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February 11, 2014

VIA HAND DELIVERY

Chairperson Karen Mitchoff
Members of the Board of Supervisors
Contra Costa County
651 Pine Street, First Floor
Martinez, CA 94553-1293

Re: **Board Meeting of February 11, 2014; Item SD.1:**
Concern regarding proposed Keller Canyon Landfill disposal fees, and
potential violations of state, federal, and local law; request to clarify
maximum disposal fees to be charged at Keller Canyon Landfill and ensure
compliance of landfill operation with terms of use permit

Honorable Chairperson Mitchoff and Members of the Board:

Our office represents Contra Costa Waste Services, Inc., ("CCWS") and Mt. Diablo Recology, LLC ("MDR"). CCWS and MDR have submitted proposals to the Central Contra Costa Solid Waste Authority ("CCCSWA," or "Authority"), seeking new franchise agreements. As you are aware, our clients are competing with Allied Waste Services, Inc., d.b.a. Republic Services ("Republic"), the owners and operators of the County's only landfill, Keller Canyon.¹ We are writing to you because we are concerned about the manner in which Republic is being allowed to operate the Keller Canyon. In a sentence, Republic is proposing to charge competitive bidders — and only its competition — an exorbitant amount to use its local landfill, thereby threatening an incipient violation of unfair competition and antitrust laws, which inures to the detriment of our clients and County residents. We are addressing our concerns to the County Board of Supervisors because the Board

¹ Keller Canyon is operated by a subsidiary of Republic.

exercises considerable control over operation of Keller Canyon through its administration of the landfill's use permit and other entitlements. If the Board exercised its full authorities, it could prevent Republic from exploiting its ownership of local landfill operations. We also respectfully request that the Board consider investigating whether the landfill has been operated in conformity with the various use permits and other entitlements that govern its management, as set forth in greater detail below.

1. Republic's proposed rate setting appears to violate California's unfair competition law, and is beyond the scope of its authority according to the terms of the Keller Canyon conditional use permit.

MDR and Republic have submitted competing bids for various components of the Authority's new franchise agreement, which would provide waste management services to a number of cities and unincorporated areas in central Contra Costa County. Initially, the Authority sought to structure the new franchise bidding process such that different companies would have the opportunity to compete for different waste operations (e.g., waste collection, transfer, recycling, disposal, etc.), the idea being that healthy competition for each component would yield the best price for Authority customers. This approach was identified as a "mix and match" process in the request for proposals, and throughout the related public process.

Then, in a January 2014 staff report, staff and the consultant first announced to the public that Republic had refused to consider working with any of the other proposers who had bid on any of the components on which Republic had bid. Moreover, it became apparent that Republic, in operating the Keller Canyon Landfill — the closest landfill, by far — would charge its own entities about \$20 per ton, whereas it would charge outside parties, such as our client, about \$70 per ton of waste in tipping fees. This rate setting carries no valid business justification, but rather is designed to make MDR's bid non-competitive, both from a cost and environmental impact standpoint. The result of the exorbitant disposal fee is to force MDR to factor into its bid the trucking of waste to Solano County, thus causing more extensive

environmental damage and making, from the Authority's apparent point of view, MDR's bid non-competitive. Essentially, Republic appears to be eliminating the possibility of competition, and potentially increasing costs to the Authority's customers, based on its control of a pivotal resource — a locally situated landfill. Though this scheme effectively frustrates the Authority's ability to evaluate a "mix and match" of provider services — a goal the Authority's board repeatedly established in public meetings — Authority staff and consultants have not challenged this practice in their analysis of proposals and staff reports.

