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Amended and Restated Agreement for Collection Services

**City of Antioch
and Allied Waste Systems, Inc.
A Delaware Corporation
Db, Allied Waste Services of Contra Costa County, Inc.**

March 25, 2010

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This Amended and Restated Agreement is entered into and effective, _____2010 between the City of Antioch, a municipal corporation of the State of California (City), and Allied Waste Systems, Inc. A Delaware Corporation (Contractor), Dba CONTRACTOR Allied Waste Services of Contra Costa County and amends and restates the Agreement For Collection Services dated September 2, 2005.

This Agreement is based on the following facts:

A. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (AB 939) and subsequent additions and amendments (codified as Public Resources Code Section 40000 et seq.), has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for Solid waste collection within their jurisdictions

B. Allied Waste Services of Contra Costa County is the City’s current Contractor for collection, removal and disposal of Solid waste under a franchise agreement dated July 8, 1988 that was extended from August 1, 2010 to July 31, 2015 pursuant to an Agreement For Collection Services dated September 2, 2005. In exchange, Contractor provided expanded services and programs with the goal of meeting the City’s AB 939 requirements.

C. Customers in the City are generally very satisfied with the services that they receive from the Contractor and continuing with the Contractor minimizes or avoids the risk of service disruptions that may come with a transition to a new company.

D. Contractor has requested an extension of that agreement from August 1, 2015 to July 31, 2025_. In exchange, Contractor proposes to expand garbage and recycling services at all City parks and facilities; increase special event garbage collection services; expand residential recycling services; enhance commercial recycling; provide a program to collect household batteries and compact fluorescent light bulbs; provide additional clean-up days for residential customers; and pay a Community Impact Fee of One Million Dollars to the City.

E. The City has undertaken negotiations with the Contractor to develop this Agreement; the negotiations have resulted in a satisfactory result; the Contractor agrees to and acknowledges that it shall collect, transfer, transport, process and dispose of all Solid waste collected in the City area and the City is not instructing the Contractor how to collect or where to dispose of Solid waste, including Recyclable materials and Green waste; and this Agreement reflects the results of the negotiations and is satisfactory to the parties.

Now, therefore, the parties agree as follows:

216 **Article 1. Definitions**

217 **1.01 Definitions.** For the purpose of this Agreement, the definitions contained in this Article
218 apply unless otherwise specifically stated. If a word or phrase is not defined in this Article, the
219 definition of the word or phrase as contained in Chapter 3 of Title 6, “Solid Waste and Rubbish:
220 of the Antioch Municipal Code shall control. When not inconsistent with the context, words used
221 in the present tense include the future, words in the plural include the singular, and words in the
222 singular include the plural. Use of the masculine gender includes the feminine gender.

223 **Agreement** means this franchise agreement (dated as as of the first date on page 1 of the
224 Agreement, including all exhibits and attachments, and any amendments thereto) between the
225 City and the Contractor for collection, transfer, transportation and disposal of Solid waste and
226 other services related to reliable Solid waste collection.

227 **Americans with Disabilities Act (ADA)** means 42 United States Code 12101-12213 and 27
228 United States Code 225 and 611 and all federal rules and regulations relating to it.

229 **Bin** means a container with capacity of one to eight cubic yards, with hinged lid and wheels/no
230 wheels serviced by a front end-loading truck.

231 **Bulky waste or bulky items** means discarded large household appliances such as washers and
232 dryers, dishwashers and other appliance without Freon (white goods), e-waste, furniture, tires,
233 carpets, mattresses and similar large items which require special handling due to their size, but
234 can be collected without special loading equipment (such as forklifts or cranes) and without
235 violating vehicle load limits. It does not include abandoned vehicles or household hazardous
236 waste (except for e-waste).

237 **California Integrated Waste Management Act of 1989 or AB 939** means California Public
238 Resources Code Section 40000 and following, and subsequent amendments to it.

239 **Cart** means a container with a hinged lid and wheels serviced by an automated or semi-
240 automated loading truck with varying capacities of approximate 20 to 100 gallons.

241 **City Manager** means the City Manager of Antioch or his or her designee.

242 **Collection, collect and collection services** means the collection of:

- 243 (a) Solid waste and its transportation to a transfer station or landfill;
- 244 (b) Recyclable material and its transportation to a processing or materials recovery facility;
245 and
- 246 (c) Green waste and its transportation to a processing facility or landfill.

247 **Commercial** means a primarily non-residential use, including retail sales; professional services;
248 wholesale operations; manufacturing and industrial operations; healthcare and educational
249 operations; and institutional, governmental and non-profit uses. It does not include a business
250 conducted in a residence with a home occupation use permit.

251 **Commercially generated Recyclable materials** means Recyclable material generated at
252 commercial property and separated by the generator for collection in a manner different from
253 Solid waste.

254 **Commingled recyclables or mixed recyclables** means more than one type of Recyclable
255 material in a bin, cart, drop box, compactor or other type of container that is separated from Solid

256 waste. This material includes, but is not limited to, wood, paper, plastic, metals, glass, and other
257 dry waste. Commingled recyclables excludes Mixed waste or Contaminated recyclables.

258 **Compactor** means a mechanical apparatus that compresses materials.

259 **Compost** means the product resulting from the controlled decomposition of organic wastes,
260 including Green waste, wood waste and food waste which are not hazardous wastes.

261 **Construction and demolition debris** means wood, wallboard, metals, glass, paper, plastic,
262 concrete, and other recyclable and non-recyclable Solid wastes, including Mixed waste,
263 generated by residential, commercial and industrial demolition, remodeling, and construction
264 activities. (See Article II of Chapter 3 of Title 6 of the Antioch Municipal Code)

265 **Container** means an approved container used for the disposal and storage until collection of
266 Solid waste, Green waste or Recyclable material. It includes a cart, bin, or drop box (or roll-off
267 box, debris box).

268 **Contractor** means a company that has entered into a franchise agreement with the City for the
269 collection of Solid waste, Green waste and/or Recyclable materials, under Chapter 3 of Title 6 of
270 the Antioch Municipal Code.

271 **Disposal** means the ultimate disposition of Solid waste collected by Contractor at a landfill in
272 full regulatory compliance or other fully permitted disposal site. Disposal does not include
273 alternative daily cover (ADC) to the extent state law defines ADC as landfill diversion for the
274 purposes of AB 939.

275 **Diversions requirement** means the diversion of 50% or more of the Solid waste and recyclables
276 disposed of in the city, as required by AB 939 and any subsequent actions.

277 **Drop Box** means an open-top container with a capacity of eight to fifty cubic yards that is
278 serviced by a roll-off truck. "Handy hauler" means a small drop box with a capacity of four to
279 six cubic yards generally used by customers on a temporary basis.

280 **Environmental laws** mean all federal and state statutes and Contra Costa County ordinances and
281 regulations concerning public health, safety and the environment, including amendments to
282 them. These include (by way of example and not limitation):

- 283 • the Comprehensive Environmental Response, Compensation and Liability Act of 1980,
284 42 U.S.C. §9601 et seq;
- 285 • the Resource Conservation and Recovery Act, 42 U.S.C. §69012 et seq.;
- 286 • the federal Clean Water Act, 33 U.S.C. §1251 et seq.;
- 287 • the Toxic Substances Control Act, 29 U.S.C. §1 601 et seq.;
- 288 • the Occupational Safety and Health Act, 29 U.S.C. §651 et seq.;
- 289 • the California Hazardous Waste Control Act, California Health and Safety Code §25100
290 et seq.;
- 291 • the California Toxic Substances Account Act, California Health and Safety Code §25300
292 et seq.;
- 293 • the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq.;
- 294 • the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code
295 §25249.5 et seq.

296 **E-waste or electronic waste** means discarded electronic equipment such as stereos, radios,
297 speakers, televisions, computers, monitors, VCRs, printers, copiers, facsimile machines, DVDs,
298 microwaves, telephones and similar items (including cathode ray tubes and other universal
299 waste which may require special handling).

300 **Exempt waste** means those wastes, including hazardous waste and infectious waste, included
301 within the exemptions set forth in Antioch Municipal Code Section section 6-3.01.

302 **Food waste** means food scraps separated from Solid waste and offered for collection by the
303 Contractor, that will decompose and/or putrefy including (i) all kitchen and table food waste, and
304 animal or vegetable waste that attends or results from the storage, preparation, cooking or
305 handling of food stuffs, and (ii) paper waste contaminated with food waste or otherwise not
306 accepted pursuant to the service specifications.

307 **Garbage.** See Solid waste.

308 **Green waste** means organic material from trees, shrubs, grass and other vegetation. Trees may
309 not be more than six inches in diameter. Green waste does not include plastic bags, bricks,
310 rocks, gravel, large quantities of dirt, concrete, sod, non-organic wastes, loose fruits and
311 vegetables, tree trunks, stumps, palm fronds, branches more than six inches in diameter or three
312 feet in length, or pet waste.

313 **Hazardous waste** means all substances defined as hazardous waste, acutely hazardous waste, or
314 extremely hazardous waste by the State of California in Health and Safety Code §25110.02,
315 §25115, and §25117 or in the future amendments to or recodifications of such statutes or
316 identified and listed as hazardous waste by the United States Environmental Protection Agency,
317 pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), and
318 all future amendments thereto. However, for the purposes of this Agreement, hazardous waste
319 shall not mean household hazardous waste which may be contained in Solid waste provided that
320 the City is in compliance with federal, state and local laws related to the diversion of household
321 hazardous waste.

322 **Household hazardous waste** means hazardous waste generated at residential sites in the City,
323 including normal residential amounts of household chemicals, pesticides, motor oil, paint,
324 products containing mercury, e-waste categorized as universal waste (such as television tubes or
325 monitors), anti-freeze, and lead-acid batteries.

326 **Landfill** means a permitted disposal site which accepts Solid waste.

327 **Litter** means any quantity of improperly discarded waste materials, including paper, metal,
328 plastic, glass or other miscellaneous Solid waste thrown or deposited in the public right-of-way,
329 public property or water.

330 **Materials recovery facility (MRF)** means a permitted facility where Solid waste or Recyclable
331 material is sorted or separated for recycling, reuse or processing.

332 **Medical waste or Infectious waste** means waste which may cause disease or reasonably be
333 suspected of harboring pathogenic organisms, including waste resulting from medical clinics,
334 dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries,
335 veterinary facilities, hospitals, and similar facilities processing wastes which may include human
336 or animal parts, contaminated bandages, pathological specimens, hypodermic needles, sharps,
337 contaminated clothing and surgical gloves. (Reference: 17 Cal. Adm. Code 314(d); Health and
338 Safety Code Sections 118215 and 25015 et seq., especially 25117.5).

339 **Mixed waste or Contaminated recyclables** means combined Recyclable materials and non-
340 Recyclable materials.

341 **Multi-family residential** means residential premises having multiple residences, which have
342 centralized Solid waste services. In this Agreement, premises may be classified as residential
343 (with individual billing for each residence) or multi-family residential (with a single billing for
344 each complex or group of units).

345 **Premises** mean any land or building in the City where Solid waste is generated or accumulated.

346 **Processing facility** means a facility to which residential Green waste, food waste or Recyclable
347 material is brought to be processed (into compost, mulch, or soil amendment), separated,
348 recycled or reused.

349 **Recyclable materials** means and includes glass, paper, cardboard, wood, concrete, plastic, used
350 motor oil & filters, ferrous and non-ferrous metal, aluminum, and any other waste materials that
351 are capable of being recycled. The terms recycle, recycled and recycling each mean and refer to
352 the process of collecting, sorting, cleansing, treating, reconstituting and/or selling recycling
353 materials, and returning them to the use in the economy. It includes construction and demolition
354 debris, including asphalt and concrete. (See regulations regarding management plan for
355 construction and demolition debris at Article II of Chapter 3 of Title 6 of the Antioch Municipal
356 Code)

357 **Recycling center** means a facility established and licensed for the collection of Recyclable
358 materials, including but not limited to buy-back centers or drop-off locations, which are
359 supplemental to the curbside recycling program operated by Contractor.

360 **Refuse.** See Solid waste.

361 **Residence or dwelling unit** means an individual living unit having bathroom and kitchen
362 facilities in a **single-family (SFD)** or a **multi-family (MFD)** building. (See also multi-family
363 residential.) It does not include a hotel or motel or an institutional facility.

364 **Rubbish.** See Solid waste.

365 **Salvage** means the authorized and controlled accumulation of Solid waste materials for
366 subsequent use.

367 **Service specifications** means the detailed operational description and other data that are
368 contained in Exhibit A and that provide the baseline used by the City to measure the success of
369 specific programs described in this Agreement.

370 **Solid waste and waste** each mean all putrescible and non putrescible solid, semi-solid, and liquid
371 wastes, including Garbage, trash, Refuse, paper, Rubbish, ashes, commercial and industrial
372 wastes, Green waste, Construction and demolition debris, abandoned vehicles and parts thereof,
373 discarded home and industrial appliances, vegetable or animal solid and semi-solid wastes, and
374 other discarded solid and semi-solid wastes. Solid waste and waste include Recyclable materials
375 that are discarded by the generators of such materials and Mixed waste which include both
376 recyclable and non-recyclable materials. Solid waste and waste does not include any of the
377 following wastes: (1) hazardous waste, as defined in Public Resources Code Section 40141; (2)
378 radioactive waste; and (3) medical waste regulated pursuant to the Medical Waste Management
379 Act. It includes all Recyclable materials that are discarded by the generator, and Mixed waste.
380 Solid waste does not include exempt waste, as defined above.

381

382 **Refuse** means garbage and rubbish. It does not include Green waste or Recyclable
383 material that has been separated out for recycling, recovery or reuse.

384 **Rubbish** means non-putrescible Solid wastes such as ashes, paper, cardboard, tin cans,
385 yard clippings, wood, glass, bedding, crockery, plastics, rubber byproducts or litter.

386 **Source separated** means the generator's segregation from Solid waste of materials designated
387 for separate collection for recycling, recovery or reuse.

388 **Transfer station** means a facility used to receive Solid wastes, temporarily store or process the
389 materials in the Solid wastes, or to transfer the Solid wastes directly from smaller to larger
390 vehicles for transport.

391 **Universal wastes** are hazardous wastes that are more common and pose a lower risk to people
392 and the environment than other hazardous wastes. (see California Code of Regulations, Div. 4.5,
393 chapter 23.) They include, for example; mercury thermostats, switches and thermometers;
394 batteries; fluorescent and high-intensity lamps; non-empty aerosol cans; certain consumer
395 electronic devices; and cathode ray tubes such as those found in television and non-flat monitors.

396 **Waste generator** or **generator** means the person who produces the Solid waste, Recyclable
397 material or Green waste, or whose act first causes the Solid waste to become subject to
398 regulation. (Public Resources Code §§40170, 40191)

399 **White goods** means inoperative or discarded refrigerators, ranges, water heaters, freezers,
400 washers, dryers, and other similar large household appliances. (See also, bulky items.)

401

402 **Article 2. Exclusive Agreement**

403 **2.01 Exclusive Agreement.** The Contractor is granted an exclusive right to provide collection
404 processing and disposal services within the City for Solid waste, Recyclable materials and Green
405 waste for single family residential, multifamily residential, commercial and industrial premises
406 except for exempt wastes, self-hauling if permitted by the City following consultation with
407 contractor regarding reasonable regulations, or as otherwise limited by this Agreement or by law.
408 This Agreement is based on the statutory and constitutional powers provided to the City
409 effectuated through the contractual terms of this Agreement. Contractor accepts this right and
410 privilege and contractually agrees to perform according to the terms, benefits and obligations
411 provided for herein.

412
413
414 **2.02 Generator’s Recycling Obligation.** Generators may dispose of Recyclable materials,
415 Green waste and bulky items by lawful means as provided for in Chapter 3 of Title 6 of the
416 Antioch Municipal Code, including but not limited to, taking Recyclable materials, Green waste
417 or bulky items directly to drop-off facilities and donating or selling such items to private or
418 public entities.

419
420 **2.03 Contractor Warranties.** In signing this Agreement, Contractor warrants that to the best
421 of its knowledge the following is true and accurate:

- 422 a. Contractor Resources. Contractor possesses the business, professional, and technical
423 expertise to collect, transport, process, and transfer the Solid waste and Recyclable material
424 generated in the City; and Contractor possesses the equipment, facility, and employee resources
425 required to perform the services specified in this Agreement.
- 426 b. Agreement Will Not Cause Breach. To the best of Contractor’s knowledge, after
427 reasonable investigation, neither the execution or delivery of this Agreement nor the
428 performance by Contractor of its obligations hereunder: (i) conflicts with, violates, or results in a
429 breach of any law or governmental regulation applicable to Contractor; or (ii) conflicts with,
430 violates or results in a breach of any term or condition of any judgment, order, or decree of any
431 court, administrative agency or other governmental authority, or any agreement or instrument to
432 which Contractor is a party or by which Contractor or any of its properties or assets are bound, or
433 constitutes a default thereunder.

434 c. No Adverse Judicial Decisions. To the best of Contractor's knowledge, after
435 reasonable investigation, there is no judicial decision that affects the validity of this
436 Agreement and may subject this Agreement to legal challenge.

437 d. No Legal Prohibition. To the best of Contractor's knowledge, after reasonable
438 investigation, there is no applicable law in effect on the date Contractor signed this
439 Agreement that would prohibit the performance by the Contractor of its obligations under
440 this Agreement and the transactions contemplated hereby.

441 e. Contractor's Investigation. Contractor has made an independent investigation
442 (satisfactory to it) of the conditions and circumstances surrounding the Agreement and
443 the work to be performed hereunder and has taken these matters into consideration in its
444 agreement to provide these services in exchange for the compensation provided for under
445 the terms of this Agreement.

446 f. Contractor Status. Contractor is duly organized, validly existing and in good
447 standing under the laws of the State of California. It is qualified to transact business in
448 the State of California and has the power to own its properties and to carry on its business
449 as now owned and operated and as required by this Agreement.

450 g. Contractor Authorization. Contractor has the authority to enter into and perform
451 its obligations under this Agreement. The board of directors of Contractor (or the
452 shareholders, if necessary) have taken all actions required by law, its articles of
453 incorporation, its bylaws or otherwise to authorize the execution of this Agreement. The
454 persons signing this Agreement on behalf of Contractor represent and warrant that they
455 have authority to do so. This Agreement constitutes the legal, valid and binding
456 obligation of the Contractor.

457 h. Statements and Information in Contractor's Proposal. The information supplied
458 by Contractor in all written submittals made in connection with Contractor's services,
459 including Contractor's Proposal dated March 24, 2003 and letter of February 5, 2010 and
460 the negotiation and execution of this Agreement, and all written representations and
461 warranties made by Contractor throughout this Agreement are true, accurate, correct, and
462 complete in all material respects on and as of the effective date of this Agreement.

463 i. No Litigation. To the best of Contractor's knowledge, after reasonable
464 investigation, there is no action, suit, proceeding or investigation, at law or in equity,
465 before or by any court or governmental authority, commission, board, agency or
466 instrumentality decided, pending or threatened against Contractor wherein an unfavorable
467 decision, ruling or finding, in any single case or in the aggregate, would materially
468 adversely affect the performance by Contractor of its obligations hereunder or which, in
469 any way, would adversely affect the validity or enforceability of this Agreement or which
470 would have a material adverse effect on the financial condition of Contractor, or any
471 surety or entity guaranteeing Contractor's performance under this Agreement.

472 **2.04 Conditions to Effectiveness of Agreement.** The obligation of the City to permit this
473 Agreement to become effective and to perform its undertakings provided for in this Agreement is
474 subject to the satisfaction of each of the conditions set out below, each of which may be waived
475 in whole or in part by the City.

476 a. Accuracy of Representations. Representations and warranties made by Contractor
477 in Section 2.03 and throughout this Agreement are accurate, true and correct on and as of
478 the effective date of this Agreement.

479 b. Absence of Litigation. There is no litigation pending or threatened in any court
480 challenging the award of this Agreement to the Contractor or the execution of this
481 Agreement or seeking to restrain or enjoin its performance as of the effective date of this
482 Agreement.

483 c. Furnishing of Insurance and Financial Assurances. Contractor has furnished
484 satisfactory evidence of the insurance and the financial assurances required by Article 13
485 of this Agreement.

486 d. Effectiveness of City's Council's Action. City's Resolution No. 2010/14
487 approving this Agreement shall, pursuant to California law providing that such a
488 resolution is subject to referendum for 30 days following approval, shall become fully
489 effective prior to the effective date of this Agreement.

490 e. Corporate Guarantee. On or before the date of signature of this Agreement the
491 Contractor shall provide a guarantee or other assurance acceptable to the City from
492 Contractor's ultimate parent company, or other parent company acceptable to the City,
493 guaranteeing or assuring performance under this Agreement by the Contractor. The
494 guarantee will be incorporated into this Agreement as Exhibit D.

495 **2.05 Limitations to Scope.** This grant to the Contractor of an exclusive agreement, right and
496 privilege to collect, transfer, transport, process and dispose of Solid waste, including Green
497 waste and Recyclable materials, shall be interpreted to be consistent with state and federal laws,
498 now and during the term of the Agreement, and the services provided hereunder shall be limited
499 by applicable state and federal laws, regulations or judicial decisions or orders with regard to the
500 matters contained in this Agreement. If future interpretations of applicable state and federal laws,
501 regulations or judicial decisions or orders limit the ability of the City to lawfully provide for the
502 scope of agreement as specifically set forth herein, in the City's reasonable discretion, the
503 Contractor agrees that the scope and extent of the Agreement will be limited to those services
504 which may be lawfully provided for under this Agreement, and that the City shall not be
505 responsible for any lost profits claimed by the Contractor arising out of further limitations of the
506 scope or extent of services of the Agreement set forth herein. In such an event, it shall be the
507 responsibility of the Contractor to minimize the financial impact to those remaining services
508 being provided as much as possible. This includes but is not limited to a City decision to allow
509 self-hauling in regulated situations.

510 **Article 3. Term of Agreement**

511 **3.01 Term.** The term of this Agreement shall be for a period beginning September 1, 2005
512 and terminating on July 31, 2025, subject to Section 3.02 below.

513 At the end of the term, the City may renegotiate the terms and conditions of the Agreement with
514 the current Contractor or select another means to procure or provide collection services. The
515 City has no obligation to renegotiate, renew, or extend the rights granted to Contractor hereunder.

516 **3.02 Additional Services.** The primary consideration of the City in entering into this
517 Agreement with Contractor, which extends to the Contractor the exclusive right to collect Solid
518 waste, Recyclable materials and Green waste for single family residential, multifamily
519 residential, commercial and industrial customers within the City limits until 2025, is to provide
520 for a comprehensive system of Solid waste collection, diversion and reuse for all sectors of the
521 waste stream in order to comply with the diversion requirements of AB 939 and subsequent
522 legislation and regulations (collectively referred to as “AB 939”). City is also providing both the
523 rights and responsibilities for collection and processing of Recyclable materials to Contractor in
524 reliance on Contractor’s stated commitment and ability to meet the diversion requirements of AB
525 939. Beginning January 1, 2006, and each year thereafter, City and Contractor shall examine the
526 City’s diversion rate in any year, Contractor shall propose corrections to current programs or new
527 programs which are designed to enable City to meet the state mandated diversion requirements.
528 Contractor shall implement only such additional programs which Contractor and City agree may
529 be appropriate.

530 If the actions required of Contractor under this Agreement, including the undertaking of any
531 additional programs as provided for in this section, fails to result in compliance with any of the
532 state mandated diversion requirements under AB939 and subsequent enactments, City and the
533 Contractor shall meet and confer to evaluate the existing programs and discuss modifications
534 and/or additions that will assist the City in meeting the state mandated diversion requirements
535 under AB 939. City compliance with state mandated diversion requirements shall be evaluated
536 by reference to the California Department of Resources Recycling and Recovery (CalRecycle)
537 final compliance determination for the City for the years starting with 2005.

