

**AGREEMENT BETWEEN  
THE CENTRAL CONTRA COSTA SOLID WASTE AUTHORITY AND  
EAST BAY MUNICIPAL UTILITY DISTRICT**

**FOR  
FOOD WASTE PROCESSING AND DISPOSAL SERVICES**

**February, 2010**

## TABLE OF CONTENTS

<b>RECITALS .....</b>	<b>1</b>
<b>ARTICLE 1. DEFINITIONS .....</b>	<b>2</b>
<b>ARTICLE 2. REPRESENTATIONS AND WARRANTIES .....</b>	<b>6</b>
2.01 Of the District .....	6
2.02 Of CCCSWA .....	7
<b>ARTICLE 3. THE PARTIES.....</b>	<b>8</b>
3.01 The District Is Independent Contractor .....	8
3.02 Parties in Interest .....	8
3.03 Binding on Successors.....	8
3.04 Confidentiality of Information .....	8
3.05 Sole Responsibility.....	8
<b>ARTICLE 4. TERM OF AGREEMENT.....</b>	<b>9</b>
4.01 Term .....	9
4.02 Term Extensions .....	9
4.03 Survival of Certain Provisions .....	9
<b>ARTICLE 5. PREPARATION, DELIVERY AND ACCEPTANCE OF FOOD WASTE... </b>	<b>9</b>
5.01 Delivered Food Waste .....	9
5.02 Acceptance of Food Waste.....	10
<b>ARTICLE 6. OTHER PROGRAM COMMITMENTS.....</b>	<b>11</b>
6.01 Facility Operations .....	11
6.02 CCCSWA Program Guarantee .....	11
6.03 General Operations.....	12
6.04 Pomace and Residual of Digested Food Solids.....	12
6.05 Records and Reports.....	12
6.06 CCCSWA Ability to Tour and Inspect Facility .....	14
6.07 Ongoing Evolution of Program .....	14
<b>ARTICLE 7. COMPENSATION .....</b>	<b>14</b>
7.01 General .....	14
7.02 Disposal Fee and Fee Escalation .....	14
7.03 Revenue Sharing.....	15
<b>ARTICLE 8. INSURANCE.....</b>	<b>15</b>
8.01 Insurance Requirements .....	15

<b>ARTICLE 9. INDEMNITY.....</b>	<b>16</b>
9.01 Indemnification .....	16
<b>ARTICLE 10. MEET AND CONFER, BREACHES AND DEFAULTS .....</b>	<b>17</b>
10.01 Request to Meet and Confer .....	17
10.02 Breaches .....	17
10.03 Default .....	18
10.04 Substitute Services .....	19
10.05 Waiver .....	19
10.06 Determination of Remedy or Cure of Breach or Default .....	19
10.07 Uncontrollable Circumstances .....	19
<b>ARTICLE 11. TERMINATION.....</b>	<b>20</b>
11.01 Parties’ Right to Suspend or Terminate .....	20
<b>ARTICLE 12. OTHER PROVISIONS .....</b>	<b>21</b>
12.01 Notices.....	21
12.02 Authorized Representatives.....	22
12.03 Assignment.....	22
12.04 Conflicting Provisions.....	22
12.05 Governing Law.....	22
12.06 Amendments.....	22
12.07 Venue.....	22
12.08 Severability.....	22
12.09 Entire Agreement .....	22
12.10 Savings Clause .....	22

**EXHIBITS**

Exhibit A: CCCSWA Participant Assessment & Contamination Control Procedures for Food Scraps Delivered to EBMUD.....	24
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## **AGREEMENT FOR FOOD WASTE PROCESSING SERVICES**

This Agreement is entered into and executed as of this \_\_\_ day of \_\_\_, 2010, by and between the Central Contra Costa Solid Waste Authority (“CCCSWA”) a joint powers authority, and East Bay Municipal Utility District, (“the District”), a public agency formed under the California Municipal Utility District Act, (together referred to as the “Parties”).

### **RECITALS**

WHEREAS, the State of California (“State”) through enactment of the California Integrated Waste Management Act of 1989, has directed all local agencies to promote recycling and to maximize the use of feasible source reduction, recycling and composting options in order to reduce the amount of municipal solid waste that must be disposed of by landfill; and

WHEREAS, organic food waste is one of the largest components of landfilled material; and

WHEREAS, the District is a joint powers authority, whose member agencies include Danville, Lafayette, Moraga, Orinda, Walnut Creek, and Contra Costa County; and

WHEREAS, the District currently operates a wastewater treatment plant (“Facility”) in Oakland, California, which has the capability to decompose organic food waste through anaerobic digestion; and

WHEREAS, the digestion of the organic food waste both diverts the food waste from landfills and captures methane gas that would otherwise be released into the atmosphere, and

WHEREAS, the District collects the methane gas and uses it as a renewable energy source at its on-site power generation station to generate energy that may be used to power the treatment plant or to create excess energy that can be sold back to the grid; and

WHEREAS, since 2008 the Parties have been participating in a pilot food waste processing and disposal program wherein CCCSWA delivers food waste from portions of its jurisdiction to be processed through anaerobic digestion at the District’s Facility and pays the District a fee for this service; and

WHEREAS, the District wishes to, and the District’s Facility has the capacity to, accept all the commercially generated food waste delivered to it by CCCSWA up to a maximum amount; and

WHEREAS, CCCSWA wishes to deliver all the commercially generated food waste from its service area to the District’s Facility and engage the District’s food waste processing and disposal services; and

WHEREAS, the Parties agree that a number of the terms and conditions of this Agreement may have to be modified over time based on new information learned as a result of the expansion of the pilot program; and

WHEREAS, the Parties agree to cooperate in good faith and in an adaptive management style to implement or amend this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, guarantees and conditions contained in this Agreement and for other goods and valuable consideration, CCCSWA and the District agree as follows:

## ARTICLE 1. DEFINITIONS

**Accept** (or **Acceptance** or other variations thereof) is the transfer of ownership of materials to the District from the Person Delivering the materials.

**Agreement** means this Agreement, including all Exhibits and attachments that are incorporated herein by reference. This Agreement may be amended and supplemented pursuant to Section 12.06.

**Applicable Law** means all statutes, rules, regulations, Permits, orders, or requirements of the United States, State, County, CCCSWA and local government authorities and agencies having applicable jurisdiction, that apply to or govern the Facility, the Site or the performance of the Parties' respective Obligations hereunder in effect as of the Execution Date and as amended and/or enacted hereinafter.

