

**AGREEMENT
FOR THE OPERATION
OF THE
SHOREWAY RECYCLING
AND DISPOSAL CENTER**



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Attachments:

- A Facility Operating Standards
- B Description of Material Processing Operations and Permits
- C Hazardous Waste Exclusion Program Description
- D List of SBWMA Provided Equipment
- E Minimum Number and Composition of Personnel Required by the Agreement
- F Weighing Standards and Procedures
- G Recyclable Materials Marketing Plan
- H Contractor Compensation
- H-1 Diversion Program Performance Incentive
- H-2 Recyclable Material Prices
- I Maintenance Requirements
- J Initial Rates
- K Form of Faithful Performance Bond
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- N Notary Certification
- O Liquidated Damages
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- Q Report Format

1 **AGREEMENT FOR THE OPERATION**
2 **OF THE**
3 **SHOREWAY RECYCLING AND DISPOSAL CENTER (SRDC)**

4 This Agreement "Agreement" is made and entered into as of this ____ day of ____, 20__, by
5 and between the South Bayside Waste Management Authority ((hereinafter referred to as "the
6 SBWMA", a joint powers authority organized in 1999 pursuant to the provisions of the Joint
7 Exercise of Powers Act (Title 1, Division 7, Article 1, §6500 et seq. of the California
8 Government Code) and _____(hereinafter referred to as
9 "Contractor").

10 **RECITALS**

- 11 1) The South Bayside Waste Management Authority (SBWMA) was originally created in
12 June 1982 by its Member Agencies to oversee the operations of solid waste and
13 recycling services and to ensure that waste and recyclable materials are managed in a
14 manner that serves the needs of the member agencies: and, to assure that the Shoreway
15 Recycling and Disposal Center (SRDC) is utilized in a manner that ensures the
16 recovery of materials.
- 17 2) The State of California found and declared that the amount of solid waste generated in
18 California, coupled with diminishing landfill space and potential adverse
19 environmental impacts from landfill disposal, have created a need for State and local
20 agencies to enact and implement an aggressive integrated waste management program.
- 21 3) The State of California has, through legislation, including enactment of the California
22 Integrated Waste Management Act of 1989 (Act), directed the responsible state
23 SBWMA, and all local agencies, to promote recycling and to maximize the use of
24 feasible source reduction, recycling and composting options in order to reduce the
25 amount of solid waste that must be disposed of by land disposal.
- 26 4) The SBWMA concurs in the aforementioned findings and declarations of the State of
27 California, and in addition, desires to properly manage natural resources and preserve
28 landfill space.
- 29 5) The recycling operations conducted at the SRDC, are an integral and important
30 component of the SBWMA's strategy for implementing the Act and are incorporated
31 into each of the SBWMA Member Agencies' Source Reduction and Recycling
32 Elements which have in turn been incorporated into the San Mateo County's
33 Integrated Waste Management Plan.
- 34 6) Acting on behalf of the Member Agencies, the SBWMA owns the transfer station and
35 Materials Recovery Facility (MRF) as well as related facilities and equipment
36 (Facilities); and, The Contractor has experience with operations of similar facilities
37 used for the purpose of managing solid waste and recyclable materials.

1 NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions
2 contained in this Agreement and for other good and valuable consideration, the parties agree
3 as follows:

1 **ARTICLE 1**
2 **DEFINITIONS**

3 Unless the context otherwise requires, capitalized terms used in this Agreement will have the
4 meanings specified in the Definitions to this Agreement, which is written below.

5 **Definitions:**

6 Act

7 "Act" means the California Integrated Waste Management Act of 1989 (AB939), as it may be
8 amended from time to time.

9 Affiliate

10 "Affiliate" means all businesses (including corporations, limited and general partnerships and
11 sole proprietorships) which are directly or indirectly related to Contractor by virtue of direct
12 or indirect ownership interest or common management shall be deemed to be "Affiliated
13 with" Contractor and included within the term "Affiliates" as used herein. An Affiliate shall
14 include a business in which Contractor owns a direct or indirect ownership interest, a business
15 which has a direct or indirect ownership interest in Contractor and/or a business which is also
16 owned, controlled or managed by any business or individual which has a direct or indirect
17 ownership interest in Contractor. For purposes of determining whether an indirect ownership
18 interest exists, the constructive ownership provisions of Section 318(a) of the Internal
19 Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided,
20 however, that (i) "ten percent (10%)" shall be substituted for "fifty percent (50%)" in Section
21 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be
22 disregarded. For purposes of determining ownership under this paragraph and constructive or
23 indirect ownership under Section 318(a), ownership interest of less than ten percent (10%)
24 shall be disregarded and percentage interests shall be determined on the basis of the
25 percentage of voting interest or value which the ownership interest represents, whichever is
26 greater.

27 Agency

28 "Agency" means a municipal corporation or political subdivision (as the case may be) of the
29 State of California which is an active member of the SBWMA.

30 Agreement

31 "Agreement" means this Amended and Restated Agreement between the SBWMA and
32 Contractor for transfer, processing and recycling of Solid Waste and other services related to
33 meeting the goals and requirements of the Act, including all exhibits and attachments, and
34 any amendments thereto.

35 Buyback/Drop-Off Center

36 "Buyback/Drop-Off Center" means an area located at the SRDC Facility where Contractor
37 provides generators the opportunity to divert Recyclable Materials prior to Disposal for free
38 or for a price paid by Contractor when market prices exist for the Recyclable Materials.

39 California Integrated Waste Management Act (AB939)

40 "California Integrated Waste Management Act" means Public Resources Code, §40000 et seq.

1 Claim
2 "Claim" means any claim by third parties against Contractor, including but not limited to,
3 injury, death of any person or damage to private property arising out of or occasioned in any
4 way by, directly or indirectly, Contractor's performance of, or its failure to perform its
5 obligations under this Agreement, including Contractor's failure to comply with all applicable
6 laws or Contractor's breach of its representation and warranties under this Agreement.

7 Collect/Collection
8 "Collect" or "Collection" means to take physical possession, transport, and remove Solid
9 Waste within and from the Service Area.

10 Contamination
11 "Contamination" means any solid or liquid that is specifically prohibited from inclusion in the
12 product, commodity, recyclable or transported materials. Contamination may also include
13 other materials that are included in a load or shipment that are not specifically mentioned or
14 described in the list of material types that are able to be included.

15 Contractor
16 "Contractor" means signatory to this Agreement and its officers, directors, employees, agents,
17 companies and subcontractors.

18 Contractor Compensation
19 "Contractor Compensation" means the amount per ton or the total amount that is paid to the
20 Contractor for the performance of services included in or envisioned in this agreement and
21 any amendments to this Agreement.

22 County
23 "County" means the County of San Mateo, California.

24 Designated Hauler(s)
25 "Designated Hauler" means that Collection Company or those companies operating in
26 accordance with a Franchise Agreement with SBWMA Member Agency/Agencies.

27 Disposal
28 "Disposal" means the ultimate disposition of Solid Waste received by Contractor at a landfill
29 in full regulatory compliance.

30 Disposal Agreement
31 "Disposal Agreement" means the Agreement between the SBWMA and Disposal Contractor
32 (dated _____).

33 Disposal Facility
34 "Disposal Facility" means the Solid Waste handling facility or facilities utilized for the
35 Disposal of Solid Waste received by Contractor. The Ox Mountain Landfill owned by Allied
36 Waste, shall be the designated Disposal Facility of Contractor as of the effective date of this
37 Agreement.

38 Disposal Rate
39 "Disposal Rate" means the fee charges per ton for disposal at a Disposal Facility.

1 Diversion

2 “Diversion” means the separation of materials from the overall Solid Waste stream and whose
3 disposition is for reuse or Recycling and not use at a landfill.

4 Effective Date

5 “Effective Date” means the date specified in Section 2.01.

6 Environmental Laws

7 "Environmental Laws" means all federal and state statutes, county, local and Agency
8 ordinances concerning public health, safety and the environment including, by way of
9 example and not limitation, the Comprehensive Environmental Response, Compensation and
10 Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act,
11 42 USC §6902 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Toxic
12 Substances Control Act, 15 USC §1601 et seq.; the Occupational Safety and Health Act, 29
13 USC §651 et seq.; the California Hazardous Waste Control Act, California Health and Safety
14 Code §25100 et seq.; the California Toxic Substances Control Act, California Health and
15 Safety Code §25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water
16 Code §13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health
17 and Safety Code §25249.5 et seq.; the California Integrated Waste Management Act,
18 California Public Resources Code §40000 et seq., as currently in force or as hereafter
19 amended, and all rules and regulations promulgated thereunder.

20 E-Waste

21 “E-Waste” means discarded electronic equipment such as, but not limited to, television sets,
22 computer monitors, central processing units (CPUs), laptop computers, external computer
23 hard drives, computer keyboards, computer mice, computer printers, DVDs, and VCRs.

24 Facility or SRDC

25 "Facility" means any plant or site, owned or leased and maintained, operated or used by
26 Contractor or the SBWMA for purposes of performing under this Agreement. The designated
27 facilities for the purposes of this Agreement shall be the SRDC Transfer Station and the
28 SRDC Materials Recovery Facility located at 225 Shoreway Road and 333 Shoreway Road
29 respectively, in the City of San Carlos.

30 Fiscal Year

31 "Fiscal Year" means the period commencing January 1 and concluding December 31 of the
32 same year.

33 Full Regulatory Compliance

34 "Full Regulatory Compliance" means compliance with all applicable permits for a Facility
35 such that Contractor will at all times maintain the ability to comply fully with its obligations
36 under this Agreement.

37 Guarantor

38 “Guarantor” means the Contractor.

39 Guaranty Agreement

40 “Guaranty Agreement” is the agreement in substantially the form attached as Attachment **L**
41 executed by the Guarantor.

1 Hazardous Waste Exclusion Program

2 "Hazardous Waste Exclusion Program" is a plan to be created, maintained and followed by
3 the Contractor to inspect inbound loads of waste and recyclable materials for hazardous waste
4 and other material that are prohibited from entering the SRDC and that are prohibited for
5 inclusion in outbound waste / recyclable materials that is shipped from the SRDC for disposal
6 or off site processing..

7 Hazardous Substance

8 "Hazardous Substance" shall mean any of the following: (a) any substances defined,
9 regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous
10 materials", "Hazardous Wastes", "toxic waste", "pollutant" or "toxic substances" or similarly
11 identified as hazardous to human health or the environment, in or pursuant to (i) the
12 Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC
13 §9601 et seq.(CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et
14 seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean
15 Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117,
16 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and (vii) California
17 Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to
18 such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other
19 hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or
20 toxic or regulated under any other applicable federal, state or local environmental laws
21 currently existing or hereinafter enacted, including, without limitation, friable asbestos,
22 polychlorinated biphenyls ("PCBs"), petroleum, natural gas and synthetic fuel products, and
23 by-products.

24 Hazardous Waste

25 "Hazardous Waste" means all substances defined as Hazardous Waste, acutely Hazardous
26 Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code
27 §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such
28 statutes or identified and listed as Hazardous Waste by the U.S. Environmental Protection
29 Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC
30 §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated there
31 under.

32 Materials Recovery Facility (MRF)

33 "Materials Recovery Facility or MRF" means the Facility used primarily for the purpose of
34 separating recyclable materials that include primarily paper and containers from residential
35 and commercial generators into marketable commodities that are packaged and prepared for
36 shipment and diverted from landfill disposal. For the purposes of this Agreement, the San
37 Carlos SRDC, located at 225 Shoreway Road, owned by SBWMA and operated by the
38 Contractor, shall be the designated MRF.

39 Maximum Turnaround Time

40 "Maximum Turnaround Time" shall be the amount of time designated in the agreement that it
41 takes vehicles using the SRDC facilities to move through any one area of the operation (i.e.
42 number of minutes from leaving the scale house, to unload and deposit Solid Waste or
43 recyclables in the designated tipping area and exiting the SRDC Facility).

1 Member Agency/Agencies

2 “Member Agencies” means any one and/or all of the public entities listed in Definitions A of
3 the Joint Exercise of Powers Agreement South Bayside Waste Management Authority.

4 Organic Materials

5 “Organic Materials” means those discarded Commercial Materials that will decompose and/or
6 putrefy and that the Member Agencies’ Municipal Codes permit, direct, and/or require
7 Generators to separate from Solid Waste and Recyclable Materials for Collection in specially
8 designated Containers for Organic materials Collection. Organic materials include Yard
9 Trimmings, FoodOrganic Scrap, and Post-Consumer FoodOrganic Scraps such as, but are
10 not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush,
11 tree trimmings, dead trees, small wood pieces, other types of organic yard waste, vegetable
12 waste, fruit waste, grain waste, dairy waste, meat waste, fish waste, paper contaminated with
13 FoodOrganic Scrap, pieces of unpainted and untreated wood, and pieces of unpainted and
14 untreated wallboard. No discarded Material shall be considered to be Organic Materials,
15 however, unless such material is separated from Solid Waste and Recyclable Material.

16 Parties

17 “Parties” means Contractor and SBWMA.

18 Pass-Through Cost

19 "Pass-Through Cost" means a cost to which no element of overhead, administrative expense,
20 profit, or other cost is added nor with respect to which any other amount is credited, such that
21 the specific amount of such cost is included without modification in the calculations or
22 reports to which such costs pertain as described in Attachment H. (e.g., waste
23 characterization studies, payments for diverting negative value recyclable materials, disposal
24 expense, franchise fees and SBWMA contract costs).

25 Person

26 "Person" means any individual, firm, association, organization, partnership, corporation,
27 business trust, joint venture, the United States, the State of California, the County of San
28 Mateo, towns, cities, and special purpose districts.

29 Plant Materials

30 “Plant Materials” means a subset of Recyclable Materials consisting of grass cuttings, weeds,
31 leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees (not more than six
32 [6] inches in diameter), and similar organic materials generated at residential commercial,
33 industrial and institutional properties within the Service Area, separated and set out for
34 Collection, processing, and Recycling. Plant Materials does not include materials not
35 normally produced from gardens or landscapes, such as, but not limited to, palm fronds, brick,
36 rock, gravel, large quantities of dirt, concrete, sod, non-organic wastes and oil. Diseased
37 plants and trees are also excluded from Plant Materials.

38 Plant Materials Processing Facility

39 “Plant Materials Processing Facility” means a permitted Facility where Plant Materials are
40 sorted, ground, mulched or separated for the purposes of reuse that are allowed under this
41 agreement and comply with the materials diversion goals of this Agreement.

1 Premises

2 "Premises" means any land, or building in the Service Area where Solid Waste is generated or
3 accumulated.

4 Rate Year

5 "Rate Year" means the twelve-month period, commencing January 1 and concluding
6 December 31 of the same year, for which Contractor compensation is calculated.

7 Recyclable Materials

8 "Recyclable Materials" means discarded materials that are separated from Solid Waste for the
9 purpose of processing, re-manufacture or reuse.

10 Recyclery

11 "Recyclery" means the Material Recovery Facility operated by Contractor pursuant to this
12 Agreement for the purposes of processing Solid Waste for Recyclable Materials.

13 Recycling

14 "Recycling" means the process of separating for Collection, Collecting, treating and/or
15 reconstituting Recyclable Materials which would otherwise be discarded and returning them
16 to the economy in the form of raw materials for new, reused, or reconstituted products or
17 reuse. The Collection, transportation or Disposal of Solid Waste not intended for, or capable
18 of, reuse is not Recycling.

19 Refuse

20 "Refuse" means putrescible and non-putrescible Solid Waste or debris, except sewage,
21 whether combustible or non-combustible which does not include uncontaminated Recyclable
22 Materials or Plant Materials.

23 Related Party Entity

24 "Related Party Entity" means any Affiliate which has financial transactions with Contractor
25 pertaining to this Agreement.

26 Residual and Residue

27 "Residual and Residue" means any materials that remain after the processing of recyclable
28 materials that are not sold as a commodity or are included in the commodity but are
29 considered contamination by the commodity definitions of the buyer or by industry
30 definitions.

31 Revenue Requirement

32 "Revenue Requirement" means the amount of revenue required to cover the annual costs of
33 operating and managing the Facilities and includes: compensation to the Contractor for
34 operating the Facilities; the franchise fee due the City of San Carlos; compensation to the
35 SBWMA for management of the facilities and agreements; and compensation to the SBWMA
36 to cover the amounts in the order set forth in the Indenture of Trust to the South Bayside
37 Waste Management Authority Solid Waste System Revenue Bonds, Series 2000.

38 Service Area

39 "Service Area" means that territory within, and, if applicable, outside the SBWMA's Member
40 Agency's boundaries with respect to which the SBWMA Member Agency exercises
41 Franchising authority for the collection of Solid Waste.

1 SBWMA Service Area

2 “SBWMA Service Area” means all of the geographic area within the boundaries of the
3 Member Agencies as they are currently drawn or as they may be amended in the future due to
4 annexations or the addition of new Member Agencies.

5 Solid Waste

6 “Solid Waste” means and includes all putrescible and nonputrescible solid, semisolid, and
7 liquid wastes, including garbage, trash, refuse, rubbish, ashes, industrial wastes, demolition
8 and construction wastes, discarded home and industrial appliances, manure, vegetable or
9 animal solid and semisolid wastes, and other discarded solid and semisolid wastes, as defined
10 in California Public Resources Code §40191, as that section may be amended from time to
11 time. For the purposes of this Agreement, “Solid Waste” does not include abandoned vehicles
12 and parts thereof, Hazardous Waste or low-level radioactive waste, medical waste, Recyclable
13 Materials, or Plant Materials.

14 The SBTSA or SBWMA

15 “The SBTSA or SBWMA” means the public entity formed pursuant to that certain agreement
16 entered into in 1981 and entitled “Joint Exercise of Powers Agreement - South Bayside
17 Transfer Station” by and between the County of San Mateo, the West Bay Sanitary District
18 (formerly known as the Menlo Park Sanitary District), and the Cities of Atherton, Belmont,
19 Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San
20 Carlos, and San Mateo, California.

21 Single Stream

22 “Single Stream” refers to commingled recyclable materials that are separated from solid waste
23 for the purpose of recycling.

24 Single Stream Processing Equipment

25 “Single Stream Processing Equipment” refers to stationary equipment designed for the
26 purposes of mechanically and manually separating single stream and other recyclable
27 materials.

28 Source Separation

29 "Source Separation" means the segregation into separate containers by the Waste Generator of
30 individual components of material which otherwise would become Solid Waste, , such as
31 Recyclable Materials ,Plant Materials or Organic Materials for the sole purpose of reuse,
32 Recyclable Materials, or composting.

33 Term

34 “Term” means the period of time specified in Section 2.02.

35 Transfer Station

36 “Transfer Station” means a Facility used for primarily the purpose of transferring Solid Waste
37 from collection vehicles to transfer vehicles to more efficiently transport said Solid Waste to
38 its ultimate Disposal Site and at which Recyclable Materials may be recovered from the Solid
39 Waste Stream and diverted from landfill disposal. For the purposes of this Agreement, the
40 San Carlos Transfer Station, located at 225 Shoreway Road, owned by SBWMA and operated
41 by BFI, shall be the designated Transfer Station.