538 In addition, consideration for the extension to the Agreement is set forth in the recitals to the
539 Agreement.

540 **3.03 Defense of Agreement.** Contractor may at its election, and if it makes that election, at its
541 sole expense, defend the validity of this Agreement against all challenges to the Agreement
542 including challenges to any compensation or fees provided to City, by any entity or person not a
543 party to this Agreement. Neither the City nor the Contractor shall have any liability to each other
544 resulting from a determination that this Agreement violates any state or Federal law, statute, or
545 constitutional provision, except to the extent such determination relates to the Contractor’s
546 willful misconduct or negligence. However, if the Contractor elects to not defend the validity of
547 this Agreement, the City may, upon reasonable notice, terminate the Agreement at its election,
548 and if it makes that election, it shall have no liability to the Contractor resulting from that
549 election to terminate. Contractor’s sole remedy shall be to receive the Contractor’s
550 compensation for services rendered by Contractor up to the date of termination, minus any
551 monies due the City provided for under this Agreement.

552 **3.04 Disposal or Processing of Collected Materials.** The Contractor shall dispose of or
553 deliver for processing all materials collected under this Agreement at a transfer station, landfill,
554 materials recovery facility or other appropriate state-licensed facility of its sole choice.

555 **3.05 Status of Transfer Station.** Any transfer station utilized must be designed and
556 constructed in accordance with all applicable state and local laws (e.g., California Environmental
557 Quality Act (CEQA), California Code of Regulations, etc.). The transfer station must maintain
558 full regulatory compliance with all permits from federal, state, regional, county and city agencies
559 necessary for it to operate as a transfer station and is in compliance with all such permits.
560 Contractor shall provide copies to the City of all notices of violation or amendments to permits
561 that could affect the Contractor’s ability to perform under this Agreement.

562 Any transfer station selected by the Contractor must be authorized to accept, under its existing
563 permit, and have sufficient uncommitted capacity to accept, all Solid waste generated in the City
564 and delivered to it by, or on behalf of, the City for the duration of the Agreement. The
565 Contractor shall immediately notify the City of any notice of breach or default received from the
566 transfer station. A third party letter prepared by Contra Costa Health Services Department
567 stating that as of the signature date of this Agreement the disposal company continues to meet the
568 regulatory compliance requirements of this Section 3.05, must be sent to the City Manager upon
569 request.

570 **3.06 Status of Disposal Site.** Any landfill utilized by the Contractor must be designed and
571 constructed in accordance with 23 California Code of Regulations Section 2510 et seq.
572 (“Subchapter 15”). The landfill must have all required permits from federal, state, regional,
573 county and city agencies necessary for it to operate as a Class III Sanitary Landfill and is in full
574 regulatory compliance with all such permits. The Contractor shall provide copies to the City of
575 all notices, of violations, that could affect the Contractor’s ability to perform under this
576 Agreement, or amendments to permits, including any extensions.

577 Any landfill must be authorized to accept, under its existing permit, and have sufficient
578 uncommitted capacity to accept, all Solid waste delivered to it by, or on behalf of, the City for
579 the duration of this Agreement. The selected landfill should not maintain the co-disposal of
580 hazardous waste with municipal Solid waste. The Contractor shall immediately notify the City of
581 any notice of breach or default received from the landfill. A third party letter prepared by Contra
582 Costa Health Services Department stating that as of the signature date of this Agreement the
583 disposal company continues to meet the regulatory compliance requirements of this Section 3.06,
584 must be sent to the City Manager upon request.

585 **3.07 Closure of Disposal Site.** The closure and post-closure maintenance plans required by
586 14 California Code of Regulations Section 18260 et seq. must be submitted to and not
587 disapproved by the state and local permit enforcement agencies having jurisdiction over the
588 landfill utilized by Contractor. The disposal site owner must have submitted evidence to the
589 appropriate governing authorities of adequate provisions to finance the closure and post-closure
590 maintenance of the landfill as required by 14 California Code of Regulations Section 18260 et
591 seq. and these arrangements have also been approved by the state and local permit enforcement
592 agencies having jurisdiction. The mechanism which the disposal site owner currently plans to
593 utilize to meet the state requirement of financial assurance for closure and post closure
594 maintenance is a performance bond. Disposal site owner may change this mechanism to another
595 legally authorized mechanism if the change is approved by the California Integrated Waste
596 Management Board. Evidence of compliance with state regulations regarding closure and post-
597 closure funding and financial assurances shall be provided to the City upon request. A third
598 party letter prepared by Contra Costa Health Services Department stating that as of the signature
599 date of this Agreement the disposal site owner continues to meet the closure and post-closure

600 financial assurance requirements of this Section 3.07, must be sent to the City Manager upon
601 request.

602 **3.08 Prior Agreement Superseded.** The parties previously entered into an agreement for
603 services similar to those specified in this Agreement. That agreement, including extensions is
604 scheduled to terminate on August 1, 2015. In signing this Agreement and upon its effective date,
605 Contractor stipulates that except for any provisions of the prior agreement specified as surviving
606 the termination of the agreement (including but not limited to record keeping, insurance, and
607 indemnity), all rights and responsibilities of the parties contained that that prior agreement are
608 superseded by this Agreement.

609

610 **Article 4. Services Provided by the Contractor**

611 **4.01 Collection, Recycling and Education Services and Programs.** Contractor shall
612 provide the collection, recycling and education services and programs described in the service
613 specifications incorporated into this Agreement as Exhibit A.

614 At the City’s request, it is Contractor’s responsibility to investigate and report to City regarding
615 suspected violations of the rights provided under this Agreement, the City’s Solid waste
616 ordinance, or the City’s construction and demolition debris ordinance, by generators or other
617 businesses providing recycling or collection services.

618 **4.02 City Right to Direct Changes.**

619 a. Procedure for Making Changes. The City may direct Contractor to: perform
620 additional services including new diversion programs and additional public education
621 activities; eliminate programs; modify the manner in which it performs existing services;
622 and perform pilot programs and innovative services, which may entail new collection
623 methods, targeted routing, different kinds of services, different types of collection
624 vehicles, and/or new requirements for generators. Contractor shall be entitled to an
625 adjustment in its compensation in accordance with Section 5.07 for providing such
626 additional or modified services but not for the preparation of its proposal to perform such
627 services. The City Council will adjust Contractor’s maximum rates to compensate
628 Contractor for its reasonable, net costs of providing such additional or modified services.

629 Contractor shall present, within 30 calendar days of the City’s request, a proposal to
630 provide the additional or expanded services described in this Section 4.02. At a minimum,
631 the proposal shall contain a complete description of the following:

- 632 1. Collection methodology to be employed (equipment, manpower, etc.).
- 633 2. Equipment to be utilized (vehicle number, types, capacity, age, etc.).
- 634 3. Labor requirements (number of employees by classification).
- 635 4. Type of materials.
- 636 5. Containers to be utilized.
- 637 6. Provision for program publicity/education/marketing.
- 638 7. Five year projection of the financial results of the program’s operations in
639 a balance sheet and operating statement format including documentation of the
640 key assumptions underlying the projections and the support for those
641 assumptions, giving full effect to the savings or costs to existing services.

642 Contractor acknowledges and agrees that the City may permit other persons besides
643 Contractor to provide additional Solid waste collection services not otherwise
644 contemplated in this Agreement if Contractor and the City cannot agree on terms and
645 conditions of such services in 120 calendar days from the date when the City first
646 requests a proposal from the Contractor to perform such services.

647 b. Monitoring and Evaluation. Upon the City’s request, the Contractor shall meet
648 with the City to describe the progress of each new program and other service issues. If
649 applicable, Contractor shall document the results of the new programs on a monthly
650 basis, including at a minimum the tonnage diverted by material type, the end use or

651 processor of the diverted materials and the cost per ton for transporting and processing
652 each type of material and other such information requested by the Contractor and/or the
653 City necessary to evaluate the performance of each program.

654 At each meeting, the City and the Contractor shall have the opportunity to revise the
655 program based on mutually agreed upon terms. The City shall have the right to terminate
656 a program if, in its sole discretion, the Contractor is not cost effectively achieving the
657 program's goals and objectives. Prior to such termination, the City shall meet and confer
658 with the Contractor for a period of up to 90 calendar days to resolve the City's concerns.
659 Thereafter, the City may utilize a third party to perform these services if the City
660 reasonably believes the third party can improve on Contractor's performance and/or cost.
661 Notwithstanding these changes, Contractor shall continue the program during the meet
662 and confer period and, thereafter, until the third party takes over the program.

663 **4.03 Responsibility for Service Billing and Collection.** The Contractor is responsible for the
664 billing and collection of payments for collection services. The Contractor shall not bill for
665 collection services rendered to City facilities as described in Section 4.04. (See Article 5, Rates,
666 Charges and Contractor Compensation.)

667 **4.04 Service to City Facilities.** Contractor shall provide Solid Waste collection and recycling
668 services to all City facilities at no cost. Currently, those facilities are listed with service levels in
669 Exhibit C. The Solid waste collection service shall be at least weekly at each location.
670 Contractor will provide for the service of recycling and garbage receptacles at all City Parks and
671 Trails at no cost to the City. Service to Parks must be done weekly at a minimum and more often
672 as need to insure that receptacles are not overflowing and debris is contained. Any changes to
673 service levels must be agreed upon by Contractor and the City prior to start of service. Annually,
674 or more frequently as needed, Contractor and the City will review the waste stream at each
675 facility to evaluate diversion programs and make changes to service levels.

676 In addition to the collection services outlined in Exhibit C, Contractor will agree to receive the
677 City's direct off haul of cake solids that are produced at the Water Treatment Plant dewatering
678 facility once it is constructed. The solids will be produced and shipped to the landfill disposal
679 site between 20 to 30 percent cake. If possible, this material should be used as Alternative Daily
680 Cover and City will pay an agreed upon rate for this disposal. Except as provided herein, the City
681 or its agents or subcontractors shall not direct haul waste to transfer or disposal facilities owned
682 by Contractor for free disposal without prior agreement from Contractor.

683 The free City services provided for in this Section shall not include free hauling and/or disposal
684 of Construction and demolition debris from the demolition or renovation of City buildings or
685 structures, or the hauling or disposal of waste stream sludge/solids, if allowed by operating
686 permits, generated from water treatment works. In the event the City wishes to have Contractor
687 provide these services, Contractor shall negotiate a fee for such services with the City that will
688 compensate Contractor for the reasonable value of such services.

689 **4.05 Service Standards.** Contractor shall perform all collection services under this
690 Agreement in a thorough and professional manner so that the residents and businesses are
691 provided reliable, courteous, timely and high quality collection services at all times. Collection
692 services described in this Agreement shall be performed regardless of weather conditions or
693 difficulty of collection.

694 **4.06 Labor and Equipment.** Contractor shall provide and maintain all labor, equipment,
695 tools, facilities, and personnel supervision required for the performance of Contractor's

696 obligations under this Agreement. Contractor shall at all times have sufficient backup equipment
697 and labor to fulfill Contractor's obligations under this Agreement. No compensation for
698 Contractor's services or for Contractor's supply of labor, equipment, tools, facilities or
699 supervision shall be provided or paid to Contractor by City or by any customer except as
700 expressly provided by this Agreement. (See also Article 10, Contractor's Office, Personnel and
701 Collection Equipment.)

702 **4.07 Purchase, Distribution and Ownership of Carts.** The Contractor is responsible for the
703 purchase and distribution of fully assembled and functional garbage, recycling and green waste
704 carts, bins and drop boxes. Contractor retains ownership of the carts, bins and drop boxes and
705 shall provide all necessary maintenance.

706 Each SFD and MFD customer shall be permitted one free replacement container per any twelve
707 month period to replace a stolen or damaged container or to swap a dirty container for a clean
708 one. SFD and MFD customers may also exchange one container size for a different container
709 size per any twelve month period at no charge. This limitation shall not effect Contractor's
710 obligation to repair containers which are damages due to normal collection activities.

711

712 **4.08 Holiday Service.** The Contractor observes December 25th and January 1st as legal
713 holidays. Contractor is not required to provide collection services or maintain office hours on the
714 designated holidays. In any week in which one of these holidays falls on a work day (Monday
715 through Saturday), SFD collection services for the holiday and each work day thereafter will be
716 delayed one work day for the remainder of the week, with normally scheduled Friday SFD
717 collection services being performed on Saturday. MFD and commercial collection services shall
718 be adjusted as necessary but must meet the minimum frequency requirements of one time per
719 week.

720 **4.09 Spillage and Litter.** The Contractor shall not litter premises in the process of providing
721 collection services or while its vehicles are on the road. The Contractor shall transport all
722 materials collected in such a manner as to prevent the spilling or blowing of such materials from
723 the Contractor's vehicle. The Contractor shall exercise all reasonable care and diligence in
724 providing collection services so as to prevent spilling or dropping of Solid waste, Green waste or
725 Recyclable materials and shall immediately, at the time of occurrence, clean up such spilled or
726 dropped waste or materials.

727 The Contractor is not responsible for cleaning up sanitary conditions caused by the carelessness
728 of the customer; however, the Contractor shall clean up any material or residue that is spilled or
729 scattered by the Contractor or its employees.

730 Equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris resulting from the
731 Contractor's operations or equipment repair shall be covered immediately with an absorptive
732 material and removed from the street surface. When necessary, Contractor shall apply a suitable
733 cleaning agent to the street surface to provide adequate cleaning. Contractor shall notify City
734 Manager of any spills including the location, material, how it occurred and how it was cleaned
735 up.

736 Contractor shall cover all open drop boxes during transport and shall take such similar physical
737 steps as are necessary to avoid unacceptable spillage from collection vehicles.

738 **4.10 Ownership of Materials.** Once Solid waste is placed in containers and properly
739 presented for collection, ownership and the right to possession shall transfer directly from the

740 generator to Contractor by operation of this Agreement. Contractor is hereby granted the right to
741 retain, process, dispose of, and otherwise use such Solid waste, or any part thereof, in any lawful
742 fashion or for any lawful purpose desired by Contractor. Subject to the provisions of this
743 Agreement, Contractor shall have the right to retain any benefit resulting from its right to retain,
744 process, dispose of, or use the Solid waste which it collects. Solid waste, or any part thereof,
745 which is disposed of at a disposal site or facility (whether landfill, transformation facility,
746 transfer station, or materials recovery facility) shall become the property of the owner or operator
747 of the disposal site(s) or facility once deposited there by Contractor. Contractor shall be entitled
748 to retain all revenues from the sale of Recyclable materials collected by Contractor pursuant to
749 this Agreement.

750 **4.11 Special Collection Services.** Contractor shall, free of charge, collect Solid waste and
751 Recycling for a minimum of three special events for the City, such as parades or civic events, as
752 determined by the City as well as one 30 cubic yard debris box for specific monthly
753 neighborhood clean-up events organized by the police department or other city department.
754 Contractor shall provide an adequate number and type of collection containers for the special
755 events and shall coordinate its collection services with the City. Recycle containers shall be
756 provided upon request.

757 Contractor shall partner with a non-profit organization to schedule an annual reuse day where
758 businesses and residents can drop off reusable items at a location with the City. The event details
759 must be approved by the City.

760 Requests for donated collection services for special events by other entities can be approved and
761 fulfilled at the discretion of the Contractor.

762 **4.12 Regularly Scheduled and Temporary Bins.** Contractor shall provide regularly
763 scheduled and temporary bins/drop box service for the purpose of collection of non-hazardous
764 Solid waste to all persons requesting and paying for such service. Contractor shall deliver and
765 collect bins at the direction of the customer. Drop boxes and bins shall be kept free of graffiti
766 and maintained in good repair. Drop boxes must be dropped on the customer's property and not
767 the City right of way. Drop boxes delivered on the street in front of a customer's property
768 require authorization from the City. Encroachment permits are required for any box to be
769 delivered on the streets. Drop boxes shall be delivered within one working day of the receipt of
770 a customer's request. Contractor's failure to meet these requirements may result in assessment
771 of a liquidated damage as provided in subsection 12.02 g.

772 **4.13 Noise.** All Collection operations shall be conducted as quietly as possible and shall
773 conform to applicable federal, state, county and City noise level regulations, including the
774 requirement that the noise level during the stationary compaction process not exceed seventy
775 decibels at a distance of 50 feet with the exceptions of 85 decibels for one-minute duration as
776 measured from a distance of 50 feet. The City may conduct random checks of noise emission
777 levels to ensure such compliance. Contractor shall promptly resolve any complaints of noise to
778 the satisfaction of the City Manager.

779 **4.14 Property Damage.** Contractor shall be responsible for any damage it causes to private
780 property and any damage it causes to the City's driving surfaces, whether or not paved, and
781 associated curbs, gutters and traffic control devices, resulting from or directly attributable to any
782 of its operations. Nothing in this paragraph is intended to create any new or additional liability
783 of Contractor than would otherwise arise from Contractor's use of public roads or right-of-w

784 **4.15 Litter and Debris pickup for City streets and public right of ways**

785 Contractor shall be responsible for the litter collection services on streets and public right of way.
786 This shall include the pickup of litter scattered on local streets and material illegally dumped on
787 sidewalks and near local waterways in the areas defined in Exhibit E. Contractor can provide
788 services directly or may subcontract work upon approval of the City. Contractor shall publicize
789 the Contra Costa Clean Water Program toll free number, 1-800 NO DUMPING as a resource for
790 people to report illegal dumping of debris. Reports of illegal dumping of debris made to this
791 number for sites within the City shall be forwarded to the Contractor for resolution. The number
792 of calls, the amount of material collected and the locations of the material will be reported to the
793 City monthly.

794

795 **4.16 Oversight of City’s Fulton Shipyard Road Annex**

796 Contractor shall provide oversight and the resources necessary to ensure that the debris delivered
797 to the City’s Fulton Shipyard Road Annex (Annex) is sorted and collected in a timely manner.
798 The material placed at the Annex for collection shall only be related to City related work,
799 including work done directly by city employees and sub-contractors approved by the City to use
800 the Annex. Accumulation of Hazardous Materials shall not be permitted at the Annex.
801 Additionally the Contractor shall not use the Annex for the accumulation of Solid Waste from
802 non-City related work without the written authorization from the City. Staging of Contractor
803 related equipment shall be limited to 5 roll-off bins. Any other storage of Contractor equipment
804 requires written approval from the City. The City shall have the right to review, provide
805 feedback and approve of any changes to the processes and uses for the Annex.

806

807 **Article 5. Rates, Charges and Contractor Compensation**

808 **5.01 Compensation.** Contractor’s compensation for services shall be provided by the
809 revenues generated by the rates that Contractor imposes, which the maximum rates set forth in
810 Exhibit B, as such rates and charges may be adjusted pursuant to this Agreement. The full, entire
811 and complete compensation due Contractor for all labor, equipment, materials and supplies,
812 taxes, insurance, bonds, overhead, disposal, profit and all other things necessary to perform all of
813 the services required by this Agreement in the manner prescribed shall be provided by Contractor
814 solely through the revenues generated through customer charges and the sale of salvage and
815 recyclables.

816 Contractor does not look to the City for payment of any sum under this Agreement. Contractor
817 will perform the responsibilities and duties described in this Agreement in consideration of the
818 right to charge and collect from customers for services rendered at rates imposed by Contractor
819 with maximum rates set by the City from time to time. The City shall have the right to structure
820 the maximum rate for residential solid waste, recycling and Green waste and commercial Solid
821 waste as it deems appropriate so long as the revenues forecasted to be received by Contractor
822 from charging such rates not exceeding the maximum rates set by the City will generate
823 equivalent revenues to that received prior to the adjustment of the rate structure net of change in
824 franchise fees and other nonrelated rate components. This Agreement does not contemplate a
825 guaranteed level of return (profit) for Contractor, nor does the City, through the setting of
826 maximum rates assume responsibility to guarantee revenues to cover all market or business risks,
827 unreasonable operational costs, or losses due to business judgment.

828 **5.02 Collection services.** The Contractor is responsible for the billing and collection of
829 payments for all collection services. Since the responsibility for providing service per Chapter 3
830 of Title 6 of the Antioch Municipal Code lies with the owner of the property, it will be the
831 Contractor’s responsibility to obtain property owner information as filed with the Contra Costa
832 County Assessors office.

833 The Contractor shall charge customers the service rates that do not exceed the maximum rates set
834 by the City Council and set forth in Exhibit B. The rates may be adjusted under the terms of this
835 Agreement.

836 **5.03 Partial Month Service.** If a customer is added to or deleted from Contractor’s City area
837 during a month, the Contractor’s billing shall be pro-rated based on the weekly service rate
838 (weekly service rate shall be the service rate divided by the number of actual weeks in the month
839 that service was provided to the customer).

840 **5.04 General Billing Requirements.** Contractor shall prepare mail and collect bills (and
841 issue written receipts for cash payments) for Solid waste collection services provided by
842 Contractor. Residential bills shall be for service for a two month period unless the City requests
843 a more frequent billing interval. Each bill must clearly describe that the billed amount is for a
844 two month period. Bills for residential service shall be mailed in advance of the provision of
845 service but no more than two months in advance. Commercial bills shall be for service for a one
846 month period billed no more than one month in advance. The Contractor’s bills shall contain a
847 local address, phone number, and e-mail address; the customer’s service level (container size,
848 frequency of collection); and any credits due the customer. City shall have the right to: 1) review
849 and determine the bill messages; 2) revise the billing format to itemize certain charges, and; 3)
850 review the billings frequency and procedures. City may also direct Contractor to insert mailers
851 relating to service with the billings. The mailers must fit in billing envelopes and not increase the

852 required postage. The Contractor will notify City about any changes to the billing insert
853 requirements at least 60 days prior to the next bill mailing. Any increased costs to City for failure
854 to do so will be borne by the Contractor. City will provide not less than 60 days notice to
855 Contractor prior to the mailing date of any proposed mailing to permit Contractor to make
856 appropriate arrangements for inclusion of City's materials. Contractor is authorized to send
857 notices of non-payment to a customer after 60 days and to suspend service after 90 days of non-
858 payment by customer. Contractor is also authorized to charge late fees on unpaid balances and
859 other fees per Contractor's billing policies and practices. Contractor shall notify City of accounts
860 to be suspended on a monthly basis.

861 Contractor shall work with the City to proactively address locations without garbage service.
862 This shall included mailing of notice of violation letters to the customers with suspended service
863 and to property owners if the customer letter is not successful in getting service reinstated.
864 Addresses that do not subscribe to service ten (10) days after the owner letter is sent will be
865 referred to the City for further action. Contractor will work with the City to abate properties
866 where compliance is not achieved by signing the property up for six (6) months of service per
867 Chapter 3 of Title 6 of the Antioch Municipal Code.

868 **5.05 City Audit of Billings.** City may at its sole discretion select a qualified independent firm
869 to perform up to five billing audits during the term of the Agreement. The frequency and timing
870 of the billing audits shall be determined at City's sole discretion. City shall provide Contractor
871 sixty days notice of each change in the audit schedule. City shall determine the scope of any
872 audits.

873 The auditor shall review the billing practices of Contractor with relation to delivery of collection
874 services. The intent of this audit is to use sampling to verify that customers are receiving the type
875 and level of service for the rates they are billed.

876 The cost of the first billing audit shall be borne by the Contractor. The cost for any subsequent
877 audit that demonstrates an error rate of less than one percent shall be borne by the City. The cost
878 of any audit that demonstrates an error rate equal to or greater than one percent shall be borne by
879 the Contractor.

