City and County of San Francisco
Department of the Environment
11 Grove Street
San Francisco, California 94102

Landfill Disposal Agreement between The City and County of San Francisco and Recology San Francisco

This Landfill Disposal Agreement (this "Agreement") is made this 28th day of July, 2011, in the City and County of San Francisco, State of California ("San Francisco"), by and between: Recology San Francisco, a California corporation, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Department of the Environment.

Recitals

WHEREAS, the City, Contractor (f/k/a Sanitary Fill Company) and Waste Management of Alameda County, Inc. ("WMAC") (f/k/a Oakland Scavenger Company) are parties to that certain Waste Disposal Agreement dated as of January 2, 1987 (the "Prior Agreement");

WHEREAS, the Prior Agreement provides the City with landfill disposal capacity of up to 15 million tons at WMAC's Altamont landfill, approximately 12.9 million of which had been utilized as of May 31, 2010;

WHEREAS, the City estimated in February 2009 that the remaining landfill disposal capacity under the Prior Agreement would be exhausted by 2014 or 2015, depending on the rate at which residual solid waste is disposed of in San Francisco in the coming years;

WHEREAS, the California Department of Resources Recycling and Recovery (CalRecycle) requires that the City have a plan for 15 years of landfill disposal capacity;

WHEREAS, to meet the CalRecycle requirement, and ensure sufficient landfill disposal capacity following exhaustion of capacity under the Prior Agreement, the City issued a Request for Proposals for Landfill Disposal Capacity ("RFP") on February 9, 2009, and subsequently selected Contractor as the highest qualified scorer pursuant to the RFP;

WHEREAS, Contractor represents and warrants that it, together with its affiliates, is qualified to perform the services required by City as set forth under this Contract;

Now, THEREFORE, the parties agree as follows:

1. Definitions.

Definitions contained in this section shall govern the construction of this Agreement.

1.1 "Applicable Laws" means all laws, ordinances, orders, judgments, rules, regulations and interpretations of any federal, state or local governmental entity applicable to operation of the Landfill or Back-Up Landfill.

1.2 "Beneficial Use Material" means any material, including contaminated soils, that is used for alternative daily cover (as defined in Section 20164 of the California Code of Regulations), landfill construction, erosion control, pad or road building, slope stabilization, other beneficial reuse (as defined in Section 20686 of the California Code of Regulations), or any other use that is not deemed to be "disposal" for purposes of the California Integrated Waste Management Act and the rules and regulations thereunder, *provided, however*, that "Beneficial Use Material" shall not include Source-Separated Recyclable Material or Source-Separated Organic Material.

1.3 "Back-Up Landfill" means the Hay Road Landfill, located at 6426 Hay Road, Vacaville, California, in unincorporated Solano County.

1.4 "Change in Law" means any change in Applicable Law or Permits occurring after the date hereof that is not the result of Contractor's willful or negligent action or omission or violation of Applicable Law or Permits.

1.5 "City Waste" means Solid Waste and/or Beneficial Use Material that is (i) collected in San Francisco by or on behalf of Permitted Haulers or City, (ii) generated in San Francisco and delivered to the Transfer Station by self-haulers, or (iii) residue from the processing of Recyclable Material or Organic Material generated in San Francisco.

1.6 "Commencement Date" means the date, as designated by the City, when all or substantially all the City's Solid Waste is first accepted at the Landfill or Back-Up Landfill, which date may not be later than January 1, 2019.

1.7 "Designated Waste" means any of the following: (i) Hazardous Waste that has been granted a variance from hazardous waste management requirements, (ii) nonhazardous waste that, under ambient environmental conditions at a waste management unit, could be released in concentrations exceeding applicable water quality objectives or that could reasonably be expected to affect beneficial uses of the waters of the state, (iii) "universal wastes," as defined in Section 66261.9 of Title 22 of the California Code of Regulations, or (iv) as to the Landfill or Back-Up Landfill, any material that is not permitted to be disposed of or accepted at such landfill under its Permits or Applicable Laws as in effect from time to time.

1.8 "Director" means the Director of the Department of Public Works of the City.

1.9 "Disposal Term" is defined in Section 2.2 hereof.

1.10 "Facilitation Agreement" means that certain Amended and Restated Facilitation Agreement dated as of the date hereof between City and Contractor.

1.11 "Fees" means the following collectively: the Solid Waste Fee, the Organics-Free Waste Fee, and the Beneficial Use Material Fee, each as defined in **Appendix A**, as well as the Excess Disposal Fee and the Carbon Mitigation Fee, each as defined in Section 3.8.

1.12 "Force Majeure" means any (a) act of God, earthquake, fire, flood, storm, epidemic, landslide, lightning, explosion or similar occurrence; (b) act of public enemy, war, terrorism, riot, civil disturbance or disobedience, sabotage or similar occurrence; (c) labor action, strike, picketing, work stoppage, work slowdown, sickout or similar occurrence; (d) order, judgment, injunction, condemnation or other act of any federal, state, county or local

court, administrative agency or governmental office or body, not the result of the Contractor's willful or negligent action or omission; or (e) act, event or condition affecting the Contractor or the Landfill or Back-Up Landfill which is beyond the reasonable control of the Contractor and is not the result of the Contractor's willful or negligent action or omission.

1.13 "Governmental Fees" means all government-mandated regulatory fees, charges or assessments that may be imposed from time to time on or applicable to the Landfill or Back-Up Landfill by federal, state or local authorities, and includes without limitation the county host fee payable to Yuba County (in the case of the Landfill) or Solano County (in the case of the Back-Up Landfill), and the AB939 fee payable to CalRecycle.

1.14 "Hazardous Waste" means any materials defined, regulated or listed (directly or by reference) as "hazardous waste," "hazardous material," "hazardous substance," "toxic waste," "pollutant" or "toxic substance," or similarly identified as hazardous to human health or to the environment, in or pursuant to applicable federal, state or local laws, rules or regulations, as the same may be amended from time to time. "Hazardous Waste" includes without limitation "hazardous waste" as defined in California Public Resources Code Section 40141, as amended.

1.15 "Landfill" means the Ostrom Road Landfill, located at 5900 Ostrom Road in unincorporated Yuba County, California.

1.16 "Ordinance" means the Refuse Collection and Disposal Ordinance of November 8, 1932, as amended, and codified as Appendix 1 to the San Francisco Administrative Code.

1.17 "Organic Material" means any food scraps, plant trimmings, food soiled paper, or other material that can be composted into usable products in a safe and timely manner by facilities accepting material collected in San Francisco's collection programs.

1.18 "Organics-Free Waste" means processed Solid Waste that contains no Organic Material other than minimal amounts of stabilized Organic Material. Stabilization shall be through processing, as documented by the Contractor. Contractor shall consult with City regarding the method of processing.

1.19 "Permits" means all licenses, permits, approvals and authorizations necessary for operation of the Landfill and Back-Up Landfill, and includes all permit conditions and obligations under the same.

1.20 "Permitted Hauler" means any person engaged in San Francisco in the collection, transportation or consolidation for transportation of Solid Waste or Beneficial Use Material and that is duly licensed under the Ordinance and/or engages in any such activities pursuant to an agreement, permit or license issued by the City. Although Contractor is a Permitted Hauler within the meaning of the preceding sentence, for purposes of this Agreement, and any other agreement that incorporates by reference this definition, the term "Permitted Hauler" shall be deemed to exclude Contractor. Where this Agreement refers to the Contractor's authority or responsibility to collect fees or charges contemplated in the Agreement, "Permitted Hauler" shall also include self-haulers operating in compliance with the Ordinance.

1.21 "Rate Board" means the San Francisco Refuse Collection and Disposal Rate Board created pursuant to the Ordinance.

1.22 "Rates" means the rates that Permitted Haulers are permitted to charge, under the Ordinance or any agreement, permit or license issued by the City, for refuse disposal and collection of refuse from residences, flats and apartments in San Francisco, and rates that Contractor is permitted to charge for the Transfer Station.

1.23 "Recyclable Material" means any material that can be returned to the economic mainstream in the form of raw material for new, reused or reconstituted products that meet the quality standards necessary to be used in the marketplace.