1 Traditional Recyclable Materials (from collection agreement)

2 “Traditional Recyclable Materials” shall include, but not be limited to: newspaper (including
3 inserts, coupons, and store advertisements); mixed paper (including office paper, computer
4 paper, magazines, junk mail, catalogs, brown paper bags, brown paper, paperboard, paper egg
5 cartons, telephone books, grocery bags, colored paper, construction paper, envelopes, legal
6 pad backings, shoe boxes, cereal and other similar food boxes); chipboard; corrugated
7 cardboard; paper milk cartons; glass containers of any color (including but not limited to
8 brown, blue, clear, and green glass containers); aluminum (including food and beverage
9 containers, foil, small pieces of scrap metal); small pieces of scrap metal weighing less than
10 10 pounds and fitting into the Recyclable Materials Collection Container; steel, tin or bi-metal
11 containers; plastic containers (i.e., all plastic containers stamped with the Society for the
12 Plastics Industry (SPI) code #1 through #7; and, plastics that are not stamped but clearly can
13 be identified as PET, HDPE, PP). For Single-Family and Multi-Family Premises, Traditional
14 Recyclable Materials shall also include Used Motor Oil, Used Motor Oil Filters, Household
15 Batteries, and Cell Phones. Traditional Recyclable Materials are a subset of Recyclable
16 Materials.

1 **ARTICLE 2**
2 **TERM OF AGREEMENT**

3 **2.01 Effective Date.**

4 The effective date of this Agreement shall be _____, 20XX (“Effective Date”).

5 **2.02 Term.**

6 The Term of the Agreement shall commence on the Effective Date and shall end at midnight
7 on December 31, 2020, unless extended as provided in Sections 2.03. Contractor’s obligation
8 to operate the SRDC Facilities shall commence January 1, 2011.

9 **2.03 Extension of Term.**

10 The SBWMA may extend the Term of this Agreement for one (1) or more periods of one (1)
11 year, up to a maximum of three (3) years, on the same terms and conditions. If the SBWMA
12 wishes to extend the Term of this Agreement it shall deliver a written notice to Contractor at
13 least twelve months before the expiration of the then current Term, specifying the time
14 increments by which it wishes to extend the Term.

15 **2.04 Conditions to the Effectiveness of Agreement.**

16 The obligation of the SBWMA and Contractor to perform under this Agreement is subject to
17 satisfaction, on or before the Effective Date, of each and every one of the conditions set out
18 below, which may be waived in whole or in part by the SBWMA.

19 **A. Accuracy of Representations.** The representations and warranties made by
20 Contractor in Article in this Agreement shall be true and correct on and as of the
21 Effective Date, and a certification to that effect dated as of the Effective Date
22 shall be delivered by Contractor to the SBWMA on the Effective Date.

23 **B. Absence of Litigation.** There shall be no litigation pending on the Effective
24 Date in any court challenging the execution of this Agreement or seeking to
25 restrain or enjoin its performance.

26 **C. Furnishing of Bonds and Insurance.** Contractor shall have shown evidence of
27 the insurance policies required by Section 9.02 and furnished the performance
28 bond required by Section 9.03.

29 **D. Effectiveness of the SBWMA’s Approval.** The SBWMA’s approval of this
30 Agreement shall have become effective, pursuant to California law, on or before
31 the Effective Date.

32 If either party wishes to assert that a condition for its benefit has not been satisfied and has
33 not been waived on the Effective Date, it must deliver written notice to that effect to the other
34 party. The SBWMA may waive the satisfaction of conditions described in this Section 2.04,

1 allow this Agreement to become effective, and exercise its rights and remedies under this
2 Agreement for Contractor's failure to deliver the bond and/or evidence of insurance. Each
3 party is obligated to perform in good faith the actions, if any, which this Agreement requires
4 it to perform before the Effective Date and to cooperate towards the satisfaction of the
5 conditions set forth above.

1
2

**ARTICLE 3
OPERATION OF THE SRDC FACILITIES**

3 **3.01 Receipt of Solid Waste and Recyclable Materials**

4 Contractor shall receive and accept at the Facilities:

5 **A.** All Solid Waste, Recyclable Materials, Plant Materials and Organic Materials
6 delivered to the Facilities by, or on behalf of the SBWMA and/or Member
7 Agencies and their Collection Contractor(s); and,

8 **B.** Publicly Hauled Solid Waste, Recyclable Materials, Plant Materials and Organic
9 Materials.

10 **3.02 SRDC Facility Operations.**

11 **A. General.** Contractor recognizes that the SBWMA and Member Agencies are
12 committed to recycling waste materials that have in the past been disposed of in
13 landfills. For that reason, the Facilities have been designed and shall be operated
14 to accomplish materials transfer and recovery through operations which are
15 summarized in the following subsections and are described in Attachments **A and**
16 **B.**

17 **B. Transfer of Municipal Solid Waste.** As authorized by the SBWMA, Contractor
18 shall operate the Transfer Station so to allow for the convenient and efficient
19 transfer of Municipal Solid Waste (MSW) from the Member Agencies. The
20 Designated Disposal Facility is the Ox Mountain Landfill. If the SBWMA selects
21 a different Disposal Facility, the SBWMA will adjust the Contractors
22 Compensation to reflect any change in distance according to Section 6.4.

23 **C. Diversion of Source Separated Organic Materials.** Contractor shall accept and
24 transfer all Plant Materials and Food Scraps to an Organics Materials Designated
25 Processing Facility. Should the SBWMA change or supplement the Designated
26 Processing Facility, it shall give Contractor thirty (30) days written notice of the
27 change. If the SBWMA selects a different Processor, the SBWMA will adjust the
28 Contractors Compensation to reflect any change in distance according to Section
29 6.4. Organic Materials shall be kept separate from other materials at the Transfer
30 Station to prevent contamination. The Contractor is required to remove visible
31 Contamination prior to shipment to the Processor.

32 **D. Diversion of Single Stream and Source Separated Recyclable Materials.**
33 Contractor shall operate the Facilities to allow for the Collection Contractor(s) to
34 efficiently deliver recyclable materials for processing. Materials targeted for
35 processing at the MRF include all types of fiber, containers and other materials
36 listed as “Acceptable Materials” in the Member Agencies Collection Contract(s)

1 or other materials as directed by the SBWMA or the Member Agencies. In 2011,
2 the SBWMA will convert residential and commercial recycling programs to
3 single stream where “Acceptable Materials” will be combined. Materials shall be
4 processed by the Contractor to maximize recovery and gross commodity revenue
5 while minimizing residue. Effective separation of materials and limiting Residual
6 levels from materials processed at the MRF is the responsibility of Contractor.
7 Contractor shall weigh and report all Residual generated by the MRF sorting
8 operations.

9 **E. Diversion of Batteries and Oil.** Contractor will need to receive and manage
10 source separated household batteries, residential used motor oil, and used oil
11 filters that are delivered to the SRDC by the Collection Contractor(s), and self
12 haul customers. The Contractor shall be responsible for handling, storage and
13 marketing of used motor oil and batteries consistent with applicable laws.
14 Contractor shall drain oil containers used by the Member Agencies’ curbside
15 collection programs of all free-flowing residue and shall make reusable emptied
16 containers available to the operators of the curbside collection programs for
17 reuse.

18 **F. Buyback/Drop-Off Center.** Contractor shall accept at the Buyback/Drop-Off
19 Center Recyclable Materials that are separated and delivered by the public,
20 process those Recyclable Materials and market them on behalf of SBWMA. The
21 following materials will be accepted at the drop-off center:

- 22 • All recyclable materials on the “Acceptable Materials” list
- 23 • Used motor oil*
- 24 • Used automobile oil filters*
- 25 • Anti-freeze*
- 26 • Automobile batteries*
- 27 • Household batteries*
- 28 • Fluorescent light bulbs and tubes*
- 29 • Household items containing mercury (e.g., thermometers, thermostats)*
- 30 • Universal waste, electronic devices and consumer electronic devices.*
- 31 • All containers for which a California Redemption Value (“CRV”) is
32 established now or during the Term.
- 33 • As directed by SBWMA, other materials that are accepted at other facilities
34 similar to the SRDC and located in the Bay Area Counties of Alameda and
35 Santa Clara.

36 * From residential generators only.

1 Contractor shall weigh and process Buy Back customer transactions without
2 having buy back customers having to enter the rest of the SRDC Complex. Buy
3 back customers shall be processed in an efficient, timely, customer friendly
4 manner. The Buy back center shall have published and posted prices to be paid
5 for materials accepted at the Buyback/Drop-Off Center and shall maintain
6 complete and accurate records of purchase transactions. Contractor shall
7 maintain signage at the SRDC giving members of the public appropriate
8 information about the location and operation of the Buyback/Drop-off Center.
9 The text of the signage shall be approved by SBWMA prior to its being installed.
10 Prices shall be within ten percent (10%), plus or minus, of the average prices paid
11 for similar materials purchased in retail quantities from individual customers in
12 similar facilities in Alameda and Santa Clara counties. These average prices will
13 be verified by a survey of these facilities conducted at a minimum of once a year
14 by the SBWMA. The revenues from the sales of recyclables shall be included in
15 the MRF commodity revenues. Payments made to customers to purchase
16 Acceptable Materials shall be the responsibility of the Contractor.

17 Contractor shall provide an area at the buy back center that will allow self-haul
18 users to drop off E-Waste items. These items shall be consolidated with E-Waste
19 that has been collected by the Collection Contractor(s) and from on-call
20 residential pick-ups for transfer to an E-Waste recovery facility approved by the
21 SBWMA. The transportation and processing of Special Waste (electronic waste,
22 universal waste, and HHW) from customers and Member Agencies will be paid
23 by the SBWMA as a Pass-Through cost.

24 **G. Recovery of Recyclable Materials from Self-Haul and Debris Box Through**
25 **“Bunker Program”.** Contractor shall maintain an area(s) at the Facilities that
26 will allow self-haul and debris box loads to drop off Recyclable Materials for
27 Recycling prior to Disposal of the remainder of the load. Materials targeted for
28 Diversion in the Bunker Program shall include, but not be limited to: Plant
29 Materials, wood, roofing materials, concrete, asphalt, clean soil and scrap metal.
30 Other Recyclable Materials (including corrugated, newspaper, office paper,
31 mixed paper, glass, plastic and metal containers and such other materials as
32 directed by the SBWMA) shall be diverted through the Buyback/Drop-Off
33 program or into the MRF. Contractor shall be responsible for providing adequate
34 personnel to ensure the quality of the material dropped-off by customers.
35

36 Contractor shall make all users of the Facilities aware of this program and its
37 associated benefits. Contractor shall be responsible for providing adequate
38 staffing to check the incoming loads, ensuring the maximum diversion of
39 Recyclable Materials and approving the quality of the Bunker Program materials
40 for drop-off. Contractor may transport bunker materials to a third party processor
41 of the Contractor’s choice. All records of third party processing should be
42 supplied to the SBWMA in Contractor’s Quarterly Reports.

43 **H. Segregation and Recovery of C&D Materials.** Contractor shall attempt to
44 segregate construction and demolition materials that are delivered to the SRDC.

1 C&D Materials entering the Transfer Station targeted for recovery include but are
2 not limited to: wood, roofing materials, drywall, concrete, asphalt, scrap metal,
3 cardboard, and recyclable plastics. It shall be the responsibility of Contractor to
4 check incoming loads and determine their adequacy for recovery. The Contractor
5 is required to segregate recoverable self haul and debris box loads and keep them
6 separate from other materials to prevent contamination.

7 The minimum amount of Self Haul C&D and recoverable materials that shall be
8 diverted by the Contractor is listed in the Diversion Guarantees, Section 6.09, and
9 Attachment **H**. The SBWMA currently has contractual arrangements for the off-
10 site processing of C&D with Zanker Road Resource Recovery in San Jose. The
11 Contractor is responsible for removing visible Contamination from the segregated
12 C&D loads delivered to the Transfer Station prior to shipment to the Processor's
13 location. The costs of transporting and handling rejected loads from the 3rd party
14 processors location will be responsibility of the Contractor.

15 The SBWMA retains the right to adjust the list of Recoverable Materials and
16 Contamination materials as requirements and sorting capabilities of the Processor
17 change. Materials shall be shipped by the Contractor to the Processor in a manner
18 that is consistent with the Agreement(s) that the SBWMA has with the
19 Processor(s).

20
21 **I. Diversion Program Guarantees.** For the Self Haul Diversion programs, the
22 Contractor shall each year meet the Following Diversion Guarantees:

- 23 1) Transfer Station Diversion Requirement: 30,000 tons per year of total Self
24 Haul tonnage delivered to the Transfer Station. All self haul tonnage is
25 included in this total which includes materials described in Section 3.02.G
26 and 6.02.H, and excludes materials from Sections 3.02.B through 3.02.F
- 27 2) MRF Diversion Requirement: Maximum MRF residue of 10% on an annual
28 basis of inbound MRF tonnage (will be calculated by comparing total tons
29 delivered to the MRF and the total tons of Residual that is generated per
30 month and averaged for the year).

31
32 Exceeding the Diversion Program Guarantees or failure to meet the diversion
33 requirements will result in an adjustment to the Contractors Compensation
34 through Performance Payments and Penalties Section 6.08.

35 **3.03 Priority.**

36 The basic and primary purpose of the SRDC is to process Municipal Solid Waste and
37 Recyclable Materials delivered by the Member Agencies and their Collection Contractor(s),
38 who shall have first priority in use of the SRDC. A secondary purpose is to process publicly
39 hauled waste and Recyclable Materials delivered by residents and/or businesses of the
40 Member Agencies who shall have secondary priority in use of the Facilities. Solid Waste,
41 Recyclable Materials, Organic Materials or Plant Materials generated outside the Member
42 Agencies shall be assigned third priority and Contractor shall operate the Facilities in the
43 above stated priorities (for example, operating practices may include not accepting materials

1 from outside the Member Agencies' jurisdictions). Processing of material from outside the
2 Participating Agencies shall, if allowed, never be permitted to interfere with processing of
3 Municipal Solid Waste or Recyclable Materials delivered by or on behalf of the Member
4 Agencies or their Collection Contractor(s).

5 **3.04 Days and Hours of Operation.**

6 Contractor shall have the right to use the Facilities, (including the administrative,
7 maintenance and repair building) every day of the year during the term of the Agreement.
8 Contractor shall operate the Facilities every day of the year, except legal holidays, during the
9 Term of the Agreement.

10 The Facilities shall be open 9 hours per day between 8:00 a.m. and 5:00 p.m. for the general
11 public, and 12 hours per day between 4:00 a.m. and 4:00 p.m. for Collection Contractor(s)
12 and transfer trucks. Contractor may operate the Facilities beyond the hours set forth above,
13 with the permission of the SBWMA and provided that it complies with facility permit
14 restrictions. In the future, the SBWMA may change the permitted operating hours of the
15 SRDC to allow for increased hours of operation.

16 **3.05 Permits.**

17 The SBWMA will obtain renewals of all facility operating permits and approvals from
18 governmental agencies.

19 If new operating permits and approvals (or amendments to the permits and approvals obtained
20 by SBWMA) become necessary during the Term, by virtue of Contractor's operations, it will
21 be the responsibility of Contractor to obtain them. SBWMA will assist the Contractor in
22 obtaining permits provided that the operations which give rise to the need for them are in
23 compliance with this Agreement. Contractor shall submit a draft of all applications for
24 operating permits (and for subsequent renewals or modifications thereof) to the SBWMA for
25 its review and approval prior to filing an application with the permitting SBWMA.
26 Contractor shall keep the SBWMA fully informed at all times on the status of all permit
27 applications, including meetings with SBWMA staff and hearings on permit applications
28 before the SBWMA's governing Board. Contractor shall apply for permits in its own name or
29 in the name of the SBWMA, as directed by the SBWMA. Contractor shall not agree to
30 permit terms and conditions on any permit which is to be issued in the name of the SBWMA
31 without the prior written consent of the SBWMA. Copies of all permits issued in
32 Contractor's name and originals of all permits issued in the SBWMA's name (and any
33 renewals or amendments) shall be delivered to the SBWMA promptly and in any case within
34 five (5) working days of their receipt by Contractor.

35 Contractor shall comply with the terms of all licenses, permits and approvals governing the
36 SRDC in force, including any which may require modifications to the operating procedures.
37 Contractor will comply with the terms and conditions contained in the Use Permit issued by
38 the City of San Carlos for the SRDC (Attachment **B**) including any mitigation measures
39 related to the operation and maintenance of the Facilities.

1 Contractor shall be solely responsible for paying any fines or penalties imposed by
2 governmental agencies for Contractor's noncompliance with permit terms.

3 **3.06 Hazardous Waste Exclusion Program.**

4 Contractor shall maintain a hazardous waste exclusion program (HWEP), the requirements of
5 which are described in Attachment C. Should additional measures be incorporated into the
6 HWEP to comply with regulatory change, Contractor shall comply with such measures.
7 Contractor shall arrange for the safe and lawful temporary storage and disposal of such waste.

8 The Contractor is required to conduct its own independent HWEP which requires the
9 Contractor to inspect outbound loads of materials that are transported to the Designated
10 Disposal and Processing Facilities by the Contractor. If the operator of the Disposal or
11 Processing Facilities reject loads because they contain materials that should have been
12 removed under the HWEP, Contractor shall notify the SBWMA immediately and manage the
13 disposal of the load in a safe and lawful manner, at its sole expense.

14 Contractor shall remove and arrange for proper disposal of CFCs and compressor oils from
15 appliances delivered to the SRDC, as well as switches containing mercury. The cost of
16 removal and disposal shall be born by the Contractor.

17 **3.07 Equipment.**

18 All equipment used by or on behalf of the Contractor shall comply with all applicable laws
19 and regulations. The SBWMA will provide the Stationary Equipment listed in Attachment D.
20 Contractor shall provide all other equipment required to perform, in a safe and efficient
21 manner, the services required by this Agreement (including rolling stock equipment and other
22 portable equipment). The SBWMA has the responsibility to furnish Stationary Equipment
23 which will remain onsite after the term of the Agreement.

24 The number of Transfer Vehicles and other pieces of equipment shown in Attachment D are
25 based on the throughput of Municipal Solid Waste (MSW) and recoverable materials at the
26 level anticipated at the commencement of the Term. The parties recognize that volume may
27 increase over time and that additional Transfer Vehicles and/or other equipment would be
28 needed. If and when it does, Contractor will acquire and operate such additional Transfer
29 Vehicles and/or other equipment as needed to receive, process and transfer materials at the
30 SRDC, while continuing to meet Performance Standards required by this Agreement, and
31 there shall be no increase in the Contractor's compensation as a result. All Transfer Vehicles
32 must be capable of being loaded from the top and must fit into and through the tunnel at the
33 SRDC Transfer Station and be capable of unloading at the Designated Disposal and
34 Processing Facilities by equipment in use at the Disposal Facility at the beginning of this
35 Agreement.

36 The SBWMA shall have the right, but not the duty, to purchase any or all equipment owned
37 by Contractor at the expiration or earlier termination of this Agreement, at its net book value
38 as shown on Contractor's financial statements (which shall be no greater than the purchase
39 price less accumulated depreciation claimed by Contractor on its federal income tax returns).

1 Contractor shall, 6 months prior to the end of the Agreement, deliver to the SBWMA properly
2 signed UCC-1 Financing Statements and all other documents necessary or appropriate for the
3 SBWMA to secure its purchase options and shall record, or allow the SBWMA to record,
4 such Statements and other documentation. As new or replacement equipment is purchased,
5 similar documentation covering it shall be provided by Contractor.

6 Upon the SBWMA's exercise of its option to purchase, Contractor will sign and deliver bills
7 of sale or other documents reasonably requested by SBWMA to evidence the transfer of title
8 to all equipment purchased.

9 If Contractor wishes to lease (rather than purchase) the equipment which it is to furnish, it
10 shall request SBWMA's permission to do so and provide to SBWMA, for its approval,
11 complete and accurate copies of all equipment leases which it proposes to enter into. The
12 leases must provide that the lessor will, if requested, consent to their assignment to SBWMA
13 without charge upon the expiration or earlier termination of this Agreement and must provide
14 adequate mechanisms for the SBWMA to acquire title to equipment if desired.

