

FRANCHISE AGREEMENT

BETWEEN

[Insert Name of County/City/Town]

AND

[Insert Company Name]

FOR

**SOLID WASTE, RECYCLABLE MATERIALS, AND
ORGANIC MATERIALS COLLECTION SERVICES**

* * *

Notes to Proposers:

1. Model Agreement. This Collection Agreement shall serve as a model agreement for each of the Member Agencies. Each Member Agency may modify it to reflect the optional collection programs it selects; any changes to the core collection programs; and other unique contract needs. In some cases, the Collection Agreement includes notes regarding unique Member Agency needs.
2. Basis for Proposals. Proposers shall base their proposal, including their cost proposal, on the terms and conditions of this Collection Agreement subject to any exceptions the Proposer has identified in their proposal.
3. Unique Member Agency Requirements. Atherton, Hillsborough, and other Member Agencies have unique requirements described in the RFP. These requirements have not been reflected in this model Collection Agreement. Prior to execution of an agreement with such Agencies, their Collection Agreements would need to be modified to reflect their unique requirements.

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M	Initial Rates for Collection Services {to be determined during contract negotiations}
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O	List of Contractors Personnel {to be determined during contract negotiations}

FRANCHISE AGREEMENT
FOR
SOLID WASTE, RECYCLABLE MATERIALS, AND
ORGANIC MATERIALS COLLECTION SERVICES

THIS AGREEMENT is made as of this ____ day of _____, 200__, by and between [NAME OF CITY, TOWN, ETC.], a [description of its legal status] ("Agency"), and [NAME OF CONTRACTOR], a [description of its legal status] ("Contractor").

RECITALS

1. The State of California has, through enactment of the California Integrated Waste Management Act of 1989 ("Act"), determined each of the following:

A. That management of solid waste is a shared responsibility of the State and local governments.

B. That it is in the public interest for local governments to be authorized and required to provide adequate solid waste handling services.

C. That the amount of solid waste generated in California, coupled with diminishing landfill space, potential adverse environmental impacts from landfilling, and the need to conserve natural resources have created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program.

2. The State of California, through the Act, has directed the California Integrated Waste Management Board and all local agencies to maximize the use of feasible waste reduction, recycling and composting options in order to reduce the amount of solid waste that must be disposed of in landfills.

3. Agency is a member of the South Bayside Waste Management Authority, established pursuant to the California Joint Exercise of Powers Act ("Authority"). In _____, 2007, the Authority, acting on behalf of Agency and its other members,

27 issued a Request for Proposals to provide collection of solid waste, recyclable materials, and
28 organic materials and related services to Agency and other members of Authority.

29 4. Contractor submitted a proposal to provide these services, which was evaluated
30 by the Authority. On the basis of that evaluation, the Authority has recommended that Agency
31 enter into an agreement with Contractor.

32 5. Agency has independently evaluated Contractor's proposal and has determined
33 that Contractor has proposed to provide solid waste handling services in a manner and on terms
34 which are in the best interests of Agency, its residents and businesses, taking into account the
35 qualifications and experience of Contractor and the cost of providing such services.

36 6. Contractor has participated in the development of this Agreement and is ready,
37 willing and able to perform the services which the Agreement requires.

38 NOW, THEREFORE, in consideration of the mutual promises contained in this
39 Agreement, and for other good and valuable consideration, Agency and Contractor agree as
40 follows:

41

ARTICLE 1 DEFINITIONS

42 **1.01 DEFINITIONS**

43 Unless the context otherwise requires, capitalized terms used in this Agreement shall have the
44 meanings set forth in the definitions contained in Attachment A.

45 **1.02 STATUTORY DEFINITIONS**

46 Unless a term is otherwise defined in this Agreement, terms used in this Agreement shall have
47 the same meaning as the definitions of those terms contained in the Act. In the event of a
48 conflict between the definition of a term in the Act and in this Agreement, the definition in the
49 Agreement shall prevail.

50

51 **ARTICLE 2 REPRESENTATION AND WARRANTIES OF CONTRACTOR**

52 Contractor represents and warrants, as of the date of this Agreement, the following:

53 **2.01 CORPORATE STATUS**

54 Contractor is a [corporation][limited liability company][partnership][etc.] duly organized, validly
55 existing and in good standing under the laws of the State of _____, and is qualified to
56 do business in the State of California. [MODIFY AS NECESSARY]

57 **2.02 CORPORATE AUTHORIZATION**

58 Contractor has the authority to enter into and perform its obligations under this Agreement. The
59 [directors][shareholders][members][etc.] of Contractor have taken all actions required by law,
60 the [articles of incorporation][bylaws][limited liability company agreement][etc.] or otherwise to
61 authorize the execution of this Agreement. [MODIFY AS NECESSARY]

62 **2.03 AGREEMENT DULY EXECUTED**

63 The persons signing this Agreement on behalf of Contractor have been authorized to do so and
64 this Agreement constitutes a legal, valid and binding obligation of Contractor.

65 **2.04 NO CONFLICT WITH APPLICABLE LAW OR OTHER DOCUMENTS**

66 Neither the execution and delivery by Contractor of this Agreement, nor the performance by
67 Contractor of its obligations hereunder (i) conflicts with, violates or will result in a violation of
68 any existing Applicable Law; or (ii) conflicts with, violates or will result in a breach or default
69 under any term or condition of any existing judgment, order or decree of any court,

70 administrative agency or other governmental authority, or of any existing contract or instrument
71 to which Contractor is a party or by which Contractor is bound.

72 **2.05 NO LITIGATION**

73 There is no action, suit, proceeding, or investigation at law or in equity, before or by any court or
74 governmental entity, pending or threatened against Contractor, or otherwise affecting Contractor,
75 wherein an unfavorable decision, ruling, or finding, in any single case or in the aggregate, would
76 (a) materially adversely affect Contractor's performance hereunder, (b) adversely affect the
77 validity or enforceability of this Agreement, or (c) have a material adverse effect on the financial
78 condition of Contractor or the entity providing the guaranty of Contractor's performance.

79 **2.06 FINANCIAL CONDITION**

80 Contractor has made available to Agency information on the its financial condition. Contractor
81 recognizes that Agency has relied on this information in evaluating the sufficiency of
82 Contractor's financial resources to perform this Agreement. To the best of Contractor's
83 knowledge, this information is complete and accurate, does not contain any material
84 misstatement of fact and does not omit any fact necessary to prevent the information provided
85 from being materially misleading.

86 **2.07 ABILITY TO PERFORM**

87 Contractor has the expertise and professional and technical capability to perform all of its
88 obligations under this Agreement.

89 **2.08 CONTRACTOR'S INVESTIGATION**

90 Contractor has made an independent investigation and analysis, the results of which are
91 satisfactory to Contractor, of the conditions and circumstances surrounding the Agreement, its
92 content and preparation, and the work to be performed by Contractor under the Agreement. The
93 Agreement accurately and fairly represents the intentions of Contractor, and Contractor enters
94 into this Agreement on the basis of that independent investigation and analysis.

95 **2.09 STATEMENTS AND INFORMATION IN PROPOSAL**

96 The Proposal submitted to the Authority by Contractor and information submitted to the
97 Authority and Agency supplementary thereto does not contain any untrue statement of a material
98 fact nor omit to state a material fact necessary in order to make the statements made, in light of
99 the circumstances in which they were made, not misleading.

100

ARTICLE 3 TERM OF AGREEMENT

101 **3.01 EFFECTIVE DATE**

102 The Effective Date of this Agreement shall be _____, 200__.

103 **3.02 TERM**

104 The Term of this Agreement shall begin on the Effective Date and shall end at midnight on
105 December 31, 2020, unless earlier terminated, or extended as provided in Section 3.03.
106 Contractor’s obligation to collect Solid Waste, Recyclable Materials and Organic Materials shall
107 begin on January 1, 2011 at 12:01 a.m. and shall continue for the remainder of the Term. [NOTE
108 TO PROPOSERS: START OF SERVICE MAY BE MODIFIED BY MUTUAL AGREEMENT
109 AND WITH CONCURRENCE OF INCUMBENT OPERATOR]

110 **3.03 EXTENSION OF TERM**

111 During calendar year 2017, the Parties shall meet and confer on the possible extension of the
112 Term.

113 **3.04 CONDITIONS TO EFFECTIVENESS OF AGREEMENT.**

114 **A. Obligation of Agency to Perform.** The obligation of Agency to perform under this
115 Agreement is subject to satisfaction, on or before the Effective Date, of each of the
116 conditions set out below, each of which may be waived in whole or in part by Agency:

- 117 1. Accuracy of Representations. The representations and warranties made by
118 Contractor in Article 2 shall be true and correct on and as of the Effective Date.
- 119 2. Absence of Litigation. There shall be no litigation pending on the Effective Date in
120 any court challenging the execution of this Agreement or seeking to restrain or
121 enjoin its performance.
- 122 3. Furnishing of Surety and Guaranty. Contractor has furnished the performance bond
123 or letter of credit required by Section _____ and the guaranty required by Section
124 _____, each meeting the requirements of this Agreement.
- 125 4. Effectiveness of Agency’s Approval. The approval of this Agreement by Agency
126 shall have become effective, pursuant to California law, on or before the Effective
127 Date.

128 Agency may waive the satisfaction of the conditions described in Section 3.04.A.3 and 4,
129 allow this Agreement to become effective, and exercise its rights and remedies under this
130 Agreement for Contractor’s failure to furnish the bond, the guaranty, or the evidence of
131 insurance.

132 **B. Obligation of Contractor to Perform.** The obligation of Contractor to perform under this
133 Agreement is subject to the satisfaction, on or before the Effective Date, of both of the
134 conditions set forth below, each of which may be waived in whole or in part by Contractor.

135 1. Absence of Litigation. There shall be no litigation pending on the Effective Date in any
136 court challenging the execution of this Agreement, or seeking to enjoin its performance.

137 2. Effectiveness of Agency's Approval. The approval of this Agreement by Agency shall
138 have become effective, pursuant to California law.

139 **C. Notice.** If either party wishes to assert that a condition for its benefit has not been satisfied
140 and has not been waived, it must deliver written notice to that effect to the other party on the
141 Effective Date. If no such notice is received, the Agreement will become effective on the
142 Effective Date.

143 **D. Good Faith.** Each party is obligated to perform in good faith the actions, if any, which this
144 Agreement requires it to perform before the Effective Date and to cooperate towards the
145 satisfaction of the conditions set forth above.

146 **ARTICLE 4 SCOPE OF AGREEMENT**

147 **4.01 SCOPE OF AGREEMENT**

148 A. Through this Agreement, Agency grants to Contractor an exclusive franchise, except as
149 provided in subsection B and in Section 4.02, to collect the following materials in the
150 Service Area:

- 151 1. Solid Waste generated at Residential Premises and Commercial Premises; and
152 2. Source Separated Recyclable Materials and Source Separated Organic Materials
153 generated at Residential Premises.

154 B. Through this Agreement, Agency grants to Contractor a non-exclusive right to collect the
155 following materials in the Service Area:

- 156 1. Source Separated Recyclable Materials and Source Separated Organic Materials
157 generated at Commercial Premises;
158 2. Specialty Recyclable or Reusable Materials generated at Residential Premises;
159 3. Non-Putrescible Wastes placed in Drop Boxes.

160 **4.02 LIMITATIONS ON SCOPE**

161 Agency may permit the Collection, Recycling or Disposal of any of the following materials by
162 Persons other than Contractor without seeking or securing any approval from Contractor:

- 163 A. Solid Waste, Recyclable Materials, and Organic Materials which are transported
164 personally by the Owner or occupant of the Premises at which they are generated (or
165 by his or her employees) to a processing or disposal facility;
- 166 B. Recyclable Materials and Organic Materials which are Source Separated by the
167 Generator and donated to youth, civic, or charitable organizations;
- 168 C. Recyclable Containers delivered for Recycling under the California Beverage
169 Container Recycling Litter Reduction Act, Section 14500 *et seq.* California Public
170 Resources Code;
- 171 D. Animal waste and remains from slaughterhouse or butcher shops, grease waste, and
172 used cooking oil;
- 173 E. By-products of sewage treatment including sludge, sludge ash, grit, and screenings;
- 174 F. Hazardous Waste, Household Hazardous Waste, Infectious Waste, and Designated
175 Waste;
- 176 G. Source Separated E-Waste and Source Separated Universal Waste;
- 177 H. Organic Materials Composted at Residential and Commercial Premises;
- 178 I. Materials generated by public schools, county, and federal facilities, provided that
179 the Generator has arranged services with other Persons or has arranged services with
180 the Contractor through a separate agreement;
- 181 J. The incidental removal of Solid Waste when the primary service performed is either
182 of the following:
- 183 1. Landscaping, gardening, weed or refuse abatement, yard clean-up, or grading
184 of a lot;
- 185 2. Construction, remodeling, or demolition of a building or structure and when
186 all of the following conditions are satisfied:
- 187 a. The individual who transports the Solid Waste is the Person who enters
188 the Premises and Collects the Solid Waste, loads the Solid Waste directly
189 into the transportation vehicle (and not a can, Cart, Bin or Drop Box),
190 and removes the Solid Waste from the premises;
- 191 b. The Solid Waste is not stored in a Drop Box, a container designed to be
192 emptied by a Collection vehicle, or a container provided by the individual
193 performing the services;
- 194 c. The services are provided to the particular Premises on an infrequent and
195 occasional, rather than a regular or on-going, basis;
- 196 d. The Person providing the services (including its affiliates) does not also
197 provide Solid Waste handling services; and
- 198 K. Solid Waste generated at Residential Premises collected on an infrequent,
199 unscheduled, "on-call" basis.

200

201

ARTICLE 5 COLLECTION SERVICES

202 **5.01 GENERAL**

203 The work to be done by Contractor pursuant to this Agreement shall include, but not be limited
204 to, the furnishing of all labor, supervision, equipment, materials, supplies, and all other items
205 necessary to perform the services required. The enumeration of, and specification of
206 requirements for, particular items of labor or equipment shall not relieve Contractor of the duty
207 to furnish all others, as may be required, whether enumerated elsewhere in the Agreement or not.

208 The work to be done by Contractor pursuant to this Agreement shall be accomplished in a
209 thorough and professional manner so that the residents and businesses within the Agency are
210 provided reliable, courteous, and high-quality service at all times. The enumeration of, and
211 specification of requirements for, particular aspects of service quality shall not relieve Contractor
212 of the duty of accomplishing all other aspects in the manner provided in this Article, whether
213 such other aspects are enumerated elsewhere in the Agreement or not.

214 **5.02 SOLID WASTE COLLECTION**

215 Contractor acknowledges that the Agency is committed to diverting materials from Disposal
216 through the implementation of source reduction, reuse, Recycling, and Composting programs
217 and that the Agency may, at some time in the future, implement, in accordance with Section
218 15.12, new programs that may impact the overall quantity or composition of Solid Waste to be
219 Collected by Contractor.

220 A. **Single-Family Dwelling (SFD).** Contractor shall Collect Solid Waste from SFD once
221 per week from Contractor-provided Carts. Contractor shall provide each Customer with
222 a twenty (20), thirty (30), sixty (60), or ninety (90) gallon (or similar sizes) Cart as
223 requested by the Customer. Prior to distribution of SFD Solid Waste Carts, Contractor
224 shall mail a notice to each SFD Customer indicating that the Customer will receive a
225 __gallon {insert default cart size; e.g., sixty (60) gallon} Cart for Solid Waste Collection
226 unless the Customer responds to the notice (i.e., by mail, email, phone or website form)
227 and requests an alternate Cart size by noting the preference for a twenty (20), thirty (30),
228 sixty (60), or ninety (90) gallon Cart (or similar sizes).

229 Contractor shall Collect Carts Curbside unless: (i) the Occupant is provided a Special
230 Handling service exemption; or, (ii) the Customer has requested Backyard Collection
231 Service and has agreed to pay the premium service Rate approved by the Agency. In
232 such case, Contractor shall Collect Carts from and return Carts to the alternative service
233 location (such as the side yard or back yard) specified by the Customer.

234 Residents seeking a Special Handling service exemption will be required to submit a
235 form containing a doctor’s signature verifying their inability to comply with the Curbside
236 set-out requirements. The Contractor shall make reasonable accommodations with regard
237 to provision of and servicing of Containers (e.g., Container size and type, placement of
238 Containers for Collection, etc.) at no additional cost to Customers that meet the Special

239 Handling criteria. Contractor will notify all residents annually, of the Special Handling
240 and Backyard Collection service options and submit, for approval, a draft notification to
241 Agency prior to distribution to service recipients annually. New service recipients shall
242 be notified upon signing up for service, of the Special Handling and Backyard Collection
243 service options. Contractor shall review all applications for Special Handling service and
244 provide a written response within five (5) Business Days (which shall include statements
245 from physicians) of receipt of said application submitted by Customer(s).

246 B. **Multi-Family Dwellings (MFD).** Contractor shall Collect Solid Waste from MFD as
247 frequently as scheduled by Customer, but not less than once per week. Contractor shall
248 allow MFD Customers to use Carts or Bins for Solid Waste Collection that are shared by
249 the Occupants of the Premises. Contractor shall provide one or more Cart(s) or Bin(s) to
250 such Customers as requested by Customer, provided that no less than one-hundred (100)
251 gallons of Container capacity are provided for every five (5) dwelling units in the MFD
252 Complex. Contractor shall provide each Customer with a choice of one or more Carts
253 with capacities ranging from twenty (20) to ninety (90) gallons (or similar sizes) or Bins
254 with capacity ranging from one (1) to eight (8) cubic yards (or similar sizes).

255 Contractor shall give special consideration when determining the Collection location for
256 MFD Complexes to ensure that the flow of traffic is not impeded and that it does not
257 result in aesthetic degradation of an area. The designated Collection location, if disputed
258 by Customer or Contractor, shall be determined by the Agency. Additionally, if in the
259 Agency's opinion the location of an existing Collection location is inappropriate, Agency
260 may require the Customer or Contractor to relocate the Collection Containers.

261 C. **Commercial Premises.** Contractor shall Collect Solid Waste from Commercial
262 Premises as frequently as scheduled by the Customer, but not less than once per week.
263 Specifically, the Contractor shall offer the following Collection service methodologies to
264 Commercial Customers:

265 1. Individual Cart or Bin Service. Contractor shall allow each Commercial Premises to
266 use Carts, Bins, Compactors, or Drop Boxes for Solid Waste Collection. Contractor
267 shall provide each Customer with a choice of one or more Carts with capacities
268 ranging from twenty (20) to ninety (90) gallons (or similar sizes), or Bins with
269 capacity ranging from one (1) to eight (8) cubic yards (or similar sizes).

270 2. Centralized Bin or Cart Service. Contractor shall allow each Commercial Premises
271 to use Carts or Bins for Solid Waste Collection that are shared by the Occupants of
272 two or more adjacent Commercial Premises. In such case, Contractor shall provide
273 one or more Carts or Bins as requested by the Customer(s) provided that no less than
274 ninety (90) gallons of Container capacity is provided for every four Commercial
275 Premises. Contractor shall provide each Customer with a choice of one or more
276 Carts with capacities ranging from twenty (20) to ninety (90) gallons (or similar
277 sizes) or Bins with capacity ranging from one (1) to eight (8) cubic yards (or similar
278 sizes).

279 3. Permanent Drop Boxes and Compactors. Contractor shall allow a Customer to use a
280 Drop Box or Compactor for Solid Waste Collection to meet the Customer's

281 permanent Disposal needs. In such case, Contractor shall provide Customer with a
282 choice of Container capacities ranging from three (3) to fifty (50) cubic yards (or
283 similar sizes). Contractor shall offer Customers the option to purchase or lease
284 Compactors through either the Contractor or an outside vendor. Regular
285 maintenance of Compactors shall be provided by Contractor (or outside vendor) as
286 frequently as needed to keep the Compactors in good working order and functioning
287 at high compaction levels.

288 D. **Member Agency Facilities.** Contractor shall Collect Solid Waste from Member Agency
289 Facilities as frequently as scheduled by the Customer, but not less than once per week.
290 Specifically, the Contractor shall offer the following Collection service methodologies to
291 Member Agency Facilities:

292 1. Individual Cart or Bin Service. Contractor shall allow each Member Agency Facility
293 to use Carts, Bins, Compactors, or Drop Boxes for Solid Waste Collection.
294 Contractor shall provide each Customer with a choice of one or more Carts with
295 capacities ranging from twenty (20) to ninety (90) gallons (or similar sizes), or Bins
296 with capacity ranging from one (1) to eight (8) cubic yards (or similar sizes).

297 2. Centralized Bin or Cart Service. Contractor shall allow each Member Agency
298 Facility to use Carts or Bins for Solid Waste Collection that are shared by the
299 Occupants of two or more adjacent Member Agency Facilities. In such case,
300 Contractor shall provide one or more Carts or Bins as requested by the Customer(s)
301 provided that no less than ninety (90) gallons of Container capacity is provided for
302 every four Member Agency Facilities. Contractor shall provide each Customer with
303 a choice of one or more Carts with capacities ranging from twenty (20) to ninety (90)
304 gallons (or similar sizes) or Bins with capacity ranging from one (1) to eight (8)
305 cubic yards (or similar sizes).

306 3. Permanent Drop Boxes and Compactors. Contractor shall allow a Customer to use a
307 Drop Box or Compactor for Solid Waste Collection to meet the Customer's
308 permanent Disposal needs. In such case, Contractor shall provide Customer with a
309 choice of Container capacities ranging from three (3) to fifty (50) cubic yards (or
310 similar sizes). Contractor shall offer Customers the option to purchase or lease
311 Compactors through either the Contractor or an outside vendor. Regular
312 maintenance of Compactors shall be provided by Contractor (or outside vendor) as
313 frequently as needed to keep the Compactors in good working order and functioning
314 at high compaction levels.

315 4. Public Street , Parks and Parking Lot Litter and Recycling Receptacles. Contractor
316 shall Collect Solid Waste from public street litter, parks, and parking lot litter (and
317 recycling receptacles, if recyclables are contaminated) between one (1) and seven (7)
318 days per week as determined by Agency. Contractor is responsible for notifying
319 Agency if a public receptacle is inoperable within twenty-four (24) hours of
320 observing or being notified of the defect. A list of Receptacles is included in
321 Attachment B.

322 Contractor shall provide the Agency with the Collection services described above at the service
323 levels and frequencies identified in **Attachment B**. Contractor shall provide and maintain

324 Collection Containers for the Agency’s use, with the exception of public litter (or Solid Waste)
325 and public Recyclable Materials receptacles, which shall be provided and maintained by the
326 Agency. Contractor shall offer the type and size of Collection Containers that Contractor
327 provides Commercial Customers pursuant to Section 5.02.C.

328 Contractor may integrate Collection of Solid Waste, Targeted Recyclable Materials, and Organic
329 Materials from Member Agency Facilities with other Collection services in the Service Area,
330 provided that Contractor attributes Tonnage Collected from Agency facilities separately from
331 other Customers upon the Agency’s request.

332 **5.03 RECYCLABLE MATERIALS COLLECTION**

333 Contractor shall Collect Targeted Recyclable Materials from Customers that have Source
334 Separated the Recyclable Materials from Solid Waste and placed these materials in the
335 Customer’s Recyclable Materials Collection Container for Collection by Contractor.

336 In accordance with Section 15.12, the Agency may request Contractor to modify its scope of
337 service to include Collection of additional types of Recyclable Materials beyond those materials
338 defined as Targeted Recyclable Materials in **Attachment A**. If the Agency requests Collection
339 of additional Recyclable Materials, the Contractor shall not receive additional compensation for
340 Collection service if the Recyclable Materials are placed by Generator in the Recyclable
341 Materials Container unless Contractor can demonstrate that Collection of the additional
342 material(s) requires modification to Collection routes to accommodate the additional volume of
343 the material(s).

344 A. Single-Family Dwellings. Once per week, Contractor shall Collect Single-Stream
345 Recyclable Materials from SFD. Contractor shall provide each SFD Occupant with one
346 Cart for Single-Stream Recyclable Materials. Contractor shall provide each Occupant
347 with a ___ {insert default Cart size} -gallon (or similar size) Cart unless Customer
348 requests a twenty (20), thirty (30), sixty (60), or ninety (90) gallon (or similar sizes) Cart.

349 Contractor shall Collect Carts Curbside unless the Occupant is provided Special
350 Handling or Backyard Collection Service. In such case, Contractor shall Collect Carts
351 from and return Carts to the alternative service location (such as the side yard or back
352 yard) specified by the Customer.

353 Contractor shall Collect Used Motor Oil and Used Motor Oil Filters placed at the
354 Collection location by Customer for Collection in Contractor-provided or Contractor-
355 approved containers. Contractor shall not be required to Collect more than five (5)
356 gallons of Used Motor Oil per Customer per Collection. Contractor shall provide one-
357 gallon translucent plastic Recyclable Containers with screw-on tops for Used Motor Oil
358 Collection and six-mil plastic Zip-close type bags for Used Oil Filter Collection to SFD
359 Occupants, upon Customer’s request, within five (5) Business Days of such request, at no
360 additional cost to Customer.

361 Contractor shall Collect from SFD Premises Household Batteries and Cell Phones placed
362 on top of or adjacent to the Recyclable Materials Cart in Contractor provided clear zip-

363 close or tie-close plastic bags clearly marked “Used Batteries and Cell Phones.”
364 Contractor shall empty the bag at the point of collection and leave it to be reused by SFD
365 by placing it inside the Cart handle. Occupants will be notified to place all batteries in a
366 clear zip-close plastic bag; tape the contacts of button cell batteries; and, wrap cell
367 phones in paper (for protection) prior to placing in the plastic bag. While Occupants will
368 be encouraged to follow the participation parameters, Contractor shall be required to
369 Collect if Occupants do not follow these instructions.

370 Contractor shall Collect Recyclable Materials, Used Motor Oil, Used Motor Oil filters,
371 Household Batteries, and Cell Phones from SFD on the same day that Solid Waste
372 Collection is provided.

373 **B. Multi-Family Premises**

374 1. General. MFD Customers that subscribe to Solid Waste Collection service shall be
375 entitled to Single-Stream Recyclable Materials Collection at no additional charge,
376 and Contractor shall provide the level of service required by MFD Customers
377 requesting Recyclable Materials Collection services. Contractor shall provide each
378 MFD Customer with Containers for Single-Stream Recyclable Materials Collection.
379 At a minimum, Contractor shall provide twenty (20) gallons per week of Container
380 capacity for Single-Stream Recyclable Materials Collection for every MFD at the
381 Premises. Contractor shall provide each Customer with Carts with capacities
382 ranging from 20- to 90-gallons (or similar sizes), or Bins with capacities ranging
383 from one (1) to eight (8) cubic yards (or similar sizes), as requested by the Customer.

384 Contractor shall Collect Single-Stream Recyclable Materials Generated at MFD
385 Complexes at least once per week or more frequently as scheduled, up to six times
386 per week, by the Customer provided that the Generator has Source Separated the
387 Recyclable Materials from Solid Waste and placed the materials in the appropriate
388 Contractor-provided Container. Contractor shall Collect Single-Stream Recyclable
389 Materials at the designated location agreed upon by Contractor and MFD Customer.
390 The designated Collection location, if disputed by Customer or Contractor, shall be
391 determined by the Agency. Carts and Bins may be shared by the Occupants of the
392 MFD Complexes. Contractor shall provide extra Carts for use in the mail room of
393 the MFD Complexes if requested by the Customer.

394 2. Universal Implementation to All Customers. {Note to Proposers: This section
395 describes an optional service. One or more Member Agencies may choose to include
396 this requirement in their Collection Agreement.} To maximize participation in the
397 Single-Stream Recyclable Materials Collection program, the Contractor shall
398 distribute Recyclable Materials Containers to all MFD Customers unless the
399 Customer has notified the Contractor that they do not want to participate in the
400 Recyclable Materials Collection program

401 Prior to distribution of the Recyclable Materials Containers, the Contractor shall
402 mail each MFD Customer a notice describing the “universal” implementation of
403 Single-Stream Recyclable Materials Collection; the number and size of Containers
404 the Contractor plans to deliver to the MFD Complex (based on Contractor’s estimate

405 of the service volume needed for the complex with a minimum of twenty (20)
406 gallons per week per MFD); and a description of how the Customer's can contact the
407 Contractor asking for different number or size of Containers or requesting not to
408 participate in the Recyclable Materials Collection program. If Contractor delivers
409 Recyclable Materials Collection Containers to a MFD Complex and the Customer
410 requests a change in the number or size of Containers or states that they do not want
411 to participate in the Collection program, Contractor shall adjust the service level or
412 remove the Collection Containers within ten (10) Business Days of the Customer's
413 request. For MFD Customers that subscribe to Solid Waste Collection service during
414 the Term of the Agreement, Contractor shall automatically deliver and service
415 Single-Stream Recyclable Materials Collection Containers at the MFD Complex
416 unless the Customer specifically refuses to participate in the Recyclable Materials
417 Collection program.

418 3. Personal Recycling Tote-Bag Distribution. Upon receipt of a request from a MFD
419 Customer or Occupant or Agency, Contractor shall deliver Recycling Tote-Bags
420 within five (5) Business Days.

421 4. Household Battery and Cell Phone Collection. Contractor shall provide an efficient,
422 convenient, and effective method for the Collection of Household Batteries and Cell
423 Phones from all MFD Complexes in the Agency. This Collection method and any
424 changes to it, shall be approved by the Agency or the SBWMA prior to
425 implementation. {Note to Proposers – This section will be revised to reflect the
426 approved collection methodology.}

427 C. **Commercial Premises**

428 1. General. Commercial Customers that subscribe to Solid Waste Collection service
429 shall be entitled to Collection of Targeted Recyclable Materials at no additional
430 charge, and Contractor shall provide the level of service required by Commercial
431 Customers requesting Recyclable Materials Collection services. The level of service
432 Contractor shall provide includes: Single-Stream Recyclable Materials Collection or
433 Source Separated Collection of cardboard, mixed paper, food and beverage
434 Recyclable Containers, or other Targeted Recyclable Materials in a manner that best
435 suits the needs of the Commercial Customer.

436 Contractor shall Collect Single-Stream Recyclable Materials or other Source
437 Separated Recyclable Materials Generated at Commercial Premises at least once per
438 week or more frequently as scheduled, up to seven (7) times per week, by the
439 Customer provided that the Generator has Source Separated the Recyclable
440 Materials from Solid Waste and placed the materials in the appropriate Contractor-
441 provided Container. Contractor shall Collect Recyclable Materials at the designated
442 location agreed upon by Contractor and Customer. The designated Collection
443 location, if disputed by Customer or Contractor, shall be determined by the Agency.

444 2. Collection Containers. Contractor shall allow Commercial Customers to select a
445 Collection service method that best suits the needs of its Premises. Specifically, the
446 Contractor shall offer the following choices to Commercial Customers:

- 447 a. Cart service. Contractor shall allow Commercial Customers to use Carts for
448 Recyclable Materials Collection. Contractor shall provide each Customer with a
449 choice of one or more Carts with capacity ranging from thirty (30) to ninety (90)
450 gallons (or similar sizes).
- 451 b. Bin service. Contractor shall allow Commercial Customers to use Bins for
452 Recyclable Materials Collection. Contractor shall provide each Customer with a
453 choice of one or more Bins with capacity ranging from 1 to 8 cubic yards (or
454 similar capacities).
- 455 c. Centralized Cart or Bin service. Contractor shall allow Commercial Customers
456 to use Carts or Bin for Recyclable Materials Collection that are shared by the
457 Occupants of two or more Commercial Premises. In such case, Contractor shall
458 provide one or more Carts or Bins to such Premises as requested by
459 Customer(s).
- 460 d. Drop Boxes and Compactors. Contractor shall allow Commercial Customers to
461 use Drop Boxes or Compactors for Recyclable Materials. In such case,
462 Contractor shall provide Customers with a choice of Container capacities
463 ranging from ten (10) to fifty (50) cubic yards. Contractor shall offer Customers
464 the option to purchase or lease Compactors through Contractor or an outside
465 vendor. Regular maintenance of Compactors shall be provided by Contractor
466 (or outside vendor) as frequently as needed to keep the Compactors in good
467 working order and functioning at high compaction levels.
- 468 3. Universal Implementation of Service. {Note to Proposers: This section describes an
469 optional service. One or more Member Agency may choose to include this
470 requirement in their Collection Agreement.} Contractor shall “universally”
471 implement Single-Stream Recyclable Materials Collection services to all
472 Commercial Customers in the same manner as that described for Multi-Family
473 Customers pursuant to Section 5.03.B.2.

474 **D. Member Agency Facilities**

- 475 1. General. Member Agency Facilities that subscribe to Solid Waste Collection service
476 shall be entitled to Collection of Targeted Recyclable Materials at no additional
477 charge, and Contractor shall provide the level of service required by Member
478 Agency Facilities requesting Recyclable Materials Collection services. The level of
479 service Contractor shall provide includes: Single-Stream Recyclable Materials
480 Collection or Source Separated Collection of cardboard, mixed paper, food and
481 beverage Recyclable Containers, or other Targeted Recyclable Materials in a manner
482 that best suits the needs of the Member Agency Facility.

483 Contractor shall Collect Single-Stream Recyclable Materials or other Source
484 Separated Recyclable Materials Generated at Agency Premises at least once per
485 week or more frequently as scheduled, up to seven (7) times per week, by the
486 Customer provided that the Generator has Source Separated the Recyclable
487 Materials from Solid Waste and placed the materials in the appropriate Contractor-

488 provided Container. Contractor shall Collect Recyclable Materials at the designated
489 location agreed upon by Contractor and Customer.

490 2. Collection Containers. Contractor shall allow Member Agency Facilities to select a
491 Collection service method that best suits the needs of its Premises. Specifically, the
492 Contractor shall offer the following choices to Member Agency Facilities:

493 a. Cart service. Contractor shall allow Member Agency Facilities to use Carts for
494 Recyclable Materials Collection. Contractor shall provide each Customer with a
495 choice of one or more Carts with capacity ranging from thirty (30) to ninety (90)
496 gallons (or similar sizes).

497 b. Bin service. Contractor shall allow Member Agency Facilities to use Bins for
498 Recyclable Materials Collection. Contractor shall provide each Customer with a
499 choice of one or more Bins with capacity ranging from 1 to 8 cubic yards (or
500 similar sizes).

