting the foregoing, the Company 7619  
shall indemnify, defend and hold harmless the City, in accordance 7621  
with subsection 14.5(A) hereof, from all Loss-and-Expense of any 7623  
tort or other liability resulting from the marketing and disposal 7624  
of Recovered Products. Such indemnity shall extend to any 7625  
liability resulting from property loss or damage or death or 7627  
personal injury (including consequential damages) suffered or 7629  
alleged to be suffered by any person from exposure to or as a 7631

result of processing or using any Recovered Product based on any 7632  
theory of recovery, including theories of product liability or 7634  
environmental impairment. The Company shall promptly notify the 7636  
City of any claim or substantial threat of a claim by any person 7637  
on account or arising out of the marketing or disposal of 7640  
Recovered Products by the Company hereunder. If the City or the 7641  
Company is required by any contract or in connection with any 7644  
Legal Proceeding arising out of the marketing or disposal of 7645  
Compost to recover or remove any Compost from its disposal 7645  
location and treat and re-market or re-dispose of such Compost 7647  
for any reason whatsoever, including non-compliance by the 7649  
Company with the Performance Guarantees, permit conditions or 7651  
contract terms, the Company shall perform such services and 7653  
activities at its sole cost and expense. 7653

SECTION 9.5. DISPOSAL OF REJECTS. The Company shall 7656  
segregate, collect and store all Rejects, and operate the 7658  
Facility so as to maximize the removal of Rejects prior to the 7658  
acceptance and processing of Acceptable Recyclable Materials, and 7660  
to minimize or avoid the presence of Acceptable Recyclable 7660  
Materials in the stream of Rejects. The Company shall observe 7661  
the Waste Screening Program set forth in Appendix 16 hereto and 7663  
shall implement such other procedures to the maximum extent 7663  
practicable to identify the source of Rejects delivered to the 7664  
Facility. The Company shall transfer all Rejects to the Mixed | 7667  
Waste Processing Train. Prior to the transportation of Rejects | 7668  
from the Facility to the Designated Disposal Facility the Company 7670



shall, at the request of the City, unload and spread Rejects 7671  
produced from Facility operations onto the tipping floor of the 7672  
Facility for inspection and weighing. The cost of such 7674  
spreading, inspection and weighing shall be borne by the City in 7675  
the event the Rejects consist of at least 90% Acceptable 7676  
Recyclable Materials. In the event such 90% limit is shown not 7677  
to be exceeded, the Company shall bear such inspection costs and 7678  
the cost of transportation and disposal of all Rejects produced 7680  
from Facility operations shall be borne by the Company until the 7682  
Company demonstrates, through a subsequent similar inspection 7683  
procedure conducted at its cost and expense, that such 90% 7684  
standard has been shown to be exceeded. 7685

SECTION 9.6. DISPOSAL OF RESIDUE. The City shall 7691  
locate a Designated Disposal Site, make all necessary 7692  
arrangements with the owner or operator thereof for the disposal 7695  
of Residue during the Term of this Agreement, and pay all Residue 7697  
disposal costs under such arrangements. The Company shall store 7699  
Residue at the Facility in an enclosed building in accordance 7702  
with the Design Requirements. The Company shall operate the 7703  
Facility and process Acceptable Waste so as to minimize the | 7704  
production of Residue, and in any event shall comply with the | 7704  
Allowable Residue by Waste Type set forth as part of the | 7705  
Performance Guarantees. The Company shall segregate, collect and 7706  
store all Residue from processing operations, and shall transport 7708  
all Residue to the Designated Disposal Facility in a safe and 7710  
environmentally sound manner and in accordance with Applicable 7710

Law. The City shall pay the Company for the transportation and 7713  
disposal of all Residue except Excess Residue through the 7716  
Allowable Residue Hauling Charge component of the Service Fee, 7717  
calculated as provided in Section 11.1 hereof, except to the 7720  
extent the City pays such Residue disposal costs directly to the 7722  
owner or operator of the Designated Disposal Facility. The cost 7724  
of transporting Excess Residue shall be borne by the Company. 7725  
The Company shall pay the City, as liquidated damages for 7727  
producing Excess Residue an amount equal to \$150 per Ton of 7730  
Excess Residue, escalated in accordance with the Operation Price 7731  
Index. 7731

Section 9.7. ADDITIONAL WASTE DIVERSION. The Company 7735  
shall have the right, with the consent of the City, to remove and 7738  
market to the Secondary Materials Market any item of Acceptable 7740  
Mixed Waste which does not constitute a Recovered Product, as 7742  
defined herein. Any revenues net of transportation costs 7743  
received from the sale of such materials shall be treated as 7744  
Recovered Product Sales Revenues. In the event there is a cost 7746  
(net of transportation costs) to marketing such materials, and 7749  
such materials are marketed for recycling and re-use purposes so 7750  
as to qualify for landfill diversion credit under the Act, the 7753  
City will pay the Company a Waste Diversion Credit calculated as 7754  
provided in subsection 11.1(F) hereof. 7754

ARTICLE X

7758

CAPITAL IMPROVEMENTS

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SECTION 10.1. CAPITAL IMPROVEMENTS AT CITY ELECTION.

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The City may direct the Company to make Capital Improvements at any time and for any reason whatsoever, whether and however any such directive revises this Agreement or affects the Facility; provided, however, to the extent such Capital Improvement impairs the ability of the Company to meet the Performance Guarantees or comply with its other obligations hereunder, appropriate adjustments to this Agreement shall be made to account for any such impairment. Such Capital Improvements may include, without limitation, increasing the capacity of the Facility by constructing additional processing trains for various Waste Types or for processing additional types of recyclable materials and municipal solid waste. This Section shall not be construed to limit the ability of the City to utilize contractors other than the Company to undertake Capital Improvements.

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SECTION 10.2. CAPITAL IMPROVEMENTS AT COMPANY ELECTION.

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The Company shall give the City and the City Engineer written notice, and reasonable opportunity to review and comment upon, any Capital Improvement proposed to be made at the Company's election, whether before or after Acceptance. Any Capital Improvement proposed to be made at the election of the Company under this Section 10.2, whether for experimental purposes or otherwise, shall be subject to the City's prior written approval,

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which approval may be withheld in the City's sole discretion. 7806  
All such Capital Improvements shall be made at the Company's sole 7808  
cost and expense, and the Company shall not be entitled to any 7809  
adjustment in the Purchase Price, the Service Fee or other 7812  
compensation or schedule or risk adjustment from the City as a 7814  
result thereof. The City shall be entitled to 50% of any | 7818  
operating cost savings attributable to the Capital Improvement. | 7820

SECTION 10.3. CAPITAL IMPROVEMENTS DUE TO COMPANY 7825

BREACH. If the Facility is damaged or destroyed due to Company 7827  
Breach, whether before or after Acceptance, the Company shall 7830  
promptly proceed to make or cause to be made all Capital 7830  
Improvements reasonably necessary to permit the Company to 7831  
perform its obligations under this Agreement in a manner which is 7833  
consistent with the Design Requirements. The Company shall give 7835  
the City and the City Engineer written notice of, and a period of 7838  
not less than 30 days to review and comment upon, any such 7840  
proposed Capital Improvement. All such Capital Improvements 7842  
shall be made at the Company's sole cost and expense, and the 7844  
Company shall not be entitled to any adjustment in the Service 7845  
Fee or other compensation from the City as a result thereof. 7847

SECTION 10.4. CAPITAL IMPROVEMENTS DUE TO COST-SHARED 7851

UNCONTROLLABLE CIRCUMSTANCES. Upon the occurrence of a Cost- 7853  
Shared Uncontrollable Circumstance, whether before or after 7854  
Acceptance, the Company shall promptly proceed, in accordance 7855  
with the terms set forth in Section 10.6 and Section 14.4 hereof, 7856  
to make or cause to be made all Capital Improvements reasonably 7858

necessary to permit the Company to perform its obligations under 7859  
this Agreement. The Company agrees to undertake any such Capital 7861  
Improvements at no profit to the Company. The Capital 7863  
Improvement Costs relating to any such Capital Improvement shall 7864  
be shared equally between the Company and the City. The Company 7866  
shall pay its share of such Capital Improvement Costs (net of any 7867  
applicable Required Construction Period Insurance or Required | 7868  
Operation Period Insurance Coverage proceeds) from its own funds. | 7870  
The City shall bear its share of such Capital Improvement Costs 7872  
in the manner provided in Section 10.6 hereof. 7873

SECTION 10.5. CAPITAL IMPROVEMENTS DUE TO CITY BREACH. 7876

If the Facility is damaged or destroyed due to a City Breach, 7878  
whether before or after Acceptance, the Company shall promptly 7881  
proceed, in accordance with the terms set forth in Sections 10.6 7882  
and 14.4 hereof, to make or cause to be made all Capital 7884  
Improvements reasonably necessary to complete the Facility or to 7886  
restore the Facility to the condition it was in upon Acceptance, 7887  
whichever is appropriate, and to permit the Company to resume 7890  
performance of and to perform its obligations under this 7892  
Agreement. The City shall bear all of the Capital Improvement 7894  
Costs relating to any such Capital Improvement in the manner 7895  
provided in Section 10.6 hereof. 7896

SECTION 10.6. PROCEDURES FOR IMPLEMENTING CAPITAL 7900  
IMPROVEMENTS FOR WHICH CITY MAY BE FINANCIALLY RESPONSIBLE. (A) 7902  
Notice, Proposals and Authorization to Proceed. In the event a 7903  
Capital Improvement is proposed or required under this Article X 7904

due to the request or breach of either party or the occurrence of 7906  
an Uncontrollable Circumstance, the provisions and procedures set 7907  
forth in Section 4.7 hereof shall apply as if the Capital 7909  
Improvement constituted Extra Construction Work thereunder to be 7910  
done pursuant to Change Order. In order to implement such 7911  
provisions with respect to any Capital Improvement which may be 7912  
required for which the City is partially responsible pursuant to 7915  
Section 10.4 hereof, or fully responsible pursuant to Section 7916  
10.5 hereof, the Company shall give the City and the City 7918  
Engineer prompt written notice thereof, which notice shall 7920  
include (1) a description of the Capital Improvement and an 7922  
explanation of why the Capital Improvement is required by an 7923  
Uncontrollable Circumstance or is due to City Breach, (2) an 7927  
estimate of the amount of all Capital Improvement Costs and 7930  
changes to the Service Fee, if any, associated therewith and 7932  
preliminary Cost Substantiation therefor, (3) a projected 7933  
completion schedule, including any effect on the Scheduled 7934  
Acceptance Date, (4) a proposed drawdown schedule, (5) the 7936  
anticipated adjustment to the Service Fee, (6) the projected 7937  
Billing Period when such adjustment shall first take effect and 7939  
(7) any changes to the Performance Guarantees required as a 7939  
result thereof. The Company shall update such notice from time 7940  
to time to reflect any modification in the computation of the 7942  
Purchase Price, the Service Fee or any other material change in 7945  
the information included in any previous notice, and shall 7946  
provide the City with a description of such Capital Improvements, 7948

Capital Improvement Costs and Cost Substantiation on a definitive 7948  
basis as soon as reasonably possible. The failure of the Company 7950  
to notify the City as to the effect of any proposed Capital 7952  
Improvement prior to the undertaking thereof on any Acceptance 7954  
Standard or Performance Guarantee shall be deemed to constitute a 7955  
waiver by the Company of any claim to a revision of the 7957  
Acceptance Standard or Performance Guarantee resulting from such 7958  
Capital Improvement. The Company shall consult with the City 7960  
concerning possible remedies to any Uncontrollable Circumstance 7961  
or problems caused by City Breach, and the Company and the City 7963  
shall cooperate in order to minimize any delay and to restore the 7964  
Facility to the performance levels originally contemplated 7965  
hereunder. The notices delivered by the Company to the City 7967  
pursuant to this subsection 10.6(A) shall be used to determine if 7967  
the City shall have the right to terminate this Agreement 7968  
pursuant to subsection 12.5(C) hereof. 7968

(B) Implementation of Capital Improvements. On the 7971  
basis of the information and proposals as furnished by the 7972  
Company, the City shall direct, and the Company shall undertake 7974  
and complete, the construction and installation of the Capital 7976  
Improvement as if such directive constituted a Change Order 7976  
issued under Section 4.7 hereof, and the provisions of Section 7978  
14.4 hereof shall apply to the extent the Capital Improvement is 7980  
required by an Uncontrollable Circumstance. Any Capital 7981  
Improvement made hereunder prior to the Purchase Date shall be 7983

owned by the Company, and any Capital Improvement made hereunder 7985  
on or after the Purchase Date shall be owned by the City. 7987