There are a number of legal problems with this approach. First, Republic's action is a violation of California's unfair competition law (Cal. Bus. & Profs. Code, § 17200 et seq.). Second, this action violates the terms of the Keller Canyon Landfill's use permit and solid waste facility permit — both of which are administered by County entities. For instance, Republic's assertion that it may charge MDR exorbitant disposal fees lies beyond the scope of its powers under Land Use Permit 2020-89, which vests the *County Board of Supervisors* with the power to ensure all disposal rates are reasonable, and to set and approve maximum rates. Each of these issues is discussed in greater detail below.

a. Violations of unfair competition law. California's unfair competition law is a far-reaching statute that proscribes "any unlawful, unfair or fraudulent business act or practice." (Cal. Bus. & Profs. Code, § 17200.) The Legislature intentionally crafted the statute broadly to allow courts maximum discretion to prohibit business practices or schemes that serve to defraud. (See, e.g., *Bank of the West v. Sup.Ct.* (1992) 2 Cal. 4th 1254, 1266-67.) The Supreme Court of California has clarified that this language is framed "in the disjunctive ... In other words, a practice is prohibited as 'unfair' or 'deceptive' even if not 'unlawful' and vice versa." (*Cel-Tech Communications, Inc. v. Los Angeles Telephone Company* (1999) 20 Cal.4th 163, 180 [citations omitted].) When does an action become "unfair?" The Court held that an "unfair" action under this framework "means conduct that threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of those laws because its effects are comparable to or the

same as a violation of the law, or otherwise significantly threatens or harms competition.” (*Id.* at 187.) Moreover, “[p]ricing practices that have the *effect* of harming competition may be unfair even if done without the purpose” or intent to do so. (*Id.* at 189 [emph. original].)

In further discussing whether a challenged conduct is “unfair,” the California Supreme Court looked to cases construing federal antitrust law. (20 Cal. 4th at 186, n. 11.) Here, a number of recognized, anti-competitive behaviors bear on this situation.

Under section 2 of the Sherman Act — the seminal federal law concerning antitrust offenses — a company’s refusal to deal may be unlawful where his “control of an essential facility (sometimes called a ‘bottleneck’)” can extend his power over commerce from one state of production to another, and from one market into another. (15 U.S.C., § 2; *MCI Communications v. AT&T* (7th Cir. 1983) 708 F.2d 1081, 1133.) “Thus, the antitrust laws have imposed on firms controlling an essential facility the obligation to make the facility available on nondiscriminatory terms.” (*Id.* Moreover, courts have held that an unreasonable change in rates charged may amount to denial of access to an essential facility. (See *Laurel Sand & Gravel, Inc. v. CSX Transportation* (4th Cir. 1991) 924 F.2d 539, 544-45.)

Here, the imposition by Republic of a \$70 per ton landfill fee on non-Republic businesses — a fee that appears to be more than triple the fee that Republic charges its subsidiaries, and more than double what it has charged outside parties prior to the Authority’s request for bids on the subject franchise agreement — qualifies as the exploitation of an “essential facility.” The federal government and the State of California, in pursuing an antitrust action against Republic Services in a 2008, certainly disapproved of operating a local landfill in a way that eliminates competitive waste services. In a Competitive Impact Statement filed in the matter of *United States v. Republic Services, Inc.* (District Court, District of Columbia, 2008) Civil Action No. 1:08-cv-02076, the U.S. Department of Justice noted that various

regulations and land use laws effectively limit the number of landfills in any given area, such that “[f]irms that compete in MSW [municipal solid waste] disposal can profitably increase their charges to haulers of MSW without losing significant sales to other firms. Thus, for purposes of antitrust analysis, MSW disposal constitutes a line of commerce, or relevant services, for purposes of analyzing the transaction.” The U.S. Department of Justice went on to recognize that transportation costs and travel time make it so that “a substantial percentage of the MSW generated in an area is disposed of in landfills within roughly 25 to 35 miles of the relevant geographic market ... In the event that all owners of local disposal facilities imposed a small but significant increase in the price of disposal of MSW, haulers of MSW could not profitably turn to more distant disposal sites. Firms that compete in MSW disposal in these markets, absent competition from other local MSW disposal operators, can profitably increase their charges for MSW disposal without losing significant sales to more distant MSW disposal sites.” In other words, those companies that operate landfills enjoy a commanding advantage, and the situation is ripe for abuse. Republic’s exorbitant landfill costs here do not extract undue profits out of local haulers, but serve to eliminate competition for the Authority’s franchise agreement. If one takes Keller Canyon and other Republic-controlled landfills out of the equation, the closest available landfills that are available to handle MDR’s waste stream would sit in Solano County — well outside the 25- to 35-mile radius identified by the U.S. Department of Justice.