1.24 "Solid Waste" shall have the same meaning as found in California Public Resources Code Sections 40191, as amended, *provided, however*, that "Solid Waste" shall not include Beneficial Use Material, Source-Separated Recyclable Material, Source-Separated Organic Material, Hazardous Waste, Designated Waste, or sewage sludge. For the avoidance of doubt, "Solid Waste" includes without limitation Organics-Free Waste, and residue from the processing of Source-Separated Recyclable Material or Source-Separated Organic Material.

1.25 "Source-Separated" materials means materials that have been segregated from the solid waste stream by the generator or at a centralized facility.

1.26 "Transfer Station" is defined in the Facilitation Agreement.

2. Site and Agreement.

2.1 **Exclusive Disposal Site:** The parties agree that the Landfill and Back-Up Landfill will be the exclusive sites used by the City and Contractor for disposal or beneficial reuse of all City Waste. The only exception to the foregoing grant of exclusivity is that City may send de minimis amounts of Collected Waste to alternative disposal sites for the purpose of testing alternative waste handling technologies.

2.2 **Term of the Agreement**: The Contractor hereby agrees to provide the City the right to deposit for disposal, in a lawful manner, from and after the Commencement Date, at the Landfill or Back-Up Landfill, all Solid Waste collected in San Francisco by Permitted Haulers or self-haulers (i) until December 31, 2025, or, if later, the 10-year anniversary of the Commencement Date, or (ii) until 5 million tons of Solid Waste have been deposited under this Agreement, whichever of (i) or (ii) comes first. The period from the Commencement Date until the expiration or earlier termination of this Agreement is referred to herein as the "Disposal Term."

2.3 **Effective Date of Agreement:** This Agreement shall become effective upon signing. The Department of the Environment shall notify the Contractor in writing at least 90 days in advance of the Commencement Date. The parties acknowledge that the Commencement Date is uncertain, because the date of termination of the Prior Agreement depends (among other things) on the rate at which Solid Waste is disposed of in San Francisco in future years. The parties further acknowledge that, if the Commencement Date occurs before the Target Date (as defined in the Facilitation Agreement), the facilities and other infrastructure required to transport materials to the Landfill may not be fully completed and operational. Accordingly, if the Commencement Date occurs before the Target Date, then

Contractor may utilize (and in such event, City shall cause the Permitted Haulers and self-haulers to utilize) the Back-Up Landfill until the Target Date.

2.4 **Enforcement:** The City agrees to make its best effort to take any administrative or legal action as is reasonable and necessary for the continued enjoyment of all parties of the benefits of this Agreement during its full term for as long as Solid Waste is being produced in San Francisco, regardless of any change in the identity of persons collecting, transporting or consolidating for transportation any Solid Waste, or of any change in the manner in which these acts are performed.

2.5 **Hazardous and Designated Wastes Not Included:** The Landfill and the Back-Up Landfill are currently designated as Class II disposal sites. No provision of this Agreement shall be deemed to require acceptance at the Landfill or Back-Up Landfill of any material which is or contains Hazardous Waste or Designated Waste. Any material which is currently permitted for disposal or beneficial reuse under this Agreement but is later reclassified as Hazardous Waste or Designated Waste shall cease to be covered by this Agreement until such time as those classifications are removed. Arrangements for disposal of Hazardous Waste or Designated Waste must be made by separate agreement. If City and Contractor enter into a separate agreement regarding acceptance of Designated Waste at the Landfill or Back-Up Landfill, Contractor shall quantify, and provide City with tonnage information regarding, any Designated Waste so accepted.

2.6 **Permits and Approvals:** Each party will pay its own expenses for preparation of such applications, environmental impact reports (EIS or EIR), and other documents and studies which have been necessary or become necessary to obtain all permits and approvals from various government agencies required for operation under this Agreement. In the event any litigation becomes necessary to protect the continued validity of permits or approvals held or required to be held by Contractor or its affiliates for operation of the Landfill or Back-Up Landfill, the cost of that litigation will be borne by the Contractor or its affiliates. The City agrees to cooperate with the Contractor and its affiliates in any such litigation.

3. Rates and Compliance.

3.1 **Disposal Fees:** The Contractor agrees to abide by, and shall be entitled to charge and collect from Permitted Haulers, the Fees provided for in this Agreement. The initial maximum Fees per ton of Solid Waste, Organics-Free Waste or Beneficial Use Material delivered to the Landfill or Back-Up Landfill pursuant to this Agreement shall be those specified in **Appendix A**. The Contractor shall prepare and submit to the City a fee statement for all Fees paid to the Contractor, including Solid Waste tonnage, Organics-Free Waste tonnage and Beneficial Use Material tonnage, by the 20th of each month for the prior calendar month. The Contractor reserves the right to enter into agreements with Permitted Haulers and self-haulers regarding matters relating to this Agreement or the Ordinance, provided that such agreements do not conflict with this Agreement.

3.2 **Fee Structure**. Each of the Solid Waste Fee, the Organics-Free Waste Fee and the Beneficial Use Material Fee consists of two components: The "Landfill Operations" component represents the compensation to the Contractor for disposal of Solid Waste (or beneficial reuse of Beneficial Use Material) at the Landfill or Back-Up Landfill, inclusive of any intermodal operations. The "Governmental Fees" component represents Governmental Fees. Contractor shall ensure that Governmental Fees are remitted to the

applicable governmental authority from the Solid Waste, Organics-Free Waste and Beneficial Use Material Fees paid by Permitted Haulers.

3.3 Fee Adjustments: The Fees defined in **Appendix A** shall be adjusted as follows:

(a) Adjustment of Landfill Operations Component. Each year commencing on July 1, 2016 (regardless of whether the Commencement Date occurs before or after July 1, 2015), and continuing each July 1 thereafter until this Agreement terminates, the "Landfill Operations" component of each Fee defined in **Appendix A** shall be automatically adjusted by 100% of the percentage change in the San Francisco-Oakland-San Jose (1967=100) All Urban Consumer Index produced by the United States Department of Labor, Bureau of Labor Statistics ("CPI-U") for the 12 months ending on the April 30 immediately preceding such July 1. Should the aforementioned index become unavailable in the same form and on the same basis as last published immediately prior to the execution of this Agreement, the parties shall utilize a replacement index that shall produce as nearly as possible the same result as would have been achieved had the aforementioned index remained available.

(b) Adjustment of Governmental Fees Component.

(i) The Governmental Fees component of each Fee defined in **Appendix A** shall be increased or decreased by the amount of any changes after the date hereof in per-ton Governmental Fees (including without limitation the introduction of any new per-ton Governmental Fees).

(ii) Adjustments to the Governmental Fee component shall occur to the extent possible concurrently with the effective date of the change to such per-ton Governmental Fees.

(iii) Contractor understands that, under the Ordinance, Contractor will not be entitled to increase Fees pursuant to this Section 3.3(b) unless and until such increase has been approved by the Director and, if applicable, the Rate Board. City understands that, in the event of a proposed increase in Fees pursuant to this Section 3.3(b), Contractor will seek an order of the Director and, if applicable, the Rate Board to approve such Fee increase, approve the inclusion of such Fee increase in the cost base used to set Rates, and approve a corresponding adjustment in the then-current Rates. Upon Contractor's provision of substantial evidence that an existing per-ton Governmental Fee has been or will be increased, or a new per-ton Governmental Fee has been or will be introduced, and of the per-ton amount of such Governmental Fee, the City departments responsible for reviewing Rate applications under the Ordinance (currently the Department of Public Works and the Department of the Environment) shall, subject to their confirmation of such evidence and Contractor's supporting calculations, recommend that the Director and, if applicable, the Rate Board, approve the inclusion of such amounts in the cost base used to set Rates; *provided, however*, that said City departments may make independent recommendations regarding the timing and allocation of any resulting rate adjustment for the purpose of avoiding major rate fluctuations while compensating Contractor for its increased expense. Any decrease in Fees pursuant to this Section 3.3(b) may be approved by the Director of the Department of the Environment.

(c) Adjustment for Change in Law.

(i) The Landfill Operations component of each Fee defined in **Appendix A** shall be adjusted by the Permitted Haulers' per-ton ratable share of any increased costs (including without limitation any increased Governmental Fees other than per-ton Governmental Fees), legally required to be incurred as a result of any Change in Law, of operating the Landfill, or of providing for or maintaining any funds, reserves, insurance coverages or like financial assurances relating to the operation, closure or postclosure of the Landfill.

