

AGREEMENT

between the

COUNTY OF SONOMA

and

for

TRANSPORT OF SOLID WASTE

_____, 2005

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1
2 Agreement between
3 County of Sonoma
4 and

5 _____
6 for
7 Transport of Solid Waste
8

9
10 THIS AGREEMENT is made as of this ___ day of _____, 2005 by
11 and between the COUNTY OF SONOMA ("County") and _____,
12 ("Contractor"). County and Contractor shall be referred to collectively as "Parties."
13

14 **RECITALS**

15
16 WHEREAS, Contractor represents that it is duly qualified and experienced in
17 transportation services; and
18

19 WHEREAS, in the judgment of the County Board of Supervisors, it is necessary
20 and desirable to enter into this Agreement to have Contractor transport Solid Waste from
21 County Facilities to Landfills and to transport Yard Debris and Wood Waste from County
22 Transfer Stations to the Central Disposal Site.
23

24 NOW, THEREFORE, in consideration of the mutual covenants contained herein
25 the parties hereto agree as follows:
26

27 **ARTICLE 1**
28 **DEFINITIONS**
29

30 Defined terms in this Agreement and the Exhibits of this Agreement, which are
31 identified by the capitalization of the first letter of each principal word thereof, shall have
32 the following meanings:
33

34 **Agreement.** "Agreement" means this Agreement between County and Contractor
35 for transport of Solid Waste, Yard Debris and Wood Waste including all exhibits and
36 attachments, and any amendments hereto.
37

38 **Central Disposal Site.** "Central Disposal Site" means the County's Central
39 Disposal Site which is located at 500 Meham Road, Petaluma, California.
40

1 **County.** "County" means the County of Sonoma, California.

2
3 **County Facilities.** "County Facilities" mean collectively the Central Disposal Site
4 and the County Transfer Stations.

5
6 **County Transfer Stations.** "County Transfer Stations" mean the four County-
7 owned transfer stations located near Annapolis, Guerneville, Healdsburg and Sonoma,
8 California.

9
10 **Commencement Date.** "Commencement Date" means _____, 20____,
11 the date on which Contractor begins provision of services required under this Agreement.

12
13 **Contractor.** "Contractor" means _____.

14
15 **Contractor Default.** "Contractor Default" has the meaning provided in Section
16 10.01.

17
18 **Designated Waste.** "Designated Waste" means non-Hazardous Material which
19 may pose special disposal problems because of its potential to contaminate the
20 environment and which may be disposed of only in Class II disposal sites, or Class III
21 disposal sites pursuant to a variance issued by the California Department of Health
22 Services or pursuant to applicable Landfill permits. Designated Waste consists of those
23 substances classified as Designated Waste by the State of California, in California Code
24 of Regulations, Title 23, Section 2522.

25
26 **Disposal Agreements.** "Disposal Agreements" mean those certain Disposal
27 Agreements between County and the Landfills.

28
29 **Effective Date.** "Effective Date" means the date of execution of this Agreement
30 by the latter of the two Parties.

31
32 **Environmental Laws.** "Environmental Laws" means all federal and state statutes,
33 and local ordinances concerning public health, safety and environmental issues including,
34 by way of example and not limitation, the Comprehensive Environmental Response,
35 Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq.; the Resource
36 Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.; the Federal Clean Air
37 Act, 42 U.S.C. Section 1351 et seq.; the Emergency Planning and Community Right to
38 Know Act, 42 U.S.C. Section 1101, et seq.; the Occupational Safety and Health Act, 29
39 U.S.C. Section 651, et seq.; the California Hazardous Waste Control Act, California
40 Health and Safety Code Section 25100, et seq.; the Carpenter-Presley-Tanner Hazardous

1 Substance Account Act, California Health and Safety Code Section 25300 et seq.; the
2 Porter-Cologne Water Quality Control Act, California Water Code Section 13000 et seq.;
3 the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code
4 Section 25249.5 et seq.; and the California Clean Air Act, Health and Safety Code
5 Section 39000 et seq.; as currently in force or as hereafter amended, and all rules and
6 regulations promulgated thereunder.
7

8 **Facility Permits.** "Facility Permits" mean all applicable permits relating to the
9 County Facilities.
10

11 **Generator.** "Generator" means any person whose act or process initially produces
12 Solid Waste, Designated Waste, Hazardous Materials, medical waste or any other product
13 which becomes part of the overall waste stream.
14

15 **Guarantor.** "Guarantor" means _____.
16

17 **Hazardous Materials.** "Hazardous Materials" mean:
18

- 19 (1) All substances defined or characterized as "hazardous waste" by the Federal
20 Solid Waste Disposal Act (42 U.S.C. Section 3251 et seq.) as amended,
21 including the Resource Conservation and Recovery Act (42 U.S.C. Section
22 6901 et seq.), and all future amendments thereto and regulations
23 promulgated thereunder;
24
- 25 (2) All "Hazardous Substances" as defined by the Comprehensive
26 Environmental Response, Compensation and Liability Act of 1980, Title 42
27 Section 9601, et seq. (CERCLA) as amended from time to time;
28
- 29 (3) All substances defined as hazardous waste, acutely hazardous waste, or
30 extremely hazardous waste by Health and Safety Code Sections 25110.02,
31 25115, and 25117, and future amendments thereunder, including Title
32 23 California Code of Regulations Sections 2521 and 2522;
33
- 34 (4) Radioactive wastes;
35
- 36 (5) Polychlorinated byphenyls;
37
- 38 (6) Chemicals known to cause cancer or reproductive toxicity;
39

1 (7) Any substance the presence of which on the Landfill is prohibited by any
2 governmental requirements; and
3

4 (8) Any substances for which any governmental requirements require a permit
5 or special handling in its use, collection, storage, treatment or disposal.
6

7 If two or more governmental agencies having concurrent or overlapping
8 jurisdiction over Hazardous Materials adopt conflicting definitions of "Hazardous
9 Materials," for purposes of processing and disposal to land, the broader definition shall be
10 employed for purposes of this Agreement.
11

12 **Landfills.** "Landfills" mean collectively Landfill A, Landfill B, and Landfill C, or
13 individually any of the three landfills.
14

15 **Landfill A.** "Landfill A" means the _____ Landfill which is owned
16 and operated by _____ and located at
17 _____ in _____.
18

19 **Landfill B.** "Landfill B" means the _____ Landfill which is owned and
20 operated by _____ and located at
21 _____ in _____.
22

23 **Landfill C.** "Landfill C" means the _____ Landfill which is owned and
24 operated by _____ and located at
25 _____ in _____.
26

27 **Landfill Gate Fees.** "Landfill Gate Fees" mean the established gate fees for
28 disposal of County Solid Waste pursuant to the Disposal Agreements.
29

30 **Landfill Operator.** "Landfill Operator" means the respective operators of the
31 Landfills.
32

33 **Operating Year.** "Operating Year" shall mean any 12-month period commencing
34 July 1 during the term of this Agreement including any extension.
35

36 **Party or Parties.** "Party" or "Parties" refers to the County and Contractor,
37 individually or together.
38

39 **Person.** "Person" includes an individual, firm, association, organization,
40 partnership, corporation, limited liability company, joint venture, the United States, the

1 State of California, the County, municipality, political subdivision, governmental agency
2 or any other entity whatsoever.

3
4 **Solid Waste.** "Solid Waste" means all putrescible and nonputrescible solid, semi-
5 solid and associated liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes,
6 industrial wastes; discarded non-hazardous home and industrial appliances; dewatered,
7 treated or chemically fixed sewage sludge which is not a hazardous material; special
8 waste; manure; vegetable or animal solid and semi-solid wastes; and other discarded solid
9 and semi-solid wastes. Solid waste does not include the following:

- 10
11 (1) Hazardous Material;
12
13 (2) Infectious waste as defined by _____;
14
15 (3) Automobiles;
16
17 (4) Designated Waste; and
18
19 (5) Other material deemed unacceptable by applicable law and/or permit
20 conditions.