Federal antitrust law also prohibits a company from refusing to deal with a rival where the two have an established relationship that generates reasonable expectations. For instance, in *Aspen Skiing Co. v. Aspen Highlands Skiing Corp.* (1985) 472 U.S. 585, 610-611 (1985), the U.S. Supreme Court found that where one company terminates a long-standing arrangement with another company in an effort to eliminate its rival, and has no valid business justification for its actions, the company violates antitrust laws. Here, various of our clients and other garbage companies, when dealing with Keller Canyon on a non-competitive basis, have disposed of waste at Keller Canyon at a cost that is far, far below \$70 per ton.

Finally, the Robinson-Patman Act prohibits a seller from “discriminat[ing] in price between different purchasers of commodities of like grade and quality” if the discrimination adversely affects competition. (15 U.S.C. § 13.) While courts have held that the Robinson-Patman Act only applies to sales of “commodities” that are tangible products, and not services, California unfair competition law is broader than federal antitrust law, and looks to antitrust jurisprudence only for guidance. Again, an act violating the state’s unfair competition law “means conduct that *threatens* an incipient violation of an antitrust law, or *violates the policy or spirit of one of those laws* because its effects are *comparable* to or the same as a violation of the law, or *otherwise significantly threatens or harms competition.*” (*Cel-Tech*, 20 Cal.4th at 187.) The lopsided pricing scheme that Republic claims it can and will impose on MDR falls within this contemplation.

2. Violations of Land Use Permit 2020-89; Request to Investigate Compliance with Other Terms of Permit.

a. Requirement to Accept All Eligible Contra Costa County Waste at an “Appropriate” Rate:

While Republic has represented that it lawfully may charge MDR and, presumably, any other competitor \$70 per ton in disposal fees at Keller Canyon, it appears that it is the County Board of Supervisors, and not Republic, that has the power to set disposal rates. Keller Canyon is permitted to operate under County Land Use Permit 2020-89, and this entitlement ensures the landfill operator cannot charge exorbitant fees for the disposal of waste.

Condition 5.1 of the use permit provides that the “Landfill operator shall not refuse to receive eligible wastes which originate in Contra Costa County provided ... that *appropriate* disposal fees are paid.” (Emphasis added.) Moreover, the use permit creates a rate setting procedure that vests the *County Board of Supervisors*, and not Republic, with the authority to set appropriate rates. For instance, conditions 12.1

through 12.3 provide for a mechanism by which the Board, annually, shall establish both minimum and maximum rates.

Insofar as Republic is proclaiming the right to charge MDR roughly \$70 per ton in disposal fees, it would violate the use permit's demand that all fees be "appropriate," and would encroach on the Board's authority to establish fees. We have searched Board agenda's for the past two years in order to determine what current maximum fee applies, but have found no evidence the County currently is enforcing the terms of the use permit. Nevertheless, the range of appropriate fees certainly could not contemplate \$70 per ton, and we respectfully request that the Board immediately clarify the reasonable range of fees that Keller Canyon may charge for the reasonably foreseeable future. To remain silent would allow Republic to exploit its control of an essential facility, to the detriment not only of MDR, but residents of the County who may have to pay artificially inflated waste management rates.

b. Request that County Board of Supervisors Investigate Compliance with Other Terms of Land Use Permit 2020-89.

In addition to the above entreaty, we also respectfully request that the County investigate whether Republic has been operating Keller Canyon in compliance with other terms of the Use Permit. Ensuring compliance with the permit not only has obvious environmental benefits, but could generate additional fees that would inure to the County's benefit. Details of each of our requests are set forth below.

i. Compliance with Condition 3.1: This condition of the use permit requires that the landfill operator "at all times comply with the requirements of laws and permits applicable to the facility."

Request: To the extent that Republic is violating California's unfair competition law and federal antitrust acts, it also is violating the terms of the use permit. Therefore, we request that the Board consider expeditiously undertaking a review and holding a public hearing to determine whether Republic has engaged in anti-competitive behavior and thereby violated condition 3.1 of Use Permit 2020-89.

ii. Condition 3.3. "State Minimum Standards: Per this condition, the "operation and maintenance of this facility is required to at all times comply with Minimum Standards for Solid Waste Handling and Disposal (California Administrative Code, Title 14, Division 7, Chapter 3)."