501 c. Centralized Cart or Bin service. Contractor shall allow Member Agency
502 Facilities to use Carts or Bin for Recyclable Materials Collection that are shared
503 by the Occupants of two (2) or more adjacent Member Agency Facilities. In
504 such case, Contractor shall provide one or more Carts or Bins to such Premises
505 as requested by Customer(s).

506 d. Drop Boxes and Compactors. Contractor shall allow Member Agency Facilities
507 to use Drop Boxes or Compactors for Recyclable Materials. In such case,
508 Contractor shall provide Customers with a choice of Container capacities
509 ranging from ten (10) to fifty (50) cubic yards. Contractor shall offer Customers
510 the option to purchase or lease Compactors through Contractor or an outside
511 vendor. Regular maintenance of Compactors shall be provided by Contractor
512 (or outside vendor) as frequently as needed to keep the Compactors in good
513 working order and functioning at high compaction levels.

514 3. Public Street , Parks and Parking Lot Litter and Recycling Receptacles. Contractor
515 shall Collect Recyclable Materials from public street, parks, and parking lot litter
516 and recycling receptacles, between one (1) and seven (7) days per week as
517 determined by Agency. Contractor is responsible for notifying Agency if a public
518 receptacle is inoperable within twenty-four (24) hours of observing or being
519 notified of the defect. A list of Receptacles is included in Attachment B.

520 **5.04 ORGANIC MATERIALS COLLECTION**

521 A. Single-Family Dwelling. Contractor shall Collect Source Separated Organic Materials
522 from SFD once per week. Collection of Organic Materials, Recyclable Materials, and
523 Solid Waste from the SFD shall occur on the same day each week. Contractor shall
524 provide each Customer with one Cart to be used for storage and Collection of Organic
525 Materials. Customer will be provided the opportunity to subscribe to service levels of
526 additional Organics carts and shall be billed in accordance with Agency approved rates
527 for additional Organics cart service. The Contractor shall provide each Customer a
528 __{insert default Cart size}-gallon Cart unless the Customer requests a smaller Cart size,
529 in which case, the Contractor shall provide a 30-, 60-, or 90-gallon (or similar size) Cart.

530 Contractor shall Collect Carts Curbside unless the Occupant is provided Special
531 Handling or Backyard Collection Service. In such case, Contractor shall Collect from
532 and return the Carts to the alternative service location (such as the side yard or back yard)
533 specified by the Customer.

534 Contractor shall provide each SFD Occupant with a Kitchen Pail that is suitable for
535 storage of Food Scraps at the inception of Collection Services. Contractor must submit
536 Kitchen Pail specifications (including material and design specifications, colors, and
537 identification marks) to Agency for Agency's written approval prior to submitting the
538 order to the manufacturer. During the Term of the Agreement, Contractor shall provide,
539 within five (5) Business Days of request by Occupant, Kitchen Pails to new SFD
540 Customers and to SFD Customers whose Kitchen Pail is lost, stolen, damaged, or
541 destroyed (where such replacement shall be limited to one per year per Customer at no
542 additional cost). Residents will be discouraged from placing Kitchen Pails Curbside for
543 Collection and will be instructed to deposit the contents of the Kitchen Pail into the
544 Organics cart.

545

546 B. **Multi-Family Premises.** MFD Customers shall have the option of voluntarily
547 subscribing to Organic Materials Collection services and shall pay Contractor for such
548 service in accordance with Agency-approved Rates. Contractor shall Collect Source
549 Separated Organic Materials from MFD Complexes that have subscribed to Organic
550 Materials Collection service as frequently as scheduled by Customer, but not less than
551 once per week. Contractor shall provide each Customer with a choice of 30-, 60- or 90-
552 gallon (or similar sizes) Carts, or Bins with capacities ranging from 1 to 8 cubic yards (or
553 similar sizes). Contractor shall Collect Organic Materials at the location agreed upon by
554 Contractor and Customer. The designated Collection location, if disputed by Customer
555 or Contractor, shall be determined by the Agency.

556 C. **Commercial Premises.** Commercial Customers shall have the option of voluntarily
557 subscribing to Organic Materials Collection services and shall pay Contractor for such
558 service in accordance with Agency-approved Rates. Contractor shall provide Organic
559 Materials Collection service to any and all Customers requesting service. Contractor
560 shall Collect Organic Materials from Commercial Premises that have subscribed to
561 Organic Materials Collection service as frequently as scheduled by Customer, but not
562 less than once per week.

563 Contractor shall allow Commercial Customers to select a Collection service method that
564 best suits the needs of its Premises. Specifically, the Contractor shall offer to Commercial
565 Organic Materials Customers Container and service choices that are similar to that
566 offered for Commercial Solid Waste Collection pursuant to Section 5.02.C.

567 D. **Member Agency Facilities.** Member Agency Facilities shall have the option of
568 voluntarily subscribing to Organic Materials Collection services.

569 Contractor shall provide Organic Materials Collection service to Member Agency
570 Facilities requesting service. Contractor shall Collect Organic Materials from Member
571 Agency Facilities that have subscribed to Organic Materials Collection service as
572 frequently as scheduled by Customer, but not less than once per week.

573 Contractor shall allow Member Agency Facilities to select a Collection service method
574 that best suits the needs of its Premises. Specifically, the Contractor shall offer to
575 Member Agency Facilities the service choices that are similar to that offered for
576 Commercial Solid Waste Collection pursuant to Section 5.02.C.

577 **D. Holiday Tree Collection.** Contractor shall annually Collect Holiday Trees from
578 Residential Premises for fifteen (15) consecutive Business Days commencing on
579 December 26. Contractor shall perform Collection of Holiday Trees on SFD Occupants
580 on the scheduled Collection day for Solid Waste Collection Contractor will be required to
581 collect trees placed adjacent to an Organics Cart for fifteen (15) Business Days
582 commencing December 26. After fifteen (15) Business Days commencing December 26,
583 Contractor will be required to collect trees placed inside an Organics Cart. These
584 Collection parameters apply to both Special Handling and Backyard Collection Service.

585 Contractor shall deliver a Drop Box for Holiday Tree Collection to MFD Complexes
586 upon request of the Owner or property manager. The location for delivery of the Bin or
587 Drop box shall be agreed upon by the owner or property manager, and Contractor shall
588 remove the Bin or Drop Box, or collect the trees loose, on the date requested by the
589 owner or property manager, which shall be no later than fifteen (15) consecutive
590 Business Days after December 26. If Bins or Drop Boxes are not available, contractor
591 shall collect the Holiday Trees loose from one or more designated consolidation locations
592 (e.g., adjacent to a solid waste enclosure) at each MFD complex as determined by the
593 owner or property manager. Contractor shall notify all MFD customers annually of this
594 program and explain the limitations to the program, the dates of service, and any
595 materials collection preparation or participation requirements, including the option to
596 order a bin or drop box, or collect the trees loose from designated collection locations.
597 To encourage participation in this program, Contractor shall not charge customers an
598 additional fee for this service.

599 **5.05 SINGLE-FAMILY ON-CALL COLLECTION SERVICE**

600 **A. General.** Contractor shall provide two separate On-Call curbside Collection Service to
601 each SFD Premises annually upon Owner or Occupant's request. Contractor will
602 schedule an On-Call Collection Service event on the regularly scheduled Collection day,
603 no more than ten (10) Business Days after the Occupant's request for an On-Call
604 Collection Service event. Occupants will be entitled to schedule an On-Call Collection
605 Service event from January 2 through December 1 each year. Contractor may provide
606 additional On-Call Collection Service events for a Customer beyond two (2) per year,
607 and in such event shall be entitled to charge the Customer at Agency-approved Rates
608 established for such service. Contractor is required to notify Customer if they have
609 already received the allocated two (2) collection events within one (1) Business Day of
610 Customer request. If Contractor fails to notify Customer that they have received the

611 allocated two (2) collection events, Contractor is not entitled to charge the Customer for a
612 third On-Call Collection Service event but it is still obligated to provide this service to
613 Customer.

614 B. **Accepted Materials.** SFD Occupants may place Curbside for Collection Solid Waste,
615 Recyclable Materials, and/or Organic Materials with the following allowances:

616 1. Solid Waste, Recyclable Materials, Organic Materials, and wood – Up to two (2)
617 cubic yards of materials per event, which is equivalent to thirteen (13) 32-gallon
618 bags of materials, provided that such materials have been bagged, boxed, bundled, or
619 containerized by the Customer.

620 2. Major Appliances – One large appliance per event (e.g., washing machine, clothes
621 dryer, refrigerator, freezer).

622 3. Bulky Items – One large bulky item per event (e.g., reusable furniture, mattresses,
623 four tires).

624 4. E-Waste – One item per event (e.g., a computer, computer monitor or television).

625 {Note to Proposers – This list shall be expanded to reflect the list of materials that
626 the Contractor proposed to Collect. For example, if Contractor proposes to Collect
627 some types of Universal Waste that can be safely and effectively Collected through
628 this on-call program, this list may be expanded to include the materials. }

629 Contractor shall reject: liquids or sludges, materials which exceed five (5) feet in length;
630 commercial-sized refrigerators or freezers; Construction and Demolition Debris;
631 Hazardous Waste; or, Infectious Waste. Contractor may reject any individual item that
632 weighs more than 200 pounds (excluding Major Appliances) unless Customer has paid,
633 or has agreed in advance to pay an additional fee for service, and Contractor may reject
634 un-containerized Discarded Materials.

635 C. **Recycling and Reuse.** Contractor shall Collect materials in a manner that maximizes
636 reuse, Recycling, composting, and diversion of materials from Disposal. Contractor shall
637 make reasonable efforts to ensure that diversion goals are met or exceeded. Disposal of
638 materials shall be the Contractor’s last option. At a minimum, Contractor shall divert
639 from Disposal: cardboard, E-Waste, useable furniture, Major Appliances, mattresses,
640 Organic Materials, wood waste, and other reusable or Recyclable Materials.

641 D. **Handling Major Appliances.** Major Appliances, Universal Waste, and E-Waste shall
642 be reused, Recycled or Disposed by Contractor in accordance with requirements of
643 Applicable Law and in accordance with the State Department of Toxic Substance Control
644 and California Integrated Waste Management Board regulations. Any changes to such
645 regulations made after the Effective Date shall be addressed as though they are a Change
646 in Law in accordance with Section 11.5.

647 E. **Collection and Processing Methods.** {Note to Proposers: This section will be
648 completed based on the Contractor’s proposal. It will describe the manner in which the
649 Contractor plans to service Customers, the types of vehicles to be used for the On-Call

650 Collection Services, the number of drivers/helpers per vehicle, and the method of
651 Collecting materials so that reusable, Recyclable, and compostable materials can be
652 diverted from Disposal. This section shall also describe the Contractor's plans for
653 Processing and Disposing materials and use of Subcontractors, if any.}

654 **5.06 ON-CALL BULKY ITEM COLLECTION**

655 {Note to Proposers: This section describes an optional service. One or more Member Agency
656 may choose to include this requirement in their Collection Agreement depending on the
657 Contractor's proposal to conduct the service and related costs.} Contractor shall Collect Bulky
658 Items from Customers and shall charge Customers the Rate established by the Agency. For
659 Commercial Customers, Contractor shall offer only on-call Bulky Item Collection services and
660 shall charge the Customer in accordance with Agency-approved Rates. Contractor will schedule
661 on-call Collections on the Customer's regularly scheduled Collection day, no more than ten (10)
662 Business Days after the Customer's requests On-Call Bulky Items Collection service.

663 **5.07 COMMUNITY DROP-OFF EVENTS**

664 {Note to Proposers: This section describes an optional service. One or more Member Agencies
665 may choose to include this requirement in their Collection Agreement depending on the
666 Contractor's proposal to conduct the service and related costs. Member Agencies will
667 determine, based on the proposals received, whether to require one or more community-wide
668 drop-off events in the scope of their Collection Agreement and the purpose and duration of the
669 drop-off events. As a result, this section will be included in the Collection Agreement only for
670 the Agencies that choose the service; and, in such case, this section will be modified to describe
671 the details of the program based on the Contractor's proposed services.}

672 Contractor shall hold annual drop-off events, or more frequent drop-off events if directed by
673 Agency, at a location selected by the Agency to allow Customers to drop off acceptable
674 materials. Acceptable materials, which shall be determined by the Agency, shall include one or
675 more of the following: Universal Waste, Recyclable Materials, Organic Materials, wood, and
676 Solid Waste.

677 **A. Residential Collection Event** {Note to Proposers: This residential clean-up event
678 section shall only be included if an Agency chooses to participate in the program based
679 on the Contractor's proposed services.}

680 1. General Requirements. Contractor shall promote, manage, staff, and operate an
681 annual drop-off event for Residential Customers that is scheduled for [redacted]
682 consecutive calendar days covering two weekends. The annual drop-off event shall
683 take place at [redacted] {Insert location} or other location selected by Agency.

684 The Agency shall approve the date of the drop-off event and all advertisements or
685 public announcements related to such event. Contractor shall promote the event by
686 preparing billing inserts to be included in each customer's bill and by advertising in
687 a minimum of two local area newspapers as approved by the Agency.

688 Contractor shall manage, staff, and supervise the event. Contractor shall provide
689 traffic control, provide signage, inspect materials delivered to the event, separate
690 materials, document each material type and quantity of such, Transport collected
691 materials to reuse, Process or Disposal locations, and clean up of the location at the
692 end of the event.

693 Contractor shall not charge Residents delivering materials unless Customer delivers
694 an item that weighs more than 75 pounds.

695 2. Accepted Materials. Residents may deliver and Contractor shall accept Major
696 Appliances, Bulky Items, Source Separated Recyclable Materials, Source Separated
697 Plant Materials, tires (4 per household; removed from rims; no commercial tires),
698 clean unfinished wood, and rubbish. Residents may not deliver more than two Major
699 Appliances and two major E-Waste items. Contractor shall reject: liquids or sludges,
700 cement; dirt; asphalt; concrete; materials which exceed five (5) feet in length; ;
701 Hazardous Waste; or Infectious Waste. Contractor may reject a single item that
702 weights more than 75 pounds (excluding Major Appliances) unless Customer has
703 paid an additional fee for service.

704 3. Participants. Contractor shall verify Residents live in the Service Area by reviewing
705 a driver's license or utility bill.

706 4. Event Hours. Contractor shall accept materials from Residential Customers over a
707 -day period from 9:00 a.m. to 4:00 p.m., Monday through Friday, and 8:00 a.m.
708 to 5:00 p.m., Saturdays and Sundays.

709 5. Recycling and Reuse. Contractor shall Collect materials in a manner that maximizes
710 reuse, Recycling, composting, and diversion of materials from Disposal. Contractor
711 shall make reasonable efforts to ensure that diversion goals are met or exceeded.
712 Contractor shall separate Recyclable Materials and Plant Materials and Transport
713 such materials to the appropriate Processing Site. Contractor shall coordinate with
714 re-use vendor(s) to have a representative present at a minimum of four (4) days of
715 the drop-off event to accept donated clothes or other reusable items. Disposal of
716 materials shall be the Contractor's last option.

717 6. Handling Major Appliances. Major Appliances shall be reused, Recycled, or
718 Disposed by Contractor in accordance with requirements of Applicable Law. Any
719 changes to such regulations made after the Effective Date shall be addressed as
720 though they are a Change in Law in accordance with Section 11.05.

721 7. Additional Drop-Off Events. The Agency may request Contractor to promote,
722 manage, staff, and operate more drop-off events than that described in Section
723 5.07.A.1. If Agency exercises such right, Agency shall provide written notice to
724 Contractor at least six (6) months before the first day of the requested drop-off event.
725 The Contractor compensation for such service shall be based on Contractor's
726 proposed cost, provided in Attachment N.

727 **5.08 COLLECTION FOR LARGE VENUES AND EVENTS**

728 Contractor shall provide Collection services, upon request to any Venue and any Event within
729 Service Area. Specifically, the Contractor shall provide to any Venue and Event, at a minimum,
730 Solid Waste and Recyclable Materials Collection services, and shall provide Organic Materials
731 Collection services if one cubic yard or more of Organic Materials are generated each day at the
732 Venue or Event. Contractor shall provide Collection as frequently as requested by the Customer.
733 Contractor shall provide an adequate number and type of Collection Container(s) for the Venue
734 or Event and shall coordinate its Collection services with the Customer. Upon request of the
735 Agency or the Event organizer, Contractor shall provide an adequate number of its employee(s)
736 for each Event to ensure all Collection points are kept clean and uncontaminated; and to empty
737 or exchange Containers as the need arises; and to respond to overages or spills.

738 Contractor shall prepare and distribute information to the public at Venues and Events describing
739 the Collection options available at the Venue or Event and promoting Recycling programs in the
740 Agency. All information prepared for distribution to Venues and Events shall be approved by
741 Agency prior to distribution. The Contractor shall report the Tonnage of material Collected at
742 each Venue and Event to the Customer and Agency upon Agency request in accordance with
743 Section 9.08.A. For Venues and Events, which are required to comply with AB 2176,
744 Contractor shall assist the Venue or Event organizer in preparing a Recycling plan and reporting
745 all information required by AB 2176. Contractor shall be required to provide, at a minimum,
746 the following information for each Venue or Event:

- 747 1. List of qualifying large venues and events in each jurisdiction
- 748 2. Physical and mailing address
- 749 3. Contact name, address, phone number and email address
- 750 4. Type of Venue or Event (Museum, Concert, Sporting Event)
- 751 5. Does the Venue or Event have a written waste diversion/recycling plan?
- 752 6. A description of the extent in which the plan has been implemented
- 753 7. Service level provided (i.e., solid waste, recycling and organics)
- 754 8. Tons disposed and diverted, by material type
- 755 9. Description of the scope and types of diversion programs provided

756 For the Member Agency sponsored Community Events listed in **Attachment C**, Contractor shall
757 provide the Collection services required by this Section at no additional charge to the Agency or
758 Event. Contractor may bill Venue or Event organizer at the Rates established by Agency for
759 comparable on-call Commercial Collection service.

760 **ARTICLE 6 DISPOSAL AND PROCESSING**

761 **6.01 DISPOSAL AND PROCESSING OF COLLECTED MATERIALS**

762 The Contractor is not responsible for providing Disposal or Processing services under the terms
763 of the Agreement. The Contractor's obligations are to transport and deliver all Solid Waste
764 Collected under this Agreement to the Designated Transfer and Processing Facility. Once
765 Collected Materials are deposited by Contractor at the Designated Transfer and Processing Site,
766 such materials shall become the property of the owner or operator of the facility. The Agency

767 reserves the right to direct the Contractor to deliver Collected Materials to an alternative site to
768 the Designated Transfer and Processing Site. If Agency exercises this right, the change in the
769 Designated Transfer and Processing Site shall be treated as an Agency-directed change in scope.

770 **6.02 CONTAMINATION REQUIREMENTS**

771 Contractor shall be required to control the Contamination level of the Recyclable Materials and
772 Organic Materials Collected. The Contamination Levels of the Recyclable Materials and
773 Organic Materials shall be measured quarterly or more or less frequently, as determined by
774 Agency, by conducting a Materials Composition/Characterization Study at the Designated
775 Transfer and Processing Site in accordance with procedures presented in Attachment E. The
776 Measured Contamination levels determined through the Materials Composition/Characterization
777 Study shall meet the following standards:

- 778 1. The Measured Contamination Level for SFD, MFD, Commercial and Member
779 Agency Recyclable Materials shall be 8% or less.
- 780 2. The Measured Contamination Level for Commercial Plant Materials shall be 5% or
781 less.
- 782 3. The Measured Contamination Level for Residential Organic Materials shall be 5% or
783 less.
- 784 4. The Measured Contamination Level for Commercial Organic Materials shall be 10%
785 or less.

786 If the Measured Contamination Level is greater than the allowable Contamination Level, the
787 Agency may assess disincentive payments in accordance with Attachment I. Contractor shall
788 control the Contamination Level of materials by educating its Customers on acceptable and non-
789 acceptable materials (e.g., using Non-Collection Notices), and by refusing to Collect Recyclable
790 Materials, Plant Materials, and Organic Materials with a Contamination Levels exceeding those
791 specified above.

792 The operator of the Designated Transfer and Processing Site shall receive and inspect the loads
793 delivered by the Contractor. The operator shall have the right to request an audit of a load if its
794 level of Contaminants in the load appears to exceed twenty percent (20%). The audit shall be
795 based on the Contamination Measurement Methodology specified in Attachment E. The
796 operator shall document its assertion of excessive contamination of a load by: (1) identifying the
797 truck number, (2) the date and time of delivery, (3) the reason the load has been identified for an
798 audit, and (4) a picture evidencing the Contamination. In the event of a load does exceed the
799 allowable contamination threshold, the operator shall notify the Contractor and Agency or
800 SBWMA, if designated by Agency, and allow the Contractor and Agency or SBWMA to inspect
801 the load to make a final determination. If the load is deemed to exceed the allowable
802 contamination threshold, the Designated Transfer and Processing Site Operator shall be
803 compensated, directly from Contractor, for the additional disposal expense associated with the
804 contamination above the Measured Contamination Level as specified above..

805 **6.03 PROCESSING AND DISPOSAL OF OTHER MATERIALS**

806 The Contractor shall be responsible for, or shall arrange for, Processing, Recycling, reuse, and/or
807 Disposal of, Bulky Items, Major Appliances, and Specialty Recyclable or Reusable Materials
808 (excluding Construction and Demolition Debris) Collected pursuant to this Agreement.

809 **ARTICLE 7 OTHER SERVICES**

810 **7.01 CUSTOMER BILLING**

811 {Note to Proposers: Contractor shall provide residential and commercial billing services with
812 the exceptions described below. This customer billing section will be modified as needed to
813 reflect the following exceptions: (i) Redwood City bills all customers using the city’s utility
814 billing system; (ii) Menlo Park bills all SFD customers through the property tax system and the
815 Contractor bills MFD and Commercial Customers; and, (iii) East Palo Alto and San Mateo
816 County (North Fair Oaks) bill all customers a base fee through the property tax system, and the
817 Contractor bills Customers for the difference between the Rate for the Customer’s actual level of
818 service and the base fee charged by the City. }

819

820 A. **Billing.** Contractor shall prepare and mail bills for services provided by Contractor and
821 shall collect Customer payments.

822 1. **Frequency.** Contractor shall bill Single-Family Customers quarterly in amounts
823 equal to the Rate for service for a three (3) month period (i.e., using a quarterly
824 format), unless the Agency requests a more frequent billing interval in which case
825 the Contractor shall be entitled to a reasonable adjustment in its compensation
826 related to the additional costs for the Agency-directed change in scope. Contractor
827 shall issue Single-Family Residential bills three months in advance in a manner that
828 one-third of SFD Customers are billed each month. Contractor shall bill MFD and
829 Commercial Customers monthly in arrears in the amount equal to Customers
830 subscribed Rate for service for a one (1) month period.

831 2. **Automated Billing and Payment.** In an effort to reduce paper waste, Contractor shall
832 make available to all Customers an automated billing and payment system. This
833 system should be website based and allow customers to view and pay bills through
834 Contractor’s website. Through the Contractor’s website, Customers may request to
835 cease paper billing and receive all bills through e-mail and/or Contractor’s website.
836 Contractor will ensure that the electronic billing and payment website conforms to
837 industry-standard practices for electronic commerce security. However, Contractor
838 must ensure that these customers are compiled in a list to ensure that billing inserts
839 are mailed directly.

840 3. **Bill Format.** Contractor shall bill Customers using a post-card billing format
841 approved by the Agency, if Customer does not opt-out by requesting use of the
842 automated billing and payment system. Contractor shall promote the website-based
843 billing and payment system on all paper bills sent to Customers. Agency shall have
844 the right to revise the billing format (e.g., size, font, frequency, etc.) and to itemize

845 certain charges and to review the Billing procedures. Contractor shall be
846 compensated for any cost increases that result from the Agency directed change to
847 the billing format.

848 4. **Records.** Contractor shall maintain, for inspection by the Agency, copies of said
849 billings and receipts, in chronological order, for a period of three (3) years after the
850 date of service. Contractor shall maintain those records in electronic format and that
851 SBWMA and/or Agency staff or representatives shall be given access to such
852 records upon one (1) Business Days notice. **{Note to Proposers: The following**
853 **sentence will be included in the Agreement for Agencies that handle some or all or**
854 **part of the billings activities.} Collection Contractor shall be allowed to access**
855 **Agency billing systems on an appointment basis and such review shall not be**
856 **unreasonably withheld by Agency.}**

857 5. **Rates.** Agency shall establish, by resolution, Rates for the types of service provided
858 as described in Section 11.07. Contractor shall bill and Collect at those Rates.

859 6. **Service Stops.** Contractor shall allow Customers to suspend service and billings
860 when said service is not in use. Single-Family Residential Customers may suspend
861 service for a minimum of one (1) service day. Commercial Customers may suspend
862 service for a minimum of two (2) service days. Multi-Family Customers may not
863 suspend service without prior written approval from Agency.

864 B. **Delinquent Payment.** {Note to Proposers: Two options for handling of delinquent
865 payments are presented below. Each Agency will select the option(s) that best meets its
866 policies and procedures.} Customers will be considered delinquent sixty (60) calendar
867 days after start of the quarter in which the services are provided. **{Option 1 Language:**
868 **Contractor may discontinue service to any account, if payment is not received by**
869 **Contractor within thirty (30) calendar days after the end of the quarter in which the bill**
870 **was issued. Contractor must provide all accounts with written notice of its intent to**
871 **discontinue service at least thirty (30) calendar days prior to such discontinuance.}**
872 **{Option 2 Language: Contractor may assess a late fee, at a rate not to exceed 5% of the**
873 **unpaid balance, monthly if payment is not received by Contractor within thirty (30)**
874 **calendar days after the end of the quarter in which the bill was issued. Contractor must**
875 **provide all accounts with written notice of its intent to assess late fees at least fifteen (15)**
876 **calendar days prior to such assessment.}**

877 C. **Local Office.** Contractor shall maintain a local office in the Service Area for acceptance
878 of in-person payment of bills. At the local office, Contractor shall accept as payment
879 personal checks, money orders, cashiers checks, and credit cards. The Local Office shall
880 be open for business from 8:00 a.m. until 5:00 p.m. Monday through Friday, exclusive of
881 Holidays.

882 D. **Contractor Revenue Collection.** Contractor shall collect revenue for services described
883 herein on behalf of the Agency. Revenues collected on behalf of the Agency or SBWMA
884 shall be handled as described in Article 11 of this Agreement.

885 E. **Review of Billings.** Contractor shall review its Billings to Customers, which were issued
886 pursuant to 7.01.B. The purpose of the review is to determine that the amount which
887 Contractor is billing each Customer is correct in terms of the level of service (i.e.,
888 frequency of Collection, size of Container, location of Container) being provided to such
889 Customer by Contractor. Contractor shall review Customer accounts not less than once
890 every three years for each Commercial, MFD, and SFD Customer, unless Agency shall
891 direct Contractor to do so more frequently. Contractor shall submit to Agency a written
892 report of the status of its review annually no later than forty-five (45) days after the end
893 of each year. The intent of this Section is for Agency to receive reports on an annual
894 basis which will cover the entire list of Customers every third year. The scope of the
895 review and the reviewer's work plan shall be submitted to Agency for approval no later
896 than six (6) months before the submission of the first report.

897 F. **Agency or SBWMA Billing Review.** Contractor acknowledges that Agency or
898 SBWMA may perform, or cause to be performed, Billing reviews periodically.
899 Contractor agrees to participate and cooperate with SBWMA and Agency and its agents
900 to accomplish these reviews and conduct any data collection and report preparation that
901 may be requested. The Contractor's full cooperation with these reviews may include, but
902 is not limited to: allowing Agency or SBWMA staff or consultants to ride along with
903 drivers in Collection vehicles during daily Collection operations; providing for
904 interviews of personnel at all levels, with or without management oversight; providing
905 reporting related to franchised operations available through Contractor's automated
906 systems; and, adjusting routing, public information, outreach, or program availability
907 based upon the recommendations of the audit, if approved by the SBWMA or Agency.

908 G. **Privacy of Customer Information.** Contractor shall not distribute or sell Customer,
909 Owner, or Occupant information such as names, addresses, and telephone numbers to
910 other Persons with the exception of distribution to the Agency, SBWMA, or its agents for
911 reporting and contract compliance purposes and distribution to Contractor's Billing agent
912 (if Contractor uses a Related Party Entity or Subcontractor for Billing purposes).

913 **7.02 CUSTOMER SERVICE**

914 Contractor is responsible for ensuring that all staff and Customer Service representatives
915 maintain a professional and courteous demeanor when in contact with Agency, SBWMA and the
916 public. Contractor shall be responsible for all employee interactions with Customers, SBWMA,
917 and Agency staff. Contractor is required to ensure that its Customers are consistently treated
918 courteously and are presented with timely, responsive and thorough solutions to problems and
919 requests for information. SBWMA and Contractor shall meet monthly to discuss compliance
920 with the Customer Service standards described herein.

921 A. **Local Office**

922 Contractor shall operate a local office in the SBWMA service area at _____ {Insert
923 address of Contractor's site}. Office hours shall be, at a minimum, from 8:00 a.m. to
924 5:00 p.m., Monday through Friday, exclusive of Holidays. Contractor shall be
925 responsible for ensuring that a qualified representative is available at the local office

926 during office hours to communicate with the public and accept bill payments from
927 Customers. Contractor shall offer bi-lingual customer service by employing customer
928 service representatives with English and Spanish language capabilities. The local office
929 and customer service telephone number(s) shall either be a local or toll free call.

930 Contractor's telephone system shall adequately handle the volume of calls typically
931 experienced on the busiest days. Contractor shall have a company representative, an
932 answering service, or voice-mail system available for calls received during non-business
933 hours and holidays.

934 Contractor shall employ sufficient customer service staff and management practices to
935 ensure that the Average Speed To Answer time is equal to or less than thirty (30) seconds
936 and that the Maximum Hold Time is Three (3) Minutes.

937 Contractor will be required to track all informational requests so that appropriate public
938 outreach materials can be designed to target the commonly asked questions. Contractor
939 shall be responsible for promoting use of the Contractor's website for scheduling of On-
940 Call Collection Service events and obtaining answers related to common informational
941 requests through: (1) public education and promotion materials; and, (2) a recorded
942 message Customers will hear when holding on the telephone when calling the customer
943 service department.

944 Contractor shall maintain and publicize an e-mail address whereby Customers can
945 communicate with the Contractor's Customer service staff. Contractor shall monitor the
946 email at least once per day, and ensure that a twenty-four (24) hour response time is
947 maintained.

948 **B. Customer Service Call Center and Staffing**

949 Contractor is required to operate a Customer Service Call Center that will serve as the
950 primary telephone point of contact and information for all services. The Customer
951 Service Call Center hotline is required to be staffed live during regular Business Hours
952 (i.e., Monday through Friday 8:00 a.m. to 5:00 p.m.) at a ratio of ____ {insert number
953 proposed by Contractor} dedicated full-time customer service representatives (CSR) to
954 one District Single-Family Dwelling. In addition, the Customer Service Call Center will
955 offer multi-lingual customer service by employing bilingual customer service
956 representatives with English and Spanish language capabilities, and contracting with a
957 service to provide bilingual capacity for other languages including Cantonese, Mandarin,
958 and Vietnamese.

959 **D. Website**

960 Contractor shall maintain and publicize an up-to-date website whereby Customers can
961 conduct business with Contractor. Contractor is required to update the Website monthly,
962 and more frequently if necessary. At a minimum, the website shall:

- 963 1. Allow Customers to view and pay bills issued by Contractor, as required in Section
964 7.01;

- 965 2. Allow Customers to schedule services such as, but not limited to, On-Call Collection
966 Service events, on-call Bulky Item Collections, extra collections, service changes,
967 temporary Drop Box service, service terminations, and service stops;
- 968 3. Provide answers to frequently asked questions including, but not limited to, proper
969 Container setout instructions, list of acceptable Recyclable and Organic Materials,
970 Collection days (in response to Customer input of service address), billing issues,
971 Customer Service telephone and e-mail contact information, and the Designated
972 Transfer and Processing Site hours, directions, and acceptable materials;
- 973 4. Provide complete list of Agency-approved Rates for all Customers;
- 974 5. Allow Customers to file Complaints and receive from Contractor e-mail responses to
975 Complaints;
- 976 6. Provide a link to enable Customers to email Contractor; and,
- 977 7. Maintain and produce visitor logs and reporting including, but not limited to, website
978 and individual page visitation, number of web-based bill payments per month,
979 number of website-submitted Complaints per month, and individual and summary
980 Customer Complaint and resolution reporting.

981 **E. Customer Information System Requirements**

982 Contractor is required to use a Customer Information System with software applications
983 capable of documenting all correspondence and conversations, pertaining to the services
984 specified herein, between Contractor, Customers, Occupants, Agency and SBWMA. The
985 system shall include, at a minimum, the following data fields:

- 986 1. Date and time of customer correspondence or contact with Contractor (e.g., phone
987 call, email)
- 988 2. Date and time response was provided
- 989 3. Date and time resolution was provided
- 990 4. Customer's name and contact information (phone numbers and email address)
- 991 5. Account address
- 992 6. Service address
- 993 7. Occupant address
- 994 8. Service location information including:
 - 995 a. Number of units
 - 996 b. Number, size and type of Solid Waste, Organics, and Recycling Containers
 - 997 c. Collection service day
 - 998 d. Route number
 - 999 e. Backyard service status
 - 1000 f. Special Handling Service status
 - 1001 g. Bulky item collection history (e.g., number of annual services performed, date
1002 requested, date provided)
- 1003 9. Service issue, complaint or inquiry
- 1004 10. Time frame stipulated for Contractor to resolve issue
- 1005 11. Description of Contractor's resolution of service issue or complaint, or response to
1006 inquiry

- 1007 12. Date and time that Contractor's resolution took place
1008 13. CSR or Contractor's employee identification code of employee inputting the
1009 Complaint or inquiry
1010 14. CSR or Contractor's employee identification code of employee inputting the
1011 resolution
1012
1013

1014 The system shall be capable of:

- 1015
1016 a) Providing real-time access to Customer contact history for the service Term or
1017 any extended term of this Agreement;
1018 b) Provide Agency and SBWMA the capacity to submit work orders (e.g.,
1019 specifying the inquiry, complaint or request for service) electronically directly
1020 to Contractor using Contractor's web-based software.
1021 c) Documenting non-collection events including problem description and
1022 resolution;
1023 d) Tracking all decline to collect events necessary to fulfill the requirements in
1024 Section 7.04 (E) of the Collection Agreement; and
1025 e) Fulfilling Customer Service reporting requirements as specified in Article 9 of
1026 the Collection Agreement.