21
22 **State.** "State" means the State of California.

23
24 **Term.** "Term" means the Term of this Agreement as described in Article 2.

25
26 **Ton.** "Ton" means a short ton of 2,000 pounds where each pound includes 16
27 ounces.

28
29 **Transfer Station Operator.** "Transfer Station Operator" means West Sonoma
30 County Disposal Company which is the operator of the County Transfer Stations pursuant
31 to a contract with County.

32
33 **Transfer Vehicle.** "Transfer Vehicle" means a tractor and trailer designed to haul
34 Solid Waste from a transfer station to a landfill.

35
36 **Transport Fee.** "Transport Fee" means the fee set forth in Section 5.02.1 of this
37 Agreement.

38
39 **Unpermitted Material.** "Unpermitted Material" means materials that the
40 Landfills may not receive under their permits.

1 Waste from all of the County Facilities so that County is in full compliance with its
2 Facility Permits.

3
4 **4.01.2 Yard Debris and Wood Waste.** Beginning on the Commencement
5 Date and continuing through the Term of this Agreement plus any extensions thereof,
6 Contractor shall receive, accept and safely and lawfully transport all Yard Debris and
7 Wood Waste delivered to Contractor at the County Transfer Stations to the Central
8 Disposal Site. Contractor shall assign sufficient Transfer Vehicles and equipment to haul
9 Yard Debris and Wood Waste from all of the County Transfer Stations to the Central
10 Disposal Site so that County is in full compliance with its Facility Permits.

11
12 **4.01.3 Access to County Refuse Facilities.** Contractor shall have access to
13 County Facilities during the days and hours set forth below:

14
15

SITE	DAYS OF ACCESS	HOURS OF ACCESS
Annapolis Transfer Station	Friday - Tuesday	6:30 am to 6:00 pm
Guerneville Transfer Station	Monday - Sunday	7:00 am to 5:30 pm
Healdsburg Transfer Station	Monday - Sunday	5:30 am to 6:00 pm
Sonoma Transfer Station	Monday - Sunday	5:30 am to 6:00 pm
Central Disposal Site	Monday - Sunday	6:00 am to 6:30 pm

16
17
18
19
20
21
22

23 **4.01.4 Emergency Services.** In the event of a tornado, major storm,
24 earthquake, fire, flood, natural disaster, or other such event, County may extend the hours
25 of access in order to accommodate the transport of additional Solid Waste.

26
27 **4.01.5 Holidays.** Contractor shall not be required to transport Solid Waste
28 on Easter Sunday, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day and New
29 Years Day.

30
31 **4.01.6 Turnaround Time of Transfer Vehicles.** Contractor shall ensure
32 that Transfer Vehicles do not queue such that it disrupts the flow of traffic on any public
33 street.

1 **4.02 Contractor’s Delivery of Solid Waste to the Landfills.** Contractor shall
2 be responsible for knowing the operational hours of the Landfills so that timely deliveries
3 of Solid Waste can be made.
4

5 **4.03 Litter Prevention.** Contractor shall enclose, cover and/or seal all Transfer
6 Vehicles to contain all Solid Waste, Yard Debris and Wood Waste and prevent spilling or
7 scattering of Solid Waste, Yard Debris and Wood Waste during transportation thereof. If
8 any material is spilled, whether on private or public property, Contractor shall clean it up
9 within twenty-four (24) hours. If Contractor does not clean it up, County may clean it up,
10 and offset County’s costs from the Transport Fees otherwise due to Contractor, in
11 addition to any liquidated damages that County may assess pursuant to Section 11.02.
12

13 **4.04 Weighing of Solid Waste.**
14

15 **4.04.1 Weighing of Solid Waste Within County.** Prior to transporting
16 Solid Waste out of the County, Contractor shall weigh all Solid Waste at [TO BE
17 NEGOTIATED].
18

19 **4.04.2 Weighing Standards and Procedures at the Landfills.** The scale
20 house(s) at the Landfills’ entrance shall serve as the location for weighing vehicles and
21 charging Landfill Gate Fees as provided herein. The Transfer Vehicles shall be charged
22 disposal fees based on the tonnage of Solid Waste accepted by the Landfill and the
23 applicable Landfill Gate Fees as set forth in the Disposal Agreements. Landfill Operators
24 shall weigh and record inbound weights of all Transfer Vehicles when the vehicles arrive
25 at the Landfills. In addition, Landfill Operators shall weigh and record outbound weights
26 of Transfer Vehicles for which Landfill Operators do not maintain tare weight
27 information. Landfill Operator shall provide each driver a receipt showing the date, time,
28 and quantity of Solid Waste delivered to the Landfills and the Landfill Gate Fees charged
29 for such material.
30

31 **4.04.3 Vehicle Tare Weights.** Between the Effective Date and the
32 Commencement Date, Contractor shall weigh at each of the Landfills and determine the
33 unloaded (“tare”) weight of each Transfer Vehicle to be used to deliver Solid Waste to the
34 Landfills. Before the Commencement Date, Landfill Operators will provide County and
35 Contractor with a report listing vehicle tare weight information, which shall include, at a
36 minimum, hauler name, tare weight, vehicle identification number, and date tare weight
37 was determined. Contractor shall, at least every year, re-weigh and revise tare weights for
38 all Transfer Vehicles used to deliver Solid Waste to the Landfills. When new vehicles are
39 placed into service and immediately after any significant repairs are to Transfer Vehicles
40 are made, Contractor shall promptly weigh such vehicles at the Landfills and determine

1 the tare weight of each vehicle. Landfill Operators will provide County and Contractor
2 with a report listing vehicle tare weight information. Contractor, County and Landfill
3 Operators shall have the right to request re-weighing of vehicles up to two (2) times per
4 year, unless there is reasonable suspicion of evidence that tare weights are not accurate,
5 in which case, tare weights may be updated more frequently to ensure accuracy.
6

7 **4.05 Weighing of Yard Debris and Wood Waste.** Loads of segregated Yard
8 Debris and Wood Waste transported by Contractor from County Transfer Stations to the
9 Central Disposal Site will be weighed at the Central Disposal Site. County will provide
10 Contractor with a receipt showing the date, time and quantity of Yard Debris or Wood
11 Waste delivered to the Central Disposal Site. Such receipts shall be used by Contractor to
12 prepare reports and monthly invoices.
13

14 **4.06 Rejection of Unpermitted Material.**
15

16 **4.06.1 Inspection.** Contractor shall have the right to inspect all Solid
17 Waste before it is delivered to Contractor (or during delivery) and shall have the right to
18 reject any Unpermitted Materials. In the event Contractor rejects any Unpermitted
19 Materials, Contractor shall immediately notify County (and the Transfer Station Operator
20 if the materials are from one of the County Transfer Stations) verbally and then follow
21 such verbal notification with written notice. The written notice shall identify: (a) the date
22 and time of occurrence; (b) material type (along with a photo of the materials); (c)
23 material weight or volume; (d) characterization of material; and the Contractor's reason
24 for rejection of the material.
25

26 **4.06.2 Responsibility for Unpermitted Materials.** If any Landfill
27 Operator rejects material delivered to its Landfill by Contractor because it contains
28 Unpermitted Material including Hazardous Materials, Contractor shall remove and
29 dispose of it in a safe and lawful manner, at the sole expense of Contractor. In the event
30 that Unpermitted Material is delivered to Contractor, Contractor shall be entitled to
31 pursue whatever remedies, if any, it may have against the Generator(s) of such waste if
32 the Generator(s) can be identified. Nothing herein shall excuse Contractor from the
33 responsibility of handling such Unpermitted Materials in a lawful manner and to
34 arrange for the proper disposition of such materials. In no case shall County be
35 considered to have delivered such Unpermitted Materials to Contractor.
36

37 **4.07 Scheduling; Management; Quality of Performance.** Contractor shall
38 engage and train qualified and competent employees, including managerial, supervisory,
39 clerical, maintenance and operating personnel, in numbers necessary and sufficient for
40 Contractor's obligations hereunder. Contractor shall coordinate, schedule in an orderly