(C) City Option to Undertake Capital Improvements. In 7990  
the event the Company and the City are unable to agree on a price 7991  
and any adjustments to this Agreement which are occasioned by a 7993  
request by the City for a Capital Improvement within a reasonable 7995  
period of time after conducting good faith negotiations with 7998  
respect thereto pursuant to subsection 10.6(A) hereof, or the 8001  
Company fails to proceed with any City-directed Capital 8002  
Improvement pursuant to subsection 10.6(B) hereof, the City shall 8004  
have the right itself to undertake and complete the Capital 8005  
Improvement requested. Such work may be performed by City 8007  
employees or City subcontractors. In the event the City elects 8009  
to proceed under this subsection, it shall provide notice of its 8010  
election to the Company together with copies of the 8012  
specifications for the work. The Company shall have the right to 8013  
comment but not approval regarding such specifications. No such 8015  
work shall impair the ability of the Company to meet the 8016  
Performance Guarantees, comply with any other term or condition 8018  
of this Agreement, affect any right of the Company or impose any 8019  
additional liability or obligation on the Company under this 8022  
Agreement; but the Company shall have no right of objection with 8023  
respect to such work if the City affords the Company price, 8025  
schedule and any other relief hereunder which is necessary to 8027  
avoid any such impairment. 8028



(D) Insurance and Other Third Party Payments. To the 8031  
 extent that any Capital Improvement Costs that are incurred 8032  
 pursuant to this Article can be recovered by the Company from any 8033  
 insurer providing the Required Construction Period Insurance or | 8035  
 the Required Operation Period Insurance, or from another third | 8037  
 party, the Company shall exercise with due diligence such rights 8038  
as it may have to effect such recovery. The Company shall give 8040  
 prompt written notice to the City of the receipt of any such 8041  
 recovery which shall be applied as appropriate to the restoration 8042  
 or reconstruction of the Facility in accordance, after the 8045  
 Purchase Date, with the Facility Obligation Transaction 8046  
 Agreements. The Company shall provide the City with copies of 8048  
 all documentation, and shall afford the City a reasonable 8049  
 opportunity to participate in and, if the City so determines, to 8053  
 direct all conferences, negotiations and litigation, regarding 8056  
 insurance claims which materially affect the City's interest 8057  
under this Agreement. All applicable insurance recoveries shall 8059  
 be applied to reducing the cost of restoration or reconstruction 8061  
prior to the calculation of the amount of any cost to be shared 8063  
 by the parties as arising out a Cost-Shared Uncontrollable 8064  
 Circumstance. 8064

## ARTICLE XI

8069

## SERVICE FEE

8071

SECTION 11.1. SERVICE FEE. (A) Formula. Commencing with the first Billing Period of the Operation Period and for each Billing Period thereafter during the Term of this Agreement, the City shall pay the Company a Service Fee for the services provided by the Company under the terms of this Agreement in accordance with the following formula:

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$$\begin{aligned}
 SF = & OM + RM + MW + YW + HC + DW + PT \\
 & + RR + MR + HR + CR - ER - LR - LD \\
 & + UM - PO + SA
 \end{aligned}$$

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where:

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OM = Base Operation and Maintenance Charge

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RM = Excess Recyclable Materials Processing Charge

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MW = Excess Mixed Waste Processing Charge

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YW = Excess Yardwaste Processing Charge

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HC = Allowable Residue Hauling Charge

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DW = Waste Diversion Charge

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PT = Pass Through Cost Charge

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RR = Recovered Recyclable Materials Revenue Charge

8107

MR = Recovered Mixed Waste Materials Revenue Charge

8108

HR = Recovered Household Hazardous Waste

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Materials Revenue Charge

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CR = Compost Revenue Charge

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ER = Excess Residue Credit

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LR = Lost Revenue Credit

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LD = Performance Liquidated Damages Credit	8114
UM = Uncontrollable Circumstance Credit or Charge	8115
PO = Benefits Accruing from Public Ownership	8116
SA = All Other Service Fee Adjustments	8117
<u>Each component of the Service Fee shall be computed in accordance</u>	8123
<u>with this Article and may be adjusted from time to time as</u>	8124
<u>provided in this Agreement. Although calculated by components,</u>	8125
<u>the Service Fee is and shall be considered to be a single fee.</u>	8126
<u>The City shall pay the Company the Service Fee with respect to</u>	8128
<u>each Billing Period during the Term, as adjusted pursuant to this</u>	8130
<u>Agreement including those Billing Periods during which an</u>	8132
<u>Uncontrollable Circumstance has occurred or is occurring.</u>	8133
<u>(B) Base Operation and Maintenance Charge.</u> The Base	8136
Operation and Maintenance Charge shall be payable with respect to	8136
<u>the processing in any Contract Year of Acceptable Waste in</u>	8137
<u>amounts not in excess of the Baseline Acceptable Waste Tonnage.</u>	8138
<u>The Base Operation and Maintenance Charge for any Contract Year</u>	8139
<u>shall be \$_____ [TO BE BID] (which dollar amount shall be</u>	8140
<u>adjusted by the proportionate increase or decrease in the</u>	8141
<u>Operation Price Index from the month of January, 1992 to December</u>	8142
<u>of the Contract Year preceding the Contract Year for which the</u>	8143
<u>determination is to be made).</u>	8143
<u>(C) Excess Recyclable Materials Processing Charge.</u> The	8146
Excess Recyclable Materials Processing Charge shall be payable	8146
<u>with respect to Acceptable Recyclable Materials processed by the</u>	8147
<u>Company in excess of 18,720 Tons of Acceptable Recyclable</u>	8149

Materials per Contract Year. The Excess Recyclable Materials | 8151  
 Processing Charge for any Contract Year shall be calculated by | 8152  
 multiplying (1) the Tonnage amount of such excess, times (2) the | 8152  
 sum of \$ \_\_\_\_\_ [TO BE BID] per Ton (which dollar amount shall be | 8153  
 adjusted to reflect the increase or decrease in the Operation | 8156  
 Price Index from the month of January, 1992 to December of the | 8156  
Contract Year preceding the Contract Year for which the | 8157  
 determination is to be made). | 8157

(D) Excess Mixed Waste Processing Charge. The Excess | 8160  
 Mixed Waste Processing Charge shall be payable with respect to | 8161  
 Acceptable Mixed Waste processed by the Company in excess of | 8163  
 468,000 Tons of Acceptable Mixed Waste per Contract Year. The | 8165  
 Excess Mixed Waste Processing Charge for any Contract Year shall | 8165  
 be calculated by multiplying (1) the Tonnage amount of such | 8166  
 excess, times (2) the sum of \$ \_\_\_\_\_ [TO BE BID] per Ton (which | 8167  
 dollar amount shall be adjusted to reflect the increase or | 8169  
 decrease in the Operation Price Index from the month of January, | 8170  
 1992 to December of the Contract Year preceding the Contract Year | 8171  
for which the determination is to be made). | 8172

(E) Excess Yardwaste Processing Charge. The Excess | 8175  
 Yardwaste Processing Charge shall be payable with respect to | 8176  
 Acceptable Yardwaste processed by the Company in excess of 78,000 | 8178  
 Tons of Acceptable Yardwaste per Contract Year. The Excess | 8179  
 Yardwaste Processing Charge for any Contract Year shall be | 8179  
 calculated by multiplying (1) the Tonnage amount of such excess, | 8180  
 times (2) the sum of \$ \_\_\_\_\_ [TO BE BID] per Ton (which dollar | 8181

amount shall be adjusted to reflect the increase or decrease in | 8183  
the Operation Price Index from the month of January, 1992 to | 8184  
December of the Contract Year preceding the Contract Year for | 8186  
which the determination is to be made). | 8187

(F) Waste Diversion Charge. The Waste Diversion Charge | 8190  
shall be payable with respect to any item of Acceptable Mixed | 8191  
Waste which does not constitute a Recovered Product as defined | 8193  
herein and which the Company pursuant to Section 9.7 hereof | 8196  
markets for recycling or reuse purposes and thereby diverts from | 8198  
landfill disposal at a net cost (including transportation) which | 8199  
is greater than any revenues received therefrom. The Waste | 8200  
Diversion Charge for any Contract Year shall be calculated by | 8201  
multiplying (1) the Tonnage amount of such diverted waste, times | 8201  
(2) 50% of any cost savings to the City resulting from the | 8202  
diversion from the Designated Disposal Site. | 8203

(G) Allowable Residue Hauling Charge. The Allowable | 8206  
Residue Hauling Charge shall be payable with respect to the | 8207  
transfer, transportation and handling of all Residue produced by | 8208  
the Facility within the Allowable Residue. The Allowable Residue | 8210  
Hauling Charge for any Contract Year shall be calculated by | 8210  
multiplying (1) the Tonnage of Residue produced by the Facility | 8212  
not exceeding the Allowable Residue, times (2) the shortest | 8213  
one-way distance in road miles from the Facility to the | 8213  
Designated Disposal Site, times (3) \$\_\_\_\_\_ [TO BE BID] per | 8215  
one-way Ton/mile (which Ton/mile amount shall be adjusted to | 8215  
reflect the increase or decrease in the Transportation Price | 8217

Index <u>from</u> the month of January, 1992 to December of the Contract	8218
Year preceding the <u>Contract</u> Year for which the determination is	8219
to be made).	8219
<u>(H) Pass Through Cost Charge.</u> The Pass Through Cost	8222
Charge <u>for</u> any Contract Year <u>shall</u> be an amount equal <u>to</u> the sum	8225
of the following items, <u>to</u> the extent paid or incurred by the	8226
Company in such Contract Year <u>and</u> to the extent the Company	8227
provides Cost <u>Substantiation</u> therefor:	8228
<u>(1) Certain Operating Period Taxes.</u> Any sales, use,	8232
real and personal property, <u>ad</u> valorem, excise, leasing or	8233
leasing use Tax, <u>or</u> any Tax to the extent measured by gross	8234
receipts, <u>gross</u> income, gross operating income or gross	8235
earnings, <u>paid</u> by or on behalf <u>of</u> the Company <u>imposed</u> by the	8238
United States, State, <u>County</u> , City or any other taxing	8239
authority or <u>jurisdiction</u> of the United States or the State	8240
<u>during</u> the Operating Period <u>against</u> the Company or the	8242
Facility <u>or</u> upon the <u>operation</u> <u>thereof</u> by the Company, <u>any</u>	8246
Tax paid by or on behalf <u>of</u> the Company <u>which</u> is imposed by	8248
the United States, State, County or City <u>or</u> any other taxing	8249
authority or <u>jurisdiction</u> <u>of</u> the United States or the State	8250
solely on the Company <u>with</u> respect to the Facility <u>or</u> on the	8252
<u>waste</u> disposal, <u>composting</u> or recycling industries. <u>Pass</u>	8255
Through Costs shall not include any Taxes <u>payable</u> due to	8256
Company Breach, <u>any</u> Taxes <u>based</u> on or measured by net income,	8258
any unincorporated <u>business</u> , payroll, franchise <u>(except</u> to	8260
the extent measured by gross receipts, <u>gross</u> income, gross	8261

operating income or gross earnings) <u>or</u> employment <u>taxes</u> ; any	8263
taxes imposed by a foreign government <u>or</u> any of their taxing	8264
agencies; <u>or</u> any sales <u>or</u> other Taxes paid by or on behalf of	8267
the Company <u>because</u> of the failure of the Company or any	8268
<u>Subcontractor</u> to comply with procedures <u>required</u> for the use	8270
of any available sales or other tax exemption. <u>Any</u> Taxes	8271
payable on the sale of Recovered Products shall be <u>deducted</u>	8272
in the computation of Product Sale Revenues and <u>shall</u> not	8273
constitute a Pass Through Cost Charge.	8273
 (2) <u>Transportation and Disposal of Household Hazardous</u>	8275
<u>Waste</u> . <u>The</u> cost of transportating and disposing of	8276
Acceptable Household Hazardous Waste in <u>accordance</u> with	8277
subsection 8.3(D) hereof.	8277
 (3) <u>Unacceptable Waste</u> . <u>Any</u> costs and expenses payable	8280
<u>by</u> the City to the Company, <u>to</u> the extent provided in	8282
subsection 8.2(G) <u>hereof</u> , on account of the delivery <u>by</u> the	8284
City or the Registered Haulers <u>of</u> Unacceptable Waste to the	8285
Facility.	8285
 <u>It</u> is specifically understood and agreed that the cost <u>of</u> all	8288
other operation, <u>maintenance</u> , repair and replacement costs <u>and</u>	8290
expenses incurred with respect to the Facility <u>not</u> expressly	8291
payable by the City <u>as</u> a Pass Through Cost Charge or otherwise	8292
hereunder, <u>to</u> the extent not resulting from Uncontrollable	8293
<u>Circumstances</u> or a City Breach, <u>will</u> be borne by <u>the</u> Company and	8296
shall not constitute a Pass Through Cost Charge.	8296