1027 F. **Monthly Meetings with Agency.** Contractor shall meet monthly with Agency to discuss
1028 compliance with the customer service standards specified in this Section 7.02,
1029 Attachment I (Performance Incentives) and Attachment J (Liquidated Damages).

1030 **7.03 PUBLIC EDUCATION AND PROMOTION**

1031 Contractor and Agency agree that all public education activities will be a collaborative
1032 effort between the SBWMA, Agency, and Contractor. Contractor shall be responsible for
1033 ensuring that its customers consistently receive a high level of customer service and
1034 responsiveness.

1035 A. **General.** Contractor acknowledges and agrees that education and public awareness are
1036 critical and essential elements of any effort to achieve diversion. Contractor shall
1037 educate Residential and Commercial Customers on the following: (i) the benefit of
1038 source reduction, reuse, Recycling, and Composting and related program opportunities;
1039 (ii) proper handling of Hazardous Waste; (iii) specific services offered by the Contractor;
1040 and (iv) Rates for Collection services. The public education program shall include
1041 distribution of public education materials at the commencement of the Agreement; when
1042 Collection services are changed during the Term of the Agreement; and when new
1043 Collection services are implemented during the Term of the Agreement. In addition, the
1044 public education program shall include on-going education activities throughout the
1045 Term of the Agreement. Educational materials that Contractor must produce and
1046 distribute shall include, but not be limited to those listed in Section 7.03 (E).

1047 **B. Annual Public Education Plan.** On or before December 31 each Rate Year, Contractor
1048 shall submit a public education plan outlining its public education activities for the
1049 coming Rate Year. The plan shall list each public education piece or activity (e.g.,
1050 newsletters, bill inserts, flyers, newspaper advertisements, website enhancements, etc.) to
1051 be prepared, the purpose of the piece, the key subject(s) to be covered, and the
1052 anticipated date of issuance. In addition, the plan shall list all events the Contractor plans
1053 to attend and the public education it intends to provide (e.g., exhibit at Earth Day event,
1054 Chamber of Commerce meetings, etc.). During the Rate Year, Contractor shall complete
1055 all elements and tasks specified in the annual public education plan in accordance with
1056 the schedule presented in the plan unless the Agency has provided written approval to
1057 waive or postpone a requirement.

1058 The Agency and/or SBWMA shall review and approve the plan or request modifications
1059 to the plan. Contractor's public education manager shall meet, at a minimum, quarterly
1060 with the SBWMA and Agency to discuss all promotion materials and agree on the style
1061 and content of the materials. The public education manager (or other representative upon
1062 Agency's written approval) shall be required to represent the Contractor at all monthly
1063 SBWMA Board meetings.

1064 **C. Content and Production Requirements.** Prior to preparing public education materials,
1065 Contractor shall discuss with the Agency and SBWMA its general approach to preparing
1066 the materials and shall determine if the Agency has any Agency-specific guidelines to be
1067 followed and if the Agency wants the Contractor to work with templates prepared by the
1068 SBWMA or others.

1069 The public education materials shall emphasize use of visual/graphic images as much as
1070 practical. Furthermore, the materials shall include a clear listing of program participation
1071 parameters and targeted materials, using visual images as much as practical.

1072 All public education materials shall be printed on paper containing the highest levels of
1073 recycled-content material reasonably practical.

1074 The Contractor shall develop a multi-lingual approach to preparing all public
1075 education
1076 materials, and all public education materials shall be provided in both English and
1077 Spanish.

1078 **D. SBWMA and Member Agencies Responsibilities**

1079 Agency and SBWMA shall take primary responsibility for implementation of the public
1080 education and outreach campaign that will be used to announce changes in collection
1081 services. SBWMA will fund the new services kick-off public education campaign.
1082 Development of the public education and promotion strategy and implementation
1083 schedule will be a collaborative process between Contractor, SBWMA, and Agency.

1084 The SBWMA and Agency's responsibilities with regard to public education and
1085 promotion activities shall include, but not be limited to, the following:

- 1086 1. Provision of public education to SFD, MFD, Commercial and Member Agency
1087 Facility generators with a broad focus on waste prevention, reuse, and recycling.
1088 2. Preparation and distribution of a quarterly residential newsletter for all SFD and MFD
1089 Occupants.
1090 3. Preparation and distribution of MFD toolkits for MFD Complex owners and
1091 managers.
1092 4. Purchase and distribution of Recycling Tote-Bags to MFD Occupants.
1093 5. Preparation and distribution of an electronic newsletter for the Commercial sector and
1094 MFD Complex managers.
1095 6. Preparation and provision of outreach materials to schools.
1096 7. Development and maintenance of SBWMA website.
1097 8. Production of decals for used oil jugs.
1098 9. Production of Household Battery and Cell Phone Recycling bags.
1099

1100 **E. Contractor Responsibilities**

1101 Contractor will be required to provide the following services:

- 1102 1. Distribute public education and promotion materials during roll-out of the new
1103 collection services program. This will entail distributing program literature and other
1104 promotional items with delivery of the Carts, Kitchen Pails and Bins to all Customers
1105 at inception of the new program.
1106 2. Actively collaborate with Agency and SBWMA on the public education strategy and
1107 development of materials to support roll-out of new collection services.
1108 3. Distribute public education and promotion materials to new customers during the
1109 Term of the Collection Agreement.
1110 4. Provide public education door hangers, posters and other promotional materials to
1111 MFD Customers at inception of new services and during the Term of the Collection
1112 Agreement.
1113 5. Deliver Recycling Tote-Bags to MFD Customers with twenty (20) or more residential
1114 units.
1115 6. Produce and deliver Non-Collection Notices (set-out correction notices) during the
1116 Term of the Collection Agreement. The format and content of the Non-Collection
1117 Notices must be approved in advance by Agency and SBWMA.
1118 7. Affix Used Oil Recycling decals onto jugs for inclusion in Used Oil Recycling kits.
1119 Assemble and deliver Used Oil Recycling Kits upon request from SFD Customers.
1120 Kits must be provided to Customer within five (5) Business Days of receipt of
1121 request.
1122 8. Deliver Household Battery and Cell Phone Recycling Bags upon request from
1123 customers. Bags must be provided to Customer within five (5) Business Days of
1124 receipt of request.
1125 9. Staff a booth at local public events and distribute promotional and educational
1126 materials.
1127 10. Annually insert with its bills, up to twelve (12), solid waste bill inserts produced by
1128 SBWMA or Member Agencies. A total of nine (9) bill inserts are specified below.
1129 11. Contractor shall develop, produce and distribute the following public education and
1130 promotion materials annually for the Term of the Collection Agreement:

*Franchise Agreement for Solid Waste, Recyclable
Materials, and Organic Materials Collection Services
Collection Agreement 080207 clean*

- 1131
1132 1. Annual clean-up services collection notice (one SFD solid waste bill insert).
1133 2. Annual holiday tree recycling notice (separate for SFD and MFD - two solid
1134 waste bill inserts).
1135 3. Annual reduce holiday packaging notice (one SFD and MFD solid waste bill
1136 insert).
1137 4. Twice annual compost giveaway notice (two SFD and MFD solid waste bill
1138 inserts).
1139 5. Twice annual commercial recycling notice (two commercial solid waste bill
1140 inserts).
1141 6. Annual commercial recycling awards notice (one commercial solid waste bill
1142 insert).
1143 7. Non-Collection Notice (set-out correction notice) for each service sector.

1144 **F. Staffing**

1145 Contractor will be required to have on staff a full-time management level employee that
1146 will service as the Public Education Manager. Contractor must notify Agency and
1147 SBWMA within two (2) Business Days if this individual resigns or is terminated from
1148 employment. Contractor shall provide to Agency and SBWMA a current job description
1149 and resume of the Public Education Manager.

1150 **G. Meeting Requirements**

1151 The Public Education Manager is required to meet quarterly, and more frequently if
1152 necessary, with Agency and/or SBWMA staff to review Public Education and Promotion
1153 activities. In addition, the Public Education Manager will be required to represent
1154 Contractor at all monthly SBWMA Board of Director meetings.

1155 **H. Agency Rights.** Contractor acknowledges that the public education and promotion
1156 activities listed are critical to the success of Agency's diversion performance relative to
1157 the Act. As such, Contractor acknowledges Agency's rights to the following:

- 1158 1. Contractor shall make available to Agency and SBWMA all public educational
1159 materials used by Contractor, which Agency and SBWMA shall approve prior to
1160 their use;
- 1161 2. Agency and SBWMA shall retain the right to modify, expand, or reduce the
1162 minimum public education requirements;
- 1163 3. Agency may require Contractor to work with a public education consultant selected
1164 by Agency or the SBWMA; and,
- 1165 4. Agency may perform, or request that the SBWMA performs on their behalf, the
1166 public education efforts assigned to the Contractor.
- 1167 5. Agency or SBWMA may provide additional, supplemental public education
1168 materials as it deems appropriate.

1169 **I. Reporting Requirements**

*Franchise Agreement for Solid Waste, Recyclable
Materials, and Organic Materials Collection Services
Collection Agreement 080207 clean*

1170 Contractor is required to prepare quarterly and annual public education activity status
1171 reports. The annual reports will in part summarize the prior twelve (12) months and also
1172 contain adjustments to current and ongoing event calendars.

1173 J. **Service Notice.** Contractor shall periodically prepare and distribute, a notice to each
1174 Customer entitled or mandated to receive service under this Agreement listing
1175 Contractor's Rates for standard Collection services, Rates for other services, annual
1176 Holiday schedule, and a general summary of services required under this Agreement to
1177 be provided Customers and optional service which may be furnished by Contractor.
1178 Such notice shall be approved by the Agency prior to distribution.

1179

1180 **7.04 COMMERCIAL RECYCLING PROMOTION PROGRAM**

1181 A. **Commercial Recycling Promotion Program Staff.** Contractor shall maintain a
1182 Commercial Recycling Promotion Program staff that will be primarily responsible for
1183 supporting Commercial accounts and Member Agency Facilities recycling related
1184 collection services. **{Note to Proposer: The following staffing arrangements will be**
1185 **dependent on the size of Service Area served by Contractor.}** The Commercial
1186 Recycling Promotion staff shall consist of a minimum of: two (2) full time “sales”
1187 representatives and one (1) supervisor {per service District if contractor services either
1188 the North or South districts}; or, five (5) full time “sales” representatives and one (1)
1189 supervisor {if both the North and South Districts are served}.

1190 B. **Signs and Placards.** Contractor shall be responsible for preparing, distributing, and
1191 posting signs at Commercial Premises that promote Recyclable Materials and Organic
1192 Materials Collection services, describe the program requirements, and identify allowable
1193 and prohibited types of materials for Collection. At a minimum, the signs or placards
1194 shall be durable and weather resistant and affixed in the Container areas. Upon request
1195 from Customer, Contractor shall provide signs and Container labeling in a second
1196 language such as, but not limited to, Spanish. Within ten (10) Business Days of a
1197 Customer’s request, Contractor shall provide extra signs for use in areas such as
1198 employee training areas, break rooms, kitchens, and janitorial areas at Commercial
1199 Premises.

1200 C. **Community Events.** At the direction of Agency or SBMWA, Contractor shall
1201 participate in and promote diversion techniques at Community Events and local
1202 activities. The Events that the Contractor will be required to assist with are not limited to
1203 the list of Agency sponsored and other events contained in Attachment C. Participation
1204 includes providing educational and public outreach information and promotional
1205 giveaways in an effort to promote the Agency’s waste reduction and Recycling program
1206 goals. Additional details on Contractor’s responsibilities regarding Events is contained in
1207 Section 5.08.

1208 D. **Notification to Commercial Customers.** Immediately upon a Customer’s request for
1209 new service, Contractor shall notify by phone or email the new Customer of the

1210 Recyclable Materials and Organic Materials Collection services offered by Contractor.
1211 Such notification shall be provided in English and Spanish and shall be provided prior to
1212 finalizing a Customer's request for a subscription to new service(s).

1213 **E. Targeted Commercial Recycling Promotion.** Contractor shall provide full on-site
1214 waste assessment and technical assistance to, at a minimum, one-hundred (100) of the
1215 largest Commercial Generators (based on weekly Solid Waste generation) annually to
1216 assist in maximizing diversion. For all other Commercial Generators, Contractor shall
1217 provide technical assistance as needed or requested and visual on-site Collection
1218 Container assessments at least once every three (3) years. Contractor shall document the
1219 site assessments, the date of the assessment, the Person contacted, the Solid Waste,
1220 Recyclable Materials, and Organic Materials service levels at the time of the assessment,
1221 and recommended changes to service level(s). Contractor shall submit results of their
1222 site assessments monthly, or upon request provide copies of assessment data and
1223 recommendations for individual site assessments.

1224 **F. Enclosure Specifications.** Contractor shall work with the Agency to develop standard
1225 specifications for Collection Container enclosures at MFD Complexes and Commercial
1226 Premises to ensure that Container enclosures have adequate space and suitable
1227 configuration to allow the Contractor to safely and efficiently service the Containers.
1228 The enclosure specifications shall require provision of adequate space for Solid Waste,
1229 Recyclable Materials, and Organic Materials Collection Containers. Contractor shall
1230 provide the enclosure specifications to the Agency on or before the Commencement Date
1231 and shall update them as frequently as needed or as requested by Agency.

1232 **G. Plan Review.** Contractor shall review plans for land use or property developments, upon
1233 request of the Agency, to assess the adequacy of Container enclosure space allowances
1234 for Solid Waste, Recyclable Materials, and Organic Materials Collection Containers and
1235 the accessibility of Containers by Collection vehicles. The Contractor's review shall be
1236 completed by the Contractor's operations manager or route supervisor within ten (10)
1237 Business Days of request by Agency and receipt of the project design drawings. If site
1238 conditions warrant, the Contractor shall conduct a site visit of the proposed property to
1239 complete its evaluation. The Contractor's review shall be summarized in a letter report
1240 that states acceptability of the proposed enclosure arrangements or notes specific changes
1241 that are required to comply with the enclosure specification. The letter report shall be
1242 signed by the Person that conducted the review on behalf of the Contractor. This review
1243 shall include, but not be limited to:

- 1244 1. Adequacy of the Container enclosure space to store Containers for the anticipated
1245 volume of Solid Waste, Recyclable Materials, and Organic Materials generated by a
1246 development of the size and purpose contemplated;
- 1247 2. Adequacy of Container enclosure space to store Containers for Solid Waste,
1248 Recyclable Materials, and Organic Materials in a fashion that allows for the greatest
1249 possible diversion of materials; and,
- 1250 3. Adequacy and accessibility of the Container enclosure space for Contractor to safely
1251 and efficiently service all Containers in the contemplated service locations taking

1252 into account the dimensions of the enclosure space, the access road dimensions,
1253 parking arrangements, pedestrian traffic, change in elevation, other site
1254 considerations, and Collection vehicle capabilities.

1255 H. **Reporting.** Contractor is required to prepare and submit reports related to the
1256 Commercial Recycling Promotion Program in accordance with the list provided in
1257 Article 9.

1258 7.05 MULTI-FAMILY DWELLING PROMOTION

1259 A. **Multi-Family Dwelling Promotion.** Contractor shall provide staff to work directly with
1260 Owners or property managers of MFD Complexes to implement the Single-Stream
1261 Recyclable Materials Collection services and to assess Customer service needs at least
1262 annually for each Multi-Family Residential Complex. The Contractor's implementation
1263 activities shall include, but not be limited to, the following tasks for each Multi-Family
1264 Residential Complexes that subscribes to Single-Stream Recyclable Materials Collection
1265 services:

1266 1. Site Assessments. Contractor shall meet in person with Owner or property manager
1267 to explain the Single-Stream Recyclable Materials Collection program and conduct
1268 an on-site assessment of Multi-Family Residential Complexes containing 20 or more
1269 residential units to determine the appropriate number and type of Solid Waste and
1270 Recyclable Materials Containers and the frequency of Collection. Contractor shall
1271 provide Containers for Single-Stream Recyclable Materials or Source Separated
1272 Recyclable Materials such as newspaper, cardboard, mixed paper, glass, aluminum,
1273 etc. depending on the needs of the MFD Complex. If practical, Contractor shall
1274 locate the Solid Waste and Recyclable Materials Containers in the same area so
1275 tenants carry materials to one location. Contractor shall also offer Recyclable
1276 Materials Carts for use in the mail area of the Premises. The site assessment shall be
1277 conducted by Contractor when Recyclable Materials Collection services are initially
1278 provided at a MFD Complex, and once every three (3) years thereafter.

1279 2. Service Level Adjustments. Within five (5) Business Days of completing the site
1280 assessment or receiving a request from a Customer, Contractor shall adjust the
1281 Customer's service level by providing any Solid Waste or Recyclable Materials
1282 Containers needed for change in service, removing unneeded Containers, and
1283 revising the billing system to reflect the monthly Rate for the new service level. At
1284 the time new Containers are delivered or existing Containers are removed, the
1285 Contractor shall confirm that all Containers are properly labeled and shall provide
1286 public education signage for the Container areas and extra signs for public areas,
1287 laundry rooms, etc.

1288 3. Preparation and Distribution of Public Education Materials. Contractor shall
1289 provide Owner or property manager with education materials developed by Agency
1290 or SBWMA which describe the requirements of the Recyclable Materials Collection
1291 program, including flyers and door hangers for distribution to tenants, signage for
1292 common areas such as mail rooms and laundry rooms, and move-in kits for new
1293 tenants.

1294 **B. Notification to MFD Customers.** Upon a Customer's request for new service,
1295 Contractor shall notify the new Customer by mail of the Recyclable Materials and
1296 Organic Materials Collection services offered by Contractor. Such notification shall be
1297 provided in English and Spanish.

1298 **C. Signs and Placards.** Contractor shall be responsible for preparing, distributing, and
1299 posting signs and placards at MFD Premises that promote Recyclable Materials and
1300 Organic Materials Collection services, describe the program requirements, and identify
1301 allowable and prohibited types of materials for Collection. At a minimum, these signs
1302 shall be durable, weather resistant and posted in the Container areas. Upon request of the
1303 Customer, Contractor shall provide signage and Container labeling in a second language
1304 such as, but not limited to, Spanish. Within ten (10) Business Days of a Customer's
1305 request, Contractor shall provide extra signage for use in areas such as laundry and mail
1306 rooms at MFD Premises.

1307 **7.06 WASTE GENERATION/CHARACTERIZATION STUDIES**

1308 Contractor acknowledges that Agency may perform Solid Waste generation and characterization
1309 studies periodically to determine the composition and contamination levels of Collected
1310 Materials. Contractor agrees to participate and cooperate with SBWMA and Agency and its
1311 agents and to accomplish studies and data collection and prepare reports, as needed, to determine
1312 weights and volumes of Solid Waste, Recyclable Materials and Organic Materials and
1313 characterize materials generated, Disposed, transformed, diverted or otherwise
1314 handled/processed to satisfy requirements of the Act. Contractor shall also facilitate visual
1315 audits of MFD, Commercial and Member Agency Cart and Bin service accounts. The visual
1316 audits will entail tipping the contents of Customers Container on the tipping floor at the
1317 Designated Transfer and Processing Site and visually observing and documenting the contents
1318 (without pursuing a detailed weight based characterization study). The materials will then be
1319 Processed at the Designated Transfer and Processing Site. Contractor will be required to
1320 facilitate said visual audits at the request of Agency; however, the annual total quantity of
1321 requests for visual audits for each service sector (i.e., MFD, Commercial, and Member Agency
1322 facility).shall be limited to 10% of the total number of accounts for each service sector.

1323 **7.07 REPORT OF ACCUMULATED SOLID WASTE; UNAUTHORIZED DUMPING**

1324 Contractor shall direct its drivers to note: (1) the addresses of any service recipients at which
1325 they observe that Solid Waste is accumulating and is not being delivered for Collection; and (2)
1326 the address, or other location description, at which Solid Waste has been dumped in an
1327 apparently unauthorized manner. Contractor shall deliver the address or description to Agency
1328 within two (2) Business Days of such observation.

1329 **7.08 PROGRAM EVALUATION**

1330 The Agency reserves the right to require the Contractor to periodically conduct audits of the
1331 Residential and Commercial Solid Waste, Recyclable Materials, and Organic Materials
1332 Collection programs to assess one or more of the following performance indicators: average

1333 volume of Recyclable Materials per setout per Customer, average volume of Organic Materials
1334 per setout per Customer, participation level (i.e., number of Customers setting out Containers per
1335 week), Contamination levels, etc. Contractor shall perform up to five (5) days of route auditing
1336 at no additional cost to the Agency or Customers once per year. Prior to the program evaluation
1337 audit, Agency and Contractor shall meet and discuss the purpose of the audit and agree on the
1338 method, scope, and data to be provided by the Contractor. If Agency requires more than five (5)
1339 days of auditing for the purposes of program evaluation, the activity shall be considered an
1340 Agency-directed change in scope and handled in accordance with provisions in Section 15.12.

1341 If the Contractor does not Collect MFD Solid Waste, Recyclable Materials, and Organic
1342 Materials using dedicated Collection vehicles, and therefore, cannot regularly and accurately
1343 report the Tonnage of Solid Waste, Recyclable Materials, and Organic Materials Collected from
1344 MFD Premises, the Agency reserves the right to require the Contractor to conduct a semi-annual
1345 or annual Tonnage assessment that involves separately Collecting, weighing, and reporting MFD
1346 Solid Waste, Recyclable Materials, and Organic Materials to quantify Tonnage Collected during
1347 a given week. This assessment shall be performed by Contractor at no additional cost to the
1348 Agency or Customers.

1349 If the Agency wants to collect program data, perform field work, conduct route audits to
1350 investigate Customer participation levels and setout volumes, and/or evaluate and monitor
1351 program results related to Solid Waste, Recyclable Materials, and Organic Materials Collected in
1352 the Agency by the Contractor, the Contractor shall cooperate with the Agency or its agent(s)
1353 which may include the SBWMA, its officers, employees, or consultants.

1354 **7.09 PROVISION OF EMERGENCY SERVICES**

1355 Contractor shall provide emergency services at the Agency's request in the event of major
1356 accidents, disruptions, or natural calamities. Emergency services may include, but are not
1357 limited to: assistance handling, salvaging, processing, composting, or Recycling materials; or,
1358 Disposing of Solid Waste following a major accident, disruption, or natural calamity. Contractor
1359 shall be capable of providing emergency services within twenty-four (24) hours of notification
1360 by the Agency or as soon thereafter as is reasonably practical in light of the circumstances.
1361 Emergency services, which exceed the Contractor's obligations, shall be compensated in
1362 accordance with Article 11. If Contractor cannot provide the requested emergency services, the
1363 Agency shall have the right to take possession of the Contractor's equipment for the purposes of
1364 providing emergency services in accordance with Article 12.

1365

1366 **ARTICLE 8** 1367 **REQUIREMENTS FOR OPERATIONS, EQUIPMENT, AND PERSONNEL**

1368 **8.01 COLLECTION HOURS AND SCHEDULES**

1369 A. Hours of Collection

1370 1. **Residential.** Residential Solid Waste, Recyclable Materials, and Organic Materials
1371 (including all such services provided to SFD and MFD Premises) shall be Collected
1372 on weekdays (i.e., Monday through Friday) between 6:00 a.m. and 6:00 p.m.
1373 exclusive of Holidays.

1374 2. **Commercial.** To preserve peace and quiet, Collection from Commercial Premises
1375 that are 200 feet or less from Residential Premises shall only occur between the
1376 hours of 6:00 a.m. and 6:00 p.m., Monday through Saturday and all such operations
1377 shall be in accordance with permissions provided to Contractor by Agency. The
1378 Agency may restrict or require modifications to hours for Collection from
1379 Commercial Premises to resolve noise Complaints, and, in such case, the Agency
1380 Manager may restrict the allowable operating hours.

1381 In the event of an unforeseen circumstance, the Contractor may Collect materials
1382 from Residential Premises or Commercial Premises that are 200 feet or less from
1383 Residential Premises between the hours of 3:00 a.m. and 6:00 p.m., Monday through
1384 Friday, upon prior written approval from the Agency Manager.

1385

1386 B. **Route Schedules.** Routes over which Contractor's vehicles travel to effect the
1387 Collection and transport of Solid Waste, Recyclable Materials, and Organic Materials
1388 shall be selected to minimize damage to Agency and private streets, and minimize
1389 inconvenience and disturbance to the public. The route schedules and routing maps shall
1390 be subject to the approval of Agency prior to Commencement of services. Contractor
1391 shall use due care to obey all traffic laws and prevent materials being transported from
1392 being spilled or scattered during transport.

1393 Contractor shall be prepared to review its operations plan outlining the Collection routes,
1394 intervals of Collection and Collection times for all materials Collected under this
1395 Agreement with the Agency or its representatives at least annually. More frequent
1396 reviews may be required if operations are not satisfactory based on documented
1397 observations or reports or Complaints. If the plan is determined to inadequately address
1398 the unsatisfactory performance as document by observations and complaints, the Agency
1399 may direct Contractor to revise the plan incorporating any changes into a revised plan
1400 and review said revised plan with the Agency within thirty (30) calendar days of the
1401 initial meeting with the Agency.

1402 C. **Contingency Plan.** Contractor shall submit to Agency ninety (90) calendar days prior to
1403 commencement of Collection services, a written contingency plan demonstrating
1404 Contractor's arrangements to provide vehicles and personnel and to maintain
1405 uninterrupted service during breakdowns, and in case of natural disaster or other
1406 emergency, including the events described in Section 14.05.

1407 **8.02 COLLECTION STANDARDS**

1408 A. **Implementation of Services.** The Contractor's implementation of the services required
1409 by the Commencement Date under this Agreement shall occur in a smooth and seamless

1410 manner so that Customers and/or Generators do not experience disruption in Collection
1411 services when services are initiated on the Commencement Date. Contractor shall be
1412 responsible for managing implementation of new Collection services and other related
1413 services and shall do so in accordance with the Implementation Plan prepared by the
1414 Contractor and incorporated into this Agreement as Attachment L.

1415 **B. Servicing Containers and Missed Pick-Ups**

1416 1. General. Contractor shall pick-up and return each Container to the location where
1417 the Occupant properly placed the Container for Collection. Contractor shall place
1418 the Containers upright with lids properly closed and secured.

1419 Contractor shall use due care when handling Containers. Contractor shall not throw,
1420 roughly handle, damage, or break Containers.

1421 Upon Customers request, Contractor shall provide special services including:
1422 unlocking and locking Containers; accessing Container locked enclosures (e.g., with
1423 a key or combination lock); and pulling or pushing Containers to the Collection
1424 vehicle. Contractor shall charge Customers for extra services in accordance with
1425 Agency-approved Rates. {Note to Proposers: The special services shall be provided
1426 to Customers in some Member Agencies at no charge. }

1427 2. **Missed Pick-Ups**. When notified of a missed pick-up, Contractor shall Collect the
1428 Solid Waste, Recyclable Materials, or Organic Materials on the day the notice is
1429 received, if possible, and in all cases shall Collect the missed pick-up by 6:00 p.m. of
1430 the next scheduled Collection day following receipt of the missed pick-up
1431 notification, with the exception that if the notice is received on a Saturday or
1432 Holiday, the missed Collection shall be required by 6:00 p.m. on the next regularly
1433 scheduled Collection day.

1434 **C. New Customers and Change in Service Levels**. Contractor shall deliver Containers
1435 and initiate Collection services for a new Customer within five (5) Business Days of the
1436 Customer's request for service. If an existing Customer requests a change in the number
1437 or size of their Solid Waste, Recyclable Materials, or Organic Materials Containers
1438 and/or frequency of Collection, the Contractor shall deliver additional Containers and/or
1439 remove Containers and shall initiate changes in the Collection services within five (5)
1440 Business Days of the Customer's request for a change in service.

1441 **D. Separate Collection of Materials and Allocation of Agency Materials**. Contractor
1442 shall separately Collect and segregate Solid Waste, Recyclable Materials, and Organic
1443 Materials from each other and shall not Comingle these materials at any time during the
1444 transportation or delivery of those materials to the Designated Transfer and Processing
1445 Site. Solid Waste, Recyclable Materials, and Organic Materials Collected in the Agency,
1446 which are combined with materials Collected from other jurisdictions, shall be allocated
1447 by Contractor to the Agency's Collection program based on volume or Tonnage using a
1448 method approved by the Agency and SBWMA.

1449 E. **Set-Out Instructions to Customer.** Contractor shall instruct Customers as to any
1450 preparation of Solid Waste, Recyclable Materials, or Organic Materials and the proper
1451 placement of Containers. If Customers are not adhering to Contractor's instructions,
1452 Contractor shall notify such Customers in writing. In cases of extreme or repeated failure
1453 to comply with the instructions, Contractor may decline to pick-up the Recyclable
1454 Materials or Organic Materials provided that Contractor leaves an adequate number of
1455 Non-Collection Notices on the Container, as determined by the Agency, indicating the
1456 reason for refusing to Collect the material. Such Notices shall also identify the steps
1457 Generator must take to recommence Collection service.

1458 F. **Non-Collection Notices.** Contractor may choose not to Collect materials for the
1459 following reasons: (1) Recyclable Materials or Organic Materials do not comply with the
1460 allowable contamination thresholds; (2) materials contain Hazardous Waste; or (3) the
1461 loaded weight of a Container exceeds the maximum load limit specified by the Cart
1462 manufacturer. In such case, Contractor shall issue Non-Collection Notices stating the
1463 reason(s) the materials were not Collected. The Non-Collection Notice shall be affixed
1464 prominently onto the Cart to ensure that it is not inadvertently removed from Cart due to
1465 weather conditions. The Non-Collection Notices must be protected from rain, if
1466 precipitation is present or forecasted, by placing the Notice in a clear plastic bag prior to
1467 affixing to Cart.

1468 Contractor shall document Non-Collection Notices recording the date and time of
1469 issuance, address of service recipient, reason for issuance, and name of employee who
1470 issued the notice. The warning notice shall be at least two inches by six inches (2" x 6")
1471 in size. The Non-Collection Notices must identify the steps the Generator must take to
1472 recommence Collection service.

1473 Contractor shall report monthly to Agency any Non-Collection Notices issued.
1474 Contractor shall take direction from the Agency with regard to termination or
1475 reinstatement of service to a service recipient due to numerous Non-Collection Notices
1476 issued to the same Customer.

1477 G. **Collection of Excess Materials (Overages).** Contractor shall direct its employees to
1478 Collect Solid Waste beyond each Customer's subscription level of service on a total of
1479 two occasions each year at no additional cost to Customer. Contractor must provide a
1480 Notice to Customer documenting the overage in order to count the overage Collection
1481 towards the allocated two per year for each Customer. Customers that repeatedly place an
1482 overage for Collection, may be assessed an overage fee by Contractor if Contractor
1483 documents said overage with a photograph and sends the Customer a letter within two (2)
1484 Business Days notifying them of the overage collected. Customers will also be provided
1485 the opportunity to subscribe to overage Collection service, in advance, or purchase
1486 overage bag(s) from the Contractor. The overage bag(s) shall have markings identifying
1487 it as the Contractors overage bag. If the Agency and/or Contractor receive numerous
1488 Complaints (as determined by the Agency) from Customers regarding Customer
1489 dissatisfaction with the requirement to purchase overage bags, the Agency reserves the
1490 right to require the Contractor to modify its overage program to better serve its
1491 Customers and/or require the Customer to subscribe to additional Collection service.

1492 Contractor and Agency shall develop a procedure for identifying Customers that
1493 repeatedly set out overages and corrective actions to be taken to control the overages or
1494 change the Customer's service level.

1495 H. **Care of Private Property.** Contractor shall not damage private property. Contractor
1496 shall ensure that its employees: (i) close all gates opened in making Collections, unless
1497 otherwise directed by the Customer, (ii) do not cross landscaped areas, and (iii) do not
1498 climb or jump over hedges and fences.

1499 Agency shall refer Complaints about damage to private property to Contractor.
1500 Contractor shall repair, to its previous condition, all damage to private or public property
1501 caused by its employees.

1502 Contractor shall endeavor to resolve all claims regarding damage to private property as
1503 soon as reasonably practicable following receipt thereof, made by Owners or Occupants
1504 of property served by Contractor, for damages to property including, but not limited to,
1505 Containers. In the event such damage shall have been caused by the negligence or
1506 intentional acts of Contractor, its officers, agents, or employees, Contractor shall
1507 promptly repair or replace such damaged property. The provisions of this Section 8.02.H
1508 shall not be deemed a limitation upon any other provisions of this Agreement, or any
1509 rights or remedies which may accrue to Agency by reason of Contractor's acts or
1510 omissions to act hereunder. Contractor is required to repair damage and/or resolve
1511 claims regarding damage to property within thirty (30) calendar days of receipt of the
1512 Complaint.

1513 I. **Litter Abatement**

1514 1. Minimization of Spills. If any Solid Waste, Recyclable Materials, or Organic
1515 Materials are spilled or scattered during Collection or transportation operations, the
1516 Contractor shall promptly clean up all spilled and scattered materials. Contractor
1517 shall use due care to prevent vehicle oil, vehicle fuel, or other liquids from being
1518 spilled during Collection or transportation operations including maintenance of the
1519 Collection vehicles to minimize and correct any leaks. Contractor shall ensure that
1520 all liquid spills or leaked liquids fluids are cleaned up promptly on the same day that
1521 they occur.

1522 Contractor shall not transfer loads from one vehicle to another on any public street,
1523 unless it is necessary to do so because of mechanical failure, emergency (e.g.,
1524 combustion of material in the vehicle), accidental damage to a vehicle, or unless
1525 approved by the Agency.