1 manner and manage all work done by Contractor's officers, employees, and
2 subcontractors. Contractor and subcontractors shall perform every act or service under
3 this Agreement in a skillful and competent manner in accordance with the standards of
4 the waste transportation and disposal industries. Contractor shall be responsible to
5 County for any errors, deficiencies, or failures to perform under this Agreement. All
6 workers and subcontractors shall be skilled in their trades. All operators shall be licensed
7 or otherwise qualified as required by law. Contractor shall, at all times, enforce strict
8 discipline and good order among its employees and all subcontractors.
9

10 **4.08 Reports.** Beginning on the Commencement Date, and monthly during the
11 term of this Agreement, Contractor shall provide a monthly report by the end of the
12 month following the reporting month (e.g., the first report will be due no later than the
13 twentieth day of the month following the Commencement Date). The report shall include
14 the total tonnage of Solid Waste, Yard Debris and Wood Waste that was transported by
15 Contractor. Solid Waste tonnage shall be broken out separately from Yard Debris and
16 Wood Waste. In addition, the monthly report shall include the following: (a) number and
17 nature of loads rejected by Contractor during the month; (b) number and nature of loads
18 rejected by any Landfill Operator during the month; and (c) number and nature of any
19 notice of violations.
20

21 **4.09 Operation and Safety Plans.**
22

23 **4.09.1 Emergency Operations Plan.** Contractor has provided to County a
24 written comprehensive emergency operations plan designed to mitigate and correct
25 hazards that may arise due to accidents or disruption of transport or disposal of Solid
26 Waste, Yard Debris or Wood Waste under this Agreement, including, but not limited to:
27 damage to property, release of hazardous or dangerous materials and the release of any
28 Solid Waste, Yard Debris or Wood Waste. A copy of the emergency operations plan is
29 attached hereto as Exhibit B and shall be updated by Contractor and submitted for County
30 approval on an annual basis.
31

32 **4.09.2 Emergency Response Business Plan.** Contractor shall,
33 in accordance with Article 1 of Chapter 6.95 of Division 20 of the California Health and
34 Safety Code (commencing with Section 25500), maintain on file with the administering
35 agency for the County any business plan for emergency response to release or threatened
36 release of Hazardous Material within the County in connection with the services to be
37 provided by Contractor under this Agreement.
38

39 **4.09.3 Safety Plan.** Contractor has provided to County a written
40 comprehensive safety plan which includes a copy of Contractor's employee injury and

1 illness protection plan (SB 198) and a list of all current drivers, along with evidence of
 2 valid licenses for each driver. A copy of the safety plan is attached hereto as Exhibit C
 3 and shall be updated by Contractor and submitted for County approval on an annual basis,
 4 provided however that, Contractor shall provide County with an updated list of all drivers
 5 and evidence of valid licenses for each driver on a quarterly basis (i.e., October 1, January
 6 1, April 1, July 1).

7
 8 **4.10 Transfer Vehicles Identification.** All Transfer Vehicles used by
 9 Contractor for performance of services hereunder shall be clearly identifiable as carrying
 10 County Solid Waste, Yard Debris or Wood Waste. The standards for such identification
 11 are set forth in Exhibit D, which is attached hereto and incorporated herein.

12
 13 **ARTICLE 5**
 14 **COMPENSATION TO CONTRACTOR**
 15

16 **5.01 General.** Contractor shall perform all of its obligations, responsibilities
 17 and duties under this Agreement, including, but not limited to, paying the costs associated
 18 with obtaining and complying with all permits and approvals in consideration of the right
 19 to charge and collect from the County, Transport Fees and reimbursement of Landfill
 20 Gate Fees.

21
 22 **5.02 Fees.**

23
 24 **5.02.1 Transport Fees.** The Transport Fees shall be as follows:
 25

	<u>Landfill A</u>	<u>Landfill B</u>	<u>Landfill C</u>
<u>Operating Year*</u>	<u>Transfer Fee</u>	<u>Transfer Fee</u>	<u>Transfer Fee</u>
2005/2006	\$___/ton	\$___/ton	\$___/ton
2006/2007	\$___/ton	\$___/ton	\$___/ton
2007/2008	\$___/ton	\$___/ton	\$___/ton

31
 32 * Rates are for the Operation Year commencing July 1 and ending June 30.
 33

34 **5.02.2 Landfill Gate Fees.** Contractor shall pay all Landfill Gate Fees
 35 within thirty (30) days of being invoiced by the Landfills. Payments shall be made via
 36 wire transfer from Contractor to the Landfills, or other method mutually agreed to by
 37 Contractor and Landfills. County shall reimburse Contractor for all Landfill Gate Fees
 38 paid by Contractor for County Solid Waste delivered to the Landfills pursuant to this

1 Agreement, provided however County shall not be responsible for any penalties or
2 interest Contractor is required to pay to the Landfills for late payments.

3
4 **5.03 Adjustments to Transport Fees.**

5
6 **5.03.1 CPI Adjustments.** Transport Fees shall be adjusted annually each
7 Operating Year by the percentage change in the U.S. City Average-All Urban Consumers
8 Index, CPI-U (All Urban Consumers; 1982-84=100) for the month of January, compiled
9 and published by the United States Department of Labor, Bureau of Labor Statistics,
10 provided, however, that in no case shall such adjustment exceed three percent (3%) in any
11 one Operating Year.

12
13 **5.03.2 Incentives.** [TO BE NEGOTIATED]

14
15 **5.04 Invoicing.** Contractor is responsible for submitting monthly invoices to
16 County. On or before the twentieth (20th) day of each month, and beginning with the
17 month immediately following the month in which Solid Waste, Yard Debris and Wood
18 Waste are first transported. Contractor shall invoice County for the total monthly
19 compensation it is due for Solid Waste transport (including Yard Debris and Wood
20 Waste) and Landfill Gate Fees incurred during the previous month. Total compensation
21 due to Contractor for Transport Fees shall be the product of the numbers of Tons of Solid
22 Waste, Yard Debris and Wood Waste transported as measured by [scales within the
23 County] times the then-current Transport Fee set forth in this Agreement. Total
24 compensation due to Contractor for reimbursement of Landfill Gate Fees shall be the
25 product of the numbers of Tons of Solid Waste (as measured by scales within the County)
26 delivered to the Landfills times the then-current Landfill Gate Fees. County shall pay
27 within thirty (30) calendar days of acceptance of the invoice.

28
29 **5.05 Weight Discrepancies.** If there are discrepancies between the weight of
30 the Transfer Vehicles as weighed at the Landfill scales and the weight of the Transfer
31 Vehicles as weighed at the [scales within the County], the lesser of the two weights shall
32 be used to calculate the Transport Fees and the reimbursement of the Landfill Gate Fees.

33
34 **5.06 Payment Implication.** Contractor agrees that payment by County to
35 Contractor shall not constitute nor be deemed a release of the responsibility or liability of
36 Contractor, its employees, subcontractors, agents and consultants for the services
37 performed hereunder nor shall such payment be deemed to be an assumption of
38 responsibility or liability by County for any defect or error in such services.

