



Staff Report

DATE: May 1, 2014 For Board Meeting: May 8, 2014

FROM: Jill K Duffy, Executive Director

SUBJECT: Item 8)
Review Draft Agreement with Solid Wastes of Willits for Transportation and Disposal of HWMA’s Municipal Solid Waste.

RECOMMENDED ACTION: Voice vote.
Authorize the Board Chair to sign the attached draft Agreement between HWMA and SWOW, following final document review by Legal Counsel.

DISCUSSION:

At the April 10th Board meeting, following a report and recommendation for Long-Term Transportation and Disposal of Municipal Solid Waste, the Board accepted the proposal made by Solid Waste of Willits and directed staff to initiate negotiation of the service Agreement. During these negotiations, SWOW has presented an offer to further reduce its transportation rates by approximately \$5.00 per load if the Authority agreed to decrease the insurance and performance bonding requirements, discussed in more detail below. After review and analysis, staff recommends accepting SWOW’s reduced rate offer.

The difference between the original proposal and the reduced transport rate proposal is summarized as follows:

	Original Proposal Total Transport Rate (Per Load)	Reduced Rate Total Transport Rate (Per Load)
From Hawthorne St.	\$ 737.78	\$ 733.06
From McKinleyville	\$ 790.13	\$ 785.41
From Eel River	\$ 685.43	\$ 680.71

These are initial year transport rates only, and are subject to annual CPI adjustments for the base transportation operations and component as well as quarterly adjustments for the fuel cost rate component. The disposal rate remains the same for the two proposals at \$19.00 per ton, subject to annual CPI adjustments.

The insurance and performance bond requirement adjustments included by SWOW as part of the proposed rate reduction option are as follows:

- General Liability: Decrease from \$10,000,000 to \$5,000,000 combined single limit per occurrence;

- Auto Liability: Increase from \$1,000,000 to \$5,000,000 aggregate;
- Pollution or Environmental Impairment Liability: Decrease from \$3,000,000 each occurrence/\$10,000,000 aggregate to \$1,000,000/\$2,000,000; and
- Performance bond: Decrease from \$1,000,000 to \$500,000.

At present, HWMA requires its solid waste transporters, Bettendorf and ERD, to carry general liability insurance at \$3,000,000/\$4,000,000 limits, auto liability at \$2,000,000, and requires no pollution/ environmental impairment insurance or performance bonding. HWMA's insurance carrier, SDRMA, has advised HWMA staff that the RFP general liability limit of \$10,000,000 could be safely reduced without impacting HWMA's risk of exposure but that the RFP auto liability limit of \$1,000,000 should be increased. The limits as proposed above are sufficient to meet the Authority's needs.

In addition, HWMA staff has researched different industry practices concerning performance bond requirements and determined that while there is no industry standard establishing a single performance bond rate, a bond in the amount of \$500,000 is within the range of industry practice and would adequately protect HWMA.

Logistical issues:

Authority staff members Patrick Owen, Helder Morais and Brent Whitener conducted a site visit to Potrero Hill Landfill and SWOW on April 30th. A verbal summary will be provided at the Board meeting.

Hawthorne Street and Satellite Facilities

Staff is working on near-term logistical and operational needs at the Hawthorne Street Transfer Station, and Humboldt Sanitation and Eel River Disposal facilities.

Humboldt Sanitation

HWMA and representatives of Humboldt Sanitation met April 30th to discuss logistics and transitional matters related to using the Authority's trucking contractor(s)¹. Also discussed was the possibility of both parties entering into a new agreement to handle non-franchise solid waste at a future date.

No changes are proposed to the existing agreement at this time.

Eel River Resource Recovery

HWMA staff met with representatives of Eel River Disposal on Monday, May 5th. Staff will provide a briefing of Monday's meeting to the Board at the May 8th meeting.

Alternatively, and as described in April, member agency material may need to be directed to the Hawthorne Transfer Station for a duration of time.

¹ HWMA will continue to haul to Dry Creek Landfill in accordance with the existing agreement, using Bettendorf Transportation, Inc. from both the Hawthorne Street and Humboldt Sanitation Facility until October 31, 2016.

FISCAL IMPACT:

Staff ran a forecast model to examine potential cost and cost savings opportunities of the proposed Solid Waste of Willits Agreement. Current operating costs for solid waste transportation through Bettendorf Trucking combined with disposal costs at Dry Creek Landfill were used for comparison. Using CPI rates from the past 10 years to forecast average CPI increases in the coming 15 years, and by averaging at least three years worth of diesel fuel rates to forecast average growth in fuel costs, the SWoW/Potrero proposal will average savings of approximately \$295,000 per year.

Overall, staff believes it is reasonable to assume the SWoW contract will result in at least \$300,000 savings per year.

STRATEGIC PLAN OBJECTIVE:

Strategic Plan Strategy 1.1 – Secure Long-Term Disposal Capacity.

ALTERNATIVES:

Board's discretion.

ATTACHMENTS:

Attachment A: Draft Agreement

AGREEMENT

between the

Humboldt Waste Management Authority

And

Solid Wastes Of Willits

For

Transportation and Disposal of Permitted Solid Waste

**AGREEMENT BETWEEN THE HUMBOLDT WASTE MANAGEMENT AUTHORITY
AND
SOLID WASTES OF WILLITS**

TO PROVIDE PERMITTED SOLID WASTE TRANSPORTATION AND DISPOSAL SERVICES

This Agreement is entered into by and between the Humboldt Waste Management Authority (hereinafter "HWMA" and the "Authority"), a joint powers authority organized under the laws of the State of California pursuant to Government Code section 6500 et seq. and Solid Wastes of Willits, Inc., a California corporation (hereinafter "Contractor"), hereinafter collectively referred to as the "Parties" and individually as a "Party," effective on June 1, 2014.

RECITALS

WHEREAS, the Authority was formed in accordance with Government Code section 6500 et seq. for purposes, in part, of providing for the economical disposal of solid waste generated within the jurisdictions of its member agencies in accordance with the California Integrated Waste Management Act of 1989 (California Public Resources Code section 40000, et seq., "AB 939"), including the transfer and disposal of solid waste, as provided in Public Resources Code section 40057.

WHEREAS, through enactment of AB 939, the State of California recognizes the important health and safety considerations of long-term planning for local governments' adequate disposal needs. The State requires local governments to make adequate provision for at least 15 years of Permitted Solid Waste Disposal capacity to preserve the health, safety and well-being of the public.

WHEREAS, the Authority is presently comprised of local governmental member agencies including the County of Humboldt and the Cities of Arcata, Blue Lake, Eureka, Ferndale and Rio Dell, and provides for the disposal of solid waste generated within the jurisdictions of its member agencies.

WHEREAS, the Authority owns and operates a solid waste transfer facility located at 1059 West Hawthorne Street, Eureka, CA, and contracts with privately owned satellite transfer facilities presently located in the City of Fortuna and community of McKinleyville, to receive municipal solid waste for transportation to a landfill disposal facility.

WHEREAS, the Authority requires landfill disposal services to serve as the place for safe, legal, and permitted disposal of solid waste not otherwise recycled or processed for higher beneficial use, and transportation services thereto.

WHEREAS, the Authority has conducted a competitive procurement process and solicited responses to proposals from qualified companies to provide transportation and disposal services.

WHEREAS, the Authority has determined that Contractor has the qualifications, skills and expertise necessary to provide transportation and landfill disposal services in a manner and on terms that are in the best interest of the Authority.

WHEREAS, the Authority wishes to engage the Contractor to provide the services specified within this Agreement in accordance with the terms and conditions below.

NOW, THEREFORE, in consideration of the mutual promises, covenants, conditions and representations recited herein and made a material part hereof, and for other good and valuable consideration, the Authority and the Contractor agree as follows:

ARTICLE 1. DEFINITIONS

Unless the term is otherwise defined in this Agreement, definitions of terms used in this Agreement will be the same as those found in Division 30, Part 1, Chapter 2 of the California Public Resources Code, and as they may be amended in the future. In the event of conflict between the definition of a term as found in the California Public Resources Code or in Authority ordinances and this Agreement, the definition in this Agreement shall supersede the definition found in the Public Resources Code or in Authority ordinances.

Accept (or Accepted) means the receipt of Permitted Solid Waste by the Contractor for Transportation to the Disposal Facility under the terms of this Agreement. Title to Permitted Solid Waste shall transfer to the Contractor when Accepted.

Adjustment Date means July 1 of each year commencing July 1, 2015, and every year thereafter for the Term of this Agreement, when the adjusted Base Transportation Operations Rate , as described in Section 7.3, and Disposal Rate, as described in Section 7.6, take effect.

Affiliate means all businesses (including corporations, limited and general partnerships, and sole proprietorships) which are directly or indirectly related to Contractor by virtue of direct or indirect ownership interests or common management shall be deemed to be "Affiliated with" Contractor and included within the term "Affiliates" as used herein. An Affiliate shall include a business in which Contractor owns a direct or indirect ownership interest, a business that has a direct or indirect ownership interest in Contractor and/or a business that is also owned, controlled, or managed by any business or individual that has a direct or indirect ownership interest in Contractor. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, the (i) "ten percent (10%)" shall be substituted for "fifty percent (50%)" in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

Agreement means this Agreement, including all attached Exhibits which are incorporated herein by reference, including any and all amendments or addenda to this Agreement and Exhibits.

Applicable Law means all statutes, laws, ordinances, rules, regulations, resolutions, requirements, permits, orders, or other directives of the United States, State, County, Authority and local government authorities and agencies having applicable jurisdiction, that apply to or govern the Facility, the site or the performance of the Parties' respective obligations hereunder in effect as of the date hereof and as amended and/or enacted hereinafter.

Authority means the Humboldt Waste Management Authority, a joint powers authority composed of the incorporated County of Humboldt and the Cities of Arcata, Blue Lake, Eureka, Ferndale, and Rio Dell,

as may be amended in accordance with the HWMA Joint Exercise of Powers Agreement, and any successor governmental agency legally assuming the Authority's responsibilities and ability to act.

Back Haul means a round trip by the Contractor from the Hawthorne Street Transfer Station Facility or a Satellite Transfer Station Facility to the Disposal Facility and back, where the Transfer Trailer Vehicle(s) container on the return trip from the Disposal Facility contains commodities other than Permitted Solid Waste.

Back Haul Credit means a per load credit to the Authority in the amount of One Hundred Fifteen Dollars and zero cents (\$ 115.00), which is applied to the Transportation Rate for each Back Haul.

Base Transportation Operations Rate means the component of the Contractor's Transportation Rate representing all non-fuel related costs including but not limited to driver labor wages and benefits, equipment repair, capital costs, overhead and profit.

Board means the governing Board of Directors of the Humboldt Waste Management Authority.

Business Day means any day other than a Saturday, Sunday or a day upon which banking institutions in the State of California are authorized or permitted by law to be closed.

Capacity means the physical space guaranteed by Disposal Subcontractor to be available at the Disposal Facility to receive and dispose of Authority Permitted Solid Waste throughout the Term of this Agreement.

Closure, Post Closure means all activities involved in the operational closure, and post closure monitoring period, of the Disposal Facility or portions of the Disposal Facility in accordance with all applicable federal, state, local or other applicable statutes, laws, regulations, ordinances, rules, permits, resolutions, orders, or other directives.

Container means the trailer container component of the Truck Transport Vehicle used to contain the Permitted Solid Waste from the time of loading to the time of deliver at the Disposal Facility.

Contractor means Solid Wastes of Willits, Inc., a California corporation, having a primary business address located at P.O. Box 1425, 351 Franklin Avenue, Willits Ca 95490.

CPI means the Consumer Price Index for All Urban Consumers, San Francisco-Oakland-San Jose, CA Average, all items (1982-84= 100), as published every other month by the United States Department of Labor, Bureau of Labor Statistics, or its successor index.

CPI Adjustment means the annual fee adjustment, up or down, beginning on the Adjustment Date, and on each new Adjustment Date thereafter for the term of this Agreement, equal to the annual change in the CPI for the twelve month period ending December 31 of the preceding year.

Disposal means the permanent management of Permitted Solid Waste by the Disposal Subcontractor once it is Accepted by Contractor.

Disposal Facility means the Potrero Hills Landfill located at 3675 Potrero Hills Land, Suisan City, CA 94585.

Disposal Facility Operation(s) means the lawful activities and standard industry practices undertaken by the Disposal Subcontractor to conduct its business and discharge its obligations to the Authority under this Agreement from the Effective Date through Post-Closure of the Disposal Facility.

Disposal Rate means the per-Ton compensation due to the Contractor from Authority for accepting Permitted Solid Waste for Disposal.

Disposal Subcontractor means Potrero Hill Landfill, Inc., a California corporation, having a primary business address located at P.O. Box 68, Fairfield CA 94533, and a California business address at 3675 Potrero Hills Lane, Suisun City, CA 94585.