880 **5.06 Adjustments to Service Rates**

881 a. Beginning on July 1, 2011, and annually thereafter, the maximum residential
882 service rates set forth in Exhibit "B" to this Agreement shall be automatically adjusted.
883 For residential service rates, the automatic adjustment in maximum rates may be not
884 more than ninety (90%) percent of the percentage increase identified in the "San Jose-San
885 Francisco-Oakland All Urban Consumer Price Index" ("CPI"), or a two (2%) percent
886 increase, whichever is greater.. Beginning July 1, 2010, for commercial, industrial and
887 multi-family regulated rates, the automatic adjustment may be not more than one hundred
888 (100%) percent of the CPI or a two percent (2%) increase, whichever is greater.. For all
889 rates, the maximum annual increase shall be five (5%) percent. Contractor shall notify
890 City of its intention to increase any rates by May 15 of each year. Any increase shall be
891 effective July 1.

892
893 b. Limits of Annual Adjustments. Fractions of less than one cent shall not be
894 considered in making annual rate adjustments. The indices or calculations shall be
895 truncated at four decimal places for the adjustment calculations.

896 **5.07 Significantly Changed Circumstances.** A special rate change may be approved at any
897 time it can be established that there is good cause based on a significant change in circumstances
898 Significantly changed circumstances may include City directed changes in service pursuant to
899 Section 4.02, new governmental fees, charges or taxes, regulatory changes, changes in law such
900 as any new or amended federal, state or local law or regulation or any change in the
901 interpretation or enforcement thereof or other dramatic changes in costs not within the control of
902 Contractor. If Contractor does desire to seek a special rate change, Contractor shall submit to the
903 City Manager a thorough written explanation of the significantly changed circumstances, as well
904 as an explanation of why these extraordinary circumstances constitute good cause for making
905 such an application and the amount of the rate adjustment requested by Contractor, together with
906 such other data and supporting documentation as may be required by City Manager.

907

908 The City Manager shall determine within 45 days whether good cause exists for an adjustment in
909 rates. If it has been determined that good cause does exist, a hearing on the proposed maximum
910 rate adjustments will be scheduled before the City Council within 60 days after the City
911 Manager's determination. The City Council shall consider the Contractor's application and such
912 other materials and information reasonably requested by the City Council from Contractor to
913 assess the merits of Contractor's application. The City Council will consider an adjustment to
914 Contractor's maximum rates to compensate Contractor for its reasonable, net costs of providing
915 such additional or modified services. No action from the City Manager within the 45 day period
916 shall be considered an appealable denial, as described below.

917 If the City Manager determines that good cause does not exist, Contractor shall have ten days in
918 which to file an appeal of the determination with the City Council. That appeal shall be placed
919 on the City Council's agenda as soon as practicable.

920 The Council's decision shall be conclusive. However, nothing in this Agreement shall be
921 construed to prevent either party from seeking judicial relief for any breach of any provision of
922 this Agreement by either party.

923

924 **Article 6. City Compensation and Other Fees**

925 **6.01 City Compensation.** The parties acknowledge that Contractor's heavy trucks create
926 significant wear and tear on City streets, leading to the need for more frequent repair. The exact
927 amount and nature of such street damage is difficult if not impossible to calculate. In
928 consideration of the exclusive contractual rights and agreement granted by the City to Contractor
929 for provision of collection services for both residential, commercial and industrial Solid waste
930 generators, beginning with the adoption of this contract on September 1, 2005, and thereafter,
931 Contractor agrees to pay the City 12% of all gross revenues received by Contractor for provision
932 of the collection services under this Agreement. This compensation has the following elements:
933 5% for the privilege of exercising the franchise, and 7% for a street impact fee and development
934 of programs for compliance with AB 939 and liquidated damage payment. The amount of any
935 City compensation may be adjusted from time to time by the City with consent of the Contractor.
936 **“Gross revenues”** means any and all compensation receive by the Contractor from the operation
937 of the franchise agreement. “Gross revenues” shall include regular subscriber fees for all
938 services, charges for the use of extra or special services, and income of whatever kind or nature
939 received by contractor by virtue of its enjoyment of the franchise agreement, including both
940 regulated and unregulated customer payments; but shall not include revenues from the sale of
941 recycled materials. Gross revenues” shall not include refundable deposits or bad debts for which
942 no payment was received from the customer or subscriber.

943 The City compensation shall be paid every three months and shall be considered late if not paid
944 by the 20th day of the month in which it becomes due. Late payments are subject to a 2% late
945 penalty for the amounts owing during the two-month payment period. Contractor shall pay an
946 additional 2% on any unpaid balance for each following 30-day period that the Agreement fee
947 remains unpaid.

948 The compensation provided to City under this Section 6.01 is contractual in nature and was a
949 materially bargained for term of this Agreement. Contractor and City agree that this amount is
950 fair and reasonable in the applicable commercial setting existing at the time of execution of this
951 Agreement. It is further agreed that the City is justified in receiving this compensation, whether
952 received as compensation for the contractual rights provided herein, as a franchise fee (5%), or
953 as cost reimbursement (7%) to the City for street repair and Solid waste programs.

954 **6.02 Community Impact Fee**

955 The Contractor shall pay the City a total of one million dollars (\$1,000,000) as a Community
956 Impact Fee. At the City’s discretion, payment may be made in \$500,000 increments on July, 1,
957 2010 and July 1, 2011 or as one payment of \$1,000,000 on July 1, 2010. The Community
958 Impact Fee will be deposited to City’s General Fund

959 **6.03 Other Fees.** The City shall reserve the right to set other or additional fees as it deems
960 necessary and will notify Contractor of any changes in fees to be collected as a part of the fees
961 and charges for Solid waste collection services. Such fees will be reflected by an adjustment in
962 the rates that Contractor is allowed to charge and collect from customers.

963
964

965 **Article 7. Single Family Dwelling Collection Services**

966 **7.01 Single Family Dwellings (SFD) Collection Services: General.** The Contractor shall
967 provide SFD collection service to all SFD customers in the City area whose residential Solid
968 waste, Recyclable materials and Green waste are properly containerized and set out within three
969 feet of the curb, swale, paved surface of the public roadway, closest accessible roadway, or other
970 such location agreed to by the Contractor and customer, that will provide safe and efficient
971 accessibility to the Contractor’s collection crew and vehicle.

972 **7.02 On-Premises Service.** Contractor shall provide on-premises collection of residential
973 Solid waste, Recyclable materials and Green waste to a SFD customer if all adult customers
974 residing there have disabilities that prevent them from setting their garbage or recycling cart at
975 the curb for collection and if a request for on-premises service has been made to, and approved
976 by, the City Manager in the manner required by City. On premises service shall include pickup
977 and replacement of carts within the front or side yard and return of the cart to such location. The
978 Contractor shall authorize on-premises service in appropriate circumstances. If there is a dispute
979 between the Contractor and a customer regarding this issue, the Contractor shall refer the matter
980 to the City Manager for his or her determination. No additional monies shall be due to the
981 Contractor for the provision of on-premises service to special needs or disabled customers. The
982 City may direct Contractor to provide an elective or optional on-premises service to customers
983 who request it for a fee in addition to the otherwise applicable rates and charges. This elective
984 on-premises service would be available to able-bodied customers.

985 Contractor shall provide on-premises collection service on the same work day that curbside
986 collection would otherwise be provided to the SFD customer.

987 **7.03 Frequency and Scheduling of Service.** SFD collection services shall be provided one
988 time per week on a scheduled route basis, except for bulky item collection, on-call waste and
989 recycling, and Holiday tree collection.

990 a. Hours and Days of Collection. SFD collection services shall be provided
991 beginning no earlier than 6:00 a.m. and ending no later than 6:00 p.m., Monday through
992 Saturday. The hours or days of collection may be extended due to extraordinary
993 circumstances with the prior consent of the City Manager.

994 b. Manner of Collection. The Contractor shall provide SFD collection service with
995 as little disturbance as possible and shall leave carts in an upright position at the same
996 point they were collected without obstructing alleys, roadways, driveways, sidewalks or
997 mail boxes.

998 **7.04 SFD Solid waste Collection Service.** Contractor is not required to collect any
999 residential Solid waste that is not placed in the cart or that is commingled with hazardous waste
1000 or medical waste. In the event of non-collection, Contractor shall affix to the cart a non-
1001 collection notice explaining why collection was not made.

1002 **7.05 SFD Recycling Service.**

1003 a. Collection. The Contractor is not required to collect Recyclable materials if the
1004 customer does not segregate the Recyclable materials from residential Solid waste. If
1005 Recyclable materials are contaminated through commingling with residential Solid waste,
1006 the Contractor shall, if practical, separate the residential Solid waste from the Recyclable
1007 materials. The Recyclable materials shall then be collected and the Solid waste shall be

1008 left in the recycling cart along with a non-collection notice. However, if the Recyclable
1009 materials and Solid waste are commingled to the extent that they cannot easily be
1010 separated by the Contractor or the nature of the Solid waste renders the entire recycling
1011 cart contaminated, the Contractor may leave the recycling cart un-emptied along with a
1012 non-collection notice.

1013 b. Cardboard. Corrugated cardboard that will not fit inside the recycling cart shall
1014 be placed as specified by the Contractor and picked up pursuant to an on-call recycle
1015 cleanup as described in Section 7.09 below.

1016 c. Changes to Work. If changes in law arise that necessitate any additions or
1017 deletions to the work described here including the type of items included as Recyclable
1018 materials, the parties shall negotiate any necessary cost changes and shall enter into an
1019 Agreement amendment covering the modifications to the work to be performed and the
1020 compensation to be paid before undertaking any changes or revisions to the work. In the
1021 event there are no costs associated with adding materials to the recycling program,
1022 additional items can be added at anytime with City Manager approval.

1023 **7.06 Green waste Collection Service.** Contractor is not required to collect any Green waste
1024 that is not placed in a Green waste cart. In the event of non-collection, Contractor shall affix to
1025 the Green waste cart a non-collection notice.

1026 **7.07 Change in Collection Schedule.** Contractor shall notify City not later than sixty days
1027 prior to, and residential customers not later than 14 days prior to, any change in residential
1028 collection operations that results in a change in the day on which Solid waste collection occurs.
1029 Contractor shall not permit any customer to go more than seven days without service in
1030 connection with a collection schedule change. City must give final approval to the routing
1031 changes and its approval shall not be withheld unreasonably.

1032 **7.08 SFD On-Call Waste and Bulky Waste Collection Service.** The Contractor shall provide
1033 SFD two on-call waste collection services to all SFD customers whose items or extra residential
1034 Solid waste have been placed in a disposable bag or container, or bundled, and placed within
1035 three feet of the curb, swale, paved surface of the public roadway, closest accessible roadway, or
1036 other such location agreed to by the Contractor and customer, that will provide safe and efficient
1037 accessibility to the Contractor's collection crew and vehicle. On-call waste collection service is
1038 limited to two cubic yards per collection.

1039 Each SFD customer is entitled to receive SFD on-call waste collection service up to two times
1040 per year. The collections shall be on-call. Collection of batteries, cell phones and CFLs can be
1041 arranged at no cost to the customer during an on-call cleanup. Contractor shall maintain
1042 adequate vehicles and personnel to meet demand of on-call pickups within two weeks of request.
1043 Each SFD customer is entitled to curbside collection of two free large bulky items (such as those
1044 specified in Exhibit B), such as appliances or furniture, at no charge per year. Additional items
1045 will be picked up for a fee as listed in bulky item price list in Exhibit B

1046 **7.09 On-Call Recycle Cleanups.** The Contractor shall provide on-call recycle cleanup
1047 service to each SFD customer whose Green waste or corrugated cardboard has been placed in a
1048 manner as set forth by the Contractor in the customer guide prepared and distributed by the
1049 Contractor to all customers.

1050 Each SFD customer is entitled to receive on-call recycle cleanup service up to three times per
1051 year (three Green waste pick ups or corrugated cardboard pick ups). Collection of batteries, cell
1052 phones and CFLs can be arranged at no cost to the customer during an on-call cleanup.

1053 **7.10 Holiday Tree Collection Service.** Contractor shall provide annual Holiday tree
1054 collection pick up and recycling at up to two locations designated by the City. This service shall
1055 be provided during the first three weeks of January of each year at a time and in a manner to be
1056 specified by Contractor in the annual holiday schedule brochure which shall be prepared by the
1057 Contractor and distributed to all SFD customers. Contractor shall provide an advance copy of
1058 the schedule to the City for its review and approval.

1059

Article 8. Multiple Family Dwelling Collection Services

8.01 Multiple Family Dwelling (MFD) Collection Services: General. The MFD collection service is governed by the following terms and conditions:

a. Hours and Days of Collection. MFD collection services shall be provided beginning no earlier than 6:00 a.m. and ending no later than 6:00 p.m., Monday through Saturday. The hours or days of collection may be extended due to extraordinary circumstances with the prior consent of the City Manager.

b. Manner of Collection. The Contractor shall provide collection service with as little disturbance as possible and shall leave any container at the same point it was collected, with the lid closed, without obstructing alleys, roadways, driveways, sidewalks or mailboxes.

8.02 MFD Solid Waste Collection Service. The Contractor shall provide MFD solid waste collection service to all MFD customers whose residential solid waste is properly contained in a container. This service shall be provided at least once every week on a scheduled route basis. The size of the container and the frequency (above the minimum) of collection shall be determined between the customer and the Contractor.

8.03 MFD Recycling Service. This service will be governed by the following terms and conditions.

a. Conditions of Service. The Contractor shall provide MFD recycling service to all MFD customers whose Recyclable materials are properly containerized and set out. The Contractor is not required to collect Recyclable materials if the customer does not segregate the Recyclable materials from residential Solid waste. If Recyclable materials are contaminated through commingling with Solid waste, the Contractor shall, if practical, separate the Solid waste from the Recyclable materials. The Recyclable materials shall then be collected and the Solid waste shall be left in the recycling container along with a non-collection notice. However, if the Recyclable materials and Solid waste are commingled to the extent that they cannot easily be separated by the Contractor or the nature of the residential Solid waste renders the entire recycling container contaminated, the Contractor may leave the container un-emptied along with a non-collection notice.

b. Frequency of Service. This service shall be provided a minimum of every other week on a scheduled route basis.

c. Changes to Work. If changes in law arise that necessitate any additions or deletions to the work, including the type of items included as Recyclable materials, the Contractor shall modify its operations to appropriately address the change in law. The parties shall attempt to negotiate any reasonable and necessary cost changes and shall enter into an Agreement amendment covering the modifications to the work to be performed and the modification to the rates and charges of Article 5. In the event there are no costs associated with adding materials to the recycling program, additional items can be added at anytime with City Manager approval.

1102 **8.04 MFD On-call Waste Collection Service.** Multifamily residents subscribing individually
1103 for service will receive two (2) on-call waste cleanups as described under Residential Services
1104 and two large item pickups per year. Contractor provides large item pick-up for a fee as
1105 described in Exhibit B. Bin service customers cannot request individual cleanups. All other
1106 guidelines apply as described in Residential Services.

1107 **8.05 On-Call Recycle Cleanups.** Multifamily residents subscribing individually for service
1108 will receive the same information as residential customers described in Residential Services for
1109 on-call recycle cleanups. Green waste exempt customers will not be eligible for Green waste
1110 cleanups. Those residents of multifamily complexes not subscribing to individual service will
1111 receive (2) cardboard on-call cleanups only.

1112 **8.06 Holiday Tree Collection Service.** Contractor shall provide annual Holiday tree
1113 collection pick up and recycling at up to two locations designated by the City. This service shall
1114 be provided during the first three weeks of January of each year at a time and in a manner to be
1115 specified by Contractor in the annual holiday schedule brochure which shall be prepared by the
1116 Contractor and distributed to all MFD customers. The brochure will also include a description of
1117 pick up services (such as cardboard or holiday tree roll-off bins) available to MFD customers for
1118 fee. Contractor shall provide advance copy of the schedule to the City for its review and
1119 approval.

1120

Article 9. Commercial and Industrial Collection Services

9.01 Commercial and Industrial Collection Service: General. The Contractor shall provide commercial collection services to all commercial and industrial customers. This service is governed by the following terms and conditions:

a. Provision of Service. Contractor shall provide commercial Solid waste and recycling service to all commercial customers.

b. Hours of Collection. Commercial collection service shall not occur between the hours of 6:00 p.m. and 4:00 a.m. within 300 feet of an inhabited dwelling unit. In order to reasonably accommodate nearby residents with noise complaints, Contractor shall adjust its collection times for specific business customers if the scheduled collection time is before 7:00 a.m. as long as the scheduled collection time can be adjusted without posing a safety risk.

c. Manner of Collection. The Contractor shall provide commercial collection service with as little disturbance as possible and shall leave any container at the same point it was originally located without obstructing alleys, roadways, driveways, sidewalks or mail boxes. Bin lids must be left in the closed position when garbage enclosure is not roofed. Contractor shall not collect garbage in the Rivertown Business District between the hours of 11:00 am and 10:00 pm of each day, except for a one (1) special service upon specific request by the customer or the City.

9.02 Commercial Solid waste Collection Service.

a. Conditions of Service. The Contractor shall provide commercial Solid waste collection service to all commercial and industrial customers whose Solid waste is properly contained in containers.

b. Size and Frequency of Service. Contractor shall provide Solid waste collection service as deemed necessary and as determined between the Contractor and the customer, but such service shall be received no less than one time per week. Collection service scheduled to fall on a holiday may be rescheduled as determined between the customer and the Contractor as long as the minimum frequency requirement is met. The frequency (above the minimum) of collection shall be determined between the customer and the Contractor.

The Contractor shall provide containers as part of the commercial collection service rates set forth in Exhibit B. The kind, size and number of containers furnished to particular customers shall be as determined mutually by the customer and company. Containers which are front loading bins, shall have lids. All containers with a capacity of one cubic yard or more shall meet applicable regulations for container safety and shall have reflective markings, shall be maintained in good repair with neatly and uniformly painted surfaces and shall prominently display the name and telephone number of Contractor. Containers shall be clearly marked and identified as belonging to Contractor. Contractor shall not be obligated to provide customers with compactor units, but will be obligated to charge the rates set by the City for the collection of compacted Solid waste.

The kind, size and number of containers and frequency of collection shall be sufficient to provide that no Solid waste need be placed outside the container.

1163 c. Non-Collection. Contractor is not required to collect any commercial Solid waste
1164 that is not placed in a container unless the Solid waste is outside the container as a result
1165 of overflow. If Solid waste is not collected, the Contractor shall affix a non-collection
1166 notice to the container.

1167

1168 **9.03 Commercial Recycling Service.** This service will be governed by the following terms
1169 and conditions:

1170 a. Conditions of Service. The Contractor shall provide commercial recycling service
1171 to all commercial customers whose Recyclable materials are properly containerized and
1172 set out. The Contractor is not required to collect Recyclable materials if the customer
1173 does not segregate the Recyclable materials from commercial Solid waste. If Recyclable
1174 materials are contaminated through commingling with Solid waste, the Contractor shall,
1175 if practical, separate the Solid waste from the Recyclable materials. The Recyclable
1176 materials shall then be collected and the Solid waste shall be left in the container along
1177 with a non-collection notice. However, if the Recyclable materials and Solid waste are
1178 commingled to the extent that they cannot easily be separated by the Contractor or the
1179 nature of the commercial Solid waste renders the entire recycling container contaminated,
1180 the Contractor may leave the container un-emptied along with a non-collection notice.

1181 b. Size and Frequency of Service. The Contractor shall provide this service as
1182 deemed necessary and as determined between the Contractor and the customer, but such
1183 service shall be received no less than every other week. Collection service scheduled to
1184 fall on a holiday may be rescheduled as determined between the customer and the
1185 Contractor as long as the minimum frequency requirement is met. Service may be
1186 provided by bin, cart or drop box at the option of the customer. The size of the container
1187 and the frequency (above the minimum) of collection shall be determined between the
1188 customer and the Contractor. The Contractor shall provide containers as part of the
1189 commercial collection service rates.

1190 c. Changes to Work. If changes in law arise that necessitate any additions or
1191 deletions to the work described here, including the type of items included as Recyclable
1192 materials, the parties shall negotiate any necessary cost changes and shall enter into an
1193 Agreement amendment covering the modifications to the work to be performed and the
1194 compensation to be paid before undertaking any changes or revisions to the work. In the
1195 event there are no costs associated with adding materials to the recycling program,
1196 additional items can be added at anytime with City Manager approval.

1197

1198 **9.04 Wet/Dry Collection**

1199 For commercial customers where the debris generated for collection is primarily dry material
1200 containing paper and metal, the Contractor shall route said customers on the recycling routes and
1201 process the material as recyclables. Wet material such as food waste or bathroom waste would
1202 be collected as Solid waste. For customers where there is no sorting done by the customer,
1203 garbage rates shall apply.

1204

1205 **Article 10. Contractor’s Office, Personnel and Collection**
1206 **Equipment**

1207 **10.01 Contractor’s Office.**

1208 a. Location; Telephone Service. Contractor shall designate a location in the City
1209 where bills may be paid by customers and a listed telephone number for the City of
1210 Antioch which does not involve a toll call for Antioch residents. Said billing payment
1211 location shall be open during normal business hours on all work days. The main office
1212 shall be open during normal business hours on all work days. The average hold time on
1213 customer calls should not exceed 60 seconds. The Contractor shall provide either a
1214 telephone answering service or mechanical device to receive customer inquiries during
1215 those times when the office is closed. Call back messages left on a business day before
1216 noon shall be returned by the end of the same day. Calls received after noon or after
1217 normal business hours shall be addressed before noon of the next business day.

1218 Contractor shall maintain the capability of responding to telephone calls: (1) in English,
1219 Spanish and such other languages as needed through a phone translation service; and (2)
1220 through telecommunications device for the deaf (TDD) services.

1221 Contractor shall install telephone equipment sufficient to handle the volume of calls
1222 typically experienced on the busiest days and such telephone equipment shall be capable
1223 of recording the responsiveness to each call.

1224 b. Emergency Contact. The Contractor shall provide the City Manager with an
1225 emergency phone number where the Contractor can be reached outside of the required
1226 office hours.

1227 **10.02 Contractor’s Personnel.**

1228 a. Qualified Personnel. The Contractor shall employ and assign qualified personnel
1229 to perform the services under this Agreement. The Contractor is responsible for ensuring
1230 that its employees comply with all applicable laws and regulations and meet all federal,
1231 state and local requirements related to their employment and position.

1232 Contractor shall provide suitable operations, health and safety training for all of its
1233 employees who use or operate equipment or who are otherwise directly involved in
1234 collection or other related operations.

1235 Contractor shall furnish such qualified drivers, mechanical, supervisory, clerical,
1236 management and other personnel as may be necessary to provide the services required by
1237 this Agreement in a satisfactory, safe, economical and efficient manner. If additional
1238 personnel are required to meet the service specifications of this Agreement, Contractor
1239 shall provide such additional personnel.

1240 b. Personnel Identification. Contractor’s field operations personnel, who normally
1241 come into direct contact with the public, including drivers, shall bear some means of
1242 individual photographic identification such as a name tag or identification card.

1243 c. Driver’s Qualifications. All drivers shall be trained and qualified in the operation
1244 of vehicles they operate and must possess a valid license, of the appropriate class, issued
1245 by the California Department of Motor Vehicles. Each driver of a collection vehicle shall

1246 at all times comply with all applicable state and federal laws, regulations and
1247 requirements.

1248 d. Customer Service Personnel. Contractor shall employ and provide ongoing
1249 training to the number of customer service representatives (CSRs) necessary to provide
1250 an excellent level of customer service. The primary responsibility of the CSRs is
1251 answering and addressing telephone and e-mail requests including for, but not limited to,
1252 new service, service changes, missed-pickups and other service-related complaints and
1253 billing inquiries. CSRs shall be fully trained to address the entire range of customer
1254 service issues and shall be fully trained in the use of telecommunications devices for the
1255 deaf services to communicate with hearing-impaired customers.