39
40 **ARTICLE 6**

1 **PERFORMANCE BOND AND SECURITY**

2
3 **6.01 Performance Bond.** Within five (5) calendar days from the date the
4 County Board of Supervisors approves this Agreement, Contractor shall furnish to
5 County, and keep current, a performance bond in a form as set forth in Exhibit E which is
6 included in and attached to this Agreement, for the faithful performance of this
7 Agreement and all obligations arising hereunder in the amount of One Million Dollars
8 (\$1,000,000). The performance bond shall be executed by a surety company licensed to
9 do business in the State of California; having an "A-" or better rating by A. M. Best or
10 Standard and Poors; and included on the list of surety companies approved by the
11 Treasurer of the United States.
12

13 **6.02 Irrevocable Letter of Credit.** Subject to County's approval, as an
14 alternative to the performance bond required by Section 6.01, Contractor may deposit
15 with County an irrevocable direct pay letter of credit in an amount set forth in Section
16 6.01, for the benefit of County, under which County is authorized to draw, upon the
17 occurrence of a Contractor Default. If allowed, the letter of credit must be issued by an
18 FDIC insured banking institution chartered to do business in the State of California, in the
19 County's name, and be callable at the discretion of County. The letter of credit shall
20 remain in force until County issues a certificate to the bank stating that the Term has
21 expired, or this Agreement has been terminated and Contractor owes County no money
22 thereunder, or that Contractor has substituted an alternative letter of credit or other
23 security document acceptable to County in County's sole discretion. Nothing in this
24 Section shall, in any way, obligate the County to accept a letter of credit in lieu of the
25 performance bond.
26

27 **6.03 Corporate Guarantee.** In addition to the performance assurance required
28 in Section 6.01 or Section 6.02, Contractor is required to obtain a guaranty in a form as
29 set forth in Exhibit F. Guarantor has agreed to guarantee Contractor's performance of this
30 Agreement, including Contractor's indemnification obligations hereunder pursuant to the
31 guaranty agreement. The guaranty agreement is being provided concurrently with
32 Contractor's execution of this Agreement. Along with the guaranty agreement, Contractor
33 has provided an opinion of counsel in a form satisfactory to County Counsel that the
34 guaranty agreement has been duly executed and delivered by Guarantor and constitutes a
35 legal, valid, and binding obligation of Guarantor enforceable against Guarantor in
36 accordance with its terms.
37

38 **ARTICLE 7**
39 **INSURANCE**
40

1 **7.01 Insurance Policies.** Contractor shall secure and maintain throughout the
2 Term of this Agreement insurance against claims for injuries to persons or damages to
3 property which may arise from or in connection with Contractor's performance of work or
4 services under this Agreement. Contractor's performance of work or services shall
5 include performance by Contractor's employees, agents, representatives and
6 subcontractors.

7
8 **7.01.1 Minimum Scope of Insurance.** Insurance coverage shall be at least
9 this broad:

10
11 (a) Insurance Services Office Form No. GL 0002 (Ed. 1/96)
12 covering Comprehensive General Liability and Insurance Services Office Form No.
13 GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services
14 Office Commercial General Liability coverage ("occurrence" form CG 0001), including
15 X, C, U where applicable.

16
17 (b) Insurance Services Office Form No. CA 0001 (Ed. 12/93)
18 covering Automobile Liability, code 1 "any auto," or code 2 "owned autos" and
19 endorsement CA 0025. Coverage shall also include code 8, "hired autos" and code 9
20 "non-owned autos."

21
22 **7.01.2 Workers' Compensation.** Workers' Compensation Insurance as
23 required by the California Labor Code and Employers Liability Insurance.

24
25 **7.01.3 Hazardous Waste and Environmental Impairment Liability**
26 **Insurance.**

27
28 **7.02 Minimum Limits of Insurance.** Contractor shall maintain insurance limits
29 no less than:

30
31 **7.02.1 Comprehensive General Liability:** \$10,000,000 combined single
32 limit per occurrence for bodily injury, personal injury and property damage. If
33 Commercial General Liability insurance with a general aggregate limit is used, either the
34 general aggregate limit shall apply separately to this Agreement or the general aggregate
35 limit shall be \$5,000,000.

36
37 **7.02.2 Automobile Liability:** \$10,000,000 combined single limit per
38 accident for bodily injury and property damage.

39
40 **7.02.3 Workers' Compensation and Employers Liability:** Workers'

1 Compensation limits as required by the California Labor Code and Employers Liability
2 limits of \$1,000,000 per accident.

3
4 **7.02.4 Hazardous Waste and Environmental Impairment Liability:**
5 \$10,000,000 per occurrence.

6
7 **7.03 Deductibles and Self-Insured Retention.** Any deductibles or self-insured
8 retention must be declared to, and approved by, County's Risk Manager. At the option of
9 County, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured
10 retention as respects County, its officers, employees, agents and contractors; or
11 (b) Contractor shall procure a bond guaranteeing payment of losses and related
12 investigations, claim administration and defense expenses in an amount specified by
13 County's Risk Manager.

14
15 **7.04 Endorsements.** The policies are to contain, or be endorsed to contain, the
16 following provisions:

17
18 **7.04.1 General Liability and Automobile Liability Coverage.**

19
20 (a) County, its officers, employees, agents and contractors are to be
21 covered as additional insureds as respects: Liability arising out of activities performed
22 by, or on behalf of, Contractor; products and completed operations of Contractor;
23 premises owned, leased or used by Contractor; and automobiles owned, leased, hired or
24 borrowed by Contractor. The coverage shall contain no special limitations on the scope
25 of protection afforded to County, its officers, employees, agents and contractors. The
26 Automobile liability shall be endorsed to contain MCA 90 coverage.

27
28 (b) Contractor's insurance coverage shall be primary insurance
29 as respects County, its officers, employees, agents and contractors. Any insurance, or
30 self-insurance maintained by County, its officers, employees, agents or contractors shall
31 be in excess of Contractor's insurance and shall not contribute with it.

32
33 (c) Any failure to comply with reporting provisions of the policies
34 shall not affect coverage provided to County, its officers, employees, agents, contractors
35 or the Transfer Company.

36
37 (d) Coverage shall state that Contractor's insurance shall apply
38 separately to each insured against whom claim is made or suit is brought, except
39 with respect to the limits of the insurer's liability.

1 **7.04.2 All Coverage.** Each insurance policy required by this Agreement
2 shall be endorsed to state that coverage shall not be suspended, voided, canceled, or
3 reduced in limits except after thirty (30) calendar days prior written notice has been given
4 to County.
5

6 **7.05 Acceptability of Insurers.** Insurance is to be placed with insurers
7 acceptable to County's Risk Manager.
8

9 **7.06 Verification of Coverage.** Prior to the Effective Date, Contractor shall
10 furnish County with certificates of insurance and with original endorsements affecting
11 coverage required by this Agreement. The certificates and endorsement for each
12 insurance policy are to be signed by a person authorized by that insurer to bind coverage
13 on its behalf. Contractor shall furnish County with a new certificate of insurance and
14 endorsements within ten (10) Work Days of each renewal of coverage or change of
15 insurers. Proof of insurance shall be mailed to the following address or any subsequent
16 address as may be directed in writing by County's Risk Manager:
17

18 Risk Manager
19 County of Sonoma
20 575 Administration Drive, Room 116A
21 Santa Rosa, California 95403
22

23 **7.07 Subcontractors.** Contractor shall include all subcontractors as insureds
24 under its policies or shall obtain separate certificates and endorsement for each
25 subcontractor.
26

27 **7.08 Modification of Insurance Requirements.** The insurance requirements
28 provided in this Agreement may be modified or waived by County's Risk Manager, in
29 writing, upon the request of Contractor if the County's Risk Manager determines such
30 modification or waiver is in the best interest of County considering all relevant factors,
31 including exposure to County.
32

33 **7.09 Rights of Subrogation.** All required insurance policies shall preclude any
34 underwriter's rights of recovery or subrogation against County with the express intention
35 of the parties being that the required insurance coverage protects both parties as the
36 primary coverage for any and all losses covered by the above-described insurance.
37 Contractor shall ensure that any companies issuing insurance to cover the requirements
38 contained in this Agreement agree that they shall have no recourse against County for
39 payment or assessments in any form on any policy of insurance. The clauses "Other
40 Insurance Provisions" and "Insured Duties in the Event of an Occurrence, Claim or Suit"

1 as it appears in any policy of insurance in which County is named as an additional insured
2 shall not apply to County.