Request: Databases belonging to the U.S. Environmental Protection Agency and CalRecycle appear to indicate that violations indeed have issued;² therefore, we ask that the County verify this information, identify whether these violations constitute infractions under 14 CCR, Division 7, Chapter 3, and disclose what response the County has made and/or intends to make in the future to address any infractions.

iii. Condition 3.6. "Subchapter 15: This condition requires the Landfill operator to "at all times comply with the provisions and requirements of Subchapter 15 of Chapter 3 of Title 23 of the California Administrative Code ("Subchapter 15") for a Class II waste disposal facility."

Request: We ask that the County evaluate compliance with the aforementioned regulations. Have violations been noted (e.g., in the aforementioned databases or elsewhere), and how has Republic reported compliance?

iv. Condition 7.1. Eligible Wastes: This condition requires that the "Landfill operator shall allow only wastes eligible for disposal in a Class II facility, as defined by the Regional Water Quality Control Board to be admitted to the landfill. The wastes admitted to the landfill shall also be consistent with the Solid Waste Facilities Permit, administered by the County Health Services Department, and consistent with the Board of Supervisors' policies and these conditions of approval. To the extent allowed by law, the Board of Supervisors may direct the Landfill operator not to accept wastes that do not meet State and County policies and regulations."

² See, e.g., <http://www.calrecycle.ca.gov/SWFacilities/Directory/07-AA-0032/Detail/> [CalRecycle database, enforcement tab], and http://echo.epa.gov/detailed_facility_report?fid=110001163053 [U.S. EPA database, enforcement and compliance tab]).

Request: We respectfully request that the Board consider investigating whether Keller Canyon has allowed for the disposal of only eligible wastes. To this end, has the County had complaints, and how has the County determined compliance?

v. Condition 11.1. Permit Review: This condition requires that the "Board of Supervisors will hold annual public hearings to review the Conditions of Approval for this Land Use Permit for three years beginning one year after the commencement of operations of the Landfill. The Board may refer proposed changes to the Land Use Permit to the County Planning Commission for processing. Thereafter, the County Planning Commission shall hold public hearings on the Land Use Permit at three-year intervals. As a result of a review and public hearing, the County Planning Commission may recommend to the Board of Supervisors new or modified conditions to improve the public health, safety, and welfare."

Request: The Use Permit required the County to conduct annual reviews for the first three years of operations, and then triennial reviews. We've reviewed agendas for your Board for the past few years, and found nothing on Keller Canyon. We respectfully request that the Board consider holding a public hearing to review compliance of Republic with the terms of the Use Permit, and consider imposing additional conditions to ensure the concept of fair competition is respected and, if necessary, that other terms of the Use Permit are observed .

vi. Condition 11.6. Compliance and Mitigation Monitoring Program. This condition requires that "the Landfill operator shall provide a fund to support County staff monitoring of compliance with Conditions of Approval and mitigation monitoring programs, as designed and implemented by the County Community Development and Health Services Departments."

Request: We request a copy of this monitoring program since it is not readily available on line, and that the County ensure the monitoring programs exist and are, or have been, adequately funded.

vii. Condition 11.11. Regulations Enforced by Other Agencies. This condition provides as follows: "Several of these Conditions of Approval relate, paraphrase or summarize laws and regulations which are imposed and enforced by other governmental agencies which have jurisdiction over particular aspects of this project. It is this Board's intent in adopting these Conditions of Approval to provide the applicant and the public with an overview of the scope of regulation applicable to this project and to provide this County with enforcement power if such laws and regulations enforced by other agencies are violated. Unless specifically stated in the Conditions of Approval, however, it is not this Board's intent to establish rules or regulations which are stricter than the laws or regulations which are applied to this project by the other agencies with jurisdiction over aspects of this project. If another agency primarily responsible for some aspect of this project finds that any action or inaction is in compliance with, or violates, any such law or regulation, that finding shall be conclusive. If these Conditions of Approval require some approval by any other agency and that agency declines to approve or disapprove the subject matter, such approval shall be deemed to have been given for purposes of these Conditions of Approval."