Effective Date means June 1, 2014.

Entity means an individual, partnership, joint venture, corporation, Limited Liability Company, trust, association, unincorporated organization or any governmental authority.

Extend (Extended or Extension) means an extension to the Term of the Agreement as set forth in Article 4.

Financial Guaranty Agreement is an agreement substantially of the form attached as Exhibit 4 executed by a party other than the Contractor guaranteeing the timely and full performance of Contractor's obligations under this Agreement.

Force Majeure events include and are not limited to floods, earthquakes, other extraordinary acts of nature, war or insurrection, riots, or other similar catastrophic events, not caused or maintained by the Contractor, which event is not reasonably within the ability of the Contractor to intervene in or control, to the extent that such event has a material adverse effect on the ability of the Contractor to perform the Contractor's obligations. No event for which the effects could have been prevented by reasonable precautions, including compliance with Applicable Laws and standard industry practices, shall be a Force Majeure. No failure of performance by any subcontractor of the Contractor shall be a Force Majeure and no event that merely increases the Contractor's cost of performance shall be a Force Majeure.

Fuel Cost Rate means the component of the Contractor's Transportation Rate representing the fuel cost associated with the Transport of Permitted Solid Waste set forth in Exhibit 1.

Fuel Cost Rate Adjustment Date means July 1, October 1, January 1 and April 1 of each year commencing July 1, 2015, and every quarter thereafter for the Term of this Agreement, when the adjusted Fuel Cost Rate, as described in Section 7.4, takes effect.

Fuel Price Index means the California Diesel Fuel Price Index published weekly by the US Department of Energy (<http://www.eia.gov>).

Guarantor means the Entity identified in Exhibit 4.

Hawthorne Street Transfer Station means the Authority's Transfer Station located at 1059 W. Hawthorne Street, Eureka CA.

Hazardous Waste means materials that are hazardous, including:

"Hazardous Waste" as defined by Section 40141 of the California Public Resources Code; all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by Sections 25110.02, 25115, and 25117 of the California Health and Safety Code (the California Hazardous Waste Control Act), California Health and Safety Code Section 25100 et seq., and future amendments to or re-codification of such statutes or regulations promulgated thereunder, including 23 California Code of Regulations Sections 2521 and 2522; and materials regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended (including, but not limited to, amendments thereto made by the Permitted Solid Waste Disposal Act Amendments of 1980), and related federal, state and local laws and regulations; materials regulated under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., as amended, and related federal, State of California, and local laws and regulations, including the California Toxic Substances Account Act, California Health and Safety Code Section 25300 et seq.; materials regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601, et seq., as amended, and regulations promulgated thereunder; and materials regulated under any future additional or substitute federal, state or local laws and regulations pertaining to the identification, transportation, treatment, storage or Disposal of toxic substances or Hazardous Waste. If two or more governmental agencies having concurrent or overlapping jurisdiction over hazardous waste adopt conflicting definitions of "hazardous waste", for purposes of collection, transportation, processing and/or Disposal, the broader, less restrictive definition shall be employed for purposes of this Agreement.

Holidays are defined as those days when the Hawthorne Street Transfer Station is closed and includes the following: New Year's Day, Easter, Thanksgiving Day, and Christmas Day. The Authority may modify this list upon ninety (90) calendar days' notice to the Contractor.

Household Hazardous Wastes are those wastes resulting from products purchased by the general public for household use which, because of their quantity, concentration, or physical, chemical, or infectious characteristics, may pose a substantial known or potential hazard to human health or the environment when improperly treated, disposed, or otherwise managed.

Liquidated Damages mean discreet payments owed to the Authority by the Contractor for failure to meet the specified obligation requirements in accordance with Article 13 and Exhibit 5 of the Agreement.

Members or Member Agencies means those agencies who comprise the Authority including at present the unincorporated County of Humboldt and the Cities of Arcata, Blue Lake, Eureka, Ferndale, and Rio Dell, and any other entity that becomes a Member Agency in the future in accordance with the provisions of the Authority's Joint Exercise of Powers Agreement.

Notice (Notify or Notifying) means written notice given by one Party to the other Party in relation to the execution of the various obligations of both Parties under this Agreement.

Party and Parties means the Authority and the Contractor, individually and together.

Permit means any federal, state or local, statutory or regulatory approval, or other measure or mechanism required for the Contractor to be in full legal compliance in the performance of all

Contractor's obligations.

Person includes any individual, firm, association, organization, partnership, corporation, trust, joint venture, the United States, the State, a County, a municipality or special purpose Authority or any other entity whatsoever.

Post-Closure pertains to all activities and related costs during the Post-Closure period of the Disposal Facility or portions of the Disposal Facility in accordance with all applicable federal, state, or local statutes, laws, regulations, ordinances, rules, resolutions, requirements, permits, orders, or other directives.

Permitted Solid Waste means all Solid Waste including putrescible and non-putrescible solid, semisolid and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, street sweepings and catch basin residue, construction and demolition waste not classified as discarded materials, bulky goods not classified as recycled materials, discarded brown goods not classified as recycled materials, dewatered, treated or chemically fixed sewage sludge which is not Hazardous Waste, manure, vegetable or animal solid and semi-Solid Wastes, residues from recycling, composting and similar processes, and other discarded wastes and any other materials defined in Section 40191 of the California Public Resources Code, as may be amended from time to time, which is generated within the Authority. Permitted Solid Waste does not include abandoned vehicles, Hazardous Waste, Household Hazardous Waste, other unacceptable waste, recycled materials, or material used as alternative daily cover (ADC).

Satellite Transfer Station means any transfer station other than the Hawthorne Street Transfer Station designated by the Authority as a facility from which the Authority provides for the transportation of Permitted Solid Waste to a landfill disposal facility. Satellite Transfer Stations currently include the facility operated by Humboldt Sanitation located in McKinleyville, CA and the facility operated by Eel River Disposal located in Fortuna, CA. The term "Satellite Transfer Station" as used in this Agreement shall include any Authority-designated satellite facility without amendment to this definition or Agreement.

Straight Haul means a round trip by the Contractor from the Hawthorne Street Transfer Station or a Satellite Transfer Station to the Disposal Facility and back, where the Contractor's Transfer Trailer Vehicle container on the return trip from the Disposal Facility is empty.

Term means the initial ten (10) year period commencing on the Effective Date. The definition of "term" as used in this Agreement shall include any Extension to the term of the Agreement made by the Authority pursuant to Article 4, without additional reference, definition or amendment to this Agreement.

Ton means a unit of measure for weight equivalent to 2,000 standard pounds (where each pound contains 16 ounces).

Transport(ation) means the transport of Permitted Solid Waste from the Hawthorne Street Transfer Station or a Satellite Transfer Station to the Disposal Facility.

Transportation Rate means the amount to be charged by the Contractor on a per-Load basis for Transport of Permitted Solid Waste to the Disposal Facility.

Transfer Station(s) means collectively the Hawthorne Street Transfer Station and any Authority designated- Satellite Transfer Station without regard to the source of the Permitted Solid Waste.

Transfer Trailer Container(s) means a trailer container designed to transport Permitted Solid Waste, owned or under the control of Contractor, and put into service by Contractor in order to satisfy Contractor's obligations contained in this Agreement.

Transfer Trailer Vehicle(s) means any tractor and trailer truck designed to transport Permitted Solid Waste, owned or under the control of Contractor, and put into service by Contractor in order to satisfy Contractor's obligations contained in this Agreement.

Uncontrollable Circumstances means (1) a Force Majeure Event, or (2) any act, event or condition outside either Party's control and not the result of willful or negligent action or inaction on the part of such Party, whether affecting the Disposal Facility or either Party, which materially and adversely affects the ability of either Party to perform any of its obligations hereunder and as further defined in Section 9.6.

Unpermitted Waste means wastes or other materials that the Disposal Facility may not receive under their Permits including:

- a) Friable Asbestos, including asbestos-containing materials that can be crumbled with pressure and are therefore likely to emit fibers, which may be Hazardous Materials if it contains more than 1% asbestos;
- b) Ash residues from the incineration of Solid Wastes, including Permitted Solid Waste, or infectious waste described in Item (g) below, or sludge not meeting at a minimum Class B standards as defined by Title 40 of the Code of Federal Regulations, Part 503;
- c) Auto shredder "fluff" consisting of upholstery, paint, plastics, and other non-metallic substances, which remain after the shredding of automobiles;
- d) Dead animals larger than 200 pounds;
- e) Hazardous Materials;
- f) Industrial Solid or semi-Solid Permitted Wastes that pose a danger to the operation of the Approved Facilities, including cement kiln dust, or process residues;
- g) Infectious Wastes that have disease transmission potential and are classified as Hazardous Wastes by the California Department of Health Services, including pathological and surgical wastes, medical clinic wastes, wastes from biological laboratories, syringes, needles, blades, tubing, bottles, drugs, patient care items that as linen or personal or food service items from contaminated areas, chemicals, personal hygiene wastes, and carcasses used for medical purposes or with known infectious diseases, where "Infectious Waste" means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities and other similar establishments that are identified in the California Health and Safety Code Section

25117.5;

- h) Liquid wastes that are not spandable, usually containing less than 50% solids, including cannery and food processing wastes, landfill leachate and gas condensate, boiler blowdown water, grease trap pumpings, oil and geothermal field wastes, septic tank pumpings, rendering plant byproducts, sewage sludge not meeting certain quality criteria (i.e. unclassified sludge less than B), and those liquid wastes that may be Hazardous Wastes;
- i) Radioactive wastes under Chapter 7.6 (commencing with Section 25800) of Division 20 of the California Health and Safety Code, and any waste that contains a radioactive material, the storage or disposal of which is subject to any other state or federal regulation;
- j) Sewage sludge comprised of human (not industrial) residue, excluding grit or screenings, removed from a wastewater treatment facility or septic tank, whether in a dry or semi-dry form not meeting certain quality criteria (i.e. unclassified sludge less than Class B as defined in the Code of Federal Regulations, Part 503);
- k) Designated Waste if not permitted at the Approved Facilities under Applicable Law, including Permits; and
- l) Any revisions made to this list after Notice from Contractor.

Waste means municipal Permitted Solid Waste.

Working Day means a day during which the Authority business office is open to do business with the public.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

2.1 Of Contractor. The Contractor represents and warrants as of the date hereof:

- a) **Status.** Contractor is a corporation duly organized under the laws of the State of California, and qualified to do business in the State of California with a business address located at P.O. Box 1425, 1425 Franklin Ave, Willits, CA 95490.
- b) **Authority and Authorization.** The undersigned representative of Contractor has full legal right, power and authority to execute and deliver this Agreement and bind Contractor to the performance of its obligations hereunder. This Agreement when executed by and delivered by the Contractor constitutes a legal, valid and binding obligation of the Contractor enforceable against the Contractor in accordance with its terms.
- c) **No Conflicts.** The execution by the Contractor of this Agreement, the performance by the Contractor of Contractor's obligations, and the fulfillment by the Contractor of the terms and conditions hereof do not: (1) conflict with, violate or result in a breach of any Applicable Law; or (2) conflict with, violate or result in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which the Contractor is a party or by which the Contractor or any

of its properties or assets are bound, or constitute a default thereunder; or (3) will not result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Contractor, other than as specifically permitted hereunder.

- d) **No Additional Approvals Required.** Contractor has all approvals, authorizations, licenses, permits, orders and consents of, or declarations, registration or filing with any governmental or administrative authority, commission, board, agency or instrumentality required for the valid execution of this Agreement by the Contractor, and which are legally required for Contractor to provide services hereunder and meet its obligations. Contractor further warrants that it shall, at its sole cost and expense, keep in effect at all times during the Term all licenses, permits and approvals which are legally required for Contractor to provide such services and meet its obligations.
- e) **No Litigation.** There is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality pending or threatened against the Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the Contractor's performance of its obligations hereunder, or which, in any way, would adversely affect the validity of, or the ability to enforce this Agreement or any other agreement or instrument entered into by the Contractor in connection with the transactions contemplated hereby.
- f) **Patents, Licenses, etc.** The use of any patent, patented article, machine or process, or a combination of any or all of the aforesaid with respect to Facility Operation in accordance with the terms and conditions of this Agreement shall not infringe upon any patent, trademark or copyright of any other third person.
- g) **Contractor Investigation.** Contractor has made an independent investigation into its satisfaction of matters, conditions and circumstances relating to its execution of this Agreement and its obligations hereunder, including its own determination of the composition and quantities of Permitted Solid Waste.
- h) **Disposal Facility Capacity.** Contractor has entered into an agreement or agreements with the Disposal Subcontractor that guarantees adequate daily and annual Permitted Solid Waste Facility disposal capacity over the Agreement Term and any Extensions which is sufficient to ensure Disposal of all Permitted Solid Waste received from the Authority.
- i) **Disposal Facility Operation.** Contractor shall require that the Disposal Subcontractor shall operate the Disposal Facility as necessary to provide permanent Disposal for all Permitted Solid Waste delivered from the Authority.
- j) **Disposal Facility Requirements.** Contractor shall comply with all requirements of the Disposal Subcontractor applicable to receiving and unloading the Authority's Permitted Solid Waste.