1256 e. Employee Courtesy. Contractor shall train its employees in customer courtesy,
1257 shall prohibit the use of loud or profane language, and shall instruct collection crews to
1258 perform the work quietly. Contractor shall use its best efforts to assure that all employees
1259 present a neat appearance and conduct themselves in a courteous manner. If any
1260 employee is found to be discourteous or not to be performing services in the manner
1261 required by this Agreement, Contractor shall take all necessary corrective measures
1262 including, but not limited to, transfer, discipline or termination.

1263 f. Employee Gratuities. Contractor shall not, nor shall it permit any agent,
1264 employee, or subcontractors employed by it to request, solicit, demand, or accept, either
1265 directly or indirectly, any extra compensation or gratuity.

1266 **10.03 Collection Equipment.**

1267 a. General Provisions. All equipment used by Contractor in the performance of
1268 services under this Agreement shall be of a high quality. The vehicles shall be designed
1269 and operated so as to prevent collected materials from escaping from the vehicles.
1270 Hoppers shall be closed on top and on all sides with screening material to prevent
1271 collected materials from leaking, blowing or falling from the vehicles. All trucks and
1272 containers shall be watertight and shall be operated so that liquids do not spill during
1273 collection or in transit.

1274 b. Registration. All vehicles used by Contractor in providing collection services,
1275 except those vehicles used solely on Contractor's premises, must be registered with the
1276 California Department of Motor Vehicles.

1277 c. Requirements for Equipment. The Contractor shall keep its vehicles in good order
1278 and repair. The Contractor shall clean and wash the trucks at a sufficient frequency to
1279 keep them clean and neat at all times. The cab and forepart of each truck shall be a
1280 uniform color. The Contractor shall paint its name on the side of each truck. The
1281 Contractor shall at all times possess and maintain adequate equipment to perform this
1282 Agreement.

1283 d. Reserve Equipment. The Contractor shall have available to it, at all times, reserve
1284 collection equipment which can be put into service and operation within one hour of any
1285 breakdown. Such reserve equipment shall correspond in size and capacity to the
1286 equipment used by the Contractor to perform the contractual duties.

1287 e. Vehicle Inspections. Contractor shall inspect each vehicle daily to ensure that all
1288 equipment is operating properly. Vehicles which are not operating properly shall be taken
1289 out of service until they are repaired and do operate properly. Contractor shall perform

1290 all scheduled maintenance functions in accordance with the manufacturer's specifications
1291 and schedule. Contractor shall keep accurate records of all vehicle maintenance, recorded
1292 according to date and mileage and shall make such records available to the City upon
1293 request.

1294 f. Operation. Vehicles shall be operated in compliance with the California Vehicle
1295 Code, and all applicable safety and local ordinances. Contractor shall not load vehicles in
1296 excess of the manufacturer's recommendations or limitations imposed by state or local
1297 weight restrictions on vehicles.

1298 g. Low Emissions Requirement. Contractor shall convert or retrofit its collection
1299 fleet to use the most cost-effective means to reduce air pollutant emissions and be in full
1300 compliance with local, state and federal clean air requirements, including, but by no
1301 means limited to, the proposed California Air Resources Board Heavy Duty Engine
1302 Standards to be contained in CCR Title 13, Section 2020 et seq., and the Federal EPA's
1303 Highway Diesel Fuel Sulfur regulations.

1304 Contractor's proposal, and Contractor's compensation subsequently negotiated with City
1305 reflect a combination of continued use of existing vehicles, immediate purchase of new
1306 vehicles, and additional introduction of new vehicles during the term of the Agreement.
1307 It is intended that Contractor's immediate purchase of new vehicles, coupled with the
1308 occasional additional purchase of vehicles during this Agreement, will allow Contractor
1309 to meet the applicable low emissions or clean air requirements, without additional
1310 replacement or major modification of the newly purchased vehicles. Should the
1311 Contractor's net capital or operational costs for vehicle purchase, lease, maintenance, or
1312 repair materially change due to the requirements of this subsection 10.03.g. from those
1313 negotiated and agreed upon, the additional costs shall not be treated as extraordinary
1314 costs providing a basis for a rate adjustment, but shall be treated as a disallowed expense
1315 for purposes of setting collection rates.

1316 If, and only if, a material change in law after the date of this Agreement requires that the
1317 vehicles purchased during the term of this Agreement must be modified or replaced to
1318 meet new clean air requirements, Contractor may apply for a special rate adjustment
1319 pursuant to Section 5.07 (Significantly Changed Circumstances) of this Agreement.
1320 Knowledge shall be imputed to Contractor of the current and proposed regulations, both
1321 state and federal, relating to clean fuel and/or low emissions requirements for Solid waste
1322 or similar vehicles which are in effect or expected to become effective during the term of
1323 this Agreement. Any impact from such current or proposed regulations shall not
1324 constitute a material change in law.

1325

1326 **Article 11. Record Keeping and Reporting Requirements**

1327 **11.01 Records, Reports and Compilations.**

1328 a. Confidentiality. Certain financial records and data prepared by Contractor or its
1329 Affiliates, relating to the cost of Contractor providing services under this Agreement,
1330 may contain or constitute confidential trade secret information which is proprietary to
1331 Contractor or its Affiliates. Contractor shall designate any such information as
1332 “Confidential” if and when it is inspected by the City and its agents. The City agrees to
1333 maintain the confidentiality of such records and data to the full extent permitted by law.
1334 The City agrees to notify Contractor of any request from any third party files legal action
1335 against the City seeking release of such records and data, City shall tender the defense of
1336 such action to Contractor and Contractor shall indemnify and hold the City harmless from
1337 any and all expenses associated with the defense of such action, including, without
1338 limitation, the City’s attorneys’ fees and costs and any attorneys fees awards or other
1339 judgments against the City.

1340 b. Records. Contractor shall maintain such accounting, statistical and other records
1341 related to its performance under this Agreement as shall be necessary to develop the
1342 financial statements and other reports required by this Agreement. Also, Contractor
1343 agrees to take direction from the City on matters related to this Agreement, conduct data
1344 collection, information and record keeping, and reporting activities needed to comply
1345 with applicable laws and regulations and to meet the reporting and Solid waste program
1346 management needs of the City and AB 939. To this extent, such requirements set out in
1347 this and other articles of this Agreement shall not be considered limiting or necessarily
1348 complete. In particular, this article is intended to only highlight the general nature of
1349 records and reports and is not meant to define exactly what the records and reports are to
1350 be and their content. Further, with the written direction or approval of the City Manager,
1351 the records and reports to be maintained and provided by Contractor in accordance with
1352 this and other articles of the Agreement may be adjusted in number, format, or frequency.

1353 c. Records Access. The City may designate one or more City employee(s) or
1354 independent contractor(s) who shall have full access to the Contractor’s accounting,
1355 statistical and other records. The City’s employee(s) or independent contractors shall be
1356 subject to such reasonable disclosure limitation as may be necessary to protect
1357 Contractor’s trade secrets. These limitations, if necessary, shall be negotiated in good
1358 faith between Contractor and the City and commemorated in a separate legally binding
1359 document.

1360 d. Compiled Financial Statements. Contractor shall furnish to the designated
1361 employees or independent contractors a compilation prepared by Contractor, which shall
1362 include:

- 1363 • an examination of the consolidated balance sheets;
- 1364 • statement of income;
- 1365 • retained earnings;
- 1366 • statement of changes in financial position and/or statement of cash flows of
1367 Contractor and its subsidiaries, reflecting all revenues derived by Contractor
1368 from the provision of collection services under this Agreement;

- 1369
- 1370
- information needed by the City or its consultant for reporting to the Waste Management Board; and
- 1371
- such schedules or additional statements as may be required to reasonably
- 1372
- evaluate all costs and revenues attributable to, or derived from, operations under
- 1373
- this Agreement.

1374 The compilation shall be furnished to the City within 30 days if a request by City is made

1375 in writing.

1376 e. Inspection of Records. The designated City employees or independent contractors

1377 shall have the right to inspect and review the books, records and accounts of Contractor,

1378 including but not limited to Contractor’s income tax returns, payroll tax reports, and other

1379 documents or records required under this Agreement, at all times during the term of this

1380 Agreement.

1381 f. Contractor’s Agreements with Labor Organizations. The Contractor shall notify

1382 the City of the expiration dates for all labor contracts and inform the City of any issues

1383 relating to the collective bargaining process that could affect the Contractor’s ability to

1384 perform under the terms of this Agreement.

1385 g. Statement of Number of Customers. The Contractor shall furnish to the City semi-

1386 annually a signed statement setting forth the Contractor’s total number of SFD customers,

1387 MFD customers, commercial and industrial customers in the City as of the date of the

1388 statement. The statement shall also indicate the breakdown of the number of MFD,

1389 commercial and industrial customers receiving Recycling and Green waste collection

1390 services.

1391 **11.02 Record Retention.** Contractor shall maintain any and all letters, books of account,

1392 invoices, vouchers, canceled checks, and other records or documents evidencing or relating to

1393 charges for services or expenditures and disbursements charged to under this Agreement.

1394 Contractor shall retain all such records for at least three years after termination or expiration of

1395 this Agreement.

1396 Contractor shall maintain all documents and records under this Agreement and shall make such

1397 documents and records available for inspection or audit, at any time during regular business

1398 hours, upon written request by the City Manager, City Attorney, City Auditor, or a designated

1399 representative of any of them. Copies of such documents shall be provided to the City for

1400 inspection at the City offices when it is practical to do so. Otherwise, unless an alternative site is

1401 mutually agreed upon, the records shall be available at Contractor’s address indicated for receipt

1402 of notices in this Agreement.

1403 Where City has reason to believe that such records or documents may be lost or discarded due to

1404 the dissolution, disbandment or termination of Contractor’s business, City may, by written

1405 request or demand of any of the above named officers, require that custody of the records be

1406 given to City and that the records and documents be maintained in City Hall. Access to such

1407 sequestered records and documents shall be granted to any party authorized by Contractor,

1408 Contractor’s representatives, or Contractor’s successor-in-interest.

1409 All records under the 2005 Agreement shall be available for inspection and audit and maintained

1410 for a period of three years after the effective date of this Agreement.

1411 **11.03 Additional Reporting.** The Contractor shall furnish the City with any additional reports
1412 as may reasonably be required, such reports to be prepared within a reasonable time following
1413 the reporting period.

1414 Records shall be maintained in forms and by methods that facilitate flexible use of data
1415 contained in them to structure reports, as needed. Reports are intended to compile recorded data
1416 into useful forms of information that can be used to, among other things:

- 1417 a. Evaluate past and expected progress towards achieving goals and objectives;
- 1418 b. Determine needs for adjustment to programs; and,
- 1419 c. Evaluate customer service and complaints.

1420 **11.04 Solid waste Records.** Upon request by City, Contractor shall maintain Solid waste
1421 service and diversion records for all services provided within City relating to:

- 1422 a. Customer services and billing information (including names and addresses);
- 1423 b. Monthly tonnage figures by City for Solid waste collected, transferred, processed
1424 and disposed of by the Contractor, and by type of generator (commercial, industrial,
1425 multi-family, and residential).
- 1426 c. Residential on-call clean-up tonnages disposed and diverted and the number of
1427 clean-ups completed;
- 1428 d. City services by agency, including City facilities and special events at which
1429 collection occurs;
- 1430 e. Routes and route maps;
- 1431 f. Facilities, equipment and personnel used;
- 1432 g. Processing and disposal of Solid waste;
- 1433 h. Complaints;
- 1434 i. Missed pick ups;
- 1435 j. C&D diversion;
- 1436 k. Transfer station diversion;
- 1437 l. Landfill diversion;
- 1438 m. Holiday tree tonnage;
- 1439 n. E-waste tonnage collected;
- 1440 o. Bulky Items diverted tonnage.
- 1441 p. Litter/Illegal Dumping debris collected

1442 **11.05 CERCLA Disposal Records.** City views the ability to defend against Comprehensive
1443 Environmental Response, Compensation and Liability Act (CERCLA) and related litigation as a
1444 matter of great importance. For this reason, the City regards the ability to prove where Solid
1445 waste collected in the City was taken for transfer or disposal, as well as where it was not taken,
1446 to be matters of concern. Contractor shall maintain, retain and preserve records which can
1447 establish where Solid waste collected in the City was disposed (and therefore establish where it
1448 was not) under this Agreement and the 2005 Agreement. This provision shall survive the
1449 expiration or earlier termination of this Agreement and the 2005 Agreement. Contractor shall

1450 maintain these records for a minimum of ten years beyond expiration or earlier termination of
1451 this Agreement, in an organized and indexed manner, and whether in physical (e.g. weigh tickets)
1452 and/or electronic form. City, however may elect to obtain such physical and electronic records at
1453 the expiration of the Agreement, or upon termination.

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Article 12. Service Inquiries, Complaints and Quality of Service.

12.01 Service Inquiries and Complaints.

a. Inquiries and Complaints. All service inquiries and complaints shall be directed to the Contractor. A representative of the Contractor shall be available to receive the complaints during normal business hours. All service complaints will be handled by the Contractor in a courteous, prompt and efficient manner. If there is a dispute between the Contractor and a customer, the matter will be reviewed and a decision made by the City Manager.

b. Customer Service Log. The Contractor will utilize the customer service log to maintain a record of all inquiries and complaints, in a manner prescribed by the City. City may obtain a copy of a service log or inspect same at any time during normal business hours.

c. Resolving Disputes. Contractor agrees that it is in the best interest of the City that all residential waste and Recyclable materials be collected on the scheduled collection day. Accordingly, missed collections will normally be collected as set forth in Articles 7 and 8 above regardless of the reason that the collection was missed. However, if a customer requests missed collection service more than two times in any consecutive two month period, the City Manager will work with the Contractor to determine an appropriate resolution to that situation. If the Contractor believes a complaint to be without merit, the Contractor shall notify the City Manager, either by fax or e-mail. The City Manager will investigate all disputed complaints and render a decision.

12.02. Quality of Service.

a. Intent. Contractor acknowledges and agrees that one of City's primary goals in entering into this Agreement is to ensure that the collection services are of the highest caliber, that customer satisfaction remains at the highest level, that maximum diversion levels are achieved, and that materials collected are put to the highest and best use.

b. Liquidated Damages. It is Contractor's duty to perform services under this Agreement in such a manner as to implement the goals set forth in subsection a. above. If Contractor fails to adequately perform the services set forth in this Agreement, City and its residents will be damaged, disadvantaged or denied the full benefit intended by the terms of this Agreement. City finds, and Contractor agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by City as a result of a breach by Contractor of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such breaches, and other remedies is, at best, a means of future correction

1499 and not remedies which make the public whole for past breaches. However, a single
 1500 breach or pattern of breaches may result in the termination of this Agreement as described
 1501 in Section 14.02.

1502 c. Service Performance Standards; Liquidated Damages for Failure to Meet
 1503 Standards. The parties further acknowledge that consistent, reliable Solid waste
 1504 collection service is of utmost importance to City and that City has considered and relied
 1505 on Contractor’s representations as to its quality of service commitment in awarding the
 1506 Agreement to it. The parties further recognize that some quantified standards of
 1507 performance are necessary and appropriate to ensure consistent and reliable service and
 1508 performance. The parties further recognize that if Contractor fails to achieve the
 1509 performance standards, or fails to submit required documents in a timely manner, City
 1510 and its residents will suffer damages and that it is and will be impractical and extremely
 1511 difficult to ascertain and determine the exact amount of damages that City will suffer.
 1512 Therefore, without prejudice to City’s right to treat such non-performance as an event of
 1513 default under this Article 12, the parties agree that the following liquidated damage
 1514 amounts represent a reasonable estimate of the amount of such damages considering all
 1515 of the circumstances existing on the date of this Agreement, including the relationship of
 1516 the sums to the range of harm to City that reasonably could be anticipated and the
 1517 anticipation that proof of actual damages would be costly or inconvenient. In placing
 1518 their initials at the places provided, each party specifically confirms the accuracy of the
 1519 statements made above and the fact that each party has had ample opportunity to consult
 1520 with legal counsel and obtain an explanation of the liquidated damage provisions at the
 1521 time that the Agreement was made.

1522 **Contractor** **City**
 1523 **Initial Here** _____ **Initial Here** _____

1524 Contractor agrees to pay (as liquidated damages and not as a penalty) the amounts set
 1525 forth below:

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| | | |
|----|---|--|
| a. | Failure to promptly repair damage to customer property caused by Contractor or its personnel. | \$500.00 per incident per location. |
| b. | Failure to maintain or timely submit to City all documents and reports required under the provisions of this Agreement. | \$500.00 per incident per day. |
| c. | Failure to comply with the hours of operation as required by this Agreement. | \$500.00 per incident per day. |
| d. | Failure or neglect to complete at least ninety percent (90%) of each route on the regular scheduled collection service work day. | \$1,000.00 for each route not completed. |
| e. | For each failure to collect Solid waste, that has been properly set out for collection, from an established customer account on the scheduled collection day and not thereafter collected within one working day. | \$150.00 |

| | | |
|----|--|-----------------------|
| f. | For each failure to forward unresolved customer complaints to City pursuant to Section 12.01 (c) | \$500.00 |
| g. | Failure to provide cart (s), bins(s) or containers to an existing customer on next service day and new customer within three days. | \$200.00 |
| h. | For each failure to provide an on-call cleanup as provided in Section 7.08, 7.09, 8.04, 8.05 | \$150.00 |
| i. | Failure to provide collection as required for City-sponsored special events as provided for in Section 4.11. | \$1,000.00 per event. |
| j. | Keeping fraudulent or inaccurate records or providing fraudulent records with regard to customer complaint logging, tracking and resolution. | \$10,000 per incident |
| k. | Failure to maintain an accurate customer complaint log or accurate records. | \$200.00 |

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Prior to assessing liquidated damages, the City shall give Contractor written notice of any alleged breach of this Agreement that the City believes justifies the imposition of liquidated damages. Contractor shall have ten (10) days after its receipt of said notice to correct or cure the breach described in the City’s notice. If the Contractor fails or refuses to correct or cure the breach, then the City may thereafter impose liquidated damages on Contractor for any breaches occurring after the ten day notice period and those listed in the written notice and consistent with the other provisions of this Agreement.

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d. Procedure for Review of Liquidated Damages. The City Manager may assess liquidated damages under this Article 12 on a monthly or less frequent basis. At the end of each period, the City Manager shall issue a written notice to Contractor (“notice of assessment”) of the liquidated damages assessed and the basis for each assessment.

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The assessment shall become final unless, within ten calendar days of the date of the notice of assessment, Contractor provides a written request for a meeting with the City Manager to present evidence that the assessment should not be made.

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The City Manager shall schedule a meeting between Contractor and the City Manager as soon as reasonably possible after timely receipt of Contractor’s request. The City Manager shall review Contractor’s evidence and render a decision sustaining or reversing the administrative charges as soon as reasonably possible after the meeting. Written notice of the decision shall be provided to Contractor. An appeal of the City Manager’s decision may be taken to the Board of Administrative Appeals pursuant to procedures set forth in AMC Chapter 4 of Title 1.

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1553 If Contractor does not submit a written request for a meeting within ten calendar days of
1554 the date of the notice of assessment, the City Manager’s determination shall be final and
1555 Contractor shall make payment within five calendar days.

1556 City’s assessment or collection of liquidated damages does not prevent City from
1557 exercising any other right or remedy, including the right to terminate this Agreement, for
1558 Contractor’s failure to perform the work and services in the manner set forth in this
1559 Agreement.

1560 **12.03 City Cost Recovery.** In addition to the liquidated damages and other remedies set forth
1561 herein, the City may bill the Contractor for fees and costs associated with addressing issues
1562 related to verified franchise violations that have not been remedied by the Contractor within a
1563 reasonable period of time, and City efforts to resolve complaints against Contractor. In instances
1564 where no liquidated damage is provided for, or no liquidated damage is imposed, and the
1565 Contractor remains in non-compliance after the City has given Contractor reasonable time to
1566 resolve the complaints, the City may require Contractor to reimburse City for the reasonable
1567 costs associated with City staff addressing verified violations of the Agreement, including, but
1568 not limited to, failures to properly resolve customer complaints and activities undertaken to force
1569 the terms of this Agreement. The costs to be recovered may include fully loaded personnel costs,
1570 direct costs incurred by the City, and third party costs incurred by the City when reasonably
1571 necessary to address Contractor’s failure to comply with all terms of this Agreement.

1572 **12.04 Performance Review.** City may at its sole discretion hold a public hearing at which
1573 Contractor shall be present and shall participate, to review its collection system services and
1574 performance. Performance review hearings may be scheduled by City at any time deemed
1575 appropriate by City. The purpose of the hearing is to provide for a discussion and review of
1576 technological, economic, and regulatory changes in order to achieve a continuing, advanced
1577 Solid waste system; and to ensure services are being provided with adequate quality,
1578 effectiveness and economy. City may require Contractor to distribute a customer satisfaction
1579 survey to all customers receiving service under this Agreement, which survey shall be approved
1580 by City prior to distribution.

1581 Topics for discussion and review at the performance review hearing may include, but shall not be
1582 limited to, services provided, feasibility of providing new services, application of new
1583 technologies, customer complaints, amendments to this Agreement, developments in the law,
1584 new initiatives for meeting or exceeding AB 939’s goals, regulatory constraints and Contractor
1585 performance. City and Contractor may each select additional topics for discussion at any
1586 performance review hearing.

1587 At City’s request, Contractor shall, at a minimum, submit a report to City indicating the
1588 following:

1589 a. Analysis of results of customer satisfaction survey, broken down by
1590 customer category and level of service.

1591 b. Changes recommended and/or new services to improve City’s ability to
1592 continue to meet the goals of AB 939 and to contain costs and minimize impacts
1593 on rates.

1594 c. Any specific plans for provision of changed or new services by
1595 Contractor, including modifications to service to meet changing circumstances
1596 and customer preferences.

1597 This report shall be reviewed in a public hearing(s). Contractor may submit other relevant
1598 performance information and reports for consideration. City may request Contractor to submit
1599 additional specific information for the hearing. In addition, any customer may submit comments
1600 or complaints during or before the hearing, either orally or in writing, and these shall be
1601 considered.

1602 Not later than 60 days after the conclusion of each performance review hearing, City may issue a
1603 report. As a result of the review, City may require Contractor to provide expanded or new
1604 services within a reasonable time and for reasonable rates and compensation and City may direct
1605 or take corrective actions for any performance inadequacies.

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1607 **Article 13. Performance Bond; Insurance; Indemnification.**

1608 **13.01 Performance Bond.** Upon execution of this Agreement, the Contractor shall furnish to
1609 the City, and keep current, a performance bond, or other form of financial assurance acceptable
1610 to City, in the amount of \$25,000 for faithful performance of this Agreement; however, if
1611 Contractor proposes to assign this Agreement the amount of performance bond may be
1612 unilaterally increased by City roughly equal to three months revenue under this Agreement for
1613 the faithful performance of its terms.

1614 **13.02 Insurance.**

1615 a. Insurance Policies. Contractor shall secure and maintain throughout the term of
1616 this Agreement, insurance against claims for injuries to persons or damages to property
1617 which may arise from or in connection with Contractor’s performance of work or services
1618 under this Agreement. Contractor’s performance of work or services shall include
1619 performance by Contractor’s employees, agents, representatives and subcontractors.

1620 b. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1621 1. The most recent editions of Insurance Services Office form number GL
1622 0002 covering Commercial or Comprehensive General Liability and Insurance
1623 Services Office form number GL 0404 covering Broad Form Comprehensive
1624 General Liability; or Insurance Services Office Commercial General Liability
1625 coverage (“occurrence” form CG 0001).