3
4 **ARTICLE 8**
5 **INDEMNIFICATION**
6

7 **8.01 Indemnification.** Contractor shall indemnify and hold harmless County,
8 County's contractors, and the public officials, officers, directors, employees, agents and
9 other contractors of each of them, from and against any and all claims, costs, losses and
10 damages (including, but not limited to, all fees and charges of engineers, architects,
11 attorneys and other professionals as well as all Court or other dispute resolution costs),
12 liabilities, expenditures or causes of action of any kind (including negligent, reckless,
13 willful or intentional acts or omissions of Contractor, any subcontractor, any supplier, any
14 person or organization directly or indirectly employed by any of them to perform or
15 furnish any services or anyone for whose acts any of them may be liable), arising from
16 relative to or caused by the performance of the services. This indemnity includes but is
17 not limited to claims attributable to bodily injury, sickness, disease or death and to injury
18 or destruction of tangible property. Contractor agrees, at Contractor's expense, after
19 written notice, from County, to defend any action against County that falls within the
20 scope of this indemnity. Additionally, if Contractor, after receipt of written notice from
21 County, fails to make any payment due under this Agreement to County, Contractor shall
22 pay any reasonable attorneys' fees or costs incurred by County in securing any such
23 payment from Contractor. Payment of any amount due pursuant to the foregoing
24 indemnity shall, after receipt of written notice by Contractor from County that such
25 amount is due, be made by Contractor prior to the County being required to pay same, or
26 in the alternative, County, at County's option, may make payment of an amount so due
27 and Contractor shall promptly reimburse County for same, together with interest thereon
28 at the rate of twelve (12%) per annum simple interest from the date of receipt by
29 Contractor of written notice from County that such payment is due. This provision is, in
30 addition to all other provisions in this Agreement and is intended to survive the end of the
31 term of this Agreement. Contractor's guaranty agreement shall extend to the
32 indemnification obligation hereunder.
33

34 **8.02 Hazardous Material Indemnification.** Contractor shall indemnify, defend
35 with counsel reasonably acceptable to County, and hold harmless, at Contractor's sole cost
36 and expense, County, its Board of Supervisors, officers, officials employees, volunteers
37 and agents (collectively, "indemnitees") from and against any and all claims, damages,
38 injuries, costs (including and without limit any and all response, remediation and removal
39 costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or
40 administrative proceedings, interest, fines, charges, penalties, and expenses (including

1 reasonable attorneys' and expert witness fees, expenditures for investigation and
2 remediation) and costs of any kind whatsoever paid, imposed upon, incurred, or suffered
3 by or asserted against any of the indemnitees by reason of, or arising from, the
4 transportation of Hazardous Materials to the Landfills (collectively, "environmental
5 events"), any personal injury, death, or property damage, arising out of or related to any of
6 the environmental events; any lawsuit brought or threatened, settlement reached, or
7 government hearing, investigation, inquiry, proceeding, or order relating to any
8 Hazardous Materials or any of the environmental events. Such indemnification shall
9 apply to all events arising from or attributable to the acts or omissions of Contractor, its
10 officers, directors, employees, whether or not negligent or otherwise culpable,
11 in connection with or related to Contractor's performance of this Agreement. For the
12 avoidance of doubt, the foregoing indemnity is intended to operate as an agreement
13 pursuant to §107(e) of the Comprehensive Environmental Response, Compensation and
14 Liability Act, CERCLA, 42 U.S.C. §9607(e) and California Health and Safety Code
15 §25364, to defend, protect, hold harmless, and indemnify County from liability
16 thereunder. This provision is in addition to all other provisions in this Agreement and is
17 intended to survive the end of the term of this Agreement. Contractor's guaranty
18 agreement shall extend to the indemnification obligation hereunder.

19
20 **8.03 Environmental Indemnification.** Contractor shall indemnify, defend with
21 counsel acceptable to County, and hold harmless, at Contractor's sole cost and expense,
22 County, its Board of Supervisors, officers, officials, employees, volunteers and agents
23 (collectively "indemnitees") from and against any and all claims, damages, injuries, costs
24 (including and without limit any and all response, remediation and removal costs), losses,
25 demands, debts, liens, liabilities, causes of action suits, legal or administrative
26 proceedings, interest, fines, charges, penalties, and expenses (including reasonable
27 attorneys' and expert witness fees, expenditures for investigation and remediation) and
28 costs of any kind whatsoever, paid, imposed upon, incurred, suffered by or asserted
29 against any of the indemnitees by any lawsuit brought or threatened, settlement reached,
30 or government hearing, investigation, inquiry, proceeding, or order relating to, or arising
31 from, directly or indirectly, Contractor's alleged failure or actual failure to comply with
32 Environmental Laws and regulations. This provision is in addition to all other provisions
33 in this Agreement and is intended to survive the end of the term of this Agreement.
34 Contractor's guaranty agreement shall extend to the indemnification obligation hereunder.

35
36 **8.04 Consideration.** It is specifically understood and agreed that the
37 consideration inuring to Contractor for the execution of this Agreement consists of the
38 promises, payments, covenants, rights and responsibilities contained in this Agreement.

39
40 **8.05 Obligation.** The execution of this Agreement by Contractor shall obligate

1 the Contractor to comply with the foregoing indemnification provision; however, the
2 collateral obligation of providing insurance must also be complied with as set forth in
3 Article 7 above.
4

5 **8.06 Subcontractors.** Contractor shall require all subcontractors to enter into an
6 agreement containing the provisions set forth in the preceding subsection in which
7 agreement the subcontractor fully indemnifies County in accordance with this Agreement.
8

9 **8.07 Exception.** Notwithstanding Sections 8.01, 8.02 and 8.03, Contractor's
10 obligation to indemnify, hold harmless and defend County, its officers and employees,
11 agents and contractors shall not extend to any loss, liability, penalty, claim, damage,
12 action or suit arising or resulting from acts or omissions constituting willful misconduct
13 on the part of County, its officers, employees, agents, or contractors.
14

15 **ARTICLE 9**
16 **FORCE MAJEURE**
17

18 **9.01 Force Majeure.** Contractor shall not be in default of its obligations under
19 this Agreement in the event, and for so long as, it is impossible or extremely
20 impracticable for it to perform its obligations due to an "act of nature" (including, but not
21 limited to, flood, earthquake, or other catastrophic events), war, insurrection, riot, or other
22 similar causes which are not the fault of, and beyond the reasonable control of, the party
23 claiming excuse from performance. Labor unrest, including but not limited to, strike,
24 work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted
25 by Contractor's employees or directed at Contractor is not an excuse from performance
26 and Contractor shall be obligated to continue to accept and transport Solid Waste, Yard
27 Debris and Wood Waste, notwithstanding the occurrence of any or all of such events. To
28 claim excuse under this Section, Contractor must: (i) have taken reasonable precautions,
29 if possible, to avoid being affected by the cause, and (ii) notify County in writing within
30 five (5) Work Days after the occurrence of the event specifying the nature of the event,
31 the expected length of time that Contractor expects to be prevented from performing, and
32 the steps which Contractor intends to take to restore its ability to perform.
33

34 **9.02 County's Right to Terminate for Force Majeure.** The interruption or
35 discontinuance of Contractor's ability to accept and transport Solid Waste, Yard Debris
36 and Wood Waste caused by one or more of the events described in Section 9.01 shall not
37 constitute a default by Contractor under this Agreement. Notwithstanding the foregoing,
38 however, if Contractor is excused from performing its obligations hereunder for any of
39 the causes listed in Section 9.01 for a period of thirty (30) calendar days or more, upon
40 expiration of the thirty (30) calendar days, County shall have the right, in its sole

1 discretion, to terminate this Agreement by giving five (5) Work Days' notice.