**CCCSWA's Collector (or Collector)** means Republic Services, Inc. or successor.

**Change in Law** means the occurrence of any event or change in Applicable Law as follows:

(1) the adoption, promulgation, amendment, modification, rescission, revision or revocation of any Applicable Law or change in judicial or administrative interpretation thereof occurring after the Execution Date hereof; or

(2) any order or judgment of any Federal, State or local court, administrative agency or governmental body issued after the Execution Date hereof if:

(i) such order or judgment is not also the result of the willful misconduct or negligent action or inaction of the Party relying thereon or of any third party for whom the Party relying thereon is directly responsible; and

(ii) the Party relying thereon, unless excused in writing from so doing by the other Party, shall make or have made, or shall cause or have caused to be made, Reasonable Business Efforts in good faith to contest such order or judgment (it being understood that the contesting in good faith of such an order or judgment shall not constitute or be construed as a willful misconduct or negligent action of such Party); or

(3) the imposition by a governmental authority or agency of any new or different material conditions in connection with the issuance, renewal, or modification of any Permit after the Execution Date; or

(4) the failure of a governmental authority or agency to issue, or the suspension or termination of, any Permit after the Execution Date hereof.

**Commercial Food Waste Generator** means those restaurants and food processing businesses

participating in CCCSWA's Food Waste processing program.

**Contract Year** means from September 1 of one year to August 31 of another.

**Delivery (Deliver or Delivered** or other variations thereof) means arrival of Collector at the Site entrance during Facility Receiving Hours for the purposes of Acceptance.

**Disposal** means depositing of Pomace or Residual of Digested Food Solids for beneficial use such as compost or alternative daily cover at landfills, or depositing at a landfill.

**Facility** means the District's main wastewater treatment plant located at 2020 Wake Avenue, Oakland, California.

**Facility Receiving Hours** are hours when the District must Accept Food Waste at the Facility as defined in Section 6.03.

**Food Waste** means organic pre-consumer food materials acceptable for Processing that is Collected from Commercial Food Waste Generators within CCCSWA's jurisdictional boundaries. Food Waste includes fruits, vegetables, meat, seafood, small bones, dairy, eggs, breads, pastas, sauces, cooking oil, grease, tea bags, coffee grounds and filters, and other related food waste materials.

**Force Majeure** events include but are not limited to floods, earthquakes, other extraordinary acts of nature, war or insurrection, riots, or other similar catastrophic events, not caused or maintained by the Party seeking relief which event is not reasonably within the ability of that Party to intervene in or control to the extent that such event has a material adverse effect on the ability of that Party to perform its obligations. No event, the effects of which could have been prevented by reasonable precautions, including compliance with Applicable Laws shall be a Force Majeure. No failure of performance by any subcontractor of the District or CCCSWA Collector shall be a Force Majeure event unless such failure is itself caused by a Force Majeure event as to the subcontractor or Collector.

**Hazardous Waste** means materials that are hazardous, including:

(1) "Hazardous Waste" pursuant to Section 40141 of the California Public Resources Code; all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by Sections 25110.02, 25115, and 25117 of the California Health and Safety Code (the California Hazardous Waste Control Act), California Health and Safety Code Section 25100 et seq., and future amendments to or recodification of such statutes or regulations promulgated thereunder, including 23 California Code of Regulations Sections 2521 and 2522; and

(2) materials regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended (including, but not limited to, amendments thereto made by the Solid Waste Disposal Act Amendments of 1980), and related Federal, State and local laws and regulations;

(3) materials regulated under the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., as amended, and related Federal, State of California, and local laws and regulations,

including the California Toxic Substances Account Act, California Health and Safety Code Section 25300 et seq.;

(4) materials regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601, et seq., as amended, and regulations promulgated thereunder; and

(5) materials regulated under any future additional or substitute Federal, State or local laws and regulations pertaining to the identification, transportation, treatment, storage or Disposal of toxic substances or Hazardous Waste; with the exception that Hazardous Waste, for the purpose of this Agreement, shall specifically exclude Household Hazardous Waste.

If two or more governmental agencies having concurrent or overlapping jurisdiction over Hazardous Waste adopt conflicting definitions of “Hazardous Waste,” for purposes of collection, transportation, Processing and/or Disposal, the more restrictive definition shall be employed for purposes of this Agreement.

**Holidays** are defined as New Year’s Day and Christmas Day or any day that either Party does not operate. Each Party shall provide the other with an annual holiday schedule indicating non-working holidays by September 1<sup>st</sup> of each year.

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

**Labor Action** means labor unrest, including strike, work stoppage, slowdown, sick-out, picketing and any other concerted job action.

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

**Other Users** means entities that Deliver Food Waste to the Facility other than CCCSWA.

**Permits** means all Federal, State and local, statutory or regulatory approvals, or other measures or mechanisms necessary for either Party to be in full legal compliance in the performance of all their obligations, as renewed or amended from time to time.

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

**Pomace** means rejected material after acceptance and processing of Food Waste, but prior to digestion, that requires recycling or Disposal.

**Process** (or **Processing** or any other variation thereof) means the handling, digestion and Disposal of Food Waste and Pomace and Residual of Digested Food Solids by the District at the Facility after Acceptance.

**Reasonable Business Efforts** means those efforts a reasonably prudent business Person would expend under the same or similar circumstances in the exercise of such Person's business judgment, intending in good faith to take steps calculated to satisfy the obligation that such Person has undertaken to satisfy.

**Residual of Digested Food Solids** means material remaining after digestion and dewatering of Food Waste that requires recycling or Disposal.

**Service Area** means CCCSWA's jurisdiction.

**Site** means the parcel(s) of land on which the Facility is situated.

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

**Transfer Station** means the location at which the Food Waste is ground before it is transported to the Facility.

**Unacceptable Material(s)** means wastes or other materials that the District cannot Process as part of the Food Waste and is considered contamination, including plastic (except plastic bags used for collection of acceptable food waste), styrofoam, glass, metal, paper, cardboard, wood, yard waste, cans, straps, ropes, cords, wires, bottles or any other material in quantities that would impact the District's ability to process Food Waste or meet regulatory compliance. De minimus quantities of these wastes which under typical operating circumstances would not disrupt District operations will not be considered unacceptable materials. This definition may evolve over time to reflect new methods that allow processing of additional materials.