2.2 Of the Authority. The Authority represents and warrants as of the date hereof:

- a) **Status.** The Authority is a joint powers authority organized and validly existing under the laws of the State of California pursuant to California Government Code section 6500 et seq.

- b) Authority and Authorization.** The Authority has full legal right, power and authority to execute and deliver this Agreement, and perform its obligations hereunder. This Agreement has been duly executed and delivered by the Authority and upon the Effective Date constitutes a legal, valid and binding obligation of the Authority enforceable against the Authority in accordance with its terms. The Authority has complied with Applicable Law in entering into this Agreement.
- c) Flow Control.** Through its Joint Exercise of Powers Agreement, the Authority has absolute flow control over the Permitted Solid Waste generated by its Member Agencies and presently directs such flow to the Hawthorne Street Transfer Station or a Satellite Transfer Station. Subject to the provisions of subsection 2.2(d) and to the obligations of the Authority arising under contracts with Dry Creek Landfill, Inc. and Bettendorf Enterprises, Inc., expiring on October 31, 2016, the Authority commits all of its Permitted Solid Waste tonnage which is intended for landfill disposal to Contractor under the terms of this Agreement.
- d) Composition and Quantities of Delivered Solid Waste.** The Authority expressly disclaims any warranties, either expressed or implied, as to the composition and quantities of Permitted Solid Waste available as of the Effective Date, including providing any minimum Tonnage of, or minimum proportion of, the Permitted Solid Waste.
- e) No Conflicts.** The execution by the Authority of this Agreement, the performance by the Authority of its obligations hereunder, and the fulfillment by the Authority of the terms and conditions hereof do not: (1) conflict with, violate or result in a breach of Applicable Law; or (2) conflict with, violate or result in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which the Authority is a party or by which the Authority or any of its properties or assets are bound, or constitute a default thereunder.
- f) No Additional Approvals Required.** No approval, authorization, license, permit, order or consent of, or declaration, registration or filing with any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution of this Agreement by the Authority.

ARTICLE 3. THE PARTIES

- 3.1 Independent Contractor.** Nothing herein contained shall be construed as creating the relationship of employer and employee or partnership or joint venture between the Parties. The Contractor shall be deemed to be, at all times, an independent contractor and not an agent of the Authority. The Contractor shall be wholly responsible for the manner in which it performs the service required of it by the terms of this Agreement and liable for any act or acts of its own, of its agents or employees. Neither the Contractor nor its officers, employees, agents, subagent's contractors, or subcontractors shall be entitled to any retirement benefits, workers' compensation benefits, or any other benefits which accrue to any Authority employees, and the Contractor expressly waives any claim it may have or acquire to such benefits.

It is further understood and agreed by the Parties that Contractor, in the performance of its performance obligations, is subject to the control or direction of Authority as to the obligations to be performed and the results to be accomplished by the services agreed to be rendered and performed hereunder, but not as to the means, methods or sequence of performing the obligations results. Contractor shall be solely responsible for the acts and omissions of its officers, employees, subcontractors, and agents. Contractor shall defend with counsel acceptable to the Authority, indemnify, and hold harmless the Authority against any and all acts of Contractor.

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

To the extent that Contractor obtains permission from the Authority to, and does, use Authority facilities, space, equipment or support services in the performance hereof, this use shall be at the Contractor's sole discretion based on Contractor's determination that such use will promote Contractor's efficiency and effectiveness.

- 3.2 Contractor's Obligations Performed at Its Sole Expense.** The Contractor shall perform the Contractor's obligations at its sole cost or expense and shall not be entitled to any adjustment in compensation, or any other compensation, other than as expressly provided for herein.

ARTICLE 4. TERM OF AGREEMENT

- 4.1 Term.** This Agreement shall become effective on the Effective Date and the Term shall commence on this date and continue in effect for ten (10) years, unless terminated earlier.

- a) Term Extensions, Authority Right of Renewal.** The Authority has the exclusive right to renew and Extend the Term beyond ten (10) years, for one (1) period of five (5) years not to exceed fifteen (15) years. The Authority shall Notify the Contractor of its intent to Extend the Agreement no later than one (1) year prior to the end of the then-current Term. Within ninety (90) calendar days of Authority's Notice, Contractor shall provide written acknowledgment of the Extended contract period. All provisions of this Agreement shall remain in effect during any Extension, including the Contractor's obligations and all provisions related to Contractor compensation and the adjustments thereof. Wherever used in this Agreement, "Term" shall mean and include any additional period duly Extended under this Section.

- 4.2 Survival of Certain Provisions.** All representations and warranties of the Parties herein, and all indemnifications, including all insurance requirements until the applicable claims periods have passed, provided for herein, and any other rights and obligations of the Parties expressly stated to survive the termination of this Agreement, shall survive such termination.

ARTICLE 5. TRANSPORTATION OF AUTHORITY PERMITTED SOLID WASTE

- 5.1 Commencement on Effective Date.** Beginning on the Effective Date, Contractor shall Accept Permitted Solid Waste for Transport from the Authority's Hawthorne Street Transfer Station and, as directed by the Authority, from the Authority's Satellite Transfer Stations. Permitted Solid Waste shall be Transported to the Disposal Facility as specifically directed by the Authority. Contractor shall Transport all Permitted Solid Waste without commitment by the Authority as to its quantity, volume or composition.
- 5.2 Directing Permitted Solid Waste To Disposal Facility.** The Authority shall determine the schedule and number of Permitted Solid Waste disposal deliveries by Contractor to the Disposal Facility. Contractor acknowledges the existence of the Authority's contractual obligation with Dry Creek Landfill, Inc. to deliver a minimum of 25,000 tons and maximum of 30,000 tons of solid waste per year until October 31, 2016.
- 5.3 Back Haul.** Contractor may Back Haul commodities other than Permitted Solid Waste, provided such Back Haul is in compliance with Applicable Law. The insurance and indemnity provisions of this Agreement shall apply to any Back Haul activity of Contractor. Back Hauls will be subject to the Transportation Rate provisions of this Agreement in Exhibit 1 and the Back Haul Credit.
- 5.4 Transfer Trailer Vehicle Tare Weights.** No less than fifteen (15) calendar days before the Effective Date, the Contractor shall establish unloaded vehicle tare weights ("Vehicle Tare Weight(s)") for each Transfer Trailer Vehicle and submit to the Authority prior to the Effective Date all such Vehicle Tare Weights in such manner that identifies individual Transfer Trailer Vehicles, their respective Vehicle Tare Weights, and the date on which the Vehicle Tare Weight was established. Vehicle Tare Weights shall be re-established, and the information submitted to the Authority within fifteen (15) days thereafter, as follows:
- i. Every 180 calendar days after the date first establishing the Vehicle Tare Weight for the individual Transfer Trailer Vehicle. In the event any subsequent Vehicle Tare Weight is 100 pounds greater or less than the initial Vehicle Tare Weight, the new Vehicle Tare Weight shall be used and Contractor shall provide a written explanation to the Authority within 30 calendar days of the reason for the difference; and
 - ii. No later than fifteen (15) calendar days after replacement of any trailer or truck component of the Transfer Trailer Vehicle.
- 5.5 Transportation Subcontracts, Authority as third party beneficiary.** Contractor shall require any Transportation subcontractor to satisfy all insurance and indemnity obligations of Contractor contained in this Agreement, and to name the Authority as an additional insured under such insurance policies. The Authority shall be a third party beneficiary of all Transportation subcontracts entered into by Contractor and used in the performance of obligations under this Agreement. Contractor shall make Transportation subcontracts assignable, without cost adjustments, to the Authority in the event of default by the Contractor. Transportation subcontracts shall be made such that upon Contractor default, any payments due to the Transport subcontractor by Contractor shall continue to be an obligation of Contractor and such payment obligations shall not be transferred to the Authority upon the assignment of the subcontract. Transportation subcontracts shall be made available for Authority review upon request.

5.6 Transportation Operational Requirements

- a) **Supplying Transfer Trailer Containers.** Contractor shall supply, repair and replace, at Contractor's own cost and expense, a sufficient number of transport-ready, Transfer Trailer Containers to safely, lawfully, and in compliance with all terms of this Agreement, Transport Permitted Solid Waste to the Disposal Facility. At a minimum, Contractor shall have at any time two empty Containers available for the Authority's use for loading Permitted Solid Waste at the Hawthorne Street Transfer Station. At the direction of the Authority, Contractor shall make additionally available at least one empty Container at each Satellite Facility. Containers shall be top-loading and shall have a minimum capacity of 120 cubic yards, shall be leak resistant and configured with impermeable tarps to prevent blowing out of wastes and infiltration of rainwater while in transit. Empty Containers shall be delivered to the transfer stations ready for loading with the tops open and tarps rolled up and all other Container openings closed to prevent leakage or spill.
- b) **Transfer Trailer Container Loading: Hawthorne Street Transfer Station.** The Authority shall visually screen Permitted Solid Waste to remove Unpermitted Waste prior to loading, shall load, and shall weigh all Containers at the Hawthorne Street Transfer Station. Prior to departure, Contractor's Transfer Trailer Vehicle driver shall inspect the Transfer Trailer Vehicle to determine if damage has occurred during loading, and in such event, shall file a report with the Authority before departing the Transfer Station. In the event such damage is caused solely by the Authority, the Authority shall reimburse Contractor for the actual cost of repairs (labor, parts and material costs only) as approved by the Authority in writing in advance upon submittal by Contractor of repair cost estimates.
- c) **Yard Tractor.** Contractor shall supply and maintain for use by the Authority at the Hawthorne Street Transfer Station one California Air Resources Board (ARB) compliant yard tractor, where compliance may be established by ARB rule including rule exemption, to be used by the Authority while moving, loading and relocating Contractor's Containers.
- d) **Transfer Trailer Container Loading: Satellite Transfer Stations.** By third party arrangements, acceptable to Contractor, made with Satellite Transfer Station owners, the Authority will arrange for the loading and weighing of Containers at Satellite Transfer Stations. The Authority shall provide Contractor with reasonable advance written notice of such Satellite Transfer Station arrangements.
- e) **Transfer Trailer Vehicle queue.** Contractor shall ensure that Transfer Trailer Vehicles queue in such manner as to not disrupt the flow of traffic within the Hawthorne Street Transfer Station Facility and Satellite Transfer Station Facilities or on any public street.
- f) **Transport within 24 Hours, Covered Transfer Trailer Containers.** Contractor shall Transport all loaded Transfer Trailer Containers from the Transfer Station to the Disposal Facility within 24 hours of loading. Contractor shall keep Containers enclosed, covered and/or sealed to contain Permitted Waste and prevent spilling or scattering of Permitted Solid Waste during Transport.

5.8 Transportation Reporting Requirements

- 1) **Quarterly Reports.** By the fifteenth (15th) calendar day of each quarter, Contractor shall submit to the Authority reports summarizing the daily Tons of Permitted Solid Waste accepted and delivered to the Disposal Facility. Unless otherwise specified by the Authority, this portion of the requirement shall be met by providing the Authority monthly invoices. In addition, the Contractor shall provide a cover letter specifying any operational problems at a Transfer Station, or any material changes in the financial or legal situation of the Contractor that in any way may or could affect the ability of the Contractor to fully meet its obligations under this Agreement. All quarterly reports shall also include calendar year-to-date monthly totals. Reports shall be provided by Contractor to Authority in hard copy and electronic format compatible with the Authority's software systems.
- 2) **Annual Reports.** No later than June 1st of each year, the Contractor shall submit an annual report for the previous calendar year that aggregates and summarizes the previously submitted quarterly reports. If the Contractor has at any time during the previous year failed to comply with Contractor obligations resulting in Liquidated Damages, the annual report shall also include the amount of any damage calculated and previously paid to the Authority, or owed by the Contractor to the Authority.
- 3) **Guarantor Report.** No later than 60 days after the close of each fiscal year, Contractor shall submit financial statements of Guarantor for the previous fiscal year, and an accompanying letter from Contractor's chief financial officer indicating any material change, or lack thereof, in the financial condition of the Contractor.
- 4) **Other Reporting Requirements.** The Authority reserves the right to request an independent review or audit of Contractor's financial records, and information obtained or reviewed by the Authority during such independent review or audit shall be treated as confidential to the extent permissible under the California Public records Act, Government Code sections 6540 et seq. The Authority reserves the right to modify or delete any of the reporting requirements outlined above, or to require that the Contractor supply other data and reports as are reasonably requested by the Authority.