1526 2. Clean-Up. During Collection operations, the Contractor shall clean-up litter in the
1527 immediate vicinity of any Container storage area (including the areas where
1528 Containers are delivered for Collection) if Contractor's actions are the cause of the
1529 litter. Each Collection vehicle shall be equipped with protective gloves, a broom,
1530 and shovel at all times for cleaning up litter. Absorbent material shall be carried on
1531 each Collection vehicle at all times and used by Contractor for cleaning up liquid
1532 spills. The Contractor shall discuss instances of repeated spillage not caused by it

1533 with the Customer of the Premise where spillage occurs, and Contractor shall report
1534 such instances to Agency. If the Contractor has attempted to have a Customer stop
1535 creating spillage but is unsuccessful, the Agency will attempt to rectify such
1536 situation with the Customer.

1537 3. **Covering of Loads.** Contractor shall cover all open Drop Boxes, with an Agency-
1538 approved cover, at the Collection location before transporting materials to the
1539 Designated Transfer and Processing Site.

1540 J. **Noise.** All Collection operations shall be conducted as quietly as possible and shall
1541 conform to applicable Federal, State, County, and Agency noise level regulations.
1542 Contractor shall promptly resolve any Complaints of noise to the satisfaction of the
1543 Agency.

1544 K. **Route Books and Route Maps.** For each Collection route, Contractor shall maintain a
1545 route book and route map that documents each Customer on the route, their service
1546 address, service level, and the order in which Customers shall be serviced (e.g., the order
1547 in which routes shall be driven). Contractor shall distribute new route books and route
1548 maps to its Collection vehicle drivers as frequently as necessary; and each driver shall
1549 note differences in the service levels shown in the route book, adding and subtracting
1550 Customers and service levels, as necessary. Route supervisors shall periodically check
1551 the routes to ensure that drivers are providing service in accordance with their route
1552 books.

1553 L. **Change in Collection Schedule.** Contractor shall notify Agency a minimum of sixty
1554 (60) Business Days prior to a change in the Residential Collection schedule and shall
1555 request approval of Contractor's notice to Residential Customers thirty (30) Business
1556 Days prior to a change in service day, unless this requirement is waived in writing by
1557 Agency. Contractor shall notice Owners and Occupants of Residential Premises not later
1558 than ten (10) Business Days prior to any change in Residential Collection operations
1559 which results in a change in the day on which Solid Waste, Recyclable Materials, and
1560 Organic Materials Collection occurs. Contractor shall not permit any Customer to go
1561 more than five (5) Business Days without service in connection with a Collection
1562 schedule change.

1563 **8.03 CONTRACTOR FACILITIES**

1564 Contractor shall provide all Facilities needed for vehicle parking and maintenance, container
1565 storage and maintenance, employee parking, administration, billing, customer service, and other
1566 activities required to fulfill its obligations hereunder. Contractor shall own or lease the
1567 Facilities; secure all permits needed to conduct their operations; design, finance, and complete
1568 any site improvements; maintain the Facilities; and make any other arrangements necessary to
1569 fulfill its obligations required by this Agreement. {Note to proposers: This section will be
1570 revised to reflect contractor's plans for providing the necessary facilities indicating if the
1571 contractor will use: (1) the Shoreway Facility corporation yard and office space through a lease
1572 arrangement with the SBWMA; (2) an existing facility owned by the Contractor; or (3) develop

1573 a new facility in or near the Service Area. If a new facility is to be developed, this section will
1574 describe the timeline for development and contingency plans.}

1575 **8.04 VEHICLES**

1576 A. **General.** Contractor shall provide a fleet of Collection vehicles sufficient in number and
1577 capacity to efficiently perform the work required by the Agreement in strict accordance
1578 with its terms. Contractor shall have available sufficient back-up vehicles for each type
1579 of Collection vehicle used (e.g., side loader, front loader, and roll-off vehicles) to respond
1580 to mechanical breakdowns, Complaints, and emergencies. As of the Commencement
1581 Date, all Residential and Commercial Collection vehicles shall be new; and other
1582 vehicles such as roll-off trucks, support vehicles, and spare vehicles may be new or used.
1583 At no time during the Term of this Agreement shall any vehicle used to perform the
1584 services required under this Agreement exceed ten (10) years of age from the first date
1585 the vehicle was registered.

1586 B. **Specifications**

- 1587 1. All vehicles used by Contractor in providing Solid Waste, Recyclable Material, and
1588 Organic Material Collection services shall be registered with the California
1589 Department of Motor Vehicles.
- 1590 2. All Collection vehicles shall have leak proof bodies designed to prevent leakage,
1591 spillage and/or overflow and shall be designed so that Collected materials are not
1592 visible.
- 1593 3. All vehicles shall comply with California Environmental Protection Agency (EPA)
1594 noise emission and the California Air Resources Board air quality regulations and
1595 other applicable pollution control regulations.
- 1596 4. All Collection vehicles shall have cameras to monitor driving and loading activities
1597 including, at a minimum: (i) back-up cameras mounted at the rear and side of the
1598 vehicle; and, (ii) a hopper camera clearly displaying the contents of the hopper prior
1599 to compaction.
- 1600 5. Contractor shall be required to operate an adequate number of Collection vehicles
1601 that shall be capable of servicing hard-to-service areas and accessing long driveways
1602 in the Service Area.
- 1603 6. All Collection vehicles shall be capable of unloading materials in the Designated
1604 Transfer and Processing Site buildings given consideration for clearance heights
1605 particularly in the Processing facility.
- 1606 7. All Collection vehicles shall be equipped with GPS systems.

1607 {Note to Proposers: If the Agency chooses to require alternative fuel vehicles based on
1608 proposed costs, this section shall be amended to describe the obligations regarding the
1609 number and type of alternative fuel vehicles to be provided.}

1610 C. **Vehicle Identification.** Contractor's name, local telephone number, and a unique vehicle
1611 identification number designated by Contractor for each vehicle shall be prominently
1612 displayed on all four sides of the vehicles, in letters and numbers no less than two and
1613 one-half (2.5) inches high. Contractor shall not place SBWMA or Agency's name and/or
1614 any SBWMA or Agency logo on Contractor vehicles, unless requested in writing by
1615 Agency or SBWMA. Vehicles shall be clearly labeled to indicate the materials Collected
1616 by that vehicle, specifically; "Solid Waste", "Recyclables", or "Organic Materials," as
1617 directed by Agency.

1618 D. **Inventory.** Contractor shall furnish the Agency or SBWMA a written inventory of all
1619 vehicles used in providing service, and shall update the inventory annually. The
1620 inventory shall list all vehicles by manufacturer, identification number, date of
1621 acquisition, type, capacity, decibel rating, average weight of load, and average loaded
1622 axle weights.

1623 E. **Cleaning and Maintenance**

1624 1. General. Contractor shall maintain all of its properties, vehicles, facilities, and
1625 equipment used in providing service under this Agreement in a good, safe, neat,
1626 clean, and operable condition at all times.

1627 2. Cleaning. Vehicles used in the Collection of Solid Waste, Recyclable Materials, and
1628 Organic Materials shall be painted, thoroughly washed, and thoroughly steam
1629 cleaned weekly so as to present a clean appearance. Agency may inspect vehicles at
1630 any time to determine compliance with this Agreement. Contractor shall also make
1631 vehicles available to the San Mateo County Health Department for inspection, at any
1632 frequency it requests.

1633 3. Repainting or Refurbishing. Contractor shall repaint or refurbish to the satisfaction
1634 of the Agency all vehicles used in the Collection of Solid Waste, Recyclable
1635 Materials and Organic Materials within thirty (30) Business Days notice from
1636 Agency, if Agency determines that their appearance warrants painting. The cost for
1637 Agency directed repainting shall be incurred by Contractor.

1638 4. Maintenance. Contractor shall inspect each vehicle daily to ensure that all
1639 equipment is operating properly. Vehicles which are not operating properly shall be
1640 removed from service until repaired and operating properly. Contractor shall
1641 perform all scheduled maintenance functions in accordance with the manufacturer's
1642 specifications and schedule or in accordance with California Highway Patrol
1643 standards, whichever are more stringent. Contractor shall keep accurate records of
1644 all vehicle maintenance, recorded according to date and mileage and shall make such
1645 records available to Agency upon request. Hydraulic oil, engine oil, and other spills
1646 from Collection vehicles in the Service Area are a concern to the Agency. Contractor
1647 shall include as part of maintenance activities a process for tracking the number and
1648 nature of automotive spills (type of fluid, amount lost, failure point) and diagnosing
1649 the cause of those spills. Based on the results of the process, Contractor shall
1650 implement appropriate corrective actions to address issues that are contributing
1651 factors to vehicle spills (e.g., revise specifications for specific part failures, revise

1652 preventative maintenance schedule to address timing of failures), so that each
1653 occurrence is controlled and minimized.

1654 5. **Repair.** Contractor shall repair, or arrange for the repair of, all of its vehicles and
1655 equipment for which repairs are needed because of accident, breakdown, hydraulic
1656 oil or engine oil leaks, or any other cause so as to maintain all equipment in a safe
1657 and operable condition. If an item of repair is covered by a warranty, Contractor
1658 shall obtain warranty performance. Contractor shall maintain accurate records of
1659 repair, which shall include the date and mileage, nature of repair and the verification
1660 by signature of a maintenance supervisor that the repair has been properly
1661 performed.

1662 6. **Storage.** Contractor shall arrange to store all vehicles and other equipment in safe
1663 and secure location(s) in accordance with all applicable zoning regulations. {Note to
1664 Proposers: This section may be amended if the Contractor will be storing vehicles at
1665 the Shoreway Recycling and Disposal Facility.}

1666 F. **Operation.** Vehicles shall be operated in compliance with Federal, State and local laws
1667 and regulations including, but not limited to, the California Vehicle Code, the regulations
1668 of the California Air Resources Board (CARB) Waste Collection Vehicle Regulations as
1669 established in the California Code of Regulations Title 13 Section 2700 et seq. and all
1670 applicable safety and local ordinances. Annually, Contractor shall provide the SBWMA
1671 and Agency with documentation of such compliance for each vehicle. For example, with
1672 regard to CARB regulations, such documentation shall demonstrate, at a minimum, the
1673 vehicle number, make, model, year, control technology used or planned, and the year that
1674 the control technology was applied or is planned to be applied. Contractor shall not load
1675 vehicles in excess of the manufacturer's recommendations or limitations imposed by
1676 Federal, State, or local weight restrictions on vehicles or roads.

1677 Contractor equipment used for Solid Waste, Recyclable Materials, and Organic Materials
1678 services shall be registered with the California Department of Motor Vehicles.
1679 Equipment shall comply with US EPA noise emission regulations, currently codified at
1680 40 CFR Part 205 and other applicable noise control regulations, and shall incorporate
1681 noise control features throughout the entire vehicle.

1682 Annually, Contractor shall have each Collection vehicle weighed at the Designated
1683 Transfer and Processing Site to determine the unloaded weight (“tare weight”) of the
1684 vehicle, and the total loaded weight of each load delivered to the Designated Transfer and
1685 Processing Site. Upon a major repair that could affect the Collection vehicle tare weight,
1686 Contractor shall have the Collection vehicle re-weighed to establish a new tare weight.
1687 Contractor shall not load vehicles in excess of vehicle legal limit. Contractor shall track
1688 and make adjustments to routes to eliminate ongoing over weights associated with
1689 individual routes.

1690 **8.05 CONTAINERS**

1691 A. **General.** Contractor shall provide all Carts, Bins, Compactors, and Drop Boxes, as
1692 appropriate, to all Customers as part of its obligations under the terms of this Agreement.

*Franchise Agreement for Solid Waste, Recyclable
Materials, and Organic Materials Collection Services
Collection Agreement 080207 clean*

1693 As of the Commencement Date, all Single-Family Carts must be new while other
 1694 Containers may be used. Contractor-provided Containers shall be designed and
 1695 constructed to be watertight and prevent the leakage of liquids. All Carts shall be
 1696 manufactured by injection or rotational molding methods; contain post-consumer content;
 1697 and meet the Cart design and performance requirements provided in **Attachment D –**
 1698 **Cart Specifications**. Contractor shall obtain the Agency’s written approval of Cart
 1699 specifications before acquisition. Carts provided to Customers shall have a useful life of
 1700 ten (10) years as evidenced by a manufacturer’s warranty or other documentation
 1701 acceptable to the Agency.

1702 All Containers with a capacity of one (1) cubic yard or more shall meet applicable
 1703 Federal, State, and local regulations for Bin safety; shall be covered with attached lids;
 1704 and shall have the capability to be lockable if required or requested by Customer.

1705 All Containers shall be maintained in a safe, serviceable, and functional condition.

1706 **B. Container Specifications**

1707 1. Sizes. Sections 5.02, 5.03, and 5.04 describe the Container sizes to be provided to
 1708 Single-Family, Multi-Family, Commercial, and Member Agency Facility Customers.
 1709 Below is a table that summarizes the size specifications. In the event of conflicts
 1710 between this Section 8.05.B and Sections 5.02, 5.03, and 5.04, the requirements in
 1711 Article 5 shall govern.

1712

	Single-Family Customers	Multi-Family Customers	Commercial and Member Agency Facility Customers
Solid Waste	___ {insert default Cart size} gallon Carts (or similar size) shall be standard. 20-, 30-, 60-, or 90-gallon Carts (or similar sizes) upon request.	30-, 60-, or 90-gallon Carts (or similar sizes) and 1 to 8 cubic yard Bins	30-, 60-, or 90-gallon Carts (or similar sizes); 1 to 8 cubic yard Bins; 10 to 50 cubic yard Drop Boxes; and, 3 to 19 cubic yard Compactors
Recyclable Materials	___ {insert default Cart size} gallon Carts (or similar size) shall be standard. Provide Customers 30-, 60-, and 90-gallon Carts (or similar sizes) upon request.	Same as above plus Recycling Tote-Bags	Same as above
Organic Materials	___ {insert default Cart size} gallon Carts (or similar size) shall be standard. Plus 1.5- to 2.5-gallon Kitchen Pails if Contractor is directed to implement Food Scraps Collection.	Same as above plus 1.5 to 2.5-gallon Kitchen Pail if Contractor is directed to implement Food Scraps Collection.	Same as above

1713
1714
1715 2. Color. Contractor shall differentiate Solid Waste Carts and Bins, Recyclable
1716 Materials Carts and Bins, and Organic Materials Carts and Bins so they are readily
1717 identifiable by: (i) providing Carts and Bins of different colors; or, (ii) Carts and
1718 Bins with different colored lids. Solid Waste Carts shall be either gray, brown, or
1719 black in color. Recyclable Materials Carts shall be blue in color. Organic Materials
1720 Carts shall be green in color. Final color selection shall be subject to approval by
1721 Agency or SBWMA.

1722 3. Loading. Minimum allowable loading requirements for the Bin and Drop Box
1723 contents shall be approved by the Agency and SBWMA prior to purchase based on
1724 the minimum manufacturer's load limits.

1725 C. **Container Labeling**. Contractor shall label each Container with white, hot-stamped
1726 lettering, and in-mold or heavy duty vinyl adhesive labels with graphics, illustrations or
1727 artwork that clearly conveys the type of materials (e.g., Solid Waste, Recyclable
1728 Materials, cardboard, mixed paper, Organic Materials, mixed Construction and
1729 Demolition Debris, wood waste, metal, etc.) to be placed in the Container for Collection.
1730 The labeling shall be positioned on each Container so it is visible to the Customer and
1731 Collection vehicle drivers on the front side and top. The labeling shall be durable and
1732 weather resistant to outdoor conditions and have a ten (10) year lifetime..

1733 All Containers shall prominently display the Contractor's name and phone number,
1734 without using space for instructional labels.

1735 Final Container labeling layout, graphics and text shall be approved by the Agency
1736 and/or SBWMA prior to distribution to the Customers.

1737 D. **Cleaning and Painting**. Contractor shall be responsible for steam cleaning and
1738 repainting all Containers, except Carts, to present an aesthetically pleasing clean
1739 appearance and to ensure this equipment is safely maintained and operationally sound.
1740 Contractor shall repaint all used Containers within eighteen (18) months of the
1741 Commencement Date of this Agreement and thereafter on an as need basis. Upon
1742 Customers request, Contractor shall steam clean all Solid Waste and Recyclable
1743 Materials Containers (or exchange existing Containers with clean Containers) twice
1744 annually, except Carts provided to Residential Premises, which Contractor is not
1745 obligated to clean or exchange if dirty. Contractor shall clean all Organic Materials
1746 Containers (or exchange existing Containers with clean Containers) quarterly, except
1747 Carts provided to Residential Premises, which Contractor is not obligated to clean or
1748 exchange if dirty. Contractor shall offer additional cleaning (or clean Container
1749 exchange) to Customers requesting such service, and shall charge Customers for such
1750 cleaning (or Container exchange) in accordance with Agency-approved Rates.

1751 Contractor shall be responsible for cleaning Containers at no additional charge to
1752 customer to ensure that nuisance or public health concerns associated with vectors are
1753 addressed within two (2) Business Days after receipt of notification of said condition.

1754 If any Container is impacted by graffiti, Contractor shall remedy the situation within
1755 forty-eight (48) hours of being notified by Customer, Agency or SBWMA.

1756 E. **Repair and Replacement.** Contractor shall repair or replace all Containers damaged by
1757 Collection operations within a three (3) Business Days of being notified by Customer or
1758 observing the damaged Container. If the repair or replacement cannot be completed
1759 within three (3) Business Days, the Contractor shall notify Customer and provide a
1760 Container of the same size or larger until the proper Container can be replaced.

1761 At no additional cost, Contractor shall replace Customer Carts that have been stolen. If
1762 Carts have been damaged due to the vehicle apparatus interface, the Contractor shall
1763 repair or replace Cart within seventy-two (72) hours if Cart is unusable or within five (5)
1764 Business Days if damage is incidental to the functionality of the Cart. Contractor shall
1765 allow Customer to exchange Containers for a Container of a different size at no
1766 additional cost. Contractor shall charge Customers for additional Cart replacements at
1767 Agency-approved Rates , which will cover Contractor’s cost.

1768 F. **Agency’s Rights to Containers.** All Carts, Bins, Compactors, and Drop Boxes acquired
1769 by or leased by Contractor and put into service at Customers’ Premises before the first
1770 anniversary of the Commencement Date of this Agreement shall become property of the
1771 Agency upon expiration or early termination of this Agreement. All Carts, Bins,
1772 Containers, and Drop Boxes purchased or leased and put into service at Customers’
1773 Premises on or after the first anniversary of the Commencement Date of this Agreement
1774 that have not been fully depreciated shall be available to the Agency, at the Agency’s
1775 option, at their net book value.

1776 At its sole discretion, the Agency may elect not to exercise its rights with regards to this
1777 Section and, in such case, the Containers shall remain the property of the Contractor upon
1778 the expiration date of this Agreement or date of its earlier termination of this Agreement.
1779 In such case, Contractor shall be responsible for removing all Containers in service from
1780 Premises within ten (10) Business Days.

1781 **8.06 PERSONNEL**

1782 A. **General.** Contractor shall furnish such qualified drivers, mechanical, supervisory,
1783 Customer service, clerical and other personnel as may be necessary to provide the
1784 services required by this Agreement in a safe and efficient manner and shall provide, at a
1785 minimum, the number and type of personnel listed in Attachment O. All personnel
1786 furnished by Contractor shall be subject to the “relationship of parties” provisions of
1787 Section 15.01.

1788 The Contractor shall offer employment to Collection vehicle drivers and helpers, route
1789 supervisors, mechanics, technicians, welders, and shop laborers by seniority under the
1790 Agreement to qualified employees working under the prior franchise agreement who
1791 become unemployed by reason of the change in contractors, provided that the Contractor
1792 shall not be obligated to offer employment to more existing employees than the
1793 Contractor needs to perform the services required under the Agreement and provided that

1794 the Contractor shall not be obligated to offer employment to existing employees that have
1795 not been employed by the previous Solid Waste Collection services provider for at least
1796 one hundred twenty (120) calendar days prior to the Commencement Date. For the
1797 purposes of this Section 8.06, "qualified employees" shall mean employees that possess a
1798 valid and proper commercial driver's license and California Department of
1799 Transportation medical certificate. Contractor shall not discharge any retained workers
1800 for at least ninety (90) calendar days after the Commencement Date, except for cause.

1801 Additional employees, if needed, shall be obtained by Contractor pursuant to procedures
1802 in effect under the collective bargaining agreement of the Agency's predecessor
1803 contractor that provided Solid Waste Collection services prior to the Commencement
1804 Date. Contractor shall maintain a list of the predecessor contractor's employees who
1805 were not offered employment by the Contractor prior to the Commencement Date or
1806 during the two (2) months following the Commencement Date. If any positions become
1807 available during the three (3) months following the initial three (3) month contract period
1808 (i.e., from April 1, 2011 through June 30, 2011), Contractor shall offer employment to
1809 qualified Persons on the list by seniority within the collective bargaining unit (if it
1810 exists). Contractor shall include this language in the collective bargaining agreements, if
1811 any such agreement exists or is negotiated. The hiring requirements in this paragraph
1812 and the preceding paragraph shall not be applicable to management or supervisory
1813 personnel.

1814 At no time during the Term of the Agreement shall wages and benefits for personnel be
1815 less than those paid for the same classification of employee by Allied Waste Services in
1816 the final year of their collective bargaining agreements with the Teamsters Local 350 or
1817 the Machinists Local 1414 in place as of October 2007.

1818 B. **Approval of Management.** Contractor recognizes the importance of establishing a
1819 successful relationship between its management and Agency staff. If the Agency is
1820 dissatisfied with the performance of the customer service manager, and/or operations
1821 manager, the Agency shall contact the general manager to discuss the employee's
1822 performance. If the Agency is dissatisfied with the general manager, the Agency shall
1823 contact the district manager to discuss the general manager's performance. Contact
1824 information for district manager is as follows:

1825 _____ {Insert District Manager's contact information}
1826 _____
1827 _____

1828 Contractor shall advise the affected management employee of any complaints made by
1829 the Agency regarding the employee's performance. The Parties shall meet and confer in
1830 good faith to address the Agency's concerns, and shall agree on a corrective course of
1831 action to be implemented immediately. Contractor agrees to consider in good faith, but
1832 shall not be bound by, any requests by the Agency to transfer or re-assign an employee
1833 should the Agency maintain in good faith that it can no longer work constructively with
1834 said management employee.

1835 C. **Provision of Field Supervision.** Contractor shall designate at least ___ qualified
1836 employees as supervisors of field operations. {Note to proposers: If the selected
1837 contractor proposes more than one supervisor for field operations, amend the previous
1838 sentence to reflect the number of supervisors.} The field supervisor(s) shall devote his or
1839 her time in the field supervising, managing, and monitoring Collection operations for
1840 reliability, quality, efficiency, and safety, and for responding to Complaints.

1841 D. **Driver Qualifications.** All drivers shall be trained and qualified in the operation of
1842 Collection vehicles, and must have in effect a valid license, of the appropriate class,
1843 issued by the California Department of Motor Vehicles. Contractor shall use the Class II
1844 California Department of Motor Vehicles employer “Pull Notice Program” to monitor its
1845 drivers for safety.

1846 E. **Customer Service Representative Training.** Customer service representatives shall be
1847 trained on specific Agency service requirements, a minimum of once per quarter. An
1848 Agency information sheet shall be provided to each Customer service representative for
1849 easy reference of Agency requirements and general Customer needs. Upon the Agency’s
1850 request, the information sheet, training agenda, and associated documentation shall be
1851 provided for Agency review.

1852 F. **Safety Training.** Contractor shall provide suitable operational and safety training for all
1853 of its employees who operate Collection vehicles or equipment or who are otherwise
1854 directly involved in such Collection. Contractor shall train its employees involved in
1855 Collection to identify, and not to Collect, Hazardous Waste or Infectious Waste. Upon
1856 the Agency’s request, Contractor shall provide a copy of its safety policy and safety
1857 training program, the name of its safety officer, and the frequency of its trainings.

1858 G. **No Gratuities.** Contractor shall not permit its employees to demand or solicit, directly or
1859 indirectly, any additional compensation, or gratuity from members of the public for
1860 Collection services or accept gratuities or compensation in exchange for additional
1861 collection services.

1862 H. **Employee Conduct and Courtesy.** Contractor shall employ only competent and
1863 qualified personnel who serve the public in a courteous, helpful, and impartial manner.
1864 Contractor shall use its best efforts to assure that all employees present a neat appearance
1865 and conduct themselves in a courteous manner. Contractor shall regularly train its
1866 employees in Customer courtesy, shall prohibit the use of loud or profane language, and
1867 shall instruct Collection employees to perform the work as quietly as possible. If any
1868 employee is found not to be courteous or not to be performing services in the manner
1869 required by this Agreement, Contractor shall take all appropriate corrective measures.
1870 The Agency may require Contractor to reassign an employee, if the employee has
1871 conducted himself or herself inconsistently with the terms of this Agreement.

1872 Contractor shall adopt policies and procedures consistent with State and federal law that
1873 ensure a sober and drug-free workplace. This includes strictly prohibiting unlawful
1874 manufacture, distribution, possession, or use of any controlled substance in the
1875 workplace, regardless of whether the employee is on duty at the time. Further, the

1876 policies and procedures shall prohibit an employee from operating either Agency or
1877 Contractor equipment and vehicles (whether on or off duty) while under the influence of
1878 alcohol or drugs. The purpose of these policies and procedures is to ensure workplace
1879 safety, productivity, efficiency, and the quality of Contractor's service to customers.

1880 I. **Uniforms.** While performing services under this Agreement, all Contractor's employees
1881 performing field service shall be dressed in clean uniforms and shall wear visible
1882 identification that include the employee's name and/or employee number, and
1883 Contractor's name. Uniform type, style, colors, and any modifications may be subject to
1884 approval by the Agency.

1885 **8.07 HAZARDOUS WASTE INSPECTION AND HANDLING**

1886 A. **Inspection Program and Training.** Contractor reserves the right and has the duty under
1887 law to inspect Solid Waste, Recyclable Materials, Organic Materials, and other materials
1888 put out for Collection and has the rights to reject Solid Waste, Recyclable Materials,
1889 Organic Materials, and other materials observed to be contaminated with Hazardous
1890 Waste and not to Collect Hazardous Waste put out with Solid Waste, Recyclable
1891 Materials, and Organic Materials. Contractor shall develop a load inspection program
1892 that includes the following components: (i) personnel and training; (ii) load checking
1893 activities; (iii) management of wastes; and (iv) record keeping and emergency
1894 procedures.

1895 Contractor's load checking personnel, including its Collection vehicle drivers, shall be
1896 trained in: (i) the effects of Hazardous Substances on human health and the environment;
1897 (ii) identification of prohibited materials; and (iii) emergency notification and response
1898 procedures. Collection vehicle drivers shall inspect Containers before Collection when
1899 practical.

1900 B. **Response to Hazardous Waste Identified during Collection.** Under no circumstances
1901 shall Contractor's employees knowingly Collect Hazardous Waste or remove unsafe or
1902 poorly containerized Hazardous Waste from a Collection Container. If Contractor
1903 determines that material placed in any Container for Collection is Hazardous Waste or
1904 other material that may not legally be accepted or safely processed at the Designated
1905 Transfer and Processing Site or presents a hazard to Contractor's employees, or those at
1906 the Designated Transfer and Processing Site, the Contractor shall have the right to refuse
1907 to accept such material. The Generator shall be contacted by the Contractor and
1908 requested to arrange proper Disposal. If the Generator cannot be reached immediately,
1909 the Contractor shall, before leaving the Premises, leave a Non-Collection Notice, which
1910 indicates the reason for refusing to Collect the material and lists the phone number for the
1911 San Mateo County Household Hazardous Waste Facility, or other resources as directed
1912 by Agency. Contractor's environmental technician (identified below) shall be notified to
1913 handle the issue with the Generator. The Contractor's environmental technician shall be
1914 required to guide the Generator to safely containerizing the Hazardous Waste and shall
1915 explain the Generator's options for proper disposition of such material.

1916 Contractor's general manager is:

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Materials, and Organic Materials Collection Services
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1917 _____ {Insert general manager’s contact information}
1918 _____
1919 _____
1920 _____
1921 _____

1922 If Hazardous Waste is found in a Collection Container or Collection area that could
1923 possibly result in imminent danger to people or property, the Contractor shall
1924 immediately notify the Agency’s Fire Department using the 911 emergency number. The
1925 Contractor shall notify the Agency of any Hazardous Waste identified in Containers or
1926 left at any Premises within twenty-four (24) hours of identification of such material.

1927 **C. Response to Hazardous Waste Identified at Designated Transfer and Processing**
1928 **Site.** Contractor shall not knowingly deliver Unpermitted Material to the Designated
1929 Transfer and Processing Site. The operator of the Designated Transfer and Processing
1930 Site (“Operator”) shall use reasonable business efforts and standard industry practices to
1931 detect and discover Unpermitted Material at the facility and shall not knowingly accept
1932 Unpermitted Material. In the event that Unpermitted Material is delivered to the
1933 Designated Transfer and Processing Site, the Operator shall be entitled to pursue
1934 whatever remedies, if any, it may have against the Generator or Person(s) bringing such
1935 Unpermitted Material to the Designated Transfer and Processing Site provided that in no
1936 case shall the Agency be considered the Person bringing such Unpermitted Material to
1937 the Designated Transfer and Processing Site.

1938 If the Operator identifies Unpermitted Materials in the materials delivered by Contractor
1939 before the materials are unloaded at the facility, the Operator has the right to reject the
1940 load and shall direct the Contractor to cause removal and disposal of the Unpermitted
1941 Material in a safe and lawful manner, at the sole expense of the Contractor. If the
1942 unacceptable material is delivered to the Designated Transfer and Processing Site by
1943 Contractor and unloaded at the facility before its presence is detected, and the Generator
1944 cannot be identified or fails to remove the material after being requested to do so, the
1945 Contractor shall arrange for and/or pay for its proper Disposal. Contractor shall make
1946 reasonable efforts to identify and notify the Generator. The Contractor shall make a good
1947 faith effort to recover the cost of any transportation and Disposal from the Generator, and
1948 the cost of this effort, as well as the cost of Disposal shall be chargeable to the Generator,
1949 if appropriate documentation, as deemed necessary by the Agency, is provided to the
1950 Agency within five (5) Business Days of the occurrence.

1951 In the event, Contractor Delivers Unpermitted Materials on a frequent or continuous
1952 basis to the Designated Transfer and Processing Site and the Contractor refuses to
1953 provide for the proper handling and disposition of such Unpermitted Material, the
1954 Operator shall provide written Notice to that Agency of such refusal by Contractor. If the
1955 Agency and Contractor are unable to resolve the dispute within twenty (20) Business
1956 Days after Operator’s Notice, then that Agency and Contractor shall pursue the dispute
1957 resolution procedures.

1958 D. **Reporting, Regulations, and Record Keeping.** Contractor shall comply with
1959 emergency notification procedures required by Applicable Laws and regulatory
1960 requirements. Contractor shall notify all applicable agencies, if appropriate, including
1961 the California Department of Toxic Substances Control and Local Emergency Response
1962 Providers and the National Response Center of reportable quantities of Hazardous Waste,
1963 found or observed in Solid Waste, Recyclable Materials, Organic Materials, Electronic
1964 Waste, Universal Waste, and Construction and Demolition Debris anywhere within
1965 Service Area. In addition to other required notifications, if Contractor observes any
1966 substances which it or its employees reasonably believe or suspect to contain Hazardous
1967 Wastes unlawfully Disposed of or released on any Agency property, including storm
1968 drains, streets or other public rights of way, Contractor will immediately notify the
1969 Agency and SBWMA.

1970 All records required by regulations shall be maintained at the Contractor's Facility.
1971 These records shall include: waste manifests, waste inventories, waste characterization
1972 records, inspection records, incident reports, and training records. Contractor shall
1973 maintain records showing the types and quantities, if any, of Hazardous Waste found in
1974 Solid Waste, Recyclable Materials, and Organic Materials which was inadvertently
1975 Collected from Customers within the Service Area, but diverted from landfilling.

1976 **8.08 COMMUNICATION AND COOPERATION WITH AGENCY**

1977 A. **Communications.** The Contractor's general manager shall have e-mail capabilities to
1978 enable the Agency and the Contractor's general manager to communicate via e-mail.

1979 B. **Monthly Meetings.** Beginning on the Commencement Date of the Agreement, and then
1980 on a monthly basis thereafter, Contractor shall meet with the Agency and SBWMA to
1981 discuss progress of each active diversion program, quality and reliability of Collection
1982 services, and compliance with the terms of the Agreement. At each monthly meeting, the
1983 Agency, SBWMA and Contractor shall have the opportunity to present and discuss
1984 proposed changes in service such as changing program requirements or modifying
1985 Collection methods.

1986 C. **Inspection by Agency.** Agency shall have the right, but not the obligation, to observe
1987 and inspect all of the Contractor's operations under this Agreement. In connection
1988 therewith, Agency shall have the right to enter facilities used by Contractor during
1989 operating hours, speak to any of Contractor's employees and receive cooperation from
1990 such employees in response to inquiries. In addition, upon reasonable notice and without
1991 interference with Contractor's operations, Agency may review and copy any of
1992 Contractor's operational and business records related to this Agreement. If Agency so
1993 requests, Contractor shall make specified personnel available to accompany Agency
1994 employees on inspections and shall provide electronic copies of records stored in
1995 electronic media.

1996 **8.09 COOPERATION WITH DESIGNATED TRANSFER AND PROCESSING SITE**
1997 **OPERATOR**

1998 A. **Communications.** If requested by SBWMA, the Contractor shall meet with the Agency,
1999 SBWMA and operator of the Designated Transfer and Processing Site at least once each
2000 month to discuss issues related to the interaction of operations between Contractor and
2001 Designated Transfer and Processing Site operator including, but not limited to:

- 2002 1. Traffic flow;
- 2003 2. Vehicle weighing procedures;
- 2004 3. Recyclable Materials and Organic Materials Contamination;
- 2005 4. Hazardous Waste screening and safety policies;
- 2006 5. Receiving hours;
- 2007 6. Billing and payment of gate fees for delivery of materials;
- 2008 7. Vehicle parking *{if Shoreway is leased}*;
- 2009 8. Employee facilities *{if Shoreway is leased}*; and
- 2010 9. Maintenance facilities *{if Shoreway is leased}*.