15 **3.08 Personnel.**

16 Contractor shall furnish qualified, competent personnel in sufficient numbers to perform, in a
17 safe and efficient manner, the services required by this Agreement (including the continued
18 and uninterrupted operation and maintenance of the SRDC and the transfer of MSW and
19 recoverable materials to the Disposal and Processor Facilities). The minimum number and
20 composition of personnel required by this Agreement shall be as shown on Attachment E.
21 The parties recognize that tonnage through the SRDC Facilities change over time and that this
22 increased/decrease in volume could require additional personnel. The Contractor will add
23 personnel as needed to operate the SRDC and achieve the Diversion Program Guarantees,
24 without any increase in the Contractor's compensation. Where there is a material change in
25 the number and composition of personnel, the Contractor shall provide written notification to
26 the SBWMA.

27 The parties acknowledge that the services provided by Contractor do not constitute a "public
28 work" and are not subject to any of the provisions of the Public Works Law, Labor §1720-
29 1901, nor the regulations promulgated thereunder.

30 The Contractor shall comply with the Terms of the Collective Bargaining Unit contracts in
31 Attachment Pand shall comply with the following:

32 **A.** Contractor shall fill the positions required to perform the work required by this
33 Agreement, in the job classifications listed in the Collective Bargaining
34 Agreement, by first offering employment to those employees of the predecessor
35 company operating the SRDC (1) who have been working continuously at the
36 SRDC from one year prior to the commencement of this Agreement in one or
37 more of the listed job classifications, (2) who are eligible for employment under
38 federal and state law, (3) who have not been convicted of a crime that is related to
39 the job or job performance, (4) who able to pass a Drug Testing Program that the

1 Contractor may require as a condition of employment, and (5) who do not present
2 a threat or disturbance to customers and coworkers.

3 **B.** If Contractor does not have enough positions available in the listed job
4 classifications to offer employment to all of the predecessor contractor's
5 employees who are eligible for employment under subparagraph A, the Contractor
6 shall maintain a list of the predecessor contractor's employees who were not
7 offered employment. If any positions become available during the first six (6)
8 months of operation, the Contractor shall offer employment to persons on the list
9 by seniority within each job classification.

10 **C.** The job classifications covered by this section are drivers, sorters, mechanics, and
11 operators and does not apply to management, supervisory, administrative or
12 clerical employees.

13 The Contractor is responsible for providing qualified and competent workers, whether as
14 direct employees or through workers furnished by an independent contractor. Contractor is
15 also responsible for providing sufficient training to all workers so that they can perform the
16 work in a safe and competent manner and are thoroughly familiar with the work which
17 Contractor is required to perform and the standards it is required to meet under this
18 Agreement. If workers provided by a particular independent contractor or party working on
19 behalf of the Contractor prove persistently unsatisfactory, the SBWMA may require that
20 Contractor either secure workers through a different independent contractor, sub-contractor or
21 hire qualified and competent employees directly.

22 **3.09 Weighing.**

23 Contractor shall operate and maintain the scale system at the Facilities. Weighing operations
24 shall be conducted in accordance with standards and procedures set forth in Attachment **F**.
25 SBWMA will provide two (2) inbound scales at the SRDC with digital instrumentation.
26 Contractor shall furnish all hardware (including computers, cabling and terminals) and
27 software and all other items necessary to generate, at a minimum, all the reports contained in
28 Attachment **F**. The software shall have the capabilities described in Attachment **F**. The
29 Contractor shall be solely responsible for operation of the computers and software. Contractor
30 will arrange for its employees to be trained in its use (training will also be provided to persons
31 designated by the SBWMA).

32 Contractor shall provide SBWMA with licenses and all other documentation necessary or
33 useful for SBWMA to operate the computers and software during and upon expiration or
34 earlier termination of the Agreement.

35 Radiation monitoring equipment is used at the entrance to the SRDC to identify loads
36 containing radioactive waste. Contractor will arrange for its employees to be trained in its use
37 (training will also be provided to persons designated by the SBWMA), and will operate the
38 equipment and respond to alerts by contacting the SBWMA and local regulatory agencies as
39 required by law.

40 **3.10 Collection of Fees.**

41 Contractor shall collect Fees established by the SBWMA from all Persons who use the SRDC
42 Facilities. Contractor shall keep complete and accurate records of all Fees collected, shall

1 keep safe all monies and funds collected, and shall make all payments to the SBWMA as
2 provided in Article 6. The SBWMA shall have sole and exclusive authority to establish Rates
3 and to modify them from time to time.

4 **3.11 Turnaround Time of MSW, Organic, Materials and Recyclable Materials**
5 **Collection Vehicles.**

6 Contractor shall operate the Facilities so that all Collection vehicles of Member Agencies and
7 their Collection Contractor are:

- 8 A. processed through the scale house weighing operation in no more than two (2)
9 minutes per vehicle, measured from the vehicle's entry onto the scale;
- 10 B. able to unload and depart from the SRDC in no more than fifteen (15) minutes
11 from the time they leaving the scale house;
- 12 C. all vehicles carrying Publicly Hauled Waste do not wait an more than fifteen
13 minutes (15) to be processed at the scale and assigned a place to dump.

14 Should Contractor fail to meet the Maximum Turnaround Time, **Liquidated Damages** shall be
15 paid in the amounts stated in Article **O**.

16 **3.12 Marketing of Recyclable Materials.**

17 **A. Marketing Plan.** Within ninety (90) days of the execution of this Agreement
18 Contractor shall submit and quarterly thereafter as part of the Quarterly Reports, a
19 Materials Marketing Plan that describes the quantities, methods of processing,
20 grade of commodity manufactured, transportation method, market destination and
21 marketing process for all materials recovered and diverted at the SRDC. The
22 Contractor shall maintain for inspection and audit, all paperwork (i.e., scale
23 receipts, bills of lading, shipping reports, material grading forms) related to
24 material shipments. The plan shall contain a Materials Specifications section that
25 lists the materials specifications for the markets/vendors used by the Contractor.

26 A section of the Materials Marketing Plan, shall contain a Materials Marketing
27 Contingency Plan that discusses how the Contractor will manage a change in
28 market conditions or marketing services used by the Contractor. The Plan will
29 list all of the Contractor's commodity buyers and Persons who provide materials
30 marketing services and commodity transportation. This plan will be updated
31 quarterly with the Materials Marketing Plan.

32 **B. Marketing Efforts.** Contractor shall use its best efforts in marketing and
33 promoting the sale of all Recyclable Materials. Contractor shall employ its best
34 marketing strategy in effecting disposition of Recyclable Materials, obtain the
35 highest prices for Recyclable Materials consistent with prevailing conditions in
36 the market, whether foreign or domestic. Contractor will exert at least the same
37 effort in marketing the Recyclable Materials from the SRDC as it does in
38 marketing materials which it markets for its own account as Principal or as an
39 agent/broker for any third party.

1 **C. Marketing Duties.** Contractor shall perform all of the following:

- 2 1) Contractor shall suitably store all Recyclable Materials to protect against
3 theft, deterioration, contamination, fire, and other damage or off site impacts.
4 Contractor shall insure all Recyclable Materials while in its possession, and
5 during shipment prior to transfer of title, against fire, theft and other casualty
6 losses. Contractor shall ship all Recycled Materials offsite for Recycling
7 within ninety (90) days of their delivery to the SRDC unless stockpiling of
8 specific Recyclable Materials on site longer than ninety (90) days is
9 approved by SBWMA in advance, and in writing.

10 Title to, and risk of loss of, Recyclable Materials shall be with Contractor
11 upon delivery to the SRDC. Contractor shall keep the Recyclable Materials
12 free from liens and other claims of Contractor's creditors.

- 13 2) Contractor shall be responsible for delivery of Recyclable Materials to
14 purchasers or recipients unless the terms of material purchasing agreements
15 require the purchaser to arrange for delivery.

- 16 3) Contractor shall obtain a letter of Certification of End Use from the
17 purchaser establishing that the materials sold (or donated) will be/have been
18 recycled or re-used in accordance with Attachment **G**).

- 19 4) Contractor shall be responsible for the disposition of Recyclable Materials
20 other than those under contract for off site processing by the SBWMA, when
21 they have no market value or negative market value. Contractor must pay all
22 transportation costs of delivering recovered Recyclable Materials to users
23 willing to accept them, up to two hundred (200) miles (one way) from the
24 SRDC.

- 25 5) For other Recyclable Materials, which the SBWMA may want to recycle at a
26 future date, the Contractor shall propose a plan for the handling and
27 marketing of the materials including a projection of related costs and
28 revenues to the SBWMA. The SBWMA may accept, reject or modify such
29 plan and Contractor shall be entitled to such compensation for implementing
30 the plan as agreed to by the Parties.

31 **3.13 Relationship of Parties with Regard to Marketing of Recyclable Materials.**

32 The Parties intend and hereby agree that their relationship shall be that of independent
33 contractors with respect to the marketing of Recyclable Materials. Nothing contained herein
34 shall be construed to create any employment, partnership, joint venture, co-ownership or
35 SBWMA relationship between the Parties, and Contractor shall not by any action allow any
36 presumption to arise that a relationship of partnership or SBWMA exists between the Parties.

1 **3.14 Maintenance of Facilities.**

2 Contractor's maintenance responsibilities will include but not be limited to conforming with
3 warranties and guidelines for the use of equipment and shall comply with all necessary and
4 required inspections and reporting as required under applicable laws and regulations. Any
5 costs that arise from voided equipment warranties (that are voided as a result of the
6 Contractor not providing maintenance as specified by the manufacturer) will be the
7 responsibility of the Contractor.

8 **3.15 Composition Study.**

9 Contractor shall assist the SBWMA in conducting, a waste and materials Composition Study
10 of materials delivered to the SRDC. Surveys will be conducted at the SBWMA's expense not
11 more frequently than once every quarter. The procedure for the study and the content of the
12 report shall be furnished by the SBWMA six weeks prior to conducting the survey. The
13 SBWMA will reimburse the Contractor for all Direct Costs (without profit) to the Contractor
14 for performing the Study.

15 **3.16 Modifications to Service.**

16 **3.16.1 General Services.** SBWMA may direct Contractor to perform Additional Services
17 (including new diversion programs) or modify the manner in which it performs existing
18 services (including the modifications to or elimination of programs). Contractor's
19 compensation shall be increased or decreased, as appropriate, to give effect to these
20 adjustments in accordance with Article 6, Section 6.11.

21 **3.16.2 Proposal for Modification of Services.** Contractor shall present, within 30 days of a
22 request to do so by SBWMA, a proposal to modify existing services. At a minimum, the
23 proposal shall contain a completed description of the following:

- 24 A. Methodology to be employed (equipment, manpower, etc.).
- 25 B. Equipment to be utilized (equipment cost, types, capacity, age, etc.).
- 26 C. Labor requirements (changes in number of employees and costs of labor by
27 classification).
- 28 D. Provision for program publicity/education/marketing (if appropriate).
- 29 E. Estimate of the impact of the service modification (increased diversion tonnage,
30 costs, increased public service, etc.).
- 31 F. Three-year projection of the financial results of the program's operations in a
32 balance sheet and operating statement format including documentation of the key
33 assumption underlying the projections and the support for those assumptions,
34 giving full effect to the savings or costs to existing services.

35 **3.16.3 SBWMA's Right to Permit Others to Provide Services.** Contractor acknowledges
36 and agrees that SBWMA may permit other Persons besides Contractor to provide Additional
37 Services not otherwise contemplated under this Agreement. If pursuant to Section 3.16.2,
38 Contractor and SBWMA cannot agree on terms and conditions of such services in one-

1 hundred twenty (120) days from the date when SBWMA first requests a proposal from
2 Contractor to perform such services, Contractor acknowledges and agrees that SBWMA may
3 permit Persons other than Contractor to provide such services. Contractor will provide access
4 and use of land, utilities and SBWMA owned equipment to perform Additional Services.

5 **3.17 Ownership of Solid Waste.**

6 Once MSW, Recyclable Materials, Plant Materials and/or Organic Materials is/are delivered
7 to the Facilities, ownership and shall transfer directly from the deliverer to Contractor by
8 operation of this Agreement. Contractor is required handle materials in a manner that meets
9 the SBWMA's diversion goals and is required to direct materials to a particular Designated
10 Processing and Disposal Facilities as the SBWMA requires in writing.

11 Recyclable Materials, Organics Materials and MSW, or any part thereof, which is transported
12 to a designated Processing or Disposal Facility shall become the property of the owner or
13 operator of the Processing or Disposal Facility once it is deposited there by Contractor and
14 formally received by the operator of the Facility.

15 SBWMA may obtain ownership or possession of recyclable materials or MSW received at the
16 SRDC upon written notice of its intent to do so, however, nothing in this Agreement shall be
17 construed as giving rise to any inference that SBWMA has such ownership or possession
18 unless such written notice has been given to Contractor.

19 **3.18 Sharing of SRDC Facilities.**

20 **3.18.1 SBWMA Use of SRDC Facilities.** SBWMA shall have exclusive use of
21 approximately five-hundred (500) square feet of the office space. In addition five (5) parking
22 spaces will be reserved for the use of SBWMA staff and invitees. Contractor shall provide, at
23 no charge to SBWMA, utilities to this portion of the administrative office/visitor center area,
24 including water, sewer, electrical power, heat and light, as well as janitorial and building
25 maintenance services. SBWMA will provide, at its expense, telephones and other
26 communications equipment, furniture, computers, office supplies and moveable partitions.

27 SBWMA shall have the right to make reasonable use of the common areas in the buildings.
28 SBWMA's use of these areas shall not interfere with Contractor's use, and the parties shall
29 cooperate with each other in the scheduling of the use of facilities.

30 **3.18.2 Collection Contractor(s) Use of SRDC Facilities and Areas.** SBWMA may select
31 and enter into an agreement with a Collection Contractor(s) whom may occupy a part of the
32 SRDC property. The Collection Contractor(s) will use the area of the SRDC property that is
33 in the northeast parcel of the property. The Collection Contractor(s) will have rights to access
34 and use the areas and structures that are located within the areas designated for the Collection
35 Contractor(s). There are areas of the SRDC site and services that the Contractor and the
36 Collection Contractor(s) will need to share. It is expected that the Operations Contractor and
37 the Collection Contractor(s) will cooperate in the use of shared areas; that each Contractor
38 will use the shared areas in a way does not impact with the others use; and that the parties
39 shall cooperate in the scheduling of the use of shared areas.

1 **ARTICLE 4**
2 **MRF EQUIPMENT INSTALLATION AND STARTUP**

3 The SBWMA plans to replace the existing MRF building and processing equipment currently
4 in use at the SRDC MRF, as shown on the Master Plan design drawings in Attachment X.

5 **4.1 MRF Equipment Installation and startup.**

6 As a part of this Agreement the Contractor will install and startup a new single stream
7 processing line(s) and associated processing equipment. The SBWMA will require the
8 Contractor to complete the equipment installation and system start-up (including Acceptance
9 Testing) of the MRF equipment within six (6) months after the SBWMA provides the MRF
10 building to the Contractor. Contractor will commence operations on the Effective Date and
11 will need to provide Interim Processing services if the Equipment is not installed by the
12 Effective Date.

13 The Contractor will install MRF processing equipment while other operations are being
14 conducted at the SRDC. The Contractor and/ or parties conducting work on behalf of the
15 Contractor will not interfere with the onsite traffic at the SRDC or with the facility operations.
16 Contractor shall install equipment according to the requirements of the Construction Plan
17 Attachment B.

18 The Diversion Guarantee Program specified in Section 3.02, shall not apply until 6 months
19 after the acceptance test has been completed.

20 **4.2 Interim Processing.**

21 Should MRF equipment not be installed and fully operational, Interim Processing will be
22 required. Costs associated with the handling, transportation, and Interim Processing of
23 recyclable materials that are not able to be processed at the SRDC MRF will be the
24 responsibility of the Contractor should the installation and start up of the MRF processing
25 equipment take longer than six (6) months.

26 If the Contractor is not able to commence installation of equipment by July 1, 2010, due to
27 delays unrelated to the Contractor or parties conducting work on behalf of the Contractor, the
28 responsibility and costs for Interim Processing shall be delayed so as to provide the
29 Contractor six (6) months of installation and startup time. If the delay in installation is
30 demonstrated to be the responsibility of the SBWMA or the result of MRF building
31 construction delays, the SBWMA will reimburse the Contractor for all costs related to Interim
32 Processing of MRF materials. These costs will be documented and submitted to the SBWMA
33 who may elect to audit the submitted costs proposed for reimbursement.

1 **ARTICLE 5**
2 **TRANSPORTATION OF MUNICIPAL SOLID WASTE, RECYCLABLE**
3 **MATERIALS AND ORGANIC MATERIALS**

4 **5.01 General.**

5 Routes over which Contractor's vehicles travel will minimize inconvenience and disturbance
6 to traffic and disruption. Contractor shall use due care to prevent materials being transported
7 from being spilled or scattered during transport. If any materials are spilled, Contractor shall
8 be responsible for the costs to clean up all spilled materials, whether on private or public
9 property.

10 **5.02 Transportation of Municipal Solid Waste.**

11 Contractor shall transport and deliver to the Designated Disposal Facility all MSW that is not
12 recycled or reused. No MSW may be disposed of at any location other than the Designated
13 Disposal Facility without written consent and direction from the SBWMA.

14 **5.03 Transportation of Hazardous Substances.**

15 Contractor shall arrange for or provide transportation and delivery to an appropriately
16 permitted disposal facility any Hazardous Substances that are encountered at the Facilities
17 and which cannot be accepted at the Designated Disposal Facility. The Contractor is not
18 responsible for the processing cost associated with the handling of Special Wastes (electronic
19 waste; universal waste; and batteries, oil, and paint) that are collected from customers as part
20 of the services to Member Agencies.

21 **5.04 Transportation of Recyclable Materials.**

22 Contractor shall arrange or provide transportation and delivery of all Recyclable Materials to
23 a purchaser, a licensed recycling facility, or a person who will use the materials in a process
24 or product and will not dispose of or use them at a landfill without prior written approval of
25 the SBWMA. No Recyclable Materials that have been delivered to the Facilities already
26 separated that have been separated from MSW at the Facilities may be disposed of (1) on a
27 landfill, or (2) used at a landfill property, (3) through Transformation, without the prior
28 written consent of the SBWMA.

29 **5.05 Parking and Maintenance of Transfer Vehicles.**

30 Contractor may park empty Transfer Vehicles at the SRDC in the area(s) designated by the
31 SBWMA for this purpose. Transfer Vehicles containing Municipal Solid Waste must be
32 parked in areas that prevent liquids that have come in contact with Municipal Solid Waste
33 and/or Recyclable materials from the Municipal Solid Waste from entering the storm water
34 system.

1 **5.06 Alternative Fuels Plan.**

2 Contractor shall maximize the use of Alternative Fuels for transfer trucks that are hauling
3 from the SRDC where mutually agreed upon by the SBWMA and the Contractor. Contractor
4 will use its best efforts to make use of alternative fuels for transfer trucks as soon as
5 practicable.

1 **ARTICLE 6**
2 **COMPENSATION TO CONTRACTOR**

3 **6.01 General.**

4 The Contractor's Compensation for performance of all its obligations under this Agreement
5 shall be as described in this Article. Contractor's Compensation provided for in this Article
6 shall be the full, entire, and complete compensation due to Contractor pursuant to this
7 Agreement for all: labor; equipment; facilities; materials and supplies; processing, and
8 Disposal fees; fees due to SBWMA; taxes; insurance; debt service; overhead, profit, and all
9 other things necessary to perform all the services in the manner required by this Agreement.