Request: Public documents show that CalRecycle and the U.S. Environmental Protection Agency may have issued notices of violation relating to Keller Canyon.³ We respectfully request that the County consider taking action on these "conclusive" findings to ensure such violations have been remedied, and that mechanisms are in place to ensure there are no repeat violations.

viii. Condition 12.2. Rate Review: This condition provides that the "Board of Supervisors shall review and approve rates annually in accordance with an approved rate application procedure. More frequent review of rates may occur if requested by the landfill operator and if the Board determines that

³ Again, see, e.g., <http://www.calrecycle.ca.gov/SWFacilities/Directory/07-AA-0032/Detail/> [CalRecycle database, enforcement tab], and http://echo.epa.gov/detailed_facility_report?fid=110001163053 [U.S. EPA database, enforcement and compliance tab]).

changing circumstances warrant such review. The Board may also review rates more frequently if the Board determines that it is in the public interest to do so.”

Request: It appears the Board sets rates annually and when the public interest so warrants. We respectfully submit that the public interest now demands an expeditious evaluation of disposal rates, and request the Board consider clarifying or establishing a reasonable range of landfill disposal rates that will apply in the reasonably foreseeable future.

ix. Condition 12.3. Form and Content of Rate Review

Application: This condition provides that “the landfill operator shall submit its rate application in a form and content as specified by the County. Such application may require the landfill operator to submit the application on forms and/or using computer software provided by or specified by the County. The County shall have the right to inspect and audit all records of the landfill operators which support its rate review application.”

Request: We respectfully request that the Board, in establishing a reasonable range of disposal rates, consider an expeditious inspection and audit of all records of Republic. It is our belief that such an audit will further evince that a \$70 per ton disposal fee is unreasonable in the extreme, unsupported by any business rationale, and designed solely to prejudice MDR’s franchise bid and disrupt the Authority board’s efforts to carry out a “mix and match” process.

c. Request that County Board of Supervisors Investigate Compliance with Agreement Between Central Contra Costa Solid Waste Authority And Allied Waste Systems, Inc. for Collection, Transfer, Transport, Processing and Disposal of Solid Waste, and Green and Food Waste (“Franchise Agreement”), incorporated into Use Permit 2020-89.

There are a number of conditions and requirements in the CCCSWA Franchise Agreement under which Republic is current operating. The landfill’s Use Permit contemplates the County’s adoption of the Franchise Agreement and, insofar as the

County is an agent of the Authority, and otherwise has the authority to pursue enforcement of its terms, both under the Franchise Agreement itself and any applicable law, we respectfully request that the County consider taking the following, specific actions.

i. Investigate quantity and nature of alternative daily cover at Keller Canyon. Definition 1.4 under the Franchise Agreement says that "Alternative Daily Cover (ADC)" means cover material used at the landfill, and that "ADC includes at least six (6) inches of cover material other than earthen material, placed on the surface of the active face of the refuse fill area at the end of each operating day to control blowing litter, fires, odor, scavenging and vectors, as defined in Section 20164, Title 27 of the California Code of Regulations." Insofar as green waste is to be used as ADC, it appears that, under Definition 1.36 of the Franchise Agreement, "Green Waste" includes tree trimmings, grass cuttings, dead plants, leaves, branches, yard clippings, dead trees, unpainted and untreated lumber, and similar materials less than six (6) inches in diameter generated at the Premises, and offered for Collection separate from Solid Waste." This requirement is reflected, in part, under Title 27, California Code of Regulations, section 20690.

To ensure green waste is less than six inches in diameter, it must be processed. To this end, Term 4.4(F)(3) of the Franchise Agreement provides that, "[c]ommencing March 1, 2005, CCCSWA has designated the Keller Canyon Landfill as the Processing Facility for Processing as ADC no more than fifty (50) percent of Green Waste and Food Waste Collected by the Recycling, Green Waste and Food Waste Collection Company from the Cities/Towns of Danville, and portions of Walnut Creek and unincorporated central Contra Costa County. The Green Waste and Food Waste will be Transported by the Recycling, Green Waste and Food Waste Collection Company and delivered to Keller Canyon Landfill using Collection vehicles." It is unclear that the Franchise Agreement permits any other facility to function as a processing facility.