(ii) For the purpose of determining each Permitted Hauler's share of such costs, the following principles shall apply: (i) non-capital costs shall be allocated on a per-ton basis; (ii) capital costs shall be amortized over the useful life of the asset (or, if less, over the remaining useful life of the Landfill) and allocated on a per-ton basis; and (iii) costs relating to the closure or postclosure of the Landfill shall be amortized over the remaining useful life of the Landfill and allocated on a per-ton basis.

(iii) Adjustments under this Section 3.3(c) shall occur to the extent possible sufficiently in advance of the effective date of the Change in Law to enable Contractor to take such steps as are reasonably necessary to ensure compliance with such Change in Law as of its effective date.

(iv) Contractor understands that, under the Ordinance, Contractor will not be entitled to increase Fees pursuant to this Section 3.3(c) unless and until such increase has been approved by the Director and, if applicable, the Rate Board. City understands that, in the event of a proposed increase in Fees pursuant to this Section 3.3(c), Contractor will seek an order of the Director and, if applicable, the Rate Board to approve such Fee increase, approve the inclusion of such Fee increase in the cost base used to set Rates, and approve a corresponding adjustment in the then-current Rates. Upon Contractor's provision of substantial evidence that a Change in Law has occurred or will occur, that the increased costs resulting from such Change in Law are legally required to be incurred and otherwise meet the requirements of Section 3.3(c)(i), and that the Permitted Haulers' per-ton ratable share of such costs has been calculated in a manner consistent with this Section 3.3(c), the City departments responsible for reviewing Rate applications under the Ordinance (currently the Department of Public Works and the Department of the Environment) shall, subject to their confirmation of such evidence and Contractor's supporting calculations, recommend that the Director and, if applicable, the Rate Board, approve the inclusion of such amounts in the cost base used to set Rates; *provided, however*, that said City departments may make independent recommendations regarding the timing and allocation of any resulting rate adjustment for the purpose of avoiding major rate fluctuations while compensating Contractor for its increased expense.

3.4 **Incorporation Into Rate Structure:** For the purpose of assuring the ability of the Permitted Haulers to pay the Fees, charges and expenses for which this Agreement provides, the City departments responsible for reviewing Rate applications under the Ordinance (currently the Department of Public Works and the Department of the Environment) will recommend to the Director (or, in the event of an appeal under the Ordinance, the Rate Board), that (i) the obligations assumed by Contractor under this Agreement are prudent, reasonable and necessary for Contractor to incur in order to render its services to the public, and (ii) subject to Contractor's evidentiary showing, City's confirmation thereof, and City's right to make independent recommendations as set forth

under Section 3.3(b)(iii) or Section 3.3(c)(iv), if applicable, such Fees, charges and expenses (as adjusted from time to time in accordance with the provisions hereof) be included in the cost base used to set Rates. The parties acknowledge that Contractor's obligation to provide the services set forth herein depends upon Contractor's receipt of the compensation contemplated by this Section 3.4. If and to the extent the Director (and, if applicable, the Rate Board) fails to approve the inclusion of such Fees, charges and expenses in the cost base used to set Rates, then promptly thereafter, the parties shall meet and negotiate in good faith for a period of thirty (30) days regarding the nature, extent and timing of Contractor's reduction of services under this Agreement and/or the Facilitation Agreement (and/or the amounts payable into the Zero Waste Account (as defined in Section 3.8) and/or the Reserve Fund (as defined in the Facilitation Agreement), so that the same are commensurate with the Fees, charges and expenses that have been so approved.

3.5 **Annual Statements:** Within ninety (90) days of the end of each of the Contractor's fiscal years during the term of this Agreement, the Contractor shall furnish to the City's Controller a financial statement of the Contractor. Such statement shall be under oath and in such detail as the Controller may reasonably require.

3.6 **Compliance Issues:** In the performance of this Agreement, Contractor shall comply with all Applicable Laws, provided that the Contractor may contest the validity or applicability of any provision of Applicable Law so long as such contest (if against a party other than the City) is conducted without prejudice, liability, damage or expense to the City. Contractor agrees to use its best efforts to maintain all Permits, and to maintain landfill capacity sufficient to satisfy Contractor's obligation under Section 2.2. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall require Contractor (or its affiliates) to violate any provision of Applicable Law or any Permit, and no failure by Contractor (or its affiliates) to perform any obligation under this Agreement shall be deemed a breach or default hereunder if such failure to perform is required in order to comply with Applicable Law or any Permit.

3.7 **Acceptance of Waste:** The Contractor has the affirmative duty to accept (or cause to be accepted) from Permitted Haulers, at the Landfill (or Back-Up Landfill, if applicable), all Solid Waste and Beneficial Use Material generated in San Francisco, subject to payment to Contractor of the Fees provided for under this Agreement. This section shall not bar Contractor from setting reasonable rates and terms for services not covered by this Agreement that the Contractor may provide to Permitted Haulers or other parties.

3.8 **City Fees; Zero Waste Account:** The parties acknowledge that City intends, subject to any required approval by the Director (and, if applicable, the Rate Board), to impose certain fees on waste generators in City to facilitate achievement of City's disposal targets and other diversion and environmental goals. Such fees comprise: (i) a fee on each ton of Solid Waste disposed during any calendar year at the Landfill, Back-Up Landfill or other landfill designated hereunder that exceeds City's annual disposal target for such calendar year as set forth on **Appendix B** (the "Excess Disposal Fee"), which fee is expected to be $5.00 per ton initially, and (ii) a fee for each ton of Solid Waste or Beneficial Use Material disposed or deposited at the Landfill, Back-Up Landfill or other landfill designated hereunder (the "Carbon Mitigation Fee"), which fee is expected initially to be $10.00 per ton for Organics-Free Waste and Beneficial Use Material, and $15.00 per ton for Solid Waste other than Organics-Free Waste. The proceeds of such Fees shall be paid into a separate City account (the "Zero Waste Account") to be used exclusively for projects, jointly approved by City and Contractor, to increase diversion from landfill or high-

temperature disposal, or to reduce carbon emissions, by City, Contractor or Permitted Haulers within San Francisco or at the Landfill or Back-Up Landfill (so long as such projects do not reduce diversion or provide an incentive to do so). If so directed by the Director (and, if applicable, the Rate Board), Contractor agrees to collect such Fees from Permitted Haulers and others, but only if and to the extent such Fees are included in the cost base used to set Rates in future Rate proceedings under the Ordinance. City may change the amount of such Fees from time to time in its sole discretion, subject to compliance with the preceding sentence and any required approval by the Director (and, if applicable, the Rate Board). The manner in which such Fees shall be calculated and collected shall be determined through the Rate process.

4. Force Majeure and Service Interruptions.

4.1 Force Majeure: If Contractor or any of its affiliates or subcontractors is unable to perform any of Contractor's obligations hereunder, in whole or in part, by reason of an event of Force Majeure or the effect thereof, then such obligations shall be suspended for the duration of such event of Force Majeure and the effect thereof, and such failure to perform shall not be deemed a breach or default hereunder. If Contractor intends to rely upon this Section 4.1 to suspend its obligations, it shall notify City as soon as reasonably practicable, describing in reasonable detail the event of Force Majeure, and shall again notify City when the effect of the event of Force Majeure has ceased.

4.2 Interruption of Service: If Contractor or its affiliates are unable to perform operations at the Landfill for more than three (3) business days for any reason not principally caused by City, including an event of Force Majeure, then City may direct Contractor and the Permitted Haulers to utilize the Back-Up Landfill. If Contractor's or its affiliates' operations under this Agreement or the Facilitation Agreement are suspended or otherwise materially affected by reason of an event of Force Majeure (or the effect thereof) under either agreement, then, subject to City's approval (not to be unreasonably withheld, conditioned or delayed), Contractor may utilize the Back-Up Landfill (and in such event, City shall cause the Permitted Haulers to utilize the Back-Up Landfill). Any utilization of the Back-Up Landfill pursuant to this Section 4.2 or Section 2.3 shall be on the same terms and conditions as are set forth in this Agreement, *provided, however*, that the Governmental Fees imposed by or applicable in Solano County shall be substituted for those imposed by or applicable in Yuba County, and the Fees payable by the Permitted Haulers at the Back-Up Landfill shall be adjusted accordingly. If Contractor or its affiliates are unable to perform operations at both the Landfill and the Back-Up Landfill concurrently for more than three (3) business days for any reason, including an event of Force Majeure, then City may either (a) utilize (and cause the Permitted Haulers to utilize) a landfill other than the Landfill and the Back-Up Landfill, or (b) take temporary possession of the Contractor's (or its affiliates') equipment at the Landfill or Back-Up Landfill to continue in the interest of public health and safety the services which the Contractor has agreed (but is unable) to provide. Except for the foregoing adjustment to the Governmental Fees component, Contractor will be responsible for any additional disposal costs incurred as a result of using the Back-Up Landfill or other landfill.