2011 The Contractor's general manager shall have e-mail capabilities to enable the operator of
2012 the Designated Transfer and Processing Site and the Contractor's general manager to
2013 communicate via e-mail.

2014 B. **Coordination of Hours.** Contractor shall plan its Collection routes to be compatible
2015 with the Designated Transfer and Processing Site receiving hours, which shall be, at a
2016 minimum, Monday through Friday from 3:00 a.m. to 6:00 p.m. and Saturday and Sunday
2017 from 6:00 a.m. to 5:00 p.m. Contractor shall deliver Collected materials to the
2018 Designated Transfer and Processing Site during the receiving hours of the Designated
2019 Transfer and Processing Site.

2020 C. **Compliance with Facility Rules.** Contractor shall cooperate with the operator of the
2021 Designated Transfer and Processing Site and comply with the operator's requirements
2022 such as how and where to unload Collection vehicles, respecting operations and
2023 construction of new facilities, cooperating with the operator's Hazardous Waste
2024 exclusion program, and so forth. All costs charged by the operator of Designated
2025 Transfer and Processing Site for acceptance of Contractor's materials shall be paid by
2026 Contractor. Contractor shall receive compensation for transfer and Processing costs in
2027 accordance with Article 11.

2028 D. **Shared Use of Facilities.** {Note to Proposers: If the Contractor has entered into a lease
2029 arrangement with the SBWMA for use of the Shoreway Facility corporation yard and
2030 office space, this section be included if the Agreement. If Contractor uses an alternative
2031 corporation yard, this section will be deleted.} In accordance with the terms and
2032 conditions set forth in the Contractor's lease arrangement with the SBWMA for use of
2033 the corporation yard and office space at the Designated Transfer and Processing Site, the

2034 Contractor shall share the use of the following facilities at the Designated Transfer and
2035 Processing Site with the site operator: _____.

2036 **8.10 BUY-RECYCLED POLICY**

2037 The Contractor shall comply with the purchasing requirements described in this Section, and
2038 shall document its on-going compliance with these requirements upon Agency request.

2039 A. **Recycled Paper.** The Contractor shall use recycled paper for invoices, bills, reports, and
2040 public education materials. The recycled paper shall have at least thirty percent (30%)
2041 post-consumer recycled content for uncoated paper and ten percent (10%) post-consumer
2042 recycled content for coated paper based on Federal standards. Contractor shall state on
2043 all materials prepared with post-consumer recycled content the following: “Printed on
2044 Recycled Paper.”

2045 B. **Re-Refined Motor Oil.** Contractor shall use its best efforts to use re-refined motor oil
2046 for its Collection vehicles.

2047 C. **Recycled Plastic.** Contractor shall purchase Carts that contain the minimum post-
2048 consumer content as specified in Attachment D. Kitchen Pails that contain a minimum of
2049 ___% {insert specification} post-consumer content recycled plastic. All Carts and
2050 Kitchen Pails shall be 100% recyclable.

2051 **8.11 ANNUAL PERFORMANCE HEARING**

2052 A. **Objectives.** Agency or SBWMA may hold a public performance hearing on or about the
2053 anniversary date of the Commencement Date of this Agreement, at which time
2054 Contractor shall be present and shall participate by making a presentation and responding
2055 to questions. The Agency or SBWMA shall convene the hearing to address the positive
2056 and negative aspects of Contractor’s overall performance. The purpose of the hearing
2057 may also involve discussion and review of technological, economic, and regulatory
2058 changes in Collection, waste reduction, Recycling, processing, and Disposal practices
2059 that can improve quality of service; increase waste reduction and diversion; and ensure
2060 services are being provided effectively and economically. Topics for discussion and
2061 review at the performance hearing shall include, but not be limited to: Contractor’s
2062 accomplishments and compliance with various provisions of the Collection Agreement,
2063 services provided, feasibility of providing new services, application of new technologies,
2064 Customer Complaints, amendments to this Agreement, developments in the Applicable
2065 Laws and regulations, new initiatives for meeting or exceeding waste reduction and
2066 Recycling goals, regulatory constraints, and Contractor performance. Agency and
2067 Contractor may each select additional topics for discussion at any performance hearing.

2068 B. **Process.** Within sixty (60) calendar days of the scheduled performance hearing date, as
2069 per notification provided by Agency or SBWMA to Contractor of its intent to conduct a
2070 performance hearing, Agency and Contractor may request from one another information
2071 or documents related to the scheduled public hearing and Agency and Contractor shall

2072 provide such information and documents not less than thirty (30) calendar days prior to
2073 the scheduled hearing date.

2074 Forty-five (45) calendar days after receiving written notice from Agency or SBWMA of
2075 its intent to schedule a performance hearing, Contractor shall, at a minimum, submit a
2076 report to Agency or SBWMA indicating the following:

- 2077 1. Recommended Changes or New Services. Changes recommended and/or new
2078 services to improve Agency's ability to meet and/or exceed the Agency's waste
2079 reduction and recycling goals and those of the Act.
- 2080 2. Complaint Records. The reports required by this Agreement regarding Complaints
2081 shall be used as one basis for review. Contractor may submit other relevant
2082 performance information and reports for consideration. Agency may request
2083 Contractor to submit specific information for the hearing. In addition, any Person
2084 may submit comments or Complaints during or before the hearing, either orally or in
2085 writing, and these shall be considered.
- 2086 3. Action Plan. Contractor shall prepare and submit an action plan for improving
2087 and/or modifying its Collection services and other services if requested by the
2088 Agency or SBWMA within ten (10) Business Days of request.

2089 Not less than ten (10) Business Days prior to the scheduled hearing date, Agency and
2090 Contractor shall exchange any written reports and other documents that will be provided
2091 or presented at the hearing. Not less than five (5) Business Days before the scheduled
2092 hearing date, Agency and Contractor shall ensure their availability to discuss the content
2093 and underlying support for such reports.

2094 The Agency and Contractor shall attend the performance hearing. The Contractor's
2095 District Manager or General Manager shall, at a minimum, present a written response to
2096 the Agency's report at the time of the hearing. In addition, Contractor may present an
2097 oral report on its Collection services and/or an oral response to the Agency's report on
2098 Contractor's performance. Contractor's failure to attend the performance hearing;
2099 provide a written response to the Agency's report; or submit an action plan if requested
2100 by the Agency or SBWMA may result in Liquidated Damages pursuant to Attachment J.

2101 Within sixty (60) calendar days after the conclusion of each performance hearing,
2102 Agency may issue a report. As a result of the review, Agency may require Contractor to
2103 provide expanded or new services within a reasonable time frame and for reasonable
2104 Rates and compensation; and, Agency may direct Contractor to take corrective actions
2105 for any performance inadequacies.

2106 **ARTICLE 9 RECORD KEEPING AND REPORTING**

2107 **9.01 GENERAL**

2108 Contractor shall compile and maintain records related to its performance under this Agreement
2109 as necessary to develop the reports required by this Agreement. As the Agency's franchised

*Franchise Agreement for Solid Waste, Recyclable
Materials, and Organic Materials Collection Services
Collection Agreement 080207 clean*

2110 Solid Waste Collector, Contractor agrees to conduct data collection, information and record
2111 keeping, and reporting activities needed to comply with and to meet the reporting and Solid
2112 Waste program management needs of the Agency, the Act, other Applicable Laws, and the
2113 requirements of this Agreement.

2114 Record keeping and reporting requirements specified in this Agreement shall not be considered
2115 limiting or necessarily complete. In particular, Article 9 is intended to highlight the general
2116 nature of records and reports and their minimum content and is not meant to comprehensively
2117 define the scope and content of the records and reports. Upon written direction or approval of
2118 Agency, the records and reports required by Contractor in accordance with this and other
2119 Articles of the Agreement shall be adjusted in number, format, or frequency.

2120 Contractor shall maintain all records necessary to allow the Agency to determine Contractor's
2121 compliance with the Terms of the Agreement and compliance with the Performance Standards
2122 and Performance Incentives presented in this Agreement including, but not limited to, those
2123 related to the quality of Collection services and Customer service and those identified in
2124 Attachments I and J. The records shall be maintained in a manner that allows for easy
2125 verification of Contractor's performance.

2126 **9.02 GENERAL RECORD KEEPING PROVISIONS**

2127 A. **General.** Contractor shall maintain records required to conduct its operations, to support
2128 requests it may make to Agency, and to respond to requests from Agency. All records
2129 shall be maintained for five (5) years after the expiration or early termination of this
2130 Agreement.

2131 In order to set Contractor's Compensation pursuant to Article 11, it is necessary for
2132 Contractor to maintain accurate, detailed financial and operational information in a
2133 consistent format and to make such information available to the Agency in a timely
2134 fashion, and in accordance with reporting requirements specified in this Article.

2135 B. **Inspection of Records.** Agency shall have the right to inspect or review the payroll tax
2136 reports, specific documents or records required expressly or by inference pursuant to this
2137 Agreement, or any other similar records or reports of Contractor or its Related Party
2138 Entities that Agency shall deem, in its sole discretion, necessary to evaluate annual
2139 reports, compensation applications provided for in this Agreement, and Contractor's
2140 performance provided for in this Agreement.

2141 Contractor agrees that the records of any and all companies conducting operations
2142 addressed in the Agreement shall be provided or made available to Agency and its
2143 official representatives for review. The Agency, its auditors and other agents selected by
2144 the Agency, shall have the right, during regular business hours, to conduct unannounced
2145 on-site inspections and review of the records and accounting systems of Contractor and
2146 to make copies of any documents relevant to this Agreement.

2147 C. **Retention of Records.** Unless otherwise herein required, Contractor shall retain all
2148 records and data required to be maintained by this Agreement for the Term of this

2149 Agreement plus at least five (5) years after expiration or early termination of the
2150 Agreement. Records and data shall be in a chronological and organized form and readily
2151 and easily interpreted. At the Agency's request, records and data required to be retained
2152 shall be retrieved in a timely manner (which shall not exceed more than ten (10) Business
2153 Days unless Contractor obtains prior written approval from the Agency) by Contractor
2154 and made available to the Agency.

2155 Contractor shall maintain copies of all Billings and Billing collections (e.g., Customer
2156 payments) records or copies of Billing summary reports (that document all Billings and
2157 Billing Collections for each Customer) for five (5) years, following the date of Billings,
2158 for inspection and verification by Agency.

2159 Records and data required to be maintained that are not specifically directed to be
2160 retained that are, in the sole opinion of the Agency, material to the determination of
2161 Contractor's Compensation or Rates or to determine Contractor's performance under this
2162 Agreement, shall be retrieved by Contractor and made available to the Agency in a timely
2163 manner (which shall not exceed ten (10) Business Days unless Contractor obtains prior
2164 written approval from the Agency). When records and data are not retained or provided
2165 by the Contractor, the Agency may make reasonable assumptions regarding what
2166 information is contained in such records and data, and such assumption(s) shall be
2167 conclusive in whatever action the Agency takes.

2168 D. **Record Security.** Contractor shall maintain adequate record security to preserve records
2169 from events that can be reasonably anticipated such as a fire, theft, and an earthquake.
2170 Electronically-maintained data and/or records shall be protected, backed up, and stored at
2171 a separate site from the original data.

2172 **9.03 RECORD KEEPING REQUIREMENTS**

2173 A. **Maintenance of Financial and Operational Records**

2174 1. General. In order to effectuate Contractor's Compensation pursuant to Article 11, it
2175 is necessary for Contractor to maintain accurate, detailed financial and operational
2176 information in a consistent format and to make such information available to the
2177 Agency and the SBWMA in a timely fashion.

2178 2. Contractor's Accounting Records. Contractor shall maintain accurate and complete
2179 accounting records containing the underlying financial and operating data relating to
2180 and showing the basis for computation of all costs associated with providing services
2181 under this Agreement. The accounting records shall be prepared in accordance with
2182 Generally Accepted Accounting Principles (GAAP) consistently applied.

2183 B. **Collection Service Records**

2184 Records shall be maintained and retained by Contractor for Agency relating to:

2185 1. Customer and Billing information including, but not limited to, the following for
2186 each Customer:

- 2187 a. Names, addresses, and phone numbers of Customer, billing contact person, and,
2188 if appropriate, for property manager or on-site contact person;
- 2189 b. Solid Waste service level, Recyclable Materials service level, and Organic
2190 Materials service level (where service level includes the number of Containers,
2191 size of each Container, and the Collection frequency of each Container);
- 2192 c. Number of tenant units at MFD Premises;
- 2193 d. Service exemptions for SFD Premises (if applicable);
- 2194 e. Special services (e.g., Backyard and Special Handling Collection for SFD
2195 Premises, push/pull charges, lock/unlock charges, etc.).
- 2196 Contractor's Customer and Billing system shall allow for information to be compiled
2197 easily and separately for each Service Sector.
- 2198 2. Weight and volume of material Collected by type (e.g., Solid Waste, Recyclable
2199 Materials, Organic Materials). Where possible, information shall be provided
2200 separately for each Service Sector.
- 2201 3. Route sheets and route maps identifying the accounts serviced by each Collection
2202 vehicle on a daily basis.
- 2203 4. Facilities, equipment and personnel used.
- 2204 5. Facilities and equipment operations, maintenance and repair.
- 2205 6. Tonnage of Solid Waste, Recyclable Materials, Universal Waste, and Organic
2206 Materials listed separately by materials type and Service Sector and the facility
2207 where materials were delivered (e.g., Designated Transfer and Processing Site).
- 2208 7. Monthly Overall Diversion Level, monthly SFD Diversion Level, and the monthly
2209 Commercial Diversion Level (each stated as a percentage) and calculated in
2210 accordance with Attachment I.
- 2211 8. Recyclable Materials, Used Oil and Used Oil Filters, Household Batteries, Cell
2212 Phones and Organic Materials Collection participation and setout rates.
- 2213 9. Tonnage of materials Collected from on-call Bulky and community drop-off events
2214 as described in Sections 5.06 and 5.07 reported separately by material type
2215 Collected and listing facilities where materials were delivered (e.g. Goodwill
2216 Industries, Designated Transfer and Processing Site, etc.).
- 2217 10. Tonnage of Solid Waste, Recyclable Materials, and Organic Materials Collected
2218 from Venues and Events as described in Section 5.08 reported separately by
2219 material type Collected and reported separately for each Venue and Event as the
2220 total tonnage of each material type for each Event or Venue monthly.
- 2221 11. Volume of Used Motor Oil and number of Used Motor Oil Filters Collected by
2222 Contractor reported separately for each facility where materials were delivered.

2223 **C. Other Programs Records**

2224 Records for other programs shall be tailored to specific needs. In general, Contractor
2225 shall maintain and retain the following records:

- 2226 1. Plans, tasks, and milestones; and
2227 2. Accomplishments including activities conducted, dates, quantities of products used,
2228 produced or distributed, and numbers of participants and responses.

2229 D. **Customer Service Records.** Daily logs of all Complaints and Inquiries provided under
2230 this Agreement shall be retained for a minimum of thirty-six (36) months. Contractor
2231 shall maintain and retain customer service center records which include, but are not
2232 limited to the following customer service center statistics.

- 2233 1. Number of calls received on a daily and monthly basis;
2234 2. Number of calls answered on a daily and monthly basis;
2235 3. Number of abandoned (dropped) calls on a daily and monthly basis;
2236 4. Average abandoned time (i.e., hold time before abandoning call)
2237 5. Number of delayed calls (i.e., calls where caller is placed on hold before speaking
2238 with a Customer service agent) on a daily and monthly basis;
2239 6. Average delay time for incoming calls on a daily and monthly basis;
2240 7. Percentage of calls answered by a person within thirty (30) seconds on a daily and
2241 monthly basis;
2242 8. Percentage of calls answered within three (3) minutes on a daily and monthly basis;
2243 9. Number of e-mail responses sent from the Customer service department to
2244 Customers on a monthly basis;
2245 10. Number and percentage of Complaint and Inquiry e-mails or submissions through
2246 Contractor website that received responses before close of business on the day
2247 received on a monthly basis;
2248 11. Number and percentage of Complaint and Inquiry e-mails that received responses by
2249 the close of business on the day following the receipt of the Complaint or Inquiry;
2250 12. Number of Complaints and Inquiries received through Contractor's website on a
2251 daily and monthly basis;
2252 13. Names of all customer service representatives employed;
2253 14. Minimum, average, and maximum number of customer service representatives
2254 employed during each month; and,
2255 15. Number of customer service representatives employed during each month.

2256 E. **CERCLA Defense Records.** Agency views the ability to defend against CERCLA and
2257 related litigation as a matter of great importance. For this reason, the Agency regards the
2258 ability to prove where Solid Waste Collected in the Agency area was taken for transfer or
2259 Disposal, as well as where it was not taken, to be matters of concern. Contractor shall
2260 maintain data retention and preservation systems which can establish where Solid Waste

2261 Collected in the Service Area was Disposed of (and therefore establish where it was not
2262 landfilled). This provision shall survive the expiration of the period during which
2263 Collection services are to be provided under this Agreement.

2264 F. **Compilation of Information for State Law Purposes.** Contractor shall compile
2265 information on amounts of Solid Waste delivered to the Designated Transfer and
2266 Disposal Site and/or Facilities and other information, which the Agency may reasonably
2267 request.

2268 Contractor shall maintain these records for a minimum of ten (10) years beyond
2269 expiration or earlier termination of the Agreement. Contractor shall provide these
2270 records to Agency (upon request or at the end of the record retention period) in an
2271 organized and indexed manner rather than destroying or disposing of them.

2272 **9.04 GENERAL REPORTING REQUIREMENTS**

2273 A. **Purpose.** Records shall be maintained and retained in forms and by methods that
2274 facilitate flexible use of data contained in them to structure reports, as needed. Reports
2275 are intended to compile recorded data into useful forms of information that can be used
2276 to, among other things:

- 2277 1. Evaluate Diversion performance,
- 2278 2. Evaluate Contractor's performance,
- 2279 3. Monitor Customer participation in Recyclable Materials and Organic Materials
2280 Collection programs and in other programs using several different performance
2281 measures,
- 2282 4. Monitor changes in the number of Customers and Customers' service levels,
- 2283 5. Determine needs for adjustment to programs and cost for such changes,
- 2284 6. Evaluate Customer service and Complaints,
- 2285 7. Determine and set Contractor's Compensation and Rates, and

2286 B. **Report Format.** Contractor may propose report formats that are responsive to the
2287 objectives and audiences for each report. The format of each report shall be approved by
2288 Agency. The Agency may review and request changes to Contractor's report formats and
2289 content and Contractor shall not unreasonably deny such requests. Contractor agrees to
2290 mail a copy of all reports to the Agency, and submit all reports by e-mail in a format
2291 compatible with the Agency's software and computers so the Agency can sort and
2292 analyze data. Contractor shall provide a certification statement, under penalty or perjury
2293 by the responsible Contractor official, that the report being submitted is true and correct
2294 to the best knowledge of such official after their reasonable inquiry.

2295 C. **Submittal Schedule and Instructions.** Contractor shall submit monthly reports within
2296 fifteen (15) calendar days after the end of the reporting month. Contractor shall submit
2297 quarterly reports within thirty (30) calendar days after the end of the reporting quarter.
2298 Contractor shall submit annual reports within forty-five (45) calendar days after the end
2299 of the each Rate Year.

2300 Contractor shall submit (via mail and e-mail) all reports to:

2301 {Insert Agency contact person, address, phone, and e-mail}

2302 D. **Failure to Report.** The refusal or failure of Contractor to file any required reports, or to
2303 provide required information to Agency, or the inclusion of any materially false or
2304 misleading statement or representation by Contractor in such report shall be deemed a
2305 default of the Agreement as described in Section 14.01 and shall subject Contractor to all
2306 remedies which are available to the Agency under the Agreement or otherwise.

2307 9.05 MONTHLY REPORTS

2308 Monthly reports shall present the information described in this Section. Each Monthly report
2309 shall present the information below for the reporting months of that month and for each of the
2310 preceding twelve (12) months.

2311 A. **Tonnage Information.** Contractor shall provide the Tonnage information requested
2312 below by Service Sector on a monthly and Year-to-date basis. However, the Agency
2313 reserves the right to request the monthly Tonnage data by route.

- 2314 1. Solid Waste. Total Solid Waste Tonnage Collected and Disposed by Service Sector.
- 2315 2. Recyclable Materials Services. Total Recyclable Materials Tonnage Collected and
2316 delivered for processing by Service Sector listed separately by material type
2317 Collected (e.g., Single-Stream Recyclable Materials, Source Separated Cardboard,
2318 Source Separated Paper, Used Motor Oil, Used Motor Oil Filters, etc.).
- 2319 3. Organic Materials Services. Total Organic Materials Tonnage Collected and
2320 delivered for processing by Service Sector listed separately by material type (e.g.,
2321 Plant Materials, Food Scraps, or Organic Materials).

2322 If Contractor does not separately track Multi-Family Tonnage data, Contractor shall
2323 conduct a semi-annual or annual Tonnage assessment if requested by the Agency in
2324 accordance with Section 7.07, that involves separately Collecting and weighing
2325 Multi-Family Solid Waste, Recyclable Materials, and Organic Materials to quantify
2326 Tonnage Collected during a given week.

2327 B. **Diversion Level.** Contractor shall provide the monthly and Year-to-date Calculated
2328 Overall Diversion Level, the monthly and Year-to-date Calculated Single-Family
2329 Diversion Level, and the monthly and Year -to-date Calculated Commercial Diversion
2330 Level (each stated as a percentage) calculated in accordance with Attachment I. In
2331 addition, Contractor shall present the calculations used to determine the Diversion
2332 Levels.

2333 C. **Complaint and Inquiry Data.** Number of Complaints and Inquiries received from
2334 Customers, Generators, or other Person by category (e.g., missed pickups, noise
2335 Complaints, scheduled Bulky Pick-Up Events, Billing concerns, property damage claims,
2336 requests for information, etc.). Complaint summary, for each month and cumulative for

2337 Rate Year to date, summarized by nature of Complaints on a compatible computer disc.
2338 The categorization of Complaints shall be agreed-upon by the Agency, SBWMA, and
2339 Contractor prior to the Commencement Date pursuant to Section 7.02.

2340 D. **Call Center Data.** Number of calls received, number of calls answered, number of
2341 dropped calls, percentage of dropped calls, average hold time, percentage of calls
2342 answered in 30 seconds.

2343 E. **Monthly Gross Revenues and Fee Reports.** Pursuant to Section 10.02, a statement
2344 itemizing each fee paid by Contractor to Agency in the month; detailing calculation of
2345 each monthly fee amount; and stating monthly Gross Revenues, by Service Sector, for all
2346 operations conducted or permitted by this Agreement.

2347 F. **On-Site Customer Assessments and Visual Audits.** Contractor shall report the number
2348 of and results of the site assessments and visual audits conducted for MFD, Commercial,
2349 and Member Agency Customers, which are required by Section 7.06 and 7.07,
2350 respectively.

2351 **9.05 QUARTERLY REPORTS**

2352 Quarterly reports shall present the information described in this Section. Each Quarterly report
2353 shall present the information below for the reporting months of that quarter and for each of the
2354 preceding twelve (12) months.

2355 A. **Tonnage Information.** Contractor shall provide the Tonnage information requested
2356 below by Service Sector on a monthly and Year-to-date basis. However, the Agency
2357 reserves the right to request the monthly Tonnage data by route.

- 2358 1. Solid Waste. Total Solid Waste Tonnage Collected and Disposed by Service Sector.
- 2359 2. Recyclable Materials Services. Total Recyclable Materials Tonnage Collected and
2360 delivered for processing by Service Sector listed separately by material type
2361 Collected (e.g., Single-Stream Recyclable Materials, Source Separated Cardboard,
2362 Source Separated Paper, Used Motor Oil, Used Motor Oil Filters, etc.).
- 2363 3. Organic Materials Services. Total Organic Materials Tonnage Collected and
2364 delivered for processing by Service Sector listed separately by material type (e.g.,
2365 Plant Materials, Food Scraps, or Organic Materials).

2366 If Contractor does not separately track Multi-Family Tonnage data, Contractor shall
2367 conduct a semi-annual or annual Tonnage assessment if requested by the Agency in
2368 accordance with Section 7.07, that involves separately Collecting and weighing
2369 Multi-Family Solid Waste, Recyclable Materials, and Organic Materials to quantify
2370 Tonnage Collected during a given week.

2371 B. **Diversion Level.** Contractor shall provide the monthly and Year-to-date Calculated
2372 Overall Diversion Level, the monthly and Year-to-date Calculated Single-Family
2373 Diversion Level, and the monthly and Year-to-date Calculated Commercial Diversion

2374 Level (each stated as a percentage) calculated in accordance with Attachment I. In
2375 addition, Contractor shall present the calculations used to determine the Diversion
2376 Levels.

2377 **C. Education Activities**

- 2378 1. Public education materials produced and total number of each distributed.
2379 2. Dates, times, and names of meetings or events attended.
2380 3. Dates, times, and names of school(s) where presentations were performed.
2381 4. Other

2382 **D. Complaint and Inquiry Data.** Number of Complaints and Inquiries received from
2383 Customers, Generators, or other Person by category (e.g., missed pickups, noise
2384 Complaints, scheduled Bulky Pick-Up Events, Billing concerns, property damage claims,
2385 requests for information, etc.). Complaint summary, for each month and cumulative for
2386 Rate Year to date, summarized by nature of Complaints on a compatible computer disc.
2387 The categorization of Complaints shall be agreed-upon by the Agency, SBWMA, and
2388 Contractor prior to the Commencement Date pursuant to Article 3.

2389 **E. Call Center Data.** Number of calls received, number of calls answered, number of
2390 dropped calls, percentage of dropped calls, average delay time, average hold time,
2391 percentage of calls answered in 30 seconds, percentage of calls answered in 90 seconds
2392 reported for the month.

2393 **F. Monthly Gross Revenues and Fee Reports.** Pursuant to Section 10.02, a statement
2394 itemizing each fee paid by Contractor to Agency in the month; detailing calculation of
2395 each monthly fee amount; and stating monthly Gross Revenues, by Service Sector, for all
2396 operations conducted or permitted by this Agreement.

2397 **G. Determination and Payment of Liquidated Damages.** In accordance with the
2398 requirements of Section 14.04.C, Contractor shall provide a report that identifies any
2399 non-compliance with performance measures listed in Attachment J (except for
2400 compliance with diversion-related standards which shall be reported as part of the
2401 Contractor's annual report) and include calculation of the Liquidated Damages due. This
2402 report shall be accompanied by supporting documentation identifying either compliance
2403 with or level of non-compliance with the performance measures. The report submittal
2404 shall be accompanied by a check from the Contractor in the amount of the Liquidated
2405 Damages due (per Contractor's calculation and self-reporting) for the reporting period.

2406 **H. Account Summary.** For monthly reports following the end of each quarter (e.g., for
2407 monthly reports submitted in January, April, July, and October), provide the following
2408 account summary information in table format:

- 2409 1. Number of Customers in each Rate category.

- 2410 2. Total number of Residential, Commercial, and Drop Box Customers subscribing to
 2411 Solid Waste, Recyclable Materials, and Organic Materials Collection service listed
 2412 separately by Service Sector and material type.
- 2413 3. Percentage of Customers subscribing to Recyclable Materials Collection service
 2414 (listed separately for Multi-Family, Commercial, and Drop Box Customers), which
 2415 shall be equal to the total number of Recyclable Materials Customers divided by the
 2416 total number of Solid Waste Customers multiplied by 100.
- 2417 4. Percentage of Customers subscribing to Organic Materials Collection service (listed
 2418 separately for Multi-Family, Commercial, and Drop Box Customers), which shall be
 2419 equal to the total number of Organic Materials Customers divided by the total
 2420 number of Solid Waste Customers multiplied by 100.
- 2421 I. **On-Site Customer Assessments and Visual Audits.** Contractor shall report the number
 2422 of and results of the site assessments conducted for Multi-Family and Commercial
 2423 Customers, which are required by Section 7.03.
- 2424 J. **Summary Assessment.** Highlight significant accomplishments and problems. Identify
 2425 recommendations and/or plans to improve services.
- 2426 K. **Public Education Plan.** The quarterly report submitted in October of each Year shall
 2427 include the public education plan for the coming Year pursuant to Section 7.04 of this
 2428 Agreement.
- 2429 L. **Hazardous Waste Records.** A summary or copy of the Hazardous Waste records
 2430 required under Section 8.07.D.
- 2431 M. **Operational Data.** A summary of Collection route operational data including: average
 2432 number of Customers and Containers serviced per route per day for each Collection
 2433 route; average number of actual both on-route and off-route hours per day by route
 2434 (distinguishing between normal and hard to serve routes, if appropriate). Fifty (50)
 2435 largest generators based on weekly Solid Waste volumes (listed in descending order)
 2436 within Agency in each of the following areas: Commercial Customers, and Multi-Family
 2437 Customers. This reporting shall include, at a minimum: the name of the Customer; the
 2438 name of the business; the address of the business; the type(s) of service received (e.g.
 2439 Collection of Solid Waste, Single-Stream Recyclable Materials, Plant Materials, Food
 2440 Scraps, mixed Organic Materials, Source Separated cardboard, Source Separated paper,
 2441 organics, etc.); the volume of service received weekly measured in cubic yards; the
 2442 frequency of service received measured in number of Collections per week; the Diversion
 2443 volume measured as total service level volume divided by Recyclables Materials and/or
 2444 Organics Materials Collection volume; and, the change in service level from the prior
 2445 quarter.
- 2446 N. **Commercial Recycling Promotion Program Status Report.** Contractor must prepare
 2447 and submit, both quarterly and annually, to Agency and SBWMA, a Commercial
 2448 Recycling Program Status Report. The Commercial Recycling Program Status Report
 2449 shall include, but not be limited to:

- 2450 1. A summary of training and professional development activities for the Commercial
2451 Recycling Promotion and supervisory staff;
- 2452 2. A description of the strategy and overall approach to attract and retain a high quality
2453 and effective Commercial Recycling Promotion Program and supervisory staff;
- 2454 3. A description and status of meeting the goals and objectives for the Commercial
2455 Recycling Promotion team and how these goals and objectives are tied to the
2456 compensation incentive plan; (Contractor must explain how the stated goals and
2457 objectives will be accomplished if no compensation incentive plan is used.)
- 2458 4. A description of Contractor’s sales strategy for maintaining and/or expanding the
2459 existing Commercial Recycling account base and diversion levels.
- 2460 5. A description of the services provided to the Commercial and Member Agency
2461 Facility sectors.
- 2462 6. A detailed accounting of diversion statistics for the Commercial and Member Agency
2463 Facility sectors.
- 2464 O. **Other Information.** Other information or reports that Agency may reasonably request
2465 or require be added to quarterly reporting. These requests may include, but shall not be
2466 limited to, information regarding on-call clean-up programs, Used Motor Oil and Used
2467 Motor Oil Filter Collection, and large Events and Venues Collection.

2468 **9.06 ANNUAL REPORTS**

2469 Annual reports shall present the information described in this Section in addition to the
2470 information required for quarterly reports pursuant to Section 9.05.

2471 A. **Operational Information**

- 2472 1. Routes by Service Sector
- 2473 a. Number of routes per day
- 2474 b. Types of vehicles
- 2475 c. Crew size per route
- 2476 e. Number of full-time equivalent routes
- 2477 f. Number of accounts per route
- 2478 g. Total hours per Service Sector per day and per year
- 2479 h. Average cost per route
- 2480 i. Route sheets and maps
- 2481 2. Personnel
- 2482 a. Organizational chart

- 2483 b. Job classifications and number of employees for each (e.g. administrative,
2484 Customer service representatives, drivers, supervisors, educational staff, etc.)
2485 c. Annual wages by job classification including benefits
2486 d. Number of full-time equivalent positions for each job classification
2487 e. Number of hours per job classification per day and per year
2488 3. Productivity Statistics
2489 a. Number of accounts per Service Sector
2490 b. Number of setouts per Service Sector
2491 c. Tons per route per day by Service Sector
2492 4. Operational Changes
2493 a. Number of routes
2494 b. Staffing
2495 c. Supervision
2496 d. Collection services
2497 5. Equipment - An inventory of equipment in accordance with Section 8.04.D.
2498 6. Billing - Billing review report in accordance with Section 7.01.F.
- 2499 B. **Customer Account Information.** As part of the annual reporting requirement,
2500 Contractor shall make available to Agency detailed Customer account information in
2501 tabular format and in electronic format (in computer software format that is compatible
2502 with the Agency's) that includes, at a minimum, the following information for each
2503 Customer: account number; service address; Customer's name, address, and phone
2504 number; billing contact name, billing address, and phone number; Solid Waste,
2505 Recyclable Materials, and Organic Materials Collection service level (i.e., number of
2506 Containers, size of Containers, frequency of Collection, and day(s) of Collection), and
2507 Rate charged. For Multi-Family Customers, the Customer account information shall also
2508 include the number of dwelling units at each Premises.
- 2509 C. **Customer Service Operations.** Contractor shall quarterly and annually, prepare and
2510 submit, to Agency and SBWMA, a Customer Service Operations Plan that shall include,
2511 at a minimum, the following sections:
- 2512 1. Customer Service Call Center
2513 A. Provide the number CSR supervisory staff and describe their responsibilities.
2514 B. Contractor must describe its training strategy for CSR's and CSR supervisory
2515 staff.
2516 C. Contractor must describe its strategy and overall approach to attracting and
2517 retaining a high quality CSR staff.
- 2518 2. Website
2519 A. Number of on-line payments made
2520 B. Number of On-Call Clean-Up Services scheduled
2521 C. Number of On-Call Bulky Goods Collections scheduled

- 2522 D. Number of extra solid waste pick-ups scheduled
- 2523 E. Number of service changes requested
- 2524 F. Number of complaints documented and resolved
- 2525 3. Customer Information System
- 2526 A. Status of any changes made to system software
- 2527 B. Description of proposed changes to system software
- 2528 C. Explanation and schedule of training activities
- 2529 4. Staffing
- 2530 5. Commercial Customer Service

2531 **D. Related Party Entities.**

2532 Contractor agrees that all financial transactions with all Related Party Entities shall be
2533 approved in advance in writing and disclosed annually (coinciding with Contractor's
2534 annual audited financial statements referred to in this Section 9.06) to the Agency in a
2535 separate disclosure letter to the Agency. This letter shall include, but not be limited to,
2536 the following information: a general description of the nature of each transaction, or type
2537 of (for many similar) transaction, as applicable. Such description shall include for each
2538 (or similar) transaction, amounts, specific Related Party Entity, basis of amount (how
2539 amount was determined), and description of the allocation methodology used to allocate
2540 any common costs. Amounts shall be reconciled to the Related Party Entity disclosures
2541 made in Contractor's annual audited financial statements referred to in this Section.