(I) <u>Recovered Recyclable Materials Revenue Charge.</u> For	8299
each Class of Recovered Recyclable Materials for which the	8299
Product Sales Revenues attributable to the marketing of such	8301
Class is positive in any Contract Year, the Recovered Recyclable	8302
Materials Revenue Charge in such Contract Year shall be an amount	8303
equal to 20% of such Recovered Product Sales Revenues for each	8303
such Class.	8303
(J) <u>Recovered Mixed Waste Materials Revenue Charge.</u>	8305
For each Class of Recovered Mixed Waste Materials for which the	8307
Product Sales Revenues attributable to the marketing of such	8307
Class is positive in any Contract Year, the Recovered Mixed Waste	8309
Materials Revenue Charge in such Contract Year shall be an amount	8310
equal to 20% of such Recovered Product Sales Revenues for each	8310
such Class.	8310
(K) <u>Recovered Household Hazardous Waste Materials</u>	8312
<u>Revenue Charge.</u> The Household Hazardous Waste Materials Revenue	8313
Charge shall be the amount, if any, described in subsection	8316
8.3(D) hereof.	8316
(L) <u>Compost Revenue Charge.</u> The Compost Revenue Charge	8319
in each Contract Year shall be an amount equal to __% [TO BE BID]	8320
of such Recovered Product Sales Revenues attributable to the	8321
marketing of Compost in such Contract Year.	8321
(M) <u>Excess Residue Credit.</u> The Excess Residue Credit	8324
for any Contract Year shall be an amount equal to 150% of the	8326
cost to the City of transferring, transporting and disposing of	8326
such Excess Residue at the Designated Disposal Site.	8327



(N) Lost Revenues Credit. The Lost Revenues Credit for 8330  
any Contract Year shall be the amount of the credit to the City 8331  
to account for any Product Sales Revenues lost as a result of the 8332  
failure of the Company for any reason to market Recovered 8333  
Products as provided in Article IX hereof. 8334

(O) Performance Liquidated Damages Credit. A credit in 8337  
the amount of all liquidated damages payable to the City 8339  
hereunder for non-performance by the Company of its obligations 8341  
under this Agreement. 8341

(P) Uncontrollable Circumstance Credit or Charge. The | 8344  
net amount of any (1) amounts payable by the City for increased 8344  
operation and maintenance costs incurred during such Contract 8346  
Year on account of Uncontrollable Circumstances which are 8346  
chargeable to the City hereunder (and not to be borne by the 8347  
Company under the cost-sharing provisions of Section 14.4 hereof | 8348  
or subject to the Service Fee Increase Limitation), and | 8350  
(2) operation and maintenance cost savings achieved by the | 8350  
Company in mitigating the effects of the occurrence of an | 8353  
Uncontrollable Circumstance pursuant to Section 14.4 hereof. 8353

(Q) Benefits Accruing Due to Public Ownership. The 8356  
Company and the City acknowledge that certain tax benefits, 8356  
savings from utility costs, or other benefits may accrue to the 8357  
Facility due to its status as a publicly owned facility. The 8359  
Company shall cooperate with the City to obtain any such benefits 8359  
and all benefits so obtained shall accrue to the City. 8360

(R) All Other Service Fee Adjustments. The All Other Service Fee Adjustments shall be the amount of any other adjustments to the Service Fee required by this Agreement.

SECTION 11.2. SERVICE FEE INCREASE LIMITATION.  
Notwithstanding any other provision of this Agreement, the per-Ton Service Fee increases (calculated on the basis of the Baseline Acceptable Waste Tonnage) occurring as a result of all Uncontrollable Circumstances occurring hereunder subsequent to the Contract Date shall not exceed the Service Fee Increase Limitation. The Service Fee Increase Limitation shall be an amount equal to \$10 per Ton of Acceptable Waste processed, which dollar amount shall be adjusted in accordance with the Operation Price Index.

SECTION 11.3. RESERVE FOR MAJOR REPAIRS AND REPLACEMENTS. (A) Withholding. There shall be withheld from the Service Fee each Contract Year, pro-rata with each Billing Period, the following amounts as a reserve for the cost and expense of making major repairs and replacements to the Facility. Each such amount shall be adjusted to reflect increases or decreases in the Operation Price Index from the month of \_\_\_\_\_, 1991 to December of the Contract Year preceding the Contract Year for which the determination is to be made:

<u>Full Contract Year</u>	<u>Withheld Amount</u>	
First	\$	
Second		
Third		
Fourth		

Fifth	8405
Sixth	8406
Seventh	8407
Eighth	8408
Ninth	8409
Tenth	8410
Eleventh	8411
Twelfth	8412
Thirteenth	8413
Fourteenth	8414
Fifteenth	8415
Sixteenth	8416
Seventeenth	8417
Eighteenth	8418
Nineteenth	8419
Twentieth	8420

The withheld amounts shall be paid to a special segregated reserve account held by the City and shall not be used for any other purpose. Interest accruing on the withheld amounts shall be retained in the reserve account.

(B) Use of Reserve. The Company shall have the right to draw on the special reserve account to make major repairs and replacements to the Facility. In order to draw on the special reserve account, the Company shall deliver a certified requisition to the City stating (1) that the Company has paid or incurred costs for major repairs and replacements to the City described in Appendix 18 hereto (attaching a list of all such items), (2) the cost of all such items (including Cost Substantiation), (3) that the requisition does not cover items which were the subject of previous requisitions, and (4) if the requisition with respect to any item is being submitted earlier than anticipated by the schedule of major repairs and replacements set forth in Appendix 18 hereto, that all ordinary

maintenance and repair required for the Facility under good  
engineering practice has been performed in a timely manner and  
the major repair or replacement which is the subject of the  
accelerated requisition is required due to an emergency or  
equipment failure. Any balance in the reserve account upon the  
expiration or termination of this Agreement shall be paid to the  
Company, unless the Agreement is terminated by the City for an  
Event of Default by the Company, in which event such balance  
shall revert to the City and become its property.

SECTION 11.4. BILLING OF THE SERVICE FEE. (A) Billing  
Statements. For each Billing Period the Company shall render a  
statement (a "Billing Statement") to the City by the 15th day of  
the following Billing Period, which shall set forth each  
component of the Service Fee. Each Billing Statement shall also  
include, for such Billing Period, all charges and other amounts  
payable by the City to the Company hereunder and all credits and  
other amounts payable by the Company to the City hereunder. The  
City shall pay the Service Fee (if positive) due to the Company  
within 30 days of the date of the Billing Statement. If the  
Service Fee is negative, the excess of the credits over charges  
shall be carried forward. All Billing Statements shall be on  
forms prepared by the City and shall be submitted together with  
completed standard City claim vouchers for payment.

(B) Billing Estimates and Adjustments. To the extent  
that the actual value of charge, credit, index value or any other  
item in any Billing Statement cannot be accurately determined at

the Billing Statement date, such item shall be billed on a good 8497  
faith estimated basis reflecting actual operating experience and 8498  
reasonably projected delivery, processing, marketing and price 8500  
trends for the balance of the Contract Year, and an adjustment 8503  
shall be made to reflect the difference between such estimated 8504  
amount and the actual amount of such item on the Billing 8505  
Statement next following the date on which the Company learns the 8506  
exact amount of such item. 8507

(C) Annual Estimates. Ninety days prior to the end of 8510  
each Contract Year, the Company shall provide to the City a 8511  
written statement setting forth its reasonable estimate of the 8513  
aggregate Service Fee for the next Contract Year, which statement 8514  
shall not be binding on the Company. 8514

SECTION 11.5: ANNUAL SETTLEMENT. Within 60 days after 8520  
the end of each Contract Year, the Company shall deliver to the 8521  
City an annual settlement statement (the "Annual Settlement 8522  
Statement") setting forth the actual aggregate Service Fee 8523  
payable with respect to such Contract Year and a reconciliation 8525  
of such amount with the amounts actually paid by the City 8526  
pursuant to the Billing Statements with respect to such Contract 8527  
Year. If any amount is then in dispute, the Annual Settlement 8529  
Statement shall set forth the Company's estimate of such amount 8531  
and a final reconciliation of such amount shall be made in the 8532  
Billing Statement for the Billing Period immediately following 8533  
the resolution of such dispute. 8533

SECTION 11.6. CITY'S PAYMENT OBLIGATIONS. (A) Payment 8538  
Irrespective of Waste Deliveries. The City shall pay the Company 8539  
the Service Fee as provided hereunder during the Term of this 8541  
Agreement, whether or not and regardless of the extent to which 8543  
the City delivers or causes to be delivered any waste to the 8544  
Facility for processing pursuant to the terms of this Agreement; 8546  
provided, however, that the City shall have no obligation to pay 8548  
the Service Fee unless and until the Purchase Date has occurred. 8549

(B) Disputes. If the City disputes any amount billed 8552  
by the Company in any Billing Statement, the City shall pay that 8555  
portion of the billed amount which is not in dispute and shall 8556  
provide the Company with written objection within 15 days of the 8556  
receipt of such Billing Statement indicating the portion of the 8557  
billed amount that is being disputed and providing all reasons 8558  
then known to the City for its objection to or disagreement with 8559  
such amount. If the City and the Company are not able to resolve 8560  
such dispute within 30 days after the City's objection, either 8562  
party may refer such dispute to the Independent Engineer for non- 8563  
binding mediation in accordance with Section 12.11 hereof. If 8565  
any such amount is adjusted in the Company's favor pursuant to 8565  
agreement, mediation or otherwise, the City shall pay the amount 8567  
of such adjustment to the Company, with interest thereon at the 8568  
Prime Rate from the date such disputed amount was due the Company 8569  
to the date of payment in full of such amount. Nothing contained 8570  
in this subsection shall limit the authority of any authorized 8571  
officer of the City or any other governmental agency to raise a 8573

further objection to any amount billed by the Company pursuant to 8573  
an audit conducted pursuant to Applicable Law. 8574

ARTICLE XII

8579

DEFAULT, TERMINATION FOR CAUSE  
AND DISPUTE RESOLUTION

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SECTION 12.1. REMEDIES FOR BREACH. The parties agree  
that, except as otherwise provided in Sections 12.2(A), 12.3(A)  
and 12.5 hereof with respect to termination rights, (1) in the  
event that the Company fails to meet the Performance Guarantees  
hereunder, the Performance Obligations provided for in  
Articles VIII and IX hereof shall be the only remedies available  
against the Company with respect to such failure to perform and  
(2) in the event that either party breaches any other obligation  
under this Agreement or any representation made by either party  
hereunder is untrue in any material respect, the other party  
shall have the right to take any action at law or in equity it  
may have to enforce the payment of any damages or the performance  
of such other obligation hereunder and such right to recover  
damages or to be reimbursed as provided herein will ordinarily  
constitute an adequate remedy for any breach of such other  
obligation or any material untruth in any such representation.  
Neither party shall have the right to terminate this Agreement  
for cause except after an Event of Default determined in  
accordance with the provisions of this Article XII shall have  
occurred and be continuing.