**Uncontrollable Circumstance(s)** means any act, event, or condition outside either Party's control and not the result of willful or negligent action or inaction on the part of such Party, whether affecting the Facility or either Party, which materially and adversely affects the ability of either Party to perform any of its obligations under this Agreement, including:

(1) The failure of any appropriate Federal, State, or local public agency or private utility having operational jurisdiction in the area in which the Facility is located, to provide and maintain utilities, services, water, sewer or power transmission lines to the Facility which are required for Facility Operation; or

(2) A Change in Law; or

(3) The suspension or interruption of either Party's Operations as a result of any release, spill, power outage, contamination, migration or presence of any Hazardous Waste, petroleum and petroleum products or as a result of any release, spill, contamination of toxic materials where the Party is not potentially liable for the release, spill or contamination, nor a potentially responsible party. The suspension of operations due to a release, spill or contamination where the Party's liability for the release, spill or contamination arises solely from Party's status as the operator of the facility or owner of the property will be considered an Uncontrollable Circumstance; or

(4) A process upset to the sanitary treatment plant system due to a toxic load or similar event not related to Food Waste processing and that prevents the use of the digesters; or

(5) A Force Majeure event that temporarily or permanently interrupts Facility Operations.

The following are excluded from Uncontrollable Circumstances, without limitation, unless caused by an Uncontrollable Circumstance listed above:

(1) Adverse changes in the financial condition of either Party or any Change in Law with respect to any taxes based on or measured by net income, or any unincorporated business, payroll, franchise or employment taxes;

(2) The consequences of errors on the part of either Party, its employees, agents, subcontractors or affiliates, including errors in plans and specifications that should reasonably have been identified; and

(3) The failure of either Party to secure patents, technical licenses, trademarks, and the like necessary for delivery and processing of Food Waste; and

(4) The lack of fitness for use, or the failure to comply with the plans and specifications of any materials, equipment or parts constituting any portion of the Facility; and

(5) Labor Actions of the District's employees or subcontractors including, but not limited to, strikes, lockouts, and industrial disturbances.

## **ARTICLE 2. REPRESENTATIONS AND WARRANTIES**

**2.01 Of the District.** The District represents and warrants as of the date hereof:

**a. Status.** The District is a publicly owned utility formed under the California Municipal Utility District Act.

**b. Authority and Authorization.** District has full legal right, power and authority to Execute and deliver this Agreement and perform District's obligations hereunder. This Agreement has been duly Executed and delivered by District and constitutes a legal, valid and binding obligation of District enforceable against District in accordance with its terms.

**c. No Conflicts.** The execution or delivery by the District of this Agreement, the performance by the District of the District's obligations, and the fulfillment by the District of the terms and conditions of this Agreement does not knowingly (1) conflict with, violate or result in a breach of any Applicable Law; or (2) conflict with, violate or result in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which the District is a Party or by which the District or any of its properties or assets are bound, or constitutes a Default thereunder.

**d. No Approvals.** The District warrants that all legally required licenses, Permits,

qualifications and approvals of whatsoever nature will be secured for the District to provide services hereunder and meet the District's obligations, and the District further warrants that it shall, at its sole cost and expense, keep in effect or obtain at all times during the Term all licenses, Permits, and approvals which are legally required for the District to provide such services and meet the District's obligations.

**e. No Litigation.** There is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality pending or, to the best of District's knowledge, threatened, against District wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by District of District's obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity of, or the ability to enforce this Agreement or any other agreement or instrument entered into by District in connection with the transactions contemplated hereby.

## **2.02 Of CCCSWA.** CCCSWA represents and warrants as of the date hereof:

**a. Status.** CCCSWA is a Joint Powers Authority, duly organized and validly existing under the Constitution and laws of the State.

**b. Authority and Authorization.** CCCSWA has full legal right, power and authority to Execute and deliver this Agreement, and perform CCCSWA's obligations hereunder. This Agreement has been duly executed and delivered by CCCSWA and upon execution constitutes a legal, valid and binding obligation of CCCSWA enforceable against CCCSWA in accordance with its terms. CCCSWA has complied with Applicable Law in entering into this Agreement.

**c. No Conflicts.** Neither the execution or delivery by CCCSWA of this Agreement, the performance by CCCSWA of CCCSWA's obligations hereunder, nor the fulfillment by CCCSWA of the terms and conditions hereof: (1) conflicts with, violates or results in a breach of Applicable Law; or (2) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which CCCSWA is a Party or by which CCCSWA or any of its properties or assets are bound, or constitutes a Default thereunder.

**d. No Approvals.** No approval, authorization, license, Permit, order or consent of, or declaration, registration or filing with any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution and delivery of this Agreement by CCCSWA, except such as have been duly obtained from CCCSWA Board.

**e. Public Works.** The services provided by the District under this Agreement do not constitute a "public work" and are not subject to any of the provisions of the Public Works law, Labor Code Sections 1720-1901, nor of the regulations promulgated thereunder.

**f. No Litigation.** There is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality pending or, to the best of CCCSWA's knowledge, threatened, against CCCSWA wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would

materially adversely affect the performance by CCCSWA of its Obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity of, or the ability to enforce this Agreement or any other agreement or instrument entered into by CCCSWA in connection with the transactions contemplated hereby.

### ARTICLE 3. THE PARTIES

**3.01 The District is Independent Contractor.** The Parties intend that the District will perform the District's obligations as an independent contractor engaged by CCCSWA and neither as an officer or employee of CCCSWA nor as a partner of or joint venturer with CCCSWA. No agents, employees, the Districts, subcontractors, consultants, licensees or invitees of the District will be deemed to be employees or agents of CCCSWA.

**3.02 Parties in Interest.** Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons other than the Parties and their representatives, successors and permitted assigns.

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

**3.04 Confidentiality of Information.** The Parties acknowledge and agree that information submitted by either Party pursuant to this Agreement may be subject to compulsory disclosure upon request from a member of the public under the California Public Records Act, Government Code Section 6250 *et seq.*

**3.05 Sole Responsibility.** Each Party shall be solely responsible for the acts and omissions of its officers, employees, subcontractors and agents.

### ARTICLE 4. TERM OF AGREEMENT

**4.01 Term.** This Agreement shall become effective upon execution and continue in effect for approximately five and one half (5 1/2) years from the date of commencement unless terminated earlier in accordance with Articles 7 or 11. Year one of the contract will begin on the effective date and end August 31, 2011. Subsequent years will be twelve (12) month periods beginning September 1<sup>st</sup> and ending August 31<sup>st</sup>.

**4.02 Term Extensions.**

**a. Agreement to Extend.** The Parties may mutually agree to extend this Agreement up to twenty-four (24) months in periods of at least twelve (12) months each. The Parties shall endeavor to commit to an extension at least ninety (90) days before the expiration of the then-current term.

**b. Agreement in Full Effect.** All provisions of this Agreement shall remain in effect during any extension.

**4.03 Survival of Certain Provisions.** All indemnifications provided for herein and any other rights and obligations of the Parties expressly stated to survive the termination of this Agreement, shall survive such termination including, but not limited to, the following provisions: Section 6.05 (Records and Reports), Article 8 (Insurance) and Article 9 (Indemnity).