5.9 Emergency Operations and Response Plan. Prior to the Effective Date, Contractor shall develop and submit to the Authority a written comprehensive emergency operations plan. Such plan shall be designated to mitigate and correct hazards that may arise due to accidents or disruption of Transport of Permitted Solid Waste under this Agreement including, but not limited to, damage to property, release of hazardous or dangerous materials, and the release of Permitted Solid Waste. The emergency plan shall be reviewed and updated by Contractor and submitted to Authority on an annual basis.

5.10 Comprehensive Safety Plan. Prior to Effective Date, Contractor shall provide to Authority evidence of a written comprehensive safety plan including a copy of Contractor's employee and illness protection plan (SB 198). Thereafter, Contractor shall provide the Authority with copies of any updated comprehensive safety as said plans are updated.

ARTICLE 6. DISPOSAL OF PERMITTED SOLID WASTE

- 6.1 No Minimum Ton Disposal Obligation.** The Authority currently operates programs intended to reduce the amount of Permitted Solid Waste for landfill Disposal. Nothing in this Agreement shall prevent, penalize, or impede, in any manner, the Authority from continuing and expanding these programs or developing new programs that reduce the amount of Permitted Solid Waste Disposed. It is the Authority's intent to continue to improve, develop, or enhance existing programs as well as to implement new programs and services throughout the Term to meet the Diversion goals set by the California Integrated Waste Management Act of 1989 (California Public Resources Code section 40000, et seq., "AB 939"), the California Jobs and Recycling Act of 2011 (Public Resources Code section 42649 et seq. "AB 341"), and the Authority's goal of achieving 75% Diversion by the year 2020. As a result, the characterization and quantity of materials destined to the Disposal Facility will change over the Term and may be materially different than that as of the Effective Date of the Agreement.
- 6.2 Standard of Performance.** Contractor shall ensure that the Disposal Subcontractor will employ standard industry practices in conducting all of the Disposal activities specified. At a minimum, Contractor shall require the Disposal Subcontractor to:
- a) Safely manage and operate the Disposal Facility and property in full compliance with Applicable Law during the Term, any Extension , and through completion of Disposal Facility Closure and Post-Closure period(s).
 - b) To obtain, maintain, and comply with all state, federal, and local permits required during the Term, any Extension, and through the completion of the Disposal Facility Closure and Post-Closure period(s).
- 6.3 Weighing of Loads.** Contractor shall ensure that the Disposal Subcontractor will employ the following minimum standards for weighing all Permitted Solid Waste:
- a) **Scales.** At least two state-certified motor vehicle scales shall be maintained and operated at the Disposal Facility in accordance with Applicable Law. Contractor shall provide documentary evidence of such certification within ten (10) calendar days of Authority's request. Said scales shall be linked to a centralized computer recording and billing system that shall be capable of tracking pertinent data on all incoming and outgoing materials. Said scales shall be operated at a minimum during all Disposal Facility receiving hours. Contractor shall provide Authority with access to weighing information at all times and copies thereof on the next Working Day following the Authority's request therefore.
 - b) **Substitute Scales.** If any scale at the Disposal Facility is inoperable, being tested, or otherwise unavailable, vehicles shall be weighed on the remaining operating scale(s). To the extent that all the scales are inoperable, being tested, or otherwise unavailable, portable scales shall be substituted until the permanent scales are replaced or repaired. Any inoperable scale shall be repaired as soon as possible and, in any event, within 72 hours (excluding Holidays) of the failure of the permanent scale. If repairs to the permanent scale are projected to take more than 12 hours, temporary substitute scale(s) shall be immediately obtained.
- 6.4 Disposal Facility Operations and Maintenance.** Contractor shall ensure that the Disposal

Subcontractor will employ the following minimum standards for operations at and maintenance of the Disposal Facility:

- a) **Disposal Facility Equipment.** All equipment, rolling stock, and supplies necessary for Operations, Closure, Post-Closure, and environmental monitoring of the Disposal Facility shall be provided.
- b) **Landfill Maintenance.** The Authority's Permitted Solid Waste Disposed of at the Disposal Facility, shall be safely and lawfully managed including: the placement, burying, and compaction of Permitted Solid Waste in the refuse fill areas; stockpiling, placement and compaction of daily cover, intermediate cover, and final cover; management of fill operations with regard to fill sequencing, side slopes configuration, and working face location and configuration. All leachate and landfill gas management systems, groundwater monitoring and management systems, storm water drainage and control systems, treatment facilities, buildings, on-site roadways, utilities, and any other required facility elements shall be lawfully operated, maintained and managed.
- c) **Staffing.** Sufficient trained personnel as required to effectively operate the Disposal Facility and provide on-going safety and professional training shall be employed.
- d) **Hazardous Waste Management.** An effective monitoring system to prevent Hazardous Waste from being accepted at the Disposal Facility as provided in the Load Checking Program described by Contractor and included in Exhibit 3 of the Agreement shall be maintained to ensure the Disposal Subcontractor's capability to manage Hazardous Waste following identification or inappropriate acceptance of Hazardous Waste by the Disposal Facility.

6.5 Inability to Deliver Permitted Solid Waste. In the event of an Uncontrollable Circumstance preventing the delivery of Authority Permitted Solid Waste to the Disposal Facility, the Authority may in its sole discretion, deliver and dispose of Permitted Solid Waste to any other disposal facility.

6.6 Compliance with Applicable Law. The Contractor shall require the Disposal Subcontractor to perform all of the Disposal Subcontractor's obligations hereunder in accordance with Applicable Law and Permits.

6.6 Disposal Subcontract, Authority as a third party beneficiary. Contractor shall require the Disposal Subcontractor to satisfy all insurance and indemnity obligations of Contractor contained in this Agreement, and to name the Authority as an additional insured under such insurance policies. The Authority shall be a third party beneficiary of all Disposal subcontracts entered into by Contractor with the Disposal Subcontractor that are used in the performance of obligations under this Agreement (collectively, "Disposal Subcontract"). Contractor shall make the Disposal Subcontract assignable, without cost adjustments, to the Authority in the event of default by the Contractor. The Disposal Subcontract shall be made such that upon Contractor default, any payments due to the Disposal Subcontractor by Contractor shall continue to be an obligation of Contractor and such payment obligations shall not be transferred to the Authority upon the assignment of the Disposal Subcontract. The Disposal Subcontract shall be made available for Authority review upon request.

ARTICLE 7. CONTRACTOR FEES AND RATES

7.1 Transportation Rate. The Authority shall pay Contractor for Transportation services to the Disposal Facility as provided for in Exhibit 1. Said payment shall be subject to annual adjustments for CPI to the initial Base Transportation Operations Rate component and quarterly adjustments for Fuel Price Index to the initial Fuel Cost Rate component.

7.2 Description of Transportation Rate. The Transportation Rate is comprised of two (2) separate cost components:

- a) Base Transportation Operations Rate component adjusted annually pursuant to Section 7.3, and;
- b) Fuel Cost Rate component, adjusted quarterly, pursuant to Section 7.4.

The Base Transportation Operations Rate and Fuel Cost Rate together equal the total Transportation Rate charged for each Transfer Trailer Container load delivered by the Contractor to the Disposal Facility. For every Back Haul during the Term of the Agreement, the Transportation Rate will be reduced by a credit to the Authority in the amount of One Hundred and Fifteen Dollars (\$115.00).

Exhibit 1 documents the initial Base Transportation Operations Rate and initial Fuel Cost Rate per Transfer Trailer Vehicle Container load for those designated Transfer Stations as of the Effective Date of the Agreement. In the event that the Authority directs Contractor to Transport Permitted Solid Waste from a Satellite Transfer Station not identified in Exhibit 1, the Transportation Rate(s) applicable to such Satellite Transfer Station shall be mutually agreed to in advance by the Parties.

7.3 Annual Adjustments to Base Transportation Operations Rate.

The Base Transportation Operations Rate shall be adjusted, up or down, on the Adjustment Date in an amount equal to seventy-five percent (75%) of the annual change in the CPI Adjustment and as described below, provided, however, that in no case shall an increase or decrease in such annual adjustment exceed three and one-half percent (3.5%).

The formula for the adjusted Base Transportation Operations Rate (BTOR_A) shall be:

$$BTOR_A = (BTOR_C) \times (1 + 0.75 \times CPI), \text{ where}$$

BTOR_C = Base Transportation Operations Rate in effect immediately prior to the Adjustment Date;

CPI = CPI Adjustment as defined in Article 1; and

BTOR_A = Adjusted Base Transportation Operations Rate for the new Rate period

7.4 Fuel Cost Rate Adjustment. The Fuel Cost Rate component shall be adjusted, up or down, based upon the percentage change in the Fuel Cost Rate since the prior quarter, on the Fuel Cost Rate Adjustment Date per Transfer Trailer Container load as set out in Exhibit 1, which shall be calculated as follows:

$$FCRA = (FCRI) \times (1 + FI), \text{ where}$$

FCRI = Initial Fuel Component Rate per Transfer Trailer Container load.

FI = Quarterly Percentage Change (increase or decrease) in the Fuel Price Index for the prior

three months.

FCRA = Fuel Cost Rate adjustment for the new quarterly rate period.

Should the Fuel Price Index not be published for the ending three month period of any given period, the calculation shall be performed using the index value published for the prior three month period. Should the Fuel Price Index be discontinued, a successor index shall replace the same as agreed to by the Parties. Successor indices shall be those which are most closely equivalent to the discontinued Index as recommended by the publishing agency. Should the Parties fail to agree on a successor index, the Parties shall follow dispute resolution procedures contained in this Agreement.

7.5 Transportation Rate Adjustment. The total Transportation Rate is calculated as shown in Exhibit 1 with components adjusted on their respective adjustment dates and shall be:

TR = (BTOR + FCR), where

TR = Transportation Rate

BTOR = Base Transportation Operation Rate component, and

FCR = Fuel Cost Rate component

7.6 Disposal Facility Fees. The Authority shall pay Contractor Disposal fees for the proper disposal of the Authority's Permitted Solid Waste at the Disposal Facility as provided in Exhibit 1. Each year on the Adjustment Date, the Disposal Rate charged by Contractor shall be subject to a CPI Adjustment in the amount of seventy five percent (75%) of the CPI Adjustment.

7.7 Invoicing.

- a) **Transport Services.** On or before the fifth (5th) Working Day of each month, Contractor shall invoice or otherwise charge the Authority for Transport of Permitted Solid Waste to the Disposal Facility. The invoice shall include a summary table identifying the total monthly amount due which shall be equal to the applicable Transportation Rates listed in Exhibit 1 multiplied by Tons of the Permitted Solid Waste delivered to the Disposal Facility during the previous month. Invoices shall be in a form satisfactory to the Authority and shall, at a minimum, separately list Transfer Trailer Vehicle number, date and time of delivery, Tons, whether a Back Haul was provided and applied Rate.
- b) **Disposal Services.** On or before the fifth (5th) Working Day of each month, Contractor shall invoice the Authority for Disposal of Permitted Solid Waste at the Disposal Facility. The invoices shall include a summary table identifying the total monthly amount due which shall be equal to the applicable Disposal Rate listed in Exhibit 1 multiplied by the Tons disposed of at the Disposal Facility during the previous month. Invoices shall be in a form satisfactory to the Authority and shall, at a minimum, separately list Transfer Trailer Vehicle number, weight, date and time of delivery, type of material, and point of origin of each Transfer Trailer Vehicle Container. Contractor may invoice the Authority for Disposal services on the same invoice as that used to charge for Transport services.
- c) **Noticing CPI Adjustments.** Contractor shall provide notice to the Authority of the annual CPI Adjustments and supporting calculations on March 10 prior to the Adjustment Date. The Authority shall not pay an annual CPI Adjustment in arrears.

d) Rate Increase in Excess of CPI. Contractor may request an increase in either the Transportation Rate or the Disposal Rate greater than CPI by providing relevant cost information to the Authority. Such request must be submitted to the Authority by March 1 of the year the increase is requested. The increase, if approved by the Authority's Board of Directors, shall be effective on July 1 of that year.

7.8 Payment. The Authority shall pay Contractor within thirty (30) days of receipt of each invoice, provided such invoice is undisputed. If the Authority disputes an invoice, it will pay the undisputed amount and provide notice to Contractor of the dispute within ten (10) days receipt of the invoice, together with any request for additional information, identified with reasonable specificity. Within ten (10) days of receiving the Authority's notice of dispute, Contractor shall respond and supply any requested information. If Contractor does not respond within those ten (10) days, it will be deemed to concur with the Authority. If the Authority disagrees with Contractor's response and the Authority and Contractor cannot reach agreement during a fifteen (15) day working period immediately following Contractor's response, either party may submit the matter in accordance with dispute resolution procedures established in this Agreement.

Payment by the Authority to Contractor is not deemed a release of the responsibility and liability of Contractor, its employees, contractors, agents and consultants for the services to be performed under this Agreement, nor is payment deemed to be an assumption of responsibility or liability by the Authority for any defect or error in Contractor's services.