Puzzling is that, while Keller Canyon is designated as the "Processing Facility" for up to 50 percent of ADC from certain areas of the County, and perhaps the sole Processing Facility, it is unclear any processing has occurred at this location. Solid Waste Facility Permit O7-AA-0032, which was approved by the Contra Costa Environmental Health Department ("County LEA"), clearly indicates on the first page that Keller Canyon is not permitted to be a "Processing Facility." The appropriate box is unchecked under Item 5(a). This paperwork seems to indicate that ADC is not processed prior to being used as ADC, at least from Danville and parts of the County.

Request. We request that the Board consider investigating, or directing the County LEA to investigate, whether proper ADC is being and has been used at Keller Canyon.

ii. Investigate Compliance with Records and Reporting

Provisions. The Franchise Agreement provides for a number of detailed records and reporting requirements, including the following:

Term 8.1, General. Per this condition, Republic "shall maintain such accounting, statistical and other records related to its performance under this Agreement as shall be necessary to develop the financial statements and other reports required by this Agreement. Also, [Republic] agrees to take direction from the CCCSWA on matters related to this Agreement, conduct data collection, information and record keeping, and reporting activities needed to comply with applicable laws and regulations and to meet the reporting and Solid Waste program management needs of CCCSWA and AB 939. To this extent, such requirements set out in this and other Articles of this Agreement shall not be considered limiting or necessarily complete. In particular, this Article is intended to only highlight the general nature of records and reports and is not meant to define exactly what the records and reports are to be and their content. Further, with the written direction or approval of the Executive Director, the records and reports to be maintained and provided by [Republic] in accordance with this and other Articles of the Agreement may be adjusted in

number, format, or frequency. To the extent that the additional direction from the CCCSWA results in the need for additional full-time [Republic] staff, [Republic] may submit an application for an adjustment to compensation as described in Section 6.7.”

Request: We respectfully ask that the Board consider requesting the aforementioned records from Republic, including financial statements and other reports, to determine what disposal rates Republic has been charging various companies, and determine what disposal rate is reasonably necessary to operate Keller Canyon. We also request that the Board consider evaluating records to ensure that all waste that fails to qualify as ADC under the franchise agreement and applicable law is being assessed a proper fee, and that the County is receiving appropriate monies for such disposal.

Term 8.2(A), Records, General. Per this term, Republic is required to “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 the material.”

Request: We respectfully request that the Board consider evaluating the appropriate records from Republic in order to establish a reasonable range of fees for the disposal of waste at Keller Canyon.

Term 8.2(B), Records, Financial Records. This term requires that detailed financial records “be maintained and cost and revenue information for the Service Area segregated from other areas served by Company. Where the allocation of costs or revenues as described in Section 6.9 to various categories of Member Agencies or Customers is required to develop equitable rates that reflect the cost of service, Company shall segregate such costs and revenues.” The Authority and its agents,

pursuant to the Franchise Agreement, have the right upon twenty-four hours' notice to conduct on-site inspections of the records and accounting systems of Republic, and to make copies of any documents it deems relevant to this Agreement.

Request: We respectfully request that the County, as a member and agent of the Authority, consider inspecting Republic's records with the purpose of demonstrating an equitable rate that reflects the costs of its services, and determining a reasonable range of disposal rates at Keller Canyon.

Term 8.3(A)(B)&(C). These terms govern the submission of reports, which must be submitted monthly to the Authority. Monthly reports should include:

- Solid Waste, collected, transferred, transported, processed, recycled and disposed of, by sector (Commercial, Industrial, Multi-family, Residential).
- Transfer station diversion report by commodity.
- Landfill diversion report by commodity.
- Processing Facility report regarding composted or processed product by commodity.