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SECTION 12.2. <u>EVENTS OF DEFAULT BY THE COMPANY.</u>	8625
(A) <u>Events of Company Default Defined.</u> Each of the following	8627
shall constitute an Event of Default on the part of the Company:	8628
(1) <u>Certain Performance Standards.</u> The failure of the	8633
Company (notwithstanding the payment by the Company of	8635
liquidated damages or the performance of any other related	8635
Performance Obligations required to be paid or performed in	8638
connection with any such failure), without notice or cure	8639
opportunity: (a) to achieve the Start Construction Date by	8640
_____, irrespective of the occurrence of any	8641
Uncontrollable Circumstance, (b) to achieve Acceptance prior	8642
to the end of the Extension Period, (c) in any rolling 90-day	8644
period to process Acceptable Waste and recover Recovered	8646
Products in accordance herewith in quantities at least equal	8648
to 85% of the waste processing and recovery guarantees	8648
applicable thereto by Waste Type, or (d) in any rolling 90-	8650
day period to market for recycling or re-use in accordance	8652
herewith Recovered Products in quantities at least equal to	8653
85% (in the aggregate by weight of all Recovered Products) of	8655
the Recovered Products recovered from Acceptable Waste in	8656
accordance herewith.	8656
(2) <u>Failure Otherwise to Comply with Agreement or</u>	8658
<u>Guaranty.</u> The failure or refusal by the Company	8659
substantially to perform any material obligation under this	8663
Agreement (other than those obligations addressed in	8665
subsection 12.2(A)(1) above), or the failure or refusal of	8666

the Guarantor to comply with any of its obligations under the  
Guaranty, unless such failure or refusal is excused by an  
Uncontrollable Circumstance or City Breach; except that no  
such other failure or refusal shall constitute an Event of  
Default giving the City the right to terminate this Agreement  
for cause under this subsection unless:

(a) The City has given prior written notice to the  
Company or the Guarantor, as applicable, stating that a  
specified failure or refusal to perform exists which  
will, unless corrected, constitute a material breach of  
this Agreement on the part of the Company or the  
Guaranty on the part of the Guarantor and which will, in  
its opinion, give the City a right to terminate this  
Agreement for cause under this Section unless such  
default is corrected within a reasonable period of time,  
and

(b) The Company or the Guarantor, as applicable,  
has neither challenged in an appropriate forum the  
City's conclusion that such failure or refusal to  
perform has occurred or constitutes a material breach of  
this Agreement nor corrected or diligently taken steps  
to correct such default within a reasonable period of  
time, but not more than 60 days, from receipt of the  
notice given pursuant to clause (a) of this subsection  
(but if the Company or the Guarantor shall have  
diligently taken steps to correct such default within a

reasonable period of time, the same shall not constitute 8708  
an Event of Default for as long as the Company or the 8709  
Guarantor is continuing to take such steps to correct 8711  
such default). 8711

(3) Voluntary Bankruptcy. The written admission by the 8714  
Company or the Guarantor that it is bankrupt, or the filing 8716  
by the Company or the Guarantor of a voluntary petition under 8717  
the Federal Bankruptcy Code, or the consent by the Company or 8718  
the Guarantor to the appointment by a court of a receiver or 8719  
trustee for all or a substantial portion of its property or 8720  
business, or the making by the Company or the Guarantor of 8722  
any arrangement with or for the benefit of its creditors 8722  
involving an assignment to a trustee, receiver or similar 8723  
fiduciary, regardless of how designated, of all or a 8725  
substantial portion of the Company's or the Guarantor's 8725  
property or business. 8726

(4) Involuntary Bankruptcy. The final adjudication of 8729  
the Company or the Guarantor as a bankrupt after the filing 8730  
of an involuntary petition under the Bankruptcy Act, but no 8732  
such adjudication shall be regarded as final unless and until 8733  
the same is no longer being contested by the Company or the 8734  
Guarantor nor until the order of the adjudication shall be 8735  
regarded as final unless and until the same is no longer 8736  
being contested by the Company or the Guarantor nor until the 8738  
order of the adjudication is no longer appealable. 8739

(5) Failure to Pay or Credit. The failure of the 8742  
Company to pay or credit amounts owed to the City under this 8744  
Agreement within 60 days following the due date for such 8745  
payment or credit (including the payment or crediting of any 8746  
liquidated damage amounts due the City in connection with the 8747  
Performance Obligations). 8747

(6) Failure to Provide Credit Enhancement When 8750  
Required. The failure of the Company to provide credit 8751  
enhancement if required by subsection 14.4 hereof. 8752

(B) Termination Liquidated Damages Payable to the 8757  
City - Certain Performance Standards. If this Agreement is 8758  
terminated by the City for an Event of Default by the Company 8759  
described in item (1) of subsection 12.2(A) hereof, the Company 8760  
shall pay the City termination liquidated damages as provided in 8761  
subsection 12.2(D) hereof. If, upon such an Event of Default, 8762  
the City elects to have the Facility razed, the Company shall 8765  
raze the Facility at its cost and expense, shall be entitled to 8767  
all salvage proceeds resulting from such razing and shall not be 8768  
entitled to any credit for the Fair Market Value of the Facility 8769  
in the computation of termination liquidated damages. 8770

(C) Termination Liquidated Damages Payable to the City- 8773  
Abandonment of Operations. If this Agreement is terminated by 8774  
the City for cause as a result of an Event of Default by the 8776  
Company hereunder other than an Event of Default set forth in 8778  
subsection 12.2(A)(1) hereof and the City provides written notice 8779  
to the Company that the City intends to abandon operation of the 8780

Facility as a whole, the Company immediately upon receipt of the 8782  
City's termination notice shall pay to the City as liquidated 8783  
damages (1) all amounts necessary to provide for the defeasance 8785  
or payment of all outstanding Facility Obligations, (2) an amount 8787  
equal to all capital amounts provided during the Term of this 8787  
Agreement from any other source to finance the Construction Work 8788  
or Capital Improvements (including, without limitation, grants, 8789  
taxes, fees and loans), (3) all amounts payable to the City under 8790  
Section 12.7 hereof, (4) all amounts necessary to raze the 8791  
Facility and restore the Facility Site to its condition as of the 8792  
Start Construction Date, (5) an amount equal to the sum of all 8793  
increased payments, damages, penalties and any other Loss-and- 8794  
Expense incurred by or on behalf of the City under any 8794  
Transaction Agreement as a result of the termination of this 8795  
Agreement and the termination, modification or violation of any 8797  
such Transaction Agreement, which amount shall not exceed 8798  
\$1,000,000, and (6) the sum of \$3,000,000. 8799

(D) Termination Liquidated Damages Payable to the City - 8802  
Continuance of Operations. If this Agreement is terminated by 8803  
the City for cause as a result of an Event of Default by the 8804  
Company hereunder other than an Event of Default set forth in 8806  
subsection 12.2(A)(1) hereof and the City, in its sole 8807  
discretion, certifies in writing to the Company that it intends 8808  
to continue operation of the Facility upon termination of this 8809  
Agreement, at the City's option exercised in its sole discretion 8810  
(1) the Company shall pay to the City as liquidated damages all 8811

amounts which the City shall be required to pay in order to 8812  
induce a replacement constructor or operator having operating 8814  
experience and financial strength substantially equal to that of 8815  
the Guarantor selected by the City in its sole discretion through 8818  
a reasonably competitive process involving at least two qualified 8819  
replacement constructors or operators, the cost of such 8821  
competitive process to be borne by the Company, to fully assume 8823  
or perform all of the Company's rights and obligations under this 8824  
Agreement and all of the Guarantor's rights and obligations under 8825  
the Guaranty (but such amounts shall not be in excess of the 8826  
maximum amount which would be payable if this Agreement were 8828  
terminated under subsection 12.2(C) hereof), or (2) the Company 8829  
shall pay to the City as liquidated damages an amount equal to 8829  
the sum of items (1), (2), (3) and (6) set forth in 8830  
subsection 12.2(C) hereof less the Fair Market Value of the 8831  
Facility determined as provided in subsections 12.2(E) and (F) 8833  
hereof. 8833

(E) Fair Market Value - Standard. "Fair Market Value", 8836  
as used in this Section, shall mean the value which would be 8837  
obtained for the Facility in an arm's length transaction between 8838  
an informed and willing buyer under no compulsion to buy, and an 8840  
informed and willing seller under no compulsion to sell, based 8842  
upon the use of the Facility in its then current condition 8842  
utilizing generally recognized professional criteria for the 8843  
appraisal of industrial property used in the materials recovery 8845  
business; provided, however, that the Fair Market Value of the 8846

Facility shall never be deemed to be greater than an amount equal 8848  
to: (1) the outstanding principal amount of the Facility 8849  
Obligations plus (2) an amount equal to all capital amounts 8851  
provided during the Term of this Agreement from any other source 8852  
to finance the Construction Work or Capital Improvements 8853  
(including without limitation, grants, taxes, fees and loans) 8855  
minus (3) any amounts included in clause (2) above which the City 8856  
is not obligated to repay. 8856

(F) Fair Market Value - Determination Procedure. If 8859  
the Company and the City cannot agree as to the Fair Market Value 8860  
of the Facility within 15 days of the City's termination notice, 8861  
then such Fair Market Value shall be mutually determined in an 8861  
appraisal by two disinterested, qualified, nationally recognized 8862  
appraisers of industrial property similar to the Facility. The 8866  
first appraiser shall be appointed by the Company and the other 8866  
appraiser shall be appointed by the City, each of which 8867  
appointments shall be made, by written notice to the other party, 8868  
within the next 15 days. If the appraisers thus appointed cannot 8869  
mutually agree upon the Fair Market Value of the Facility within 8870  
15 days of the appointment of the last appointed appraiser, then 8872  
the Fair Market Value of the property shall be the average of the 8872  
two appraisals, provided the final results of the higher 8873  
appraisal are within 10% of the lower appraisal. If the higher 8874  
of the two appraised values is not within 10% of the lower of the 8875  
two appraised values and the parties hereto cannot agree to a 8876  
value within 15 days of the appraised value, the two appraisers 8876

shall jointly select a third independent appraiser having the same qualifications who shall decide a final value at either of or between the two existing appraised values. In the event the two appraisers are unable to agree on a third independent appraiser, the parties shall petition a court of competent jurisdiction for the appointment of the third independent appraiser. The appraisers shall give written notice to the parties stating the determination of Fair Market Value and shall furnish to each party a signed copy of such determination. The expense of all such procedures shall be borne by the Company.

(G) Adequacy of Termination Liquidated Damages. The parties agree that the City's actual damages upon termination of the Company for cause under this Section 12.2 and Section 12.5 would be difficult or impossible to ascertain, that the termination liquidated damages provided for in subsections 12.2(B), (C) and (D) hereof are intended to place the City in an economic position equivalent to that which it would have been in had the Event of Default or material breach permitting termination for cause not occurred, and that such termination liquidated damages shall constitute the only damages payable by the Company upon any such termination for cause, regardless of legal theory. The obligation to pay such termination liquidated damages shall not impair or limit the obligation of the Company to the City under any other provision of this Agreement which expressly survives termination hereunder.



(H) Waiver of Defenses. The Company acknowledges that  
it is solely responsible for the siting, design, construction,  
shakedown, testing, operation and maintenance of the Facility and  
hereby irrevocably and unconditionally waives the following  
defenses to the payment and performance of its obligations under  
this Agreement: any defense based upon failure of consideration,  
contract of adhesion, impossibility or impracticability of  
performance, commercial frustration of purpose, or the existence,  
non-existence, occurrence or non-occurrence of any foreseen or  
unforeseen fact, event or contingency that may be a basic  
assumption of the Company or the Guarantor with regard to any  
provision of this Agreement, the Guaranty or any Transaction  
Agreement.

(I) Enforcement Costs. The Company agrees to pay to  
the City all Fees-and-Costs incurred by or on behalf of the City  
in enforcing payment or performance of the Company's obligations  
hereunder if such non-performance results in a judicially  
determined Event of Default by the Company.

SECTION 12.3. EVENTS OF DEFAULT BY THE CITY.