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

ARTICLE 8. INSURANCE, INDEMNITY, BONDS, FURTHER ASSURANCES

8.1 Insurance. The Contractor shall secure and maintain in full force and effect during the Term the types and amounts of insurance coverage listed in Exhibit 2. The Contractor shall be responsible for payment of all premiums for its policy and shall pay such deductibles upon occurrence of an insured loss under its policy. The Contractor shall supply a certificate of insurance and additional insured endorsement to the Authority showing compliance with this section and Exhibit 2 or at the Authority's request; the Contractor shall supply a certified copy of the insurance policies to the Authority.

8.2 Indemnification and Defense. The Contractor shall defend, with counsel acceptable to Authority, save, indemnify and hold harmless the Authority, its officers, agents, employees and volunteers as their respective interests may appear, from and against any and all liabilities, attorneys' fees and expenses at trial and on appeal, including damages, claims, demands, judgments, losses, costs, expenses and actions, arising out of, or resulting from any act, error or omission of Contractor, its officers, employees, agents or subcontractors in connection with the performance of this Agreement, excepting only the active and sole negligence of the Authority or Authority's Contractor(s) and which may cause but is not limited to the following:

- a) personal injuries including, but not limited to wrongful death, and property damage of any kind, nature or sort resulting from Facility Operations,
- b) penalties, fines, and charges arising from Contractor's violation of Applicable Law(s) in connection with Facility Operations,
- c) any condition of the Designated Disposal Facility relating to the presence of Hazardous Waste, petroleum or petroleum products from the first Effective Date to deliver Permitted Solid Waste through the Term, any Extensions, and subsequent migration off-site or on-site remediation thereof,
- d) any allegation of infringement, violation or conversion of any patent, licenses, proprietary right, trade secret or other similar interest, in connection with the Disposal Facility Operation,
- e) any claims or liability related to vector caused damages or illness, biohazard, damage to the environment or health of the community in the vicinity of the Designated Disposal Facility,
- f) any claims or other liabilities directly or indirectly related to Designated Disposal Facility operations,
- g) any claims or other liabilities directly or indirectly related to Contractor actions or inactions during Designated Disposal Facility Closure or Post-Closure,
- h) any claims or other liabilities directly or indirectly related to the provisions of the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601 et seq., Section 107(c), during or subsequent to the period in which this Agreement is in effect.

If there is an event which may result in potential claim, litigation, damage or liability, Contractor agrees to immediately Notify the Authority in order for the Authority to retain the ability to participate in the defense.

The Contractor shall make good and reimburse the Authority for any expenditures, including, attorney's fees and costs, that the Authority may incur by reason of such claim or litigation and if requested by Authority, the Contractor shall defend any such suits at the sole cost and expense of the Contractor.

All of the terms and Obligations of this Article shall survive termination of this Agreement.

8.3 Hazardous Substances Indemnification. The Contractor shall indemnify, defend with counsel acceptable to the Authority, protect and hold harmless the Authority, its officers, officials, employees, agents, assigns and any successor or successors to the Authority's interest from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages) injuries, response mediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, attorney's fees for the adverse party and expenses (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the forgoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered

by, or asserted against, the Authority or its officers, officials, employees, agents, or assigns, arising from or attributable to acts or omissions including but not limited to any repair, cleanup, Disposal or detoxification, or preparation and implementation of any removal, remedial, response, Closure, Post-Closure, or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or Hazardous Wastes at any place where the Contractor transports, stores or Disposes of Permitted Solid Waste pursuant to this Agreement. The foregoing indemnity is also intended to operate as an agreement pursuant to CERCLA, 42 U.S.C. Section 9607(c) and California Health and Safety Code Section 25364, to defend, insure, protect, hold harmless and indemnify the Authority from liability.

8.4 Bonds and Surety Instrument. The Contractor shall carry, and keep in force a performance bond and/or surety instruments as provided for herein. All bonds shall be executed by a corporation admitted to issue surety bonds in the State, subject to regulation by the California Insurance Commissioner, rated not less than "(A.VII)" by A.M. Best Company, Inc. as applicable, and having a financial condition and record of service reasonably satisfactory to the Authority. The corporation(s) executing such bonds shall be financially and organizationally independent of Contractor, and shall be in no manner an affiliate of the Contractor. Within ten (10) Working Days of Authority's issuance of its Notice specifying the Effective Date on which Permitted Solid Waste delivered to the Designated Disposal Facility shall commence, Contractor shall furnish a bond (in a form reasonably acceptable to the Authority and commercially available), and/or comparable instrument(s) approved by the Authority, or any combination thereof, (the "Surety Instruments"). The principal sum shall be Five Hundred Thousand Dollars (\$ 500,000.00). The term of each Surety Instrument shall be issued for a three (3) year period if commercially available to Contractor, but not less than one (1) year or the remaining period in the Term or any Extension, whichever is less. Not less than ninety (90) calendar days before the expiration of each such Surety Instrument, the Contractor shall either extend such Surety Instrument as evidenced by a continuation certificate in a form reasonably acceptable to the Authority, or furnish a replacement Surety Instrument in the principal sum equal to Five Hundred Thousand Dollars (\$ 500,000.00).

8.5 Self Insurance. In lieu of meeting the requirements for obtaining insurance coverage contained in this Article, the Authority may approve a Contractor proposal to provide self insurance that ensures a level of protection and risk minimization equivalent to or greater than that required in this Article. Authority approval shall be at its sole discretion.

8.6 Financial Guaranty Agreement. Guarantor shall execute a legally valid, binding and enforceable Financial Guaranty Agreement attached hereto as Exhibit 4 and provide with the Financial Guaranty Agreement an opinion of counsel in a form satisfactory to the Authority's General Counsel that the Financial Guaranty Agreement has been duly executed and delivered by the Guarantor and constitutes a legal, valid, and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms.

ARTICLE 9. BREACHES AND DEFAULTS

9.1 Contractor Breach. Any failure of Contractor to perform fully any of Contractor's obligations in accordance with the provisions of this Agreement, shall be considered a breach of the Agreement. In addition, the following events shall constitute a material breach by the Contractor:

- a) **Misrepresentation.** A misrepresentation in any representation or disclosure made to the Authority by the Contractor in connection with or as an inducement to entering into or performing this Agreement or any future amendment to this Agreement which proves to be false or misleading in any material respect as of the time the representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.
- b) **Seizure or Attachment of Equipment.** Any equipment owned or leased by Contractor is lawfully seized, attached or levied upon resulting in Contractor's failure to meet Contractor's Obligations.
- c) **Labor or Legal Difficulties.** If Contractor is:
- (i) the subject of any labor action (including work stoppage or slowdown, sick-out, picketing, lock-out or other concerted job action) in excess of thirty (30) calendar days; or
 - (ii) the subject of a civil or criminal judgment or order entered by a Federal, State, regional or local agency for violation of an environmental or tax law, which judgment is in excess of two hundred fifty thousand dollars (\$250,000), and the Authority believes in good faith that Contractor's ability to timely and fully perform Contractor's Obligations has thereby been placed in substantial jeopardy, the Authority may, at its option and in addition to all other remedies it may have, demand from Contractor reasonable assurances of timely and full performance hereunder. If Contractor fails or refuses to provide such reasonable assurances by the date required by the Authority such failure or refusal shall constitute a Contractor breach.
- d) **Voluntary Bankruptcy, Insolvency, Liquidation.** Either Contractor's or Guarantor's filing of a voluntary claim for debt relief under any applicable bankruptcy, insolvency, debtor relief or other similar law now or hereafter in effect, or consent to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, custodian, administrator (or similar official) of Contractor or Guarantor for any part of Contractor's or Guarantor's operating assets or any substantial part of Contractor's or Guarantor's property, or the making of any general assignment for the benefit of Contractor's or Guarantor's creditors, or the failure generally to pay Contractor's or Guarantor's debts as they become due or shall take any action in furtherance of any of the foregoing; provided in the event of Guarantor's failure herein, that Contractor may propose to Authority that Authority substitute a Guarantor as provided in Exhibit 4, in which event the Authority may, at its sole discretion, effect such substitution, in which event it shall not terminate this Agreement in accordance with this paragraph.
- e) **Involuntary Bankruptcy, Insolvency, Liquidation.** The entry of a court order, ruling or decree either with Contractor's consent or where Contractor fails to oppose the proceeding: (a) for relief from the Agreement in any involuntary case brought under any bankruptcy, insolvency, debtor relief or similar law, now or hereinafter in effect, or (b) appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Contractor, or for any part of Contractor's operating equipment or assets, or (c) the winding up or liquidation of the affairs of the Contractor, and the Authority believes in good faith that Contractor's ability to timely and fully perform Contractor's obligations has thereby been placed in substantial jeopardy, the

Authority may, at its option and in addition to all other remedies it may have, demand from Contractor reasonable assurances of timely and full performance hereunder. If Contractor fails or refuses to provide such reasonable assurances by the date required by the Authority such failure or refusal shall constitute a Contractor breach.

- f) Court Order or Decree.** The entry by a court of a decree, ruling, or order for relief in respect of the Contractor, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or the Contractor shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Contractor or for any part of the Contractor's operating equipment or assets, or order the winding up or liquidation of the affairs of the Contractor.
- g) Failure to Maintain Surety and Insurance Instruments.** The failure to maintain the surety instruments, indemnifications, or insurance as required by this Agreement.
- h) Lapse of Financial Guaranty.** Lapse of any Financial Guaranty required under this Agreement.
- i) Regulatory Violation.** The violation of any Permit condition, order, or filing of any regulatory body having jurisdiction over the Contractor relative to this Agreement in such a manner as to materially interfere with Contractor's present or future ability to perform Contractor's obligations under this Agreement, provided the Contractor may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred.
- j) Failure to Notify Authority.** The failure to Notify the Authority in a timely manner of any receipt of notice of violation or official communication from any regulatory body having jurisdiction over the Contractor's performance which significantly affects the Contractor's ability to perform under this Agreement.
- k) Cessation of Services.** Contractor's cessation of Disposal services as required under this Agreement for a period of two (2) consecutive days or more, for any reason within the control of Contractor, including labor disputes or regulatory agency actions or order or court-ordered injunction to cease Operation.
- l) Failure to Meet Reporting Requirements.** The failure to provide Authority with required information, reports, and/or records in a manner exceeding the time schedule defined as Liquidated damages as provided for in the Agreement.
- m) Un-remedied Acts or Omissions.** Any act or omission by the Contractor which violates the terms, conditions, or requirements of this Agreement, or any other Applicable Law, statute, ordinance, order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if the Contractor cannot reasonably correct or remedy the breach within the time set forth in such notice, if the Contractor should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

9.2 Notice of Breach. Either Party shall promptly Notice the other Party regarding the occurrence of a breach as soon as such breach becomes known to the Noticing Party.

9.3 Cure of Breach. Time is of the essence in the remedy of any breach related to the performance of any Contractor obligations; therefore, Contractor shall begin cure of any breach as soon as it becomes aware of the breach, whether discovered by the Contractor or through written Notice from the Authority. Upon giving or receiving notice of a breach, Contractor shall proceed to cure such breach as follows:

- a) Immediately, if the breach is such that in the sole determination of the Authority, the health, welfare or safety of the public is endangered thereby; or
- b) Within thirty (30) calendar days of notice of the breach. However, if the nature of the breach is such that it will reasonably require more than thirty (30) calendar days to cure Contractor shall request agreement from the Authority to extend the thirty (30) day cure period and Authority shall not unreasonably withhold such approval, so long as Contractor is able to substantially perform Contractor's obligations. Contractor shall provide the Authority, no less than weekly, written status of the progress reports in curing such breach, and must diligently proceed to complete same.

9.4 Remedy of Breach, Specified Monetary Damages. Upon effective Notice thereof to Contractor, the Authority may exercise any one or more of the following remedies, or the remedies provided in this Agreement to which it may be entitled, including but not limited to, compensatory damages and consequential fines or penalties that are assessed on the Authority, by any regulatory agency including but not limited to CalRecycle, directly resulting from Contractor's failure to meet all Contractor's obligations. In the event of any administrative regulatory proceeding, Authority will notice the Contractor of the date and time of such proceeding to provide Contractor the opportunity to attend and make a presentation.

9.5 Remedy of Breach, Other Authority Remedies. In addition to the monetary damages specified in this Article, Contractor acknowledges that the Authority's remedy of damages of a breach hereof by Contractor may be inadequate for reasons including:

- a) The urgency of timely, continuous and high quality waste management service hereunder, including Disposal of Permitted Solid Waste that constitute a threat to public health safety and welfare.
- b) The long term and significant investment of money and personnel by Authority staff, consultants, financial advisors, and counsel required to request and evaluate proposals for alternative service comparable to the service provided hereunder for the price provided hereunder, and to negotiate new agreements therefore.
- c) The Authority's reliance on Contractor's technical Transportation and waste management expertise.