4.3 Possession of Contractor's Equipment. If the City takes possession of equipment pursuant to Section 4.2, (i) the City shall employ only qualified operators satisfactory to the Contractor; (ii) the City shall comply with all reasonable instructions of the supervisor at the Landfill or Back-Up Landfill for the conduct of operations; (iii) the City shall be responsible for the proper use and operation of the equipment and facilities, including

maintenance and repair; (iv) the equipment and facilities shall be returned to it in the same condition as when the City took possession, ordinary wear and tear excepted; (v) the Fees provided in **Appendix A** (as adjusted) shall apply, which Fees shall continue to be paid to the Contractor to the extent possible (and if not possible, then paid to the City and held in trust for the Contractor); (vi) the Contractor shall reimburse the City for its reasonable, documented costs of operating the Landfill or Back-Up Landfill; and (vii) the City will defend, indemnify and hold harmless the Contractor and its affiliates from claims by third parties resulting from the City's negligence or intentional misconduct in the use of the facilities or equipment.

4.4 **Exercise and Duration of City's Rights**. The City may exercise any of the rights set forth in Section 4.2 only upon 24 hours' prior written notice to the Contractor. Such rights shall terminate as soon as the Contractor demonstrates to the City's reasonable satisfaction that it (and its affiliates) are ready, willing and able to resume operations at the Landfill (or the Back-Up Landfill, if both the Landfill and Back-Up Landfill have been inoperable), at which time the City shall promptly resume delivery (and cause the Permitted Haulers to resume delivery) of Solid Waste and Beneficial Use Material to the Landfill (or Back-Up Landfill).

5. Landfill Operations.

5.1 **Hours of Operation:** The Landfill (and Back-Up Landfill, if needed) will receive Solid Waste and Beneficial Use Material under this Agreement on days and times sufficient to accept all City Waste in accordance with this Agreement. Self-haulers will be able to deliver Solid Waste and Beneficial Use Material generated in City to Contractor's affiliate, Recology Yuba-Sutter, at its transfer station located at 3001 N. Levee Road, Marysville, California, during its business hours, for disposal and beneficial reuse at the Landfill.

5.2 **Hazardous Waste and Designated Waste:** The Contractor shall take reasonable steps to see that only Solid Waste and Beneficial Use Material is accepted from the Permitted Haulers at the Landfill and Back-Up Landfill. The Contractor agrees to use reasonable efforts to identify and remove from the waste stream Hazardous Waste or Designated Waste it may receive from the Permitted Haulers for disposal at the Landfill or Back-Up Landfill. "Reasonable efforts" shall include, but not be limited to, employee training and inspection by qualified personnel, as well as working cooperatively with the City on public education, particularly to educate self-haulers. The Contractor agrees to ensure compliance with the Landfill Load Check Program attached hereto as **Appendix C**, as the same may be amended or updated from to time. Incoming loads must be screened before, during and after tipping for the presence of prohibited wastes. Within 60 days after the end of each calendar year, Contractor will provide the City with an annual report on the quantities of Hazardous Waste and Designated Waste (if any) removed prior to and at the Landfill (or Back-Up Landfill, if applicable) from the City's waste stream. The parties recognize that, notwithstanding Contractor's reasonable efforts and compliance with the Landfill Load Check Program, it is possible that Hazardous Waste or Designated Waste may be delivered to the Landfill or Back-Up Landfill. Accordingly, delivery of Hazardous Waste or Designated Waste to the Landfill or Back-Up Landfill shall not in itself evidence Contractor's failure to comply with this Section 5.2.

5.3 **Landfill Gas**: The Contractor agrees to use commercially reasonable efforts to ensure that a state-of-the-art gas recovery system (which employs commercially reasonable methods to maximize capture of landfill gas and minimize flaring) is maintained at the Landfill, using

best available control technology, for the duration of the Disposal Term. The Contractor shall use commercially reasonable efforts to ensure that the portion of the gas recovered from such system during the Disposal Term, attributable to tonnage disposed at the Landfill pursuant to this Agreement, is used by the Contractor or its affiliates to produce energy or fuel vehicles, or is sold to third parties whom the Contractor reasonably believes intend to use such gas to produce energy or fuel vehicles or to transfer such gas to end users who intend to use it for such purposes. The Contractor and the Department of the Environment will cooperate in good faith to design and implement a plan to use such portion of Landfill gas in accordance with the preceding sentence, it being understood that such plan shall not conflict with any agreements for the use of Landfill gas entered into by the Contractor or its affiliates before the date hereof. The Contractor will provide an annual report on the percent and amount of Landfill gas captured from such system during the Disposal Term. The Contractor further agrees to use good faith efforts to explore the feasibility (subject to applicable permitting and land use requirements) of installing renewable energy facilities on property adjacent to the Landfill that will offset a minimum of 50% of all energy imported to the Landfill. The Contractor shall not be obligated to install any such facilities unless it determines that doing so would be commercially reasonable and profitable.

5.4 **Minimizing Climate Impacts**: The Contractor and the Department of the Environment will cooperate in good faith to design and implement a plan to reduce greenhouse gas emissions at the Landfill during the Disposal Term. Such a plan may include baseline emissions levels, projected reduction of emissions, and the quantification, monetization and use of carbon emission credits (through the California Climate Action Registry or other agencies), if any. If the plan generates carbon credits during the Mining Rights Term (as defined in Section 5.5), the parties will negotiate in good faith the sharing of the net proceeds or net value of such credits attributable to tonnage disposed at the Landfill pursuant to this Agreement. Nothing in this Section 5.4 shall obligate the Contractor to incur any costs in connection with such plan or to otherwise reduce greenhouse gas omissions at the Landfill, unless the Contractor determines (after consultation with City) that doing so is commercially reasonable.

5.5 **Mining Rights**: If, at any time during the Mining Rights Term, the Contractor performs (or causes to be performed) any mining of materials disposed at the Landfill, the parties will negotiate in good faith the sharing of the net profits (if any) earned by the Contractor during the Mining Rights Term from such mining that are attributable to tonnage disposed at the Landfill pursuant to this Agreement. Such net profits (if any) shall be determined taking into account all costs relating to such mining, including without limitation reasonable insurance, reserves, development, capital and operating expenses, actual and potential liability and all measures to mitigate the environmental and other risks and liabilities associated with such mining. The "Mining Rights Term" means the term of this Agreement and for a period of ten (10) years (or, if less, the length of the Disposal Term) thereafter, *provided, however*, that the Mining Rights Term shall automatically terminate upon the transfer of the Landfill to any party other than the Contractor or an affiliate of the Contractor. Nothing in this Section 5.5 shall obligate the Contractor to engage in any landfill mining, unless the Contractor determines (after consultation with City) that doing so is commercially reasonable and profitable. Nothing in this Section 5.5 shall confer upon the City any rights against any subsequent owner or transferee of the Landfill. This Section 5.5 in no way reduces the responsibility of the Contractor to properly operate the Landfill and Back-Up Landfill or manage it after closure, nor does it subject the City to any liability.

6. **No Duplication of Liquidated Damages**. Liquidated damages or penalties payable by the Contractor under the terms of this Agreement shall be in lieu of, and not in addition to, liquidated damages or penalties payable by the Contractor under the Municipal Code of the City with respect to the same event or circumstance. Under no circumstances shall the Contractor be liable for liquidated damages or penalties under both the Municipal Code and this Agreement with respect to the same event or circumstance.

7. **Submitting False Claims; Monetary Penalties**. Pursuant to San Francisco Administrative Code Section 21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code, is available on the web at http://www.municode.com/Library/clientCodePage.aspx?clientID=4201. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

8. **Taxes**. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

9. **Payment Does Not Imply Acceptance of Work**. The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

10. **Qualified Personnel**. Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor or its affiliates or subcontractors.