1626 2. The most recent editions of Insurance Services Office form number CA
1627 0001 covering Automobile Liability, code 1 “any auto” and endorsement CA
1628 0025.

1629 3. Worker’s Compensation insurance as required by the Labor Code of the
1630 State of California and Employer’s Liability Insurance.

1631 c. Minimum Limits of Insurance. Contractor shall maintain limits no less than:

1632 1. Commercial or Comprehensive General Liability: \$5,000,000 combined
1633 single limit per occurrence for bodily injury, personal injury and property damage.

1634 2. Automobile Liability: \$5,000,000 combined single limit per accident for
1635 bodily injury and property damage.

1636 3. Workers’ Compensation and Employers Liability: Workers compensation
1637 limits as required by the Labor Code of the State of California and Employers
1638 Liability limits of \$1,000,000 per accident.

1639 e. Other Insurance Provisions. The policies are to contain, or be endorsed to contain,
1640 the following provisions:

1641 1. General Liability and Automobile Liability Coverages:

1642 (a) The City, its officials, directors, employees and volunteers are to be
1643 covered as additional insureds as respects: liability arising out of activities
1644 performed by or on behalf of Contractor; products and completed
1645 operations of Contractor; premises owned, leased or used by Contractor;
1646 or automobiles owned, leased, hired or borrowed by Contractor. The

1647 coverage shall contain no special limitations on the scope of protection
1648 afforded to the City, its officials, directors, employees or volunteers.

1649 (b) Contractor's insurance coverage shall be primary insurance as
1650 respects City, its officials, employees and volunteers. Any insurance or
1651 self-insurance maintained by City, its officials, employees or volunteers
1652 shall be excess of Contractor's insurance and shall not contribute with it.

1653 (c) Any failure to comply with reporting provisions of the policies
1654 shall not affect coverage provided to City, its officials, employees or
1655 volunteers.

1656 (d) Coverage shall state that Contractor's insurance shall apply
1657 separately to each insured against whom claim is made or suit is brought,
1658 except with respect to the limits of the insurer's liability.

1659 2. Workers' Compensation and Employers Liability Coverage. The insurer
1660 shall agree to waive all rights of subrogation against City, its officials, employees
1661 and volunteers for losses arising from work performed by Contractor for City
1662 except for the sole negligence of City.

1663 3. All Coverages. Each insurance policy required by this clause shall be
1664 endorsed to state that the coverage shall not be suspended, voided, canceled by
1665 either party, except after thirty days' prior written notice by certified mail, return
1666 receipts requested, has been given to City.

1667 f. Acceptability of Insurers. The insurance policies required by this section shall be
1668 issued by an insurance company or companies admitted to do business in the State of
1669 California and with a rating in the most recent edition of Best's Insurance Reports of size
1670 category VII or larger and a rating classification of A or better. To the extent permitted by
1671 law, all or any part of the required insurance may be provided under a plan of self-
1672 insurance.

1673 g. Verification of Coverage. Contractor shall annually furnish City with certificates
1674 of insurance and with original endorsements affecting coverage required by this clause.
1675 The certificates and endorsements for each insurance policy are to be signed by a person
1676 authorized by that insurer to bind coverage on its behalf. The certificates and
1677 endorsements are to be on forms provided by or acceptable to City and are to be received
1678 and approved by City before work commences.

1679 h. Subcontractor. Contractor shall include all subcontractors as insureds under its
1680 policies or shall furnish separate certificates and endorsements for each subcontractor. All
1681 coverages for subcontractors shall be subject to all of the requirements stated herein.

1682 i. Rights of Subrogation. All required insurance policies shall preclude any
1683 underwriter's rights of recovery or subrogation against City except for the sole
1684 negligence of City with the express intention of the parties being that the required
1685 insurance coverage protects both parties as the primary coverage for any and all losses
1686 covered by the above-described insurance. Contractor shall ensure that any companies
1687 issuing insurance to cover the requirements contained in this Agreement agree that they
1688 shall have no recourse against City for payment or assessments in any form on any policy
1689 of insurance. The clauses 'Other Insurance Provisions' and 'Insured Duties in the Event

1690 of an Occurrence, Claim or Suit’ as it appears in any policy of insurance in which City is
1691 named as an additional insured shall not apply to City.

1692 **13.03 Indemnification.**

1693 a. Indemnification. Contractor shall indemnify, defend and hold harmless City, its
1694 officers, directors, employees, volunteers and agents (collectively “indemnities”) from
1695 and against any and all loss, liability, penalty, forfeiture, claim, demand, action,
1696 proceeding or suit of any and every kind and description (including, but not limited to,
1697 injury to and death of any person and damage to property, or for contribution or
1698 indemnity claimed by third parties) arising or resulting from and in any way connected
1699 with:

1700 (1) the alleged negligence or willful misconduct of Contractor, its officers,
1701 employees, agents and/or subcontractors in performing services under this
1702 Agreement;

1703 (2) the failure of Contractor, its officers, employees, agents and/or applicable laws
1704 (including, without limitation, environmental laws) and regulations, and/or
1705 applicable permits and licenses;

1706 (3) the acts of Contractor, its officers, employees, agents and/or subcontractors in
1707 performing collection services under this Agreement for which strict liability is
1708 imposed by law (including, without limitation, environmental laws).

1709
1710 The foregoing indemnity applies regardless of whether the loss, liability, penalty,
1711 forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is also caused
1712 in part by any of the indemnities’ negligence, except this indemnity shall be limited to
1713 exclude coverage for intentional wrongful acts and active negligence of indemnities.
1714 Contractor further agrees to and shall, upon demand of City, at Contractor’s sole cost and
1715 expense, defend (with attorneys acceptable to the City) the City, its officers, directors,
1716 employees, and agents against any claims, actions, suits or other proceedings, whether
1717 judicial, quasi-judicial or administrative in nature, arising or resulting from any events
1718 described in the immediately preceding paragraph.

1719 Contractor’s duty to indemnify and defend shall survive the expiration or earlier
1720 termination of this Agreement.

1721 b. Hazardous Substances Indemnification. Contractor shall indemnify, defend with
1722 counsel selected by City, protect and hold harmless the City, its officers, directors,
1723 employees, volunteers, and agents (collectively, “indemnitees”) from and against all
1724 claims, damages (including but not limited to special, consequential, natural resources
1725 and punitive damages), injuries, costs, (including without limit any and all responses,
1726 remediation and removal costs), losses, demands, debts, liens, liabilities, causes of action,
1727 suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses
1728 (including without limit attorneys’ and expert witness fees and costs incurred in
1729 connection with defending against any of the foregoing or in enforcing this indemnity),
1730 (collectively, “damages”) of any kind whatsoever paid, incurred or suffered by, or
1731 asserted against, indemnitees arising from or attributable to the acts or omissions of
1732 Contractor, its officers, directors, employees, companies or agents, whether or not
1733 negligent or otherwise culpable, in connection with or related to the performance of this

1734 Agreement, including without limit damages arising from or attributable to any
1735 operations, repair, clean-up or detoxification, or preparation and implementation of any
1736 removal, remedial, response, closure, post-closure or other plan (regardless of whether
1737 undertaken due to governmental action) concerning any hazardous substance, hazardous
1738 waste, and/or house hazardous waste (collectively, “waste”) at any places where
1739 Contractor transports, processes, stores or disposes of the Solid waste, and/or
1740 construction and street debris, or other waste collected under this Agreement. This
1741 indemnity afforded indemnitees, shall only be limited to exclude coverage for intentional
1742 wrongful acts and active negligence of indemnitees. The foregoing indemnity is intended
1743 to operate as an agreement pursuant to Section 107(e) of the Comprehensive
1744 Environmental Response, Compensation and Liability Act, CERCLA, 42 USC §9607(e)
1745 and California Health and Safety Code §25364, to defend, protect, hold harmless, and
1746 indemnify City from liability. This provision is in addition to all other provision in this
1747 Agreement and is intended to survive the end of the term of this Agreement. Nothing in
1748 this paragraph shall prevent the Contractor from seeking indemnification or contribution
1749 from persons or entities other than indemnitees, for any liabilities incurred by the
1750 Contractor, or the indemnitees. As appropriate, the parent company should provide the
1751 guarantees necessary to meet this provision. All costs of Contractor incurred in providing
1752 this indemnification and in defense of itself and related party entities, shall be disallowed
1753 for purposes of setting rates under this Agreement.

1754 c. Proposition 218 Indemnification. City intends to comply with all applicable laws
1755 concerning the setting of maximum rates under this Agreement. Nonetheless, Contractor
1756 shall indemnify, defend and hold harmless the City, their officers, employees, agents and
1757 volunteers, (collectively, indemnitees) from and against all claims, damages, injuries,
1758 losses, costs, including demands, debts, liens, liabilities, causes of action, suits, legal or
1759 administrative proceedings, interest fines, charges, penalties and expenses (including
1760 attorneys’ and expert witness fees, expenditures for investigation, and administration) and
1761 costs or losses of any kind whatsoever paid, imposed upon, endured or suffered by or
1762 assessed against Contractor or any of the indemnitees resulting in any form from the
1763 City’s setting of maximum rates for service under this Agreement or in connection with
1764 the application of California Constitution Article XIII C and Article XIII D to the
1765 imposition, payment or collection of rates and fees for services provided by Contractor
1766 under this Agreement. Nothing herein is intended to imply that California Constitution
1767 Articles XIII C or XIII D, apply to the setting of rates for the services provided under this
1768 Agreement, rather this section is provided merely to allocate risk of loss as between the
1769 parties.

1770 d. AB 939/SB1016 Indemnification. The Contractor agrees to indemnify and hold
1771 harmless City, its officers, directors, employees and agents from and against all fines
1772 and/or penalties imposed by the CalRecycle if the source reduction and recycling goals or
1773 any other requirement of AB 939/SB1016 or any future diversion or disposal
1774 requirements are not met by City with respect to the waste stream collected under this
1775 Agreement and such failure is due to the failure of Contractor to meet any obligation
1776 under this Agreement, including delays in providing information that prevents City from
1777 submitting reports required by AB 939/SB1016 in a timely manner.

1778 In interpreting the foregoing AB 939/SB1016 indemnification provision, Contractor and
1779 City are cognizant of Public Resources Code 40059.1 and agree that the intent of this
1780 Agreement is to provide Contractor with the breadth of rights and responsibilities to

1781 allow the City to meet its AB 939 diversion requirements through implementation of
1782 Contractor's programs. The program and services to be carried out by Contractor under
1783 this Agreement, as more particularly outlined in the service specifications (Exhibit A),
1784 are intended and expected to allow the City to meet its AB 939 diversion requirements,
1785 provided all programs are carried out consistently and competently, and with an
1786 aggressive program of outreach and customer education. Reliance by the City on
1787 Contractor's ability to provide programs and services that will consistently provide for
1788 City's compliance with AB 939 diversion requirements constitutes a material
1789 consideration for City to grant the exclusive rights and privileges contained herein.
1790

1791 **ARTICLE 14. DEFAULT AND REMEDIES**

1792 **14.01 Events of Default.** All provisions of the franchise and this Agreement to be performed
1793 by Contractor are considered material. Each of the following shall constitute an event of default.

1794 a. Fraud or Deceit. If Contractor practices, or attempts to practice, any fraud and/or
1795 deceit upon City.

1796 b. Repeated Pattern of Breaches. If there is a pattern of breaches over time such that
1797 in combination, they constitute a significant failure by Contractor to perform its
1798 obligations.

1799 c. Insolvency or Bankruptcy. If Contractor becomes insolvent, unable, or unwilling
1800 to pay its debts, or upon listing of an order for relief in favor of Contractor in a
1801 bankruptcy proceeding.

1802 d. Failure to Maintain Coverage. If Contractor fails to provide or maintain in full
1803 force and affect the workers' compensation, liability, or indemnification coverage as
1804 required by this Agreement.

1805 e. Violations of Regulation. If Contractor, its facilities, transfer station or disposal
1806 site, fall out of full regulatory compliance or Contractor violates any permits, orders or
1807 filings of any regulatory body having jurisdiction over Contractor which violation or non-
1808 compliance materially affects the Contractor's ability to perform under this Agreement,
1809 provided that Contractor may contest any such orders or filings by appropriate
1810 proceedings conducted in good faith, in which case no breach of the Agreement shall be
1811 deemed to have occurred during the pendency of the contestation or appeal, to the extent
1812 Contractor is able to adequately perform during that period.

1813 f. Result of Performance Review. Failure to provide information as requested for a
1814 performance review, or failure to adequately perform as revealed by a performance
1815 review, as provided in Section 12.04.

1816 g. Failure to Perform. If Contractor ceases to provide collection, transfer, transport,
1817 processing, or disposal services as required under this Agreement for a period of two
1818 consecutive business days or more, including without limit, cessation of services due to
1819 work stoppages or slowdowns, strikes, sickouts, picketing or concerted job actions by
1820 Contractor's employees.

1821 h. Failure to Pay. If Contractor fails to make any payments required under this
1822 Agreement.

1823 i. Failure to Maintain or Supply Records. If Contractor fails to maintain and/or to
1824 provide City with required information, reports, and/or records in a timely manner as
1825 provided for in this Agreement.

1826 j. False or Misleading Statements. Any representation or disclosure made to City
1827 by Contractor in connection with or as an inducement to entering into this Agreement, or
1828 any future amendment to this Agreement or in conjunction with any application for a rate
1829 increase, which proves to be false or misleading in any material respect as of the time
1830 such representation or disclosure is made, whether or not any such representation or
1831 disclosure appears as part of this Agreement.

1832 k. Attachment. There is a seizure or attachment of, or levy on, the operating
1833 equipment of Contractor, including without limits its equipment, maintenance or office
1834 facilities, or any part thereof.

1835 l. Failure to Provide Assurance of Performance. If Contractor fails to provide
1836 reasonable assurances of performance as required under Section 13.01.

1837 m. Criminal Activity of Contractor. Should Contractor or any of its officers,
1838 directors or contract manager, or others in position to supervise or influence actions under
1839 this Agreement, be “found guilty” of felonious conduct relating to its obligations, or other
1840 felonious conduct at any of Contractor’s operations. The term “found guilty” shall be
1841 deemed to include any judicial determination that Contractor or any of Contractor’s
1842 officers, directors or employees is guilty, and any admission of guilt by Contractor, or
1843 any of Contractor’s officers, directors or employees including, the pleas of “guilty,”
1844 “nolo contendere,” “no contest,” or “guilty to a lesser felony” entered as part of any plea
1845 bargain. Such felonious conduct includes, but is not limited to any activities related to or
1846 carried out pursuant to this Agreement for: (i) price fixing, (ii) illegal transport or
1847 disposal of hazardous or toxic materials, (iii) bribery of public officials, or (iv) fraud or
1848 tampering. In the event of felonious conduct, City reserves the right to exercise one or
1849 more of the remedies specified below in Section 14.02. Such action shall be taken after
1850 Contractor has been given notice and an opportunity to present evidence in mitigation.

1851 n. Assignment. Contractor assigns this Agreement in violation of Section 16.08.

1852 Contractor shall be given two business days from notification by the City to cure any default
1853 arising under subsections g, h, i, k, and l provided, however that the City shall not be obligated to
1854 provide Contractor with a notice and cure opportunity if the Contractor has committed the same
1855 or similar breach within a twenty-four month period.

1856 However, notwithstanding anything contained herein to the contrary, for the failure of the
1857 Contractor to provide collection services for a period of two consecutive work days, the City
1858 may secure the Contractor’s records on the fourth work day in order to provide interim collection
1859 services until the matter is resolved and the Contractor is again able to perform under this
1860 Agreement; provided, however, if the Contractor is unable for any reason to resume performance
1861 at the end of 30 calendar days all liability of the City under this Agreement to the Contractor
1862 shall cease and this Agreement may be deemed terminated by the City. Interim collection service
1863 may be provided by City, or a designated third party, pursuant to Section 14.08 of the Agreement,
1864 or otherwise.

1865 **14.02 Right to Terminate Upon Default**

1866 Upon a default by Contractor, the City shall give Contractor ten (10) days’ written notice of said
1867 default. Upon Contractor’s failure or refusal without legal excuse to correct, make good or cure
1868 said default within ten (10) days of said notice, the City Manager shall have the right to terminate
1869 this Agreement upon a ten business days notice if the public health or safety is threatened,
1870 without the need for any hearing, suit or legal action. If public health or safety is not immediately
1871 threatened the City Council may terminate after a hearing and subsequent thirty days notice of
1872 the decision to terminate, without need for further hearing, suit or legal action. This right of
1873 termination is in addition to any other rights of City upon a failure of Contractor to perform its
1874 obligations under this Agreement.

1875 City’s right to terminate this Agreement and to take possession of Contractor’s equipment and
1876 facilities are not exclusive, and City’s termination of this Agreement shall not constitute an

1877 election of remedies. Instead, they shall be in addition to any and all other legal and equitable
1878 rights and remedies which City may have.

1879 By virtue of the nature of this Agreement, the urgency of timely continuous and high-quality
1880 service, the lead time required to effect alternative service, and the rights granted by City to
1881 Contractor, the remedy of damages for a breach hereof by Contractor is inadequate and City shall
1882 be entitled to injunctive relief.

1883 **14.03 Effective Date.** In the event of the events specified above, and except as otherwise
1884 provided in those subsections, termination shall be effective upon the date specified in the City’s
1885 written notice to the Contractor and upon that date this Agreement shall be deemed immediately
1886 terminated. Upon such termination all liability of the City under this Agreement to the
1887 Contractor shall cease, and the City shall have the right to call the performance bond and shall be
1888 free to negotiate with other contractors for the operation of the collection services. The
1889 Contractor for failure to perform shall reimburse the City all direct and indirect costs of
1890 providing interim collection services.

1891 **14.04 Termination Cumulative.** The City’s right to terminate this Agreement is cumulative to
1892 any other rights and remedies provided by law or by this Agreement.

1893 **14.05 Excuse from Performance.** The parties shall be excused from performing their
1894 respective obligations hereunder in the event they are prevented from so performing by reason of
1895 floods, earthquakes, other “acts of God”, war, civil insurrection, riots, acts of any government
1896 (including judicial action) and other similar catastrophic events, which are beyond the control of
1897 and not the fault of the party claiming excuse from performance hereunder. Labor unrest,
1898 including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other
1899 concerted job action conducted by Contractor’s employees or directed at Contractor or its
1900 selected facilities is not an excuse from performance and Contractor shall be obligated to
1901 continue to provide service notwithstanding the occurrence of any or all of such events.

1902 The party claiming excuse from performance shall, within two business days after such party has
1903 notice of such cause, give the other party notice of the facts constituting such cause and asserting
1904 its claim to excuse under this section.

1905 The interruption or discontinuance of Contractor’s services caused by one or more of the events
1906 excused shall not constitute a default by Contractor under this Agreement. Notwithstanding the
1907 foregoing, however, if Contractor is excused from performing its obligations hereunder for any
1908 of the causes listed in this section for a period of seven calendar days or more, City shall
1909 nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten
1910 business days’ notice, in which case the provisions relative to taking possession of Contractor’s
1911 land, equipment and other property and engaging Contractor’s personnel in Section 14.08 and
1912 this Article will apply.

1913 **14.06 Assurance of Performance.** City may, at its option and in addition to all other remedies
1914 it may have, demand from Contractor reasonable assurances of timely and proper performance of
1915 this Agreement, in such form and substance as City may require. If Contractor fails or refuses to
1916 provide satisfactory assurances of timely and proper performance in the form and by the date
1917 required by City, such failure or refusal shall be an event of default.

1918

1919 **14.07 City Remedies For Contractor Default.**

1920 City shall have the following rights:

- 1921 a. Waive Default. To, at its sole discretion, waive the Contractors' default.
- 1922 b. Termination. Terminate the Agreement in accordance with this Article.
- 1923 c. All Other Available Remedies. In addition to, or in lieu of termination, to
1924 exercise all of its remedies in accordance with this Article and any other remedies at law
1925 and in equity, to which City shall be entitled, according to proof.
- 1926 d. Damages Survive. If Contractor owes any damages upon City's termination of
1927 the Agreement, Contractor's liability under this Article shall survive termination.

1928 Whether or not City exercises its right to terminate, City shall have the right to: (i) seek
1929 performance by the surety under the letter of credit, performance bond or certificate of
1930 deposit (instrument for securing performance), and (ii) make a claim on any insurance
1931 policy or policies.

1932 **14.08 City Right to Perform Service.**

1933 a. General. In the event that Contractor, for any reason whatsoever, fails, refuses or
1934 is unable to collect, transfer, transport, process and dispose of any or all Solid waste
1935 which it is required by this Agreement, at the time and in the manner provided in this
1936 Agreement, for a period of more than three business days, and if, as a result thereof, Solid
1937 waste should accumulate in the city to such an extent, in such a manner, or for such a
1938 time that the City should find that such accumulation endangers or menaces the public
1939 health, safety or welfare, then City shall have the right, but not the obligation, upon one
1940 business day prior written notice to Contractor during the period of such emergency as
1941 determined by the City Manager, to perform, or cause to be performed, such services.

1942 b. Billing and Compensation to City. During such time that City is providing Solid
1943 waste services, or causing them to be provided by a third party, Contractor shall bill and
1944 collect payment from all users of the above-mentioned services. Contractor further agrees
1945 that, in such event, it shall reimburse City for any and all costs and expenses incurred by
1946 City in providing the Solid waste service in such a manner and to an extent as would
1947 otherwise be required of Contractor under the terms of this Agreement. Such
1948 reimbursement shall be made from time to time after submission by City to Contractor of
1949 each statement listing such costs and expenses, but in no event later than five (5) business
1950 days from and after each such submission.

1951 c. City's Actions Not A Taking. City's exercise of its rights under this Section (1)
1952 does not constitute a taking of private property for which compensation must be paid, (2)
1953 will not create any liability on the part of City to Contractor, (including loss of revenue
1954 by Contractor) and (3) does not exempt Contractor from any of the indemnity provisions
1955 of this Agreement, which are meant to extend to circumstances arising under this section.

1956 d. Duration of City's Performance. City's right pursuant to this section to render
1957 collection services, shall terminate when City determines that such services can be
1958 resumed by Contractor; provided nothing in this section is intended to limit such other
1959 rights as City has under this Article.

1960

1961 **Article 15. Modifications to the Agreement**

1962 **15.01 Modifications.** The City shall have the power to make changes in this Agreement as the
1963 result of changes in law, changes in the City of Antioch Municipal Code, or both, to impose new
1964 rules and regulations on the Contractor under this Agreement relative to the scope and methods
1965 of providing collection services as may be necessary or desirable to meet City’s responsibilities
1966 with regard to public welfare, sanitation, health and AB 939. The City shall give the Contractor
1967 notice of any proposed change and an opportunity to be heard concerning those matters. The
1968 scope and method of providing collection services under this Agreement shall also be liberally
1969 construed to include, but not be limited to, the manner, procedures, operations and obligations,
1970 financial or otherwise, of the Contractor.

1971 **15.02 Change in Law.** The City and the Contractor understand and agree that the California
1972 Legislature and other regulatory bodies have the authority to make comprehensive changes in
1973 Solid waste management legislation and that these and other changes in law in the future which
1974 mandate certain actions or programs for counties or municipalities may require changes or
1975 modifications in some of the terms, conditions or obligations under this Agreement. The
1976 Contractor agrees that the terms and provisions of the City of Antioch Municipal Code, as it now
1977 exists or as it may be amended, shall apply to all of the provisions of this Agreement.