2
3 **ARTICLE 10**
4 **BREACHES AND DEFAULT**
5

6 **10.01 Contractor Defaults.** The happening of any one of the following events
7 shall constitute a Contractor Default:

8
9 **10.01.1 Bankruptcy, Insolvency, Liquidation.**

10
11 (a) Contractor shall take the benefit of any present or future
12 insolvency statute, or shall make a general assignment for the benefit of creditors, or file
13 a voluntary petition in bankruptcy (court) or a petition or answer seeking an arrangement
14 for its reorganization or the readjustment of its indebtedness under the Federal
15 bankruptcy laws or under any other law or statute of the United States or any state
16 thereof, or consent to the appointment of a receiver, trustee or liquidator of all or
17 substantially all of its property; or

18
19 (b) By order of decree of a Court, Contractor shall be adjudged
20 bankrupt or an order shall be made approving a petition filed by any of its creditors or by
21 any of the stockholders of the Contractor, seeking its reorganization or the readjustment
22 of its indebtedness under the Federal bankruptcy laws or under any law or statute of the
23 United States or of any state thereof, provided that if any such judgment or order is
24 stayed or vacated within sixty (60) calendar days after the entry thereof, any notice of
25 default shall be and become null, void and of no effect, unless such stayed judgment or
26 order is reinstated in which case, said default shall be deemed immediate; or

27
28 (c) By, or pursuant to, or under the authority of any legislative act,
29 resolution or rule or any order or decree of any Court or governmental board, agency or
30 officer having jurisdiction, a receiver, trustee or liquidator shall take possession or
31 control of all or substantially all of the property of Contractor, and such possession or
32 control shall continue in effect for a period of sixty (60) calendar days.

33
34 **10.01.2 Failure to Meet Payment or Reporting Requirement.**

35 Contractor has defaulted, by failing or refusing to: (a) pay in a timely manner any
36 monies due County hereunder; or (b) provide County with required information, reports
37 and/or records; and said default is not cured within ten (10) Work Days of receipt of
38 written notice by County to do so.

39
40 **10.01.3 Misrepresentation.** A misrepresentation in any representation or

1 disclosure made to County by Contractor in connection with or as an inducement to
2 entering into or performing this Agreement or any future amendment to this Agreement
3 which proves to be false or misleading in any material respect as of the time the
4 representation or disclosure is made, whether or not any such representation or disclosure
5 appears as part of this Agreement.
6

7 **10.01.4 Failure to Maintain Performance Bond or Surety Instrument.**

8 Contractor fails to maintain the performance bond, insurance, or alternative security
9 agreement as required under this Agreement.
10

11 **10.01.5 Lapse of Guaranty.** Lapse of any financial guaranty required
12 under this Agreement.
13

14 **10.01.6 Cessation of Services.** Contractor ceases to provide
15 transportation services as required under this Agreement for a period of two (2)
16 consecutive Work Days or more, for any reason within the control of Contractor,
17 including labor disputes or regulatory agency actions or order or court-ordered injunction
18 to cease operation.
19

20 **10.01.7 Regulatory Violation.** Contractor violates any permits, orders, or
21 filings of any regulatory body having jurisdiction over Contractor relative to this
22 Agreement in such a manner as to materially interfere with Contractor's present or future
23 ability to perform Contractor's obligations under this Agreement, provided Contractor
24 may contest any such orders or filings by appropriate proceedings conducted in good
25 faith, in which case no breach of this Agreement shall be deemed to have occurred.
26

27 **10.01.8 Other Defaults.** Contractor has defaulted, by failing or refusing
28 to perform or observe any other terms, conditions or covenants in this Agreement which
29 is not specifically identified above, or has wrongfully failed or refused to comply with
30 the instructions of County relative thereto and said default is not cured within thirty (30)
31 calendar days of receipt of written notice by County to do so, or if by reason of the nature
32 of such default, the same cannot be remedied within thirty (30) calendar days following
33 receipt by Contractor of written demand from County to do so, Contractor fails to
34 commence the remedy of such default within said thirty (30) calendar days following
35 such written notice or having so commenced shall fail thereafter to continue with
36 diligence the curing thereof (with Contractor having the burden of proof to demonstrate
37 (a) that the default cannot be cured within thirty (30) calendar days, and (b) that it is
38 proceeding with diligence to cure said default), and such default will be cured within a
39 reasonable period of time.
40

1 **10.02 Remedy of Breach, Specified Monetary Damages.** Upon delivery of
2 notice of a Contractor Default to Contractor, County may exercise any one or more of the
3 following remedies:
4

5 **10.02.1 Compensatory Damages.** Upon a Contractor Default, County
6 shall have the right to recover any applicable damages to County, including but not
7 limited to the following:
8

9 **(i) Incremental Haul Costs:** The incrementally greater direct costs
10 for hauling and transporting Solid Waste, Yard Debris or Wood Waste by another
11 transport company, as compared to the then-current Transport Fees under this
12 Agreement.
13

14 **(ii) Consequential Fines:** Any consequential fines and penalties
15 assessed on County, including by the California Integrated Waste Management Board,
16 directly resulting from Contractor's failure to meet all its obligations hereunder.
17

18 **10.02.2 Termination.** Upon a Contractor Default, County shall have the
19 right to terminate this Agreement immediately upon written notice to Contractor.
20

21 **10.02.3 Right to Security.** Upon a Contractor Default, County shall have
22 the right, in addition to all other rights and remedies available to County hereunder or
23 otherwise provided by law, to foreclose upon the performance bond (or draw upon the
24 letter of credit).
25

26 **10.02.4 Remedies Cumulative.** In addition to the monetary damages
27 specified in Section 10.02.1 and liquidated damages provided for hereunder, Contractor
28 acknowledges that County's remedy of damages of a breach hereof by Contractor may be
29 inadequate for reasons including: the urgency of timely, continuous and high quality
30 waste management service hereunder, including disposal of Solid Waste that constitute a
31 threat to public health. Consequently, County shall be entitled to all available equitable
32 remedies, including specific performance and injunctive relief.
33

34 **10.3 Waiver.** County reserves the right to waive any and all breaches or
35 defaults of this Agreement, and any such waiver shall not be deemed a waiver of all
36 previous or subsequent breaches or defaults. In the event County chooses to waive a
37 particular breach or default of this Agreement, it may condition same on payment by
38 Contractor of actual damages occasioned by such breach or default of Agreement and
39 shall make every effort to resolve the same quickly and amicably.
40

1 consistent and reliable service and performance. The Parties further recognize that if
2 Contractor fails to achieve the performance standards, or fails to submit required
3 documents in a timely manner County, and County's residents and businesses will suffer
4 damages and that it is and will be impractical and extremely difficult to ascertain and
5 determine the exact amount of damages. Therefore, without prejudice to County's right to
6 treat such non-performance as a Contractor Default under Article 10, the Parties agree
7 that the liquidated damages amount defined in this Section represent reasonable estimates
8 of the amount of such damages considering all of the circumstances existing on the
9 Effective Date of this Agreement, including the relationship of the sums to the range of
10 harm to County that reasonably could be anticipated and the anticipation that proof of
11 actual damages would be costly or impractical. In placing their initials at the places
12 provided, each Party specifically confirms the accuracy of the statements made above and
13 the fact that each Party has had ample opportunity to consult with legal counsel and
14 obtain an explanation of the liquidated damage provisions at the time that the Agreement
15 was made.

16
17 County Initials: _____ Contractor Initials: _____

18
19 Contractor agrees to pay (as liquidated damages and not as penalty) the
20 following amounts:
21

Liquidated Damages		
Item		Amount
a.	Failure to submit monthly report to County in accordance with Section 4.08	\$100 per calendar day of delay
b.	Receipt by County of any notice of violation issued by a regulatory agency against the County where such violation is a result of Contractor's activities	\$1,000 per violation in addition to any assessed penalty
c.	Failure to remove Solid Waste from the County Facilities in accordance with the Permit Conditions	\$1,000 per each event
d.	Failure to Cooperate with the Transfer Station Operator	\$500 per each event where County determines Contractor has not cooperated
e.	Failure to respond to a public complaint within 2 Work Days	\$100 per calendar day of delay
f.	Failure to comply with any time periods set forth in <u>Sections 4.09 and 7.06</u> of this Agreement	\$100 per calendar day of delay
g.	Failure to Properly Cover Loads which Results in Litter Complaint	\$500 per complaint

11.03 Notification. Prior to assessing liquidated damages, County shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s) and non-performance. County may present evidence of non-performance in writing and through testimony of its employees and others relevant to the incident(s) and non-performance. County will provide Contractor with a written explanation of its determination on each incident(s) and non-performance (hereinafter "Liquidated Damages Determination") prior to authorizing the assessment of liquidated damages. Contractor shall have the right to submit evidence in support of its defense within ten (10) days of receiving the Liquidated Damages Determination which County shall consider before authorizing the assessment of liquidated damages. The ultimate decision of County shall be final and no further administrative remedies shall be available.