11. **Responsibility for Equipment**. Except as set forth in Section 4.3, City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

12. **Independent Contractor**. Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local

law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

13. Insurance.

(a) Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(i) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than $1,000,000 each accident, injury, or illness; and

(ii) Commercial General Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(iii) Commercial Automobile Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(iv) Professional liability insurance, applicable to Contractor's profession, with limits not less than $1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

(b) Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

(i) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(ii) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

(c) Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

(d) All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the following address:

Department of the Environment
Attn: Rachel Buerkle
11 Grove Street
San Francisco, CA 94102

(e) Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made during such three-year period, such claims shall be covered by such claims-made policies.

(f) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

(g) Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated by the end of the notice and cure period provided for in Section 17(b), the City may, at its sole option, terminate this Agreement immediately upon notice to Contractor.

(h) Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement, subject to the notice and cure period provided for in Section 17(b).

(i) Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

(j) If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall, to the extent possible, name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

14. **Indemnification**. Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against, any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor, or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of City, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that this Section 14 is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, cost, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. Without prejudice to the foregoing limitations on Contractor's obligation

to indemnify, save harmless and defend, Contractor specifically acknowledges and agrees that such obligation includes the obligation to defend City from any claim which falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

15. **Incidental and Consequential Damages**. Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

16. **Liability of City**. THE CITY SHALL HAVE NO PAYMENT OBLIGATIONS UNDER THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

17. **Default; Remedies; Termination**. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

(a) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

7. Submitting False Claims
20. Proprietary or Confidential Information of City
24. Assignment
31. Drug-Free Workplace Policy
48. Protection of Private Information

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of 30 days after written notice thereof from City to Contractor, *provided, however*, that if such breach cannot reasonably be cured within such 30-day period, then Contractor shall not be deemed to be in default if Contractor commences efforts to cure such default within such 30-day period and thereafter diligently pursues such cure to completion.

(c) Contractor (i) is generally not paying its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, or (iv)) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property.

(d) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property material to this Agreement, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering

the dissolution, winding-up or liquidation of Contractor, and, in each case, such order remains in effect for more than 60 calendar days.

(e) Contractor defaults on the Amended and Restated Facilitation Agreement, dated July 28, 2011, and such default is not cured as provided in such agreement, *provided, however*, that nothing herein shall be deemed to imply that Contractor shall be entitled to additional notice or cure rights with respect to such default other than as may be provided in such agreement.

On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement upon 90 days prior written notice to Contractor (except in the event of an uncured breach of Section 13 (Insurance), which shall entitle City to terminate this Agreement immediately upon notice to Contractor, pursuant to Section 13(g)), or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

18. **Rights and Duties upon Termination or Expiration**. This section and the following sections of this Agreement shall survive termination or expiration of this Agreement:

7. Submitting False Claims	22. Audit and Inspection of Records
8. Taxes	41. Modification of Agreement.
9. Payment Does Not Imply Acceptance of Work	42. Administrative Remedy for Agreement Interpretation.
11. Responsibility for Equipment	43. Agreement made in California; Venue
12. Independent Contractor	44. Construction
13. Insurance	45. Entire Agreement
14. Indemnification	47. Severability
15. Incidental and Consequential Damages	48. Protection of Private Information
16. Liability of City	
20. Proprietary or Confidential Information of City	

Subject to the immediately preceding sentence, upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. This subsection shall survive termination of this Agreement.

19. **Conflict of Interest**. Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts

which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

20. **Proprietary or Confidential Information of City**. Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all proprietary or confidential information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data. Information will not be, or will cease being, proprietary or confidential information of City if or when (i) it enters the public domain other than by Contractor's breach of this Section 20, (ii) it is rightfully communicated to Contractor free of any obligation of confidentiality, or (iii) it is independently developed by Contractor without use of any proprietary or confidential information of City.

21. **Notices to the Parties**. Unless otherwise indicated elsewhere in this Agreement, or otherwise legally required, all communications required or permitted hereunder shall be in writing and shall be sent by e-mail, facsimile, registered U.S. mail, or nationally recognized overnight courier, and shall be addressed as follows:

To City: Melanie Nutter, Director, San Francisco Department of the Environment, 11 Grove Street, San Francisco, CA 94102, Fax: 415-554-6393, E-Mail: melanie.nutter@sfgov.org.

To Contractor: John Legnitto, Vice President and Group Manager, San Francisco Region, Recology San Francisco, 250 Executive Park, Suite 2100, San Francisco, CA 94134, Fax: 415-468-2209, E-Mail: jlegnitto@recology.com.

with a copy to:

Teresa L. Johnson, Howard Rice Nemerovski Canady Falk & Rabkin, A Professional Corporation, 3 Embarcadero Center, 7th Floor, San Francisco, CA 94111, Fax: 415-677-6262, E-Mail: tjohnson@howardrice.com.

Notices shall be deemed effective upon confirmation of receipt or, in the case of registered mail, three (3) business days after proper deposit in the U.S. mail. Each party may change the foregoing contact information by prior written notice to the other party given in accordance with this section.

22. **Audit and Inspection of Records**. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after a final audit commenced during such five-year period has been completed, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this section.

23. **Subcontracting**. Contractor is prohibited from subcontracting this Agreement or any part of it to any party other than an affiliate of Contractor, unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

24. **Assignment**. The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor to any party other than an affiliate of Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement.

25. **Non-Waiver of Rights**. Nothing in this Agreement shall constitute a waiver or limitation of any rights that either party may have under applicable law. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

26. **Earned Income Credit (EIC) Forms**. Administrative Code Section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement. Failure to comply with any requirement contained in the preceding sentence shall constitute a material breach by Contractor of the terms of this Agreement, subject to the notice and cure period provided for in Section 17(b). If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section. Capitalized terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

27. **Local Business Enterprise Utilization; Liquidated Damages.**

(a) **The LBE Ordinance**. Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively, the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to the notice and cure period provided for in Section 17(b), to

exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

(b) **Compliance and Enforcement**. By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the San Francisco Human Rights Commission ("HRC") for non-compliance with the LBE Ordinance shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City. Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three (3) years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

28. Nondiscrimination; Penalties.

(a) **Contractor Shall Not Discriminate**. In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(b) **Subcontracts**. Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement, subject to the notice and cure period provided for in Section 17(b).

(c) **Nondiscrimination in Benefits**. Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by City, or where work is being performed for City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

(d) **Condition to Contract**. As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form

(form HRC-12B-101) with supporting documentation and secure the approval of the form by the HRC.

(e) **Incorporation of Administrative Code Provisions by Reference**. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of $50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

29. **MacBride Principles—Northern Ireland**. Pursuant to San Francisco Administrative Code §12F.5, City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

30. **Tropical Hardwood and Virgin Redwood Ban**. Pursuant to §804(b) of the San Francisco Environment Code, City urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

31. **Drug-Free Workplace Policy**. Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement, subject to the notice and cure period provided for in Section 17(b).

32. **Resource Conservation**. Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract, subject to the notice and cure period provided for in Section 17(b).

33. **Compliance with Americans with Disabilities Act**. Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement, subject to the notice and cure period provided for in Section 17(b).

34. **Sunshine Ordinance**. In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has

been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by the first sentence of this paragraph will be made available to the public upon request.

35. **Limitations on Contributions**. Through execution of this Agreement, Contractor acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six (6) months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

36. **Requiring Minimum Compensation for Covered Employees**.

(a) Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance ("MCO"), as set forth in San Francisco Administrative Code Chapter 12P ("Chapter 12P"), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this section.

(b) The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this section against Contractor.

(c) Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

(d) Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

(e) The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

(f) Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

(g) Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(h) Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

(i) If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than $25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed $25,000 in the fiscal year.

37. **Requiring Health Benefits for Covered Employees**. Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance ("HCAO"), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized

terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

(c) Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

(d) Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with Chapter 12Q. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

(e) Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(g) Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

(h) Contractor shall keep itself informed of the current requirements of the HCAO.

(i) Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(j) Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

(k) Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

(l) City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

(m) If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than $25,000 ($50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach $75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than $75,000 in the fiscal year.

38. First Source Hiring Program.

(a) **Incorporation of Administrative Code Provisions by Reference**. The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

(b) **First Source Hiring Agreement**. As an essential term of, and consideration for, any contract or property contract with City, not exempted by the FSHA, and subject to the exclusion in San Francisco Administrative Code Section 83.15 for existing labor agreements (to the extent any collective bargaining agreements to which Contractor is a party satisfy the requirements of that section), Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the date services are first performed under the contract or property contract. Subject to the same exemptions and exclusions, Contractor shall also enter into an agreement with the City for any other work that it performs in San Francisco. Such agreement shall:

(i) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of Chapter 83. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of Chapter 83.