(A) Events of City Default Defined. Each of the following shall  
constitute an Event of Default on the part of the City:

(1) Failure to Comply with Agreement. The failure or  
refusal by the City substantially to perform any material  
obligation under this Agreement unless such failure or  
refusal is excused by an Uncontrollable Circumstance or  
Company Breach; except that no such failure or refusal shall

constitute an Event of Default giving the Company the right 8947  
to terminate this Agreement for cause under this Section 8948  
unless: 8948

(a) The Company has given prior written notice to 8952  
the City stating that a specified failure or refusal to 8953  
perform exists which will, unless corrected, constitute 8955  
a material breach of this Agreement on the part of the 8956  
City and which will, in its opinion, give the Company a 8957  
right to terminate this Agreement for cause under this 8958  
Section unless such default is corrected within a 8959  
reasonable period of time, and 8959

(b) The City has neither challenged in an 8962  
appropriate forum the Company's conclusion that such 8964  
failure or refusal to perform has occurred or 8966  
constitutes a material breach of this Agreement nor 8967  
corrected or diligently taken steps to correct such 8970  
default within a reasonable period of time but not more 8972  
than 60 days from the date of the notice given pursuant 8973  
to clause (a) of this subsection (but if the City shall 8976  
have diligently taken steps to correct such default 8976  
within a reasonable period of time, the same shall not 8978  
constitute an Event of Default for as long as the City 8979  
is continuing to take such steps to correct such 8979  
default). 8979

(2) Bankruptcy or Insolvency. The filing by the City 8982  
of a petition seeking relief, a final adjudication of 8984

insolvency or bankruptcy, <u>or</u> an assumption by a cognizant	8985
regulatory body <u>of</u> supervision of the City's finances, in any	8986
case <u>under</u> the Federal Bankruptcy Code <u>or</u> any federal or	8988
state statute intended to provide relief <u>or</u> otherwise become	8989
effective <u>for</u> political subdivisions which are insolvent,	8990
<u>financially</u> unsound or unable to meet <u>their</u> obligations as	8992
they mature.	8992
 (3) <u>Failure to Pay.</u> <u>The</u> failure of the City to pay	8995
amounts <u>owed</u> to the Company under this Agreement <u>within</u> 60	8997
days following receipt of a Company invoice therefor.	8997
 <u>It</u> is specifically <u>understood</u> that the provisions of Article VIII	9000
hereof <u>are</u> intended to constitute <u>an</u> adequate remedy for non-	9002
performance by the City <u>but</u> that, <u>upon</u> the occurrence of <u>an</u> Event	9005
of Default by the City, <u>the</u> Company shall have the right <u>to</u>	9007
terminate this Agreement <u>and</u> to receive damages as <u>and</u> to the	9009
extent provided in this Article XII.	9009
 (B) <u>Termination Liquidated Damages Payable to the</u>	9011
<u>Company.</u> <u>If</u> this Agreement is terminated by the Company for	9012
cause <u>as</u> provided in this Section, <u>the</u> City immediately <u>upon</u> such	9016
termination shall pay to the <u>Company</u> as liquidated damages (1)	9017
all <u>costs</u> and expenses incurred by the Company related to	9018
<u>terminating</u> any Subcontracts <u>and</u> its operations with respect to	9020
the <u>Facility</u> , up to a cap for such costs of \$1,000,000 <u>and</u>	9022
(2) the sum of \$3,000,000.	9022
 (C) <u>Adequacy of Termination Liquidated Damages.</u> <u>The</u>	9025
parties agree that the Company's <u>actual</u> damages upon termination	9026

of the City for cause under this Section 12.3 would be difficult  
or impossible to ascertain, that the termination liquidated  
damages provided for in subsections 12.3(B) hereof are intended  
to place the Company in substantially the same economic position  
it would have been in had the Event of Default permitting  
termination for cause not occurred, and that such termination  
liquidated damages shall constitute the only damages payable by  
the City upon any such termination for cause, regardless of legal  
theory. The obligation to pay such termination liquidated  
damages shall not impair or limit the obligation of the City to  
the Company under any other provision of this Agreement which  
expressly survives termination hereunder.

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SECTION 12.4. PROCEDURE FOR TERMINATION FOR CAUSE. If  
any party shall have a right of termination for cause in  
accordance with this Article XII, the same may be exercised by  
notice of termination given to the party in default at least 60  
days prior to (or, in the case of a bankruptcy default,  
simultaneously with) the date of termination specified in such  
notice (the "Termination Date").

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SECTION 12.5. CITY CONVENIENCE TERMINATION OR  
SUSPENSION ELECTION IN CERTAIN CIRCUMSTANCES. (A) Convenience  
Termination or Suspension During the Development Period and the  
Construction Period. The City shall have the right to terminate  
or suspend this Agreement during the Development Period and  
during the Construction Period, as, to the extent and subject to

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the terms and conditions provided in Articles III and IV, 9068  
respectively, hereof. 9068

(B) Periodic Convenience Termination During the 9070  
Operation Period. The City shall have the right to terminate 9071  
this Agreement, in its sole discretion, for convenience and 9073  
without cause on any day during the first three months of the 9074  
sixth, eleventh and sixteenth full Contract Years of the 9076  
Operation Period upon 120 days prior written notice to the 9076  
Company. If the City exercises its right to terminate this 9077  
Agreement pursuant to this subsection 12.5(B), the City shall pay 9079  
to the Company on the termination date the amount set forth in 9080  
the table below (which amounts shall not be subject to 9082  
escalation), as applicable for the Contract Year of Termination: 9083

<u>Full Contract Year</u>	<u>Termination Payment</u>	9089
Sixth	\$1,000,000	9091
Eleventh	667,000	9092
Sixteenth	333,000	9093

(C) Termination During the Operation Period for 9099  
Incurred Costs Due to Uncontrollable Circumstances. The City 9100  
shall have the right to terminate this Agreement at any time 9101  
during the Operation Period upon six months' notice to the 9104  
Company following a determination by the City, made in its sole 9105  
discretion subject to reasonable justification, that all 9107  
Uncontrollable Circumstances occurring since the Contract Date 9108  
have in the aggregate increased the total cost to the City of 9110  
waste disposal utilizing the Facility (including costs associated 9111  
with the Service Fee, payments on Facility Obligations and 9112

<u>Residue disposal</u> ) <u>50%</u> above the costs expected as of <u>the</u> Contract	9115
Date to be <u>paid</u> by the City hereunder <u>in</u> the first full Contract	9117
Year <u>escalated</u> to such notice date <u>based</u> on the Operation Price	9119
Index. <u>If</u> the City exercises its right to terminate the	9120
Agreement pursuant to this <u>Section</u> 12.5(C), <u>the</u> City shall pay to	9122
the Company <u>on</u> the termination date <u>the</u> amount of costs which it	9124
incurs <u>with</u> respect to <u>demobilization</u> and Subcontractor <u>contract</u>	9127
termination, which amounts shall <u>be</u> subject to Cost	9128
Substantiation and <u>shall</u> not exceed \$250,000.	9129
<u>(D) Suspension and Termination During the Operation</u>	9131
<u>Period for Delay Caused by Change In Law.</u> <u>Subsequent</u> to the	9133
Start Construction Date, the City shall have the right to suspend	9133
the obligations of the parties to perform this Agreement	9133
<u>following</u> a period of six consecutive months <u>or</u> more during which	9135
any Change in Law <u>has</u> precluded the construction or operation of	9136
the Facility. <u>If</u> the City exercises its right of such	9137
suspension, <u>the</u> City shall pay to the Company <u>on</u> the date of	9139
suspension <u>the</u> amount of costs which it incurs with respect to	9140
<u>demobilization</u> and Subcontractor contract termination <u>which</u>	9142
amounts shall be Cost Substantiated and <u>payment</u> for which <u>shall</u>	9144
not exceed \$250,000. <u>The</u> City may elect to reinstate the	9145
obligations of the parties to perform this Agreement <u>at</u> any time	9146
during such period of suspension <u>if</u> Applicable Law permits	9147
resumption of the construction or operation of the <u>Facility</u> upon	9148
30 days' <u>written</u> notice to the Company and payment to the <u>Company</u>	9150
of the Company's reasonable costs of re-mobilization, <u>subject</u> to.	9151

Cost Substantiation. In the event any such preclusion extends 9152  
for a period of three years or more, the City shall have the 9154  
right to terminate this Agreement upon written notice to the 9156  
Company. 9156

(E) Adequacy of Termination Payment. The Company 9159  
agrees that the applicable termination and suspension payments 9160  
provided in this Section will fully and adequately compensate the 9164  
Company and all Subcontractors for all profits, costs, expenses, 9166  
losses, liabilities, damage, taxes, and charges of any kind 9167  
whatsoever (whether foreseen or unforeseen) attributable to such 9168  
termination of the Company's right to perform this Agreement. 9170

(F) Continuance by City. After the date of any 9173  
termination under Subsection 12.5(A), (B), 12.5(C) or 12.5(D) the 9176  
City may (but without any obligation to do so) take any and all 9180  
actions necessary or desirable to continue the Operations 9181  
Services so terminated, including, without limitation, entering 9182  
into contracts with other contractors, with or without public 9185  
letting. 9185

SECTION 12.6. CERTAIN OBLIGATIONS OF THE COMPANY UPON 9191  
TERMINATION. (A) Obligations on Default Termination or a 9193  
Convenience Termination. Upon a termination of the Company's 9195  
right to perform this Agreement under Sections 12.2 or 12.5 9195  
hereof, the Company at its cost and expense shall: 9198

(1) stop the Construction Work or the Operation 9200  
Services on the date and to the extent specified by the City; 9202

- (2) promptly take all action as necessary to protect 9205  
and preserve all materials, equipment, tools, facilities and 9206  
other property; 9206
- (3) promptly remove from the Facility Site all 9209  
equipment, implements, machinery, tools, temporary facilities 9211  
of any kind and other property owned or leased by the Company 9214  
(including, but not limited to, sheds, trailers, workshops 9216  
and toilets), and repair any damage caused by such removal; 9217
- (4) clean the Facility Site and Facility, and leave the 9222  
same in a neat and orderly condition; and 9223
- (5) promptly remove all employees of the Company and 9227  
any Subcontractors and vacate the Facility Site. 9228
- (6) promptly deliver to the City Engineer copies of all 9230  
Subcontracts, together with a statement of: 9231
- (a) the items ordered and not yet delivered 9234  
pursuant to each agreement; 9234
- (b) the expected delivery date of all such items; 9237
- (c) the total cost of each agreement and the terms 9240  
of payment; and 9240
- (d) the estimated cost of cancelling each 9243  
agreement; 9244
- (7) deliver to the City Engineer promptly a list of: 9247
- (a) all special order items previously delivered 9250  
or fabricated by the Company or any Subcontractor but 9251  
not yet incorporated in the Construction Work or the 9251  
Operation Services; and 9252



(b) all <u>other</u> <u>supplies</u> , <u>materials</u> , <u>machinery</u> ,	9256
<u>equipment</u> and other property <u>previously</u> <u>delivered</u> <u>or</u>	9259
fabricated by the Company or any <u>Subcontractor</u> but not	9260
yet <u>incorporated</u> in the Construction Work or the	9261
Operation Services;	9261
(8) advise the <u>City</u> promptly of any special	9264
<u>circumstances</u> which <u>might</u> limit or prohibit cancellation of	9266
any Subcontract;	9266
(9) unless the <u>City</u> <u>directs</u> otherwise, terminate all	9269
Subcontracts <u>and</u> make no additional <u>agreements</u> with	9271
Subcontractors;	9271
(10) as <u>directed</u> by the <u>City</u> , transfer to the <u>City</u> by	9274
appropriate <u>instruments</u> of title, <u>and</u> deliver to the <u>Facility</u>	9277
Site (or such other place as the <u>City</u> may specify), all	9277
special order items;	9277
(11) notify <u>the</u> <u>City</u> promptly <u>in</u> writing <u>of</u> any Legal	9282
Proceedings against the Company <u>by</u> any Subcontractor relating	9283
<u>to</u> the termination of the Construction Work or the <u>Operation</u>	9285
Services (or any <u>Subcontracts</u> );	9286
(12) give <u>written</u> notice of termination, <u>effective</u> as	9290
of date <u>of</u> termination <u>of</u> this Agreement, promptly under each	9292
<u>policy</u> of Required Construction <u>Required</u> Operation Period	9294
<u>Insurance</u> (with a copy of each such <u>notice</u> <u>to</u> the <u>City</u> ), but	9297
permit <u>the</u> <u>City</u> <u>to</u> continue <u>such</u> policies thereafter <u>at</u> its	9301
own expense, if possible; and	9301

(13) take such other actions, and execute such other 9305  
documents, as may be necessary to effectuate and confirm the 9307  
foregoing matters, or as may be otherwise necessary or 9309  
desirable to minimize the City's costs, and take no action 9313  
which will increase any amount payable to the City under this 9316  
Agreement. 9317