10 **6.02 Processing Facility.**

11 The SBWMA plans to replace the existing Recyclable Materials processing equipment
12 installed at the MRF as of the date of this Agreement with new equipment, which shall be
13 proposed by the Contractor as shown on the design drawings attached as Attachment **B** with
14 the equipment listed on Attachment **D**. The Contractor shall be wholly responsible for this
15 equipment installation and the cost of the equipment installation has been identified in the
16 Contractor's Proposal. The installation cost, start-up cost, and Acceptance Testing costs will
17 be paid by the SBWMA; amortized over the first year of the Operations Agreement and paid
18 to the Contractor through an adjustment to the Contractor's monthly compensation.

19 The Equipment Installation period (including installation, start-up, and Acceptance Testing)
20 will occur prior to commencement of Recyclable Materials processing under this Agreement.
21 The Contractor has six (6) months to complete the Equipment Installation. During this six (6)
22 month Equipment Installation period the SBWMA shall pay the Interim Processing costs of
23 Recyclable Materials, however, should the Equipment Installation exceed six (6) months, the
24 Contractor shall be responsible for all costs associated with Interim Processing. Interim
25 Processing costs may include; but are not limited to: handling, transport, processing and
26 materials marketing (including diminished revenues from the sale of Recyclable Materials).

27 **6.03 Calculation of Contractor's Compensation.**

28 Contractor's Compensation shall be the product of multiplying the Contractor's Fees by the
29 applicable number of tons as described below.

- 30 **A.** Contractor's Receipt and Handling (transfer) Fee per incoming ton of Solid
31 Waste, Plant Material, Organic Material and Construction and Demolition
32 materials delivered to the Transfer Station multiplied by the number of tons of
33 such materials received by Contractor. In cooperation with the Contractor, the
34 SBWMA shall reasonably translate this per ton rate into a per yard fee for non-
35 weighed material.

1 **B.** Contractor's Transport Fee per ton mile to transport materials from the Transfer
2 Station to the Designated Disposal Facility, Plant Materials Processing Facility,
3 Organic Materials Processing Facility and Construction and Demolition Debris
4 Processing Facility multiplied by the number of tons of such materials transported
5 from the Transfer Station by Contractor. In cooperation with the Contractor, the
6 SBWMA shall reasonably translate this per ton rate into a per yard fee for non-
7 weighed material.

8 **C.** Contractor's Recyclable Materials Processing Fee per ton multiplied by the
9 number of tons of such materials delivered to the MRF. For Compensation
10 purposes, the Buy Back / Drop Off center tons shall be included in the inbound
11 tonnage of the Materials Processing Facility.

12 **6.04 Rate Components and Overview of Adjustment Process.**

13 The above Contractor Fees shall be disaggregated into the following three cost categories:

- 14 • labor (including but not limited to wages, employee benefits, workers
15 compensation insurance, and payroll taxes);
- 16 • fuel/power; and,
- 17 • other operating and maintenance truck and rolling equipment depreciation and
18 interest) as shown in Attachment **H**. The operating and maintenance category
19 shall include the amortization of planned start-up and Acceptance Testing costs
20 related to the MRF (but not any costs incurred by Contractor for Interim
21 Processing of Recyclable Materials after the six month installation period).

22 Between the date of execution of the Agreement and the date on which Fees are set for Rate
23 Year One, each of the cost categories shall be multiplied by one plus the average percentage
24 change for the twelve preceding months in the appropriate index (described in Section 6.08
25 A) compared to the average percentage change for the twelve previous months, and the sum
26 of these various products shall be the Rate Year One Fees to account for inflationary costs
27 during this period.

28 Thereafter, the Rate Year One Fees shall be disaggregated into the categories described
29 above, adjusted by one plus the percentage change for the preceding 12 months in the same
30 indices (described in Section 6.08 B) compared to the average percentage change for the
31 twelve previous months and the sum of these various products shall be the Rate Year Two
32 Fees. However, Labor costs shall be adjusted based on the collective bargaining agreements
33 in effect at the time this Agreement was executed and, once the term of those bargaining
34 agreements expire, then the labor costs shall be adjusted by the index described in Section
35 6.08 B.

36 Annually, prior to commencement of each Rate Year, per ton fees shall be determined by
37 adjusting the then current fees by the average percentage change for the 12 preceding months
38 compared to the prior 12 months to calculate the fees for the coming rate year.

1 **6.05 Recyclable Materials Revenue.**

2 Annually, commencing with Rate Year One, the Contractor shall pay to the SBWMA not less
3 than the amount of \$, , (million hundred and thousand dollars) *{Insert*
4 *amount from Contractor's proposal}* from the sale of Recyclable Materials (Revenue
5 Guarantee). Should the Contractor's actual revenues from the sale of Recyclable Materials be
6 less than the Revenue Guarantee from such sales, the Contractor shall still be required to pay
7 not less than the Revenue Guarantee to the SBWMA. Should the Contractor's actual
8 revenues from the sale of Recyclable Materials be more than the Revenue Guarantee, then the
9 Contractor shall share such additional amount with the SBWMA and the SBWMA shall
10 receive 75% and the Contractor shall receive 25% of the additional amount. Such payments
11 shall be made in the manner described in this Section below.

12 **6.06 Determination of Customer Rates.**

13 The SBWMA will set Customer Rates at levels sufficient to cover the Contractor's
14 compensation and other costs and Fees. The SBWMA shall have the sole and exclusive right
15 to change the relationship of individual Fees in comparison with other Fees as SBWMA
16 deems appropriate.

17 The SBWMA shall not be in default of this Agreement, if it is determined by a court of
18 competent jurisdiction, that it lacks the authority to set Fees and/or increase Fees for charges
19 related to providing service, pursuant to this Agreement. Should a court of competent
20 jurisdiction determine that the SBWMA lacks authority to set and/or increase Fees for charges
21 related to Franchise Fees and governmental fees.

22 Nothing herein is intended to imply that California Constitution, Articles XIIIIC or XIID,
23 apply to the setting of Fees for the services provided under this Agreement; rather this Section
24 is provided merely to allocate risk of loss as between the Parties.

25 **6.07 Performance Guarantees**

26 After the conclusion of each Rate Year, a determination will be made of whether (and the
27 amount of) any performance payments are due to the Contractor from the SBWMA or due
28 from the Contractor to the SBWMA. Adjustments to Contractor's Fees will be made in
29 subsequent year(s) to account for any payment to Contractor from the SBWMA or due to the
30 SBWMA from the Contractor.

1 **6.08 Determination of Contractor's Fees**

2 **6.08.1 Contractor's Fees for Rate Year One.** Contractor's Fees for Rate Year One
3 (January 1, 2011 through December 31, 2011), which are presented in Attachment H, were
4 proposed by Contractor based on Contractor's proposed costs and SBWMA-stipulated
5 tonnage and composition. The Contractor's Fees for Rate Year One are expressed in 2008
6 values and shall be adjusted to 2011 values to reflect changes in the costs of labor; fuel; and,
7 other operating and maintenance (but shall not be adjusted for any other reason, unless
8 approved in writing by the SBWMA) in accordance with the following procedure:

9 **A.** Labor costs shall be adjusted to reflect negotiated changes in the collective
10 bargaining agreements, the increased costs of non-represented employees (based
11 on annual changes in the U.S. Department of Labor, Bureau of Labor Statistics,
12 Private Industry Employment Costs Index), workers compensation rates
13 (assuming not more than a 1.0 modification factor) applied to the data contained
14 in the Contractor's cost forms, to bring these costs to their 2011 value.

15 **B.** Fuel / Power costs shall be adjusted by multiplying that component of the
16 Contractor's Fees by one plus the average percentage change for the twelve
17 months ending June 30, 2009 in the:

18 1. Power costs for the MRF and Transfer Station rate adjustment as power costs
19 (rate per KwHr) change from year to year, and

20 2. U.S. Department of Labor, Bureau of Labor Statistics, Producer Price Index –
21 Commodity Index for #2 diesel fuel (not seasonally adjusted, fuels and related
22 products and power, series no. wpu057303) from the same index for the 12
23 months ending June 30, 2008 to bring these costs to a 2009 value and repeating
24 this procedure twice more to bring these costs to a 2011 value.

25 **C.** Other Operating and Maintenance costs shall be adjusted by multiplying that
26 component of the Contractor's Fees by one plus the average percentage change
27 for the twelve months ending June 30, 2009 in the U.S. Department of Labor,
28 Bureau of Labor Statistics, Consumer Price Index – All Urban Consumers, U.S.
29 City average (not seasonally adjusted, all items, base period: 1982-84+100. series
30 no. cuur0000sa) from the same index for the 12 months ending June 30, 2008 to
31 bring these costs to a 2009 value and repeating this procedure twice more to bring
32 these costs to a 2011 value.

33 **6.08.2 Contractor's Fees for Subsequent Rate Years.** The Contractor's Fees shall be
34 adjusted annually, commencing with determination of Contractor's Fees for Rate Year Two
35 and continuing through the remaining Term of this Agreement including any extension
36 periods. The adjustments to Contractor's Fees shall be determined using an index-based
37 adjustment. The index-based adjustment involves use of the same price indices described in
38 this Section to calculate Contractor's Fees.

1 Upon the expiration of the Collective Bargaining Agreement in effect at the time this
2 Agreement executed, the labor component of the Fees shall be adjusted using the average
3 monthly change for the twelve months ending preceding the termination of the Agreement in
4 the U.S. Department of Labor, Bureau of Labor Statistics, Private Industry Employment Costs
5 Index for Service-Producing Industries (seasonally adjusted, total compensation, series no.
6 ecs12102i) from the same index for the 12 months ending one year earlier. The adjustments
7 shall be calculated by the Contractor and submitted to the SBWMA by August 1 preceding
8 the commencement of the Rate Year.

9 **6.09 Annual Performance Payment Process.**

10 Annually, the Contractor's performance will be evaluated and amounts calculated as being
11 due to the Contractor from the SBWMA or due from the Contractor to the SBWMA as
12 described below.

13 **6.09.1 Diversion Guarantee:** Under the Diversion Guarantee, the Contractor shall divert
14 from disposal or use at a landfill a minimum of 30,000 tons per year of Self Haul material
15 entering the Facilities (excluding Processing Facility tons and Buy Back / Drop Off Center
16 tons). For each ton of municipal solid waste less than the minimum Diversion Guarantee
17 percentage diverted from landfill disposal, Contractor shall pay SBWMA a per ton penalty as
18 described in Attachment **H** Diversion Guarantee and Performance Payment. For each ton of
19 solid waste greater than the Diversion Guarantee, Contractor shall receive a per ton
20 Performance Payment from the SBWMA.

21 **6.09.2 Recyclable Material Residual Guarantee:** Contractor has proposed to divert and
22 market Recyclable Materials and maintain a residual level (i.e., amount disposed sent to
23 landfill as a percentage of incoming tonnage) less than 10% of the tonnage or Recyclable
24 Materials received at the Materials Processing Facility (i.e., Residual Guarantee). The
25 penalties and payment associated with the Diversion Guarantee are described in Attachment
26 **H**. The Recyclable Material Residual Guarantee shall not be adjusted except in writing by the
27 SBWMA.

28 After completion of the Rate Year, the annual amount due to Contractor from the SBWMA or
29 due from Contractor to the SBWMA will be calculated and converted into a per ton amount
30 and applied proportionately to all of the Contractor's Fees and added to or subtracted from the
31 approved annual Contractor's Fees for the forthcoming rate period.

32 Such adjustments shall be recalculated annually. The prior year's adjustment shall be
33 reversed (eliminated from the rates) and the new calculation shall be added to or subtracted
34 from the Contractor's Fees as appropriate. The performance payment process shall not be
35 conducted for performance during the last the last Rate Year of the Agreement. As a result,
36 Contractor's Fees shall not be adjusted for differences between its proposed and actual
37 performance during the last years of the Agreement.

1 **6.10 Application Process for Contractor’s Fees**

2 **A. Application Date and Content.** Contractor’s application for determination of
3 performance payments in the prior completed Rate Year and Contractor’s Fees
4 for the next Rate Year shall be prepared and submitted by August 1st.

5 **B. SBWMA Review of Application.** The Contractor’s Rate application shall be
6 reviewed by the SBWMA for compliance with the procedures for determining
7 Contractor’s Fees. The SBWMA shall notify the Contractor by September 1, if it
8 believes an adjustment to the Contractor’s Application is appropriate. The
9 SBWMA shall meet with the Contractor during September to reach agreement on
10 whether an adjustment is appropriate and the amount of such adjustment. If the
11 SBWMA and Contractor do not agree on such adjustments, the SBWMA staff
12 shall make a reasonable determination of Contractor’s Fees for recommendation
13 to the SBWMA Board. The SBWMA Board shall consider the Contractor’s
14 Application, the SBWMA’s recommendation and any additional comments from
15 the Contractor and establish the Contractor’s Fees for the coming Rate Year. In
16 the event the SBWMA Board denies Contractor’s request, Contractor shall have
17 the right to present its claim in a court of competent jurisdiction. The SBWMA
18 shall act in good faith to approve the Contractor’s Fees for the Coming Rate Year
19 by commencement date of the Rate Year.

20 **6.11 Special Compensation Review**

21 **A. Eligible Items.** The Contractor is entitled to apply to the SBWMA for
22 consideration of a special review of Contractor’s Compensation (the amount the
23 Contractor receives from the Contractor’s Fees multiplied by the appropriate
24 tonnage), or the SBWMA may initiate such a review, should one or more of the
25 following occur or should there be an occurrence that has a material effect of 1%
26 or more annually on the Contractor’s Compensation for the then-current Rate
27 Year:

- 28 1. Documented significant changes in the cost to provide services required in
29 this Agreement as a result of an agreed-upon, SBWMA-directed change in
30 scope, as provided for under Section 3.16.
- 31 2. Flood, earthquake, other acts of nature, war, civil insurrection, riots, acts of
32 any government SBWMA (including judicial action), or other similar
33 catastrophic events which are beyond the control of and not the fault of the
34 Contractor.
- 35 3. Change in Law, including, but not limited to, Changes in Law that result in
36 regulatory, governmental, or other surcharge fees, after the Effective Date
37 that: (1) was not reasonably known to the Contractor before the Effective
38 Date, (2) the Contractor substantiates. In the event the Change in Law results
39 in a direct cost increase or decrease, such cost impact shall be considered

1 during a Special Adjustment to Contractor's Compensation required by
2 Section 6.11, and Contractor may be compensated retroactively for such cost
3 subject to SBWMA approval.

4 **B. Ineligible Items.** A special review of Contractor's Compensation may not be
5 initiated for the following items and Contractor shall not be compensated for such
6 items over the Term of the Agreement unless the SBWMA and Contractor agree
7 to such an adjustment.

8 1. Increases in the cost of operations or capital resulting from the failure of the
9 Contractor's selected processing equipment to achieve the performance
10 standards assumed in the Contractor's Proposal.

11 2. Increases in the cost of operations or capital resulting from the Contractor's
12 inability to achieve the worker productivity assumed in Contractor's
13 Proposal.

14 3. Increases in the cost of operations resulting from the purchase or lease of
15 equipment or hiring of personnel, beyond those contained in Contractor's
16 proposal, unless authorized in writing in advance by the SBWMA.

17 **C. Review of Costs and Profit.** If the Contractor or the SBWMA requests a special
18 review of Contractor's Fees, the SBWMA shall have the right to review any or all
19 financial and operating records of Contractor and Affiliates (that have financial
20 transactions with Contractor related to operations under this Agreement). For the
21 purposes of analyzing the reasonableness of Contractor's Compensation, the
22 Contractor's profit shall be calculated using an operating ratio of [REDACTED] % {Insert
23 operating ratio based on Contractor's Proposal} of actual reasonable and
24 necessary costs net of Plant Material, Construction and Demolition Material
25 Processing, and Solid Waste Disposal expenses, Franchise Fees, Debt Service and
26 other SBWMA Management fees.

27 **D. Submittal of Request.** If the Contractor is requesting a special review of
28 Contractor's Compensation, the Contractor must submit its request for a special
29 review, and cost, allocation and operational data, in a form and manner specified
30 by the SBWMA, at least six (6) months before the proposed effective date of any
31 adjustment of Contractor's Compensation. The SBWMA may (but is not
32 required to) waive the six (6) month submittal requirement if the reason for the
33 special review of Contractor's Compensation is a Change in Law whose effective
34 date is less than six (6) months from its enactment.

35 If SBWMA is requesting a special review of Contractor's Fees, the SBWMA
36 shall notify the Contractor at least eight (8) months before the proposed effective
37 date of any adjustment of Contractor's Compensation. Upon such notification,
38 Contractor shall, within sixty (60) calendar days, submit reasonable cost,
39 allocation and operational data and proposed adjustment to Contractor's Fees as
40 requested by the SBWMA, in a form and manner generally consistent with the

1 Contractor's Cost Proposal or, if necessary to address unique conditions, as
2 specified by the SBWMA.

3 A request for special review of Contractor's Fees shall include a proposal on
4 whether the Contractor's Rate adjustment resulting from the special review shall
5 be an adjustment in addition to or in lieu of the annual adjustment of Contractor's
6 Fees to be performed in accordance with Section 6.11.

7 **E. Burden of Justification.** Contractor shall bear the burden of justifying to the
8 SBWMA by substantial evidence any entitlement to current, as well as increased,
9 Contractor's Compensation under this Section 6.11. If the SBWMA determines
10 that the Contractor has not met its burden, the Contractor may request one hearing
11 to produce additional evidence. Upon such request, the SBWMA shall permit
12 said additional hearing before the SBWMA Board. In the event the SBWMA
13 Board denies Contractor's request, Contractor shall have the right to present its
14 claim in a court of competent jurisdiction.

15 **F. Grant of Request.** Based on evidence the Contractor submits, the SBWMA may
16 grant some, all, or none of the requested increase (or decrease) and approve the
17 adjusted Contractor's Fees.

18 **6.11.1 Cost of Review.** The Party requesting the special review of Contractor's Fees shall
19 bear all actual, reasonable, and additional costs of both Parties for participating in such review
20 up to a maximum of \$50,000 per Party. Such costs shall not be reimbursed through Fees
21 charged Customers. If a special review occurs in response to an SBWMA-directed change in
22 scope (pursuant to Section 3.16) or SBWMA-initiated changes to the amount of the Franchise
23 Fee or other fees, the SBWMA shall be considered the Party requesting the special review.

1 **6.12 Rate Adjustments for Changes in Scope**

2 In the event either the SBWMA or Contractor requests a change in scope in accordance with
3 Section 6.11 of this Agreement, the Contractor shall furnish the SBWMA with projected
4 operational and cost data for the change in scope to support any adjustment to Contractor's
5 Fees. For the purposes of analyzing cost impacts of changes in scope, the Contractor's profit
6 shall be calculated using an operating ratio of ____% {Insert operating ratio based on
7 Contractor's Proposal} of actual reasonable and necessary costs net of Plant Material,
8 Construction and Demolition Material Processing, and Solid Waste Disposal expenses,
9 Franchise Fees, Debt Service and other SBWMA Management fees. The SBWMA reserves
10 the right to require that the Contractor supply any additional cost data or other information it
11 may reasonably need to ascertain the appropriate adjustment of Contractor's Fees, if any, for
12 the change in scope. The SBWMA shall review this cost, profit, allocation and operational
13 data, and the SBWMA shall establish Contractor's Fees for the change in scope, if warranted.

14 The granting of any change in scope shall be contingent upon SBWMA's written approval
15 and establishment of new Contractor's Fees. The SBWMA shall adjust Fees, in good faith,
16 coincident with any adjustment made pursuant to this Section so that the change in scope and
17 the corresponding Fees become effective on the same date.