1978
1979 Nothing in this Agreement requires any party to perform any act or function contrary to law. The
1980 City and Contractor agree to enter into good faith negotiations regarding modifications to this
1981 Agreement which may be required in order to implement changes in the interest of the public
1982 welfare or due to change in law. When such modifications are made to this Agreement, the City
1983 and the Contractor shall negotiate in good faith, a reasonable and appropriate compensation
1984 adjustment for any increase or decrease in the services or other obligations required of the
1985 Contractor due to any modification in the Agreement, which may include an adjustment to the
1986 maximum rate that Contractor can impose.

1987 **15.03 Amendments.** This Agreement may be modified or amended only by a written document
1988 executed by both the Contractor and the City, and approved as to form by the City Attorney.

1989

1990 **Article 16. Miscellaneous Provisions**

1991 **16.01 New Services and Container Inventory.** Contractor shall provide collection service to
1992 any new customer within one business day of receiving such request. Contractor shall provide
1993 new customer requested carts, bins, or debris boxes within one business day of receiving such
1994 request and by next service day for existing customers. If a request for new service or for a
1995 change of service is received in the form of a voicemail message or an e-mail, the time of receipt
1996 of the request shall be considered to be the time of the customer's transmission of the message.
1997 Contractor shall maintain an adequate inventory of each type of container as is necessary to meet
1998 these requirements.

1999 **16.02 Report of Accumulation of Solid waste.** Contractor shall direct its drivers to note (1)
2000 the addresses of any premises at which they observe that Solid waste is accumulating and is not
2001 being delivered for collection; and (2) the address, or other location description, at which Solid
2002 waste has been dumped in an apparently unauthorized manner. Contractor shall deliver the
2003 address or description to City within five business days of such observation.

2004 **16.03 Emergency Services.** Contractor shall as soon as practically possible and normally
2005 within four hours of notice from the City, provide collection services in order to remove debris
2006 resulting from a disaster or other emergency event (declared or not), unless upon a reasonable
2007 effort Contractor is unable to do so. In particular, Contractor shall under City's direction utilize
2008 such personnel, drop boxes, and/or drop box vehicles as are reasonably available to collect and
2009 transport debris and the Contractor will be reasonably compensated for said work performed.

2010 **16.04 Load Inspection Program.** Contractor shall develop and implement a public education
2011 program designed to educate generators regarding proper methods of handling and disposing of
2012 hazardous waste and a load inspection program for Contractor's personnel to detect and discover
2013 hazardous waste placed by generator for collection by Contractor. Collection vehicle drivers
2014 shall be trained by Contractor to inspect containers prior to collection when practical.

2015 In the event a collection vehicle driver finds hazardous waste at the point of collection and such
2016 waste is in an uncovered or leaking container that would be unsafe to leave, the hazardous waste
2017 shall be left in the collection container and Contractor's environmental technician shall be
2018 notified to handle the issue with the generator. Environmental technicians shall help guide the
2019 generator to safely containerize the hazardous waste and shall explain the generator's options for
2020 proper disposition of such material. Under no circumstances shall Contractor's employees
2021 knowingly collect hazardous waste or remove unsafe or poorly containerized hazardous waste
2022 from a collection container. In the event an extremely hazardous waste is found in a collection
2023 container or collection area, such as an explosive or large quantity of concentrated corrosive
2024 material, Contractor shall immediately notify the appropriate regulatory authorities.

2025 If materials collected by Contractor are delivered to a facility owned by Contractor for purposes
2026 of transfer, processing, or disposal, load checkers and equipment operators at such facility shall
2027 conduct inspections in areas where collection vehicles unload Solid waste, Recyclable materials,
2028 Green waste, or Green waste and food waste to identify hazardous wastes. Facility personnel
2029 shall remove these materials for storage in an on-site hazardous materials storage container(s).
2030 Contractor shall make reasonable efforts to identify and notify the generator. Contractor shall
2031 arrange for removal of the hazardous wastes by permitted haulers in accordance with applicable
2032 laws and regulatory requirements.

2033 Contractor shall comply with emergency notification procedures required by applicable laws and
2034 regulatory requirements. All records required by regulations shall be maintained at the
2035 Contractor's facility. These records shall include: waste manifests, waste inventories, waste
2036 characterization records, inspection records, incident reports, and training records.

2037 **16.05 Independent Contractor.** In the performance of services under this Agreement,
2038 Contractor is an independent contractor and not an officer, agent, servant or employee of City.
2039 Contractor shall have exclusive control of the details of the services and work performed and
2040 over all persons performing such services and work. Contractor shall be solely responsible for
2041 the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any.
2042 Neither Contractor nor its officers, employees, agents, contractors or subcontractors shall obtain
2043 any right to retirement benefits, workers compensation benefits, or any other benefits which
2044 accrue to City employees, and Contractor expressly waives any claim it may have or acquire to
2045 such benefits.

2046 **16.06 Laws to Govern.** This Agreement and all matters relating to it shall be governed by the
2047 laws of the State of California.

2048 **16.07 Consent to Jurisdiction.** The parties agreed that any litigation between City and
2049 Contractor concerning or arising out of this Agreement shall be filed and maintained exclusively
2050 in the courts of County of Contra Costa, Martinez, State of California, or in the United States
2051 District Court for the Northern District of California. Each party consents to service of process
2052 in any manner authorized by California law.

2053 **16.08 Assignment.** No assignment of this Agreement or any right occurring under this
2054 Agreement shall be made in whole or in part by the Contractor without the express written
2055 consent of the City. The City shall have full discretion to approve or deny, with or without cause,
2056 any proposed or actual assignment by the Contractor. City may perform a detailed review of all
2057 aspects of any proposed assignment and Contractor shall provide all documents and information
2058 requested by City to facilitate its review. All costs of City in performing such a review will be
2059 reimbursable by Contractor to City on demand. Any assignment of this Agreement made by the
2060 Contractor without the express written consent of the City shall be void and shall be grounds for
2061 the City to declare a default of this Agreement and immediately terminate this Agreement by
2062 giving written notice to the Contractor, and upon the date of such notice this Agreement shall be
2063 deemed immediately terminated, and upon such termination all liability of the City under this
2064 Agreement to the Contractor shall cease, and the City shall have the right to call the performance
2065 bond and shall be free to negotiate with other contractors, the Contractor, or any other person or
2066 company for the service which is the subject of this Agreement. In the event of any assignment,
2067 the assignee shall fully assume all the liabilities of the Contractor. The definition of assignment
2068 is as defined in the Guaranty Agreement attached as Exhibit D.

2069 The use of a subcontractor to perform services under this Agreement shall not constitute
2070 delegation of Contractor's duties provided that Contractor has received prior written
2071 authorization from the City Manager to subcontract such services and the City Manager has
2072 approved a subcontractor who will perform such services. Contractor shall be responsible for
2073 directing the work of Contractor's subcontractors and any compensation due or payable to
2074 Contractor's subcontractor shall be the sole responsibility of Contractor. The City Manager shall
2075 have the right to require the removal of any approved subcontractor for reasonable cause.

2076 **16.09 Nondiscrimination.** In the performance of all work and services under this Agreement,
2077 Contractor shall not discriminate against any person on the basis of such person's race, sex,

2078 color, national origin, religion, marital status or sexual orientation. Contractor shall comply with
2079 all applicable local, state and federal laws and regulations regarding nondiscrimination, including
2080 those prohibiting discrimination in employment.

2081 **16.10 Compliance with Laws.** In the performance of this Agreement, Contractor shall comply
2082 with all applicable laws, regulations, ordinances and codes of the federal, state and local
2083 governments, including the City of Antioch Municipal Code.

2084 City shall provide written notice to Contractor of any planned amendment to the Antioch
2085 Municipal Code that would substantially affect the performance of Contractor's services under
2086 this Agreement. Such notice shall be provided at least 30 calendar days before the City
2087 Council's approval of such an amendment.

2088 **16.11 Permits and Licenses.** Contractor shall obtain, at its own expense, all permits and
2089 licenses required by law or ordinance, specifically including the City business license, and
2090 maintain them in effect throughout the term of this Agreement. Contractor shall provide proof of
2091 such permits, licenses or approvals and shall demonstrate compliance with them upon the request
2092 of the City Manager.

2093 **16.12 Point of Contact.** The day-to-day dealings between the Contractor and the City shall be
2094 between the Contractor and the City Manager or his or her designee.

2095 **16.13 Notices.** Whenever either party desires to give notice to the other, it must be given by
2096 written notice addressed to the party for whom it is intended, at the place last specified as the
2097 place for giving of notice in compliance with this paragraph. For the present, the parties
2098 designate the following as the respective persons and places for giving of notice:

2099

As to the City:
City Manager
City of Antioch- City Hall
P.O. Box 5007
Antioch, CA 94531-5007

As to the Contractor:
Allied Waste Systems, Inc.
441 N Buchanan Circle
Pacheco, CA 94553

With a copy to:
City Attorney
City of Antioch – City Hall
P.O. Box 5007
Antioch, CA 94531-5007

2100 Notices shall be effective when received at the address as specified above. Changes in the
2101 respective address to which such notice is to be directed may be made by written notice.
2102 Facsimile transmission is acceptable notice, effective when received, however, facsimile
2103 transmissions received (i.e. printed) after 4:30 p.m. or on weekends or holidays, will be deemed
2104 received on the next business day. The original of items that are transmitted by facsimile
2105 equipment must also be mailed.

2106 **16.14 Entire Agreement.** This Agreement is the result of mutual drafting efforts of the parties,
2107 both of whom were represented by counsel. Therefore, no interpretation shall be given to this
2108 Agreement which would favor one party or the other because of the identity of the drafter. This
2109 Agreement and the attached Exhibits constitute the entire Agreement and understanding between
2110 the parties, and it shall not be considered modified, altered, changed or amended in any respect
2111 unless in writing and signed by the parties. The original agreement between the parties dated
2112 December 17, 1974 and all amendments to it and the subsequent Agreement dated September 2,
2113 2005 are expressly superseded in total by this Agreement except for the indemnification
2114 provisions. In addition, all prior written and oral communications, including correspondence,
2115 drafts, memoranda and representations, are superseded by this Agreement.

2116 **16.15 Severability.** If any provision of this Agreement or the application of it to any person or
2117 situation shall to any extent be held invalid or unenforceable, the remainder of this Agreement
2118 shall not be affected, shall continue in effect.

2119 **16.16 Right to Require Performance.** The failure of the City at any time to require
2120 performance by the Contractor of any provision of this Agreement does not affect the right of the
2121 City thereafter to enforce the provision, nor shall waiver by the City of any breach of any
2122 provision be held to be a waiver of any succeeding breach of the provision or as a waiver of any
2123 provision itself.

2124 **16.17 Headings.** Headings in this document are for convenience of reference only and are not
2125 to be considered in any interpretation of this Agreement.

2126 **16.18 Exhibits.** Each Exhibit referred to in this Agreement forms an essential part of this
2127 Agreement. Each such Exhibit is a part of this Agreement and each is incorporated by this
2128 reference. The list of exhibits is set forth at the end of the Table of Contents.

2129 **16.19 Incorporation of City's Municipal Code.** This Agreement is entered into under the
2130 authority of the ordinances contained with the City's Municipal Code and the Municipal Code is
2131 hereby incorporated in and made a part of this Agreement by reference.

2132 **16.20 Authority to Execute.** Contractor warrants that it has the authority to enter in to this
2133 Agreement and that the officers signing below have the authority to bind the Contractor.
2134

2135 **16.21 Effective Date.** This Agreement shall take effect when it is properly executed by the
2136 City and the Contractor, and that date shall be reflected in the opening paragraph.

2137 IN WITNESS WHEREOF, the City and the Contractor have executed this Agreement on the
2138 respective date(s) below each signature.

CITY OF ANTIOCH

CONTRACTOR

ALLIED WASTE SYSTEMS, INC

By: _____
Jim Jakel, City Manager

By: _____
Jeff Andrews, Senior Vice President,
Operations

Date: _____

Date: _____

Authorized by
City Council Resolution No. _____

Approved as to form:

Attest: _____
Jolene Martin, City Clerk

Thomas M. Bruen, Counsel for Contractor

Approved as to form:

Lynn Tracy Nerland, City Attorney

Exhibit A

Service Specifications:

Description of Collection, Recycling and Education Services and Programs

I. Residential Collection Services

Solid waste

Contractor will offer a fully automated collection service for Solid waste. Each single family dwelling will have a choice of four cart sizes for refuse collection (20-gallon, 32-gallon, 64-gallon or 96-gallon). On a weekly basis the carts will be serviced at the curb by an automated collection vehicle, using an extendable arm, to grasp the cart and tip the contents into the body of the vehicle. Drivers will provide special consideration for on-premises services as described below (i.e. seniors, disabled).

Only Garbage shall be placed in the garbage cart. Customers shall be instructed to place their cart out the night before their collection day or by 5:30 a.m. on their service day. At least three (3) feet of space shall be between the garbage cart and any other object including Green waste and recycling carts, mailboxes or portable basketball hoops. The cart will be placed on the street in front of the curb for street side pickup. The cart's front will face out to the street.

Customers with extra Garbage or large Bulky items, can call customer service prior to their service day to arrange for extra service for a fee, as described in Exhibit B.

Recycling

Contractor will offer fully automated collection services for recycling. Each single family dwelling will receive a 64-gallon cart for recycling collection. On a weekly basis the carts will be serviced on the same day as their regular garbage pick up day at the curb. An automation collection vehicle, using an extendable arm, will grasp the cart and tip the contents into the body of the vehicle. Drivers will provide special consideration for on-premises service as described below (i.e. seniors, disabled).

Customers will not have to source separate Recyclable material. All material will be deposited into the 64-gallon recycling cart. The cart will be placed on the street in front of the curb for street side pickup. The cart's front will face out to the street. Contractor will provide a 32-gallon recycling cart for those customers with special needs such as disability or storage limitations or a 96 gallon recycling cart for those customers who generate excess Recyclable material. This option will not be an advertised service, but provided on a case by case as needed basis. Additional carts for Recyclable material will be available for the rate set forth in Exhibit B. Customers shall be instructed to place their cart out the night before their collection day or by 5:30 a.m. on their service day. At least three (3) feet of space shall be between the garbage cart and any other object including Green waste and recycling carts, mailboxes, portable basketball hoops, etc.

Acceptable Recyclable material:

- ◆ All plastic containers #1-7
- ◆ Rigid Plastic items

- 2185 ♦ Aluminum and tin cans
- 2186 ♦ Glass bottles and jars of all colors
- 2187 ♦ White paper
- 2188 ♦ Envelopes (with or without windows)
- 2189 ♦ Computer print out paper (with blue/green stripe)
- 2190 ♦ Adding machine tape
- 2191 ♦ Colored paper
- 2192 ♦ Fax paper
- 2193 ♦ White & carbonless forms
- 2194 ♦ Laser printer paper
- 2195 ♦ Manila folders and envelopes
- 2196 ♦ Magazines
- 2197 ♦ Newspapers
- 2198 ♦ Cardboard (3'x3' in size, no larger)
- 2199 ♦ Phone books
- 2200 ♦ Junk mail
- 2201 ♦ Paperback and hard covered books
- 2202 ♦ Construction paper
- 2203 ♦ Aluminum foil
- 2204 ♦ Scrap metal and small metal appliances
- 2205 ♦ Electronic Waste Peripherals
- 2206
- 2207 Unacceptable Recyclable material:
- 2208 ♦ Plastic bags
- 2209 ♦ Carbon paper
- 2210 ♦ Spiral or bound notebooks
- 2211 ♦ Food/snack waste
- 2212 ♦ Restroom waste
- 2213 ♦ Tyvek (overnight envelopes)
- 2214 ♦ Food wrappers
- 2215 ♦ Cookware/Ceramics
- 2216 ♦ Window glass or mirrors
- 2217 ♦ Shrink wrap
- 2218 ♦ Polystyrene/Styrofoam

2219
2220 All contaminated containers will be tagged for customer education purposes.

2221
2222 **Green waste**

2223 Each single family dwelling will receive a 96-gallon cart for Green waste collection. On a bi-
2224 weekly basis (every other week) the carts will be serviced on the same day as regular garbage
2225 pick up at the curb. An automation collection vehicle, using an extendable arm, will grasp the
2226 cart and tip the contents into the body of the vehicle. Customers will be notified annually of
2227 their collection schedule. The cart will be placed on the street in front of the curb for street side
2228 pickup. The cart's front will face out to the street. Customers shall be instructed to place their
2229 cart out the night before their collection day or by 5:30 a.m. on their service day. At least three
2230 (3) feet of space shall be between the Green waste cart and any other object including Garbage

2231 and recycling carts, mailboxes, portable basketball hoops, etc. Contractor will provide a 32-
2232 gallon Green waste cart for those customers with special needs such as disability or storage
2233 limitations. This option will not be an advertised service, but provided on a case by case as
2234 needed basis. Drivers will provide special consideration for on-premises service as described
2235 below (i.e. seniors, disabled). Additional carts for Green Waste material will be available for the
2236 rate set forth in Exhibit B. Acceptable material must be placed directly into the cart, with no
2237 bagging or other containers placed into the cart.

2238
2239

2240 Acceptable Green waste material:

- 2241 ◆ Grass clippings
- 2242 ◆ Brush
- 2243 ◆ Weeds and leaves
- 2244 ◆ Hay and straw
- 2245 ◆ Prunings
- 2246 ◆ Tree trimmings
- 2247 ◆ Tree branches 6 inches or less in diameter and 3 feet or less in length

2248

2249 Unacceptable Green waste material:

- 2250 ◆ Plastic bags
- 2251 ◆ Rocks or concrete
- 2252 ◆ Sod and dirt
- 2253 ◆ Loose fruits and vegetables
- 2254 ◆ Tree trunks, stumps, palm fronds
- 2255 ◆ Branches more than 6 inches in diameter or more than 3 feet in length
- 2256 ◆ Pet waste

2257

2258 All contaminated containers will be tagged for customer education purposes.

2259

2260 The City of Antioch will review customer's requests for exemption from this program.
2261 Exemptions will be granted if the resident can prove that no Green waste is generated for
2262 disposal due to composting, contracting with a landscaper or if the property is hardscaped (does
2263 not have any plants, consists of concrete and rock or decking). Customers who are granted
2264 exemptions will not receive a Green waste cart and will be billed at the Green waste Exempt rate
2265 set forth in Exhibit B.

2266

2267 **On-Premises Service**

2268

2269 Contractor shall provide on-premises collection of residential Solid waste, Recyclable materials
2270 and Green waste to a SFD customer if all adult customers residing there have disabilities that
2271 prevent them from setting their Garbage, Recycling or Green waste cart at the curb for collection
2272 and if a request for on-premises service has been made to, and approved by, the City Manager in
2273 the manner required by City. On premises service shall include pickup and replacement of carts
2274 within the front or side yard and return of the cart to such location. The Contractor shall
2275 authorize on-premises service in appropriate circumstances.

2276

2277 **On Call Waste Cleanup Program**

2278
2279 Contractor will offer residential customers two (2) on-call curbside cleanups per year allowing a
2280 maximum of 2 cubic yards per cleanup or the equivalent of fourteen (14) thirty-two gallon bags.
2281 Pick up will be on the same day as regular garbage service. Contractor provides large item pick-
2282 up for 2 items per customer every calendar year for additional items there is a fee as outlined in
2283 Exhibit B. For customer convenience, Contractor utilizes a voice mail system so customers may
2284 leave messages after business hours including requests for scheduling on-call collection service.
2285 Guidelines will be as follows:

- 2286
2287 Guidelines for collection:
- 2288 ♦ Place items at the curb by 5:30 a.m., preferably the night before the cleanup day.
 - 2289 ♦ All items must be stacked in one place.
 - 2290 ♦ Bag or tie items with rope, cord, tape or string strong enough to keep the bundle intact or
 - 2291 place in disposable containers. All containers will be taken including metal and plastic trash
 - 2292 cans.
 - 2293 ♦ Place cleanup items in a single pile at a distance of 4 feet or more from all carts.

- 2294
2295 Unacceptable . waste Material:
- 2296 ♦ No item may weigh more than 150 lbs. or be longer than 4 feet. Bags cannot weigh more
 - 2297 than 50 pounds.
 - 2298 ♦ No televisions or computer monitors*.
 - 2299 ♦ No household hazardous wastes including paint, motor oil, car batteries, antifreeze, solvents,
 - 2300 pesticides, cleaners.
 - 2301 ♦ No large car parts (tires, transmission blocks, engines, etc.) or large furniture*.
 - 2302 ♦ No rocks, dirt or concrete.
 - 2303 ♦ No refrigerators, freezers, air conditioners or other appliances with Freon*.
 - 2304 ♦ No tree stumps or large tree trunks.
 - 2305 ♦ Do not place cleanup items near or in front of refuse or recycling carts.
 - 2306 ♦ No loose piles

2307 * **Can be picked up as a large item pickup, but not part of the on-call cleanups.**

2308
2309 **On Call Recycle Cleanups**

2310
2311 Contractor will offer three (3) on call recycling pickups per year, for recycling extra Green waste
2312 and/or for extra corrugated cardboard. Residents will call customer service to schedule a pickup
2313 a week in advance.

- 2314
2315 Guidelines:
- 2316 ♦ After filling Green waste cart, place extra clippings in containers that are 32 gallons or less in
 - 2317 volume. Maximum 75 lbs. per container. Containers will not be taken away. Do not use
 - 2318 plastic bags.
 - 2319 ♦ Tree branches and prunings must be 3 feet or less in length and 6 inches or less in diameter.
 - 2320 ♦ Trim cardboard to 3 feet or less on each side, flatten and bundle with string.
 - 2321 ♦ For pickups, place bundled cardboard or Green waste containers at the curb by 5:30 a.m. or,
 - 2322 preferably, the night before.
 - 2323 ♦ Keep extra material at least 4 feet away from carts.

2324

2325 **Motor Oil and Oil Filters**

2326 Customers will be able to recycle motor oil and oil filters curbside. The motor oil shall be in a
2327 clear plastic container like a plastic milk jug. The lid shall be taped to the top and placed beside
2328 the recycle cart on their recycle collection day. Customers are allowed a maximum of three (3)
2329 gallons of oil per pick up. Oil filters will be placed in a heavy sealable plastic bag such as a
2330 Ziploc bag sealed and left by the recycle cart on their recycle collection day.

2331
2332 While recycling is an automated service, the driver will get out of the vehicle to pick up these
2333 materials.

2334
2335 Used motor oil and filters will not be collected during the On-Call Bulky Waste Cleanups.

2336
2337 **On-Call Pickup of Batteries, Cell Phones and Compact Fluorescent Light bulbs**

2338 Customers will be able to include Compact Fluorescent Light bulbs (CFLs), cell phones and
2339 household batteries to any on call recycling or waste pickups at no additional charge. Items need
2340 to be placed next to material left out for pickup in sealed clear plastic bags. Each material type
2341 needs to be placed in a separate bag. There is a maximum of four (4) cell phones per
2342 appointment. CFLs must not be broken or there will be a fee for disposal

2343
2344 **II. Multifamily Collection Services**

2345
2346 **Solid waste**

2347 Multifamily residents subscribing individually for service will receive carts for Solid waste,
2348 Recycling and Green waste. These customers will receive service that is very similar to the type
2349 described for single family dwellings. Multi-family residents who do not subscribe individually
2350 for service will be provided with carts (32-gallon, 64-gallon or 96-gallon) or front end load
2351 containers ranging in size from one (1) cubic yard to six (6) cubic yards. Collection frequency
2352 will be at a minimum once a week. Contractor provides large item pick-up for a fee as described
2353 in Exhibit B.

2354
2355 Contractor will service compactor containers as long as the compactor meets collection vehicle
2356 specifications.