## **ARTICLE 5. PREPARATION, DELIVERY AND ACCEPTANCE OF FOOD WASTE**

**5.01 Delivered Food Waste.** CCCSWA will use Reasonable Business Efforts and will employ specified procedures to ensure that all Food Waste Delivered to the District's Facility is acceptable based on District's Food Waste process performance and impact to District's wastewater treatment plant processes.

**a. Grinding of Food Waste.** Before Delivery, the Food Waste must be ground into pieces approximately two inches square in size or smaller, through a hammermill or like equipment.

**b. Preventing Contamination of Loads.** CCCSWA will take reasonable steps to prevent Unacceptable Materials from being included in Food Waste Delivered to the District, including education of Collector and Commercial Food Waste Generators, or termination of Food Waste collection service to certain Commercial Food Waste Generators. CCCSWA and EBMUD agree to explore methods that will allow processing of additional organic materials in the future. CCCSWA's Participant Assessment and Contamination Controls procedures are attached to this Agreement as Exhibit A.

**c. Handling of Plastic Bags Containing Collected Food Waste.** EBMUD acknowledges that the Food Waste is offered for collection in plastic bags. CCCSWA's Collector picks up the bagged Food Waste and transports it for grinding, where plastics bags are ground and processed along with the Food Waste. During the grinding process, some plastic bags are removed and the remainder must be ground into small pieces which are then delivered along with the ground Food Waste. CCCSWA acknowledges that large quantities of film plastic larger than the two inch square size can be problematic for the District's operation. Both Parties agree to mutually explore alternatives which may control or reduce the use of plastic bags by program participants.

### **5.02 Acceptance of Food Waste.**

**a. Acceptance and Ownership of Food Waste.** Notwithstanding the above, the District shall inspect loads to confirm that no Unacceptable Materials are contained therein. Food Waste will be deemed Accepted unless the District rejects the materials as they are being dumped or immediately after dumping. If the Food Waste is contaminated in a manner that could not be ascertained upon visual inspection during unloading, and the District Notifies CCCSWA prior to completion of processing, the Food Waste may be considered not Accepted as of the time of Notification.

**b. Quality of Food Waste.** For three weeks during October, 2009, the Parties tested a grinder and agreed that the quality of Food Waste delivered to the District during the test period was acceptable for District operations.

**c. Rejection of Unacceptable Material.**

**(1) Inspection.** The District may use Reasonable Business Efforts to detect and discover Unacceptable Material.

**(2) Rejection of Contaminated Loads.** The District may reject Unacceptable Material and any loads containing Unacceptable Materials. Should the District reject any Delivered loads of Food Waste at the District's Facility due to the presence of Unacceptable Materials, the District shall immediately notify CCCSWA verbally, identifying the District's reason for rejection of the Delivered material and identifying the Collector's truck that Delivered such material if the truck was identified.

If the District rejects material Delivered to the Facility per section 5.02(a), Collector will remove the rejected Food Waste from the Facility.

**(3) Deterioration of Quality.** As long as the Parties use the same processes and the same type of equipment they used during the October 2009 test, and the District experiences similar process performance based on the quality of Food Waste delivered by CCCSWA, and as long as the percentage by weight of pomace from CCCSWA's Food Waste is similar to the percentage by weight of pomace from CCCSWA's Food Waste delivered during the October 2009 test, then the District will accept CCCSWA's Food Waste.

## **ARTICLE 6. OTHER PROGRAM COMMITMENTS**

### **6.01 Facility Operations.**

**a. Operating Throughput Commitment.** The District acknowledges that the CCCSWA will need approximately one and a half years, beginning in September, 2010, to expand collection to those generators who qualify for inclusion in the program. CCCSWA estimates a minimum of fifteen (15) tons per day or seventy-five (75) tons per week (after grinding) once the program has been implemented. The District commits to accept this minimum tonnage per day/week and will adjust the acceptance amount based on actual program performance/disposal as the program matures.

**b. Vehicle Turnaround.** The District will make best efforts to allow unloading of CCCSWA Collector's vehicles and vehicle turnaround to exit the Facility within an average of thirty (30) minutes or less of arriving at the Facility absent vehicle breakdown, driver negligence, lack of

cooperation, or driver parking to use restrooms, telephone or other driver or truck-related issues, and provided that the truck arrives at the Facility within a reasonable timeframe if previously agreed to by both Parties.

## **6.02 CCCSWA Program Guarantee.**

**a. Quantity.** CCCSWA shall make Reasonable Business Efforts to deliver one hundred percent (100%) of the Food Waste collected from Commercial Food Waste Generators to the District, not including loads which may have to be rejected due to the presence of Unacceptable Materials. CCCSWA will not materially reduce the scope of the Food Waste program without written agreement by the District. The Parties acknowledge that some restaurants or food processors in CCCSWA's jurisdiction do not participate in the Food Waste program because they are currently unable to provide food waste that meets required specifications.

**b. Expansion of Program.** CCCSWA further commits to expanding its Food Waste collection program.

**c. Change in CCCSWA's Collector.** CCCSWA will notify the District in writing if the current CCCSWA Collector is replaced and indicate the successor. CCCSWA shall ensure that any successor complies with the terms and conditions of this agreement.

**d. Permits.** CCCSWA will be responsible for any and all permits required for delivery of Food Waste.

## **6.03 General Operations.**

**a. Facility Receiving Hours.** Receiving and operating hours of the Facility are as follows:

Hours of delivery typically will be agreed upon by the Parties in consideration of convenience and issues of waste flow. Unless otherwise agreed upon by the Parties, the District shall Accept Food Waste from CCCSWA's Collector at the Facility between 7:00 a.m. and 3:00 p.m. each Monday through Friday.

**(1) Notification in Emergency.** It is the responsibility of CCCSWA or CCCSWA's Collector to Notify the District of emergencies, changes in scheduling, etc.

**b. Scale Operation.** The District has a scale on site but does not currently weigh trucks. Therefore, either the Collector or the Transfer Station operator will weigh the trucks (1) for billing purposes and (2) to determine the amount of materials diverted. If in the future the District begins operating the on-site scale, the District will have the option to require trucks to be weighed on site and to use that information for billing purposes. Should the District elect to weigh CCCSWA trucks, the District's scales must be state certified and maintained in accordance with all applicable motor vehicle weighing laws and regulations. CCCSWA has the right to continue to weigh trucks and to challenge the District's weight information.

c. **Continuous Operations.** The District shall keep open and operate the Facility continuously and uninterrupted, except when the District is prevented from doing so by any Uncontrollable Circumstance or rejection of Unacceptable Material.

d. **Safety.**

(1) **Traffic Flow.** The District shall direct traffic upon entry to the Site so that vehicles travel, queue, unload and exit in a safe manner.