(B) Additional Obligations. Upon termination of the 9320  
Company's right to perform this Agreement under Section 12.2 and 9321  
12.5 hereof, the Company at its cost and expense shall provide, 9323  
and shall use its best efforts to cause its Subcontractors to 9325  
provide, technological and design advice and support to the City 9327  
(or any replacement operator designated by the City). Such 9328  
advice and support shall be for a period of six months and shall 9329  
include providing any plans, drawings, renderings, blueprints, 9330  
operating manuals, design requirements or other information, 9332  
useful or necessary for the City or any replacement operator 9334  
designated by the City to complete and carry out the Construction 9335  
Work and to perform the Operation Services. 9335

(C) Company Payment of Certain Costs. If termination 9338  
is pursuant to Section 12.2 hereof and the Company fails to 9340  
comply with any obligation under this Section, the City may 9342  
perform such obligation; and the Company shall pay the entire 9345  
cost (or any portion thereof) upon demand, notwithstanding that 9346  
any other person may have defaulted in taking similar action or 9350  
occupied the same areas or otherwise had any responsibility for 9352  
the condition involved. 9352

(D) City Payment of Certain Costs. If termination is 9355  
for the convenience of the City under Section 12.5 hereof, the 9356  
City shall pay to the Company within 60 days of the date of the 9359  
Company's invoice all cost and expenses incurred by the Company 9363  
in satisfying the requirement of subsections 12.6(A) and 12.6(B) 9364  
hereof. 9364

SECTION 12.7. NO WAIVERS. No action of the City or 9370  
Company pursuant to this Agreement (including, but not limited 9371  
to, any investigation or payment), and no failure to act, shall 9374  
constitute a waiver by either party of the other party's 9377  
compliance with any term or provision of this Agreement. No 9380  
course of dealing or delay by the City or Company in exercising 9383  
any right, power or remedy under this Agreement shall operate as 9387  
a waiver thereof or otherwise prejudice such party's rights, 9392  
powers, and remedies. No single or partial exercise of (or 9395  
failure to exercise) any right, power or remedy of the City or 9399  
Company under this Agreement shall preclude any other or further 9401  
exercise thereof or the exercise of any other right, power or 9405  
remedy. 9405

SECTION 12.8. NO CONSEQUENTIAL OR PUNITIVE DAMAGES. In 9409  
no event shall either party hereto be liable to the other or 9410  
obligated in any manner to pay to the other any special, 9411  
incidental, consequential, punitive or similar damages based upon 9414  
claims arising out of or in connection with the performance or 9414  
non-performance of its obligations or otherwise under this 9415  
Agreement, or the material inaccuracy of any representation made 9417

in this Agreement, whether such claims are based upon contract,  
tort, negligence, warranty or other legal theory.

SECTION 12.9. FORUM FOR DISPUTE RESOLUTION. It is the  
express intention of the parties that all legal actions and  
proceedings related to this Agreement or to the Facility or to  
any rights or any relationship between the parties arising  
therefrom shall be solely and exclusively initiated and  
maintained in courts of the State of California or the United  
States of America having appropriate jurisdiction.

SECTION 12.10. NON-BINDING MEDIATION. Either party  
hereto may give the other party written notice of any dispute  
with respect to the Company's satisfaction of any Development  
Period milestone any Acceptance Standard, any Performance  
Guarantee, any technical matter or any other matter specified  
herein for resolution by mediation. Such notice shall specify a  
date and location for a meeting of the parties hereto at which  
such parties shall attempt to resolve such dispute. In the event  
that such dispute cannot be resolved by the parties hereto within  
30 days, such dispute shall be referred to an Independent  
Engineer for advice and non-binding mediation. If the  
Independent Engineer is unable, within 30 days, to reach a  
determination as to the dispute that is acceptable to the parties  
hereto, the matter may be referred by either party to Legal  
Proceedings.

ARTICLE XIII

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TERM

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SECTION 13.1. TERM OF AGREEMENT. This Agreement shall become effective on the Contract Date, and shall continue in effect until the twentieth anniversary of the Purchase Date, or, if renewed at the option of the City as provided in Section 13.2 hereof, until the last day of the renewal term (the "Renewal Term"; the Initial Term and the Renewal Term, if any, being referred to as the "Term"), unless earlier terminated in accordance with its terms, in which event the Term shall be deemed to have expired as of the date of such termination. All rights, obligations and liabilities of the parties hereto shall commence on the Contract Date, subject to the terms and conditions hereof. The City shall have no obligation to pay the Purchase Price hereunder until the Purchase Date, or to make Service Fee payments hereunder until the Purchase Date. The rights and obligations of the parties hereto pursuant to Sections 12.2, 12.3, 12.5, 12.6, 12.7, 12.8, 12.9, 14.4, 14.5, 14.6, 14.7 and 14.13 hereof shall survive the termination or expiration of this Agreement, and no such termination or expiration of this Agreement shall limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination or expiration. At the end of the Term of this Agreement, all other obligations of the parties hereunder shall terminate unless extended.

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SECTION 13.2. RE-TESTING AND RENEWAL. (A) The Company, 9518  
at the request of the City, shall perform a re-test of the 9519  
Facility for compliance within the Acceptance Standards at any 9520  
time designated by the Company within the first three Billing 9521  
Periods of the one year period preceding the expiration of the 9522  
Initial Term hereof. Any such re-test shall be conducted in 9523  
accordance with the requirements of Appendix 6 hereto, and the 9525  
parties shall bear the costs and take the actions with respect to 9526  
the results of such tests as provided in such Section. 9526

(B) Re-Testing Results. Any such re-test shall be 9529  
conducted in accordance with the Acceptance Tests. If such test 9531  
demonstrates that the Facility is operating in compliance with 9532  
the Acceptance Standards, then the costs incurred by the Company 9533  
in performing the test showing such compliance shall be paid to 9535  
the Company by the City as a Pass Through Cost. If such test 9536  
shows that the Facility is operating out of compliance with the 9537  
Acceptance Standards then within 10 days of such test results, 9538  
the Company shall submit to the City a plan for remediation and 9540  
retesting. The City shall have 15 days to approve such plan, 9541  
such approval not to be unreasonably withheld. The Facility 9543  
shall then be re-tested at the Company's cost and expense to 9544  
demonstrate that the necessary correction action has been taken. 9544  
The costs of the test showing the inability to comply with the 9546  
applicable Acceptance Standard shall be borne by the Company and 9547  
the Company shall at its cost and expense make all Capital 9548  
Improvements and operating changes and take all other actions 9549

which may be necessary to enable the Facility to achieve the 9550  
Acceptance Standards. Testing shall be conducted in a manner 9551  
which minimizes interference with the Company's performance of 9552  
its obligations under this Agreement and the Performance 9554  
Guarantees shall be adjusted appropriately to reflect any 9555  
interference unless such testing shows non-compliance with the 9556  
Acceptance Standards. The Company shall pay to the City all 9557  
damages incurred by the City as the result of the Facility's 9558  
failure to comply with the Acceptance Standards. 9559

SECTION 13.3. OPTION TO RENEW. The City shall have the 9564  
option in its sole discretion to renew this Agreement, for an 9567  
additional term or terms aggregating eight years following the 9568  
expiration of the Initial Term on the same conditions as are 9569  
applicable during the Initial Term hereof. If the City 9571  
determines that it wishes to renew this Agreement pursuant to 9574  
this Section 13.3, the City shall give the Company written notice 9575  
of its irrevocable election to renew this Agreement on or before 9576  
the 365th day preceding the last day of the Initial Term. 9577

ARTICLE XIV

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GENERAL

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SECTION 14.1. NON-RECOURSE TO CITY. No recourse shall be had to the general funds or general credit of the City for the payment of any amount due the Company hereunder, whether on account of the Purchase Price, the Service Fee, any Interim Service Fee or otherwise, or for any Loss-and-Expense of any nature arising from the performance or non-performance of the City's obligations hereunder. The sole recourse of the Company for all such amounts shall be to the funds held in the City's Solid Waste Enterprise Fund (including Facility Obligation proceeds, grant funds, System Revenues, investment income, insurance proceeds and condemnation awards and other revenue and income derived from or in connection with the System) by operation of the terms of this Agreement and the Facility Obligation Transaction Agreements. All amounts held in the Solid Waste Enterprise Fund shall be held for the uses permitted and required thereby, and no such amounts shall constitute property of the Company.

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SECTION 14.2. FACILITY OBLIGATION TRANSACTION

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AGREEMENTS. (A) Issuance of Facility Obligations. The Facility Obligation Transaction Agreements shall provide for the issuance of Facility Obligations by the City, subject to the requirements of and other Applicable Law, for the purpose generally of providing funds for the capital purposes of the System. These

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purposes shall include the payment of the Purchase Price to the 9624  
Company, other System improvement and capital asset costs, and 9626  
costs of issuance, capitalized interest and reserves associated 9626  
with the issuance of and security for the Facility Obligations. 9627  
The Facility Obligations shall be secured by the System Revenues 9628  
and the covenants of the City undertaken with respect thereto 9629  
under the Facility Obligation Transaction Agreements. The City 9631  
shall use its best efforts to issue Facility Obligations at the 9632  
times and in the amounts required to provide funds for the 9632  
payment of the Purchase Price to the Company hereunder. The City 9634  
otherwise shall have sole discretion to determine the maturity, 9635  
interest rates, redemption provisions, tax-exempt or taxable 9637  
status, security, timing and method of issuance, issue size, and 9641  
all other terms and conditions of the Facility Obligations and 9641  
their offering and sale. The City also shall have sole 9642  
discretion to refund, refinance or restructure the Facility 9643  
Obligations and to convert Facility Obligations from a variable 9644  
to a fixed interest rate mode or the reverse at any time without 9645  
the consent of the Company. The Company shall, at its cost and 9647  
expense, assist the City in connection with the issuance, 9648  
refunding and conversion of Facility Obligations in accordance 9649  
with customs and practices prevailing in the public finance 9650  
industry for facility vendor participation in securities 9651  
transactions of this nature. 9651

(B) Flow of Funds. The Facility Obligation Transaction 9655  
Agreements shall provide that all System Revenues shall be 9657

deposited in the Solid Waste Enterprise Fund revenue account for 9659  
application to the following purposes in the following general 9661  
order of priority: (1) to the payment of System Operating 9663  
Expenses (including the Service Fee, except any revenue sharing 9665  
component of the Service Fee); (2) to the payments due on the 9666  
Facility Obligations to the extent not provided for from 9667  
capitalized interest or other sources; (3) to the replenishment 9669  
of any reserve funds under the Facility Obligation Transaction 9671  
Agreements; and (4) to the Company, payment of any revenue 9675  
sharing components of the Service Fee and of any other amounts to 9676  
which the Company is entitled hereunder. The Facility Obligation 9678  
Transaction Agreements may establish additional funds and 9679  
accounts within the Solid Waste Enterprise Fund and provide for 9681  
deposits in such funds and accounts and for the application of 9683  
System Revenues to additional purposes in such order and manner 9684  
as may be consistent with similar financing transactions or 9685  
required by the securities markets, as long as the Facility 9686  
Obligations are structured so that System Operating Expenses are 9687  
paid before payments due on the Facility Obligations. 9688

(C) City Responsibilities. The Facility Obligation 9691  
Transaction Agreements shall obligate the City to charge rates, 9692  
fees and charges for disposal services provided for solid waste 9694  
delivered to the System which are sufficient to pay payments due 9695  
on the Facility Obligations, System Operating Expenses, all other 9698  
amounts due to the Company hereunder, and all other City expenses 9701  
related to the System and its covenants under the Facility 9702

Obligation Transaction Agreements, and to comply with Applicable 9703  
Law and secure the cooperation of all other involved governmental 9704  
units which may be necessary in connection with such activities. 9705

(D) City and Company Rights. The Facility Obligation 9708  
Transaction Agreements shall confer on the City the exclusive 9708  
power and responsibility for operating and managing the System, 9710  
for preparing and amending the System budget, and for directing 9712  
the disbursement of System Revenues to pay System Operating 9713  
Expenses. In the event the City fails to exercise any such power 9715  
and such failure causes a failure of payment hereunder or other 9717  
City Breach, the Company shall have the right to compel the City 9719  
to exercise such power to the extent necessary to remedy the City 9720  
Breach. 9720