9.6 Events of Default.

a) **Contractor Default.** Each of the following shall constitute an event of default by Contractor:

1) **Uncured Material Breach of Agreement.** The Contractor fails to cure any material breach;

- i. within ten (10) Working Days of receiving Notice from the Authority specifying the material breach; unless the nature of the breach is such that it will reasonably require up to thirty (30) calendar days to cure, in which case the Contractor shall not be in default so long as the Contractor promptly commences to cure such breach and diligently proceeds to complete same; or
- ii. immediately, if the material breach is such that the health, welfare or safety of the public is endangered thereby.

2) **Repeated Pattern of Material Breaches.** Contractor has, in the sole but reasonable determination of the Authority, incurred a pattern of successive material breaches, or related events of material breach, that cumulatively indicate Contractor unwillingness or inability to consistently perform all Contractor Obligations throughout the Base Term and any Extensions.

3) **Failure to Notify Authority of Material Breach.** Contractor fails to Notify Authority of a material breach known to the Contractor as specified in this Article.

4) **Failure to Remedy Effects of Uncontrollable Circumstance.** The Contractor fails to remedy effects of an Uncontrollable Circumstance within ten (10) Working Days of the event or within the time period approved by the Authority in accordance with this Article.

b) **Remedies in the Event of Contractor Default.** Upon the occurrence of a Contractor default, the Authority shall have the right to exercise any or all of the following rights:

1) **Termination.** To terminate this Agreement, Authority shall give the Contractor Notice of Termination: such Notice shall be effective ten (10) working days thereafter, or immediately if the public health or welfare is threatened.

2) **All Other Available Remedies.** To exercise all of its remedies in accordance with this Article and any other remedies at law and in equity, to which the Authority shall be entitled, according to proof.

3) **Other Authority Rights.** The Authority shall also have the right to:

- i. seek performance by the surety under any performance bond, and/or
- ii. make a claim on any insurance policy or policies or self insurance instrument.

9.7 Criminal Activity of Contractor. Should the Contractor or any of its officers or directors be

found guilty of a felony relating to the Contractor's obligations under this Agreement, or at any of the Contractor's Operations that involves, but is not limited to: (i) price fixing, (ii) illegal transport or disposal of Permitted Solid Waste, hazardous or toxic materials, (iii) bribery of public officials, or (iv) fraud or tampering, the Contractor shall be in default and Authority reserves the right:

- i. To unilaterally terminate this Agreement in accordance with Article 10.
- ii. To exercise all other remedies available to Authority as if a Contractor default had occurred, in accordance with this Article.
- iii. To impose sanctions which may include financial sanctions or any other condition deemed appropriate short of termination.

Such action shall be taken after the Contractor has been given Notice and an opportunity to present evidence in mitigation.

For purposes of this section, the term "found guilty" shall include any judicial determination that Contractor or any of Contractor's officers, directors or employees is guilty, and any admission of guilt by Contractor, or any of Contractor's officers, directors or employees including, but not limited to, the pleas of "guilty", "nolo contendere", "no contest" or "guilty to a lesser felony" entered as part of any plea bargain.

If the Authority does not terminate this Agreement, the Contractor shall dismiss or remove such officers, directors or employees and take all action necessary and appropriate to remedy any breach of Contractor's obligations under this Agreement.

9.8 Uncontrollable Circumstances

- a) **Uncontrollable Circumstance(s).** "Uncontrollable Circumstance(s)" means any act, event or condition outside either Party's control and not the result of willful or negligent action or inaction on the part of such Party, whether affecting the Facility or either Party, which materially and adversely affects the ability of either Party to perform any of its obligations hereunder, including:
- 1) The failure of any appropriate Federal, State, Authority, or local public agency or private utility having operational jurisdiction in the area in which the Facility is located, to provide and maintain utilities, services, water, sewer or power transmission lines to the Facility which are required for Facility Operation;
 - 2) A Change in Law other than Changes in Law specifically excluded in this Agreement;
 - 3) The suspension or interruption of Disposal Facility Operations as a result of any release, spill, contamination, migration or presence of any Hazardous Waste, petroleum and petroleum products at the Facility or the Facility site;
 - 4) A Force Majeure event that temporarily or permanently interrupts Disposal Facility

Operations;

- b) Exclusions.** The following are excluded from Uncontrollable Circumstances, without limitation, unless caused by an Uncontrolled Circumstance listed above:
- 1) Either Party's breach hereunder;
 - 2) Adverse changes in the financial condition of either Party or any Change in Law with respect to any taxes based on or measured by net income, or any business, payroll, franchise or employment taxes.
 - 3) The consequences of errors in Disposal Facility Operation on the part of Contractor, its employees, agents, subcontractor or affiliates or failure to comply with Standard Industry Practices, standard Operating procedures, Permit requirements, and Applicable Law;
 - 4) The failure of Contractor to secure patents, technical licenses, trademarks, and the like necessary for Disposal Facility Operation;
 - 5) The lack of fitness of the Disposal Facility for use;
 - 6) Change in Applicable Law that either:
 - Increases Disposal Facility costs due to additional environmental regulations; or
 - Is caused by regulations mandated by County, local, state, federal statutes, laws, regulations, ordinances, rules, permits, resolutions, orders, or other directives.
 - 7) Labor actions including but not limited to strikes, lockouts, and industrial disturbances.
- c) Performance Excused.** Neither Party shall be in breach of its Obligations hereunder in the event, and for so long as, it is impossible or extremely impracticable for it to perform such Obligations due to an Uncontrollable Circumstance if such Party exerted Reasonable Business Efforts to prevent such Uncontrollable Circumstance, and such Party expeditiously takes all actions within its control to end, or to ameliorate the effects of such Uncontrollable Circumstance as soon as possible and in no circumstances shall the remedy of the effects of such Uncontrollable Circumstances not be accomplished within ten (10) Working Days of the event unless a longer period to remedy the effects of the Uncontrollable Circumstance is approved by the Authority. If Contractor fails to remedy the effects of the Uncontrollable Circumstance within ten (10) Working Days or such period approved by the Authority, the Contractor shall be in default of the Agreement.

Contractor shall carry and keep in force such insurance as is needed to mitigate the financial effects of Uncontrollable Circumstances to which the Facility and/or Contractor may subject. Insurance proceeds from policies covering any Uncontrollable Circumstance act or event shall be used to mitigate any damages caused by insurable events, including prompt reimbursement in full of any Disposal Rate or direct cost payments made by the Authority to the Contractor during an Uncontrollable Circumstances affecting the Facility and/or Contractor.

- d) **Notice.** The Party experiencing an Uncontrollable Circumstance and relying thereon shall give immediate Notice thereof to the other Party, including describing performance hereunder for which it seeks to be excused.

ARTICLE 10. TERMINATION

10.1 Authority's Right to Suspend. Authority shall have the right to suspend this Agreement, in whole in or in part, upon the occurrence of a Contractor default regarding a failure to perform any of Contractor's obligations where such occurrence that endangers public health, welfare or safety; provided such suspension is for no longer than forty-five (45) calendar days, during which period the Contractor shall have the opportunity to demonstrate to the reasonable satisfaction of the Authority the Contractor can once again fully perform its obligations under this Agreement, in which case Authority may waive such default. If Authority is not so satisfied, it may exercise any or all remedies provided in this Agreement.

10.2 Authority's Right to Terminate. In addition to any other remedy available to the Authority in law or under the terms of this Agreement, the Authority shall have the right to terminate this Agreement in the following events:

- a) **Contractor Default.** The occurrence of a Contractor default.
- b) **Criminal Activity of Contractor.** The Contractor is found guilty of felonious conduct in accordance with Section 9.5.

10.3 Termination for Contractor Default. In addition to any other remedy, and in the event the Authority exercises its right to terminate the Agreement, as of the effective date of such termination the Authority shall have the right to:

- a) seek performance by the surety under any performance bond; and/or
- b) make a claim on any insurance policy or policies or self-insurance instrument.

ARTICLE 11. DISPUTE RESOLUTION

11.1 Dispute Resolution Procedures. In the event that any dispute arises between the Parties concerning the interpretation, enforcement or any other matter related to or in connection with this Agreement, the Parties shall comply with the procedures in this Article in an attempt to resolve such dispute and shall comply with their respective obligations pending resolution as reasonably practical.

The dispute resolution procedure may be initiated by either Party upon providing Notice to the other specifying the matter in dispute. Upon receipt of such Notice, both Parties shall, within five (5) Working Days of receipt of such Notice, meet and confer in good faith to resolve such dispute. Each Party shall, in good faith and in writing, promptly provide to the other Party any and all information and documentation reasonably related to the dispute requested by the other Party. If Parties are unable to satisfactorily resolve the dispute within thirty (30) calendar days then the Authority and

Contractor shall have all legal and equitable remedies as provided for in this Agreement.

11.2 Continued Performance. Except for an event of Contractor Default, in the event of any dispute arising under this Agreement, the Authority and Contractor shall continue performance of their respective obligations under this Agreement and shall attempt to resolve such dispute in a cooperative manner, including but not limited to negotiating in good faith.

ARTICLE 12. ASSIGNMENT

12.1 Definition. For purposes of this Article, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of the Contractor's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of thirty (30) percent or more of the outstanding common stock of the Contractor; (iii) any reorganization, consolidation, merger recapitalization, stock issuance or re-issuance, voting trust, pooling Agreement, escrow arrangement, liquidation or other transaction to which the Contractor or any of its shareholders is a party which results in a change of ownership or control of thirty (30) percent or more of the value or voting rights in the stock of the Contractor; and (iv) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership. If the Contractor is not a corporation, an assignment shall also include, among other things, any transfer or reorganization that has an effect similar to the situations described in foregoing sentence for corporations. For purposes of this Article, the term "proposed assignee" shall refer to the proposed transferee(s) or other successor(s) in interest pursuant to the assignment. If the Contractor is a subsidiary of another corporation or business entity, any "assignment," as defined above, by the parent company or corporation shall be considered an assignment by the Contractor.

12.2 Authority Assignment. The Authority may assign its rights and responsibilities under this Agreement to any other Person as long as any such proposed assignee under this Section shall (i) have the legal authority and financial capacity sufficient to assume and perform all of the Authority's Obligations, and (ii) shall agree in writing to do so.

12.3 Contractor Assignment

a) Limitations. The Contractor acknowledges that this Agreement involves rendering a vital service to the Authority, and its residents and businesses, and that the Authority has relied upon the Contractor's representation of its experience and financial resources in qualifying the Contractor to perform the services under this Agreement. Except as provided in this Article 14, the Contractor shall not assign its rights or delegate, subcontract, or otherwise transfer its Obligations hereunder to any other Person without the prior written consent of the Authority. Any such assignment made without the written consent of the Authority shall be void and the attempted assignment shall constitute a material breach of this Agreement. Under no circumstances shall the Authority be required to consider any proposed assignment if the Contractor is in default at any time during the period of consideration.

b) Determination. The Contractor shall submit its request for Authority consent to the Authority together with documentation and information concerning the financial capability and Permitted Solid Waste management experience of the proposed assignee. Any such proposed assignee

under this Section shall have the legal authority sufficient to assume and perform all Contractor's Obligations, and shall agree in writing to do so.

In making its determination to consent to the assignment the Authority may require and consider, and the Contractor shall cause to be provided such items as the following:

- 1) audited financial statement for the immediately preceding five (5) operating years, indicating that the proposed assignee's financial status is sufficient to perform all Contractor's Obligations.
- 2) satisfactory proof that the proposed assignee has at least ten (10) years of Municipal Permitted Solid Waste Disposal experience on a scale equal to or exceeding the scale of Operations conducted by the Contractor;
- 3) satisfactory proof that in the last five (5) years, the proposed assignee has not suffered any citation or other censure from any Federal, State or local agency having jurisdiction over its waste management operations due to any Significant failure to comply with state, Federal or local waste management law, which citation or censure has not been timely cured to the satisfaction of such agency, or is not now in the process of a cure; and if it has suffered any citation or other censure, that the assignee has provided the Authority with a complete list thereof;
- 4) the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion;
- 5) the proposed assignee conducts its Operations in accordance with Standard Industry Practices and in full compliance with all Federal, State and local laws regulating the Disposal of Municipal Permitted Solid Waste including Hazardous Waste and hazardous substances;
- 6) letters of credit, lines of credit, or other financial assurances that confirm the assignee's financial ability to perform the Agreement; and
- 7) any other information reasonably required by the Authority to ensure the proposed assignee can fulfill the terms hereof, including the payment of damages, in a timely, safe and effective manner.

c) **Application and Transfer Fee.** Any application for an assignment/transfer of this Agreement shall be governed by the following conditions:

- 1) Any application for an assignment/transfer shall be made in a manner prescribed by the Authority representative identified in Section 14.2. The application shall include a transfer fee in an amount determined by the Authority's Executive Director to be sufficient to cover the cost of all direct and indirect administrative expenses including consultants and attorneys, necessary to adequately analyze the application and to reimburse the Authority for all direct and indirect expenses. Contractor shall be refunded any amounts deposited that exceeded such expenses actually incurred by Authority.