2542 At the Agency's request, Contractor shall provide the Agency with copies of working
2543 papers or other documentation deemed relevant by the Agency relating to information
2544 shown in the annual disclosure letter. The annual disclosure letter shall be provided to
2545 the Agency within sixty (60) Business Days of Contractor's Fiscal Year end.

2546 **E. Contractor's Review of Billings.** Pursuant to the requirements described in Section
2547 7.01.F, Contractor shall submit a report on its review of Billings.

2548 **F. Determination and Payment of Liquidated Damages.** In accordance with the
2549 requirements of Section 14.04.C, Contractor shall provide a report that identifies any
2550 non-compliance with the diversion measures listed in Attachment J and includes
2551 calculation of the Liquidated Damages due. This report shall be accompanied by
2552 supporting documentation identifying either compliance with or level of non-compliance
2553 with the performance measures. The report submittal shall be accompanied by a check
2554 from the Contractor in the amount of the Liquidated Damages due (per Contractor's
2555 calculation and self-reporting) for the reporting period.

2556 **9.07 EVENT-SPECIFIC REPORTING**

2557 Event-specific reports shall be submitted following the occurrence of the event as described in
2558 this Section.
2559

2560 A. **Report of Accumulated Solid Waste; Unauthorized Dumping.** As required by
2561 Section 7.06, Contractor shall report: (i) the addresses of any Premises at which the
2562 driver observes that Solid Waste, Recyclable Materials, and/or Organic Materials is
2563 accumulating; and (ii) the address, or other location description, at which Solid Waste,
2564 Recyclable Materials, and/or Organic Materials has been dumped in an apparently
2565 unauthorized manner. The report shall be delivered to the Agency within five (5)
2566 Business Days of such observation.

2567 B. **Hazardous Waste.** As required by Section 8.07, the Contractor shall notify the Agency
2568 of any Hazardous Waste identified in Containers or left at any Premises within 24 hours
2569 of identification of such material.

2570 C. **Reporting Adverse Information.** Contractor shall provide Agency two copies (one to
2571 the Agency Manager, one to the Agency Attorney) of all reports, pleadings, applications,
2572 notifications, Notices of Violation, communications or other material relating specifically
2573 to Contractor's performance of services pursuant to this Agreement, submitted by
2574 Contractor to, or received by Contractor from, the United States or California
2575 Environmental Protection Agency, the California Integrated Waste Management Board,
2576 the Securities and Exchange Commission or any other Federal, State, County, or local
2577 agency, including any Federal or State court. Copies shall be submitted to Agency
2578 simultaneously with Contractor's filing or submission of such matters with said agencies.
2579 Contractor's routine correspondence to said agencies need not be routinely submitted to
2580 Agency, but shall be made available to Agency promptly upon Agency's written request.

2581 **9.08 UPON-REQUEST REPORTING**

2582 A. **Holiday Tree Services.** Within ten (10) Business Days of Agency's request, Contractor
2583 provide the Tonnage of Holiday trees collected at the Drop Box sites or at drop-off sites
2584 (if drop-off sites were established).

2585 B. **Other.** The Agency reserves the right to request additional reports from the Contractor,
2586 and the Contractor shall deliver such reports within twenty-five (25) Business Days of
2587 such request provided that such information is similar in nature to the required elements
2588 of the monthly, quarterly or annual reporting requirements described in Sections 9.05 and
2589 9.06. If the reporting information requested by the Agency is not typically part of the
2590 Contractor's reporting requirements described in Sections 9.05 and 9.06, Contractor shall
2591 provide such information if the Contractor is required to maintain the information under
2592 the record keeping requirements described in Sections 9.01, 9.02, and 9.03.

2593 **ARTICLE 10 FRANCHISE FEE AND OTHER FEES**

2594 **10.01 GENERAL**

2595 The fees described in this Article shall be treated as Pass-Through Costs for the purposes of
2596 determining Contractor's Compensation and shall be recoverable through the Rates that
2597 Contractor charges to Customers. Contractor shall separately identify any of the fees established
2598 under this Article on Customer bills if directed to do so by Agency.

2599 **10.02 FRANCHISE FEE**

2600 In consideration of the exclusive franchise granted to Contractor by this Agreement, and to
2601 reimburse Agency for costs incurred in administering this Agreement, Contractor shall pay to
2602 Agency a Franchise Fee equal to _____ percent (___%) of Contractor's Gross Revenue
2603 received for services provided in Agency's Service Area under this Agreement.

2604 **10.03 AB 939 FEE**

2605 Agency has incurred expenses for preparing and adopting the Source Reduction and Recycling
2606 Element and the Household Hazardous Waste Element (SRRE and HHWE, respectively)
2607 required by the Act. Agency has incurred, and will continue to incur, expenses for implementing
2608 the programs in the SRRE and HHWE, and other programs Agency deems necessary to meet and
2609 sustain its diversion requirements. The AB 939 fee in effect on the Effective Date is
2610 \$_____ per year.

2611 **10.04 COLLECTION VEHICLE FEE**

2612 Contractor shall pay Agency a Collection vehicle impact fee of \$_____ per year to offset the
2613 cost to Agency of the annual impact of Contractor's Collection vehicles on Agency's streets.
2614 [NOTE TO PROPOSERS: THIS SECTION IS OPTIONAL FOR AGENCIES. IF AN
2615 AGENCY DOES NOT HAVE A COLLECTION VEHICLE IMPACT FEE AS OF THE DATE
2616 THE AGREEMENT IS SIGNED, THIS SECTION WILL BE OMITTED FROM ITS
2617 AGREEMENT.]

2618 **10.05 AGENCY ADMINISTRATIVE FEE**

2619 Contractor shall pay Agency a Administrative Fee of \$_____ per year to offset the cost to
2620 Agency of administering the Collection Agreement.

2621 **10.06 TIME AND METHOD OF PAYMENT**

2622 On or before the 20th day after the end of each calendar quarter, Contractor shall pay to Agency
2623 (i) the amount of the Franchise Fee due on Gross Revenues received during that quarter, (ii)
2624 twenty five percent (25%) of the annual AB 939 Fee, and (iii) the appropriate amount of any
2625 other fee established by Agency.

2626 Contractor shall provide, concurrently with the payment of fees, a statement showing the
2627 calculation of each fee, including the Gross Revenues received from Customers in each Service
2628 Sector for each month in the quarter. The statement shall be in a format, and contain the level of
2629 detail, specified by Agency.

2630 If a fee is not paid on time, Contractor shall pay a late payment charge equal to two percent (2%)
2631 of the fees due for that quarter. In addition, Contractor shall pay an additional two percent (2%)
2632 on any unpaid balance for each 30-day period a portion of the fee due remains unpaid. Late
2633 payment charges are not included in Contractor's Compensation and may not be recovered
2634 through Rates.

2635 **10.07 ADJUSTMENTS TO FEES; ADDITIONAL FEES**

2636 Agency may from time to time adjust the amount of the fees described in this Article and may
2637 establish other fees. Changes in the total amount of fees to be collected by Contractor and
2638 remitted to Agency shall be reflected in an adjustment to Contractor's Compensation and Rates.

2639 **ARTICLE 11 CONTRACTOR'S COMPENSATION AND RATES**

2640 **11.01 OVERVIEW**

2641 The Contractor's Compensation for performance of all its obligations under this Agreement is
2642 described in this Article. Contractor's Compensation provided for in this Article shall be the
2643 full, entire, and complete compensation due to Contractor pursuant to this Agreement for all
2644 labor, equipment, materials and supplies, Processing, transfer, and Disposal fees, fees due to
2645 Agency, taxes, insurance, bonds, overhead, operations, profit, and all other things necessary to
2646 perform all the services in the manner required by this Agreement.

2647 Contractor's proposed costs were adjusted during negotiations of this Agreement in 2009 to
2648 reflect: (1) changes to costs if one or more Member Agencies choose not to participate in the
2649 Service District; (2) inclusion of optional programs in the scope of services; (3) any scope
2650 expansion to integrate programs for management of Household Hazardous Waste, U-Waste,
2651 sharps, or other programs; and, (4) any unique Member Agency conditions or contract terms.
2652 {Note: During contract negotiations in 2009, this list may be revised to account for changes to
2653 proposed costs or to reflect reasons for actual changes that may be different than described
2654 above.} These "Adjusted Proposed Costs" for the Service District are included in Attachment N
2655 of this Agreement. At the time of negotiations, the Adjusted Proposed Costs for the Service
2656 District were allocated to each Member Agency. The Agency's allocated costs are also included
2657 in Attachment N of this Agreement. All future compensation adjustments are to be based on the
2658 Adjusted Proposed Costs.

2659 The Adjusted Proposed Costs shall be adjusted in 2010 to set Contractor's Compensation for
2660 2011. The adjustments are needed to reflect changes (from 2008 to 2011) for several factors:

- 2661 • Inflation as Adjusted Proposed Costs were be presented in 2008 dollars;
- 2662 • Estimated Tonnage Collected and related Disposal and Processing costs;
- 2663 • Service level conditions (i.e., number of accounts, lifts, pulls);
- 2664 • Wage and benefits; and,
- 2665 • Equipment capital expense if impacted by more than inflation.

2666 Annually thereafter, the Contractor's Compensation shall be adjusted using various indices with
2667 the following exceptions: (i) wages for route labor and mechanics will be adjusted based on
2668 wage rates in the collective bargaining agreements negotiated by the prior collection contractor
2669 until those agreements expire (thereafter wages shall be adjusted using a cost index); (ii) costs
2670 will be adjusted (in 2012 only) when determining Rate Year Three (2013) compensation to

2671 reflect the then-current data for accounts, bin lifts, and drop box pulls; and (iii) Disposal and
2672 Processing costs will be adjusted annually to reflect estimated Tonnage and projected Shoreway
2673 facility gate fees.

2674 After the conclusion of each Rate Year, a revenue reconciliation will be conducted to determine
2675 if the Gross Revenues Collected were equal to, less than, or greater than the Contractor's
2676 Compensation. Adjustments to Contractor's Compensation will be made in subsequent year(s)
2677 to recover any shortfalls or remit any excess revenues. In addition, a reconciliation will be
2678 conducted to determine if actual Disposal and Processing Costs for the Shoreway Facility (i.e.,
2679 for the Designated Transfer and Processing Site) are equal to, less than, or greater than the
2680 Disposal and Processing Costs included in the Contractor's Compensation. Adjustments to
2681 Contractor's Compensation will be made in subsequent year(s) to pay Contractor for any
2682 shortfalls or recover from Contractor any surpluses in Disposal and Processing Costs. **If**
2683 **Contractor's actual costs for other expenses are more or less than the calculated annual**
2684 **Contractor's Compensation, adjustments will not be made except changes related to a**
2685 **special compensation review (pursuant to Section 11.05).**

2686 **No retroactive adjustments to Contractor's Compensation for actual costs will be made**
2687 **during the Term of this Agreement with the exception of retroactive adjustments to**
2688 **compensate the Contractor for actual Disposal and Processing costs described above.** The
2689 Customer participation and service levels of the Collection services achieved in Rate Year One
2690 and the first portion of Rate Year Two will be reflected in Contractor's Compensation for Rate
2691 Year Three and will be considered representative of future conditions.

2692 In accordance with Section 11.04, the Contractor will file a Compensation Adjustment
2693 Application (Application) annually by August 1 with the Agency to request determination of
2694 Contractor's Compensation for the coming Rate Year.

2695 Under this Agreement, Contractor shall have the right and obligation to charge and collect from
2696 Customers, Rates that are approved by the Agency for provision of services to Customers. The
2697 Agency shall determine the Rates, adjust the Rates periodically as necessary, and establish the
2698 Rate structure (i.e., relationship of individual Rates to other Rates).

2699 **11.02 DETERMINATION OF CONTRACTOR'S COMPENSATION**

2700 A. **Contractor's Compensation for Rate Year One (2011).** Contractor's Compensation
2701 for 2011 shall be determined based on the Adjusted Proposed Costs included in
2702 Attachment N adjusted to reflect impacts related to three years of inflation (as Adjusted
2703 Proposed Costs are in 2008 dollars), changes in wages and benefits, estimated 2011
2704 Tonnage and Disposal and Processing fees, and estimated 2011 Customer account data
2705 and service levels. In 2010, Contractor shall present its Application documenting its
2706 calculation of Contractor's Compensation for 2011.

2707 B. **Contractor's Compensation for Rate Year Two (2012).** Contractor's Compensation
2708 for 2012 shall be based on the 2011 Contractor's Compensation adjusted to reflect
2709 inflation, changes in wages and benefits, and estimated 2012 Tonnage and Disposal and
2710 Processing fees. In 2011, Contractor shall present an Application documenting its
2711 calculation of Contractor's Compensation for 2012.

2712 C. **Contractor's Compensation for Rate Year Three (2013).** Contractor's Compensation
2713 for 2013 shall be based on Contractor's Compensation for 2012 adjusted to reflect
2714 inflation, changes in wages and benefits, estimated 2013 Tonnage and Disposal and
2715 Processing fees, and estimated 2013 Customer account and service levels. In 2012,
2716 Contractor shall present an Application documenting its calculation of Contractor's
2717 Compensation for 2013. Note that the adjustment for Customer account and service
2718 levels shall be the final adjustment made during the Term of the Agreement.

2719 D. **Contractor's Compensation for Rate Years Four and Beyond (2014 and Beyond).**
2720 The Contractor's Compensation shall be adjusted annually, with Agency Council/Board
2721 approval, commencing with determination of Contractor's Compensation for Rate Year
2722 Four (2014) and continuing through the remaining Term of this Agreement including any
2723 extension periods. . The calculations include several adjustments to Contractor's
2724 Compensation related to inflation, changes in wages and benefits, estimated Tonnage and
2725 Disposal and Processing fees. For Rate Year Four (2014) through the last Rate Year of
2726 the Term, no changes to Contractor's Compensation will be made to reflect actual costs
2727 (other than the reconciliation of actual Shoreway Facility Disposal and Processing Costs)
2728 or to reflect changes in Customer account and service levels. The only changes that may
2729 relate to actual costs would be changes made through a special compensation review
2730 pursuant to Section 11.05.

2731 E. **Allocation of Contractor's Costs.** Contractor shall provide to the Agency and SBWMA
2732 such detailed operational data as Agency and SBWMA requires to reasonably ascertain
2733 the relative costs of service for the service areas where Contractor operates. SBWMA
2734 shall allocate Contractor's Compensation to the Agency in accordance with the
2735 procedures described in of Attachment K.

2736 11.03 ANNUAL RECONCILIATION PROCESS

2737 In accordance with procedures described in Attachment K, an annual revenue reconciliation
2738 process shall occur after completion of each Rate Year to adjust for actual Gross Revenues
2739 Collected and actual Disposal and Processing costs. The reconciliation process shall not be
2740 performed for revenues and Disposal and Processing costs related to the last Rate Year of the
2741 Agreement. As a result, Contractor shall not be compensated for differences between projected
2742 and actual Gross Revenues Collected in the last year of the Agreement.

2743 11.04 APPLICATION PROCESS FOR CONTRACTOR'S COMPENSATION

2744 A. **Application Date and Content.** Contractor's Application for determination of
2745 Contractor's Compensation for each Rate Year shall be prepared and submitted by
2746 August 1 each year. If the Agency requests additional information beyond that provided
2747 by the Contractor in its application, the Contractor shall provide information requested by
2748 the Agency during its review of the application.

2749 B. **Agency Review of Application.** The Contractor's Compensation application shall be
2750 reviewed by the Agency or, at the Agency's request, the SBWMA or their representative

2751 for accuracy, and consistency with the procedures for determining Contractor's
2752 Compensation. The Agency (or the SBWMA at the Agency's request) or their
2753 representative may propose corrections to the Contractor's determination of Contractor's
2754 Compensation for review with the Contractor; however, if the Agency and Contractor do
2755 not agree on such corrections, the Agency shall make the final determination of
2756 Contractor's Compensation. The Agency Council/Board shall approve the Contractor's
2757 Compensation for the Coming Rate Year. The Agency Council/Board shall act in good
2758 faith to approve the Contractor's Compensation for the Coming Rate Year by
2759 commencement date of the Rate Year.

2760 11.05 SPECIAL COMPENSATION REVIEW

2761 A. **Eligible Items.** The Contractor is entitled to apply to the Agency for consideration of a
2762 special review of Contractor's Compensation, or the Agency may initiate such a review,
2763 should one or more of the following occur and should such occurrence have a material
2764 effect of 2% or more annually on the Contractor's Compensation for the then-current
2765 Rate Year:

- 2766 1. Documented significant changes in the cost to provide services required in this
2767 Agreement as a result of an agreed-upon, Agency-directed change in scope, as
2768 provided for under Section 15.12.
- 2769 2. Provision of emergency services pursuant to Section 7.09.
- 2770 3. Flood, earthquake, other acts of nature, war, civil insurrection, riots, acts of any
2771 government agency (including judicial action), or other similar catastrophic events
2772 which are beyond the control of and not the fault of the Contractor.
- 2773 4. Change in Law, including, but not limited to, Changes in Law that result in
2774 regulatory, governmental, or other surcharge fees, after the Effective Date that: (i)
2775 was not reasonably known to the Contractor before the Effective Date, (ii) the
2776 Contractor substantiates, and (iii) results in a direct cost increase or decrease that is
2777 equal to or greater than 2% of the Contractor's Compensation for the then-current
2778 Rate Year.
- 2779 5. Agency-initiated changes to the amount of Franchise Fees or other fees in
2780 accordance with Article 10.

2781 B. **Ineligible Items.** A special review of Contractor's Compensation may not be initiated
2782 for the following items and Contractor shall not be compensated for such items over the
2783 Term of the Agreement.

- 2784 1. Increases or decreases in the cost of Solid Waste, Recyclable Materials, or Organic
2785 Materials Collection, transportation, Processing, or Disposal costs in excess of the
2786 increases provided through the annual adjustment mechanism described in
2787 Attachment K unless cost increases or decreases are related to eligible items listed in
2788 Section 11.05.A above.

- 2789 2. Growth or decline in the number of Customers or their subscription levels with the
2790 exception of adjustments made when determining Contractor's Compensation for
2791 Rate Year One (2011) and Rate Year Three (2013).
- 2792 3. Changes in the number of accounts related to Container sizes or frequency of
2793 Collection with the exception of adjustments made when determining Contractor's
2794 Compensation for Rate Year One (2011) and Rate Year Three (2013).
- 2795 4. Change in the Tonnage or composition of Solid Waste, Recyclable Materials, or
2796 Organic Materials other than the changes related to the reconciliation of Disposal
2797 and Processing costs.

2798 C. **Review of Costs.** If the Contractor or the Agency requests a special review of
2799 Contractor's Compensation, the Agency shall have the right to review any or all financial
2800 and operating records of Contractor and Related-Party Entities.

2801 D. **Submittal of Request.** If the Contractor is requesting a special review of Contractor's
2802 Compensation, the Contractor must submit its request for a special review, and cost and
2803 operational data, in a form and manner specified by the Agency, at least six (6) months
2804 before the proposed effective date of any adjustment of Contractor's Compensation. The
2805 Agency may waive the six (6) month submittal requirement if the reason for the special
2806 review of Contractor's Compensation is a Change in Law that will become effective in
2807 less than a six (6) month period.

2808 If Agency is requesting a special review of Contractor's Compensation, the Agency shall
2809 notify the Contractor at least eight (8) months before the proposed effective date of any
2810 adjustment of Contractor's Compensation. Upon such notification, Contractor shall,
2811 within thirty (60) calendar days, submit reasonable cost and operational data and
2812 proposed adjustment to Contractor's Compensation as requested by the Agency, in a
2813 form and manner specified by the Agency.

2814 A request for special review of Contractor's Compensation shall include a proposal on
2815 whether the Contractor's Compensation adjustment resulting from the special review
2816 shall be an adjustment in addition to or in lieu of the annual adjustment of Contractor's
2817 Compensation to be performed in accordance with Section 11.02 above.

2818 E. **Burden of Justification.** Contractor shall bear the burden of justifying to the Agency by
2819 substantial evidence any entitlement to current, as well as increased, Contractor's
2820 Compensation under this Section 11.05. If the Agency determines that the Contractor has
2821 not met its burden, the Contractor may request one hearing to produce additional
2822 evidence. Upon such request, the Agency shall permit said additional hearing. In the
2823 event the Agency denies Contractor's request, Contractor shall have the right to present
2824 its claim in a court of competent jurisdiction.

2825 F. **Grant of Request.** Based on evidence including, but not limited to that submitted by
2826 Contractor, the Agency Council {or Board} may grant some, all, or none of the requested
2827 increase (or decrease) and approve the adjusted Contractor's Compensation.

2828 G. **Compensation.** The Party requesting the special review of Contractor’s Compensation
2829 shall bear all reasonable costs of both Parties for participating in such review up to a
2830 maximum of \$50,000 per Party and such costs shall not be reimbursed through Rates
2831 charged Customers. If a special review occurs in response to an Agency-directed change
2832 in scope (pursuant to Section 11.05.A.1) or Agency-initiated changes to the amount of
2833 the Franchise Fee or other fees (pursuant to Section 11.05.A.5), the Agency shall be
2834 considered the Party requesting the special review.

2835 **11.06 COMPENSATION ADJUSTMENTS FOR CHANGES IN SCOPE**

2836 In the event either the Agency or Contractor requests a change in scope in accordance with
2837 Section 15.12 of this Agreement, the Contractor shall furnish the Agency with projected
2838 operational and cost data for the change in scope to support any adjustment to Contractor’s
2839 Compensation. For the purposes of analyzing cost impacts of changes in scope, the Contractor’s
2840 profit shall be calculated using an operating ratio of _____% {Insert operating ratio based on
2841 Contractor’s Proposal} of actual reasonable and necessary costs net of Transfer, Processing, and
2842 Disposal expenses, Franchise Fees, and other fees. The Agency reserves the right to require that
2843 the Contractor supply any additional cost data or other information it may reasonably need to
2844 ascertain the appropriate adjustment of Contractor’s Compensation, if any, for the change in
2845 scope. The Agency shall review this operational and cost data, and the Agency Council/Board
2846 shall establish Contractor’s Compensation for the change in scope, if warranted.

2847 The granting of any change in scope shall be contingent upon Agency’s written approval and
2848 establishment of new Contractor’s Compensation.

2849 **11.07 RATE-SETTING PROCESS**

2850 A. **General.** The Agency shall be responsible for establishing Rates as described in this
2851 Article. If at any time during the Term of the Agreement, the Contractor determines the
2852 need for a Rate that does not appear on the Agency-approved Rate schedule, Contractor
2853 shall immediately notify the Agency and request establishment of such rate. For
2854 example, if a Customer requires Collection of a fifteen (15) cubic yard Compactor five
2855 (5) times per week and the Agency-approved Rate schedule does not include this level of
2856 service, the Contractor must request that the Agency approve a Rate for this level of
2857 service. This provision shall not be interpreted as an excuse from performance. In the
2858 event that a Rate does not exist where one is needed, Contractor shall immediately notify
2859 Agency of the interim Rate that they intend to charge until Agency can set a Rate.

2860 B. **Annual Adjustment Process.** The Rates shall be adjusted annually, with Agency
2861 Council/Board approval, commencing with the first Rate Year (January 1, 2011) and
2862 continuing through the remaining Term of this Agreement including any extension
2863 periods. The Agency shall adjust Rates as it determines necessary in consideration of
2864 annual Gross Revenues needed to cover Contractor’s Compensation for the Rate Year.
2865 The Agency Council/Board shall act in good faith to approve such Rate adjustments by
2866 commencement date of the Rate Year. The adjusted Rates shall not take effect until the
2867 Agency Council/Board has approved such Rates.

2868 C. **Failure to Adjust Rates by January 1.** If the Contractor submits its application for
2869 determination of Contractor’s Compensation on or before August 1 , and the Agency
2870 does not adjust Rates to be effective on or before January 1 of a Rate Year, the Agency
2871 may include a surcharge on the Rates that shall be effective for the remainder of the Rate
2872 Year to recover revenues lost by the Contractor, if any. To determine the amount of lost
2873 revenues, if any, the Agency and Contractor shall meet and confer to determine the effect
2874 the delay in adopting Rates has on the Contractor’s revenue. The assessment of the
2875 revenue impact shall consider the Contractor’s billing cycle (e.g., impact to Customers
2876 billed in advance and to Customers billed in arrears), the ability of Contractor to delay
2877 issuance of bills, the payment cycle of Customers, and other variables.

2878 If the Contractor does not submit the application on or before the application date of
2879 August 1, Rates may not be adjusted by January 1. In such case, all Rates shall be
2880 adjusted as soon as practical following approval by the Agency Council. If the
2881 Contractor does not submit the application by the application date identified in Section
2882 11.04.A, no retroactive adjustment will be made to allow the Contractor to recover
2883 revenues that it would have collected, had the Rate adjustment been implemented in
2884 accordance with the prescribed schedule.

2885 D. **Rate Structure.** The Agency shall have the sole and exclusive right to change the
2886 relationship of individual Rates in comparison with other Rates as Agency deems
2887 appropriate.

2888 **11.08 NOTICE OF RATE ADJUSTMENTS**

2889 The Agency shall provide all property Owners and Customers with advance written notice of
2890 approved Rate changes at least forty-five (45) calendar days before the public hearing at which
2891 the adjustment to Rates shall be effective (or as otherwise required to conform to the noticing
2892 requirements of Proposition 218) unless the Agency provides written approve to waive this
2893 requirement. Contractor shall provide Agency with a complete and current list of its customer
2894 addresses and contacts at least ninety (90) calendar days before the aforementioned public
2895 hearing.

2896 **11.09 POTENTIAL RATE CONSTRAINTS**

2897 The parties recognize that, as of the date this Agreement is entered into, there is no authoritative
2898 judicial determination of whether Articles 13.C and D of the California Constitution apply to
2899 charges imposed by private enterprises for solid waste handling and recycling services when
2900 those charges are regulated by a local government.

2901
2902 Until such authoritative judicial guidance is available, the Agency intends to provide notice of
2903 proposed rate increases, and an opportunity for public hearing and protest as required by Article
2904 13.D.

2905
2906 The Agency will not be in default of this Agreement if (i) a majority protest prevents a proposed
2907 rate increase from being adopted, (ii) a court rules that rates adopted by the Agency are not
2908 consistent with Article 13.D, or (iii) an initiative reduces rates from those in effect. After any

2909 such event, the parties shall promptly meet and confer in good faith to consider modifications to
2910 service levels commensurate with the rates that Contractor may legally charge.

2911 **11.10 PERFORMANCE INCENTIVES AND DISINCENTIVES**

2912 Pursuant to conditions and standards described in Attachment I, performance incentives (in the
2913 form of monetary payments to the Contractor) may be awarded to Contractor for excellent
2914 performance related to minimal missed pick-up initial complaints, high diversion levels, and
2915 minimal call center average hold time. Any performance incentive for achievement of the
2916 performance standards in Attachment I shall be added to Contractor’s approved compensation
2917 during the Rate Year following the award of the performance incentive. Pursuant to conditions
2918 and standards described in Attachment I, performance disincentives (in the form of deferred
2919 compensation to the Contractor) may be assessed by the Agency for substandard performance
2920 related to: diversion level attained (i.e., Single-Family and Commercial sectors), Contamination
2921 Level (i.e., Targeted Recyclable Materials, Residential and Commercial Organic Materials, and
2922 Commercial Plant Materials), Missed Pick-Up Initial Complaints, Missed Pick-Up Collection
2923 Events, Average Hold Time, and Calls Answered in Three (3) Minutes. Any performance
2924 disincentive payment for substandard performance as specified in Attachment I shall be deducted
2925 from Contractor’s approved compensation during the Rate Year following assessment of the
2926 performance disincentive. {Note to Proposers: This section describes an optional
2927 incentive/disincentive mechanism. One or more Member Agencies may choose to include some
2928 or all of these provisions in their Collection Agreement depending on their goals to manage
2929 Contractor’s performance and related costs. }

2930 **ARTICLE 12 AGENCY RIGHT TO USE EQUIPMENT AND FACILITIES**

2931 **12.01 PURPOSE**

2932 The purpose of this Article is to provide a procedure for Collecting Solid Waste, Recyclable
2933 Materials, Organic Materials, and other materials pursuant to this Agreement from Agency’s
2934 Service Area upon the occurrence of an “emergency condition.” The Agency, in its sole
2935 discretion, may determine a period of an “Emergency Condition” if both of the following
2936 conditions occur: (i) Contractor, for any reason whatsoever, fails, refuses, or is unable to
2937 perform its obligations, at the time and in the manner provided in this Agreement, for a period of
2938 more than forty-eight (48) hours, and (ii) the Agency finds that such failure, refusal, or inability
2939 endangers or menaces the public health, safety, or welfare. The Parties acknowledge that either
2940 temporary cessation or cessation of indeterminate duration of the services to be provided by
2941 Contractor hereunder may result in conditions detrimental to the public health, safety, and
2942 welfare, and that, in order to protect the public, invoking the extraordinary provisions of this
2943 Article may be necessary.

2944 If the Agency determines a period of emergency, then the Agency shall have the right during the
2945 period of such emergency to: (i) perform, or cause to be performed, such services with its own or
2946 other personnel without liability to Contractor; and/or (ii) take possession of and use any or all of
2947 Contractor's land, Facilities, equipment, and other property used or useful in providing the
2948 services under this Agreement.

2949 **12.02 NOTICING OF EMERGENCY CONDITION**

2950 A. **Hearing; Determination.** Agency may hold a hearing on the question of the existence
2951 of an Emergency Condition upon giving not less than forty-eight (48) hours prior written
2952 notice to Contractor and to all Member Agencies of SBWMA of said hearing. At the
2953 hearing, Contractor and any and all interested Persons shall be given the opportunity to
2954 be heard on the question aforesaid. Upon conclusion of the hearing, Agency shall
2955 determine if an Emergency Condition exists in the Service Area. If it is determined that
2956 an Emergency Condition does exist, the Agency shall, by resolution, declare the
2957 existence of the Emergency Condition, and transmit a certified copy of the resolution to
2958 Contractor and to all Member Agencies and the SBWMA.

2959 B. **Noticing Procedures.** If the Agency chooses to exercise its right to perform service in
2960 the event of an Emergency Condition, the Agency shall provide oral notice (by telephone
2961 or in Person) to Contractor of the Contractor's failure, refusal, or inability to perform its
2962 Collection obligations and of the Agency's intent to perform Collection services and/or
2963 possess Contractor's Facilities and equipment. The Agency shall send written
2964 confirmation of such oral notification to Contractor, by certified mail, within twenty-four
2965 (24) hours of the oral notification, unless the twenty-four (24) hour deadline ends on a
2966 Sunday, Agency Holiday, or United States Postal Service holiday, then confirmation of
2967 such notice shall be sent on the day following such day. At a minimum, the Agency shall
2968 provide written notice to the Contractor twenty-four (24) hours prior to its plans to
2969 exercise its rights to temporarily perform Collection services and/or possess Contractor's
2970 Facilities and equipment.

2971 **12.03 EMERGENCY OPERATIONS**

2972 From and after the declaration of the existence of an Emergency Condition pursuant to Section
2973 12.02, SBWMA, Agency, and/or their agent(s) may assume and carry out, as the "Emergency
2974 Operator," the Collection operations of Contractor hereunder if Agency's Service Area is within
2975 the area to which the Emergency Condition pertains. Except as provided in Section 12.04,
2976 during the period the Emergency Condition exists, all revenues which, but for the Emergency
2977 Condition would accrue hereunder to Contractor, shall instead accrue and be payable to the
2978 Emergency Operator.

2979 **12.04 USE OF CONTRACTOR'S EQUIPMENT AND FACILITIES**

2980 Upon the declaration of the existence of an Emergency Condition pursuant to Section 12.01,
2981 Contractor shall make available and relinquish to the SBWMA, Agency, and/or their agent(s)
2982 ("Emergency Operator") all of Contractor's operable vehicles, equipment, and other Facilities
2983 necessary or convenient for provision of Collection services in the Service Area.
2984 Notwithstanding the foregoing provisions of this Section 12.04, the use of Contractor's vehicles,
2985 equipment and other Facilities, and the assignment of rights to Contractor shall, in the case of
2986 Contractor's insolvency, bankruptcy, or other adverse financial condition, be subject to the
2987 provisions of the United States Bankruptcy Act (11 USC §101 et seq.) to the extent applicable.

2988 During the existence of an Emergency Condition, the Emergency Operator shall operate,
2989 maintain, and repair, without cost to Contractor, Contractor's vehicles, equipment, and other
2990 Facilities used by it. Upon the cessation of the Emergency Condition, the right to use such
2991 vehicles, equipment, and Facilities shall expire, and the Emergency Operator shall return said
2992 vehicles, equipment, and Facilities to Contractor in a condition substantially the same as that
2993 which existed upon acquiring said vehicles, equipment, and Facilities, ordinary wear and tear
2994 excepted.

2995 The Agency, or its Emergency Operator, agrees that it assumes responsibility for the proper and
2996 normal use of such equipment and Facilities while in its possession and that it shall attempt to
2997 avoid interrupting the Contractor's services to other parties.

2998 Contractor agrees that in such event:

- 2999 • It will take direction from the Agency to effect the transfer of possession of property
3000 to the Agency for Agency's use.
- 3001 • It will, if Agency so requests, keep in good repair and condition all of such property,
3002 provide all motor vehicles with fuel, oil and other service, and provide such other
3003 service as may be necessary to maintain said property in satisfactory operational
3004 condition.
- 3005 • Subject to provisions of any labor agreements then in effect, Contractor shall provide
3006 the services of all or any personnel necessary or useful for the Collection operations
3007 including, if Agency so desires, employees then employed by Contractor. Contractor
3008 further agrees, if Agency so requests, to furnish Agency the services of any or all
3009 management or office personnel employed by Contractor whose services are
3010 necessary or useful for Collection operations and for the Billing and collection of fees
3011 for these services subject to the provisions of Section 15.01 (Relationship of the
3012 Parties).