18 **6.13 Revenue Guarantee**

19 **6.13.1 General.** As part of the consideration for selecting the Contractor, the Contractor
20 shall pay to SBWMA an amount not less than \$____,____ (___ million ___ hundred and ___
21 thousand dollars) {Insert amount based on Contractor's Proposal} (the Revenue Guarantee).
22 This Revenue Guarantee is based on revenues from the value of Recyclable Materials
23 proposed by the Contractor and the Recyclable Material volume and composition stipulated
24 by the SBWMA (refer to Attachment H).

25 At the conclusion of the first Rate Year the SBWMA and the Contractor shall make a
26 determination of the actual annual Recyclable Material volume and composition (including
27 contamination Fees) based on actual 2011 operating results. These actual volume and
28 composition values will replace the SBWMA-stipulated values in Attachment H and the
29 proposed Revenue Guarantee shall be recalculated. The proposed Revenue Guarantee shall
30 not be adjusted for changes in the assumed market values for the Recyclable Materials.

31 Such payment shall be made regardless of whether the Contractor actually receives revenues
32 from the sale of Recyclable Materials processed at the Recyclable Materials Processing
33 Facility that are less than the Revenue Guarantee. For example, if Contractor receives \$
34 ____ (\$500,000 less than the Revenue Guarantee) then it shall pay the Revenue
35 Guarantee amount of \$____. Should the Contractor receive more than the Revenue
36 Guarantee from the sale of Recyclable Materials, then the Contractor shall share such
37 additional amount with the SBWMA and the SBWMA shall receive 75% and the Contractor
38 shall receive 25% of the additional amount.

1 **6.13.2 Timing of Revenue Guarantee Payment.** Contractor shall remit to SBWMA on or
2 before the last Working Day of each month via wire transfer all revenues received from the
3 Sale of Recyclable Materials up to the amount of the Revenue Guarantee. Should the
4 Contractor receive less than the amount of the Revenue Guarantee in any Rate Year, then the
5 Contractor shall remit any difference between the amount paid to the SBWMA and the
6 Revenue Guarantee not later than the last Working Day of January following the end of the
7 Rate Year. Should the Contractor receive more than the Revenue Guarantee, Contractor shall
8 remit 75% of the additional amount to the SBWMA on or before the last Working Day of
9 each month.

10 **6.13.3 Penalty for Late Payment.** Should the Contractor fail to pay the SBWMA all
11 amounts due in accordance with section 3.10, Contractor shall pay a late payment for each
12 day the payment is due in the amount of two tenths percent (0.2%) of the amount due.

13 **6.13.4 Format of Payment Report.** At the same time as the wire transfer is executed,
14 Contractor shall electronically submit to the SBWMA a schedule, in a format approved by the
15 SBWMA, showing the calculation of the amount paid, including any late payments.

16 **6.14 Notice of Rate Adjustments.**

17 The SBWMA or the Contractor at the SBWMA's direction, shall provide all Customers with
18 advance written notice of approved Rate changes at least fourteen (14) calendar days before
19 the effective date of the new rates, unless the SBWMA provides written approve to waive this
20 requirement.

21 The SBWMA shall not be in default of this Agreement, if it is determined by a court of
22 competent jurisdiction, that it lacks the authority to set Fees and/or increase Fees for charges
23 related to providing service, pursuant to this Agreement. Should a court of competent
24 jurisdiction determine that the SBWMA lacks authority to set and/or increase Fees for charges
25 related to Franchise Fees and governmental fees .

26 Nothing herein is intended to imply that California Constitution, Articles XIIIIC or XIID,
27 apply to the setting of Fees for the services provided under this Agreement; rather this Section
28 is provided merely to allocate risk of loss as between the Parties.

29 **6.15 Payments to the SBWMA.**

30 Contractor shall collect SBWMA-approved Fees and charges from all Persons using the
31 Transfer Station and Processing Facility. In accordance with a schedule established by the
32 SBWMA, but no more frequently than bi-monthly and no less frequently than monthly,
33 Contractor shall deposit (through wire transfer) with the SBWMA such revenues collected
34 during the period plus revenue received from Recyclable Materials sales and SBWMA shall
35 pay amounts (including amounts due Contractor) in the order set forth in the Indenture of
36 Trust to the South Bayside Waste Management Authority Solid Waste System Revenues
37 Bonds, Series 2000 or such other Indenture of Trust that may apply.

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ARTICLE 7
CONTRACTOR RECORDS/REPORTING

3 **7.01 Tonnage Records.**

4 In addition to the financial records required under Article 6, at a minimum, Contractor shall
5 compile monthly tonnage summary records and whose format and content have been
6 approved by the SBWMA.

7 Contractor shall maintain records of all materials received and shipped for the period of this
8 Agreement and all extensions to this Agreement or successor Agreements. In the event the
9 SBWMA requests certain records or Contractor discontinues providing services to the
10 SBWMA, Contractor shall provide all records of all services requested to the SBWMA within
11 thirty (30) days of discontinuing service. Records shall be in a chronological and organized
12 form, and readily and easily interpreted.

13 **7.02 CERCLA Defense Records.**

14 The SBWMA views the ability to defend against CERCLA and related litigation as a matter
15 of great importance. For this reason, the SBWMA regards the ability to prove where Solid
16 Waste Collected in the SBWMA Service Area was taken for Transfer or Disposal, as well as
17 where it was not taken, to be matters of significant importance. Therefore, Contractor shall
18 maintain data retention and preservation systems that can establish where Solid Waste was
19 transferred and disposed of (and therefore establish where it was not landfilled). This
20 provision shall survive the expiration of the period during which services are to be provided
21 under this Agreement for ten (10) years; such records shall be provided in an organized and
22 indexed manner and then turned over to the SBWMA after the ten (10) year period.

23 All records required under this Agreement shall be maintained for each year of the Term and
24 for three years beyond the expiration or termination of the Agreement. At the end of that
25 period, SBWMA reserves the right to take physical possession of these records.

26 **7.03 Provision of Records to the SBWMA.**

27 In the event Contractor discontinues providing services to the SBWMA, Contractor shall
28 provide to the SBWMA all records required by this Agreement within thirty (30) days of
29 discontinuing service. Records shall be in chronological order, in an organized form, and
30 readily and easily interpreted.

31 **7.04 Reports and Schedules.**

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

- 1 **A.** determine and set rates and evaluate the financial efficiency of operations;
- 2 **B.** evaluate past and expected progress towards achieving AB 939 and SBWMA
- 3 goals and objectives;
- 4 **C.** determine needs for program adjustments; and,
- 5 **D.** evaluate customer service and complaints.

6 Either the SBWMA or Contractor may propose report formats that are responsive to the
7 objectives of and audiences for each report. The format of each report shall be approved by
8 the SBWMA. Contractor agrees to submit all reports on computer discs or in electronic
9 format compatible with the SBWMA's software and computers at no additional charge, if
10 requested by the SBWMA. Contractor will provide a certification statement, under penalty or
11 perjury, by the responsible Contractor official, that the report being submitted is true and
12 correct to the best knowledge of such official.

13 Reports containing all required information shall be submitted to the SBWMA on a quarterly
14 basis (Quarterly Report) and shall be submitted within thirty (30) calendar days after the end
15 of the calendar quarter. Annual reports shall be submitted within thirty (30) calendar days
16 after the end of the calendar year.

17 Quarterly and Annual Reports will summarize all information, tonnage, events, activities and
18 changes in operations as required in Article 3. However, the reporting for all tonnage will be
19 on a month basis and data will be totaled and presented on a monthly basis in the Reports.

20 All reports shall be submitted to:

21 <u>If to the SBWMA:</u>	SBWMA Executive Director
22	City of San Carlos
23	610 Elm Street, Suite 202
24	San Carlos, CA 94070

25 **7.05 Quarterly Report Requirements.**

26 The information listed below and in Attachment **Q**, Report Format, shall be the minimum
27 reported for each service. The report format will be developed jointly by Contractor and
28 SBWMA and include the following:

- 29 **A.** character, weight and volume of all materials (by material type) entering the
- 30 SRDC Facilities by Member SBWMA;
- 31 **B.** character, weight and volume of Solid Waste, Organic Materials, and Recyclable
- 32 Materials (by material type) entering the SRDC Facilities by the hauler type
- 33 (Collection Contractor(s), commercial haulers, self haul, public, and other)(by
- 34 type of vehicle),;
- 35 **C.** character, weight and volume of all Solid Waste, Organics Materials, Recyclable
- 36 Materials (by material type) leaving the SRDC Facilities;

- 1 **D.** character, weight and volume of all materials moving between the buildings and
2 operations on the SRDC premises (e.g. between the MRF building, Transfer
3 Station building and Buyback center) (by material type);
- 4 **E.** mass balance accounting of all materials that enter and leave the SRDC site so
5 that all inbound tons equal outbound / shipped materials less inventory (by
6 material type);
- 7 1. The percentage of materials diverted by material type, category (Residential,
8 Commercial, Self haul) and SRDC operation (MRF, Transfer Station, Bunker
9 Program, Buyback/drop off center and other), and residual from MRF
10 operations.
- 11 2. location to which all Solid Waste, Organics Materials, and Recyclable
12 Materials, received by the Facilities was delivered for transfer, processing,
13 sale, ultimate use or disposal;
- 14 3. Recyclable Materials sales value (by material type);
- 15 4. changes to facilities, equipment and personnel used;
- 16 5. changes to facilities and equipment operations, maintenance and repair;
- 17 6. reporting incidence of accidents involving either employees or customers of
18 the facilities;
- 19 7. documentation of hazardous spills and removals shipment, and ship
20 manifesting;
- 21 8. other information or reports that the SBWMA may reasonably request or
22 require.
- 23 **F. Programs.** For each program, provide activity-related and narrative reports on
24 goals, milestones, and accomplishments. Contractor shall describe problems
25 encountered, actions taken and any recommendations to facilitate progress.
- 26 **G. Summary Assessment.** Contractor shall provide a summary assessment of the
27 overall Materials handling systems from Contractor's perspective relative to
28 financial and physical status of the Facilities. Contractor shall assess how well
29 the program is operating in terms of efficiency, economy and effectiveness
30 relative to meeting all the goals and objectives of this Agreement. Contractor
31 shall provide recommendations and plans to improve operations which highlight
32 significant accomplishments and problems. Contractor should document changes
33 on a monthly basis and include monthly documentation in the quarterly reporting.
- 34 **H. Meet and Confer with SBWMA.** Beginning on the effective date of the
35 Agreement, and then on a quarterly basis thereafter, Contractor shall meet with
36 the SBWMA to describe the services performed at the SRDC and the progress of
37 each active Diversion Program. Contractor should document the results of the
38 programs on a monthly basis, including the tonnage diverted by material type, the
39 end use or processor of the diverted materials and the cost per ton for transporting

1 and processing each type of material and other such information requested by the
2 SBWMA necessary to evaluate the performance of each program.

3
4 **I. Addition and Changes to Programs.** The SBWMA and Contractor shall have
5 the opportunity to add and revise programs based on mutually agreed upon terms.
6 The SBWMA shall have the right to terminate a program if in its sole discretion
7 the Contractor is not cost effectively achieving the program's goals and
8 objectives. Prior to such termination, the SBWMA shall meet and confer with
9 Contractor for a period of up to 90 days to resolve the SBWMA's concerns.
10 Thereafter, the SBWMA may utilize a third party to perform these services if the
11 SBWMA reasonably believes the third party can improve on Contractor's
12 performance and/or cost. Notwithstanding these changes, Contractor should
13 continue the program during the meet and confer period and, thereafter, until the
14 third party takes over the program.

15 **7.06 Annual Report Requirements.**

16 The Annual Report shall be in the form of the Quarterly Reports and shall provide the same
17 type of information as required pursuant to Section 7.04 and 7.05 of this Agreement,
18 summarized for the preceding four quarters. The annual report shall also include a complete
19 inventory of equipment used to provide all services, and a list of Contractor's personnel used
20 to operate the SRDC.

21 **A. Inspection of Records.** The SBWMA, and its agents selected by the SBWMA,
22 shall have the right, during regular business hours, to conduct unannounced on-
23 site inspections of the records and accounting systems of Contractor and to make
24 copies of any documents relevant to this Agreement.

25 **B. Retention of Records.** Records and data required to be maintained that are
26 specifically directed to be retained shall be retrieved by Contractor and made
27 available to the SBWMA.

28 Records and data required to be maintained that are not specifically directed to be
29 retained that are, in the sole opinion of the SBWMA, material to the rate setting
30 or to a determination of Contractor's performance under this Agreement, shall be
31 retrieved by Contractor and made available to the SBWMA.

32 Records and data required to be maintained that are not specifically directed to be
33 retained and that are not material to a rate setting and/or not required for the
34 determination of Contractor's performance do not need to be retrieved by
35 Contractor. In such a case, however, the SBWMA may make reasonable
36 assumptions regarding what information is contained in such records and data,
37 and such assumption shall be conclusive in whatever action the SBWMA takes.

1 **7.07 Adverse Information.**

2 **A. Reporting Adverse Information.** Contractor shall provide the SBWMA two
3 copies (one to the SBWMA Executive Director, one to the SBWMA Legal
4 Council) of all reports, pleadings, applications, notifications, Notices of
5 Violation, communications or other material relating specifically to Contractor's
6 performance of services pursuant to this Agreement, submitted by Contractor to,
7 or received by Contractor from, the United States or California Environmental
8 Protection SBWMA, the California Integrated Waste Management Board, the
9 Securities and Exchange Commission or any other federal, state or local
10 SBWMA, including any federal or state court. Contractor shall also notify the
11 SBWMA of any criminal charges for violation of any federal or state
12 environmental law or antitrust law or for fraud or similar matters initiated
13 hereafter against any management employee of Contractor or its affiliates that
14 have direct or indirect responsibility for administration of Contractor's
15 performance of services under this agreement. Copies shall be submitted to the
16 SBWMA simultaneously with Contractor's filing or submission of such matters
17 with said agencies. Contractor's routine correspondence to said agencies need
18 not be routinely submitted to the SBWMA, but shall be made available to the
19 SBWMA promptly upon the SBWMA's written request.

20 **B. Failure to Report.** The refusal or failure of Contractor to file any required
21 reports, or to provide required information to the SBWMA, or the inclusion of
22 any materially false or misleading statement or representation by Contractor in
23 such report shall be deemed a material breach of this Agreement, and shall
24 subject Contractor to all remedies available to the SBWMA, after sixty (60) days
25 and notification to Contractor by the SBWMA of the selected remedy, under this
26 Agreement or otherwise.

1 **ARTICLE 8**
2 **PAYMENTS TO THE SBWMA AND TO THE CITY OF SAN CARLOS**

3 **8.01 General.**

4 It is the intent of this Article to compensate the SBWMA for all labor, equipment, materials
5 and supplies, taxes, insurance, bonds, overhead, debt service payments, contributions to
6 prudent and necessary reserves, and all other things necessary to perform its contractual and
7 fiduciary responsibilities required by this Agreement. Also, it is the intent of this Article to
8 ensure that the City of San Carlos continues to receive compensation due it including but not
9 limited to its current share of property tax revenue in spite of the transfer of ownership of the
10 Facilities from Contractor to the SBWMA.

11 **8.02 Calculation of Payment Due to the SBWMA.**

12 **A. Debt Service Payments and Contributions to Reserves.** The SBWMA shall
13 annually determine the amount of the debt service payment and contributions to
14 reserves required by the covenants of the bonds issued to finance the purchase of
15 the Facilities. This amount shall be added to the amount of the Revenue
16 Requirement determined in accordance with Attachment H.

17 **B. Management Costs.** The SBWMA shall annually determine the amount of its
18 costs to perform its obligations under this Agreement and other agreements to
19 which it is party. This amount shall be added to the amount of the Revenue
20 Requirement determined in accordance with Attachment H when setting rates.

21 **8.03 Franchise Fee Due the City of San Carlos.**

22 The SBWMA shall annually determine the amount of the franchise fee payment due the City
23 of San Carlos based upon the terms of the Franchise Agreement between Contractor and the
24 City of San Carlos. This amount shall be added to the Revenue Requirement without profit
25 and paid to the City of San Carlos.

26 **8.04 Payments to the SBWMA.**

27 Contractor shall collect Fees from all Persons, as provided in Section 3.10 of this Agreement.
28 In accordance with Section 6.15 Contractor shall deposit with the SBWMA such Fees
29 collected during the period plus revenue received from Recyclable Materials and SBWMA
30 shall pay amounts in the order set forth in the Indenture of Trust to the South Bayside Waste
31 Management Authority Solid Waste System Revenue Bonds, Series 2000.

1 **ARTICLE 9**
2 **INDEMNITY, INSURANCE AND BOND**

3 **9.01 Indemnification.**

4 Contractor shall indemnify, defend and hold harmless SBWMA, its officers, employees and
5 agents (collectively, the "Indemnitees"), from and against (1) any and all liability, penalty,
6 claim, demand, action, proceeding or suit, of any and every kind and description, whether
7 judicial, quasi-judicial or administrative in nature, (2) any and all loss including, but not
8 limited to, injury to and death of any person and damage to property, and (3) contribution or
9 indemnity demanded by third parties (collectively, the "Claims"), arising out of or occasioned
10 in any way by, directly or indirectly, Contractor's performance of, or its failure to perform, its
11 obligations under this Agreement. The foregoing indemnity shall not apply to the extent that
12 a Claim is caused solely by the active negligence or intentional misconduct of the
13 Indemnitees, but shall apply if the Claim is caused by the joint negligence of Contractor and
14 other persons, including an Indemnitee. Upon the occurrence of any Claim, Contractor shall
15 defend (with attorneys reasonably acceptable to SBWMA) the Indemnitees. Contractor's
16 duty to defend and indemnify shall survive the expiration or earlier termination of this
17 Agreement.

18 **9.02 Insurance**

19 A. Types and Amounts of Coverage. Contractor shall procure from an insurance
20 company or companies admitted to do business in the State of California, and
21 shall maintain in force at all times during the Term, the following types and
22 amounts of insurance:

- 23 1. Workers' Compensation and Employer's Liability. Contractor shall maintain
24 workers' compensation insurance covering its employees in statutory amounts
25 and otherwise in compliance with the laws of the State of California.
26 Contractor shall maintain employer's liability insurance in an amount not less
27 than One Million Dollars (\$1,000,000) per accident or disease. Contractor
28 shall not be obligated to carry workers compensation insurance if (i) it
29 qualifies under California law and continuously complies with all statutory
30 obligations to self-insure against such risks; (ii) furnishes a certificate of
31 Permission to Self Insure issued by the Department of Industrial Relations; and
32 (iii) furnishes updated certificates of Permission to Self Insure periodically to
33 evidence continuous self insurance.
- 34 2. Comprehensive General Liability. Contractor shall maintain comprehensive
35 general liability insurance with a combined single limit of not less than Ten
36 Million Dollars (\$10,000,000) per occurrence and _____ Million Dollars
37 (\$____,000,000) annual aggregate covering all claims and all legal liability for
38 personal injury, bodily injury, death, and property damage, including the loss
39 of use thereof, arising out of, or occasioned in any way by, directly or
40 indirectly, Contractor's performance of, or its failure to perform, services
41 under this Agreement.

1 The insurance required by this subsection shall include:

- 2 (i) Premises Operations (including use of owned and non-owned
3 equipment);
- 4 (ii) Personal Injury Liability with employment exclusion deleted;
- 5 (iii) Broad Form Blanket Contractual with no exclusions for bodily injury,
6 personal injury or property damage (including coverage for the
7 indemnity obligations contained herein);
- 8 (iv) Owned, Non-Owned, and Hired Motor Vehicles;
- 9 (v) Broad Form Property Damage.