2357
2358 **Recycling**

2359
2360 Recycling service will be provided to all complexes and individuals in multifamily complexes
2361 unless the City determines otherwise. Diversion for this program is calculated with the
2362 commercial diversion rates. Carts or front-end load containers will be used for recycling. The
2363 types of material collected will be the same as detailed under Residential Recycling Services.

2364
2365 Multifamily residents who subscribe individually for service will receive
2366 instructions/information that is similar to residents of single family dwellings. Those residents of
2367 multifamily complexes not subscribing to individual service will receive information through the
2368 facility manager, if available or the property owner. Contractor will bill the facility manager,
2369 landlord or homeowners association for the service in cases where front load containers are
2370 utilized.

2371

2372 The City of Antioch reserves the right to review service criteria (space limitations, impractical
2373 service, lack of recycle material, lack of commitment to separate material from Solid waste) and
2374 require any adjustments to the program. Contractor will work with all multifamily customers to
2375 maximize recycling services and minimize additional overall cost of service upon request of the
2376 customer.

2377
2378 Contractor will service compactor containers as long as the compactor meets our collection
2379 vehicle specifications.

2381 **Green waste**

2382 Green waste service will be offered to all complexes and individuals in multifamily complexes
2383 unless the City determines otherwise. Carts or drop boxes will be used.

2384
2385 The City of Antioch reserves the right to review service criteria (space limitations, impractical
2386 service, lack of recycle material) and approve any exemptions from the program. Contractor will
2387 work with all multifamily customers to maximize Green waste services and minimize additional
2388 overall cost of service upon request by the customer.

2389
2390 **On Call Waste Cleanup**
2391 Multifamily residents subscribing individually for service will receive two (2) on-call bulky
2392 waste cleanups as described under Residential Services. Contractor provides large item pick-up
2393 for a fee as described in Exhibit B.

2394
2395 Multifamily residents subscribing to bin service have the option of scheduling debris boxes for
2396 complex clean ups according to the fees set forth in Exhibit B. The property manager or
2397 designated representative must call in advance to schedule a box. The customer service
2398 department will determine the appropriate box size based on the size of the complex. Contractor
2399 will provide the property manager/designee with information to distribute to their tenants
2400 regarding acceptable material for the cleanups. No hazardous waste or white goods containing
2401 Freon will be allowed. Bin service customers cannot request individual cleanups. All other
2402 guidelines apply as described in Residential Services. Contractor provides large item pick-up for
2403 a fee as described in Exhibit B.

2404
2405 **On Call Recycle Cleanups**
2406 Multifamily residents subscribing individually for service will receive the same information as
2407 residential customers described in Residential Services for on-call recycle cleanups. Green waste
2408 exempt customers will not be eligible for Green waste cleanups. Those residents of multifamily
2409 complexes not subscribing to individual service will receive three (3) cardboard on-call cleanups
2410 only. The facility manager will coordinate with Contractor whether a bin, debris box or other
2411 collection method would best suit their need.

2412
2413
2414 **III. Commercial/Industrial Collection Services**

2415
2416 **Solid waste**
2417 Commercial and industrial customers are serviced in a variety of ways depending upon their
2418 location, frequency and amount of service required, accessibility and where they are situated
2419 relative to other customers with similar service requirements and as described in Section 9 of the

2420 Collection Agreement. Commercial and Industrial customers will typically be serviced in one of
2421 three ways. The most common means of managing materials generated by this segment of the
2422 customer base is the use of small containers/bins for collection by front end load vehicles. These
2423 containers come in multiple sizes and can be configured to various dimensions in order to fit a
2424 given refuse enclosure. These bins are typically utilized for collection of Refuse and Recyclable
2425 material and will be available for Green waste service.
2426

2427 Drop boxes are used in circumstances where the generator has a large amount of material that
2428 would require too frequent service of a front end load container. These boxes also come in
2429 multiple shapes and sizes and are transported by roll-off collection vehicles equipped with a hoist
2430 to lower and raise the container onto the bed of the vehicle for transport. These containers are
2431 typically used for Refuse, Recyclable material and Green waste. These boxes must have a
2432 minimum of twice a month service. However, the City of Antioch may require more frequent
2433 service based upon health or public nuisance issues.
2434

2435 Some customers may be better served by use of containers equipped with compactors. These
2436 receptacles are generally very useful for bulky wastes and material that is easily compacted in
2437 order to maximize payloads. Roll-off collection vehicles are also utilized to transport and
2438 exchange compactor boxes. Contractor will provide service at the compacted rate as long as the
2439 customer supplies their own compactor.
2440

2441 In certain instances where commercial customers do not require a large degree of service,
2442 commercial carts are utilized. These containers are identical to those employed in serving
2443 residential customers and typically are used by small business owners who do not generate a
2444 large amount of refuse or recyclables. These carts are generally serviced by the vehicles serving
2445 the residential customers.
2446

2447 Contractor will work closely with commercial and industrial customers to determine the most
2448 efficient and cost effective service options available to them.
2449

2450 **Recycling**

2451
2452 Contractor will offer a range of recycling services to commercial customers:
2453

- 2454 ♦ Send a Waste Assessment Survey and commercial recycling mailer outlining new services to
2455 all commercial customers.
 - 2456 ♦ Meet with large waste generators to identify potential recycle waste streams and source
2457 reduction opportunities.
 - 2458 ♦ Conduct on-site Waste Assessments upon request for all commercial customers. Make
2459 recycling and source reduction recommendations.
 - 2460 ♦ Attend and speak to business organizations such as the Chamber of Commerce.
 - 2461 ♦ Review current service levels of all commercial customers. Determine potential for
2462 recycling and contact customer.
 - 2463 ♦ Re-route commercial customers with primarily “dry” debris to recycling routes
- 2464 Contractor will work with all commercial customers to maximize recycling services and
2465 minimize additional overall cost of service.
2466

2467 **Commercial/Industrial Diversion Requirements**

2468
2469 Allied Waste will use all commercially reasonable efforts to implement a comprehensive,
2470 mandatory, commercial/industrial recycling, reuse and diversion program to maximize the
2471 amount of solid waste that can be diverted from this segment of the City's waste stream. Allied
2472 Waste will obtain a commercial diversion rate, as calculated by the dividing total commercial
2473 recycling tonnage by the total commercial tons hauled of 50% by 2011. The incremental goals
2474 are to be a 35% diversion rate for 2008, 40% for 2009 and 45% for 2010. If the incremental
2475 goals are not met, Allied Waste shall meet with the City to evaluate the program and
2476 implementation plan.

2477
2478 In order to meet this diversion rate, Allied Waste will have a full-time Recycling Coordinator
2479 dedicated to waste diversion programs in Antioch.

2480
2481 If it does not look like the 2011 goal will be achieved Allied Waste shall promptly undertake a
2482 study at no cost to the City, including waste characterization of the commercial/industrial waste
2483 stream, to determine how these requirements can be met. Allied Waste shall, upon a schedule
2484 agreed to by the City, provide the study to the City along with a comprehensive report as to how
2485 these specific targets can be promptly met and how the state mandated City-wide 50 percent
2486 diversion requirement will be accomplished on a consistent basis.

2487
2488 **IV. Construction and Demolition**

2489 Construction and demolition debris means wood, wallboard, metal, glass, paper, plastic, concrete
2490 and other recyclable and non-recyclable Solid wastes, including Mixed waste, generated by
2491 residential, commercial and industrial demolition, remodeling, and construction activities.
2492 Containers are available in sizes ranging from (8) eight cubic yards to fifty (50) cubic yards.

2493
2494 Construction and Demolition (C&D) customers must contact a customer service representative
2495 (CSR) at Contractor to arrange for service. The CSR will ask if the drop box contains recycle
2496 material and will direct Construction and demolition debris, including dirt and cement, to a
2497 permitted processing facility. The diversion goal of these mixed loads at the processing facility is
2498 a minimum fifty (50) percent. The customer will indicate on their order form, by checking the
2499 applicable box, if they need documentation to comply with the City of Antioch Municipal Code.
2500 Contractor will report to the City any flagrant violations of the City C&D Ordinance. Contractor
2501 will obtain a fifty (50) percent or greater diversion from mixed C&D customers on a bin by bin
2502 basis. Bins where a 50% diversion rate cannot be achieved must be hauled and noted as Solid
2503 waste. Prior to servicing mixed C&D bins as Solid waste, customer must be notified.

2504
2505 **VI. Holiday Tree Recycling**

2506
2507 **Residential**

2508 Contractor will offer two options for residential customers for recycling holiday trees:

- 2509 ♦ Green waste cart collection – Place unflocked tree in green waste cart. Branches must be 6
2510 inches or less in diameter and 3 feet or less in length. Cut off treetops.
- 2511 ♦ Recycling Drop Off Center- Contractor shall provide annual Holiday tree collection pick up
2512 and recycling at up to two locations designated by the City. This service shall be provided
2513 during the first three weeks of January of each year at a time and in a manner to be mutually
2514 agreed upon by City and Contractor.

2515

2516 Information and instructions for the Holiday Tree Collection Program will be sent to residential
2517 customers as a bill insert upon City approval.

2518
2519 **Multifamily**

2520 A flyer, approved by the City, will be sent to multifamily complexes notifying them of their tree
2521 recycling options and program guidelines. Multifamily accounts can use their existing green
2522 waste bins for recycling, the free drop off locations described above or schedule a green waste
2523 recycling roll off bin.

2524
2525 **Commercial**

2526 A drop off facility located on N. Buchanan Cr. in Pacheco accepts holiday trees at no charge
2527 from commercial customers. Residential and multi-family customers may avail themselves of
2528 this service as well. Commercial accounts can also use their existing green waste bins for
2529 recycling or the free drop off locations described above.

2530
2531 Guidelines for residential, multifamily and commercial customers:

- 2532 • Remove stands, whether metal, plastic or wood.
- 2533 • No flocked or artificial trees.
- 2534 • Remove lights, ornaments, tinsel and other trimming from branches.

2535
2536 **VII. Electronic Recycling**

2537
2538 Residential customers can use one of their free on call bulky cleanups for curbside collection of
2539 computer monitors, televisions and other electronic equipment (universal waste) for single
2540 family, multi-family and commercial customers. Residential, multifamily and commercial
2541 customers can put electronic waste peripherals such as keyboards, speakers, and mice in single
2542 stream recycling carts or dumpsters.

2543
2544 Single family, multifamily and commercial customers can call Contractor customer service in
2545 advance to schedule a pick up for the collection of electronic equipment for a fee as described in
2546 Exhibit B. Multi-family and commercial customers that do not have individual billing may have
2547 electronic equipment picked up for a fee as described in Exhibit B. For commercial customers,
2548 this material will need to be placed in a location accessible to larger vehicles. Multifamily
2549 customers will be asked where their material will be located for collection. If the customer does
2550 not provide this information, the customer will be asked to place the material near their garbage
2551 enclosure.

2552
2553 Collection arrangements that have not been made according to the guidelines above will not be
2554 picked up and a non-collection notice will be left with information on how to schedule.

2555
2556 **VIII. Public Education**

2557
2558 Contractor will develop materials that convey instructions and information to residential,
2559 multifamily and commercial customers. Information will be distributed to customers on an
2560 annual basis, at a minimum. Multifamily and commercial literature may differ slightly due to
2561 collection differences. This information will include:

- 2562
- 2563 ♦ Garbage collection guidelines

- 2564 ♦ Recycle collection guidelines
- 2565 ♦ Green waste collection guidelines
- 2566 ♦ On call cleanup guidelines
- 2567 ♦ Recycle cleanups
- 2568 ♦ Set out of oil and oil filters
- 2569 ♦ Spacing between carts
- 2570 ♦ Recycling Drop Off Center
- 2571 ♦ Hazardous waste guidelines
- 2572 ♦ How to Reach Us
- 2573 ♦ Payment Options
- 2574 ♦ Service Questions
- 2575 ♦ Vacation policy
- 2576 ♦ Holidays
- 2577 ♦ Holiday Tree Collection Program as described on page 10.
- 2578 ♦ Website
- 2579 ♦ Customer Complaint Resolution Process
- 2580 ♦ Electronic Waste Recycling

2581
2582

2583 Program Expansion Outreach- An implementation plan will be submitted to the City for approval
2584 30 days after contract approval. The implementation plan will include, but is not limited to:
2585 start date of new services; types of outreach methods to be used (brochures, workshops,
2586 meetings, personal contact, etc. stickers; press releases and newspaper ads). The City will
2587 approve all educational material within a reasonable time period that enables implementation
2588 deadlines to be met.

2589

2590 **IX. City Services**

2591 City facilities will be provided service free of charge as specified in Section 4.04 and 415. of the
2592 Collection Agreement.

2593

2594 **X. Outreach to Schools**

2595 Contractor has a separate Agreement with Antioch Unified School District. Contractor will
2596 include all solid waste and recycle tons in their quarterly recycle reports to the City.

2597

2598 **XI. Scope of Services**

2599 Nothing contained herein is intended to modify the definitions of Solid waste or the scope of
2600 exempt waste as set forth in this Agreement or City ordinances, including but not limited to
2601 Chapter 3 of Title 6 of the Antioch Municipal Code. The City's ordinances, the Agreement and
2602 this Exhibit A shall be interpreted in a manner so as to harmonize any inconsistencies.

2603

2604

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2611

Exhibit B

2612

Schedule of Maximum Rates that Contractor can Impose

2613

2614

Maximum Residential Rates

2615

| | | |
|------|---|---------|
| 2616 | 20 gal garbage cart, 64 gal recycle cart, 96 gal green waste cart | \$20.99 |
| 2617 | 32 gal garbage cart, 64 gal recycle cart, 96 gal green waste cart | \$24.65 |
| 2618 | 64 gal garbage cart, 64 gal recycle cart, 96 gal green waste cart | \$39.80 |
| 2619 | 96 gal garbage cart, 64 gal recycle cart, 96 gal green waste cart | \$46.75 |

2620

Maximum Green Waste Exempt Rate

| | | |
|------|--|---------|
| 2621 | 20 gal garbage cart, 64 gal recycle cart | \$16.67 |
| 2622 | 32 gal garbage cart, 64 gal recycle cart | \$20.33 |
| 2623 | 64 gal garbage cart, 64 gal recycle cart | \$35.48 |
| 2624 | 96 gal garbage cart, 64 gal recycle cart | \$42.43 |

2625

Maximum Senior Rates (must apply with City)

| | | |
|------|---|----------|
| 2627 | 20 gal garbage cart, 64 gal recycle cart, 96 gal green waste cart | \$13.60 |
| 2628 | 32 gal garbage cart, 64 gal recycle cart, 96 gal green waste cart | \$ 14.80 |
| 2629 | 64 gal garbage cart, 64 gal recycle cart, 96 gal green waste cart | \$23.65 |
| 2630 | 96 gal garbage cart, 64 gal recycle cart, 96 gal green waste cart | \$ 27.77 |

2631

Maximum Green Waste Exempt Senior Rates

| | | |
|------|--|---------|
| 2632 | 20 gal garbage cart, 64 gal recycle cart | \$11.01 |
| 2633 | 32 gal garbage cart, 64 gal recycle cart | \$12.21 |
| 2634 | 64 gal garbage cart, 64 gal recycle cart | \$21.06 |
| 2635 | 96 gal garbage cart, 64 gal recycle cart | \$25.18 |

2636

Maximum Additional Rates:

| | | | |
|------|--------------------------------|----------|--------|
| 2638 | Second recycle cart | 64Gal- | \$5.21 |
| 2639 | Senior second recycle cart | 64 Gal - | \$4.44 |
| 2640 | Second green waste cart | 96 Gal | \$4.32 |
| 2641 | Senior second green waste cart | 96 Gal | \$2.59 |

2642

| | | |
|------|---|-------|
| 2643 | Extra on call recycling/cardboard cleanup – on service day only | 30.00 |
| 2644 | Extra on call recycling/green waste cleanup - on service day only | 30.00 |

2645

Maximum Special Pickup Rates

| | | |
|------|-------------------------------|-----------------------------|
| 2646 | Minimum charge on service day | \$25.00 |
| 2647 | Minimum charge nonservice day | \$40.00 |
| 2648 | Extra bag | \$2.50 each – place at curb |
| 2649 | Extra can | \$6.00 each – place at curb |

2650

Maximum Handy Hauler Bins Rates

| | | |
|------|--------|--------|
| 2651 | 4 yard | 139.53 |
| 2652 | 5 yard | 161.00 |
| 2653 | 6 yard | 203.93 |

2654

| | Bulky Item Maximum Price List | |
|------|---|----------|
| 2655 | | |
| 2656 | | |
| 2657 | twin mattress | \$40.00 |
| 2658 | twin box spring | \$40.00 |
| 2659 | double mattress | \$40.00 |
| 2660 | double box spring | \$40.00 |
| 2661 | queen mattress | \$40.00 |
| 2662 | queen box spring | \$40.00 |
| 2663 | king mattress | \$40.00 |
| 2664 | king box spring | \$40.00 |
| 2665 | Stove | \$40.00 |
| 2666 | Dryer | \$40.00 |
| 2667 | Washer | \$40.00 |
| 2668 | Dishwasher | \$40.00 |
| 2668 | hot water heater | \$40.00 |
| 2669 | couch/sofa | \$40.00 |
| 2670 | hide a bed | \$40.00 |
| 2671 | refrigerator (pick up and Freon removal) | \$100.00 |
| 2672 | Freezer (pick up and Freon removal) | \$100.00 |
| 2673 | air conditioner (pick up and Freon removal) | \$100.00 |
| 2674 | swamp cooler | \$40.00 |
| 2675 | tires (less than 19") | \$6.00 |
| 2676 | tires with rim (less than 19") | \$8.00 |
| 2677 | tires (larger than 19") | \$9.00 |
| 2678 | tires with rim (larger than 19") | \$14.00 |
| 2678 | TV (32" or smaller) | \$25.00 |
| 2679 | TV (32" or larger) | \$40.00 |
| 2680 | Computer monitors | \$25.00 |
| 2681 | Ewaste (3 pieces) | \$5.00 |
| 2682 | Extra 32 Gal bag | \$2.50 |

2683
2684
2685

Exhibit C
Commercial & Multi-Family Maximum Garbage Rates

| | | | | | |
|------|--------------|---------|-------------------|--------------|---------|
| 1 Yd | 1 x per week | 142.62 | 5 Yd | 1 x per week | 528.78 |
| | 2 x per week | 285.23 | | 2 x per week | 1057.64 |
| | 3 x per week | 427.85 | | 3 x per week | 1586.50 |
| | 4 x per week | 570.48 | | 4 x per week | 2115.28 |
| | 5 x per week | 713.09 | | 5 x per week | 2644.14 |
| | Special | 49.67 | | Special | 157.29 |
| 2 Yd | 1 x per week | 219.57 | 6Yd | 1 x per week | 627.45 |
| | 2 x per week | 439.19 | | 2 x per week | 1254.88 |
| | 3 x per week | 658.79 | | 3 x per week | 1882.23 |
| | 4 x per week | 878.39 | | 4 x per week | 2509.67 |
| | 5 x per week | 1097.99 | | 5 x per week | 3137.12 |
| | Special | 74.20 | | Special | 182.10 |
| 3Yd | 1 x per week | 330.36 | 8Yd | 1 x per week | 824.82 |
| | 2 x per week | 640.89 | | 2 x per week | 1649.27 |
| | 3 x per week | 961.30 | | 3 x per week | 2473.84 |
| | 4 x per week | 1281.73 | | 4 x per week | 3298.43 |
| | 5 x per week | 1481.88 | | 5 x per week | 4123.03 |
| | Special | 99.33 | | Special | 248.32 |
| 4Yd | 1 x per week | 427.24 | | | |
| | 2 x per week | 854.49 | | | |
| | 3 x per week | 1281.73 | 32 Gal cart 1x/wk | 23.20 | |
| | 4 x per week | 1708.96 | 64 Gal cart 1x/wk | 41.36 | |
| | 5 x per week | 2136.20 | 96 gal cart 1x/wk | 59.17 | |
| | Special | 132.43 | | | |

2686

| | |
|--------------|--------|
| Debris Box: | 2687 |
| Compact Rate | 362.09 |
| Min. Monthly | 488.37 |
| Concrete | 212.16 |
| Reg. Rate | 479.67 |
| Excess ton | 88.33 |

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2701
2702

Commercial & Multi-Family Maximum Recycle Rates

| | | | | |
|------|--------------|-----------|--------------|---------|
| 1 Yd | 1 x per week | 99.835 Yd | 1 x per week | 370.15 |
| | 2 x per week | 199.67 | 2 x per week | 740.35 |
| | 3 x per week | 299.50 | 3 x per week | 1110.55 |
| | 4 x per week | 399.34 | 4 x per week | 1480.70 |
| | 5 x per week | 499.16 | 5 x per week | 1850.90 |
| | Special | 34.77 | Special | 110.10 |
| 2 Yd | 1 x per week | 153.706Yd | 1 x per week | 439.22 |
| | 2 x per week | 307.44 | 2 x per week | 878.42 |
| | 3 x per week | 461.15 | 3 x per week | 1317.56 |
| | 4 x per week | 614.87 | 4 x per week | 1756.77 |
| | 5 x per week | 768.59 | 5 x per week | 2195.98 |
| | Special | 51.94 | Special | 127.47 |
| 3Yd | 1 x per week | 231.258Yd | 1 x per week | 577.21 |
| | 2 x per week | 448.62 | 2 x per week | 1154.48 |
| | 3 x per week | 672.91 | 3 x per week | 1731.68 |
| | 4 x per week | 897.21 | 4 x per week | 2308.90 |
| | 5 x per week | 1037.32 | 5 x per week | 2886.12 |
| | Special | 69.53 | Special | 173.82 |
| 4Yd | 1 x per week | 299.07 | | |
| | 2 x per week | 598.14 | | |
| | 3 x per week | 897.21 | | |
| | 4 x per week | 1196.28 | | |
| | 5 x per week | 1495.34 | | |
| | Special | 92.70 | | |

2703 96 gal cart green waste 4.33

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2705 32 gal cart recycle 16.23

2706 94 gal cart recycle 28.95

2707 96 gal cart recycle 41.42

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Exhibit D
City Facilities and Special Collection Services