SECTION 14.3. FINANCIAL SECURITY FOR THE PERFORMANCE OF 9724  
THE COMPANY'S OBLIGATIONS. (A) Performance and Labor and 9725  
Materials Bonds. On or before the Start Construction Date the 9727  
Company shall provide financial security for the performance of 9728  
its construction and testing obligations hereunder through a 9729  
Performance Bond and a Labor and Materials Payment Bond issued by 9730  
\_\_\_\_\_. The Performance Bond and the Labor and 9731  
Materials Payment Bond shall be issued in the form set forth in 9732  
the Transaction Agreement Forms and in the amount of the Purchase 9733  
Price, and shall be for a term ending 180 days following the last 9734  
day of the Extension Period. 9735

(B) Development Period Letter of Credit. On or before 9738  
the Contract Date the Company shall provide additional security 9740

for the performance of its obligations hereunder through a letter  
of credit issued by a bank whose long-term debt is rated "A" or  
better by either Rating Service (the "Development Period Letter  
of Credit"). The Development Period Letter of Credit shall be in  
a stated amount equal to 15% of the Purchase Price, as reasonably  
estimated by the City as of the Contract Date (assuming a \_\_\_\_  
month Development Period and a \_\_\_\_ month Construction Period),  
shall be for a term of one year, shall be continuously renewed,  
extended or replaced so that it remains in effect until the Start  
Construction Date and the Construction Period Letter of Credit is  
furnished to the City pursuant to subsection 14.3(C) hereof, and  
shall be issued in the form set forth in the Transaction  
Agreement Forms. The City shall be authorized under the  
Development Period Letter of Credit to make one or more sight  
drawings thereon upon certification to the issuing bank that the  
City has terminated this Agreement upon any failure of the  
Company to achieve any Development Period milestone as provided  
in Article IV hereof, or that the Company has abandoned  
performance of any of its Development Period obligations under  
this Agreement resulting in termination of the Agreement by the  
City for an Event of Default. The Development Period Letter of  
Credit shall also permit a drawing thereon in the full stated  
amount thereof in the event that any required renewal, extension  
or replacement thereof is not made prior to 30 days of its  
expiration.

(C) Construction Period Letter of Credit. On or before 9780  
the Start Construction Date the Company shall provide additional 9781  
security for the performance of its obligations hereunder through 9782  
a letter of credit issued by a bank whose long-term debt is rated 9783  
"A" or better by either Rating Service (the "Construction Period 9785  
Letter of Credit"). The Construction Period Letter of Credit 9786  
shall be in the stated amount of \$\_\_\_\_\_, shall be for a 9788  
term of one year, shall be continuously renewed, extended or 9789  
replaced so that it remains in effect until the Purchase Date and 9791  
the Operation Period Letter of Credit is furnished to the City 9792  
pursuant to subsection 14.3(D) hereof or until 180 days after the 9794  
expiration of the Extension Period, and shall be issued in the 9795  
form set forth in the Transaction Agreement Forms. The City 9797  
shall be authorized under the Construction Period Letter of 9798  
Credit to make one or more sight drawings thereon upon 9799  
certification to the issuing bank that the Company has failed to 9800  
achieve Acceptance of the Facility prior to the expiration of the 9801  
Extension Period, that the Company has abandoned or otherwise 9802  
failed to comply with its Construction Period obligations under 9802  
this Agreement resulting in termination of the Agreement by the 9803  
City for an Event of Default or by reason of the Company's 9804  
failure to pay the City amounts due and owing under this 9805  
Agreement when and as due. The Construction Period Letter of 9806  
Credit shall also permit a drawing thereon in the full stated 9808  
amount thereof in the event that any required renewal, extension 9809

or replacement thereof is not made prior to 30 days of its expiration.

(D) Operation Period Letter of Credit. On or before the Purchase Date the Company shall provide security for the performance of its obligations hereunder through a letter of credit issued by a bank whose long-term debt is rated "A" or better by either Rating Service (the "Operation Period Letter of Credit"). The Operation Period Letter of Credit for the first partial Contract Year shall be in the stated amount of \$\_\_\_\_\_, shall be for a term of one year, shall be continuously renewed, extended or replaced so that it remains in effect for the entire Term of this Agreement in a stated amount equal in each Contract Year to the initial stated amount escalated in accordance with the Operation Price Index, and shall be issued in the form set forth in the Transaction Agreement Forms. The City shall be authorized under the Operation Period Letter of Credit to make one or more sight drawings thereon upon certification to the issuing bank of the Company's failure to pay any amounts due and owing under this Agreement when and as due as the result of an Event of Default by the Company. The Operation Period Letter of Credit shall permit a drawing thereon in the full stated amount thereof in the event that any required renewal, extension or replacement thereof is not made prior to 30 days of its expiration.

(E) Material Decline in the Guarantor's Credit Standing. For purposes of this Section, a "Material Decline in

the Guarantor's Credit Standing" shall be deemed to have occurred 9846  
 if (1) in the event that the Guarantor has long-term senior debt 9847  
 outstanding which has a credit rating by either Rating Service, 9848  
 such rating by either rating service is established or is reduced 9849  
 below investment grade level or (2) in the sole opinion of the 9850  
 City, in the event that the Guarantor does not have long-term 9851  
 senior debt outstanding or such debt is not rated by either 9852  
 Rating Service, the credit standing of the Guarantor declines to 9854  
 a level which is insufficient to support an investment grade 9855  
 credit rating by either Rating Service on long-term senior debt 9856  
 of the Gurantor, whether or not any such debt is outstanding. 9857  
 The Company immediately shall notify the City of any Material 9859  
 Decline in the Guarantor's Credit Standing. 9860

(F) Credit Enhancement. If, at any time during the 9863  
 Term hereof, a Material Decline in the Guarantor's Credit 9864  
 Standing occurs, the Company shall immediately notify the City 9865  
 thereof and, within 30 days after such occurrence, shall provide 9868  
 credit enhancement of its obligations hereunder in the form 9869  
 either of (1) an unconditional guarantee of all of the Company's 9870  
 obligations hereunder provided by a corporation or financial 9872  
 institution whose long-term senior debt is or would be rated 9873  
 investment grade by either Rating Service or (2) a letter of 9874  
 credit securing the Company's obligations hereunder in a face 9875  
 amount equal to the amount of the termination damages payable 9876  
 under Section 12.2 hereof provided by a financial institution 9877

whose long-term senior debt is or would be rated investment grade 9878  
by either Rating Service. 9879

SECTION 14.4. UNCONTROLLABLE CIRCUMSTANCES GENERALLY. 9883

(A) Performance Excused. Except as otherwise specifically 9885  
provided in this Agreement, neither the City nor the Company 9887  
shall be liable to the other for any failure or delay in 9888  
performance of any obligation under this Agreement (other than 9889  
any payment at the time due and owing) to the extent due to the 9890  
occurrence of an Uncontrollable Circumstance. 9891

(B) Notice, Mitigation. The party experiencing an 9894  
Uncontrollable Circumstance shall notify the other party by 9896  
hardcopy telecommunication or telephone and in writing, on or 9898  
promptly after the date the party experiencing such 9898  
Uncontrollable Circumstance first knew of the commencement 9899  
thereof, followed within 15 days by a written description of (1). 9901  
the Uncontrollable Circumstance and the cause thereof (to the 9904  
extent known), (2) the date the Uncontrollable Circumstance began 9906  
and the cause thereof, its estimated duration, the estimated time 9909  
during which the performance of such party's obligations 9910  
hereunder will be delayed, and the impact, if any, on the 9913  
Acceptance Date, (3) the estimated amount, if any, by which the 9914  
Purchase Price or the Service Fee may need to be adjusted as a 9917  
result of such Uncontrollable Circumstance, (4) its estimated 9918  
impact on the other obligations of such party under this 9919  
Agreement and (5) potential mitigating actions which might be 9922  
taken by the Company or City and any areas where costs might be 9923



reduced and the approximate amount of such cost reductions. Any 9925  
such cost reductions achieved by the Company through such 9926  
mitigating measures shall inure to the benefit of the City 9927  
through dollar-for-dollar reduction in the Service Fee. Each 9929  
party shall provide prompt written notice of the cessation of 9930  
such Uncontrollable Circumstance. Whenever such act, event or 9931  
condition shall occur, the party claiming to be adversely 9932  
affected thereby shall, as promptly as reasonably possible, use 9934  
its best efforts to eliminate the cause therefor, reduce costs 9936  
and resume performance under this Agreement. While the delay 9937  
continues, the Company or City shall give notice to the other 9938  
party with a copy to the City Engineer, before the first day of 9940  
each succeeding month, updating the information previously 9941  
submitted. The Company shall furnish promptly (if and to the 9943  
extent available to the Company) any additional documents or 9944  
other information relating to the Uncontrollable Circumstance 9945  
reasonably requested by the City Engineer or the City. 9946

(C) Cost-Shared Uncontrollable Circumstances. The 9949  
Company's obligation to share in the costs resulting from the 9950  
occurrence of a Cost-Shared Uncontrollable Circumstance shall be | 9951  
(1) the first \$100,000 of costs incurred with respect to each | 9952  
such occurrence prior to the Acceptance Date, up to an aggregate | 9953  
amount of \$500,000 prior to the Acceptance Date and (2) the first | 9956  
\$50,000 per Contract Year following Acceptance of costs incurred | 9959  
with respect to such occurrences up to and aggregate limitation | 9963

of \$500,000 after the Acceptance Date for the Initial Term of this Agreement. 9963 9963

(D) Conditions to Purchase Price, Service Fee and Schedule Relief. If and to the extent that Uncontrollable Circumstances interfere with, delay or increase the cost of the Company's performing the Construction Work or the Operation Services in accordance herewith, and the Company has given timely notice as required by subsection 14.4(B) hereof, the Company shall be entitled to an increase or extension in the Purchase Price, the Service Fee or the schedule for performance equal to the amount of the increased cost or the time lost as a result thereof. In the event that the Company believes it is entitled to any Purchase Price, Service Fee or schedule relief on account of any Uncontrollable Circumstance, it shall furnish the City written notice of the specific relief requested and detailing the event giving rise to the claim within 30 days after the giving of notice delivered pursuant to subsection 14.4(B) hereof. Within 30 days after receipt of such a timely submission from the Company, the City shall issue a written determination as to the extent, if any, it concurs with the Company's claim for Purchase Price, Service Fee or schedule relief, and the reasons therefor. 9965 9966 9968 9969 9971 9973 9975 9976 9977 9978 9980 9981 9984 9985 9986 9986 9987 9989 9991

(E) Acceptance of Relief Constitutes Release. The Company's acceptance of any Purchase Price, Service Fee or schedule relief under this Section shall be construed as a release of the City by the Company (and all persons claiming by, through, or under the Company) for any and all Loss-and-Expense 9994 9995 9997 10000 10000

resulting from, or otherwise attributable to, the event giving 10004  
rise to the relief claimed. 10004

SECTION 14.5. INDEMNIFICATION. (A) Indemnification by 10009  
the Company. The Company agrees that it will protect, indemnify 10010  
and hold harmless the City and its representatives, officers, 10012  
employees and subcontractors (as applicable in the 10013  
circumstances), (the "City Indemnified Parties") from and against 10014  
(and pay the full amount of) all liabilities, actions, damages, 10016  
claims, demands, judgments, losses, costs, expenses, suits or 10017  
actions and reasonable attorney's fees (collectively, "Loss-and- 10019  
Expense"), and will defend the City Indemnified Parties in any 10021  
suit, including appeals, for personal injury to, or death of, any 10023  
person, or loss or damage to property (including damage to any 10024  
property adjoining or adjacent to the Project) arising out of (1) 10027  
the negligence of the Company or any of its officers, members, 10028  
employees, agents, representatives or Subcontractors in 10030  
connection with its obligations or rights under this Agreement, 10032  
(2) the operation of the Facility by or under the direction of 10034  
the Company, whether during the Term or after the expiration or 10036  
termination of this Agreement, (3) the transportation, marketing 10037  
and disposal of Recovered Products and Residue, (4) any Company 10039  
Breach or (5) the performance or non-performance of the Company's 10041  
obligations under this Agreement. The Company shall not, 10042  
however, be required to reimburse or indemnify any City 10044  
Indemnified Party for any Loss-and-Expense to the extent any such 10045  
Loss-and-Expense is due to (a) any City Breach, (b) the 10048

negligence or other wrongful conduct of any City Indemnified 10049  
Party, or (c) any Uncontrollable Circumstance. A City 10051  
Indemnified Party shall promptly notify the Company of the 10052  
assertion of any claim against it for which it is entitled to be 10053  
indemnified hereunder, shall give the Company the opportunity to 10054  
defend such claim, and shall not settle the claim without the 10055  
approval of the Company. These indemnification provisions are 10056  
for the protection of the City Indemnified Parties only and shall 10058  
not establish, of themselves, any liability to third parties. 10058  
The provisions of this subsection 14.5(A) shall survive 10060  
termination of this Agreement. 10060