10 The comprehensive general liability insurance shall be written on an “occurrence” basis
11 (rather than a “claims made” basis) in a form at least as broad as the most current version of
12 the Insurance Service Office commercial general liability occurrence policy form (CG0001).
13 If occurrence coverage is not obtainable, Contractor must arrange for “tail coverage” on a
14 claims made policy to protect SBWMA from claims filed within four years after the
15 expiration or earlier termination of this Agreement relating to incidents that occurred prior to
16 such expiration or termination.

- 17 1. Automobile Liability. Contractor shall maintain automobile liability
18 insurance covering all vehicles used in performing service under this
19 Agreement with a combined single limit of not less than Ten Million Dollars
20 (\$10,000,000) per occurrence for bodily injury and property damage.
- 21 2. Pollution Liability. Contractor shall maintain pollution liability insurance
22 coverage of not less than Ten Million Dollars (\$10,000,000) per occurrence
23 covering claims for on-site, under-site, or off-site bodily injury and property
24 damage as a result of pollution conditions arising out of its operations under
25 this Agreement.
- 26 3. Hazardous Materials Transport. Contractor shall maintain insurance
27 coverage of not less than Ten Million Dollars (\$10,000,000) per occurrence
28 for bodily injury and property damage arising out of the sudden and
29 accidental release of any hazardous materials or wastes during transport of
30 such materials by vehicles owned, operated or controlled by Contractor in
31 the performance of services required by this Agreement.

32 **A. Acceptability of Insureds.** The insurance policies required by this section shall
33 be issued by an insurance company or companies admitted to do business in the
34 State of California, subject to the jurisdiction of the California Insurance
35 Commissioner, and with a rating in the most recent edition of Best’s Insurance
36 Reports of size category XV or larger and a rating classification of A+ or better.

1 **B Required Endorsements.** Without limiting the generality of Sections 9.02.A
2 and B, the policies shall contain endorsements in substantially the following
3 form:

4 **1. Workers' Compensation and Employers' Liability Policy.**

5 (a) "Thirty (30) days prior written notice shall be given to the
6 [NAME OF SBWMA] in the event of cancellation or non-
7 renewal of this policy. Such notice shall be sent to:

8 _____
9 _____
10 _____
11 Attention: _____

12 (b) "Insurer waives all right of subrogation against [SBWMA]
13 and its officers and employees for injuries or illnesses
14 arising from work performed for [SBWMA]."

15 **2. Comprehensive General Liability Policy; Automobile Liability Policy;**
16 **Pollution Liability Policy; and Hazardous Materials Policy.**

17 (a) "Thirty (30) days' prior written notice shall be given to the
18 [NAME OF SBWMA] in the event of cancellation,
19 reduction of coverage, or non-renewal of this policy. Such
20 notice shall be sent to:

21 _____
22 _____
23 _____
24 Attention: _____

25 (b) "The [SBWMA], its officers, employees, Member
26 Agencies, volunteers and agents are additional insureds on
27 this policy."

28 (c) "This policy shall be considered primary insurance as
29 respects any other valid and collectible insurance
30 maintained by the [SBWMA], including any self-insured
31 retention or program of self-insurance, and any other such
32 insurance shall be considered excess insurance only."

33 (d) "Inclusion of the [SBWMA] as an insured shall not affect
34 the [SBWMA]'s rights as respects any claim, demand, suit
35 or judgment brought or recovered against the Contractor.
36 This policy shall protect Contractor and the [SBWMA] in
37 the same manner as though a separate policy had been
38 issued to each, but this shall not operate to increase the

1 company's liability as set forth in the policy beyond the
2 amount shown or to which the company would have been
3 liable if only one party had been named as an insured."

4 C. Deductibles. The liability policies described in Section 9.02.A(2) and (3) may
5 contain deductibles, but not self-insured retentions. The deductibles may not
6 exceed _____ Thousand Dollars (\$_____) per
7 occurrence and must be limited by an annual cap of no more than
8 _____ Hundred Thousand Dollars (\$_____) in any policy
9 year.

10 D. Delivery of Proof of Coverage. No later than ninety (90) days before the
11 commencement of operations (i.e., on or before _____, 2010),
12 Contractor shall furnish SBWMA one or more certificates of insurance on a
13 standard ACORD form substantiating that each of the coverage's required
14 hereunder is in force, in form and substance satisfactory to SBWMA. Such
15 certificates shall show the type and amount of coverage, effective dates and dates
16 of expiration of policies and shall be accompanied by all required endorsements.
17 If SBWMA requests, copies of each policy, together with all endorsements, shall
18 also be promptly delivered to SBWMA. Contractor shall furnish renewal
19 certificates to SBWMA to demonstrate maintenance of the required coverage's
20 throughout the Term.

21 E. Other Insurance Requirements

22 1. In the event performance of any services is delegated to a subcontractor,
23 Contractor shall require such subcontractor to provide statutory workers'
24 compensation insurance and employer's liability insurance for all of the
25 subcontractor's employees engaged in the work. The liability insurance
26 required by Subsection A.2 and the automobile liability policy required by
27 subsection A.3 shall cover all subcontractors or the subcontractor must
28 furnish evidence of insurance provided by it meeting all of the requirements
29 of this Section 9.02.

30 2. Contractor shall comply with all requirements of the insurers issuing
31 policies. The carrying of insurance shall not relieve Contractor from any
32 obligation under this Agreement, including those imposed by Section 9.01.
33 If any claim is made by any third person against Contractor or any
34 subcontractor on account of any occurrence related to this Agreement, other
35 than claims by employees for work-related incidents, Contractor shall
36 promptly report the facts in writing to the insurance carrier and to the
37 SBWMA.

38 3. If Contractor fails to procure and maintain any insurance required by this
39 Agreement, SBWMA may take out and maintain such insurance as it may
40 deem proper and may require Contractor to reimburse it for the cost incurred
41 within 30 days and/or deduct the cost from any monies due Contractor.
42 SBWMA may also treat the failure as a Contractor Default.

1 4. SBWMA is not responsible for payment of premiums for or deductibles
2 under any required insurance coverage's.

3 5. Any excess or umbrella policies shall be written on a "following form" basis.

4 **9.03 FAITHFUL PERFORMANCE BOND.**

5 Not later than ten (10) days before the Effective Date (i.e., on or before
6 _____, 2010), Contractor shall file with SBWMA a bond securing the
7 Contractor's faithful performance of its obligations under this Agreement. The principal
8 sum of the bond shall be Two Million Dollars (\$2,000,000). The form of the bond shall
9 be as set out in Attachment **-1**. The bond shall be executed as surety by a corporation
10 admitted to issue surety bonds in the State of California, regulated by the California
11 Insurance Commissioner, and with a financial condition and record of service
12 satisfactory to SBWMA.

13 The term of the bond shall be not less than twenty-four (24) months, or until
14 _____, whichever occurs first. The bond shall be extended,
15 or replaced by a new bond in the same principal sum (adjusted by the percentage change
16 in the Consumer Price Index), for the same term (i.e., twenty-four (24) months) and in
17 the same form, bi-annually thereafter. Not less than ninety (90) days before the
18 expiration of the initial, or any subsequent, bond, Contractor shall furnish either a
19 replacement bond or a continuation certificate substantially in the form attached as
20 Attachment **-2**, executed by the surety.

21 It is the intention of this section that there be in full force and effect at all times a bond
22 securing the Contractor's faithful performance of the Agreement, throughout its Term.

23 **9.04 Alternative Security.**

24 SBWMA may, in its sole discretion, allow Contractor to provide alternative security in
25 the amount set forth in Section 9.03, in the form of (a) a prepaid irrevocable standby
26 letter of credit in form and substance satisfactory to SBWMA, approved by the
27 SBWMA's Attorney and issued by a financial institution acceptable to SBWMA, or (b) a
28 certificate of deposit in the name of the SBWMA and in a form and with a term
29 satisfactory to SBWMA, accompanied by an agreement giving SBWMA the right to
30 draw on the funds deposited satisfactory to SBWMA and with a financial institution
31 acceptable to SBWMA. Interest on the certificate of deposit will be payable to
32 Contractor

33 **9.05 Hazardous Waste Indemnification.**

34 Contractor shall indemnify, defend and hold harmless the Indemnitees against all claims,
35 of any kind whatsoever paid, incurred or suffered by, or asserted against Indemnitees
36 arising from or attributable to any repair, cleanup or detoxification, or preparation and
37 implementation of any removal, remedial, response, closure or other plan (regardless of
38 whether undertaken due to governmental action) concerning any Hazardous Wastes
39 released, spilled or disposed of by Contractor pursuant to this Agreement. The foregoing
40 indemnity is intended to operate as an agreement pursuant to Section 107(e) of the
41 Comprehensive Environmental Response, Compensation and Liability Act,

1 (“CERCLA”), 42 U.S.C. Section 9607(e), and California Health and Safety Code Section
2 25364, to defend, protect, hold harmless and indemnify Indemnitees from liability and
3 shall survive the expiration or earlier termination of this Agreement. Notwithstanding
4 the foregoing, Contractor is not required to indemnify the Indemnitees against claims
5 arising from Contractor's delivery of Solid Waste, Recyclable Materials and Organic
6 Materials to the Designated Transfer and Processing Site, or their subsequent delivery to
7 other Processing locations or the ultimate Disposal Site, unless such claims are due to
8 Contractor's negligence or willful misconduct.

9 **9.06 Integrated Waste Management Act Indemnification.**

10 Contractor agrees to indemnify and hold harmless the Indemnitees against all fines
11 and/or penalties imposed by the California Integrated Waste Management Board
12 (CIWMB) or the Local Enforcement SBWMA (LEA) based on Contractor's failure to
13 comply with laws, regulations or permits issued or enforced by the CIWMB or the LEA
14 or caused or contributed to by the Contractor's failure to perform obligations under this
15 Agreement. This indemnity obligation is subject to the limitations and conditions in
16 Public Resource Code Section 40059.1 but is enforceable to the maximum extent
17 allowable by that Section. This indemnity shall survive the termination or earlier
18 expiration of this Agreement.

19 **9.07 Guaranty.**

20 Not later than ten (10) days before the Effective Date, Contractor shall furnish a
21 Guaranty of its performance under this Agreement, in the form of Attachment M,
22 properly executed by _____.

1
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ARTICLE 10
DEFAULT AND REMEDIES

3 **10.01 Events of Default.**

4 Each of the following shall constitute an event of default ("Contractor Default"):

- 5 A. Contractor fails to perform its obligations under Article 3, 4 or 5 of this Agreement
6 and its failure to perform is not cured within ten (___10_) business days after
7 written notice from SBWMA.
- 8 B. Contractor fails to perform its obligations under any other Article of this
9 Agreement and its failure to perform is not cured within ten (___10_) days after
10 written notice from SBWMA, provided that if the nature of the breach is such that
11 it will reasonably require more than ten (___10_) days to cure, Contractor shall not
12 be in default so long as it promptly commences the cure and diligently proceeds to
13 completion of the cure, and provided further that neither notice nor opportunity to
14 cure applies to events described in subsections C through H.
- 15 C. Contractor ceases to provide Operations and transportation services for a period of
16 two (___2___) consecutive business days for any reason within the Contractor's
17 control, including labor unrest such as strike, work stoppage or slowdown, sickout,
18 picketing, or other concerted job action by Contractor's employees.
- 19 D. Contractor files a voluntary petition for relief under any bankruptcy, insolvency or
20 similar law.
- 21 E. An involuntary petition is brought against Contractor under any bankruptcy,
22 insolvency or similar law which remains undismissed or unstayed for ninety (90)
23 days.
- 24 F. Contractor fails to furnish a replacement bond or a continuation certificate of the
25 existing bond not less than ninety (___90_) days before expiration of the
26 performance bond, as required by Section 9.03 or fails to maintain all required
27 insurance coverage's in force.
- 28 G. Contractor fails to provide reasonable assurance of performance when required
29 under the Agreement.
- 30 H. A representation or warranty contained by the Contractor proves to be false or
31 misleading in a material respect as of the date such representation or warranty was
32 made.

33 **10.02 Right to Suspend or Terminate Upon Default.**

- 34 A. Upon any Contractor Default, SBWMA may terminate this Agreement or suspend
35 it, in whole or in part. Such suspension or termination shall be effective thirty (30)
36 days after SBWMA has given notice of suspension or termination to Contractor,
37 except that such notice may be effective in a shorter period of time, or
38 immediately, if the Contractor Default is one which endangers the health, welfare
39 or safety of the public, such as the failure to handle Solid Waste, Recyclable

1 Materials, or Organic Materials. Notice may be given orally in person or by
2 telephone to the representative of Contractor designated in or under Section 11.10
3 (or, if he/she is unavailable, to a responsible employee of Contractor) and shall be
4 effective immediately. Written confirmation of such oral notice of suspension or
5 termination shall be sent by personal delivery, facsimile, or other expedited means
6 of delivery to Contractor within twenty-four (24) hours of the oral notification at
7 the address shown in Section 11.09. Contractor shall continue to perform the
8 portions of the Agreement, if any, not suspended, in full conformity with its terms.

9 **B.** SBWMA may also suspend or terminate this Agreement, upon the same notice
10 provisions, if Contractor's ability to perform is prevented or materially interfered
11 with by a cause which excuses nonperformance under Section 10.09, despite the
12 fact that nonperformance in such a case is neither a breach nor a Contractor
13 Default.

14 **10.03 Specific Performance.**

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

19 **10.04 Right to Perform; Use of Contractor Property.**

20 If this Agreement is suspended and/or terminated due to a Contractor Default, SBWMA shall
21 have the right to perform, by contract or otherwise, the work herein or such part thereof as it
22 may deem necessary. In the event of Contractor's Default, SBWMA shall have the right to
23 use any of Contractor's equipment, facilities and other property reasonably necessary for the
24 provision of services hereunder and for the billing and collection of fees for those services.
25 SBWMA shall have the right to continue use of such property until other suitable
26 arrangements can be made for the provision of such services, which may include the award of
27 a contract to another service provider.

28 **10.05 Damages.**

29 Contractor shall be liable to SBWMA for all direct, indirect, special and consequential
30 damages arising out of Contractor's Default. This section is intended to be declarative of
31 existing California law.

32 **10.06 SBWMA's Remedies Cumulative.**

33 SBWMA's rights to suspend or terminate the Agreement under Section 10.02, to obtain
34 specific performance under Section 10.03 and to perform under Section 10.04 are not
35 exclusive, and SBWMA's exercise of one such right shall not constitute an election of
36 remedies. Instead, they shall be in addition to any and all other legal and equitable rights and
37 remedies that SBWMA may have, including a legal action for damages under Section 10.05
38 or imposition of liquidated damages under Section 10.07.

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10.07 Liquidated Damages.

The Parties acknowledge that consistent, courteous and efficient operations of the facilities is of utmost importance and SBWMA has considered and relied on Contractor’s representations as to its quality of service commitment in entering into this Agreement. The Parties further recognize that quantified standards of performance are necessary and appropriate to ensure consistent and reliable service. The Parties further recognize that if Contractor fails to achieve the performance standards, SBWMA and its residents will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of damages that SBWMA will suffer. Therefore, the Parties agree that the liquidated damage amounts listed on Attachment O represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to SBWMA that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Agreement was made.

Contractor Initial Here: _____ SBWMA Initial Here: _____

Contractor agrees to pay (as liquidated damages and not as a penalty) the amount set forth on Attachment O.

SBWMA may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees, agents or representatives or through investigation of customer complaints.

Prior to assessing liquidated damages, SBWMA shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. Contractor may review (and make copies at its own expense) all non-confidential information in the possession of SBWMA relating to incident(s)/non-performance. Contractor may, within ten (10) days after receiving the notice, request a meeting with SBWMA’s Representative or his or her designee. Contractor may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. SBWMA’s Representative or his or her designee will provide Contractor with a written explanation of his or her determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of SBWMA’s Representative or his or her designee shall be final.

SBWMA may assess liquidated damages for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement.

Contractor shall pay any liquidated damages assessed by SBWMA within ten (10) days after they are assessed.

SBWMA’s right to recover liquidated damages for Contractor’s failure to meet the service performance standards shall not preclude SBWMA from obtaining equitable relief for

1 persistent failures to meet such standards nor from terminating the Agreement for such
2 persistent failures.

3 **10.08 SBWMA DEFAULT**

4 SBWMA shall be in default under this Agreement (“SBWMA Default”) in the event
5 SBWMA commits a material breach of the Agreement and fails to cure such breach within
6 thirty (30) days after receiving notice from the Contractor specifying the breach, provided that
7 if the nature of the breach is such that it will reasonably require more than thirty (30) days to
8 cure, SBWMA shall not be in default so long as SBWMA promptly commences the cure and
9 diligently proceeds to completion of the cure.

10 In the event of an asserted SBWMA Default, Contractor shall continue to perform all of its
11 obligations hereunder until a court of competent jurisdiction has issued a final judgment
12 declaring that SBWMA is in Default.

13 **10.09 Excuse from Performance.**

14 **A. Force Majeure.** Neither party shall be in default of its obligations under this
15 Agreement in the event, and for so long as, it is impossible or extremely
16 impracticable for it to perform its obligations due to an “act of God” (including,
17 but not limited to, flood, earthquake or other catastrophic events), war,
18 insurrection, riot, labor unrest of other than the party’s employees (including
19 strike, work stoppage, slowdown, sick out, picketing, or other concerted job
20 action), or other similar cause not the fault of, and beyond the reasonable control
21 of, the party claiming excuse. A party claiming excuse under this Section must (1)
22 have taken reasonable precautions, if possible, to avoid being affected by the
23 cause, and (2) notify the other party in writing as provided in Subsection C.

24 **B. Obligation to Restore Ability to Perform.** Any suspension of performance by a
25 party pursuant to this Section shall be only to the extent, and for a period of no
26 longer duration than, required by the nature of the event, and the party claiming
27 excuse shall use its best efforts to remedy its inability to perform as quickly as
28 possible and to mitigate damages that may occur as result of the event.

29 **C. Notice.** The party claiming excuse shall deliver to the other party a written notice
30 of intent to claim excuse from performance under this Agreement by reason of an
31 event of Force Majeure. Notice required by this Section shall be given promptly
32 in light of the circumstances, but in any event not later than five (5) days after the
33 occurrence of the event of Force Majeure. Such notice shall describe in detail the
34 event of Force Majeure claimed, the services impacted by the claimed event of
35 Force Majeure, the expected length of time that the party expects to be prevented
36 from performing, the steps which the party intends to take to restore its ability to
37 perform, and such other information as the other party reasonably requests.

38 **D. SBWMA's Rights in the Event of Force Majeure.** The partial or complete
39 interruption or discontinuance of Contractor’s services caused by an event of
40 Force Majeure shall not constitute a Contractor Default. Notwithstanding the
41 foregoing: (i) SBWMA shall have the right to make use of Contractor’s facilities
42 and equipment in the event of non-performance excused by Force Majeure; (ii) if
43 Contractor’s failure to perform by reason of Force Majeure continues for a period

1 of thirty (30) days or more, SBWMA shall have the right to immediately terminate
2 this Agreement; (iii) if Contractor is unable to process and dispose of Solid Waste
3 and other materials as required by this Agreement for a period of _____
4 (__) or more consecutive days or for any _____ (__) days in a
5 _____ (__) -day period as a result of Force Majeure, SBWMA shall
6 have the right to make use of Contractor's property, and (iv) if Contractor's
7 inability Process Municipal Solid Waste or Recyclable Materials continues for
8 _____ (__) days or more from the date by which Contractor gave
9 or should have given notice under Subsection C, SBWMA may terminate this
10 Agreement.