(ii) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(iii) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(iv) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

(v) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of Chapter 83. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of Chapter 83, that employer shall be subject to the sanctions set forth in Section 83.10 of Chapter 83.

(vi) Set the term of the requirements.

(vii) Set appropriate enforcement and sanctioning standards consistent with Chapter 83.

(viii) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with Chapter 83.

(ix) Require the developer to include notice of the requirements of Chapter 83 in leases, subleases, and other occupancy contracts.

(c) **Hiring Decisions**. Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

(d) **Exceptions**. Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with Chapter 83 would cause economic hardship.

(e) **Liquidated Damages**. Contractor agrees:

(i) To be liable to the City for liquidated damages as provided in this section;

(ii) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by Chapter 83 as set forth in this section;

(iii) That the contractor's commitment to comply with Chapter 83 is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by Chapter 83 will cause harm to the City and the public which is significant and substantial but extremely difficult to quantity; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to $5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

(iv) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to $10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

(v) That in addition to the cost of investigating alleged violations under this section, the computation of liquidated damages for purposes of this section is based on the following data:

(A) The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of $348 per month, totaling approximately $14,379; and

(B) In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of

employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

therefore, liquidated damages that total $5,000 for first violations and $10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

(vi) That the failure of contractors to comply with Chapter 83, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

(vii) Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of $5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

(f) Subcontracts. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this section.

39. **Prohibition on Political Activity with City Funds**. In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement pursuant to Section 17, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

40. **Preservative-Treated Wood Containing Arsenic**. Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

41. **Modification of Agreement**. This Agreement may not be added to, amended or otherwise modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement, *provided, however*, that the Director of the Department of the Environment may enter into any additions, amendments, or other modifications to, or waivers of any terms of, this Agreement (including, without limitation, changes to the exhibits) that the Director, in consultation with the City Attorney, determines are in the best interests of the City, do not materially decrease the benefits of this Agreement to the City, do not materially increase the obligations or liabilities of the City, and are necessary and advisable to carry out the purpose of this Agreement, which determination shall be conclusively evidenced by the execution and delivery by the Director of this Agreement and of such additions, amendments, or other modifications to, or waivers of any terms of, this Agreement.

42. **Administrative Remedy for Agreement Interpretation**. Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the Director of the Department of the Environment, who shall decide the true meaning and intent of the Agreement.

43. **Agreement Made in California; Venue**. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

44. **Construction**. All paragraph captions are for reference only and shall not be considered in construing this Agreement.

45. **Entire Agreement**. This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 41, "Modification of Agreement."

46. **Compliance with Laws**. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time, provided that Contractor may contest the validity or applicability of any such law, code, ordinance, order or regulation so long as such contest (if against a party other than the City) is conducted without prejudice, liability, damage or expense to the City. Notwithstanding anything to the contrary in this Agreement, Contractor's obligations under the sections of this Agreement that refer to or incorporate by reference sections of City's Municipal Code are subject to any applicable qualifications, limitations, exceptions and exemptions available under or applicable to such sections of the Municipal Code; it is not the intention of the parties to expand Contractor's obligations under such sections of this Agreement beyond the obligations set forth in the corresponding sections of the Municipal Code.

47. **Severability**. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

48. **Protection of Private Information**. Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and

12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contactor to comply with the requirements of Section 12M.2 of the Administrative Code shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement pursuant to Section 17 hereof, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

49. **Graffiti Removal**. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on San Francisco and its residents, and to prevent the further spread of graffiti. Contractor shall make a good faith effort to remove all graffiti from any real property owned or leased by Contractor in San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works, and shall in all cases remove graffiti from any real property owned or leased by Contractor in San Francisco within five (5) business days of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.). Notwithstanding the other provisions of this Section 49, if Contractor, in good faith, is uncertain as to whether something is graffiti, it shall not be required to remove the item until a good faith determination can be made, in accordance with Article 23 of the San Francisco Public Works Code, that the item is graffiti.

50. **Food Service Waste Reduction Requirements**. Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars ($100) liquidated damages for the first breach, two hundred dollars ($200) liquidated damages for the second breach in the same year, and five hundred dollars ($500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of

the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

51. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Landfill Disposal Agreement on the day first mentioned above.

CITY	**CONTRACTOR**
Recommended by: Melanie Nutter, Director Department of the Environment Approved as to Form: Dennis J. Herrera City Attorney By _____ Thomas J. Owen Deputy City Attorney	Recology San Francisco By signing this Agreement, I certify that Recology San Francisco complies with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off. I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles. _____ Michael J. Sangiacomo President and Chief Executive Officer City vendor number:

Appendices

A: Initial Fees
B: City Landfill Disposal Targets
C: Landfill Load Check Program

IN WITNESS WHEREOF, the parties hereto have executed this Landfill Disposal Agreement on the day first mentioned above.

CITY	**CONTRACTOR**
Recommended by: _____ Melanie Nutter, Director Department of the Environment Approved as to Form: Dennis J. Herrera City Attorney By _____ Thomas J. Owen Deputy City Attorney	Recology San Francisco By signing this Agreement, I certify that Recology San Francisco complies with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off. I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles. _____ Michael J. Sangiacomo President and Chief Executive Officer City vendor number:

Appendices

A: Initial Fees
B: City Landfill Disposal Targets
C: Landfill Load Check Program

Appendix A
Initial Fees

SOLID WASTE FEE

The per-ton disposal fee at the Landfill and Back-Up Landfill for all Solid Waste (other than Organics-Free Waste) tonnages (the "Solid Waste Fee") will be:

Landfill Operations (2015 dollars)	$22.73
Governmental Fees (2009 dollars)*:	
County Host Fee (2009 dollars)*	4.40
CalRecycle AB939 Fee (2009 dollars)*	1.40
TOTAL FEE	**$28.53**

ORGANICS-FREE WASTE FEE

The per-ton disposal fee at the Landfill or Back-Up Landfill for all Organics-Free Waste tonnages (the "Organics-Free Waste Fee") will be:

Landfill Operations (2015 dollars)	$22.43
Governmental Fees (2009 dollars)*:	
County Host Fee (2009 dollars)*	4.40
CalRecycle AB939 Fee (2009 dollars)*	1.40
TOTAL FEE	**$28.23**

BENEFICIAL USE MATERIAL FEE

The per-ton tip fee at the Landfill or Back-Up Landfill for all Beneficial Use Material tonnages (the "Beneficial Use Material Fee") will be:

Landfill Operations (2015 dollars)	$21.33
Governmental Fees (2009 dollars)*	0.00
TOTAL FEE	**$21.33**

* Figures shown are for Yuba County and apply to the Landfill only. For the Back-Up Landfill, Governmental Fees imposed by or applicable in Solano County (including without limitation County Host Fees) will apply in lieu of those imposed by or applicable in Yuba County.

Appendix B
City Landfill Disposal Targets

Calendar Year	Annual Disposal Target
2009	402,774
2010	366,158
2011	329,542
2012	292,926
2013	256,310
2014	219,694
2015	183,078
2016	146,462
2017	109,846
2018	73,230
2019	36,614
2020	0

Appendix C
Landfill Load Check Program

LOAD CHECKING PROGRAM

Prepared for

Recology Ostrom Road

Revised
July 2010

Prepared by

Recology

TABLE OF CONTENTS

INTRODUCTION

The load checking program described in this document was prepared by Recology for Recology Ostrom Road (ROR). The purpose of the load checking program is described below followed by a program overview.

Purpose

ROR's load checking program establishes procedures to identify and remove hazardous and otherwise prohibited wastes from the solid waste stream delivered to the facility. The program consists of a number of elements comprising a comprehensive load checking program whose purpose is to reduce disposal of prohibited waste at ROR.

Wastes prohibited from disposal at the facilities include hazardous, medical and other wastes prohibited by either the sites Solid Waste Facility Permit or Conditional Use Permit. Definitions of these wastes can be found in statute, regulation, or permit conditions. In addition, ROR may deem other wastes as prohibited at the facility. A list of typically prohibited wastes is in Appendix A.

The program is not intended to screen every waste load and prevent all prohibited waste from entering the facility. Rather, the program's objective is to put forth best efforts to reduce such occurrences.