#### **6.04 Pomace and Residual of Digested Food Solids.**

a. **Pomace.** CCCSWA will dispose of all Pomace from processing unless mutually agreed to otherwise. Because the District receives Food Waste from other sources, Pomace may not be from CCCSWA Food Waste and may rather be an equivalent volume based on a CCCSWA specific Pomace reject rate determined annually by the District.

b. **Residual of Digested Food Solids.** The District will dispose of Residual of Digested Food Solids through compost, alternative daily cover at landfills, land application, or any other use consistent with CalRecycle recycling guidelines. If the District disposes of the Residual of Digested Food Solids in any other manner, the District will notify CCCSWA in writing within five (5) days.

#### **6.05 Records and Reports.**

a. **General Record Keeping.** The District shall maintain such accounting, statistical and other records related to its performance under this Agreement as shall be reasonably necessary to develop the reports required by this Agreement. Also, the District agrees to receive input from the CCCSWA if necessary on data collection, information and record keeping, and reporting activities required to comply with applicable laws and regulations and to meet the reporting and Food Waste program management needs of CCCSWA and AB 939.

The District shall maintain records required to conduct its operations, to support requests it may make to CCCSWA, and to respond to requests from CCCSWA in the conduct of CCCSWA business. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as fire, theft and earthquake. Electronically maintained data/records shall be protected and backed up in order to ensure complete and accurate retrieval of information.

b. **Financial Records.**

**Retention of Records.** Unless otherwise herein required, the District shall retain the CERCLA Disposal Records, Monthly Reports, and Annual Reports required to be maintained by this Agreement for at least five (5) years after the expiration or earlier termination of this Agreement. Alternatively, the District may send the records and data to CCCSWA after the District's normal retention period has expired. Records and data that are specifically directed to be retained shall be made available to the CCCSWA upon request.

In the event CCCSWA requests certain records or the District discontinues providing Food Waste processing services to CCCSWA, the District shall provide all records requested by CCCSWA within forty-five (45) days.

**CERCLA Disposal Records.** CCCSWA views the ability to defend against Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and related litigation as a matter of great importance. For this reason, the CCCSWA regards the ability to prove where Pomace and Residual of Digested Food Solids resulting from the Processing of Food Waste Delivered by CCCSWA Collector was taken for Disposal, as well as where it was not taken, to be matters of concern. The District shall maintain, retain and preserve records that can establish where such Pomace and Residual of Digested Food Solids was Disposed (and therefore establish where it was not). This provision shall survive the expiration or earlier termination of this Agreement. The District shall maintain these records for a minimum of ten (10) years beyond expiration or earlier termination of the Agreement, in an organized and indexed manner, and either in physical (e.g. weigh tickets) and/or electronic form and provide these records to CCCSWA on a regular basis. Alternatively, the District may send these records to CCCSWA after the District's normal retention period has expired. CCCSWA, however, may elect to obtain such physical and electronic records at the expiration of the Agreement, or upon termination.

**c. Monthly Reports.** Monthly reports will include summaries of dates and tonnage of Food Waste delivered. In addition, CCCSWA has the right to request information on the location and disposal of Pomace and Residual of Digested Food Solids .

**d. Annual Report.** The Annual Report shall include the content of the monthly reports and provide summaries as follows: dates and tonnage of Food Waste delivered; records related to energy production; greenhouse gas credit information. In addition, CCCSWA shall have the right to request information on the location and Disposal of Pomace and Residual of Digested Food Solids.

**e. Report Submittal.**

All reports shall be submitted to:

Executive Director  
Central Contra Costa Solid Waste Authority  
1280 Civic Drive, Suite 210  
Walnut Creek, CA 94596

**6.06 CCCSWA Ability to Tour and Inspect Facility.** CCCSWA and its designated representative(s) have the right, to enter, observe and tour the Facility on reasonable notice and at the convenience of the District staff upon District written approval, including email communication.

CCCSWA can also be accompanied on such tours by board members, city councilmembers, mayors, representatives from educational organizations, and public relations or media representatives. CCCSWA and its representatives or guests will comply with the District's safety and security rules.

**6.07 Ongoing Evolution of Program.** Periodically and when necessary during the Term of this

Agreement, the Parties will meet to discuss the ongoing evolution of the food waste processing and disposal program. The Parties agree to use good faith efforts to resolve issues that arise based on concerns or impacts identified throughout the life of the project.

## ARTICLE 7. COMPENSATION

**7.01 General.** The District’s compensation provided for in this Article will be the full, entire and complete compensation due to the District pursuant to this Agreement for all labor, equipment, material and supplies, taxes, insurance, bonds, overhead, transport, Acceptance, Processing, Pomace and Residual of Digested Food Solids Disposal, and all other things necessary to perform the services required by this Agreement in the manner and at the time prescribed. CCCSWA is not obligated to reimburse the District for any losses that the District may incur due to fluctuations in the costs of processing Food Waste.

**7.02 Disposal Fee and Fee Escalation.** Both sides agree to set the new disposal fee at EBMUD at \$45 for the first year of the contract and then increase the disposal fee to \$50 per ton for year two of the contract, and \$55 per ton for year three of the contract. At the end of contract year three, a cost review will be conducted to determine the disposal fee for contract years four and five. If, after the cost review, the price per ton is set at less than \$61 per ton, then CCCSWA shall pay that amount. If the price per ton is set at \$61 or more, then CCCSWA has the option of paying the price per ton, or proceeding with mediation and possible termination as provided in Section 11.01(b)(4). Proposed disposal fees are based on the condition of material currently being delivered to EBMUD. The following table lists the proposed disposal fee levels by contract year:

<b>Period</b>	<b>Dates</b>	<b>Fee</b>
Pilot Program/Interim Period	3/1/10 – 8/31/10	\$45
Contract Year 1	9/1/10 – 8/31/11	\$45
Contract Year 2	9/1/11 – 8/31/12	\$50
Contract Year 3	9/1/12 – 8/31/13	\$55
Contract Years 4-5	9/1/12 – 8/31/15	TBD by Cost Review

**7.03 Revenue Sharing.** The Parties agree that the District will retain all revenue realized from the sale of electricity generated by the digestion of food waste, including CCCSWA’s Food Waste.