City Facilities shall include but not be limited to the following:

| City | | Facility | | Current Service Level |
|----------------|---|------------------------------|---|-----------------------|
| ANTIOCH | | | | |
| 0033696-132 | G | Antioch Youth Sports Complex | G | 21 95 gal 1x wk |
| | | 1030 Apollo Court | R | 15 95 gal on call |
| 0033696-135 | G | East Co. Day Care | G | 1 2yd 1x wk |
| 0033696-117 | G | 931 Cavallo Rd. | G | 1 4yd 2x wk |
| 0033696-129 | G | Lynn House | G | 1 95 gal 1x wk |
| | | 809 First St. | | |
| 0020636-107 | G | Fulton Shipyard | R | 2 95 gal 1x wk |
| 0020636-109 | R | | R | 1 20yd on call |
| 0020636-101 | R | | R | 4 20 yd on call |
| 0020636-103 | R | | R | 5 20 yd on call gw |
| 0029496-100 | G | Park Maintenance Dept. | G | 1 32 gal 1x wk |
| | | 3060 Gentrytown Dr. | | |
| 0033696-105 | G | Lone Tree Golf Course | G | 1 6yd 2x wk |
| | | | G | 1 6yd 1x wk |
| | | | R | 15 95 gal 1x wk |
| | | | R | 3 14 gal bins on call |
| | | | R | 1 2yd 1x wk |
| 0033696-100 | G | City Hall | G | 4 95 gal 2x wk |
| 0033696-119 | R | 212 H Street | R | 10 95 gal 1x wk |
| 0033696-148 | R | | R | 8 95 gal 1x wk |
| | | | R | 1 8yd 3x wk |
| 0033696-126 | G | Community Park | G | 1 8yd 2x wk |
| | | 801 James Donlon | R | 1 2yd 1x wk |
| 0033696-124 | G | Police Station | G | 1 4yd 5x wk |
| | | 300 L Street | R | 3 95 gal 1x wk |
| 0033696-137 | G | Prewett Water Park | G | 1 95 gal 1x wk |
| | | 4701 Lone Tree Way | G | 4 3yd 3x wk |
| | | | R | 1 95 gal 1x wk |
| 0033696-103 | G | Chichibu Park | G | 6 32 gal 1x wk |
| | | Longview Road | | |
| 0033696-123 | G | Antioch Marina | G | 2 4yd 2x wk |
| 0033696-138 | R | 5 Marina Plaza | R | 4 95 gal 1x wk |
| 0033696-107 | G | Corp Yard | G | 3 2yd 1x wk |
| 0033696-120 | R | N Street | G | 1 8yd 1x wk |
| | | | R | 4 95 gal 1x wk |
| | | | R | 1 4yd 1x wk |
| 0033696-106 | G | Water Treatment Plant | G | 1 4yd 1x wk |
| | | 401 Putnam Street | R | 2 64 gal 1x wk |
| 0033696-118 | G | 275#A Tregallas Road | G | 1 32 gal 1x wk |
| 0014126-100 | G | Antioch Little League | G | 2 6yd 1x wk |
| 0014126-101 | R | 10th Street | R | 12 95 gal 1x wk |
| 0033696-128 | G | Delta 2000 | G | 1 3yd 1x wk |

| | | | | |
|-------------|---|--------------------|---|----------------|
| | | 301 10th Street | R | 1 64 gal 1x wk |
| 0033696-122 | G | 200#A 18th Street | G | 1 32 gal 1x wk |
| 0033696-125 | G | Antioch Sr. Center | G | 1 6 yd 2x wk |
| | | 415 2nd St. | R | 2 95 gal 1x wk |
| 0033696-104 | G | 6th Street | G | 2 32 gal 1x wk |
| 0033696-139 | R | Delta Diablo HW | R | 2 64 gal 1x wk |

G - trash
R - recycling

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2715 Minimum Three Special events and monthly litter pickup events, which currently

2716 include:

2717 Coastal Clean Up

2718 Keep Antioch Beautiful clean up

2719 Monthly Neighborhood Litter Picks

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Exhibit E

Service Specifications:
Right of Way Cleaning Areas

- Lone Tree Way - Hwy 4 to Empire
- Hillcrest Ave. - Hwy 4 to Lone Tree Way
- Deer Valley Rd. - Hwy 4 to Lone Tree Way
- James Donalon Blvd. - Lone Tree Way to Somersville
- Contra Loma Blvd. - Hwy 4 to James Donalon
- Dallas Ranch Rd. - Lone Tree Way to the end of the road
- Davison Dr. – Lone Tree Way to Hillcrest Ave.
- Country Hills Dr. – Truskmore Way to Lone Tree Way
- Sagebrush Way – Lone Tree Way to Prewett Ranch Rd.
- East 18th St. – Hillcrest Ave. east to #1860 18th St.
- Oakley Rd. – Willow Ave. to City Limits
- Mokelumne Dr – Mark Twain Dr to Prewett Ranch Dr
- Golf Course Rd – Lone Tree way to Mesa Ridge Dr
- Other right of way areas to be added.**

GUARANTY AGREEMENT

This Guaranty, made as of the date written below by ALLIED WASTE INDUSTRIES, INC., a corporation duly organized and existing in good standing under the laws of the State of Delaware ("Guarantor"), to and for the benefit of the City of Antioch ("City"), a municipal corporation in the State of California (the "State")

WITNESSETH

WHEREAS, Allied Waste Systems, Inc., a Delaware corporation d.b.a. Pleasant Hill Bayshore Disposal, Inc. (the "Contractor"), a wholly owned subsidiary of the Guarantor, and the City have entered into the AGREEMENT FOR COLLECTION SERVICES, as may be supplemented and amended from time to time in accordance with the terms thereof (the "Agreement"), which Agreement is incorporated in this Agreement by reference and by this Agreement made part of this Agreement; and

WHEREAS, it is in the interests of Guarantor that the Contractor comply with the Agreement with the City; and

WHEREAS, in the event the Contractor fails to timely and fully perform its obligations, including the payment of moneys, pursuant to the Agreement, the Guarantor is willing to guaranty Contractor's timely and full performance thereof; and

NOW THEREFORE, the Guarantor provides this Guaranty:

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

1. **Guaranty Of Contractor's Performance Under Agreement.** Guarantor by this Guaranty directly, unconditionally, irrevocably, and absolutely guaranties the timely and full performance of Contractor's obligations under the Agreement in accordance with the terms and conditions contained therein or to cause that timely and full performance. Within 30 days' written request therefore by the City, Guarantor will honor the Guaranty. Notwithstanding the unconditional nature of the Guarantor's payment obligations set forth in this Agreement, the Guarantor may assert the defenses provided in the paragraph entitled Defenses under Section 8 of this Guaranty, against claims made under this Guaranty.

2. **Governing Law; Consent To Jurisdiction; Service Of Process.** This Guaranty is governed by the laws of the State of California. The Guarantor by this Guaranty agrees to the service of process in the State for any claim or controversy arising out of this Guaranty or relating to any breach. The Guarantor by this Guaranty agrees that the courts of the State and to the extent permitted by law, the United States District Court for the Northern District of California, will have the exclusive jurisdiction of all suits, actions, and other proceedings involving itself and to which the City may be party for the adjudication of any claim or controversy arising out of this Guaranty or relating to any breach of this Guaranty, waives any objections that it might otherwise have to the venue of any Court for the trial of any suit, action,

or proceeding, and consents to the service of process in any suit, action, or proceeding by prepaid registered mail, return receipt requested.

3. **Enforceability; No Assignment.** This Guaranty is binding upon and enforceable against Guarantor, its successors, assigns, and lawful representatives. It is for the benefit of the City, its successors and assigns. The Guarantor may not assign or delegate the performance of the Guaranty without the prior written consent of the City in its sole discretion. Any assignment made without the consent of City is voidable by the City in its sole discretion. Together with its request for City consent, Guarantor will pay City \$10,000 for its reasonable expenses for private attorney's fees and investigation costs ("assignment expenses") necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any assignment. City will reimburse Guarantor the excess, if any, over those assignment expenses it incurs. Contrariwise, Guarantor will pay City the excess assignment expenses, if any, over \$10,000 City incurs within 30 days' of City's request therefore. Guarantor will further pay to City the City's reimbursement costs for fees of attorneys who are not City employees and investigation costs necessary to enjoin the assignment or to otherwise enforce this provision within 30 days of the City's request therefore ("injunction costs"). Guarantor's obligation to pay City assignment expenses and injunction costs will not exceed \$35,000 in the aggregate, excluding any costs that the City may recover under applicable law, including court costs paid to a prevailing party.

For purposes of the Guaranty "assign" and "assignment" means:

- a) selling, exchanging or otherwise transferring effective control of management of the Guarantor (through sale, exchange or other transfer of outstanding stock or otherwise);
- b) issuing new stock or selling, exchanging or otherwise transferring 20% or more of the then outstanding common stock of the Guarantor;
- c) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of ownership or control of Guarantor;
- d) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment of an execution, being levied against Guarantor, appointment of a receiver taking possession of any of Guarantor's tangible or intangible property; and,
- e) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any transfer or change of Ownership or control of Guarantor.

For purposes of determining "Ownership", the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date hereof, will apply.

4. **Guaranty Absolute And Unconditional.** The undertakings of Guarantor set forth in this Agreement are absolute and unconditional, and the City is entitled to enforce any or all of those undertakings against Guarantor without being first required to enforce any remedies or to seek to compel the Contractor to perform its obligations under the agreement or to seek, or obtain recourse against any other party or parties, including but not limited to the Contractor or any assignee of the Contractor, who are, or may be, liable therefore in whole or in part, irrespective of any cause or state of facts whatever. Without limiting the generality of the foregoing, the Guarantor expressly agrees that its state of facts or the happening from time to time of an event, other than the payment of the terms of the Agreement, including, without limitation, any of the following, each of which is by this Guaranty expressly waived as a defense to its liability under this Guaranty, except to the extent those defenses would be available to the Contractor and release, discharge or otherwise offset Contractor's obligations under the Agreement:

- a) the invalidity, irregularity, illegality or unenforceability, of or any defect in or objections to the Agreement;
- b) any modification or amendment or compromise of or waiver of compliance with or consent to variation from any of the provisions of the Agreement by the Contractor;
- c) any release of any collateral or lien thereof, including, without limitation, any performance bond;
- d) any defense based upon the election of any remedies against the Guarantor of the Contractor, or both, including without limitation, any consequential loss by the Guarantor of its right to recover any deficiency, by the way of subrogation or otherwise, from the Contractor or any other person or entity;
- e) the recovery of any judgment against the Contractor to enforce any of that collateral or performance bond;
- f) the City or its assigns taking or omitting to take any of the actions which it or any of that assign is required to take under the Agreement; any failure, omission or delay on the part of the City or its assignees to enforce, assert or exercise any right, power or remedy conferred on it or its assigns by the Agreement, except to the extend that failure, omission or delay gives rise to an applicable statue of limitations defense by the Contractor with respect to a specific obligation;
- g) the default or failure of the Guarantor to fully perform any of its obligations set forth in the Guaranty;
- h) the bankruptcy, insolvency, or similar proceeding involving or pertaining to the Contractor or the City, or any order or decree of a court, trustee or receiver in any proceeding;

- i) in addition to those circumstances described in item (h), any other circumstance which might otherwise constitute a legal or equitable discharge of a guarantor or limit the recourse of the City to the Guarantor;
- j) the existence or absence of any action to enforce the Agreement;
- k) subject to the provisions of the Agreement relating to Uncontrollable Circumstances, any present or future law or order of any government or any agency thereof, purporting to reduce, amend or otherwise affect the Agreement or to vary any terms of payment or performance under the Agreement;

Provided that, notwithstanding the foregoing, Guarantor will not be required to pay any monetary obligation of Contractor to City from which Contractor would be discharged, released or otherwise excused under the provisions of the Agreement.

5. Waivers. Guarantor by the Guaranty waives:

- a) Notice of acceptance of the Guaranty and of the creation, renewal, extension and accrual of the limited financial obligations Guaranteed under this Guaranty;
- b) Notice that any person has relied on this Guaranty;
- c) Diligence, demand of payment and notice of default or nonpayment under this Guaranty or the Agreement, and any and all other notices required under the Agreement;
- d) Filing of claims with a court in the event of reorganization, insolvency, or bankruptcy of the Contractor;
- e) any right to require a proceeding first against the Contractor or with respect to any collateral or lien, including, without limitation, any performance bond, or any other requirement that the City exercise any remedy or take any other action against the Contractor or any other person, or in respect of any collateral or lien, before proceeding under this Guaranty;
- f) (i) any demand for performance or observance of, or (ii) any enforcement of any provision of, or (iii) any pursuit or exhaustion of remedies with respect to, any security (including, with limitation, any performance bond) for the obligations of the Contractor under the Agreement; any pursuit of exhaustion of remedies against the Contractor or any other obligor or guarantor of the obligations; and any requirement of promptness or diligence on the part of any person in connection therewith;
- g) to the extent that it lawfully may do so, any and all demands or notices of every kind and description with respect to the foregoing or which may be required to be given by any statute or rule of law, and any defense of any kind which it may now or hereafter have with respect to this Guaranty or the obligations of the Contractor

under the Agreement, *except* any Notice to the Contractor required pursuant to the Agreement or applicable law which Notice preconditions the Contractor's obligation or the defenses listed in Section 8 below.

To the extent that it may lawfully do so, the Guarantor by this Guaranty further agrees to waive, and does by this Guaranty absolutely and irrevocably waive and relinquish, the benefit and advantage of, and does by this Guaranty covenant not to assert, any appraisal, valuation, stay, extension, redemption or similar laws, now or any time hereafter in force, which might delay, prevent or otherwise impede the due performance or proper enforcement of the Guaranty, the Agreement, or the obligations of the Contractor under the Agreement and by this Guaranty expressly agrees that the right of the City under this Guaranty may be enforced notwithstanding any partial performance by the Contractor or the Guarantor, or the foreclosure upon any security (including, with limitation, any performance bond) given by the Contractor for its performance of any of its obligations under the Agreement.

6. Agreements Between City And Contractor; Waivers By City. 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 City and Contractor, the City and Contractor may, from time to time:

- a) renew, modify or compromise the liability of the Contractor for or upon any of the obligations by this Guaranty Guaranteed; or
- b) consent to any amendment or change of any terms of the Agreement; or
- c) accept, release, or surrender any security (including, without limitation, any performance bond), or
- d) grant any extensions or renewals of the obligations of the Contractor under the Agreement, and any other indulgence with respect thereto, and to affect any release, compromise or settlement with respect thereto, all without releasing or discharging the liability of Guarantor under this Guaranty.

The Guarantor further agrees that the City or any of its assigns will have and may exercise full power in its uncontrolled discretion, without in any way affecting the liability of the Guarantor under this Guaranty, to waive compliance with and any default of the Contractor under, the Agreement.

7. Continuing Guaranty. This Guaranty is a continuing Guaranty and will continue to be effective or be reinstated, as applicable, if at any time any payment of any of the obligations under this Guaranty is rescinded or is otherwise required to be returned upon reorganization, insolvency or bankruptcy of the Contractor or Guarantor or otherwise, all as though payment had not been made.

8. Defenses. Notwithstanding any provision in the Guaranty to the contrary, 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 will 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 City in enforcing this Guaranty following the default on the part of the Guarantor under this Guaranty whether the same is 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 in this Agreement conferred upon or reserved to the City under this Guaranty is intended to be exclusive of any other available remedy or remedies, but each and every remedy is cumulative and is in addition to every other remedy given under the Guaranty and the Agreement or in this Agreement after 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 the Guaranty contained will 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 is made except upon the written consent of Guarantor and the City.

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

15. **No Set-Off, Etc.**

By Guarantor. The obligation of Guarantor under this Guaranty will not be affected by any set-off, counterclaim, recoupment, defense or other right that Guarantor may have against the City on account of any claim of the Guarantor against the City; *provided* that Guarantor reserves the right to bring independent claims not arising from the Agreement against the City so long as any claim will not be used to set-off or deduct from any claims which the City may have against the Guarantor arising from this Guaranty.

By Contractor. The obligation of Guarantor under this Guaranty is 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 will 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 this Guaranty:

- a) The Guarantor has the power, authority and legal right to enter into this Guaranty and to perform its obligations and undertakings under this Guaranty, and the execution, delivery 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, (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 Guarantee 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 proceedings before any court or administrative agency which would have a material adverse affect on the financial condition of the Guarantor, or the ability of the Guarantor to perform its obligations or undertakings under this Guaranty.

17. **No Merger; No Conveyance Of Assets.** Guarantor agrees that during the term of this Guaranty in accordance with Section 14 Guarantor will not consolidate with or merge into any other corporation where the shareholders of the Guarantor yield control of the Guarantor, or a majority interest in the Guarantor, to the newly formed corporation, or convey, transfer or lease all or substantially all of its properties and assets to any person, firm, joint venture, corporation, and other entity, unless the City consents thereto in accordance with Section 3 above.

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

19 **Notices.** All notices, instructions and other communications required or permitted to be given to or made upon any party to this Guaranty is in writing, and is given in the manner and to the addresses provided in the Agreement.

20. **Separate Suits.** Each and every payment default by Contractor under the Agreement will give rise to a separate cause of action under this Guaranty, and separate suits may be brought under this Guaranty by the City or its assigns as each cause of action arises.

21. **Headings.** The Section headings appearing in this Agreement are for convenience only and will not govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Guaranty.

22. **Entire Agreement.** This Guaranty constitutes the entire agreement between the parties to this Guaranty with respect to the transactions contemplated by this Guaranty. Nothing in this Guaranty is intended to confer on any person other than the Guarantor, the City and their permitted successors and assigns under this Guaranty any rights or remedies under or by reason of this Guaranty.

23. **Personal Liability.** It is understood and agreed to by the City that nothing contained in this Agreement will create any obligation or right to look to any director, officer, employee or stockholder of the Guarantor (or any affiliate thereof) for the satisfaction of any obligations under this Guaranty, and no judgment, order or execution with respect to or in connection with this Guaranty is taken against any director, officer, employee or stockholder.

24. **Events Of Default.** Each of the following will constitute an event of default under this Guaranty:

- a) **Failure To Fulfill Payment Of Guaranty.** Guarantor fails to fulfill full and timely payment of any guaranty under this Guaranty, including Section 1, and the failure continues for 5 days after Notice (which is deemed given upon receipt of registered or certified mailing by U.S. Postal Service or of invoiced commercial service) (hereinafter defined as "Notice") has been given to the Guarantor by the City; fails to perform any of its obligations under this Guaranty or engages in any acts prohibited under this Guaranty other than failures itemized below, and fails to cure that failure or conduct within 30 days;
- b) **Breach Of Guaranty.** The Guarantor fails to observe and perform any covenant, condition or agreement of this Guaranty, other than any failures listed explicitly in this section, and that failure continues for more than 30 days after Notice has been given the Guarantor by the City;
- c) **Failure To Give Notice Of Proposed Assignment, Etc.** The Guarantor fails to give City Notice in accordance with Section 19 within 10 days of the first to occur of
 - (i) Contractor or any Affiliate issuing a press release as to any proposed assignment, (within the meaning of Section 3), or consolidation, merger, conveyance, transfer or lease described in paragraph (e) of this Section (24) or
 - (ii) The filing with the Securities and Exchange Commission of a Form 8-K or other filing with respect to a memorandum of intent or an agreement and plan therefore

(paragraph (i) and (ii) together defined as, "Change Notice");

- d) **Consolidation, Merger; Conveyance Of Assets.** The Guarantor consolidates, merges or conveys, transfers or leases assets in violation of Section 17 despite City Board action following Change Notice in preceding paragraph c) withholding

or denying City consent, and on or before 15 days thereafter, does not provide City with a substitute Guarantor satisfactory to City in City's sole discretion;

- e) **Bankruptcy, Insolvency, Liquidation.** Guarantor files a voluntary claim for debt relief under any applicable bankruptcy, on solvency, debtor relief, or other similar law now or hereafter in effect, or will consent to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, custodian, administrator (or similar official) of Guarantor for any substantial part of Guarantor's operating assets or any substantial part of Guarantor's property, or will make any general assignment for the benefit of Guarantor's creditors, or will fail generally to pay Guarantor's debts as they become due or will take any action in furtherance of any of the foregoing.

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

- f) **Breach Of Representations Or Warranties.** Any representation or warranty of Guarantor is untrue as of the date thereof, Guarantor knowingly makes, causes to be made or condones the making of any false entry in its books, and accounts, records and reports under this Guaranty.

Upon any Event of Default the City may to proceed first and directly against the Guarantor under Guaranty without proceeding against or exhausting any other remedies, which it may have. The Guarantor acknowledges that any Contractor default comprises a default under the Agreement.

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

By: T. A. BA, V.P.

Date: April 13, 2009

Attest: [Signature], Sec.

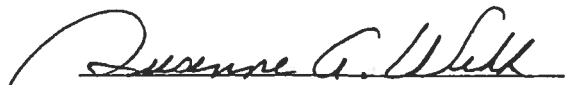
Date: April, 13, 2009

Proper notarial acknowledgment of execution by Guarantor must be attached.

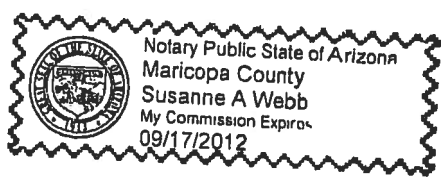
(1) Chairman, president or vice-president, and (2) secretary, assistant secretary, CFO or assistant treasurer, must sign for corporations. Otherwise, the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 13th day of April, 2009, by Tim M. Benter, a Vice President of ALLIED WASTE INDUSTRIES, INC., a Delaware corporation, for and on behalf thereof.


Notary Public

My Commission Expires:
9/17/12



CONTINUATION CERTIFICATE

The International Fidelity Insurance Company (hereinafter called the Surety) hereby continues in force its Bond No. 360113 in the sum of Twenty Five Thousand Dollars and 00/100 (\$25,000.00) Dollars, on

behalf of Allied Waste Systems, Inc.

in favor of City Of Antioch City Hall

subject to all the conditions and terms thereof through April 10, 2011 at location of risk.

This Continuation is executed upon the express condition that the Company's liability shall not be cumulative and shall be limited at all times by the amount of the penalty stated in the bond.

IN WITNESS WHEREOF, the Company has caused this instrument to be signed by its duly authorized Attorney-in-Fact and its corporate seal to be hereto affixed this 22 day of March, 2010.

International Fidelity Insurance Company
Surety

By: Roxanne M. Grace
Roxanne M. Grace / Attorney-in-Fact

POWER OF ATTORNEY INTERNATIONAL FIDELITY INSURANCE COMPANY

HOME OFFICE: ONE NEWARK CENTER, 20TH FLOOR
NEWARK, NEW JERSEY 07102-5207

KNOW ALL MEN BY THESE PRESENTS: That INTERNATIONAL FIDELITY INSURANCE COMPANY, a corporation organized and existing laws of the State of New Jersey, and having its principal office in the City of Newark, New Jersey, does hereby constitute and appoint

KAREN B. DEDRICK, HOWARD N. DEAN, BRENDAN SCHRIBER, ROXANNE M. GRACE

Charlotte, NC.

its true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be as binding upon the said INTERNATIONAL FIDELITY INSURANCE COMPANY, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal office.

This Power of Attorney is executed, and may be revoked, pursuant to and by authority of Article 3-Section 3, of the By-Laws adopted by the Board of Directors of INTERNATIONAL FIDELITY INSURANCE COMPANY at a meeting called and held on the 7th day of February, 1974.

The President or any Vice President, Executive Vice President, Secretary or Assistant Secretary, shall have power and authority

- (1) To appoint Attorneys-in-fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof and,
- (2) To remove, at any time, any such attorney-in-fact and revoke the authority given.

Further, this Power of Attorney is signed and sealed by facsimile pursuant to resolution of the Board of Directors of said Company adopted at a meeting duly called and held on the 29th day of April, 1982 of which the following is a true excerpt:

Now therefore the signatures of such officers and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.



IN TESTIMONY WHEREOF, INTERNATIONAL FIDELITY INSURANCE COMPANY has caused this instrument to be signed and its corporate seal to be affixed by its authorized officer, this 16th day of October, A.D. 2007.

INTERNATIONAL FIDELITY INSURANCE COMPANY

STATE OF NEW JERSEY
County of Essex

Secretary

On this 16th day of October 2007, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said he is the therein described and authorized officer of the INTERNATIONAL FIDELITY INSURANCE COMPANY; that the seal affixed to said instrument is the Corporate Seal of said Company; that the said Corporate Seal and his signature were duly affixed by order of the Board of Directors of said Company.



IN TESTIMONY WHEREOF, I have hereunto set my hand affixed my Official Seal, at the City of Newark, New Jersey the day and year first above written.

A NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Nov. 21, 2010

CERTIFICATION

I, the undersigned officer of INTERNATIONAL FIDELITY INSURANCE COMPANY do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Section of the By-Laws of said Company as set forth in said Power of Attorney, with the ORIGINALS ON IN THE HOME OFFICE OF SAID COMPANY, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect

IN TESTIMONY WHEREOF, I have hereunto set my hand this 22nd day of March, 2010

Assistant Secretary