3013 If the interruption or discontinuance of service is caused by any of the reasons listed in Excuse
3014 from Performance Section 14.05, the Agency shall pay to Contractor \$100 per day for use of
3015 each Collection vehicle and the reasonable rental value of other equipment and Facilities,
3016 possession of which is taken by the Agency, for the period of the Agency's possession, if any,
3017 which extends beyond the period of time for which Contractor has rendered bills to Customers in
3018 advance of service.

3019 Except as otherwise expressly provided in the previous paragraph, the Agency's exercise of its
3020 rights under this Article: (i) does not constitute a taking of private property for which
3021 compensation must be paid; (ii) will not create any liability on the part of Agency to Contractor;
3022 and (iii) does not exempt Contractor from the indemnity provisions of Article 13, which are
3023 meant to extend to circumstances arising under this Section, provided that Contractor is not
3024 required to indemnify Agency against claims and damages arising from the sole negligence of
3025 Agency officers, employees, and agents in the operation of Collection vehicles during the time
3026 the Agency has taken possession of such vehicles.

3027 **12.05 INDEMNIFICATION**

3028 In the event that an Emergency Operator appointed by Agency or SBWMA utilizes any Facilities
3029 and/or equipment of Contractor, Agency shall defend, indemnify, and hold harmless Contractor
3030 and its Affiliates from and against any and all losses, expenses, liens, claims, demands, and
3031 causes of action of every kind and character (excluding those based upon the sole active or
3032 passive negligence or willful misconduct of Contractor, its officers, employees and agents) for
3033 death, personal injury, property damage, or any other liability or damages, including costs,
3034 attorneys' fees, and settlements arising out of, or in connection with, the use of Contractor's
3035 Facilities and/or equipment by said Emergency Operator.

3036 **12.06 CESSATION OF EMERGENCY**

3037 A. **Hearing; Determination.** At any time after the Emergency Operator has commenced the
3038 Collection of Solid Waste, Agency may hold a hearing on the question of the cessation of
3039 the Emergency Condition upon giving not less than forty-eight (48) hours' prior written
3040 notice to Contractor, the Emergency Operator, and all other Member Agencies of
3041 SBWMA of said hearing. At the hearing, Contractor, the Emergency Operator, and any
3042 and all interested Persons shall be given the opportunity to be heard on the question
3043 aforesaid. Upon conclusion of the hearing, the Agency shall determine if the Emergency
3044 Condition has ceased. If it is determined that the Emergency Condition has ceased, the
3045 Agency shall, by resolution, declare the cessation of the Emergency Condition, and
3046 transmit a certified copy of the resolution to Contractor, SBWMA, and all other Member
3047 Agencies of SBWMA.

3048 B. **Resumption of Service.** Upon the declaration of cessation of the Emergency Condition,
3049 the Emergency Operator shall immediately return to Contractor its vehicles, equipment,
3050 and other Facilities acquired and used by it under Section 12.04. Further, upon the
3051 declaration of cessation of the Emergency Condition, Contractor shall recommence its
3052 operations hereunder (unless Agency has terminated this Agreement pursuant to Section
3053 12.07) and shall perform all of its duties and obligations in accordance with the
3054 provisions hereof, and shall be entitled to all of its rights hereunder, including accrual of
3055 revenues for its benefit, from and after the date upon which the Emergency Condition
3056 shall be deemed to have ceased.

3057 C **Duration of Agency's Possession.** Agency (or the Emergency Operator) has no
3058 obligation to maintain possession of Contractor's property and/or continue its use in
3059 Collection operations for any period of time and may, at any time, in its sole discretion,
3060 relinquish possession to the Contractor.

3061 The Agency's right to retain temporary possession of Contractor's property, and to
3062 provide Collection services, shall continue until Contractor can demonstrate to the
3063 Agency's satisfaction that it is ready, willing, and able to resume such services or for one
3064 hundred eighty (180) calendar days, whichever occurs first unless the Contractor is in
3065 default in which case the Agency may terminate the Agreement in accordance with
3066 procedures described in Article 14.

3067 Notwithstanding anything herein contained to the contrary, no Emergency Condition
3068 shall exist for more than one hundred eighty (180) consecutive calendar days. Upon the
3069 expiration of said one hundred eighty (180) calendar days, and unless the Emergency
3070 Condition has ceased prior thereto, this Agreement shall terminate. In the event of such
3071 termination, no rights shall accrue to Contractor under this Agreement from and after the
3072 date of termination.

3073 **12.07 AGENCY TERMINATION OF AGREEMENT**

3074 Notwithstanding the provisions of Section 12.06, if, upon the cessation of the Emergency
3075 Condition, Agency's determines (irrespective of contrary determinations by SBWMA or other
3076 Member Agencies) Contractor is not substantially able to perform its duties and obligations
3077 hereunder due to the effects of the Emergency Condition, the Agency Council/Board may
3078 declare this Agreement terminated effective upon the date of the cessation of the Emergency
3079 Condition. In the event of such termination, no rights shall accrue to Contractor under this
3080 Agreement from and after the date of termination. Contractor shall not be entitled to any further
3081 revenues from Collection operations authorized hereunder from and after the effective date of
3082 termination.

3083 **12.08 CONDEMNATION**

3084 The Agency fully reserves the rights to acquire the Contractor's property, Facilities, and
3085 equipment utilized in the performance of this Agreement, by purchase or through the exercise of
3086 the right of eminent domain.

3087 **ARTICLE 13 INDEMNITY, INSURANCE, BOND, GUARANTY**

3088 **13.01 INDEMNIFICATION**

3089 Contractor shall indemnify, defend and hold harmless Agency, its officers, employees and agents
3090 (collectively, the "Indemnitees"), from and against (i) any and all liability, penalty, claim,
3091 demand, action, proceeding or suit, of any and every kind and description, whether judicial,
3092 quasi-judicial or administrative in nature, (ii) any and all loss including, but not limited to, injury
3093 to and death of any person and damage to property, and (iii) contribution or indemnity demanded
3094 by third parties (collectively, the "Claims"), arising out of or occasioned in any way by, directly
3095 or indirectly, Contractor's performance of, or its failure to perform, its obligations under this
3096 Agreement. The foregoing indemnity shall not apply to the extent that a Claim is caused solely
3097 by the active negligence or intentional misconduct of the Indemnitees, but shall apply if the
3098 Claim is caused by the joint negligence of Contractor and other persons, including an
3099 Indemnitee. Upon the occurrence of any Claim, Contractor shall defend (with attorneys
3100 reasonably acceptable to Agency) the Indemnitees. Contractor's duty to defend and indemnify
3101 shall survive the expiration or earlier termination of this Agreement.

3102 **13.02 INSURANCE**

3103 **B. Types and Amounts of Coverage.** Contractor shall procure from an insurance
3104 company or companies admitted to do business in the State of California, and shall
3105 maintain in force at all times during the Term, the following types and amounts of
3106 insurance:

3107 1. Workers' Compensation and Employer's Liability. Contractor shall maintain
3108 workers' compensation insurance covering its employees in statutory amounts
3109 and otherwise in compliance with the laws of the State of California. Contractor
3110 shall maintain employer's liability insurance in an amount not less than one
3111 million dollars (\$1,000,000) per accident or disease. Contractor shall not be
3112 obligated to carry workers compensation insurance if (i) it qualifies under
3113 California law and continuously complies with all statutory obligations to self-
3114 insure against such risks; (ii) furnishes a certificate of Permission to Self Insure
3115 issued by the Department of Industrial Relations; and (iii) furnishes updated
3116 certificates of Permission to Self Insure periodically to evidence continuous self
3117 insurance.

3118 2. Comprehensive General Liability. Contractor shall maintain comprehensive
3119 general liability insurance with a combined single limit of not less than ten
3120 million dollars (\$10,000,000) per occurrence and _____ million dollars
3121 (\$____,000,000) annual aggregate covering all claims and all legal liability for
3122 personal injury, bodily injury, death, and property damage, including the loss of
3123 use thereof, arising out of, or occasioned in any way by, directly or indirectly,
3124 Contractor's performance of, or its failure to perform, services under this
3125 Agreement.

3126 The insurance required by this subsection shall include:

- 3127 (i) Premises Operations (including use of owned and non-owned equipment);
- 3128 (ii) Personal Injury Liability with employment exclusion deleted;
- 3129 (iii) Broad Form Blanket Contractual with no exclusions for bodily injury,
3130 personal injury or property damage (including coverage for the indemnity
3131 obligations contained herein);
- 3132 (iv) Owned, Non-Owned, and Hired Motor Vehicles;
- 3133 (v) Broad Form Property Damage.

3134 The comprehensive general liability insurance shall be written on an "occurrence"
3135 basis (rather than a "claims made" basis) in a form at least as broad as the most
3136 current version of the Insurance Service Office commercial general liability
3137 occurrence policy form (CG0001). If occurrence coverage is not obtainable,
3138 Contractor must arrange for "tail coverage" on a claims made policy to protect
3139 Agency from claims filed within four years after the expiration or earlier

3140 termination of this Agreement relating to incidents that occurred prior to such
3141 expiration or termination.

3142 3. Automobile Liability. Contractor shall maintain automobile liability insurance
3143 covering all vehicles used in performing service under this Agreement with a
3144 combined single limit of not less than ten million dollars (\$10,000,000) per
3145 occurrence for bodily injury and property damage.

3146 4. Pollution (Environmental Impairment) Liability. Contractor shall maintain
3147 pollution liability insurance coverage of not less than ten million dollars
3148 (\$10,000,000) per occurrence covering claims for on-site, under-site, or off-site
3149 bodily injury and property damage as a result of pollution conditions arising out
3150 of its operations under this Agreement.

3151 5. Hazardous Materials Transport. Contractor shall maintain insurance coverage of
3152 not less than _____ million dollars (\$____,000,000) per occurrence for bodily
3153 injury and property damage arising out of the sudden and accidental release of
3154 any hazardous materials or wastes during transport of such materials by vehicles
3155 owned, operated or controlled by Contractor in the performance of services
3156 required by this Agreement.

3157 **C. Acceptability of Insureds.** The insurance policies required by this section shall be
3158 issued by an insurance company or companies admitted to do business in the State of
3159 California, subject to the jurisdiction of the California Insurance Commissioner, and
3160 with a rating in the most recent edition of Best's Insurance Reports of size category
3161 XV or larger and a rating classification of A+ or better.

3162 **D. Required Endorsements.** Without limiting the generality of Sections 13.02.A and
3163 B, the policies shall contain endorsements in substantially the following form:

3164 1. Workers' Compensation and Employers' Liability Policy.
3165 (a) "Thirty (30) days prior written notice shall be given to the
3166 [NAME OF AGENCY] in the event of cancellation or non-
3167 renewal of this policy. Such notice shall be sent to:

3168 _____
3169 _____
3170 _____
3171 Attention: _____

3172 (b) "Insurer waives all right of subrogation against [AGENCY] and its officers
3173 and employees for injuries or illnesses arising from work performed for
3174 [AGENCY]."

3175 2. Comprehensive General Liability Policy; Automobile Liability Policy; Pollution
3176 Liability Policy; and Hazardous Materials Policy.

- 3177 (a) “Thirty (30) days’ prior written notice shall be given to the [NAME OF
 3178 AGENCY] in the event of cancellation, reduction of coverage, or non-
 3179 renewal of this policy. Such notice shall be sent to:
 3180 _____
 3181 _____
 3182 Attention: _____
- 3183 (b) “The [AGENCY], its officers, employees, and agents are additional insureds
 3184 on this policy.”
- 3185 (c) “This policy shall be considered primary insurance as respects any other
 3186 valid and collectible insurance maintained by the [AGENCY], including any
 3187 self-insured retention or program of self-insurance, and any other such
 3188 insurance shall be considered excess insurance only.”
- 3189 (d) “Inclusion of the [AGENCY] as an insured shall not affect the [AGENCY]’s
 3190 rights as respects any claim, demand, suit or judgment brought or recovered
 3191 against the Contractor. This policy shall protect Contractor and the
 3192 [AGENCY] in the same manner as though a separate policy had been issued
 3193 to each, but this shall not operate to increase the company’s liability as set
 3194 forth in the policy beyond the amount shown or to which the company would
 3195 have been liable if only one party had been named as an insured.”

3196 **E. Deductibles.** The liability policies described in Section 13.02.A(2) and (3) may
 3197 contain deductibles, but not self-insured retentions. The deductibles may not exceed
 3198 _____ Thousand Dollars (\$_____) per occurrence and must
 3199 be limited by an annual cap of no more than _____ Hundred Thousand
 3200 Dollars (\$_____) in any policy year.

3201 **F. Delivery of Proof of Coverage.** No later than ninety (90) days before the
 3202 commencement of operations (i.e., on or before _____, 2010),
 3203 Contractor shall furnish Agency one or more certificates of insurance on a standard
 3204 ACORD form substantiating that each of the coverages required hereunder is in
 3205 force, in form and substance satisfactory to Agency. Such certificates shall show the
 3206 type and amount of coverage, effective dates and dates of expiration of policies and
 3207 shall be accompanied by all required endorsements. If Agency requests, copies of
 3208 each policy, together with all endorsements, shall also be promptly delivered to
 3209 Agency. Contractor shall furnish renewal certificates to Agency to demonstrate
 3210 maintenance of the required coverages throughout the Term.

3211 **G. Other Insurance Requirements**

- 3212 1. In the event performance of any services is delegated to a subcontractor,
 3213 Contractor shall require such subcontractor to provide statutory workers’
 3214 compensation insurance and employer’s liability insurance for all of the
 3215 subcontractor’s employees engaged in the work. The liability insurance
 3216 required by Subsection A.2 and the automobile liability policy required by

- 3217 subsection A.3 shall cover all subcontractors or the subcontractor must furnish
3218 evidence of insurance provided by it meeting all of the requirements of this
3219 Section 13.02.
- 3220 2. Contractor shall comply with all requirements of the insurers issuing policies.
3221 The carrying of insurance shall not relieve Contractor from any obligation under
3222 this Agreement, including those imposed by Section 13.01. If any claim is
3223 made by any third person against Contractor or any subcontractor on account of
3224 any occurrence related to this Agreement, other than claims by employees for
3225 work-related incidents, Contractor shall promptly report the facts in writing to
3226 the insurance carrier and to the Agency.
- 3227 3. If Contractor fails to procure and maintain any insurance required by this
3228 Agreement, Agency may take out and maintain such insurance as it may deem
3229 proper and may require Contractor to reimburse it for the cost incurred within
3230 30 days and/or deduct the cost from any monies due Contractor. Agency may
3231 also treat the failure as a Contractor Default.
- 3232 4. Agency is not responsible for payment of premiums for or deductibles under
3233 any required insurance coverages.
- 3234 5. Any excess or umbrella policies shall be written on a “following form” basis.

3235 **13.03 FAITHFUL PERFORMANCE BOND**

3236 Not later than ten (10) days before the Effective Date (i.e., on or before _____,
3237 2010), Contractor shall file with Agency a bond securing the Contractor’s faithful performance
3238 of its obligations under this Agreement. The principal sum of the bond shall be _____
3239 million dollars (\$____,000,000). The form of the bond shall be as set out in Attachment F. The
3240 bond shall be executed as surety by a corporation admitted to issue surety bonds in the State of
3241 California, regulated by the California Insurance Commissioner, and with a financial condition
3242 and record of service satisfactory to Agency.

3243 The term of the bond shall be not less than twenty-four (24) months, or until
3244 _____, whichever occurs first. The bond shall be extended, or
3245 replaced by a new bond in the same principal sum (adjusted by the percentage change in the
3246 Consumer Price Index), for the same term (i.e., twenty-four (24) months) and in the same form,
3247 bi-annually thereafter. Not less than ninety (90) days before the expiration of the initial, or any
3248 subsequent, bond, Contractor shall furnish either a replacement bond or a continuation certificate
3249 substantially in the form attached as Attachment __-2, executed by the surety.

3250 It is the intention of this section that there be in full force and effect at all times a bond securing
3251 the Contractor’s faithful performance of the Agreement, throughout its Term.

3252 **13.04 ALTERNATIVE SECURITY**

3253 Agency may, in its sole discretion, allow Contractor to provide alternative security in the amount
3254 set forth in Section 13.03, in the form of (a) a prepaid irrevocable standby letter of credit in form
3255 and substance satisfactory to Agency, approved by the Agency's Attorney and issued by a

3256 financial institution acceptable to Agency, or (b) a certificate of deposit in the name of the
3257 Agency and in a form and with a term satisfactory to Agency, accompanied by an agreement
3258 giving Agency the right to draw on the funds deposited satisfactory to Agency and with a
3259 financial institution acceptable to Agency. Interest on the certificate of deposit will be payable
3260 to Contractor.

3261 **13.05 HAZARDOUS WASTE INDEMNIFICATION**

3262 Contractor shall indemnify, defend and hold harmless the Indemnitees against all claims, of any
3263 kind whatsoever paid, incurred or suffered by, or asserted against Indemnitees arising from or
3264 attributable to any repair, cleanup or detoxification, or preparation and implementation of any
3265 removal, remedial, response, closure or other plan (regardless of whether undertaken due to
3266 governmental action) concerning any Hazardous Wastes released, spilled or disposed of by
3267 Contractor pursuant to this Agreement. The foregoing indemnity is intended to operate as an
3268 agreement pursuant to Section 107(e) of the Comprehensive Environmental Response,
3269 Compensation and Liability Act, ("CERCLA"), 42 U.S.C. Section 9607(e), and California
3270 Health and Safety Code Section 25364, to defend, protect, hold harmless and indemnify
3271 Indemnitees from liability and shall survive the expiration or earlier termination of this
3272 Agreement. Notwithstanding the foregoing, Contractor is not required to indemnify the
3273 Indemnitees against claims arising from Contractor's delivery of Solid Waste, Recyclable
3274 Materials and Organic Materials to the Designated Transfer and Processing Site, or their
3275 subsequent delivery to other Processing locations or the ultimate Disposal Site, unless such
3276 claims are due to Contractor's negligence or willful misconduct.

3277 **13.06 CALIFORNIA INTEGRATED WASTE MANAGEMENT ACT**
3278 **INDEMNIFICATION**

3279 Contractor agrees to indemnify and hold harmless the Indemnitees against all fines and/or
3280 penalties imposed by the California Integrated Waste Management Board (CIWMB) or the Local
3281 Enforcement Agency (LEA) based on Contractor's failure to comply with laws, regulations or
3282 permits issued or enforced by the CIWMB or the LEA or caused or contributed to by the
3283 Contractor's failure to perform obligations under this Agreement. This indemnity obligation is
3284 subject to the limitations and conditions in Public Resource Code Section 40059.1 but is
3285 enforceable to the maximum extent allowable by that Section. This indemnity shall survive the
3286 termination or earlier expiration of this Agreement.

3287 **13.07 GUARANTY**

3288 Not later than ten (10) days before the Effective Date, Contractor shall furnish a Guaranty of its
3289 performance under this Agreement, in the form of Attachment ___, properly executed by
3290 _____

3291 **ARTICLE 14 DEFAULT AND REMEDIES**

3292 **14.01 EVENTS OF DEFAULT.** Each of the following shall constitute an event
3293 of default ("Contractor Default"):

*Franchise Agreement for Solid Waste, Recyclable
Materials, and Organic Materials Collection Services
Collection Agreement 080207 clean*

3294 A. Contractor fails to perform its obligations under Article 5, 6 or 7 of this
3295 Agreement and its failure to perform is not cured within ten (10) Business Days after written
3296 notice from Agency.

3297 B. Contractor fails to perform its obligations under any other Article of this
3298 Agreement and its failure to perform is not cured within ten (10) days after written notice from
3299 Agency, provided that if the nature of the breach is such that it will reasonably require more than
3300 ten (10) days to cure, Contractor shall not be in default so long as it promptly commences the
3301 cure and diligently proceeds to completion of the cure, and provided further that neither notice
3302 nor opportunity to cure applies to events described in subsections C through H.

3303 C. Contractor ceases to provide collection and transportation services for a
3304 period of two (2) Business Days for any reason within the Contractor's control, including labor
3305 unrest such as strike, work stoppage or slowdown, sickout, picketing, or other concerted job
3306 action by Contractor's employees.

3307 D. Contractor files a voluntary petition for relief under any bankruptcy,
3308 insolvency or similar law.

3309 E. An involuntary petition is brought against Contractor under any
3310 bankruptcy, insolvency or similar law which remains undismissed or unstayed for ninety (90)
3311 days.

3312 F. Contractor fails to furnish a replacement bond or a continuation certificate
3313 of the existing bond not less than ten (10) days before expiration of the performance bond, as
3314 required by Section 13.03_____ or fails to maintain all required insurance coverages in force.

3315 G. Contractor fails to provide reasonable assurance of performance when
3316 required under Section 14.10.

3317 H. A representation or warranty contained in Article 2 proves to be false or
3318 misleading in a material respect as of the date such representation or warranty was made.

3319 **14.02 RIGHT TO SUSPEND OR TERMINATE UPON DEFAULT.**

3320 I. Upon any Contractor Default, Agency may terminate this Agreement or
3321 suspend it, in whole or in part. Such suspension or termination shall be effective thirty (30) days
3322 after Agency has given notice of suspension or termination to Contractor, except that such notice
3323 may be effective in a shorter period of time, or immediately, if the Contractor Default is one
3324 which endangers the health, welfare or safety of the public, such as the failure to collect Solid
3325 Waste, Recyclable Materials, or Organic Materials for the period of time specified in Section
3326 14.01.C. Notice may be given orally in person or by telephone to the representative of
3327 Contractor designated in or under Section 15.10 (or, if he/she is unavailable, to a responsible
3328 employee of Contractor) and shall be effective immediately. Written confirmation of such oral
3329 notice of suspension or termination shall be sent by personal delivery, facsimile, or other
3330 expedited means of delivery to Contractor within twenty-four (24) hours of the oral notification

3331 at the address shown in Section 15.09. Contractor shall continue to perform the portions of the
3332 Agreement, if any, not suspended, in full conformity with its terms.

3333 J. Agency may also suspend or terminate this Agreement, upon the same
3334 notice provisions, if Contractor's ability to perform is prevented or materially interfered with by
3335 a cause which excuses nonperformance under Section 14.09, despite the fact that
3336 nonperformance in such a case is neither a breach nor a Contractor Default.

3337 **14.03 SPECIFIC PERFORMANCE**

3338 By virtue of the nature of this Agreement, the urgency of timely, continuous and high-quality
3339 service, the lead time required to effect alternative service, and the rights granted by Agency to
3340 Contractor, the remedy of damages for a breach hereof by Contractor is inadequate and Agency
3341 shall be entitled to injunctive relief.

3342

3343 **14.04 RIGHT TO PERFORM; USE OF CONTRACTOR PROPERTY**

3344 If this Agreement is suspended and/or terminated due to a Contractor Default, Agency shall have
3345 the right to perform, by contract or otherwise, the work herein or such part thereof as it may
3346 deem necessary. In the event of Contractor's Default, Agency shall have the right to use any of
3347 Contractor's equipment, facilities and other property reasonably necessary for the provision of
3348 services hereunder and for the billing and collection of fees for those services, upon the terms
3349 provided in Article 12. Agency shall have the right to continue use of such property until other
3350 suitable arrangements can be made for the provision of such services, which may include the
3351 award of a contract to another service provider.

3352

3353 **14.05 DAMAGES**

3354 Contractor shall be liable to Agency for all direct, indirect, special and consequential damages
3355 arising out of Contractor's Default. This section is intended to be declarative of existing
3356 California law.

3357

3358 **14.06 AGENCY'S REMEDIES CUMULATIVE**

3359 Agency's rights to suspend or terminate the Agreement under Section 14.02, to obtain specific
3360 performance under Section 14.03 and to perform under Section 14.04 are not exclusive, and
3361 Agency's exercise of one such right shall not constitute an election of remedies. Instead, they
3362 shall be in addition to any and all other legal and equitable rights and remedies that Agency may
3363 have, including a legal action for damages under Section 14.05 or imposition of liquidated
3364 damages under Section 14.07.

3365

3366 **14.07 LIQUIDATED DAMAGES**

3367 The Parties acknowledge that consistent, courteous and efficient collection of Solid Waste,
3368 Recyclable Materials and Organic Materials is of utmost importance and Agency has considered
3369 and relied on Contractor’s representations as to its quality of service commitment in entering into
3370 this Agreement. The Parties further recognize that quantified standards of performance are
3371 necessary and appropriate to ensure consistent and reliable service. The Parties further
3372 recognize that if Contractor fails to achieve the performance standards, Agency and its residents
3373 will suffer damages and that it is and will be impracticable and extremely difficult to ascertain
3374 and determine the exact amount of damages that Agency will suffer. Therefore, the Parties agree
3375 that the liquidated damage amounts listed on Exhibit J represent a reasonable estimate of the
3376 amount of such damages considering all of the circumstances existing on the date of this
3377 Agreement, including the relationship of the sums to the range of harm to Agency and its
3378 residents that reasonably could be anticipated and recognition that proof of actual damages
3379 would be costly or inconvenient. In placing their initials at the places provided, each party
3380 specifically confirms the accuracy of the statements made above and the fact that each party had
3381 ample opportunity to consult with legal counsel and obtain an explanation of this liquidated
3382 damage provision at the time that this Agreement was made.

3383 Contractor
3384 Initial Here: _____ Agency
3385 Initial Here: _____

3386 Contractor agrees to pay (as liquidated damages and not as a penalty) the amount set
3387 forth in Attachment J.

3388 In addition to considering the quarterly reports submitted by Contractor, Agency may
3389 determine the occurrence of events giving rise to liquidated damages through the observation of
3390 its own employees or agents and through investigation of customer complaints made directly to
3391 Agency. Prior to assessing liquidated damages based on such observations or investigations,
3392 Agency shall give Contractor notice of its intention to do so. The notice will include a brief
3393 description of the incident(s)/non-performance. Contractor may review (and make copies at its
3394 own expense) all non-confidential information in the possession of Agency relating to
3395 incident(s)/non-performance. Contractor may, within ten (10) days after receiving the notice,
3396 request a meeting with Agency's Representative or his or her designee. Contractor may present
3397 evidence in writing and through testimony of its employees and others relevant to the
3398 incident(s)/non-performance. Agency's Representative or his or her designee will provide
3399 Contractor with a written explanation of his or her determination on each incident(s)/non-
3400 performance prior to authorizing the assessment of liquidated damages. The decision of
3401 Agency's Representative or his or her designee shall be final.

3402 Agency’s right to recover liquidated damages for Contractor’s failure to meet the service
3403 performance standards shall not preclude Agency from obtaining equitable relief for persistent
3404 failures to meet such standards nor from terminating the Agreement for such persistent failures.

3405 **14.08 AGENCY DEFAULT**

3406 Agency shall be in default under this Agreement (“Agency Default”) in the event Agency
3407 commits a material breach of the Agreement and fails to cure such breach within thirty (30) days
3408 after receiving notice from the Contractor specifying the breach, provided that if the nature of the
3409 breach is such that it will reasonably require more than thirty (30) days to cure, Agency shall not
3410 be in default so long as Agency promptly commences the cure and diligently proceeds to
3411 completion of the cure.

3412 In the event of an asserted Agency Default, Contractor shall continue to perform all of its
3413 obligations hereunder until a court of competent jurisdiction has issued a final judgment
3414 declaring that Agency is in Default.

3415 **14.09 EXCUSE FROM PERFORMANCE**

3416 **A. Force Majeure.** Neither party shall be in default of its obligations under this
3417 Agreement in the event, and for so long as, it is impossible or extremely impracticable for it to
3418 perform its obligations due to an “act of God” (including, but not limited to, flood, earthquake or
3419 other catastrophic events), war, insurrection, riot, labor unrest of other than the party’s
3420 employees (including strike, work stoppage, slowdown, sick out, picketing, or other concerted
3421 job action), or other similar cause not the fault of, and beyond the reasonable control of, the party
3422 claiming excuse. A party claiming excuse under this Section must (i) have taken reasonable
3423 precautions, if possible, to avoid being affected by the cause, and (ii) notify the other party in
3424 writing as provided in Subsection C.

3425 **B. Obligation to Restore Ability to Perform.** Any suspension of performance by a
3426 party pursuant to this Section shall be only to the extent, and for a period of no longer duration
3427 than, required by the nature of the event, and the party claiming excuse shall use its best efforts
3428 to remedy its inability to perform as quickly as possible and to mitigate damages that may occur
3429 as result of the event.

3430 **C. Notice.** The party claiming excuse shall deliver to the other party a written notice
3431 of intent to claim excuse from performance under this Agreement by reason of an event of Force
3432 Majeure. Notice required by this Section shall be given promptly in light of the circumstances,
3433 but in any event not later than five (5) days after the occurrence of the event of Force Majeure.
3434 Such notice shall describe in detail the event of Force Majeure claimed, the services impacted by
3435 the claimed event of Force Majeure, the expected length of time that the party expects to be
3436 prevented from performing, the steps which the party intends to take to restore its ability to
3437 perform, and such other information as the other party reasonably requests.

3438 **D. Agency's Rights in the Event of Force Majeure.** The partial or complete
3439 interruption or discontinuance of Contractor’s services caused by an event of Force Majeure
3440 shall not constitute a Contractor Default. Notwithstanding the foregoing: (i) Agency shall have
3441 the right to make use of Contractor’s facilities and equipment in accordance with Article 12 in
3442 the event of non-performance excused by Force Majeure; (ii) if Contractor’s failure to perform
3443 by reason of Force Majeure continues for a period of thirty (30) days or more, Agency shall have
3444 the right to immediately terminate this Agreement; (iii) if Contractor is unable to collect and

3445 dispose of Solid Waste as required by this Agreement for a period of _____ (__) or
3446 more consecutive days or for any _____ (__) days in a _____ (__) -day
3447 period as a result of Force Majeure, Agency shall have the right to make use of Contractor's
3448 property in accordance with Article 12, and (iv) if Contractor's inability to collect and dispose of
3449 Municipal Solid Waste continues for _____ (__) days or more from the date by
3450 which Contractor gave or should have given notice under Subsection C, Agency may terminate
3451 this Agreement.

3452 **14.10 ASSURANCE OF PERFORMANCE**

3453 If Contractor (i) persistently suffers the imposition of liquidated damages under Section 14.07;
3454 (ii) is the subject of any labor unrest including work stoppage or slowdown, sickout, picketing or
3455 other concerted job action; (3) appears in the reasonable judgment of Agency to be unable to
3456 regularly pay its bills as they become due; (4) is the subject of a civil or criminal proceeding
3457 brought by a federal, state, regional or local agency for violation of an Environmental Law in the
3458 performance of this Agreement, or (5) performs in a manner that causes Agency to be uncertain
3459 about Contractor's ability and intention to comply with this Agreement, Agency may, at its
3460 option and in addition to all other remedies it may have, demand from Contractor reasonable
3461 assurances of timely and proper performance of this Agreement, in such form and substance as
3462 Agency may require.

3463 **ARTICLE 15 OTHER AGREEMENTS OF THE PARTIES**

3464

3465 **15.01 RELATIONSHIP OF PARTIES**

3466 The parties intend that Contractor shall perform the services required by this Agreement as an
3467 independent contractor engaged by Agency and not as an officer or employee of Agency nor as a
3468 partner of or joint venturer with Agency. No employee or agent of Contractor shall be deemed
3469 to be an employee or agent of Agency. Except as expressly provided herein, Contractor shall
3470 have the exclusive control over the manner and means of conducting the services performed
3471 under this Agreement, and over all persons performing such services. Contractor shall be solely
3472 responsible for the acts and omissions of its officers, employees, subcontractors and agents.
3473 Neither Contractor nor its officers, employees, subcontractors and agents shall obtain any rights
3474 to retirement benefits, workers' compensation benefits, or any other benefits which accrue to
3475 Agency employees by virtue of their employment with Agency.

3476 **15.02 COMPLIANCE WITH LAW**

3477 In providing the services required under this Agreement, Contractor shall at all times comply
3478 with all applicable laws of the United States, the State and Agency, with all applicable
3479 regulations promulgated by federal, state, regional or local administrative and regulatory
3480 agencies, and by Agency, now in force and as they may be enacted, issued or amended during
3481 the Term, and with all permits affecting the services to be provided.

3482 **15.03 ASSIGNMENT**

3483 Contractor acknowledges that this Agreement involves rendering a vital service to Agency’s
3484 residents and businesses, and that Agency has selected Contractor to perform the services
3485 specified herein based on (i) Contractor’s experience, skill and reputation for conducting its
3486 operations in a safe, effective and responsible fashion, and (ii) Contractor’s financial resources to
3487 maintain the required equipment and to support its indemnity obligations to Agency under this
3488 Agreement. Agency has relied on each of these factors, among others, in choosing Contractor to
3489 perform the services to be rendered by Contractor under this Agreement.

3490 **A. Agency Consent Required.** Contractor shall not assign its rights or delegate or
3491 otherwise transfer its obligations under this Agreement to any other Person without
3492 the prior written consent of Agency. Any such assignment made without the consent
3493 of Agency shall be void and the attempted assignment shall constitute a Contractor
3494 Default.

3495 **B. Assignment Defined.** For the purpose of this Section, “assignment” shall include,
3496 but not be limited to, (i) a sale, exchange or other transfer to a third party of
3497 substantially all of Contractor’s assets dedicated to service under this Agreement;
3498 (ii) a sale, exchange or other transfer of outstanding common stock of Contractor to
3499 a person who is not a shareholder as of the Effective Date which results in a change
3500 in control of Contractor; (iii) any dissolution, reorganization, consolidation, merger,
3501 re-capitalization, stock issuance or reissuance, voting trust, pooling agreement,
3502 escrow arrangement, liquidation or other transaction which results in a change of
3503 ownership or control of Contractor; (iv) any assignment by operation of law,
3504 including insolvency or bankruptcy, an assignment for the benefit of creditors, a writ
3505 of attachment for an execution being levied against this Agreement, appointment of
3506 a receiver taking possession of Contractor’s property, or transfer occurring in the
3507 event of a probate proceeding; and (v) any combination of the foregoing (whether or
3508 not in related or contemporaneous transactions) which has the effect of any such
3509 transfer or change of ownership, or change of control of Contractor. [MODIFY AS
3510 NECESSARY TO REFLECT CONTRACTOR'S LEGAL STATUS AS
3511 CORPORATION, LLC., ETC.]