The Parties acknowledge that a potential revenue stream exists in the sale of both Green House Gas Offsets (Credits) and Renewable Energy Certificates (RECs), or other future instruments that attach monetary value to the capture of Green House Gas, or the generation of renewable energy, as a result of the digestion of food waste. The Parties also acknowledge that there will be costs associated with pursuing Credits, RECs, or other future instruments. The Parties' intent is to find a way to equitably share revenue created from the processing of the CCCSWA's Food Waste. The District reserves the right to determine whether to pursue Credits, RECs or future instruments associated with CCCSWA Food Waste and agrees to notify the CCCSWA in writing at the time it initiates actions to pursue those Credits, RECs, or future instruments. At that time, the Parties will meet to:

- a. Determine revenue potential for Credits, RECs, or future instruments, based on factors such as current market value and market trends;

b. Agree on cost factors, such as validation, administration, operating, and other potential costs; and

c. Agree on allocation of costs and potential revenue.

The meetings will be held in a spirit of cooperation using an adaptive management approach. At the time that these actions are completed, this Section 7.03 will be revised. Once the Parties agree on cost and revenue allocation, the allocation will retroactively apply to any applicable revenue received and costs incurred by the District from the date the District first notifies the CCCSWA that it is initiating the pursuit of Credits, RECs or future instruments associated with CCCSWA Food Waste. If the Parties are unable to reach agreement on (a) through (c), the Parties agree to mediate the dispute. If the Parties are unable to reach agreement after mediation, either Party may terminate the Contract. CCCSWA acknowledges that by entering into this Agreement, it does not obtain any right to or interest in any Credits, RECs or future instruments created from anything other than CCCSWA Food Waste.

## ARTICLE 8. INSURANCE

### 8.01 Insurance Requirements.

**a. CCCSWA Insurance.** CCCSWA shall secure and maintain, or shall require its Contractor to secure and maintain, in full force and effect during the Term adequate insurance that shall be no less than the types and amounts of insurance coverage listed below. Insurers must provide the CCCSWA and the District with thirty (30) calendar days' Notice of any cancellation or reduction in coverage and name the District as an additional insured. CCCSWA shall supply a certificate of insurance and additional insured endorsement to the District showing compliance with this Article 8. The terms and obligations of this section shall survive termination of this Agreement.

**b. Workers' Compensation Insurance.** CCCSWA shall, or shall require its Collector to, take out and maintain during the life of this Agreement, Workers' Compensation and Employer's Liability insurance for all of its employees working on this project. In lieu of evidence of Workers' Compensation insurance, the District will accept a Self-Insuring Certificate from the State of California.

**c. Comprehensive Automobile and General Liability Insurance.** CCCSWA shall, or shall require its Collector to, take out and maintain during the life of this Agreement Automobile and General Liability insurance in the amount of one million dollars (\$1,000,000) for combined single limit coverage for bodily injury, personal injury and property damage. The following coverages or endorsements must be indicated on the certificate:

- (1) The District, its Directors, officers and employees are additional insureds in the policy as to the work being performed;
- (2) The coverage is primary to any other insurance carried by the District;
- (3) The policy covers contractual liability for the assumption of liability of others;
- (4) The policy is written on an occurrence basis;
- (5) The policy covers broad form property damage liability

- (6) The policy covers personal injury (libel, slander, and trespass) liability;
- (7) The policy covers use of non-owned vehicles;
- (8) The policy covers pollution and nuisance liability;
- (9) The policy will not be canceled nor reduced without thirty (30) days' written notice to the District.
- (10) The policy(ies) cover(s) products and completed operations.

**d. District Self-insured.** The District is self-insured. To the extent the District owes obligations that typically would be covered by commercial insurance, the District agrees to pay for its obligations from its self-insurance. The District agrees that its self-insurance program shall be maintained at a level that at minimum will provide coverage in the amounts set forth below in subsection e that apply to CCCSWA.

**e. Amounts of Insurance.** The amounts of insurance shall not be less than the following:

- General Liability – one million dollars (\$1,000,000) per occurrence
- Auto Liability – one million dollars (\$1,000,000) per occurrence
- Worker’s Compensation – State statutory limit
- Pollution Liability – one million dollars (\$1,000,000) per occurrence

## **ARTICLE 9. INDEMNITY**

**9.01 Indemnification.** CCCSWA agrees to indemnify and hold harmless the District, its directors, officers, employees and agents for CCCSWA’s share of any and all claims, costs and liability, for any damage, injury, or death of or to any person or the property of any person, including attorneys’ fees, fines and penalties arising out of the CCCSWA wastes delivered to the Facility and the delivery of said CCCSWA wastes to the Facility pursuant to this Agreement.

The District agrees to indemnify and hold harmless CCCSWA, its directors, officers, employees and agents for the District’s share of any and all claims, costs and liability for any damage, injury, or death of or to any person or the property of any person, including attorneys’ fees, arising out of the District’s operation and maintenance of the Facility, excluding any claims, costs and liability related to CCCSWA wastes delivered to the Facility that are not in compliance with the terms of this Agreement.

The terms and obligations of this Section shall survive termination of the Agreement.

## **ARTICLE 10. MEET AND CONFER, BREACHES AND DEFAULTS**

**10.01 Request to Meet and Confer.** If any problem occurs that materially affects this Agreement or a Party’s ability to perform under this Agreement, including a change in Applicable law that affects either Party’s ability to receive diversion credits under AB 939, either Party can send notice describing the problem and requesting a meet and confer. The Parties may choose to meet in person

or by teleconference. The meet and confer process is intended to be a prerequisite to sending a Notice of Breach.

If either Party does not agree to the meet and confer, does not appear at the meet and confer meeting, or if the Parties are not able to correct the performance issue or solve the problem within a reasonable time after the meet and confer, the aggrieved Party may send a Notice of Breach.

Notwithstanding the above, there is no requirement that the meet and confer process be used for a failure to pay, or for urgent matters of public health or other matters requiring immediate resolution.

## **10.02 Breaches.**

**a. Definition.** A breach is a material failure to perform any of the obligations conferred by any provision of this Agreement.

**b. Notice of Breach.** Either Party shall promptly Notice the other Party regarding the occurrence of a breach as soon as such breach becomes known to the Noticing Party. Such Notice shall be given verbally followed immediately by written Notice.

**c. Cure of Breach.** CCCSWA and the District shall begin cure of any breach as soon as possible after it becomes aware of its breach. Upon giving or receiving verbal Notice of a breach, CCCSWA or the District shall proceed to cure such breach as follows:

(1) Immediately, if the breach is such that in the determination of either the District or the CCCSWA, the health, welfare or safety of the public is endangered thereby, unless immediate cure is impossible in which event the Party required to cure shall Notify the other Party, and the other Party may seek substitute services.