Overview

The load checking program consists of five elements:

- Personnel and training
- Load checking activities
- Management of wastes
- Record keeping procedures
- Emergency procedures

Each of these elements is discussed in detail in separate sections of this document. They are summarized below.

Personnel and training identifies the facility personnel typically involved in the load checking program and describes their respective load checking responsibilities and training requirements. The load checking program is intended to be implemented by trained employees of Recology and its subsidiaries.

Load checking activities describes the main activities associated with load checking. The load checking program is applicable to solid waste entering the facility regardless of source, including contract, refuse collection, and transfer vehicles. Some of the wastes arriving at the facility have previously been processed through transfer stations. These loads are still subject to the ROR's loadchecking program, however loadchecking preference falls to previously unprocessed materials. The primary load checking activities are customer notification, site surveillance, and waste inspection. A number of redundancies are incorporated into load checking activities to provide for multiple opportunities to examine the waste for prohibited wastes. As such, the effectiveness of load checking activities does not depend on any single activity.

Management of wastes describes the handling procedures of prohibited waste.

Record keeping procedures describes the various records and forms used in documenting load checking program activities.

Emergency Response Procedures are addressed in the site plan written specifically for ROR is incorporated here by reference in Appendix F, even though the load checking program incorporates procedures to reduce the potential for such emergencies.

The ROR load checking program is dynamic and is subject to change due to new regulatory requirements, contractual obligations, company procedures, and industry standards. Recology will review the program as needed to maintain program consistency with new requirements.

PERSONNEL AND TRAINING

Once solid waste arrives at the facility entrance, it is potentially subject to load checking. Although the majority of load checking activities are conducted by the load checker, other personnel assist with certain load checking duties. ROR personnel involved in the load checking program are listed below.

- Equipment operator
- Spotter
- Working foreman
- Load checker
- Recology Environmental Compliance Department personnel

The load checking responsibilities and training requirements for each position are described below. All personnel are required to comply with the general safety practices and personal protective requirements for their positions. A list of site and contact personnel is in Appendix C.

Equipment Operator

The equipment operator uses heavy equipment to process the solid waste at ROR. This activity provides the opportunity for review of the solid waste immediately before burial. Situated in the equipment cab, the equipment operator can generally identify larger objects in the solid waste such as appliances or drums. If prohibited wastes are identified, the equipment operator contacts the load checker or Supervisor and relays relevant information such as the type of material suspected and whether emergency procedures are necessary, for example, due to a spill or fire.

The equipment operator may also assist the load checker during waste inspections by mechanically spreading the load. The equipment operator should not attempt to move or manage prohibited wastes or allow equipment to contact prohibited waste without direction from the load checker or working foreman. The equipment operator may provide assistance in containing emergency situations. The equipment operator typically does not complete load checking forms.

Typical training for this position includes (1) the effects of hazardous substances on human health and the environment, (2) identification of prohibited materials, and (3) emergency notification and response procedures. Additional training may be provided periodically.

Spotter

The spotter primarily directs traffic into position to unload, but he or she has the opportunity to survey loads before and during the unloading process. If prohibited wastes are suspected in the load, the spotter notifies the customer of the facility's waste acceptance policy and informs the customer that the wastes cannot be accepted at the facility. The spotter then notifies the load checker or working foreman of the suspected prohibited wastes. The spotter may provide assistance in containing emergency situations. The spotter typically does not complete load checking forms.

Typical training for this position includes (1) the effects of hazardous substances on human health and the environment, (2) identification of prohibited materials, and (3) emergency notification and response procedures. Additional training may be provided periodically.

Working Foreman

In addition to supervising ROR operations, the working foreman provides backup for the load checker and handles some of the load checker's duties if prohibited waste is discovered when the load checker is not present. These load checking duties typically include addressing customer concerns, refusing prohibited wastes, placing prohibited wastes in the hazardous materials storage container, and responding to emergencies. Upon the load checker's return, the working foreman reports any load checking activities conducted during the load checker's absence. Load checking activities conducted by the working foreman are recorded on the appropriate forms, typically the Site Surveillance Form or the Waste Inspection Form. Examples of these forms are in Appendix D.

Typical training for this position includes (1) the effects of hazardous substances on human health and the environment, (2) identification of prohibited materials, (3) emergency notification and response procedures, (4) selection and proper use of personal protective equipment, (5) management of prohibited wastes, and (6) record keeping. These trainings are conducted at least annually. Additional training may be provided periodically.

Load Checker

The load checker performs the routine activities of the load checking program. The load checker's primary responsibility is surveillance of incoming loads for hazardous and other prohibited wastes. The load checker can conduct load checking activities (customer notification, site surveillance, and waste inspection) at any location within the facility; however, these activities are typically conducted at either the public disposal area or ROR's tipping area.

As the primary site employee implementing the load checking program, the load checker is responsible for a number of other activities. These include addressing customer concerns, refusing prohibited wastes and responding to emergencies. The load checker reviews any activities that occurred during his or her absence. In addition, the load checker is the primary contact for regulatory agencies regarding the load checking program. This employee also maintains written records of load checking activities at the site, typically on the Site Surveillance Form and the Waste Inspection Form.

Typical training for this position includes (1) the effects of hazardous substances on human health and the environment, (2) identification of prohibited materials, (3) emergency notification and response procedures, (4) selection and proper use of personal protective equipment, (5) management of prohibited wastes, including waste characterization, and (6) record keeping. Additional training may be provided periodically. The load checker periodically attends refresher courses on waste related issues offered by colleges or universities, consulting firms, and professional organizations.

Recology Environmental Compliance Department Personnel

Recology Environmental Compliance Department personnel assist facility personnel as necessary. Their responsibilities typically include assisting with questions regarding the acceptability of certain wastes, conducting periodic audits, providing training for load checking personnel, providing guidance on company and facility policies, and responding to questions about the load checking program.

Typical training for Recology Environmental Compliance Department personnel includes (1) the effects of hazardous substances on human health and the environment, (2) identification of prohibited materials, (3) emergency notification and response procedures, (4) selection and proper use of personal protective equipment, (5) management of prohibited wastes, and (6) record keeping. Personnel periodically attend refresher courses on waste management related issues offered by colleges or universities, consulting firms, and professional organizations.

LOAD CHECKING ACTIVITIES

Load checking activities fall into three categories:

- Customer notification
- Site surveillance
- Load inspection

Each activity provides a varying level of scrutiny of the solid waste stream for the presence of prohibited wastes. Load checking activities are intended to promote customer cooperation with the load checking program. A fundamental concept of the load checking program is that customers are responsible for verifying the acceptability of their wastes. Although public education materials are readily available from local and state agencies, many customers may claim they are unaware that certain wastes are prohibited from disposal at the facility. Nevertheless, it is extremely important throughout the load checking process to maintain a courteous relationship with the customer.

Each of the load checking activities described below identifies the typical steps in the process of load checking. It should be noted that every load that is checked is not subject to all activities. There are two reasons for this. First, the program intentionally includes an element of randomness. That is, each activity can occur randomly as loads arrive at the facility. Second, subjecting each load checked to all load checking activities could significantly increase the time the customer must remain at the facility. The flow description indicates maximum review of the waste load by all site personnel that could potentially be involved. Additionally, there is no fixed sequence to the activities described; several activities may be undertaken simultaneously or independently and may target specific or random loads.

To prevent customers from circumventing the program, it is extremely important that the schedule for conducting load checking activities not become predictable. Thus, load checking activities should not occur on the same days of the week and at the same times of day.

Customer Notification

Notifying customers that certain wastes are unacceptable for disposal at the facility is a key component of the load checking program. It is the customer's responsibility to ensure that they deliver acceptable wastes. Customers are notified that they retain responsibility for any prohibited wastes detected in their load. Notification is accomplished through the use of signs, notices, and verbal communication (such as inquiring about the customers' loads).

Customer notification can be conducted by any site personnel, but it is typically conducted by the weigh master from the scale house. Copies of typical customer notification used at the facility are included in Appendix E.

Signs

The sign posted near the entrance of the facility notifies customers of the waste acceptance policy. It states that hazardous wastes are prohibited from disposal at the landfill and lists examples of such wastes. It also states that all loads are subject to inspection for prohibited wastes.

Notices

Notices of the policy not to accept hazardous and other prohibited wastes are distributed periodically at the entrance station and during load checking. Local collection companies periodically inform their customers of waste prohibitions as well. Warning decals (e.g., prohibiting disposal of hazardous wastes) are affixed to waste containers delivered to ROR. Other load checking policy notices may also be distributed as the need arises.