- 2) The Contractor shall reimburse the Authority for any and all additional costs related to the assignment requested and not covered by the assignment/transfer fee, including attorney's fees and investigation costs related to investigation of the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment. Bills shall be supported with evidence of the expense or cost incurred. The Contractor shall be responsible for ensuring the payment of such bills within thirty (30) calendar days of receipt.
- d) **Transition.** If the Authority consents to an assignment/transfer, at the point of transition the Contractor shall cooperate with the Authority and subsequent Contractor(s) or subcontractor(s) to assist in an orderly transition which shall include, but not be limited to, the Contractor's provision of vehicle tare weights and billing information.

ARTICLE 13. LIQUIDATED DAMAGES.

The Parties acknowledge that timely, consistent, and efficient operations are of utmost importance to the Authority; failure to conduct Transportation operations or Operate the Disposal Facility in accordance with obligations in the Agreement and failure to allow for Transfer Trailer Vehicles efficiently to unload at the Disposal Facility increase the Authority's costs; and the Authority has considered and relied on Contractor's representations as to its quality of service commitment in entering into this Agreement. The Parties further recognize that quantified standards of performance are necessary and appropriate to ensure consistent and reliable service. The Parties further recognize that if the Contractor fails in its obligations, the Authority and its residents and businesses will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of such damages. Therefore, the Parties agree that the Liquidated Damages at set forth in Exhibit 5 represent a reasonable estimate of the amount of such damages, considering all of the circumstances existing on the date hereto, including the relationship of the amounts to the range of harm to the Authority that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. The Contractor agrees to pay as Liquidated Damages, and not as a penalty, for failure to perform the events of failure specified Exhibit 5 the amounts listed in Exhibit 5.

Payment of Liquidated Damages in no way limits Authority's ability to seek other damages; and does not excuse Contractor from conducting appropriate cure of breach or default as provided in Article 9, or such other remedies as may be provided in this Agreement. The assessment of Liquidated Damages and/or deductions as provided under this Agreement shall not relieve Contractor of its obligation to provide sufficient service or to meet any of the terms of this Agreement. In signing this Agreement, the Contractor specifically confirms the accuracy of the statements made in this Article with respect to Liquidated Damages for all events of failure listed in Exhibit 5 and the fact that it had ample opportunity to consult with legal counsel and obtain an explanation of such Liquidated Damage provisions at the time that this Agreement was made.

The Authority may deduct Liquidated Damages owed as provided for in this Agreement from payments to Contractor.

ARTICLE 14. OTHER PROVISIONS

14.1 Notices. All demands, orders, requests, proposals, comments, acknowledgments, approvals, consents, certifications and other communications made hereunder and shall be in writing and shall either be, delivered personally or delivered by courier, to a representative of the Parties at the address below or be deposited in the United States mail, first class postage prepaid (certified mail, return receipt requested), addressed as follows:

If to Authority:	If to Contractor:
Executive Director	President
Humboldt Waste Management Authority	Solid Wastes of Willits, Inc.
1059 West Hawthorne Street	P.O. Box 1425
Eureka, CA 95501	Willits, CA, 95490

The address to which communications may be delivered may be changed from time to time by a Notice given in accordance with this Section. Any Notice of other communication hereunder shall be effective as of the date received, or, if earlier, as of the date upon which such Notice or communication is first sent by facsimile transmission, and confirmed in writing by the receiving Party.

14.2 Authorized Representatives

a) Authority. For purposes of this Agreement, the Authority's authorized representative shall be the Authority's Executive Director or his/her designee, who shall have the authority to make operational decisions in accordance with Applicable Law and Authority policy with respect to this Agreement which are binding on the Authority.

b) Contractor. For purposes of this Agreement, the Contractor's authorized representative shall be the Contractor's President, who shall have the authority to make decisions in accordance with Applicable Law and Contractor's articles of incorporation, bylaws and policy.

14.3 Conflicting Provisions. In the event the provisions of the Articles herein conflict with those of the Exhibits hereto, the Articles shall prevail.

14.4 Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State.

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

14.6 Venue. The venue for any legal proceedings in state court filed by either party to the Agreement shall be the Superior Court of California, County of Humboldt, and a unified court or, in case of federal court jurisdiction the Northern District of California. The appropriate venue for agreed upon an alternative dispute resolution shall be Humboldt County, California.

14.7 Attorney's Fees. In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the

prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

- 14.8 Severability.** If any term or provision of this Agreement shall be found to be illegal or unenforceable, then, notwithstanding, this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken.
- 14.9 Entire Agreement.** This Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby. All Exhibits 1 through 5 are hereby incorporated into this Agreement by reference. This Agreement shall completely and fully supersede all prior understandings and agreements between the Parties with respect to such transactions. However, nothing in this paragraph shall supersede or diminish the representations and warranties as contained in Article 2.
- 14.10 Parties in Interest.** Nothing in this Agreement, whether express or implied, is intended to confer any rights on any persons other than the Parties and their representatives, successors and permitted assigns.
- 14.11 Binding on Successors.** The provisions of this Agreement shall inure to the benefit of and be binding on the successors and permitted assigns of the Parties.
- 14.12 Further Assurances.** Each Party agrees to execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by the other in order to give full effect to this Agreement.
- 14.13 Actions of the Authority in Its Governmental Capacity.** Nothing herein shall be interpreted as limiting the rights and obligations of the Authority in its governmental or regulatory capacity.
- 14.14 Exercise of Options.** The Parties' exercise of any approval, disapproval, option, discretion, election or choice hereunder shall be in each respective Party's independent, sole, exclusive and absolute control and judgment.
- 14.15 Cooperation.** The Parties recognize and agree that unforeseen developments and circumstances may occur during the Agreement Term that materially modify or otherwise affect one or both Party's respective obligations. The Parties further agree that in such event, each Party will cooperate in a professional manner and negotiate with the other in good faith to address and resolve such unforeseen developments in a timely manner.
- 14.16 Interpretation** means, unless a clear intention appears otherwise:
- a) the singular number includes the plural number and vice versa
 - b) reference to any Entity includes such Entity's successors and assigns but, if applicable, only if such successors and assigns are consented to in accordance with this Agreement, any reference to an Entity in a particular capacity excludes such Entity in any other capacity;
 - c) reference to any gender includes the other gender;

- d) reference to an agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended, modified, restated, substituted and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof;
- e) reference to an Article, Section, Schedule or Exhibit means such Article, Section, Schedule or Exhibit to this Agreement, and references in any Article, Section, Schedule, Exhibit or definition to any clause means such clause of such Article, Section, Schedule, Exhibit or definition;
- f) "hereunder," "hereto," "herein," and words of similar import are references to this Agreement as a whole and not any particular Section or other provision hereto or thereof;
- g) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;
- h) relative to any determination of any period of time, "from" means "from and including," "to" means "to but excluding" and "through" means "through and including;"
- i) reference to any "day" shall mean a calendar day, including Saturdays, Sundays, and Holidays unless otherwise specified;
- j) all references in this Agreement to laws and regulations shall be understood to include such laws and regulations as they may be subsequently amended or recodified, unless otherwise specifically provided. In addition, references to specific governmental agencies shall be understood to include agencies which succeed to or assume the functions they are currently performing.

14.17 Waiver. The Authority reserves the right to waive any and all breaches or defaults of this Agreement, and any such waiver shall not be deemed a waiver of all previous or subsequent breaches or defaults. In the event the Authority chooses to waive a particular breach or default of this Agreement, it may condition same on payment by the Contractor of actual damages occasioned by such breach or default of Agreement and shall make every effort to resolve the same quickly and amicably.

14.18 Exhibits. The following Exhibits are attached hereto and incorporated herein to this Agreement:

- Exhibit 1: Transportation and Disposal Rates and Other Fees
- Exhibit 2: Insurance Requirements
- Exhibit 3: Load Checking Program
- Exhibit 4: Financial Guaranty Agreement
- Exhibit 5: Liquidated Damages

14.19 Recyclables Materials Base Purchase Price. Under that certain Agreement between the Parties for Recyclable Materials Loading, Transportation, Processing and Marketing Services, effective August __, 2011, for the duration of said Agreement and any successor thereto, Contractor agrees to pay the Authority a minimum of \$9.00 per Ton of Recyclable Materials for Humboldt County sourced Recyclable Materials tonnage directed to Contractor in excess of tonnage directed during calendar year

2013, as said terms are defined in said Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement to be effective on the date first above written.

CONTRACTOR:

By: _____
Printed Name: _____
Title: _____

Date: _____

By: _____
Printed Name: _____
Title: _____

Date: _____

Approved as to form:

Contractor Counsel

Date: _____

HUMBOLDT WASTE MANAGEMENT AUTHORITY:

By: _____
Chair of the Board

Date: _____

Attest: _____
Clerk of the Board

Date: _____

Approved as to form:

Authority Counsel

Date: _____

All Certificates Received:

By:

Date:

EXHIBIT 1

Transportation and Disposal Rates

Initial Disposal Rate, Protero Hills Landfill (PHLF): \$19/ton

Initial Diesel Fuel Price per Gallon (\$/g) = \$3.72

Transportation Rate (TR) to be paid by the Authority to the Contractor per Transfer Trailer Container shall consist of two components; (1) Base Transportation Operation Rate (BTOR) component which shall be adjusted annually by the CPI and the Fuel Cost Rate (FCR) Component which shall be adjusted quarterly. The two (2) components shall be added together to arrive at the total Transportation Rate per Transfer Trailer Vehicle Container Load.

Disposal Fees shall be paid on a dollar per ton basis for Permitted Solid Waste including and adjusted annually.

Contract Year Beginning 6/01/2014	Base Transportation Operations Rate (Per Load)	Initial Fuel Cost (Per load)	Total Transportation Rate (Per Load)
Hawthorne Street Transfer Station To PHLF	\$ 437.69	\$295.37	\$733.06
Humboldt Sanitation McKinleyville Transfer Station To PHLF	\$ 465.43	\$319.98	\$785.41
Eel River Resource Recovery Transfer Station, Fortuna To PHLF	\$409.95	\$270.76	\$680.71

EXHIBIT 2
INSURANCE REQUIREMENTS

The Contractor shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors. With respect to General Liability, and Pollution and/or Environmental Impairment Liability coverage should be maintained through the Designated Disposal Facility Post-Closure period. The maintenance of claims made against any insurance required of the Contractor shall not be considered a waiver by Authority of any claim or liabilities it may have against the Contractor. Evidence of coverage and all endorsements shall be provided to the Authority prior to the Effective Date.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (“occurrence” form CG 0001).
2. Insurance Services Office form number CA 0001 (Ed. 1/78), covering Automobile Liability, code 1 (any auto) and endorsement CA 0025.
3. Workers’ Compensation Insurance as required by the State of California and Employer’s Liability Insurance.
4. Pollution and/or Environmental Impairment Liability.

B. Minimum Limits of Insurance. The Contractor shall maintain limits no less than:

- 1) General Liability: \$5,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- 2) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- 3) Workers’ Compensation and Employer’s Liability: \$1,000,000 each accident, \$1,000,000 policy limit bodily injury or disease, \$1,000,000 each employee bodily injury by disease.
- 4) Pollution and/or Environmental Impairment Liability: \$1,000,000 each occurrence/\$2,000,000 policy aggregate covering liability arising from the release of waste materials and/or irritants, contaminants or pollutants. Such coverage shall, if commercially available, without involvement of the Authority, automatically broaden in its form of coverage to include legislated changes in the definition of waste materials and/or irritants, contaminants or pollutants. The policy shall stipulate this insurance is primary and no other insurance carried by the Authority will be called upon to contribute to a loss suffered by the Contractor

hereunder and waive subrogation against the Authority and other additional insureds.

D. Other Insurance Provisions.

1. The policies are to contain, or be endorsed to contain, the following provisions:
 - a. The Authority, its officers, officials, employees and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations.
 - b. The Contractor's insurance coverage shall be primary insurance with regard to the Authority, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the Authority, its officers, officials, employees, agents or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
 - c. Each insurance policy required by this Agreement shall be occurrence-based, (except environmental impairment coverage which shall be claims based) or an alternate form as approved by the Authority and shall be endorsed to state that the insurer(s) must provide the Contractor and Authority with thirty (30) calendar days notice prior to any cancellation, change or other modification by certified mail, return receipt requested, has been given to the Authority and name the Authority its officers, officials, agents, employees and volunteers as additional insureds.
 - d. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
2. The Automobile Liability policy shall be endorsed to delete the Pollution and/or the Asbestos exclusion and add the Motor Carrier Act endorsement (MCS-90), TL 1005, TL 1007 and/or other endorsements required by federal or State authorities.
3. Workers' Compensation and Employers Liability Coverage. The Insurer shall agree to waive all rights of subrogation against the Authority, its officers, officials, employees and volunteers for losses arising from work performed by the Contractor for the Authority, except for the sole or willful misconduct of the Authority, its officers, officials, employees or volunteers.

E. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII if admitted. If pollution and/or Environmental Impairment and/or errors and omissions coverage are not available from an "Admitted" Insurer, the coverage may be written with the Authority's permission, by a Non-admitted insurance company. A Non-admitted

company should have an A.M. Best's rating of A: X or higher.

F. Verification of Coverage. The Contractor shall furnish the Authority with certificates and endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that Insurer to bind coverage on its behalf. All endorsements are to be received and approved by the Authority's Risk Manager before work commences.

G. Other Provisions. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Authority, its officers, officials, agents, employees and volunteers.

EXHIBIT 3
LOAD CHECKING PROGRAM

EXHIBIT 4
FINANCIAL GUARANTY AGREEMENT

This Guaranty, made as of the date of the Agreement (as defined below) by Solid Wastes of Willits, Inc., a corporation duly organized and existing in good standing under the laws of the State of California ("**Guarantor**"), to and for the benefit of the Humboldt Waste Management Authority ("**Authority**"), a joint powers agency organized under the laws of the State of California (the "**State**") pursuant to Government Code section 6500 et seq.

WITNESSETH

WHEREAS, Solid Wastes of Willits, Inc. and the Authority have negotiated a Service Agreement for Transportation and Disposal capacity dated as of the later of the date of execution thereof by the Authority or the Contractor, as may be supplemented and amended from time to time in accordance with the terms thereof ("**Agreement**"), which Agreement is incorporated herein by reference and hereby made part hereof;

WHEREAS, it is in the interest of Guarantor that the Contractor enter into the Agreement with the Authority;

WHEREAS, the Authority is willing to enter into the Agreement only upon the condition that the Guarantor execute this Guaranty;

WHEREAS, it is a condition precedent to the Authority to enter into the Agreement, the Guarantor agrees as follows:

Capitalized terms used herein and not otherwise defined herein, shall have the meaning assigned to them in the Agreement.

(1) Guaranty of Contractor's Obligations to Authority. Guarantor hereby directly, unconditionally, irrevocably, and absolutely guarantees the timely and full performance of Contractor's Obligations under the Agreement in accordance with the terms and conditions contained therein, or as they may be hereafter amended or modified by agreement of Contractor and the Authority. Notwithstanding the unconditional nature of the Guarantor's payment Obligations set forth herein, the Guarantor shall have the right to assert the defenses provided in the paragraph entitled "Defenses" under Section 8 hereof, against claims made hereunder.

(2) Governing law; consent to jurisdiction. This Guaranty is made in Humboldt County, California, and shall be governed by the laws of the State of California without regard to the choice of law or conflicts. The venue for any legal action in state court filed by either party to this Guaranty for the purpose of interpreting or enforcing any provision of this Guaranty shall be in the Superior Court of California, County of Humboldt, a unified court. The venue for any legal action in federal court filed by either party to this Guaranty for the purpose of interpreting or enforcing any provision of this Guaranty lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Guaranty shall be Humboldt County, California; however, nothing in this sentence shall obligate

either party to submit to mediation or arbitration any dispute arising under this Guaranty.

(3) Enforceability; no assignment. This Guaranty shall be binding upon and enforceable against Guarantor, its successors, assigns, and legal representatives. It is for the benefit of the Authority, its successors and assigns. The Guarantor may not assign or delegate the performance of this Guaranty without prior written consent of the Authority, which shall not be unreasonably withheld. Any such assignment made without the consent of Authority shall be void. Guarantor shall submit its request for Authority consent to the Authority together with the following documentation and any other documentation the Authority may reasonably request:

- (i) audited financial statements for the immediately preceding three (3) operating years; indicating that the proposed assignee's financial status is equal to or greater than Guarantor's; and
- (ii) any other information reasonably required by Authority to ensure the proposed assignee can fulfill the terms hereof, including the payment of damages, in a timely, safe and effective manner.

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

"Assign." For the purpose of this Section, "assign" includes to sell, exchange or otherwise transfer to a third party all or substantially all of Guarantor's assets.

(4) Guaranty absolute and unconditional. The undertakings of Guarantor set forth herein are absolute and unconditional, except as provided herein, and the Authority shall be entitled to enforce any or all of said undertakings against Guarantor as provided in this Guaranty. Without limiting the generality of the foregoing, the Guarantor expressly agrees that its Obligations hereunder shall not be affected, limited, modified or impaired by (a) the default or failure of the Guarantor to fully perform any of its Obligations set forth in this Guaranty, or (b) the bankruptcy, insolvency, or similar proceeding involving or pertaining to the Contractor, or any order or decree of a court, trustee or receiver in any such proceeding; provided that, notwithstanding the foregoing, Guarantor shall not be required to pay any monetary obligation of Contractor to Authority from which Contractor would be discharged, released or otherwise excused under the provisions of the Agreement.

(5) Waivers. Guarantor hereby waives:

- (a) notice of Acceptance of this Guaranty and of the creation, renewal, Extension and accrual of the Obligations Guaranteed hereunder; and
- (b) filing of claims with a court in the event of reorganization, insolvency, or bankruptcy of the Contractor.

(6) Agreements between Authority and Contractor; Waivers by Authority. The Guarantor agrees that, without the necessity for any additional endorsement or Guaranty by or any reservation of rights against Guarantor and without any further assent by Guarantor, by mutual agreement

between the Authority and Contractor, the Authority and Contractor may, from time to time

- (a) renew, modify or compromise the liability of the Contractor for or upon any of the obligation hereby Guaranteed;
- (b) consent to any amendment or change of any terms of the Agreement;
- (c) accept, release, or surrender any security (including, without limitation, any performance bond); or
- (d) grant any Extensions or renewal of the Obligations of the Contractor under the Agreement, and any other indulgence with respect thereto, and to effect any release, compromise or settlement with respect thereto, all without releasing or discharging the liability of Guarantor hereunder.

Notwithstanding the foregoing, nothing in this Guaranty shall be construed to create a greater obligation on the part of the Guarantor that the Contractor would have under the Agreement, or as it may be amended or modified by the Contractor and the Authority.

(7) Continuing Guaranty. This Guaranty is a continuing Guaranty and shall continue to be effective or be reinstated, as applicable, if at any time any payment of any of the Obligations hereby Guaranteed is rescinded or is otherwise required to be returned upon reorganization, insolvency or bankruptcy of the Contractor or Guarantor or otherwise, all as though such payment had not been made.

(8) Defenses. The Guarantor may exercise or assert any and all legal or equitable rights, defenses, counter claims or affirmative defenses under the Agreement or Applicable Law which the Contractor could assert against any party seeking to enforce the Agreement against the Contractor, and nothing in this Guaranty shall constitute a waiver thereof by the Guarantor.

(9) Payment of costs of enforcing Guaranty. Guarantor agrees to pay all costs, expenses and fees, including all reasonable attorney's fees, which may be incurred by the Authority in enforcing this Guaranty following the default on the part of the Guarantor hereunder whether the same shall be enforced by suit or otherwise.

(10) Enforcement. The terms of this Guaranty may be enforced as to any one or more breaches either separately or cumulatively.

(11) Remedies cumulative. No remedy herein conferred upon or reserved to the Authority hereunder is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Guaranty and the Agreement or hereinafter existing at law or in equity or by statute.

(12) Severability. The invalidity or unenforceability of any one or more phrases, sentences or clauses in this Guaranty contained shall not affect the validity or enforceability of the remaining portions of this Guaranty, or any part thereof.

(13) Amendments. No amendment, change, modification or termination of this Guaranty shall be made except upon the written consent of Guarantor and the Authority.

(14) Term. The Obligations of the Guarantor under this Guaranty shall remain in full force and effect until (i) all monetary Obligations of the Contractor under the Agreement shall have been fully performed or provided for in accordance with the Agreement, or (ii) the discharge, release or other excuse of said Obligations in accordance with the terms of the Agreement.

(15) No set-offs, etc. The obligation of Guarantor under this Guaranty shall be subject to any set-off, counterclaim, recoupment, defense or other right that the Contractor may assert pursuant to the Agreement, if any, but the obligation of Guarantor under this Guaranty shall not be subject to any set-off, counterclaim, recoupment, defense or other right that the Contractor may assert independently of and outside the Agreement.

(16) Warranties and representations. The Guarantor warrants and represents that as of date of execution of the Guaranty:

- (a) The Guarantor has the power, authority and legal right to enter into this Guaranty and to perform its Obligations and undertakings hereunder, and the execution, Effective and performance of this Guaranty by the Guarantor (i) have been duly authorized by all necessary corporate and shareholder action on the part of the Guarantor, (ii) have the requisite approval of all Federal, State and local governing bodies having jurisdiction or authority with respect thereto, if any (iii) do not violate any judgment, order, law or regulation applicable to the Guarantor; (iv) do not conflict with or constitute a default under any agreement or instrument to which the Guarantor is a party or by which the Guarantor or its assets may be bound or affected; and (v) do not violate any provision of the Guarantor's articles or certificate of incorporation or by-laws.
- (b) This Guaranty has been duly executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms; and
- (c) There are no pending or, to the knowledge of the Guarantor, threatened actions or proceeding before any court or administrative agency which would have a material adverse effect on the financial condition of the Guarantor, or the ability of the Guarantor to perform its Obligations or undertakings under this Guaranty.

Guarantor acknowledges and agrees that such representations and warranties are material.

(17) Counterparts. This Guaranty may be executed in any number of counterparts, some of which may not bear the signatures of all parties hereto. Each such counterpart, when so executed and delivered, shall be deemed to be an original and all of such counterparts, taken together, shall constitute one and the same instrument; provided, however, that in pleading or proving this Guaranty, it shall not be necessary to produce more than one copy (or sets of copies) bearing the signature of the Guarantor.

(18) Notices. All notices, instructions and other communications required or permitted to be given to or made upon any party hereto shall be in writing, and shall be given in the manner and

to the addresses provided in the Agreement, except notices to Guarantor shall be sent to:
[Name, Address]

(19) Separate suits. Each and every payment default by Contractor under the Agreement shall give rise to a separate cause of action under this Guaranty, and separate suits may be brought hereunder by the Authority or its assigns as each cause of action arises.

(20) Headings. The Section headings appearing herein are for convenience only and shall not govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Guaranty.

(21) 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 Authority and their permitted successors and assigns hereunder any rights of remedies under or by reason of this Guaranty.

IN WITNESS WHEREOF, Guarantor has executed this instrument the day and year first above written.

_____ Corporation By: _____

_____, _____

Date

By: _____

_____, _____

Date

**EXHIBIT 5
LIQUIDATED DAMAGES**

The following Liquidated Damages shall be levied for Contractor’s failure to meet specific Contractor obligations due to Contractor’s fault. The amounts for Liquidated Damages will be adjusted annually to reflect changes in CPI.

Event	Transportation Liquidated Damage
Reporting	<ul style="list-style-type: none"> • One hundred dollars (\$100) per Business Day for each calendar day that a report required by this Agreement is past due to the Authority. • More than seven (7) Business Days past due, the rate of Liquidated Damages shall increase to two hundred and fifty dollars (\$250). • More than fifteen (15) Business Days past due, the rate of Liquidated Damages shall be increased to five hundred dollars (\$500) for each additional day beyond fifteen that the report is past due. • Reports that are more than thirty (30) Business days past due may result in potential Default in accordance with Article 9 and forfeiture of the Performance Bond.
Weighing	<ul style="list-style-type: none"> • Rate of five hundred dollars (\$500) per load of Authority Permitted Solid Waste that is delivered to the Designated Disposal Facility and Alternative Disposal Facility and is not accurately weighed, recorded, and reported to Authority.
Transfer Trailer Container Delivery.	<ul style="list-style-type: none"> • Rate of one hundred fifty dollars (\$150) per empty Transfer Trailer Vehicle container delivery delays at the Hawthorne Street Transfer Station Facility resulting in overtime pay for Authority personnel.
Transfer Trailer Container Availability	<ul style="list-style-type: none"> • Rate of one hundred fifty dollars (\$150) per empty Transfer Trailer Vehicle container that is not available for loading at any one time at the Hawthorne Street Transfer Station Facility resulting in delay of loading Permitted Solid Waste and resulting in additional costs to the Authority. • Contractor must have a minimum of two (2) empty Transfer Trailer Vehicle containers available on-site at any one time.
No Service	<ul style="list-style-type: none"> • Rate of ten thousand dollars (\$10,000) per day for each incident of “No Service” occurring through the fault of the Contractor. • Authority may terminate the Agreement for default when the total number of “No Service” days equal three (3) calendar days within any ninety (90) day period.