(2) Within thirty (30) calendar days of giving or receiving Notice of the breach; provided that if the nature of the breach is such that it will reasonably require more than thirty (30) calendar days to cure, CCCSWA or the District shall not be in default so long as CCCSWA or the District promptly commences to cure its breach, secures written agreement from the other Party to extend the thirty (30) calendar day cure period, and provides the other Party, no less than weekly, written status of progress in curing such breach, and diligently proceeds to complete same.

**d. Remedy of Breach, Other Remedies.** The Parties shall be entitled to all available monetary or equitable remedies, including specific performance and injunctive relief.

## **10.03 Default.**

**a. Events of District Default.** Each of the following shall constitute an event of default by the District.

(1) **Uncured Breach of Agreement.** The District fails to cure any breach as specified in Section 10.02.

(2) **Repeated Pattern of Breaches.**

**b. Notice of Default.** The District shall be in default from the date of receipt of a Notice from the CCCSWA identifying such default.

**c. CCCSWA Remedies in the Event of District Default.** Upon failure to cure a District default pursuant to Section 10.02, the CCCSWA shall, in addition to its right to collect monetary damages, have the following rights:

(1) **Waive Default.** To, at its sole discretion, waive the District default.

(2) **Termination.** Terminate the Agreement in accordance with Article 11, provided that no termination shall be effective until the CCCSWA has given written notice to the District of its decision to terminate the Agreement.

(3) **All Other Available Remedies.** In addition to, or in lieu of termination, to exercise all of its remedies in accordance with this Article and any other remedies at law and in equity, to which the CCCSWA shall be entitled, according to proof.

(4) **Damages Survive.** If the District owes any damages upon CCCSWA's termination of the Agreement, the District's liability under this Section 10.03 shall survive termination.

**d. Events of CCCSWA Default.** The following shall constitute an event of default by CCCSWA.

(1) **Uncured Breach of Agreement.** CCCSWA fails to cure any breach as specified in Section 10.02.

(2) **Repeated Pattern of Breaches.**

**e. Notice of Default.** CCCSWA shall be in default from the date of receipt of a Notice from the District identifying such default.

**f. District Remedies in the Event of CCCSWA Default.** Upon failure to cure a CCCSWA default pursuant to Section 10.02, the District shall, in addition to its right to collect monetary damages, have the following rights:

(1) **Waive Default.** To, at its sole discretion, waive the CCCSWA default.

(2) **Termination.** Terminate the Agreement in accordance with Article 11, provided that no termination shall be effective until the District shall have given written notice to CCCSWA of its decision to terminate the Agreement.

(3) **All Other Available Remedies.** In addition to, or in lieu of termination, to exercise all of its remedies in accordance with this Article and any other remedies at law and in equity, to which the District shall be entitled, according to proof.

(4) **Damages Survive.** If the CCCSWA owes any damages upon the District's termination of the Agreement, CCCSWA's liability under this Section 10.03 shall survive

termination.

#### **10.04 Substitute Services.**

**a. CCCSWA Rights.** In addition to exercising any or all remedies specified in Section 10.03, with regard to an event of District breach or default, respectively, or due to an Uncontrollable Circumstance, the CCCSWA may at its sole discretion seek substitute services.

**10.05 Waiver.** A waiver by one Party of one breach or default by the other Party shall not be deemed to be waiver of any other breach or default by that Party, including ones with respect to the same obligations hereunder, and including new incidents of the same breach or default. The subsequent acceptance of any damages or other money paid hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or default.

**10.06 Determination of Remedy or Cure of Breach or Default.** Upon request of either Party, an event of breach or default shall be considered remedied or cured upon signature by both Parties of a written agreement specifying the event and stating that remedy and/or cure of such event has been completed.

#### **10.07 Uncontrollable Circumstances.**

**a. Performance Excused.** Neither Party shall be in breach of its obligations hereunder in the event, and for so long as, it is impossible or extremely impracticable for it to perform such obligations due to an Uncontrollable Circumstance if such Party exerted Reasonable Business Efforts to prevent such Uncontrollable Circumstance, and such Party expeditiously takes all actions within its control to end, or to ameliorate the effects of such Uncontrollable Circumstance as soon as possible.

The District shall carry and keep in force such insurance as is needed to mitigate the financial effects of Uncontrollable Circumstances to which the Facility or the District may be subject. All insurance proceeds available from policies covering any Uncontrollable Circumstance act or event must be used to mitigate any damages caused by insurable events.

**b. Notice.** The Party claiming excuse from performance of its obligations based on an Uncontrollable Circumstance shall Notify the other Party as soon as is reasonably possible, but in no event later than three (3) working days after the occurrence of the event constituting the Uncontrollable Circumstance. The Notice shall include a description of the event, the nature of the obligations for which the Party claiming Uncontrollable Circumstance seeks excuse from performance, the expected duration of the inability to perform and proposed mitigation measures.

## **ARTICLE 11. TERMINATION**

### **11.01 Parties' Right to Suspend or Terminate.**

**a. Suspension.** Either Party shall have the right to suspend this Agreement, in whole or in part, upon the occurrence of a default under Section 10.03 regarding a failure to perform obligations and upon an occurrence that endangers public health, welfare or safety, provided such

suspension is for no longer than forty-five (45) calendar days.

**b. Termination for Other Reasons.** The Parties shall have the right to terminate this Agreement if one or more of the following events occur:

(1) **Default.** Occurrence of a default, or a breach which is not cured within the time frame specified in Section 10.02.

(2) **Criminal Activity.** Either Party is found guilty of felonious conduct. The term "found guilty" shall be deemed to include any judicial determination that the Party or any of the Party's officers, directors or employees is guilty, and any admission of guilt by Contractor, or any of Contractor's officers, directors or employees including, but not limited to, the pleas of "guilty," "nolo contendere," "no contest," or "guilty to a lesser felony" entered as part of any plea bargain.

(3) **Facility Damage or Destruction.** In the event the Facility is totally destroyed or is materially damaged and the District fails to reconstruct or repair the Facility.

(4) **Exceedance of Disposal Fee Cap.** The District determines after year three that a Disposal Fee equal to or greater than \$61/ton is warranted and CCCSWA is unwilling to pay that amount (per Section 7.02). However, before this Agreement may be terminated pursuant to this subsection, the Parties shall mediate in a good faith attempt to resolve the dispute.

(5) **Failure to Agree on Revenue Sharing.** The Parties do not come to agreement regarding the sharing of revenue as discussed in Section 7.03.