Verbal Communication

In addition to signs and notices, facility personnel verbally inform customers that hazardous and other prohibited wastes are not acceptable. Facility personnel can also inquire about the nature of the customer's wastes. If a facility employee sees or suspects prohibited wastes in a customer's load, they politely inform the customer of the facility's policy of not accepting hazardous and other prohibited items for disposal. Occasional confrontations may occur with customers who insist upon disposing of prohibited wastes at the facility. If customer problems develop, the load checker or working foreman is notified.

Site Surveillance

Vehicles entering the facility are subject to surveillance by site personnel. Incoming loads are screened initially by the weigh master or other entrance personnel for the presence of prohibited wastes. In addition, the customer is queried as to whether they have any hazardous or otherwise prohibited wastes. If prohibited waste is not visible or suspected, the vehicle is allowed to proceed to the disposal area or tipping area. If prohibited wastes are observed or suspected, the customer is reminded of the facility's prohibited waste policy and is not allowed to unload the prohibited waste. The weigh master then notifies the load checker or working foreman of the load. The weigh master records observations on the Site Surveillance Form.

When the load arrives at the appropriate tipping area, the spotter directs the vehicle where to unload. This is also an opportunity to survey the waste for prohibited wastes. If prohibited wastes have been previously identified, the spotter will observe the customer to confirm that the prohibited wastes are not unloaded. If prohibited wastes are discovered or suspected by the spotter, or if the customer is uncooperative, the spotter notifies the load checker or working foreman.

The load checker generally conducts surveillance of the incoming waste at the or the tipping area. At this point, surveillance of the load involves observing the waste as it is unloaded from the vehicle. The load checker may examine some of the wastes more closely to confirm the status of the waste. If the waste is deemed acceptable, it can be unloaded. If the waste is deemed unacceptable, the customer is asked to retain the material that is prohibited. The customer must demonstrate to the load checker's satisfaction the waste's acceptability by presenting material safety data sheets (MSDS's), laboratory tests, or other proof of acceptability. Observations of this activity are recorded in the Site Surveillance Form. If a more detailed review of the waste load is desired, a waste inspection is performed. As the vehicle leaves the facility, the weighmaster may survey the load again to ensure that prohibited wastes detected earlier were not unloaded.

Any material suspected of being hazardous or otherwise prohibited is returned to the customer when possible. Procedures for handling prohibited wastes from known and unknown generators are described in the Management of Wastes section of this document.

Waste Inspection

Waste inspections involve a more thorough examination of the waste stream than surveillance. Waste inspections are conducted on a random day each week or as required by the appropriate regulating agency. Inspections are documented in the Waste Inspection Form.

Waste loads can be randomly or intentionally selected for inspection. The load checker instructs the driver to unload the wastes onto a designated area. The load checker then inspects and carefully examines the waste for the presence of prohibited wastes. Any material suspected of being hazardous or otherwise prohibited is returned to the customer when possible. Procedures for handling prohibited wastes from known and unknown generators are described in the Management of Wastes section of this document.

MANAGEMENT OF WASTES

When possible, prohibited wastes identified at the facility are returned to the generator. If the generator is not on site, or if the waste is from an unknown or recalcitrant generator, the waste must be stored in the facility's hazardous materials storage container until removal. Wastes from unknown or recalcitrant generators are designated for off-site disposal and must also be packaged for shipment. Each of these waste management activities is described below.

Waste Return Procedures

Waste return procedures in instances where the generator is known, unknown, and recalcitrant are discussed in the following sections.

Known Generators

If the generator of the prohibited wastes is known and is on site, the load checker informs the generator that the wastes are not acceptable at the facility and that the generator is responsible for properly managing and disposing of the waste. The load checker records information pertaining to the types of wastes rejected and the generator (e.g., vehicle identification) on the Waste Inspection Form. If the load checker is not on site, the spotter or weigh master will contact the working foreman to work with the generator.

Unknown Generators

If prohibited wastes are found at the facility and the generator cannot be identified, the wastes become the responsibility of ROR as the facility owner. The wastes are stored in the Hazardous Waste Storage bin until arrangements for shipment are made.

Recalcitrant Generators

If regulatory authorities are able to convince recalcitrant generators to accept responsibility for the prohibited wastes, the wastes are managed consistent with the procedures described previously for known generators. If recalcitrant generators do not accept responsibility for the prohibited wastes, the wastes are managed consistent with the procedures described previously for unknown generators.

Waste Classification and Storage

Wastes are classified by the Load Checker and stored in a specially designed bin until arrangements for shipment have been made.

RECORD KEEPING PROCEDURES

A variety of records and reports, including those required by regulations, are maintained either i the scale house or facility office. These include, but are not limited to, the following:

- Inspection records
- Incident reports
- Training records

Discussions of each of these documents are presented in this section. Copies of the records and reports described are kept at the scale house or facility office for inspection by the U.S. Environmental Protection Agency (U.S. EPA), California EPA, or any other federal, state or local enforcement agency. Additional copies may be kept at other locations as described below. All records and reports are maintained for a minimum of three years.

Inspection Records

The load checker inspects the hazardous materials storage container weekly to assess the condition of containment features and waste containers. Appendix E presents an inspection check list and schedule for the hazardous materials storage container. The inspection checklist includes the following information:

- Date and time of inspection
- Name of inspector
- Inspection observations
- Date of repairs/remedies
- Description of repairs/remedies

Any deficiencies noted during the hazardous materials storage container inspection are corrected as soon as possible.

Incident Reports

The Local Enforcement Agency, the California Department of Toxic Substances Control and the Regional Water Quality Control Board are notified of regulated hazardous or PCB wastes discovered at the facility. If an incident involving prohibited waste occurs that results in implementing emergency procedures, the load checker, working foreman, or other personnel will report the incident to the Local Enforcement Agency and the California Department of Toxic Substances Control. The report includes:

- Date, time, type of incident
- Name, amount, and type of waste involved
- Extent of injuries (if applicable)
- Actual or potential hazards to human health or the environment
- Estimated quantity and disposition of waste recovered (as a result of the incident)

Training Records

As described in the Personnel and Training section of this document, program personnel undergo training before they undertake their responsibilities. Records documenting the successful completion of training requirements are kept on file at the facility office for at least three years beyond termination of the employee's employment.

Emergency Services	Emergency	Non-Emergency
Plumas-Brophy Fire District	9-1-1	(530) 633-2727
CDF Fire Department	9-1-1	(530) 823-4904
Marysville Police Department	9-1-1	(530) 741-6621
County Sheriff	9-1-1	(530) 749-7909
California Highway Patrol	9-1-1	(530) 674-5141
Ambulance and Paramedics	9-1-1	
Poison Control	(800) 342-9293	(916) 734-3692
Environmental Health	N/A	(530) 741-6251
Regional Water Quality Control Board	N/A	(916) 255-3000

In addition, the following telephone numbers will be listed at the site:

Cal-EPA Emergency Response	(916) 324-2445
Cal-EPA Department of Toxic Substances Control	(916) 324-1826
State Spill Reporting	(800) 852-7550
National Response Center	(800) 424-8802
RCRA Hot Line	(800) 424-9346
TSCA Hot Line	(800) 424-9065
CHEMTREC	(800) 424-9300

Appendix A - List of Prohibited Wastes

Appendix B - Emergency Phone Numbers

Appendix C - Site Information

Appendix D – Load Checking Program Forms

Appendix E – Customer Notices

Appendix F - Emergency Response/Contingency Plan

SITE INFORMATION

Name, Type, and Location of Site

Name:	Recology Ostrom Road
Type:	Class II Municipal Solid Waste Landfill
Location:	5900 Ostrom Road Wheatland, CA 95692
Telephone:	(530) 743-6321

Generator

EPA I.D. ORL CAL 000 117 247

Local Enforcement Agency
Yuba County
Department of Environmental Health
Office: (530) 749-5450

General Manager
Phil Graham
Office: (530) 743-6321

Emergency Coordinator
Primary Coordinator
Ron Harville
Office: (530) 743-6321

Alternate Coordinator(s)
Phil Graham
Office: (530) 743-6321

Load Checking Program Administrators

Bryan Clarkson
Environmental Compliance Manager
(707) 693-2108

Phil Graham
General Manager
(530) 743-6321