Under these terms, a yearly report also is due, that requires in addition:

- A written inventory of all equipment, including collection vehicles, used in providing service, with an updated inventory from the previous year. The inventory shall list all equipment by manufacturer, ID number, date of acquisition, date put into service to provide service under the Franchise Agreement, and capacity.
- Republic's annual financial reports/statements (including various supplemental schedules) describing the Republic's operations, expenses, revenues pertaining to the Franchise Agreement.

Further details are set forth in the Franchise Agreement, though it should be noted the reports are intended to cover a wide variety of facilities that include the Contra Costa Transfer and Recovery Facility, the Newby Island Recycling and Composting Facility, and Keller Canyon Landfill.

Request. We respectfully request that the County consider exercising all authority to review the above information in order to determine a reasonable range of disposal fees at Keller Canyon; whether waste materials have been processed appropriately; and whether an adequate amount of material has been composted and recycled (tracking details of where materials were processed and their volume).

d. Violations of County Solid Waste Facility Permit 07-AA-0032.

The Keller Canyon Landfill also operates under the structures of Solid Waste Facility Permit 07-AA-0032, approved by the County LEA. Condition 17(b) provides that landfill operation "shall comply with all federal, state, and local requirements and enactments" Insofar as Republic is violating California's unfair competition law, the federal Sherman Act, and the terms of Use Permit 2020-89, the company is violating its solid waste facility permit.

Request: We respectfully request that the Board consider directing the County LEA to evaluate this issue and take the appropriate action.

* * *

Republic's unwillingness to offer MDR access to the Keller Canyon Landfill violates the Authority's "mix and match" approach, but also violates (1) state and federal law, and (2) the terms of local permits. In the course of investigating this pricing issue, we found large gaps in the landfill's records of operation, and numerous apparent violations recorded with state and federal entities, such that we became concerned about Keller Canyon's compliance with its Use Permit and other entitlements.

Violations of the Use Permit would of course jeopardize Republic's ability to operate. Regarding violations of applicable law, including California's unfair competition law, remedies would include injunction, restitution, disgorgement, and other orders that may prevent future, anti-competitive actions. Our client certainly has standing to challenge Republic's pricing structure, but we respectfully request that the County not tolerate it, especially given its mandates and authorities under Use Permit 2020-89 and other applicable entitlements. Simply, the County Board of Supervisors has the power to investigate Republic's actions and ensure the Authority's new franchise agreement is bid out in a competitive matter. Permitting Republic's behavior not only inflicts harm on competitors, but also the citizens that reside in the County who — ultimately — pay the costs.

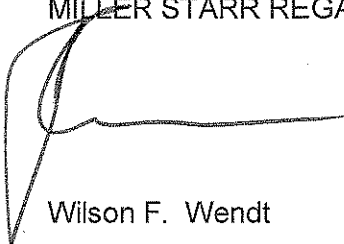
Therefore, we respectfully request that the Board instruct staff to review the positions and inquiries contained herein, and agendize this matter for response and discussion at the Board's February 25, 2014 meeting. Given the possibility that information arising through the review and consideration requested of this Board could have a significant influence on the Authority's selection of bidders, including without limitation more information concerning the feasibility of moving forward with a "mix and match" franchise agreement, we also request that members of the County Board of Supervisors who sit on the Authority's board exercise their power to encourage the Authority to delay its decision on the new franchise agreement from February 27, 2014 until March 27, 2014. This short delay would allow Authority staff and decisionmakers the necessary time to digest any new information. To the extent there exists a concern that a delayed decision on the franchise agreement could delay its operative date, please note that Republic has proposed an approach whereby it would phase in equipment, whereas MDR's vendor has informed our clients that the necessary equipment can be delivered in 10 months (including a two-month buffer). A short delay will not prejudice the

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Members of the Board of Supervisors
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process, and could result in the County and its residents benefitting from a more competitive bid process.

Very truly yours,

MILLER STARR REGALIA

A handwritten signature in black ink, appearing to read 'Wilson F. Wendt', is written over the printed name. The signature is stylized with a large, sweeping initial 'W'.

Wilson F. Wendt

WFW:sa

cc: Kenton Alm, Esq.
Paul Morsen
Bob Hilton
Tracy Swanborn
Clients

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