11.04 Payment. County shall be entitled to offset the Transport Fees due Contractor hereunder with any liquidated damages that are assessed by County.

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**ARTICLE 12
COMPLIANCE WITH LAW**

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12.01 Compliance With Law. In providing the services required under this Agreement, Contractor shall at all times comply with all applicable laws (including but not limited to “Environmental Laws”) of the United States, the State of California, the County, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term, (collectively, the “Laws”). In the event of any conflict between this Agreement and Laws, the requirements of the Laws shall govern, and Contractor shall not be in breach of this Agreement if Contractor complies with the Laws in contravention of this Agreement.

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12.02 Due Diligence. The Parties acknowledge that County may be subject to fines for failure to cause Solid Waste to be transported from County Facilities in accordance with applicable law and permits and that waste management is a public health and safety concern. The Parties agree that each shall exercise due diligence in the performance of any of the terms and conditions of this Agreement and that time is of the essence hereunder.

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12.03 Patents, Trademarks, Licenses. Contractor and its affiliates shall hold or possess a right to use all patents, rights to patents, trademarks, copyrights and licenses, as the case may be of any equipment or software necessary for the performance by Contractor of its performance obligations hereunder and the transactions contemplated by this Agreement.

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12.04 Complaints. Contractor shall promptly and politely respond to complaints, including complaints from County, the Landfill Operators, the County Transfer Station Operator and the public at large, related to Contractor's performance or nonperformance of its obligations hereunder, and shall use its best efforts to resolve such complaints within thirty (30) days' receipt thereof.

**ARTICLE 13
ASSIGNMENT**

13.01 Assignment by Contractor. No assignment of this Agreement or any right occurring under this Agreement shall be made in whole or in part by Contractor without the express written consent of County, which shall not be unreasonably withheld. Any assignment of this Agreement made by Contractor without the express written consent of County shall be null and void and shall be grounds for County to declare a default of this

1 Agreement and immediately terminate this Agreement by giving written notice to
2 Contractor, and upon the date of such notice this Agreement shall be deemed immediately
3 terminated, and upon such termination all liability of County under this Agreement to
4 Contractor shall cease, and County shall have the right to call the performance bond or
5 security agreement. The use of a subcontractor to perform services under this Agreement
6 shall not constitute delegation of Contractor's duties provided that Contractor has received
7 prior written authorization from County to subcontract such services and County has
8 approved a subcontractor who will perform such services. Contractor shall be responsible
9 for directing the work of Contractor's subcontractors and any compensation due or
10 payable to Contractor's subcontractor shall be the sole responsibility of Contractor.
11 County shall have the right to require the removal of any approved subcontractor for
12 reasonable cause. The subcontractors listed in Exhibit G, which is attached to and
13 incorporated in this Agreement, are hereby approved by County. For purposes of this
14 Agreement, an assignment shall mean: (i) the sale or other transfer of more than an
15 aggregate of forty percent (40%) of the voting share of Contractor (other than to
16 immediate family members by reasons of gift, death or other reasons arising from
17 attempts to plan for the disposition of the estate of such partner or member); or (ii) the
18 sale, mortgage, hypothecation, or pledge of more than an aggregate of forty percent
19 (40%) of the value of Contractor's unencumbered assets; or (iii) the dissolution, merger,
20 consolidation, or other reorganization of Contractor. An assignment shall not include a
21 transfer to any entity that controls, is controlled by, or is under common control with
22 Contractor.

23
24 **13.02 Assignment by County.** County may assign its rights and responsibilities
25 under this Agreement to any other entity as long as any such proposed assignee under this
26 Section shall: (a) have the legal authority and financial capacity sufficient to assume and
27 perform all of County's obligations hereunder; and (b) shall agree in writing to do so.

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29 **ARTICLE 14**
30 **NOTICES; PARTY REPRESENTATIVES**

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32 **14.01 Notice.** All notices, demands, requests, proposals, approvals, consents, and
33 other communications which this Agreement requires, authorizes or contemplates shall,
34 except where specifically provided otherwise, be in writing and shall either be personally
35 delivered to a representative of the parties at the address below or be deposited in the
36 United States mail, first class postage prepaid, (certified or registered mail, return receipt
37 requested) addressed as follows:
38

1 If to the County: Sonoma County Transportation &
2 Public Works
3 2300 County Center Drive, Suite B100
4 Santa Rosa, CA 95403
5 Attn: Integrated Waste Manager
6

7 If to the Contractor: _____
8 _____
9 _____
10 _____
11

12 The address to which communications may be delivered may be changed
13 from time to time by a written notice given in accordance with this Section. Notices shall
14 be deemed delivered only upon receipt.
15

16 **14.02 Party Representatives.**

17
18 **14.02.1 County Representative.** Authority to act on behalf of the County
19 is hereby delegated to the person designated in Exhibit H.
20

21 **14.02.2 Contractor Representative.** Contractor acknowledges that it is
22 important to County to have a Contractor representative who is authorized and
23 empowered by Contractor to serve as liaison between Contractor and County. Authority
24 to act on behalf of Contractor is hereby delegated to the person designated in Exhibit H.
25 Such person's statements, representations, actions and commitments shall fully bind
26 Contractor. All oral directions or instructions and notices given by County to such named
27 representative shall bind Contractor as if delivered to Contractor personally.
28

29 **14.02.3 Emergency Telephone Numbers.** The Parties have designated in
30 Exhibit H, persons who shall be available on a 24-hour basis, including their telephone
31 numbers.
32

33 **14.02.4 Changes to Named Representatives.** The Parties may change the
34 names of their designated representative or emergency contact person by providing the
35 other party with prior written notice.
36

37 **ARTICLE 15**
38 **RECORDS**

39
40 **15.01 Contractor's Records.**

1 Article 16, in an attempt to resolve such dispute.
2

3 **16.01.2 Initial Procedures.** The dispute resolution procedure may be
4 initiated by either Party upon providing notice to the other specifying the matter in
5 dispute. Upon receipt of such notice, both Parties shall within seven (7) Work Days of
6 receipt of such notice, meet and confer in good faith to resolve such dispute. Each Party
7 shall, in good faith and in writing, promptly provide to the other Party any and all
8 information and documentation reasonably related to the dispute requested by the other
9 Party. If the Parties are unable to resolve the dispute within thirty (30) calendar days,
10 then mediation procedures described in Section 16.01.3 below shall be employed to
11 resolve the dispute.
12

13 **16.01.3 Mediation.** In the event that disputes arising under this Agreement
14 cannot be resolved satisfactorily between the Parties, after the initial procedures specified
15 in Section 16.01.2 above, County and Contractor agree that such disputes shall first be
16 submitted to non-binding mediation prior to any court action.
17

18 **16.02 Continue Performance.** Except for a Contractor Default, in the event of
19 any dispute arising under this Agreement, County and Contractor shall continue
20 performance of their respective obligations under this Agreement and shall attempt to
21 resolve such dispute in a cooperative manner, including but not limited to negotiating in
22 good faith.
23

24 **ARTICLE 17**
25 **REPRESENTATIONS AND WARRANTIES OF CONTRACTOR**
26

27 **17.01 Corporate Status.** Contractor is a _____ duly
28 organized, validly existing and in good standing under the laws of the State of
29 [California]. It is qualified to transact businesses in the State of California and has the
30 power to own its properties and to carry on its business as now owned and operated and
31 as required by this Agreement.
32