11 **10.10 Assurance of Performance.**

12 If Contractor (1) persistently suffers the imposition of liquidated damages under Section
13 10.07; (2) is the subject of any labor unrest including work stoppage or slowdown, sickout,
14 picketing or other concerted job action; (3) appears in the reasonable judgment of SBWMA to
15 be unable to regularly pay its bills as they become due; (4) is the subject of a civil or criminal
16 proceeding brought by a federal, state, regional or local SBWMA for violation of an
17 Environmental Law in the performance of this Agreement, or (5) performs in a manner that
18 causes SBWMA to be uncertain about Contractor's ability and intention to comply with this
19 Agreement, SBWMA may, at its option and in addition to all other remedies it may have,
20 demand from Contractor reasonable assurances of timely and proper performance of this
21 Agreement, in such form and substance as SBWMA may require.

1 **Article 11**
2 **OTHER AGREEMENTS OF THE PARTIES**

3 **11.01 Relationship of Parties.**

4 The parties intend that Contractor shall perform the services required by this Agreement as an
5 independent contractor engaged by SBWMA and not as an officer or employee of the
6 SBWMA nor as a partner of or joint venturer with the SBWMA. No employee or agent of
7 Contractor shall be deemed to be an employee or agent of SBWMA. Except as expressly
8 provided herein, Contractor shall have the exclusive control over the manner and means of
9 conducting the services performed under this Agreement, and over all persons performing
10 such services. Contractor shall be solely responsible for the acts and omissions of its officers,
11 employees, subcontractors and agents. Neither Contractor nor its officers, employees,
12 subcontractors and agents shall obtain any rights to retirement benefits, workers'
13 compensation benefits, or any other benefits which accrue to SBWMA employees by virtue of
14 their employment with SBWMA.

15 **11.02 Compliance with Law.**

16 In providing the services required under this Agreement, Contractor shall at all times comply
17 with all applicable laws of the United States, the State and SBWMA, with all applicable
18 regulations promulgated by federal, state, regional or local administrative and regulatory
19 agencies, and by SBWMA, now in force and as they may be enacted, issued or amended
20 during the Term, and with all permits affecting the services to be provided.

21 **11.03 Assignment.**

22 Contractor acknowledges that this Agreement involves rendering a vital service to SBWMA's
23 residents and businesses, and that SBWMA has selected Contractor to perform the services
24 specified herein based on (i) Contractor's experience, skill and reputation for conducting its
25 operations in a safe, effective and responsible fashion, and (ii) Contractor's financial
26 resources to maintain the required equipment and to support its indemnity obligations to
27 SBWMA under this Agreement. SBWMA has relied on each of these factors, among others,
28 in choosing Contractor to perform the services to be rendered by Contractor under this
29 Agreement.

30 **A.** SBWMA Consent Required. Contractor shall not assign its rights or delegate or
31 otherwise transfer its obligations under this Agreement to any other Person
32 without the prior written consent of SBWMA. Any such assignment made without
33 the consent of SBWMA shall be void and the attempted assignment shall
34 constitute a Contractor Default.

35 **B.** Assignment Defined. For the purpose of this Section, "assignment" shall include,
36 but not be limited to, (i) a sale, exchange or other transfer to a third party of
37 substantially all of Contractor's assets dedicated to service under this Agreement;
38 (ii) a sale, exchange or other transfer of outstanding common stock of Contractor
39 to a person who is not a shareholder as of the Effective Date which results in a
40 change in control of Contractor; (iii) any dissolution, reorganization,

1 consolidation, merger, re-capitalization, stock issuance or reissuance, voting trust,
2 pooling agreement, escrow arrangement, liquidation or other transaction which
3 results in a change of ownership or control of Contractor; (iv) any assignment by
4 operation of law, including insolvency or bankruptcy, an assignment for the
5 benefit of creditors, a writ of attachment for an execution being levied against this
6 Agreement, appointment of a receiver taking possession of Contractor's property,
7 or transfer occurring in the event of a probate proceeding; and (v) any combination
8 of the foregoing (whether or not in related or contemporaneous transactions)
9 which has the effect of any such transfer or change of ownership, or change of
10 control of Contractor. [MODIFY AS NECESSARY TO REFLECT
11 CONTRACTOR'S LEGAL STATUS AS CORPORATION, LLC., ETC.]

12 **C. Consent Requirements.** If Contractor requests SBWMA's consideration of and
13 consent to an assignment, SBWMA may deny or approve such request in its
14 complete discretion. No request by Contractor for consent to an assignment need
15 be considered by SBWMA unless and until Contractor has met the following
16 requirements:

- 17 1. Contractor shall pay SBWMA its reasonable expenses for attorneys' fees and
18 investigation costs necessary to investigate the suitability of any proposed
19 assignee, and to review and finalize any documentation required as a condition
20 for approving any such assignment;
- 21 2. Contractor shall furnish SBWMA with audited financial statements of the
22 proposed assignee's operations for the immediately preceding three (3)
23 operating years;
- 24 3. Contractor shall furnish SBWMA with satisfactory proof: (i) that the proposed
25 assignee has at least ten (10) years of solid waste/recycling management
26 experience on a scale equal to or exceeding the scale of operations conducted
27 by Contractor under this Agreement; (ii) that in the last five (5) years, the
28 proposed assignee has not been the subject of any administrative or judicial
29 proceedings initiated by a federal, state or local SBWMA having jurisdiction
30 over its operations due to an alleged failure to comply with federal, state or
31 local laws or that the proposed assignee has provided SBWMA with a
32 complete list of such proceedings and their status; (iii) that the proposed
33 assignee conducts its operations in a safe and environmentally conscientious
34 manner, in accordance with sound waste management practices in full
35 compliance with all federal, state and local laws regulating the handling and
36 transfer of waste and recyclable materials and all Environmental Laws; (iv) of
37 any other information required by SBWMA to ensure the proposed assignee
38 can fulfill the terms of this Agreement in a timely, safe and effective manner.

39 **D. No Obligation to Consider.** SBWMA will not be obligated to consider a
40 proposed assignment if Contractor is in default.

1 **11.04 Subcontracting.**

2 Contractor shall not engage any subcontractors to perform any of the services required of it by
3 Articles 3,4 or 5 of this Agreement without the prior written consent of SBWMA. Contractor
4 shall notify SBWMA no later than ninety (90) days prior to the date on which it proposes to
5 enter into a subcontract. SBWMA may approve or deny any such request in its sole
6 discretion. [As of the Effective Date, SBWMA has approved the use of the following
7 subcontractors for the following specific services: _____][ADD IF
8 APPROPRIATE]

9 **11.05 Affiliated Entity.**

10 Contractor will not form or use any Affiliate to perform any of the services or activities which
11 Contractor is required or allowed to perform under this Agreement, other than as a
12 subcontractor approved by SBWMA under Section 11.04.

13 If Contractor enters into any financial transactions with an Affiliate for the provision of labor,
14 equipment, supplies, services, or capital related to the furnishing of service under this
15 Agreement, that relationship shall be disclosed to SBWMA, and in the financial reports
16 submitted to SBWMA. In such event, SBWMA's rights to inspect records and obtain
17 financial data shall extend to such Affiliate.

18 **11.06 Contractor's Investigation.**

19 Contractor has made an independent investigation, satisfactory to it, of the conditions and
20 circumstances surrounding the Agreement and the work to be performed by it. Contractor has
21 carefully reviewed the information in the Request for Proposals, and Addenda if any.
22 Contractor has had the opportunity to inspect the Designated Transfer and Processing Site and
23 to review the permits governing its operation, as well as the Source Reduction and Recycling
24 Element adopted by SBWMA. Contractor has taken such matters into consideration in
25 agreeing to provide the services required by, for the compensation to be provided under, this
26 Agreement.

27 **11.07 No Warranty by SBWMA.**

28 While SBWMA believes that the information contained in the Request for Proposals is
29 substantially correct, SBWMA makes no warranties in connection with this Agreement,
30 including but not limited to the accuracy or completeness of the information contained in the
31 Request for Proposals.

32 **11.08 Condemnation.**

33 SBWMA reserves the rights to acquire the Contractor's property utilized in the performance
34 of this Agreement through the exercise of eminent domain.

35 **11.09 Notice.**

36 All notices, demands, requests, proposals, approvals, consents and other communications
37 which this Agreement requires, authorizes or contemplates shall, except as provided in
38 Section _____, be in writing and shall either be personally delivered to a representative of

1 the parties at the address below or be deposited in the United States mail, first class postage
2 prepaid, addressed as follows:

3 If to SBWMA: _____
4 _____
5 _____
6 _____

7 If to Contractor: _____
8 _____
9 _____

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

12 **11.10 Representatives of the Parties.**

13 A. Representatives of SBWMA. References in this Agreement to “SBWMA” shall
14 mean the [SBWMA Board of Directors] and all actions to be taken by SBWMA
15 shall be taken by the [SBWMA Board of Directors] except as provided below.
16 The [SBWMA Board of Directors] may delegate authority to the [Executive
17 Director], and/or to other SBWMA officials and may permit such officials, in turn,
18 to delegate in writing some or all of such authority to subordinate officers.
19 Contractor may rely upon actions taken by such delegates if they are within the
20 scope of the authority properly delegated to them. [MODIFY AS
21 APPROPRIATE]

22 B. Representative of Contractor. Contractor shall, by the Effective Date, designate in
23 writing a responsible officer who shall serve as the representative of Contractor in
24 all matters related to the Agreement and shall inform SBWMA in writing of such
25 designation and of any limitations upon his or her authority to bind Contractor.
26 SBWMA may rely upon action taken by such designated representative as actions
27 of Contractor unless they are outside the scope of the authority delegated to
28 him/her by Contractor as communicated to SBWMA.

29 **11.11 Duty of Contractor Not to Discriminate.**

30 In the performance of this Agreement Contractor shall not discriminate, nor permit any
31 subcontractor to discriminate, against any employee, applicant for employment, or Customer
32 on account of race, color, national origin, ancestry, religion, sex, age, physical disability,
33 medical condition, sexual orientation, marital status, or other characteristic, in violation of
34 any Applicable Law.

35 **11.12 Right to Inspect Contractor Operations.**

36 SBWMA shall have the right, but not the obligation, to observe and inspect all of the
37 Contractor’s operations under this Agreement. In connection therewith, SBWMA shall have
38 the right to enter facilities used by Contractor during operating hours, speak to any of
39 Contractor’s employees and receive cooperation from such employees in response to
40 inquiries. In addition, upon reasonable notice and without interference with Contractor’s

1 operations, SBWMA may review and copy any of Contractor's operational and business
2 records related to this Agreement. If SBWMA so requests, Contractor shall make specified
3 personnel available to accompany SBWMA employees on inspections and shall provide
4 electronic copies of records stored in electronic media.

5 **11.13 Right of SBWMA to Make Changes.**

6 SBWMA may, without amending this Agreement, direct Contractor to cease performing one
7 or more types of service described in Articles 3, 4, or 5, may direct Contractor to modify the
8 scope of one or more such services, may direct Contractor to perform additional solid waste
9 handling services, or may otherwise direct Contractor to modify its performance under any
10 other Section of this Agreement. Contractor shall promptly and cooperatively comply with
11 such direction.

12 If such changes cause an increase or decrease in the cost of performing the services, an
13 equitable adjustment in the Contractor's compensation shall be made pursuant to Section
14 _____. Contractor will continue to perform the new or changed service while the appropriate
15 adjustment in compensation is being determined.

16 **11.14 Transition to Next Service Provider.**

17 At the expiration of the Term or the earlier termination of the Agreement, or upon SBWMA's
18 approval of a proposed assignment, Contractor shall cooperate fully with SBWMA to ensure
19 an orderly transition to any and all new service providers. Contractor shall provide, within
20 ten (10) days of a written request by SBWMA, then-current Customer account and billing
21 information. Contractor may, but is not required to, sell operations rolling stock, vehicles and
22 equipment to the next service provider.

23 Contractor shall, at least 180 days prior to the transition of services, attend meetings with the
24 next service provider and with SBWMA and SBWMA staff and consultants to plan for the
25 transition to the new Contractor. Contractor shall perform in accordance with such plan and
26 direct personnel to provide operations and transition assistance. Contractor will direct its
27 employees to provide accurate information to the new provider about operations, customers
28 and vendors of the facility.

29 **11.15 Reports as Public Records.**

30 The reports, records and other information submitted or required to be submitted by
31 Contractor to SBWMA are public records within the meaning of that term in the California
32 Public Records Act, Government Code Section 6250 et seq. Unless a particular record is
33 exempted from disclosure by the California Public Records Act, it must be disclosed to the
34 public by SBWMA upon request.

35 Contractor will not object to SBWMA making available to the public any information
36 submitted by the Contractor, or required to be submitted in connection with the Contractor's
37 compensation, including but not limited to records described in Article .

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ARTICLE 12
MISCELLANEOUS AGREEMENTS

3 **12.01 Governing Law.**

4 This Agreement shall be governed by, and construed and enforced in accordance with, the
5 laws of the State of California.

6 **12.02 Jurisdiction.**

7 Any lawsuits between the parties arising out of this Agreement shall be brought and
8 concluded in the courts of the State of California, which shall have exclusive jurisdiction over
9 such lawsuits. With respect to venue, the parties agree that this Agreement is made in and
10 will be performed in San Mateo County.

11 **12.03 Binding on Successors.**

12 The provisions of this Agreement shall inure to the benefit of and be binding on the
13 successors and permitted assigns of the parties.

14 **12.04 Parties in Interest.**

15 Nothing in this Agreement is intended to confer any rights on any Persons other than the
16 parties to it and their permitted successors and assigns.

17 **12.05 Waiver.**

18 The waiver by either party of any breach or violation of any provisions of this Agreement
19 shall not be deemed to be a waiver of any breach or violation of any other provision nor of
20 any subsequent breach or violation of the same or any other provision.

21 **12.06 Attachments.**

22 Each of the Attachments, identified as Attachments "A" through "Q," is attached hereto and
23 incorporated herein and made a part hereof by this reference.

24 **12.07 Entire Agreement.**

25 This Agreement, including the Attachments, represents the full and entire agreement between
26 the parties with respect to the matters covered herein and supersedes all prior negotiations and
27 agreements, either written or oral.

28 **12.08 Section Headings.**

29 The article headings and section headings in this Agreement are for convenience of reference
30 only and are not intended to be used in the construction of this Agreement nor to alter or
31 affect any of its provisions.

32 **12.09 Interpretation.**

33 This Agreement shall be interpreted and construed reasonably and neither for nor against
34 either party, regardless of the degree to which either party participated in its drafting.

1 **12.10 Amendment.**

2 This Agreement may not be modified or amended in any respect except by a writing signed
3 by the parties.

4 **12.10 Severability.**

5 If a court of competent jurisdiction holds any non-material provision of this Agreement to be
6 invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect
7 any of the remaining provisions of this Agreement which shall be enforced as if such invalid
8 or unenforceable provision had not been contained herein.

9 **12.11 Costs and Attorneys' Fees.**

10 The prevailing party in any action brought to enforce the terms of this Agreement or arising
11 out of this Agreement may recover its reasonable costs expended in connection with such an
12 action from the other party. However, each party shall bear its own attorneys' fees.

13 **12.12 No Damages for Invalidation of Agreement.**

14 If a final judgment of a court of competent jurisdiction determines that this Agreement is
15 illegal or was unlawfully entered into by SBWMA, neither party shall have any claim against
16 the other for damages of any kind (including but not limited to loss of profits) on any theory.

17 **12.13 References to Laws.**

18 All references in this Agreement to laws and regulations shall be understood to include such
19 laws and regulations as they may be subsequently amended or recodified, unless otherwise
20 specifically provided. In addition, references to specific governmental agencies shall be
21 understood to include agencies that succeed to or assume the functions they are currently
22 performing.

Attachment A

Facility Operating Standards

1. **Signs.** The SBWMA will post easily-readable signs at the entrance to the SRDC detailing the regulations which must be followed by vehicles entering the station, indicating the hours of operation, the types of waste and Recyclable Materials accepted, the rates charged, and a local telephone number to call for information or in case of emergency. Contractor shall maintain and repair these and other on-site signs. Contractor shall not post any signs without the prior written consent of the SBWMA.
2. **Traffic Control.** Contractor shall be responsible for the safe control and direction of traffic once it enters the SRDC Site. Contractor shall make optimal use of queuing lanes and unloading spaces and shall operate and store vehicles so as not to impede on-site traffic flow.
3. **Floor Operation and Transfer Loading.** The height and width of MSW and recoverable materials on the transfer station floor shall not reach a point where unloading by customer is hampered. Solid waste shall be loaded into transfer trailers so the gross weight of the transfer tractor and trailer does not exceed weight limitations for streets or highways established by the public agency or agencies having jurisdiction thereof. At least once during each 48 hour period, the SRDC floor will be completely cleared of all solid waste, provided that Contractor may accomplish this in two phases, with one half the floor cleared at one time.
4. **Control of Blowing Debris.** Contractor shall sweep daily (1) all areas within the SRDC Site, and (2) Shoreway Road collecting all debris in these areas. Materials so collected shall be disposed of at the SRDC.
5. **Vector Control.** Contractor shall conduct the operation of the SRDC in such a manner as to ensure that conditions are unfavorable for production of rodents and insects. In the event that rodent and insect activity becomes apparent to the Local Enforcement Agency or the SBWMA, supplemental vector control measures shall be initiated by Contractor, as directed by the Local Enforcement Agency and the SBWMA.
6. **Odor, Dust and Noise Control.** Contractor shall control odor and dust at the SRDC by use of installed dust and odor control systems in place at the transfer station.
7. **Fire Control.** Contractor shall provide all necessary and appropriate fire control equipment. Prior to commencing operations at the SRDC, Contractor shall submit a fire control/handling plan for the SRDC and obtain approval from the SBWMA.
8. **Weighing.** Contractor shall weigh all MSW and other materials delivered by the SBWMA, the other Member Agencies, and their respective Collection Contractor and by any other municipalities or their Collection Contractor. Contractor shall calculate the weight of Publicly Hauled Waste by determining the volume of all vehicles delivering such waste and applying the conversion factors in Attachment . (If

actual weighing of such vehicles becomes legally required under state or federal law, SBWMA shall make the necessary changes to the scales, including the potential addition of new scales and scale lanes, to accommodate the weighing efficiently. Contractor shall weigh each loaded vehicle carrying MSW, recyclable material or other materials that were delivered to the facility through the inbound scales as it leaves the SRDC. Contractor shall also weigh all source-separated Recyclable Materials as it is delivered to or leaves the SRDC.

All such scales and weighing equipment shall be kept in good and accurate condition operating at the standards of accuracy and reliability specified in Title 4 California Code of Regulations Division 9. Contractor shall request that the California Department of Food and Agriculture, Division of Measurement Standards, inspect all scales and weighing equipment at least once per year. In addition, Contractor shall check the accuracy of scales using appropriate methods (for example by weighing the same load on two scales) when requested by the SBWMA, but not more than once per week.

If a scale or weighing equipment is found to be measuring inaccurately and the errors are outside the tolerances allowed in Title 4 California Code of Regulations, Division 9, Contractor will promptly repair or recalibrate it so that it does operate accurately.

9. **Establishment of Vehicles' Tare Weights.** Before the commencement of service, Contractor shall provide the SBWMA with a copy of its standard methodology for determining tare weights for SBWMA's review and approval. Contractor shall modify its standard methodology if requested to do so by SBWMA. Before the commencement of service, the Contractor shall weigh each Collection Contractor vehicle which will or may be used to deliver Municipal Solid Waste or Recyclable Materials to the SRDC, to determine their unloaded ("tare") weights. Vehicles to be weighed include, but are not limited to, front, side and rear loaders, roll-off trucks, street sweepers, recycling trucks, pickup trucks, vans and trucks and trailers. In addition, during the same period of time, Contractor shall weigh each transfer trailer.