(B) Indemnification by the City. The City agrees that 10063  
to the extent permitted by law, it will protect, indemnify and 10065  
hold harmless the Company and its Affiliates and their respective 10067  
officers, directors, Subcontractors (as applicable in the 10068  
circumstances) and employees (the "Company Indemnified Parties") 10070  
from and against (and pay the full amount of) all Loss-and- 10072  
Expenses, and will defend the Company Indemnified Parties in any 10073  
suit, including appeals, for personal injury to, or death of, any 10075  
person, or loss or damage to property arising out of (1) the 10076  
negligence of the City or any of its officers, employees, agents, 10078  
representatives, contractors or subcontractors in connection with 10079  
its obligations or rights under this Agreement, (2) City Breach, 10081  
or (3) the performance or nonperformance of the City's 10084  
obligations under this Agreement. The City shall not, however, 10086  
be required to reimburse or indemnify any Company Indemnified 10087

Party for any Loss-and-Expense to the extent any such Loss-and-Expense is due to (a) any Company Breach, (b) the negligence or other wrongful conduct of any Company Indemnified Party, or (c) any Uncontrollable Circumstance. A Company Indemnified Party shall promptly notify the City of the assertion of any claim against it for which it is entitled to be indemnified hereunder, shall give the City the opportunity to defend such claim, and shall not settle the claim without the approval of the City. These indemnification provisions are for the protection of the Company Indemnified Parties only and shall not establish, of themselves, any liability to third parties. The provisions of this Section 14.5(B) shall survive termination of this Agreement.

SECTION 14.6. PROPERTY RIGHTS. The Company shall pay all royalties and non-governmental license fees relating to the design, construction, testing, operation and maintenance of the Facility. The Company agrees that it will protect, indemnify and hold harmless the City and any of the City Indemnified Parties from and against all Loss-and-Expenses, and will defend the City Indemnified Parties in any suit, including appeals, arising out of or related to infringement of such patent, trademark or copyright relating to, or for the unauthorized use of trade secrets by reason of, the design, construction, testing, operation or maintenance of the Facility, or at its option, will acquire the rights of use under infringed patents, or modify or replace infringing equipment with equipment equivalent in quality, performance, useful life and technical characteristics

and development so that such equipment does not so infringe. The 10130  
provisions of this Section 14.6 shall survive termination of this 10131  
Agreement, but only for a period of time equal to the unexpired 10132  
statute of limitations applicable to any claim for which 10134  
indemnification might be required. 10134

SECTION 14.7. PROPRIETARY INFORMATION. (A) Company 10140  
Requests. The parties hereto hereby acknowledge that the Company 10141  
has a proprietary interest in certain information that may be 10142  
furnished pursuant to the provisions of this Agreement. The 10144  
Company shall have the right to request the City in writing not 10145  
to publicly disclose any information which the Company believes 10146  
to be proprietary and not subject to public disclosure under 10149  
Applicable Law. Any information which is the subject of such a 10150  
request shall be clearly marked on all pages, shall be bound, and 10151  
shall be physically separate from all non-proprietary 10153  
information. The Company's written request shall be accompanied 10155  
by a written unqualified legal opinion from an attorney licensed 10156  
to practice in the State to the effect that such information 10158  
constitutes a trade secret of the Company and is not subject to 10159  
public disclosure under the California Public Records Act. 10160

(B) City Non-Disclosure. In the event the City receives 10164  
a request from the public for the disclosure of any information 10164  
designated as proprietary by the Company pursuant to subsection 10166  
14.7(A) hereof, the City shall keep in confidence and shall not 10167  
disclose such information unless it is entitled to do so pursuant 10168  
to the provisions of subsection 14.7(C) hereof. the Company 10170

shall indemnify, hold harmless and defend the City against all 10172  
Loss-and-Expense arising out of any withholding from public 10173  
disclosure of information designed as proprietary by the Company. 10174

(C) Required Disclosures. The provisions of this 10177  
Section requiring the City to withhold information from public 10179  
disclosure shall not apply to any information, notwithstanding 10180  
any confidential or proprietary designation thereof, which (1) is 10183  
known to the City without any restriction as to disclosure or use 10184  
at the time it is furnished, (2) is or becomes generally 10186  
available to the public without breach of any agreement, (3) is 10187  
received from a third party without limitation or restriction on 10188  
such third party or the City at the time of disclosure, or (4) is 10190  
required to be or may be disclosed under or pursuant to the 10191  
Public Records Act or any other Applicable Law or regulations 10193  
governing such disclosure, an order of a court of competent 10195  
jurisdiction, or a lawful subpoena. 10196

SECTION 14.8. RELATIONSHIP OF THE PARTIES. Neither 10200  
party to this Agreement shall have any responsibility whatsoever 10201  
with respect to services provided or contractual obligations 10202  
assumed by the other party hereto, and nothing in this Agreement 10204  
shall be deemed to constitute either party a partner, agent or 10206  
legal representative of the other party or to create any 10207  
fiduciary relationship between the parties. 10207

SECTION 14.9. COMPANY OWNERSHIP AND BUSINESS 10210  
ACTIVITIES. (A) Ownership, Merger and Acquisition of the 10211  
Company. During the Term of this Agreement (1) all of the stock 10213

of the Company of any class shall be owned directly and not indirectly by the Guarantor without encumbrances, restriction or condition, (2) the Company shall not be merged or consolidated with or acquired in whole or in part by any person, and (3) the Company shall not transfer its assets in whole or in part to any other person, except for a merger, consolidation or transfer of assets directly and not indirectly with the Guarantor.

(B) Company Business Activities. The Company agrees that during the Term hereof its business activities will be limited to those contemplated by this Agreement with respect to the Facility and that it will not engage in activities or incur liabilities other than in connection with the Company's performance of this Agreement and the transactions contemplated hereby.

SECTION 14.10. ASSIGNMENT OF AGREEMENT. This Agreement may be assigned by either party hereto only with the prior written consent of the other party, which may be withheld in the other party's sole discretion.

SECTION 14.11. INTEREST ON OVERDUE OBLIGATIONS. Except as otherwise provided herein, all amounts due hereunder, whether as damages, credits, revenue or reimbursements, that are not paid when due shall bear interest at the Overdue Rate on the amount outstanding from time to time, on the basis of a 365-day year, counting the actual number of days elapsed, and all such interest accrued at any time shall, to the extent permitted by Applicable Law, be deemed added to the amount due, as accrued.



SECTION 14.12. NO DISCRIMINATION. (A) The Company shall not discriminate nor permit discrimination by any of its officers, employees, agents and representatives against any person because of age, race, color, religion, national origin, sex, sexual orientation or physical disability. The Company will take all actions reasonably necessary to ensure that applicants are employed, and that employees are treated during employment, without regard to their age, race, color, religion, national origin sex, sexual orientation or physical disability. Such action shall include, without limitation, recruitment and recruitment advertising; layoff or termination; upgrading, demotion, transfer, rates of pay or other form of compensation; and selection for training, including apprenticeship. The Company shall impose the non-discrimination provisions of this Section 14.11 by contract on all Subcontractors hired to perform work related to the Facility and shall take all reasonable actions necessary to enforce such provisions. The Company will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

SECTION 14.13. SUBCONTRACTORS. (A) Approval of Certain Subcontractors. The City shall have the right, to the extent provided below in this Section 14.13, to approve all Subcontractors engaged to perform any work related to the Facility Site, or any portion of the Construction Work or Operation Services under subcontracts which have a value at any

time outstanding of \$25,000 or more. Any such approval under | 10314  
this subsection shall not be unreasonably withheld. The Company | 10316  
shall furnish the City written notice of its intention to engage | 10317  
such Subcontractors, together with all information requested by | 10319  
or otherwise available to the Company pertaining to the proposed | 10320  
Subcontractor and subcontract pertaining to the demonstrated | 10323  
responsibility of the proposed Subcontractor in the following | 10324  
areas: (1) any conflicts of interest, (2) any record of felony | 10326  
criminal convictions or pending felony criminal investigations, | 10326  
(3) any final judicial or administrative finding or adjudication | 10328  
of illegal employment discrimination, and (4) any final judicial | 10331  
or administrative finding or adjudication of non-performance in | 10332  
contracts with the City. In the event the City fails to respond | 10333  
to any such notice of intention within 30 days of receipt | 10335  
thereof, the City shall be deemed to have approved the proposed | 10336  
Subcontractor. The approval or withholding thereof by the City | 10338  
of any proposed Subcontractor shall not create any liability of | 10339  
the City to the Company, to third parties or otherwise. The | 10341  
Company shall, at the City's request at any time, furnish the | 10344  
names of all Subcontractors who have provided or are providing | 10346  
goods or services in connection with the Construction Work or the | 10348  
Operation Services. | 10348

(B) Indemnity for Subcontract Claims. No Subcontractor | 10351  
shall have any right against the City for labor, services, | 10353  
materials or equipment furnished for the Construction Work or the | 10354  
Operation Services. The Company acknowledges that its indemnity | 10355

obligations under subsection 14.5(A) hereof shall extend to all 10357  
claims for payment by any Subcontractor who furnishes or claims 10359  
to have furnished any labor, services, materials or equipment in 10362  
connection with the Construction Work or the Operation Services. 10363

SECTION 14.14. ACTIONS OF THE CITY IN ITS GOVERNMENTAL 10367  
CAPACITY. Nothing in this Agreement shall be interpreted as 10369  
limiting the rights and obligations of the City in its 10370  
governmental or regulatory capacity, or as limiting the right of 10371  
the Company to bring any legal action against the City, not based 10372  
on this Agreement, arising out of any act or omission of the City 10373  
in its governmental or regulatory capacity. With respect to 10375  
actions arising out of this Agreement, the City, to the extent 10376  
permitted by Applicable Law, hereby irrevocably waives any and 10377  
all rights it may have to the defense of sovereign or 10378  
governmental immunity or any similar defense and agrees not to 10379  
raise such defense to any claim, suit or proceeding based upon or 10381  
arising out of this Agreement which is brought against the City 10382  
by the Company. 10382

SECTION 14.15. PERFORMANCE OF RELATED OBLIGATIONS. Each 10385  
party shall enforce the provisions of and its respective rights 10387  
under the Transaction Agreements to which it is a party, and duly 10389  
perform its obligations thereunder in accordance therewith. 10389  
Neither party will consent to or permit any rescission of or 10391  
amendment to, or otherwise take any action in connection with, 10394  
the Transaction Agreement which would in any manner materially 10395

and adversely impair or affect the rights or obligations of the  
other party hereto.

SECTION 14.16. BINDING EFFECT. This Agreement shall  
bind and inure to the benefit of the parties hereto and any  
successor or assignee acquiring an interest hereunder consistent  
with the provisions of Section 14.9 hereof.

SECTION 14.17. AMENDMENTS. Neither this Agreement nor  
any provision hereof may be changed, modified, amended or waived  
except by written agreement duly executed by both parties.

SECTION 14.18. NOTICES. Any notices or communications  
required or permitted hereunder shall be in writing and shall be  
sufficiently given if transmitted by hardcopy telecommunication  
or delivered in person, or by overnight courier to the following:

If to the Company:

If to the City:

Changes in the respective addresses to which such notices may be  
directed may be made from time to time by any party by written  
notice to the other party. Notices and communications given by  
mail hereunder shall be deemed to have been given 5 days after  
the date of dispatch; all other notices shall be deemed to have  
been given upon receipt.

SECTION 14.19. FURTHER ASSURANCES. Each party agrees  
to execute and deliver any instruments and to perform any acts as

may be necessary or reasonably requested by the other in order to 10448  
give full effect to this Agreement. 10449

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

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10454

CITY OF SACRAMENTO, CALIFORNIA

10456

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

10460  
10461  
10462

[COMPANY NAME]

10464

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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