33 **17.02 Corporate Authorization.** Contractor has the authority to enter into and
34 perform its obligations under this Agreement. The managers of Contractor (or the
35 members, if necessary) have taken all actions required by law, its articles of organization,
36 its operating agreement, or otherwise, to authorize the execution of this Agreement. The
37 person signing this Agreement on behalf of Contractor has the authority to do so.
38

39 **17.03 Agreement Will Not Cause Breach.** To the best of Contractor's
40 knowledge, after reasonable investigation, neither the execution or delivery of this

1 Agreement nor the performance of this Agreement by Contractor: (i) conflict with,
2 violates, or results in a breach of any applicable law; or (ii) conflicts with, violates or
3 results in a breach of any term or condition of any judgment, order or decree of any court,
4 administrative agency or other governmental authority, or any Agreement or instrument to
5 which Contractor is a party or by which Contractor or any of its properties or assets are
6 bound, or constitutes a default thereunder.
7

8 **17.04 No Litigation.** To the best of Contractor's knowledge, after reasonable
9 investigation, there is no action, suit, proceeding or investigation, at law or in equity,
10 before or by any court or governmental authority, commission, board, agency or
11 instrumentality decided, pending or threatened against Contractor wherein an unfavorable
12 decision, ruling or finding, in any single case or in the aggregate, would materially
13 adversely affect the performance by Contractor of its obligations hereunder or which, in
14 any way, would adversely affect the validity or enforceability of this Agreement or which
15 would have a material adverse effect on the financial condition of Contractor or any
16 surety guaranteeing Contractor's performance under this Agreement, which has not been
17 waived by County in writing.
18

19 **17.05 No Adverse Judicial Decisions.** To the best of Contractors knowledge,
20 after reasonable investigation, there is no judicial decision that affects the validity of this
21 Agreement or subject this Agreement to legal challenge.
22

23 **17.06 Ability to Perform.** Contractor possess the business, professional, and
24 technical capabilities to accept and transport Solid Waste, Yard Debris and Wood Waste;
25 Contractor possesses the permits to perform this Agreement; and Contractor possesses the
26 equipment, facility, and employee resources required to perform this Agreement.
27

28 **17.07 Contractor Investigation.** Contractor has made an independent
29 investigation to its satisfaction of matters, conditions and circumstances relating to its
30 execution and delivery of this Agreement and its obligations hereunder.
31

32 **17.08 Conflict of Interest.** Contractor warrants and represents that no elected
33 official, officer, agent or employee of County has a financial interest, directly or
34 indirectly, in this Agreement, the compensation to be paid under it and, further, that no
35 County employee who acts in the County as a "purchasing agent" as defined in the
36 appropriate Section of California Statutes, nor any elected or appointed officer of the
37 County, nor any spouse or child of such purchasing agent, employee or elected or
38 appointed officer, is a partner, officer, director, or proprietor of the Contractor and,
39 further, that no such County employee, purchasing agent, County elected or appointed
40 officer, or the spouse or child of any of them, alone or in combination, has a material

1 interest in the Contractor. Material interest means direct or indirect ownership of more
2 than five percent (5%) of the total assets or capital stock of the Contractor.

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4 **ARTICLE 18**
5 **MISCELLANEOUS PROVISIONS**
6

7 **18.01 Relationship of the Parties.** The parties intend that Contractor shall
8 perform the services required by this Agreement as an independent contractor engaged by
9 County and not as an officer or employee of County nor as a partner of or joint venturer
10 with County. No employee or agent of Contractor shall be or shall be deemed to be an
11 employee or agent of County. Except as expressly provided herein, Contractor shall have
12 the exclusive control over the manner and means of conducting the services performed
13 under this Agreement, and all persons performing such services. Contractor shall be
14 solely responsible for the acts and omissions of its officers, employees, subcontractors,
15 and agents. Neither Contractor nor its officers, employees, subcontractors, and agents
16 shall obtain any rights to retirement benefits, workers' compensation benefits, or any other
17 benefits which accrue to County employees by virtue of their employment with County.
18

19 **18.02 Governing Law.** This Agreement shall be governed by, and construed and
20 enforced in accordance with the laws of the State of California.
21

22 **18.03 Jurisdiction.** Any lawsuits between the parties arising out of this
23 Agreement shall be brought and concluded in the courts of the State of California, which
24 shall have exclusive jurisdiction over such lawsuits. With respect to venue, the parties
25 agree that this Agreement is made in and will be performed in the County of Sonoma.
26

27 **18.04 Binding on Successors.** The provisions of this Agreement shall inure to
28 the benefit of and be binding on the successors and permitted assigns of the Parties.
29

30 **18.05 Parties in Interest.** Nothing in this Agreement, whether expressed or
31 implied, is intended to confer any rights on any persons other than the Parties and their
32 representatives, successors and permitted assigns.
33

34 **18.06 Duty of Contractor Not to Discriminate.** Contractor shall not
35 discriminate in the employment of persons engaged in the performance of this Agreement
36 on account of race, color, national origin, ancestry, religion, sex, physical handicap, or
37 medical condition, in violation of any applicable federal or state law.
38

39 **18.07 Acknowledgment.** It is acknowledged that each Party was, or had the
40 opportunity to be represented by counsel in the preparation of and contributed equally to

1 the terms and conditions of this Agreement and, accordingly, the rule that an Agreement
2 shall be interpreted strictly against the party preparing the same shall not apply herein due
3 to the joint contributions of both Parties.
4

5 **18.08 Exhibits.** Each of the Exhibits, identified as Exhibits "A","B", "C," "D,"
6 "E," "F," "G," and "H," is attached hereto and incorporated herein and made a part hereof
7 by this reference.
8

9 **18.09 Entire Agreement.** This Agreement including the Exhibits, represents the
10 full and entire Agreement between the Parties with respect to the matters covered herein
11 and supersedes all prior negotiations and agreements, either written or oral.
12

13 **18.10 Section Headings.** The article headings and section headings in this
14 Agreement are for convenience of reference only and are not intended to be used in the
15 construction of this Agreement nor to alter or affect any of its provisions.
16

17 **18.11 Amendment.** This Agreement may not be modified or amended in any
18 respect except in writing signed by the Parties.
19

20 **18.12 Severability.** If any term or provision of this Agreement is for any reason
21 deemed to be invalid, and unenforceable, the invalidity or unenforceability of such
22 provision shall not affect any of the remaining provisions of this Agreement which shall
23 be enforced as if such invalid, or unenforceable provision had not been contained herein.
24

25 **18.13 Attorneys' Fees.** The prevailing Party in any action brought to enforce the
26 terms of this Agreement or arising out of this Agreement may recover its reasonable costs
27 and attorneys' fees expended in connection with such an action from the other Party.
28

29 **18.14 References to Laws.** All references in this Agreement to laws and
30 regulations shall be understood to include such laws and regulations as they may be
31 subsequently amended or recodified, unless otherwise specifically provided. In addition,
32 references to specific governmental agencies shall be understood to include agencies
33 which succeed to or assume the functions they are currently performing.
34

35 **18.15 Definitions.** Capitalized terms used in this Agreement without definition
36 have the meanings specified in Article 1, unless the context clearly requires otherwise.
37

38 **18.16 Actions of County in its Governmental Capacity.** Nothing contained
39 herein shall be interpreted as limiting the rights and obligations of County in its
40 governmental or regulatory capacity.

1 Sheryl L. Bratton
2 Chief Deputy County Counsel
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Exhibit A to Transport Agreement
Designation of Landfills

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Exhibit B to Transport Agreement
Contractor's Emergency Operations Plan

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Exhibit C to Transport Agreement
Contractor's Safety Plan

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Exhibit D to Transport Agreement
Transport Vehicle Identification Standards

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Exhibit F to Transport Agreement
Corporate Guaranty

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Exhibit G to Transport Agreement
Approved List of Subcontractors

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Exhibit H to Transport Agreement
Parties Designated Representatives