The tare weight of each vehicle shall be provided to the SBWMA and Collector along with the vehicle number within thirty (30) days after each vehicle is weighed. Contractor shall be responsible for coordinating the weighing of vehicles with SBWMA and the Member Agencies and their Designated Haulers.

When additional or replacement vehicles are placed into service by the SBWMA, the other Member Agencies or their Designated Haulers, or the Contractor and when the SBWMA or other Participating Agencies change their Designated Haulers, Contractor shall promptly weigh such additional and replacement vehicles and the vehicles of the new Designated Hauler and provide the tare weights to the SBWMA within thirty (30) days after the vehicles are weighed.

All weighing shall be conducted at the SRDC by a certified weighmaster. Weighing shall be conducted in accordance with Contractor's standard methodology, in the form approved by the SBWMA.

Contractor shall have the right to conduct random re-weighing of all vehicles, provided that re-weighing of any vehicles shall occur no more than twice a year. If requested in writing by SBWMA, all vehicles delivering Municipal Solid Waste or Recyclable Materials to the SRDC or delivering Municipal Solid Waste to the Disposal Site shall be reweighed by Contractor, following the SBWMA approved methodology, at six (6) month intervals. In addition, any specific vehicle shall be reweighed by Contractor at SBWMA's request, within one (1) week after SBWMA delivers a written request to do so. Adjusted tare weights shall be furnished to the SBWMA within thirty (30) days after re-weighing.

10. Cubic Yard - Ton Conversions. The transfer station self haul customers are charged tip fees based on the yardage of the delivered materials. The contractor will need to ensure that the average monthly bulk density for volume based loads is above the Self Haul Ratio of 2.7 cubic yards per ton. If the Contractor is under the Self Haul Ratio the Contractor will pay the SBWMA for lost revenues from scale measurements that are below the Self Haul Ratio. The Contractor will perform the following to ensure that the scale Self Haul Ratio is in compliance:

- 1) Train all scale staff in the proper volumetric measurement of inbound loads.
- 2) Monitor the scale accuracy in volumetric measurements on a weekly basis through periodic spot-checks that are documented and recorded in a Scale Load Audit binder and available for inspection by the SBWMA.
- 3) Submit a monthly report to the SBWMA that document the volumetric to tons ratio for inbound Self Haul customers to the SRDC.

11. Personnel. There will be at least one employee of the Contractor's (or a designated sub-contractor or security company) physically in attendance at the SRDC at all times, whether or not the SRDC is operating, or open.

During the hours of 6 a.m. to 7 p.m., seven (7) days a week, there will be a manager or lead worker who is the representative of Contractor on-site. SBWMA will be informed of his/her name. At all other times, there will be a supervisory employee designated as emergency coordinator who will be on-call. Employees who are on-site (and the SBWMA) will be instructed how to contact this emergency coordinator.

When the SRDC is operating outside of the regular operating hours, there will be a night supervisor on-site. If there is more than one employee on-site, one will be in charge and employees (and the SBWMA) will be informed as to the chain of command.

12. Training of Personnel. Contractor shall provide adequate operational and safety training for all of its employees who are involved in performing operations at the SRDC. All such personnel shall be trained in the identification and proper handling and disposal of Hazardous and Biomedical Wastes. The training will comply with the

health and safety plan. Contractor will comply with the health and safety plan, unless changes thereto are approved by the SBWMA.

13. Equipment.

- A. General. All equipment shall comply with all applicable federal, state, and local laws, including (1) U.S. Department of Transportation: Federal Motor Vehicle Safety Standards; Federal Motor Carrier Safety Regulations; Interstate Motor Carrier Noise Emissions Standards, (2) U.S. Environmental Protection Agency: Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines, and (3) Bay Area Air Quality Management District.
- B. Tractors and Trailers. All tractors and transfer trailers (individually and in combination) shall comply with the applicable laws. Tractors and transfer trailers shall be painted in a uniform color scheme approved by the SBWMA and shall prominently display a SBWMA service mark (logo), the design and placement of which are subject to SBWMA approval.
- C. Six months prior to the commencement of services by the Contractor, Contractor shall submit to SBWMA a list of the equipment it proposes to use at the SRDC and transfer vehicles that will be used in delivering Municipal Solid Waste to the Designated Disposal and Processing Facilities.
- D. Contractor shall furnish backup, substitute or replacement equipment necessary to continue uninterrupted operations, transfer and disposal when equipment regularly in service is inoperable or unavailable.
- E. All loaded transfer trailers must be parked on the tipping floor at the end of the day.
- F. Contractor shall use blade guards and rubber tires on all mobile equipment operated in and around the Station and shall use due care in their operation to avoid damaging the tipping floor.

14. Cleaning and Maintenance.

- A. General. Contractor shall maintain all properties, facilities and equipment used in providing service under this Agreement in a safe, clean, neat, and operable condition at all times.
- B. Cleaning. Tractors and transfer trailers shall be kept clean, shall be thoroughly washed on the exterior at least once every week and thoroughly cleaned with pressurized hot water at least once per year. Building office areas shall be cleaned daily. Work areas within buildings and structures shall be swept daily and washed twice a week. The refuse transfer truck loading area shall be cleaned and swept at the end of each operating day.

Municipal Solid Waste may not be left on the tipping floor for more than 24 hours. Municipal Solid Waste (other than Recyclable Materials) shall be removed to the Disposal Facility within 48 hours after its delivery to the SRDC or as directed by the LEA. Wastes shall not be disposed of into storm drains, or into sanitary sewers without proper pretreatment meeting the requirements of the local waste water treatment facility.

The transfer building(s) shall be thoroughly cleaned with pressurized hot water at least once per year and one month prior to expiration of the Term of this Agreement.

- C. Painting. Vehicles shall be repainted and/or refurbished so that they present an acceptable appearance in the opinion of the SBWMA. The frequency of painting shall be on an as needed basis but should be no less than every 4 years.

All surfaces on the interior of all buildings and structures shall be repainted or refurbished by Contractor so that they present an acceptable appearance in the opinion of the SBWMA, provided that painting will not be required more often than once every four years. The type of paint, color and method of application shall be submitted to the SBWMA for review and approval prior to commencement of repainting work.

- D. Maintenance and Repair; Alterations.

1. SBWMA's Obligations. The SBWMA shall maintain in good condition the roofs, structural portions and exterior walls (but not plate glass, glass windows, window frames, doors and door frames, which are the responsibility of Contractor), and paved exterior areas, unless such maintenance and repair becomes necessary in whole or in part due to acts of Contractor, in which case Contractor shall pay SBWMA the reasonable cost of such maintenance. SBWMA shall repair or replace, if and when necessary, the tipping floor.

2. Contractor's Obligations. Subject to Section 20, Contractor shall keep and maintain in good, safe condition and repair the SRDC, appurtenances and every part thereof, including without limitation the stationary equipment, such as conveyors, MRF processing equipment, balers, shredders and screens; plumbing and sewage facilities; mechanical, electrical, lighting, heating, ventilating and air conditioning systems; fire and dust suppression systems; fuel storage and dispensing facilities; scales, and all personal property furnished by Contractor including vehicles.

Contractor shall perform periodic maintenance on all equipment, in accordance with applicable manufacturer's specifications and schedules and so as to maintain in force any manufacturer's/vendor's warranties. SBWMA will assist Contractor in securing manufacturer's/vendor's repair and replacement of equipment due under warranties (if any) provided to SBWMA in connection

with the purchase of such equipment which Contractor is required to maintain and repair.

Contractor shall also repair any damage to any facilities, whether owned by it or SBWMA, caused by the actions of its employees, subcontractors or other agents.

Contractor shall be responsible for securing replacement parts (and for maintaining an inventory of spare parts as agreed on with SBWMA) for all equipment and for SRDC systems and facilities which it is required to maintain and repair. The cost of all replacement/spare parts, including those furnished by SBWMA for transfer station or MRF operations and facilities, will be borne by Contractor and is therefore included in the compensation adjustment section of the Agreement. The cost of all labor required for maintenance and repair performed by Contractor will be borne by Contractor and is included in the compensation.

Contractor shall not make any alterations to the Station or to facilities or equipment owned by SBWMA without SBWMA's prior written consent. In order to obtain such consent, Contractor shall submit plans and specifications, or other form of description as required by SBWMA, to SBWMA prior to commencing any alteration. If Contractor performs any alteration work prior to receiving SBWMA approval, SBWMA may require Contractor to remove all such work at Contractor's sole expense and restore the Station, facility or equipment to its prior condition.

- E. Wastewater Disposal. The wastewater collected in the SRDC's sumps (from Municipal Solid Waste, wash-down operations, etc.) does not meet the standards for discharge to the Water Pollution Control Plant. Contractor shall be responsible for periodic pumping of collected wastewater by a pumping truck, its transport offsite and proper disposal in accordance with applicable regulations. The Contractor shall be responsible for the cost of pumping, transport and disposal.

- 15. **Landscape Maintenance**. Contractor shall regularly maintain (e.g. water, weed, prune and repair) all landscaped areas within the SRDC site (i.e., frontage road, within the perimeter fence and out to the gatehouse) so that they present a neat and attractive appearance to the satisfaction of the SBWMA. Contractor shall replace all plant materials (trees, bushes, etc.) which are damaged or killed by Contractor's operations with plant materials of the same type, unless a different type is approved in advance by the SBWMA.

- 16. **Complaints about Operation of SRDC**. All complaints about the operation or maintenance of the SRDC shall be directed to the person designated as General Manager by Contractor. The General Manager shall compile a log of all complaints brought to his or her attention or that of his or her staff, indicating the date and time the complaint was received; the name, address and telephone number of the party

making the complaint; and the action taken to correct or modify the situation complained of. Each month Contractor shall send to SBWMA a copy of the log of complaints for the previous month.

17. **Tours of SRDC.** Upon reasonable request of SBWMA, Contractor shall provide tours of the SRDC. Such tours shall not unreasonably disrupt SRDC operations. Contractor shall not be required to conduct such tours more frequently than once per week. SBWMA shall not be charged for labor, overhead, overtime, or any other costs associated with any such tours. Contractor shall distribute SRDC brochures to participants on the tours.
18. **Customer Courtesy.** Contractor shall insure that its employees deal with members of the public in a courteous and professional manner.
19. **Destruction of Premises.** If the SRDC is totally or partially destroyed from a risk covered by insurance in effect at the time, SBWMA shall restore the SRDC structures to substantially the same condition as it was in immediately before destruction, provided that SBWMA's obligation hereunder is limited to the amount of insurance proceeds it receives. Such destruction shall not terminate this Agreement.

If the SRDC or buildings are totally or partially destroyed by a risk not covered by insurance then in effect, SBWMA shall have the election to terminate this Agreement or to restore the premises, such election to be made within a reasonable time after the destruction occurs.

20. **Use of Premises.** Contractor shall use the SRDC Site only for the processing of Municipal Solid Waste and recyclable materials delivered under this Agreement and for directly related support purposes.
21. **Spill Response Plan.** Contractor shall provide kits for cleanup of spills of hazardous materials, including used motor oil, on the SRDC site. Contractor shall implement the Spill Response component of the Hazardous Waste Exclusion Program.
22. **Site Security Cameras.** Contractor shall be responsible for maintaining the security cameras installed by the SBWMA.

Attachment B
Description of Material Processing Operations and Permits

Attachment C
Hazardous Waste Exclusion Program Description

Attachment D
List of SBWMA Provided Equipment

Attachment E
Minimum Number and Composition of
Personnel Required by the Agreement

Attachment F
Weighing Standards and Procedures

Attachment G
Recyclable Materials Marketing Plan

Attachment H
Contractor Compensation

Attachment H-1
Diversion Program Performance Incentive

Attachment H-2
Recyclable Material Prices

Attachment I Maintenance Requirements

The frequency of facility inspections and routine maintenance for the Transfer Station, Recyclery and Maintenance facility shall be performed in accordance with the attached list that details the frequency with which certain service are performed. Repairs, as identified during the monthly facility inspections, shall be corrected as immediately as possible by either facility staff or by a qualified subcontractor.

Copies of the monthly facility inspection forms are also attached. These forms shall be used by the facility managers to document the completion of the monthly facility inspections.

Prior to performing service of any type, all subcontractors are required to provide a certificate of insurance that meets or exceeds _____ 's required liability insurance coverage.

The facility managers shall continually view, aside from the monthly inspections, the entire facility in order to identify deficiencies and maintain a professional looking work site.

Attachment J
Initial Rates

Attachment K
Form of Faithful Performance Bond

Attachment L
CONTRACTOR'S FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____, a California _____, as PRINCIPAL, and _____, a Corporation organized and doing business by virtue of the laws of the State of California, and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as SURETY, are held and firmly bound to the SBWMA, hereinafter called OBLIGEE, in the penal sum of Two Million and No/100 Dollars (\$2,000,000) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above bounden PRINCIPAL has entered into a contract, entitled "OPERATION OF THE _____TRANSFER STATION AND RECYCLERY" with the SBWMA, to do and perform the following work, to wit: Collect Recyclable materials generated within the SBWMA, in accordance with the contract.

NOW, THEREFORE, if the above bounden PRINCIPAL shall well and truly perform, or cause to be performed each and all of the requirements and obligations of said contract to be performed by said PRINCIPAL, as in said contract set forth, then this BOND shall be null and void; otherwise it will remain in full force and effect.

And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

PROVIDED FURTHER, the original term of this bond is _____ to _____. Renewal of this bond for any additional periods shall be at the sole option of the Surety. Non-renewal of the bond by the Surety shall not constitute any right or claim against the bond by the Obligee.

The bond in all terms, conditions and limitations is acknowledged and accepted

by: _____ By: _____

Name/Title: _____

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this _____ DAY OF _____, _____.

a California Corporation

By: _____

(PRINCIPAL)

(SEAL)

SURETY

By: _____

(ATTORNEY IN FACT)

(SEAL)

Attachment M
Performance Guarantee

Attachment N
NOTARY CERTIFICATION

STATE OF CALIFORNIA
COUNTY OF _____) ss:

On _____, _____, before me, the undersigned, a Notary Public in and for the State of California, personally appeared _____, known to me to be the _____ of the Contractor that executed the within instrument on behalf of the Contractor therein named, and acknowledged to me that such Contractor executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of _____ this _____ day of _____, _____.

Notary Public

My Commission Expires:

Attachment O
LIQUIDATED DAMAGES

Attachment P
COLLECTIVE BARAGAINING AGREEMENTS

Attachment Q
REPORT FORMAT

Attachment H-1
Diversion Guarantee and Payment Programs

**Attachment H-1
Diversion Guarantee and Payment Programs**

MRF Diversion Program - Incentive Payment and Penalty

The Contractor shall be entitled to additional commodity revenue payments on an annual basis, above the commodity Revenue Guarantee, for each percentage point that MRF residual is below 10%. The Contractor shall earn additional commodity revenue for this reduction in MRF residual according to the following table:

Table 1-1 MRF Residual Reduction Incentive Payment

Total MRF residual/year*	Increase in commodity revenue share
10% or Greater	No increase
9.1 to 9.9%	.5% increase
8.1% to 9%	1.0% increase
7.1% to 8%	2.0% increase
6.1% to 7%	3.0% increase
5.1% to 6%	4.0% increase
0 % to 5%	5.0% increase
<i>* Based on 12 month average</i>	

The annual residual generation from the MRF shall be calculated by comparing the total monthly inbound tonnage to the monthly residual tonnage. For any calendar year that the average residual generation rate is less than 10%, the Contractor's percentage split of the gross commodity sales revenue for that year will be increase from 25% to a higher percentage based on Table 1-1. Department of Conservation CRV and recycling supplemental payments are included in the gross commodity sales revenues and are to be a part of the incentive payment split.

The Residual Penalty for exceeding the maximum 10% MRF Residual rate will be waived during the first 6 months of operations under the Agreement. After the 6

month anniversary, the Contractor's penalty for exceeding the 10% Maximum Residual level will be \$70.00 per ton. As with the MRF Diversion incentive payment, the Residual penalty will be assessed annually (except in the first year where it will be based on the a partial year until the one-year Agreement anniversary).

Self Haul Diversion Program - Incentive Payment and Penalty

The Self haul Diversion Program has an Incentive for increased diversion and a penalty for not meeting or exceeding the diversion baseline. The Diversion Program goals are based on the total tons of Self Haul materials entering the transfer station that are diverted from use at a landfill on an annual (calendar year) basis. The amount of the self haul diversion incentive payment will be \$70.00 for each ton. For the first year the Contractor will be paid a diversion incentive for each ton diverted from use at a landfill over a Diversion Baseline of 30,000 tons.

The Diversion Baseline is fixed at year one at a minimum diversion tonnage of 30,000. For subsequent years the diversion threshold will be adjusted. The amount of the annual adjustment to the diversion baseline will be equal to the average to the Self Haul diversion achieved in the prior two years. The Diversion Baseline can only be adjusted upwards.

The contractors Self Haul Diversion will be calculated annually adding the total annual diverted tonnage of the Self Haul category. For the purposes of this program, Diverted tonnage is tonnage that is not used at a landfill. At the end of each calendar year the Contractor shall submit a request for payment including all supporting calculations and documents.

For any calendar year that the Contractor is not able to Divert more than the diversion Baseline, the Contractor shall be penalized \$70.00 per ton. This penalty will be in the form of a reduced payment to the contractor for transfer station operations.

I

Fee Component	Payment/Penalty Per Diverted Ton
Diversion Incentive Fee	\$70/ton
Diversion Penalty	\$70/ton

Attachment **XX**

MRF Product Quality Standards

The following Product Quality Standards are for to be followed by the Contractor to ensure that there is effective recovery of materials and that quality Products are produced by the single-stream processing system and marketed by the Contractor. All measurements of percentage in the Product Quality Standards are by weight.

Fiber

- At a minimum, 75% of the newspaper feed into the processing system will be captured and baled separately from mixed paper.
- Product sold by the Contractor will meet the ISRI specifications for #8 newspaper, #2 mixed paper and OCC or the Contractor will manufacture a commodity of sufficient quality that sales revenue per ton are equal to or greater than the average market price paid to other processors in the Bay Area selling the same commodity grade as determined by a local market survey of other processors conducted by the SBWMA at the SBWMA's discretion.
- Should prices fall below the average commodity price or the Contractor's loads are rejected or down graded by buyers, the Contractor will be required to meet the ISRI product quality specifications.
- Not more than 1% of fiber materials (defined as whole or intact sheets of fiber and does not include shredded paper) fed into the Processing System shall be disposed as residue or trash.
- At a minimum, 90% of the paper (excluding shredded and paper recovered as newspaper or corrugated cardboard) arriving at the facility will be captured and baled as mixed paper.
- At a minimum, 95% of the corrugated cardboard arriving at the facility will be captured and baled as OCC.

Container Glass

- Glass product sold by the Contractor will have less than 10% non-glass contamination and meet the minimum standards for the State California Redemption Value (CRV).

Aluminum

At a minimum, 99.5% of the aluminum cans fed into the processing system shall be recovered and processed and be free of contaminants.

PET

At a minimum, 98% of the PET bottles collected shall be recovered as PET Product. PET product shall contain less than 2% contaminants. Not more than 1% by weight of all collected PET shall be disposed as residue.

HDPE

At a minimum, 98% of the HDPE containers collected shall be recovered as HDPE Product. HDPE product shall be sorted into natural and colored and each Product shall contain less than 2% contaminants. Not more than 1% by weight of all collected HDPE shall be disposed as residue.