

**Third Amendment to the Franchise Agreement Between the County of San Mateo and BFI Waste Systems of North America, Inc. for Solid Waste, Recyclable Materials and Plant Materials Collection Services**

This **THIRD AMENDMENT** to the Franchise Agreement Between the County of San Mateo and BFI Waste Systems of North America, Inc. for Solid Waste, Recyclable Materials and Plant Materials Collection Services (“Franchise Agreement”), dated for reference December 1, 2003, is made by and between the County of San Mateo (“Agency”) and BFI Waste Systems of North America, Inc. (“Contractor”).

**RECITALS**

**WHEREAS, the** Agency and the Contractor entered into the Franchise Agreement, dated February 8,2000, and effective January 1,2000; and

**WHEREAS, the** Franchise Agreement anticipates that the Agency may request additional services or the modification of existing services there under; and

**WHEREAS, the** Franchise Agreement provides that the Agency may direct the Contractor to submit proposals from time to time to provide additional or expanded services; and

**WHEREAS, the** Agency is a Member Agency of the South Bayside Waste Management Authority (“Authority”), and the Authority, on behalf of the Agency, has requested a proposal from the Contractor for a Commercial Organics Collection Program; and

**WHEREAS, the** Contractor has prepared a proposal in response to the Authority’s request; and

**WHEREAS, the** Agency and the Contractor now desire to amend the Franchise Agreement to incorporate the Commercial Organics Collection Program.

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

1. “The Contractor shall implement the program to divert commercial organic material from landfill disposal (hereinafter the “Commercial Organics Collection Program”, or “Program”) consistent with the Contractor’s November 20,2002 proposal, and subsequent clarifications and revisions dated: January 27,2003; February 7,2003; March 14,2003; August 6, 2003; and August 13,2003. Copies of the foregoing documents are on file with the Authority, the Agency and the Contractor.

2. The Commercial Organics Collection Program shall commence not later than September 1,2004, and shall continue for the remaining term of the Franchise Agreement and any extension thereof.

3. The Contractor shall report Program tonnage information and other such operation information (e.g., changes in participants' solid waste service levels), in a content and format satisfactory to the Authority, as part of the existing quarterly Management Information System (MIS) report provided by the Contractor to the Authority. In addition, the Contractor shall submit Program financial information as a part of the Contractor's annual rate application consistent with the provisions of Article 6 of the Franchise Agreement.

4. The Contractor shall be compensated for services rendered hereunder in accordance with Article 6 of the Franchise Agreement, except as provided below for processing expenses.

5. Accounting for processing expenses incurred hereunder shall be the product of multiplying the number of commercial organic tons processed by Contractor by the applicable Processing Fee (per ton) specified below (hereinafter referred to as the "Processing Fee").

	Contamination Level	Processing Fee (per ton)
Tier 1	Less than 5%	\$ 30.00
Tier 2	5% to less than 10%	\$ 32.00
Tier 3	10% to less than 15%	\$ 36.00
Tier 4	15% to less than 20%	\$ 38.00
Tier 5	Greater than 20%	\$ 40.00

6. The applicable Processing Fee will be based on the quarterly assessment process as described in the Contractor's proposal letter dated March 14, 2003, referred to in Paragraph 1 above. The Authority and/or the Agency may monitor the Contractor's quarterly assessment process to ensure that it reflects an accurate accounting of the contamination level for purposes of establishing the applicable Processing Fee. The Tier 2 Processing Fee of \$32.00 per ton will be applicable for the first quarter of the program.

7. The Tiered Processing Fee schedule will remain in effect without adjustment until December 31, 2006, the end of the current term of the Agreement. Any new governmental or regulatory agency fees that become effective during the current term of the Agreement will be added to the Tiered Processing Fee schedule.

8. Commencing January 1, 2007, and on every twelve month anniversary thereof ("Adjustment Date") the Tiered Processing Fee schedule shall be adjusted to reflect the change in the Consumer Price Index, All Urban Consumers, All Items Indexes, for the San Francisco-Oakland-San Jose Metropolitan Area, (Series ID: CUURA422SAO) published by the United States Department of Labor, Bureau of Labor Statistics ("Index"). The Index for the month of April preceding the Adjustment Date shall be the Comparison Index; the Index for the month of

April twelve months prior thereto shall be the Base Index. On each Adjustment Date, each Tiered Processing Fee shall be adjusted to an amount equal to the product obtained by multiplying each Tiered Processing Fee for the prior year by a factor equal to one (1) plus the percentage change in the Index between the Base Index and the Comparison Index. Any new governmental or regulatory agency fees that become effective after January 1,2007, will be added to the Tiered Processing Fee schedule.

9. As an additional part of the Program, the Contractor shall provide the Agency with finished compost measured by the inbound tonnage of organic material delivered to the Newby Compost Facility from the Agency's Service Area. The Agency may elect to receive finished compost in accordance with the following exchange factors: (a) one cubic yard of bulk compost in exchange for each incoming ton of material delivered; (b) one, one cubic foot & of compost in exchange for each two tons of material delivered; or (c) any combination of the foregoing. The Contractor will provide additional bagged compost at \$1.00 per bag, subject to a CPI adjustment after December 31,2004. Compost requested by the Agency within a calendar year shall be charged against inbound tonnage only in the same calendar year.


10. In the event the Agreement is not extended after December 31,2006, the Authority shall pay the Contractor the Net Book Value of the vehicles and containers acquired for the Commercial Organics Collection Program. In such event, the Authority shall have the option, but not the obligation, to assume ownership of such vehicles and/or containers. If the Franchise Agreement is extended after December 31,2006, then the Authority shall have the option, but not the obligation, to purchase the commercial organics collection vehicles and/or containers by payment to the Contractor of the Net Book Value thereof at the end of the final term of any such extensions.

**IN WITNESS WHEREOF**, the parties hereto have executed this Third Amendment to the Franchise Agreement on the date indicated below.

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

**“Contractor”**

**BFI Waste Systems of Nokh America, Inc.**

By:   
Chris Valbusa  
General Manager

**“Agency”**

**County of San Mateo**

BY! \_\_\_\_\_  
Mark Church, President  
Board of Supervisors

Attest:

By : - - - \_\_\_\_\_  
John Maltbie  
Clerk of the Board