Notice of termination shall be effective thirty (30) calendar days thereafter; provided, that such Notice shall be effective immediately if the public health or welfare is threatened.

**c. Payments Upon Termination.** Upon termination, the District shall accept as full payment for services rendered to the date of termination any payments required based on the portion of work actually performed. If the CCCSWA has made any payment for services that have not been performed, then the District shall promptly repay to the CCCSWA that amount.

## ARTICLE 12. OTHER PROVISIONS

**12.01 Notices.** Except as otherwise specified in this Agreement, all Notices, requests, acknowledgements, approvals, and other communications made hereunder to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt; (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service; (iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail

or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. or on a non-business day.

If to CCCSWA:

CCCSWA Executive Director  
1280 Civic Drive St 210  
Walnut Creek, California 94596  
Telephone: (925) 906-1801  
Fax: (925) 906-1805

If to The District:

EBMUD Resource Recovery Program Manager  
Attn: Sophia Skoda  
P.O. Box 24055, MS 702  
Oakland, California 94623-1055  
Telephone: (510) 287-1542  
Fax: (510) 287-0621

The address to which communications may be delivered may be changed from time to time by a Notice given in accordance with this Section.

## **12.02 Authorized Representatives.**

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

**b. The District.** For purposes of this Agreement, the District's authorized representative will be Dave Williams, Director of Wastewater.

**12.03 Assignment.** Neither Party may assign its rights or responsibilities under this Agreement to any other entity without the consent of the other Party.

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

**12.05 Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of California.

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

**12.07 Venue.** The venue for any legal proceedings initiated by the District related to this Agreement shall be the County of Contra Costa or County of Alameda, or, in case of federal

jurisdiction, Federal District Court, Northern District.

**12.08 Severability.** If any term or provision of this Agreement shall be found to be illegal or unenforceable, then, notwithstanding, this Agreement shall remain in full force and effect and such term or provision shall be deemed stricken.

**12.09 Entire Agreement.** This Agreement contains the entire Agreement between the Parties with respect to the transactions contemplated hereby. All Exhibits are hereby incorporated into this Agreement by reference. This Agreement shall completely and fully supersede all prior understandings and agreements between the Parties with respect to such transactions. However, nothing in this paragraph shall supersede or diminish the representations and warranties as contained in Article 2.

**12.10 Savings Clause.** If any phrase, clause, section, subsection, paragraph, subdivision, sentence, term, or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is finally found to be void, invalid, illegal, or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision will remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Agreement or the application of this Agreement to other situations will remain in full force and effect.

**[Remainder of page intentionally left blank. Text continues on next page.]**

IN WITNESS WHEREOF, the PARTIES hereto have Executed this Agreement on the date first above written.

CCCSWA Chair (CCCSWA)

Director of Wastewater (District)

\_\_\_\_\_  
CCCSWA Chair

\_\_\_\_\_  
The District (signature)

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

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

ATTEST:

\_\_\_\_\_  
CCCSWA Secretary to the Board

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

APPROVED AS TO FORM:

\_\_\_\_\_  
CCCSWA Attorney, Kenton L. Alm

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

APPROVED AS TO FORM:

\_\_\_\_\_  
District Attorney, Veronica Fauntleroy

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

## **Exhibit A**

### **CCCSWA Participant Assessment & Contamination Control Procedures for Food Scraps Delivered to EBMUD**

#### **Participant Assessment:**

1. Acceptable food waste includes: Fruits, Vegetables, Meat, Seafood, Small Bones, Dairy, Eggs, Breads, Pastas, Sauces, Cooking Oil, Grease, Tea Bags, Coffee Grounds and Filters, and incidental pieces of paper, such as napkins or paper toweling, disposed with food waste.
2. Potential participants for the food waste program include restaurants, assisted living facilities, grocery stores, schools, hospitals, and any other business or institutional facility that has food service.
3. Source separation is required. Program participants will be required to separate acceptable food waste from non-acceptable materials and place the acceptable materials in designated containers. The ideal candidate for the program will have significant pre-served food waste available for collection and may be permitted to include post consumer food waste if adequate practices are established to control contamination.
4. Zero Tolerance Rule for Contamination. The program will clearly establish zero tolerance for any unacceptable waste materials. Unacceptable waste materials considered contamination by this program includes: Plastic (except plastic bags used for collection of acceptable food waste), Styrofoam, glass, metal, liquids, paper, cardboard, wood, yard waste, and all other non-food waste materials.
5. During set up/training, level of management control over kitchen staff will be assessed.
6. After participant is trained and participation has started, review method of handling post-served/post-consumer food scraps to determine if this material can be included once the commercial entity has proven its ability to consistently deliver clean pre-consumer food scraps.

#### **Training:**

1. Conduct training for all kitchen staff describing participation procedures, acceptable food scrap materials, and zero tolerance for contamination.
2. Training will be conducted in the predominant language spoken by kitchen staff.
3. Once participation has started, conduct one follow up visit. If deficiencies are noted, conduct retraining with kitchen and management staff.
4. Participants must use clear plastic bags to allow route collector to observe contents prior to collection. Alternative paper bags will be encouraged whenever possible.

#### **Containers/Signage:**

1. Each participant will receive an appropriate number of 25 gallon “Slim Jim” collection containers for indoor use and a clearly marked 64 gallon carts or 1-2 yard boxes for outdoor storage of food scraps.
2. Participants will be instructed to use clear plastic bags for containment of food scraps to preserve cleanliness and hygiene. Paper bags will be encouraged for use as alternatives

- to plastic whenever possible. Clear bags will permit the program route collector to observe bag contents and check for contaminants.
3. Each participant will be provided with the following signage to instruct staff in proper participation procedures and maintain awareness:
    - a. 11" x 17" posters displaying approved and prohibited food scraps for placement on walls
    - b. 8" x 11" posters displaying approved and prohibited food scraps for placement on walls or collection containers
    - c. 5" x 12" "bumper sticker" signage for differentiating food collection containers from refuse containers.

Signs will be distributed in sufficient numbers to serve needs of new participants. Additional posters and signs will be provided upon request.

**Oversight:**

1. Route Collector will check contents of collection carts and/or clear collection bags prior to disposal. In instances where contaminants are detected, food scraps will be left uncollected and a notice of non-collection left on the cart. The restaurant name and date will be recorded for follow-up by route supervisor/program managers.
2. Collector staff will conduct spot checks of participants to assess participation, sufficient number of collection containers, fill levels of containers, and contamination. Inspectors will use these spot check opportunities to update restaurants on procedural changes or other important information.
3. Repeated contamination incidents and disinterest or inability by management to correct the problem will result in removal from program.

1269438.8