3512 **C. Consent Requirements.** If Contractor requests Agency’s consideration of and
3513 consent to an assignment, Agency may deny or approve such request in its complete
3514 discretion. No request by Contractor for consent to an assignment need be
3515 considered by Agency unless and until Contractor has met the following
3516 requirements:

3517 1. Contractor shall pay Agency its reasonable expenses for attorneys’ fees and
3518 investigation costs necessary to investigate the suitability of any proposed
3519 assignee, and to review and finalize any documentation required as a condition
3520 for approving any such assignment;

3521 2. Contractor shall furnish Agency with audited financial statements of the proposed
3522 assignee’s operations for the immediately preceding three (3) operating years;

3523 3. Contractor shall furnish Agency with satisfactory proof: (i) that the proposed
3524 assignee has at least ten (10) years of solid waste/recycling management
3525 experience on a scale equal to or exceeding the scale of operations conducted by
3526 Contractor under this Agreement; (ii) that in the last five (5) years, the proposed
3527 assignee has not been the subject of any administrative or judicial proceedings
3528 initiated by a federal, state or local agency having jurisdiction over its operations
3529 due to an alleged failure to comply with federal, state or local laws or that the
3530 proposed assignee has provided Agency with a complete list of such proceedings
3531 and their status; (iii) that the proposed assignee conducts its operations in a safe
3532 and environmentally conscientious manner, in accordance with sound waste
3533 management practices in full compliance with all federal, state and local laws
3534 regulating the collection and disposal of waste and all Environmental Laws; (iv)
3535 of any other information required by Agency to ensure the proposed assignee can
3536 fulfill the terms of this Agreement in a timely, safe and effective manner.

3537 **D. No Obligation to Consider.** Agency will not be obligated to consider a proposed
3538 assignment if Contractor is in default.

3539 **15.04 SUBCONTRACTING**

3540 Contractor shall not engage any subcontractors to perform any of the services required of it by
3541 Articles 5 or 6 of this Agreement without the prior written consent of Agency. Contractor shall
3542 notify Agency no later than ninety (90) days prior to the date on which it proposes to enter into a
3543 subcontract. Agency may approve or deny any such request in its sole discretion. [As of the
3544 Effective Date, Agency has approved the use of the following subcontractors for the following
3545 specific services: _____][ADD IF APPROPRIATE]

3546 **15.05 AFFILIATED ENTITY**

3547 Contractor will not form or use any Affiliate to perform any of the services or activities which
3548 Contractor is required or allowed to perform under this Agreement, other than as a subcontractor
3549 approved by Agency under Section 14.04.

3550 If Contractor enters into any financial transactions with an Affiliate for the provision of labor,
3551 equipment, supplies, services, or capital related to the furnishing of service under this
3552 Agreement, that relationship shall be disclosed to Agency, and in the financial reports submitted
3553 to Agency. In such event, Agency's rights to inspect records and obtain financial data shall
3554 extend to such Affiliate.

3555 **15.06 CONTRACTOR'S INVESTIGATION**

3556 Contractor has made an independent investigation, satisfactory to it, of the conditions and
3557 circumstances surrounding the Agreement and the work to be performed by it. Contractor has
3558 carefully reviewed the information in the Request for Proposals, and Addenda if any. Contractor
3559 has had the opportunity to inspect the Designated Transfer and Processing Site and to review the
3560 permits governing its operation, as well as the Source Reduction and Recycling Element adopted

3561 by Agency. Contractor has taken such matters into consideration in agreeing to provide the
3562 services required by, for the compensation to be provided under, this Agreement.

3563 **15.07 NO WARRANTY BY AGENCY**

3564 While Agency believes that the information contained in the Request for Proposals is
3565 substantially correct, Agency makes no warranties in connection with this Agreement, including
3566 but not limited to the accuracy or completeness of the information contained in the Request for
3567 Proposals.

3568 **15.08 CONDEMNATION**

3569 Agency reserves the rights to acquire the Contractor's property utilized in the performance of
3570 this Agreement through the exercise of eminent domain.

3571 **15.09 NOTICE**

3572 All notices, demands, requests, proposals, approvals, consents and other communications which
3573 this Agreement requires, authorizes or contemplates shall, except as provided in Section
3574 _____, be in writing and shall either be personally delivered to a representative of the parties
3575 at the address below or be deposited in the United States mail, first class postage prepaid,
3576 addressed as follows:

3577 **A.** If to Agency:

3578 _____
3579 _____
3580 _____

3581 **B.** If to Contractor:

3583 _____
3584 _____
3585 _____

3587 The address to which communications may be delivered may be changed from time to time by a
3588 notice given in accordance with this Section.

3589 **15.10 REPRESENTATIVES OF THE PARTIES.**

3590 **A. Representatives of Agency.** References in this Agreement to "Agency" shall mean
3591 the [City Council][Agency Board of Directors] and all actions to be taken by Agency
3592 shall be taken by the [City Council][Agency Board of Directors] except as provided
3593 below. The [City Council][Agency Board of Directors] may delegate authority to
3594 the [City Manager][General Manager], and/or to other Agency officials and may

3595 permit such officials, in turn, to delegate in writing some or all of such authority to
3596 subordinate officers. Contractor may rely upon actions taken by such delegates if
3597 they are within the scope of the authority properly delegated to them. [MODIFY AS
3598 APPROPRIATE]

3599 **B. Representative of Contractor.** Contractor shall, by the Effective Date, designate in
3600 writing a responsible officer who shall serve as the representative of Contractor in
3601 all matters related to the Agreement and shall inform Agency in writing of such
3602 designation and of any limitations upon his or her authority to bind Contractor.
3603 Agency may rely upon action taken by such designated representative as actions of
3604 Contractor unless they are outside the scope of the authority delegated to him/her by
3605 Contractor as communicated to Agency.

3606 **15.11 DUTY OF CONTRACTOR NOT TO DISCRIMINATE**

3607 In the performance of this Agreement Contractor shall not discriminate, nor permit any
3608 subcontractor to discriminate, against any employee, applicant for employment, or Customer on
3609 account of race, color, national origin, ancestry, religion, sex, age, physical disability, medical
3610 condition, sexual orientation, marital status, or other characteristic, in violation of any
3611 Applicable Law.

3612 **15.12 RIGHT OF AGENCY TO MAKE CHANGES**

3613 Agency may, without amending this Agreement, direct Contractor to cease performing one or
3614 more types of service described in Articles 5 or 6, may direct Contractor to modify the scope of
3615 one or more such services, may direct Contractor to perform additional Solid Waste, Recycling,
3616 Organics or Plant Materials handling services, or may otherwise direct Contractor to modify its
3617 performance under any other Section of this Agreement. Contractor shall promptly and
3618 cooperatively comply with such direction.

3619 If such changes cause an increase or decrease in the cost of performing the services, an equitable
3620 adjustment in the Contractor's compensation shall be made pursuant to Article 11. Contractor
3621 will continue to perform the new or changed service while the appropriate adjustment in
3622 compensation is being determined.

3623 A. **Proposal for Change in Service.** Contractor shall present a proposal to Agency,
3624 within forty-five (45) calendar days of a request by Agency to initiate a change in
3625 service. At a minimum, the proposal shall contain a complete description of the
3626 following, as applicable:

- 3627 1. Collection methodology to be employed.
- 3628 2. Equipment to be utilized (number of vehicles, types, capacity, age, etc.).
- 3629 3. Labor requirements (number of employees by classification).
- 3630 4. Type of materials containers to be used.
- 3631 5. Description of program publicity/education/marketing materials to be
3632 developed, if applicable.

- 3633 6. Estimated tonnage to be diverted and the methodology for determining that
3634 diverted tonnage.
- 3635 7. Anticipated impacts of the change in scope, if any, on performance incentive
3636 measures included in Attachment I.
- 3637 8. Description of end uses of Collected material.
- 3638 9. Three (3) year projection of the financial impact of the program's operations
3639 in a balance sheet and operating statement format including documentation
3640 of the key assumptions underlying the projections and the support for those
3641 assumptions, giving full effect to the savings or costs to existing services.
- 3642 10. Monitoring tools and quantitative measures including: cost per ton; annual
3643 diversion; sample report formats that will be used to demonstrate and
3644 document Contractor performance, definitions of terms and schedule for
3645 report distribution; Promotion materials; sectors (i.e., Single-family, Multi-
3646 Family, Commercial) targeted; pre-implementation as well as expected post-
3647 implementation route information including, but not limited to, cost per
3648 route and accounts or lifts per route per day.

3649 B. **Review of Proposal.** The Agency or SBWMA, if designated by Agency, shall
3650 review the Contractor's Proposal for the change in scope of services. The Agency
3651 or SBWMA may negotiate with the Contractor to amend the Agreement to reflect
3652 the change in scope, and the Agency may choose to negotiate or designate the
3653 SBWMA to negotiate the change in scope with the Contractor.

3654 If the Agency or SBWMA and Contractor cannot agree on Terms and conditions
3655 of the change in services in one-hundred-fifty (150) calendar days from the date
3656 when Agency first requests a proposal from Contractor to perform such services,
3657 Contractor acknowledges and agrees that Agency may permit a third party
3658 contractor to provide additional Solid Waste, Recyclable Materials, and Organic
3659 Materials Collection and diversion services not otherwise contemplated, if the
3660 scope of these services are outside the exclusive rights granted in this
3661 Agreement.

3662 The Agency or SBWMA shall have the right to terminate a program if, in its
3663 discretion, the Contractor is not cost effectively achieving the program's goals
3664 and objectives. Thereafter, the Agency may utilize a third party to perform these
3665 services if the Agency reasonably believes the third party can improve on
3666 Contractor's performance and cost effectiveness. Notwithstanding these
3667 changes, Contractor shall continue the program during the meet and confer
3668 period and, thereafter, until the third party takes over the program.

3669
3670

3671 **15.13 TRANSITION TO NEXT SERVICE PROVIDER**

3672 At the expiration of the Term or the earlier termination of the Agreement, or upon Agency's
3673 approval of a proposed assignment, Contractor shall cooperate fully with Agency to ensure an
3674 orderly transition to any and all new service providers. Contractor shall provide, within ten (10)
3675 days of a written request by Agency, then-current route lists, which identify each Customer on
3676 the route, its service level (number of Containers, Container sizes, frequency of Collection,
3677 scheduled Collection day), any special Collection notes, and detailed then-current Customer
3678 account and billing information. Contractor may, but is not required to, sell Collection vehicles
3679 and containers to the next service provider.

3680 Contractor shall, at least 180 days prior to the transition of services, attend meetings with the
3681 next service provider and with Agency and SBWMA staff and consultants to plan the recovery
3682 of Contractor's Containers and placement of the new Containers. Contractor shall perform in
3683 accordance with such plan and direct route supervisors to provide "ride-alongs" so that the new
3684 service providers' employees may ride with drivers in Collection vehicles during Collection
3685 operations. Contractor will direct its drivers and other employees to provide accurate
3686 information to the new provider about routing and Customers.

3687 **15.14 REPORTS AS PUBLIC RECORDS**

3688 The reports, records and other information submitted or required to be submitted by Contractor
3689 to Agency are public records within the meaning of that term in the California Public Records
3690 Act, Government Code Section 6250 *et seq.* Unless a particular record is exempted from
3691 disclosure by the California Public Records Act, it must be disclosed to the public by Agency
3692 upon request.

3693 Contractor will not object to Agency making available to the public any information submitted
3694 by the Contractor, or required to be submitted in connection with the Contractor's compensation,
3695 including but not limited to records described in Article ____.

3696 **ARTICLE 16 MISCELLANEOUS PROVISIONS**

3697 **16.01 GOVERNING LAW**

3698 This Agreement shall be governed by, and construed and enforced in accordance with, the laws
3699 of the State of California.

3700 **16.02 JURISDICTION**

3701 Any lawsuits between the parties arising out of this Agreement shall be brought and concluded
3702 in the courts of the State of California, which shall have exclusive jurisdiction over such
3703 lawsuits. With respect to venue, the parties agree that this Agreement is made in and will be
3704 performed in San Mateo County.

3705 **16.03 BINDING ON SUCCESSORS**

3706 The provisions of this Agreement shall inure to the benefit of and be binding on the successors
3707 and permitted assigns of the parties.

*Franchise Agreement for Solid Waste, Recyclable
Materials, and Organic Materials Collection Services
Collection Agreement 080207 clean*

3708 **16.04 PARTIES IN INTEREST**

3709 Nothing in this Agreement is intended to confer any rights on any Persons other than the parties
3710 to it and their permitted successors and assigns.

3711 **16.05 WAIVER**

3712 The waiver by either party of any breach or violation of any provisions of this Agreement shall
3713 not be deemed to be a waiver of any breach or violation of any other provision nor of any
3714 subsequent breach or violation of the same or any other provision.

3715 **16.06 ATTACHMENTS**

3716 Each of the Attachments, identified as Attachments “A” through “O,” is attached hereto and
3717 incorporated herein and made a part hereof by this reference.

3718 **16.07 ENTIRE AGREEMENT**

3719 This Agreement, including the Attachments, represents the full and entire agreement between the
3720 parties with respect to the matters covered herein and supersedes all prior negotiations and
3721 agreements, either written or oral.

3722 **16.08 SECTION HEADINGS**

3723 The article headings and section headings in this Agreement are for convenience of reference
3724 only and are not intended to be used in the construction of this Agreement nor to alter or affect
3725 any of its provisions.

3726 **16.09 INTERPRETATION**

3727 This Agreement shall be interpreted and construed reasonably and neither for nor against either
3728 party, regardless of the degree to which either party participated in its drafting.

3729 **16.10 AMENDMENT**

3730 This Agreement may not be modified or amended in any respect except by a writing signed by
3731 the parties.

3732 **16.11 SEVERABILITY**

3733 If a court of competent jurisdiction holds any non-material provision of this Agreement to be
3734 invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect
3735 any of the remaining provisions of this Agreement which shall be enforced as if such invalid or
3736 unenforceable provision had not been contained herein.

3737 **16.12 COSTS AND ATTORNEYS’ FEES**

3738 The prevailing party in any action brought to enforce the terms of this Agreement or arising out
3739 of this Agreement may recover its reasonable costs expended in connection with such an action
3740 from the other party. However, each party shall bear its own attorneys’ fees.

3741 **16.13 NO DAMAGES FOR INVALIDATION OF AGREEMENT**

3742 If a final judgment of a court of competent jurisdiction determines that this Agreement is illegal
3743 or was unlawfully entered into by Agency, neither party shall have any claim against the other
3744 for damages of any kind (including but not limited to loss of profits) on any theory.

3745 **16.14 REFERENCES TO LAWS**

3746 All references in this Agreement to laws and regulations shall be understood to include such
3747 laws and regulations as they may be subsequently amended or recodified, unless otherwise
3748 specifically provided. In addition, references to specific governmental agencies shall be
3749 understood to include agencies that succeed to or assume the functions they are currently
3750 performing.

1 **ATTACHMENT A - DEFINITIONS**

2 Unless the context otherwise requires, capitalized terms used in this Agreement will have the meanings
3 specified in this Article.

4 **AB 2176**

5 “AB 2176” refers to Assembly Bill 2176 (Montanez, Chapter 879, Statutes of 2004 – Large Venue
6 Facilities and Event Waste Reduction law) which was signed into law September 2004 and requires cities
7 and counties to report on progress with their waste reduction and Recycling efforts of large venues and
8 special events in their annual reporting to the State of California required by the Act.

9 **Act**

10 “Act” means the California Integrated Waste Management Act of 1989 (AB 939) Public Resources Code,
11 Section 40000 et seq., as it may be amended from time to time.

12 **Affiliate**

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

28 **Agency**

29 “Agency” means _____ {Insert name of City, County, or District}, the municipal corporation or
30 political subdivision (as the case may be) of the State of California named a party to this Agreement and
31 which is also an active member of the SBWMA.

32 **Agreement**

33 "Agreement" means this Agreement, including any amendments, between Agency and Contractor.

34 **Applicable Law**

35 “Applicable Law” means all Federal, State, and local laws, regulations, rules, orders, judgments, degrees,
36 permits, approvals, or other requirement of any governmental agency having jurisdiction over the
37 Collection, transportation, Processing, and Disposal of Solid Waste, Recyclable Materials, Organic
38 Materials and other materials Collected pursuant to this Agreement that are in force on the Effective Date
39 and as they may be enacted, issued or amended during the Term of this Agreement.

40 **Average Hold Time**

41 “Average Hold time” shall be defined as the sum of all call Hold Times divided by the number of calls
42 answered by the agent or queue of agents.

43 **Backyard Collection Service**

44 “Backyard Collection Service” means the provision of Collection Service to a SFD in the rear or side
45 premises. The service is provided at a premium charge to Customer unless it is included as a standard
46 service.

47 **Billings**

48 "Billings" means any and all statements of charges for services rendered, howsoever made, described or
49 designated by Contractor, or made by others for Agency or Contractor, to Owners or Occupants of
50 property, including Residential and Commercial Premises, served by Contractor for the Collection of
51 Solid Waste, Recyclable Materials, Organic Materials, and other materials Collected pursuant to this
52 Agreement

53 **Bin**

54 “Bin” means a metal Container with capacity of approximately one (1) to eight (8) cubic yards, with a
55 hinged lid, and with wheels, typically serviced by a front-loading Collection vehicle.

56 **Bulky Items**

57 “Bulky Items” means large discarded items including, but not limited to, Major Appliances, furniture,
58 tires, carpets, mattresses, and other oversize materials whose large size precludes or complicates their
59 handling by normal Collection, Processing, or Disposal methods. Bulky Items do not include abandoned
60 automobiles, large auto parts, or trees.

61 **Business Days**

62 “Business Days” mean days during which Agency offices are open to do business with the public.

63 **Cart**

64 “Cart” means a plastic Container with a hinged lid and two wheels that is serviced by an automated or
65 semi-automated Collection vehicle. A Cart has capacity of 20, 30, 60, or 90 gallons (or similar volumes).
66 The Cart specifications that Contractor must adhere to are provided herein.

67 **Cell Phones**

68 “Cell Phones” means all telephones used for mobile or cellular communications. Cell Phones also
69 includes all Cell Phone batteries.

70 **Change in Law**

71 “Change in Law” means any of the following events or conditions which has a material and adverse effect
72 on the performance by the Parties of their respective obligations under this Agreement (except for
73 payment obligations):

- 74 a. The enactment, adoption, promulgation, issuance, modification, or written change in
75 administrative or judicial interpretation on or after the Effective Date of any Applicable Law; or
- 76 b. The order or judgment of any governmental body, on or after the Effective Date, to the extent
77 such order or judgment is not the result of willful or negligent action, error or omission or lack of

78 reasonable diligence of the Agency, SBWMA, or of the Contractor, whichever is asserting the
79 occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure
80 in good faith to contest any such order or judgment shall not constitute or be construed as such a
81 willful or negligent action, error or omission or lack of reasonable diligence.

82 **Collect/Collection**

83 "Collect" or "Collection" means to take physical possession, transport, and remove Solid Waste,
84 Recyclable Materials, Organic Materials, or other materials pursuant to this Agreement within and from
85 Agency.

86 **Collection Container**

87 "Collection Container" means any Container provided by Contractor to store and Collect Solid Waste,
88 Recyclable Materials, Organics, or any other material targeted for Collection by Contractor or
89 subcontractor of Contractor.

90 **Collection District**

91 "Collection District" means either the North or South service area. The service areas are defined as the
92 "North Collection District" and the "South Collection District". The North Collection District will
93 comprise the following Agencies: Belmont, Burlingame, Foster City, Hillsborough, San Mateo, and
94 sections of unincorporated San Mateo County. The South Collection District will comprise the following
95 Agencies: Atherton, East Palo Alto, Menlo Park, Redwood City, San Carlos, West Bay Sanitary District
96 and sections of unincorporated San Mateo County.

97 **Commencement Date**

98 "Commencement Date" means the date specified in Section 3.02 when Collection transportation,
99 Processing, and Disposal services required by this Agreement shall be provided.

100 **Commercial**

101 "Commercial" means a business activity that includes, but is not limited to, retail sales, services,
102 wholesale sales, research and development, government, educational, non-profit, hospital, manufacturing,
103 institutional and industrial operations, but excluding businesses conducted upon Residential Property
104 which are permitted under applicable zoning regulations and are not the primary use of the property.

105 **Commingle**

106 "Commingle" to mix, mingle, or combine Targeted Recyclable Materials in a Collection Container.

107 **Compactor**

108 "Compactor" means a mechanical apparatus that compresses materials and/or the Container that holds the
109 compressed materials. Compactors include Bin compactors of any size serviced by front-loading
110 Collection vehicles and Drop Box Compactors of any size serviced by Drop Box Collection vehicles.

111 **Complaint**

112 "Complaint" means written or orally communicated statements made by members of the public,
113 Customers, Owners, or Occupants of properties served by Contractor, or officers, employees or agents of
114 Agency or SBWMA alleging non-performance or deficiencies in Contractor's performance, duties or
115 obligations of the Agreement, or otherwise alleging a violation by Contractor of the provisions of this
116 Agreement.

117 **Construction and Demolition Debris**

118 "Construction and Demolition Debris" means used or discarded materials removed from premises during
119 construction or renovation of a structure resulting from construction, remodeling, repair, or demolition
120 operations on any pavement, house, commercial building, or other structure.

121 **Containers**

122 "Containers" means any and all types of receptacles used for storage and Collection of Solid Waste,
123 Recyclable Materials, Organic Materials and other materials Collected pursuant to this Agreement
124 including, but not limited, to metal or plastic cans, Carts, Bins, tubs, Bins, or Drop Boxes.

125 **Contamination**

126 "Contamination" means (i) all materials other than those defined as Traditional Recyclable Materials that
127 were Collected by Contractor with Single-Stream or Source Separated Recyclable Materials; (ii) all
128 materials other than those defined as Plant Materials Collected by Contractor with Plant Materials; or (iii)
129 all materials other than those defined as Organic Materials Collected by Contractor with Organic
130 Materials.

131 **Contamination Level**

132 "Contamination Level" shall equal the percentage of Contamination in the Recyclable Materials, Plant
133 Materials, or Organic Materials Collected by Contractor, which shall be calculated as the Tonnage of
134 Contaminated Material divided by the Tonnage of Materials Collected divided by 100.

135 **Contractor**

136 "Contractor" means _____ {Insert name of contractor}, a corporation organized and
137 operating under the laws of the State of _____ and its officers, directors, employees, agents,
138 companies, and Subcontractors.

139 **Contractor's Compensation**

140 "Contractor's Compensation" means the means the monetary compensation received by Contractor in
141 return for providing services in accordance with this Agreement as described in Article 11.

142 **Contractor's Proposal**

143 "Contractor's Proposal" means the proposal submitted by Contractor and received on _____, 2008 by
144 the SBWMA in response to the SBWMA's November 2007 Request for Proposals for Collection Services
145 and certain supplemental written materials and are incorporated by reference.

146 **County**

147 "County" shall mean the County of San Mateo.

148 **Curbside**

149 "Curbside" means the location of a Collection Container for pick-up, where such Container is placed on
150 the street or alley against the face of the curb, or where no Curb exists, the Container is placed not more
151 than five (5) feet from the outside edge of the street or alley nearest the property's entrance.

152 **Customer**

153 "Customer" means the Person whom Contractor submits billing invoice to and collects payment from for
154 Collection services provided to a Premises. The Customer may be the Occupant or Owner of the

155 Premises provided that the Owner of the Premises shall be responsible for payment of Collection services
156 if an Occupant of Premises, which is identified as the Customer of Owner's Premises, fails to make such
157 payment.

158 **Designated Transfer and Processing Site**

159 "Designated Transfer and Processing Site" means the Shoreway Recycling and Disposal Center at 225
160 and 333 Shoreway Road, San Carlos, California, which is owned by SBWMA and operated by _____
161 {insert future operator's name}, unless the Agency designates, in writing, a different Transfer Station
162 and/or Processing site(s).

163 **Designated Waste**

164 "Designated Waste" means non-Hazardous Waste which may pose special Disposal problems because of
165 its potential to contaminate the environment and which may be Disposed of only in Class II Disposal
166 Sites or Class III Disposal Sites pursuant to a variance issued by the California Department of Health
167 Services. Designated Waste consists of those substances classified as Designated Waste by the State of
168 California, in California Code of Regulations Title 23, Section 2522 as may be amended from time to
169 time.

170 **Discarded**

171 "Discarded" means Solid Waste, Recyclable Materials, Plant Materials, Food Scraps, or materials
172 Collected pursuant to this Agreement placed by a Generator in a Container and/or at a location that is
173 designated for Collection pursuant to the Agency's Municipal Code.

174 **Disposal**

175 "Disposal" means the ultimate disposition of Solid Waste Collected by Contractor at a Disposal Site in
176 Full Regulatory Compliance.

177 **Disposal Site(s)**

178 "Disposal Site(s)" means the Solid Waste facility or facilities utilized for the landfill Disposal of Solid
179 Waste Collected.

180 **Drop Box**

181 "Drop Box" means an open-top Container with a typical capacity of 10 to 50 cubic yards that is serviced
182 by a Drop Box or roll-off Collection vehicle.

183 **Effective Date**

184 "Effective Date" means the date on which the latter of the two Parties signs the Agreement and the date
185 on which Contractor may begin to take actions and incur costs in preparation to provide Collection,
186 transportation, Processing, and Disposal services required by this Agreement.

187 **Electronic Waste (or E-Waste)**

188 "Electronic Waste" or "E-Waste" means "Covered Electronics Wastes" (as defined by SB20 – the
189 Electronic Waste Recycling Act of 2003) including discarded electronic equipment such as, but not
190 limited to, television sets, computer monitors, central processing units (CPUs), laptop computers, and
191 peripherals (e.g., external computer hard drives, computer keyboards, computer mice, and computer
192 printers).

193 **Environmental Laws**

194 "Environmental Laws" means all Federal and State statutes, County, local and Agency ordinances
195 concerning public health, safety and the environment including, by way of example and not limitation, the
196 Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC
197 §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6902 et seq.; the Federal Clean
198 Water Act, 33 USC §1251 et seq.; the Toxic Substances Control Act, 15 USC §1601 et seq.; the
199 Occupational Safety and Health Act, 29 USC §651 et seq.; the California Hazardous Waste Control Act,
200 California Health and Safety Code §25100 et seq.; the California Toxic Substances Control Act,
201 California Health and Safety Code §25300 et seq.; the Porter-Cologne Water Quality Control Act,
202 California Water Code §13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California
203 Health and Safety Code §25249.5 et seq.; as currently in force or as hereafter amended, and all rules and
204 regulations promulgated there under.

205 **Event**

206 "Event" includes but is not limited to large events as defined in AB 2176 (Montanez, Chapter 879,
207 Statutes of 2004) and any event that serves an average of at least 2,000 attendees and workers per day of
208 the event. A list of Events is included as Attachment Attachment D ___.

209 **Facility/Facilities**

210 "Facility/Facilities" means any plant or site, owned or leased and maintained, operated or used by
211 Contractor for purposes of performing Contractor's obligations under this Agreement (e.g., facilities for
212 parking and maintaining vehicles, administration offices, and customer service offices, etc.). As of the
213 Effective Date, Contractor's Facility(ies) are _____ at _____ in _____, California.

214 **Federal**

215 "Federal" means belonging to or pertaining to the national government of the United States; or founded
216 on or organized under the constitution of the United States.

217 **Fiscal Year**

218 "Fiscal Year" means the period commencing July 1 through June 30 each year. {Insert Contractor's or
219 Agency's fiscal year if different. }

220 **Food Scraps**

221 "Food Scraps" means a subset of Organic Materials that will decompose and/or putrefy including (i) all
222 kitchen and table food waste, and animal or vegetable waste that attends or results from the storage,
223 preparation, cooking or handling of food stuffs, (ii) paper waste contaminated with Food Scraps, and (iii)
224 biodegradable plastic food service ware. Food Scraps is a subset of Organic Materials.

225 **Franchise Fee**

226 "Franchise Fee" means the fee paid by Contractor to Agency for the right to hold the franchise granted by
227 this Agreement.

228 **Full Regulatory Compliance**

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

231 **Generator**

232 “Generator” means any Person as defined by the Public Resources Code, whose act or process produces
233 Solid Waste, Recyclable Materials, Organic Materials, or other Discarded material as defined in the
234 Public Resources Code, or whose act first causes Solid Waste to become subject to regulation.

235 **Gross Revenue**

236 “Gross Revenues” means any and all revenue or compensation in any form to Contractor or subsidiaries,
237 Guarantor, or parent companies of Contractor, for the Collection of Solid Waste, Recyclable Materials,
238 Organic Materials, and other materials pursuant to pursuant to this Agreement, in accordance with
239 Generally Accepted Accounting Principals, including, but not limited to, monthly Customer fees for the
240 Collection of Solid Waste, Recyclable Materials, and Organic Materials within the Agency, without
241 subtracting Franchise Fees, other Agency fees, or any other cost of doing business.

242 **Gross Revenues Collected**

243 “Gross Revenues Collected” shall mean cash receipts collected by the Contractor or the Agency for the
244 Collection of Solid Waste, Recyclable Materials, Organic Materials, and other materials pursuant to this
245 Agreement within the Service Area, without subtracting Franchise Fees, other Agency fees, or any other
246 cost of doing business.

247 **Guarantor**

248 “Guarantor” means _____ {Insert Name of Guarantor}.

249 **Guaranty Agreement**

250 “Guaranty Agreement” is the agreement attached as Attachment G that is executed by the Guarantor
251 guaranteeing the timely and full performance of Contractor’s obligations.

252 **Hazardous Substance**

253 "Hazardous Substance" shall mean any of the following: (a) any substances defined, regulated or listed
254 (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic
255 waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the
256 environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and
257 Liability Act of 1980, 42 USC §9601 et seq.(CERCLA); (ii) the Hazardous Materials Transportation Act,
258 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the
259 Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8,
260 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and (vii) California Water Code
261 §13050; (b) any amendments, rules or regulations promulgated there under to such enumerated statutes or
262 acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material,
263 chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable
264 Federal, State or local Environmental Laws currently existing or hereinafter enacted, including, without
265 limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic
266 fuel products, and by-products.

267 **Hazardous Waste**

268 "Hazardous Waste" means all substances defined as Hazardous Waste, acutely Hazardous Waste, or
269 extremely Hazardous Waste by the State in Health and Safety Code §25110.02, §25115, and §25117 or in
270 any future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste
271 by the US Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and

272 Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations
273 promulgated there under.

274 **Hold Time**

275 “Hold Time” shall be defined as the amounts of time per answered call that a customer service
276 agent (or agents) placed a call on hold, plus the amounts of time a call is left unanswered after
277 contractor’s introductory voicemail message(s) are ended either by completion of the message(s)
278 or by action performed by customer.

279 **Holidays**

280 “Holidays” are defined as New Year’s Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas
281 Day.

282 **Holiday Schedule**

283 “Holiday Schedule” means the modified service schedule for the days following a holiday. If a Holiday
284 falls on a weekday (i.e., Monday-Thursday), the service is pushed back one (1) day with the exception of
285 Friday, whereby service is pushed back until the following Monday.

286 **Holiday Trees**

287 “Holiday Trees” means trees targeted for diversion that were purchased and used in celebration of
288 Christmas and other holidays in December and January.

289 **Household Batteries**

290 “Household Batteries” means disposable or rechargeable dry cells (e.g., A, AA, AAA, B, C, D, 9-volt,
291 button-type) commonly used as power sources for household or consumer products including, but not
292 limited to, nickel-cadmium, nickel metal hydride, alkaline, mercury, mercuric oxide, silver oxide, zinc
293 oxide, nickel-zinc, nickel iron, lithium, lithium ion, magnesium, manganese, and carbon-zinc batteries,
294 but excluding automotive lead acid batteries.

295 **Household Hazardous Waste**

296 “Household Hazardous Waste” means Hazardous Waste generated at Residential Premises within the
297 Service Area.

298 **Infectious Waste**

299 “Infectious Waste” means biomedical waste generated by a Person or at hospitals, public or private
300 medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries,
301 veterinary facilities, and other similar establishments that are identified in State Health and Safety Code
302 Section 25117.5 as may be amended from time to time.

303 **Inquiry**

304 “Inquiry” means a written or orally communicated request for information, request for Collection
305 services, or request for change in service level made by members of the public, Customers, Owners, or
306 Occupants of properties served by Contractor, or officers, employees or agents of Agency or SBWMA.

307 **Kitchen Pail**

308 “Kitchen Pail” means a receptacle suitable for the storage of Food Scraps that has a capacity of 1.5 to 2.5
309 gallons, a wire or plastic handle, and a lid. The Kitchen Pail specifications that Contractor must adhere to
310 are provided herein.

311 **Liquidated Damages**

312 “Liquidated Damages” means the amounts owed by Contractor to the Agency for failure to meet specific
313 quantifiable standards of performance as described in Section 14.04.

314 **Major Appliances**

315 “Major Appliances” means any discarded Residential device, including, but not limited to, washing
316 machines, clothes dryer, hot water heaters, dehumidifiers, conventional ovens, microwave ovens, stoves,
317 refrigerators, freezers, air-conditioners, trash compactors, and residential furnaces discarded by
318 Residential Generators. Major Appliances are commonly referred to as White Goods.

319 **Agency Manager**

320 “Agency Manager” means Agency’s chief executive officer {Insert City Manager, Town Manager, or
321 other title if appropriate}, as designated by Agency, or his or her designee.

322 **Materials Recovery Facility (MRF)**

323 "Materials Recovery Facility" means a permitted facility where Solid Waste, Recyclable Materials,
324 Organic Materials, or other materials are Processed, sorted or separated for the purposes recovering
325 reusable or Recyclable Materials or materials Processed for beneficial use. For the purposes of this
326 Agreement, Agency has designated the Shoreway MRF, located at 333 Shoreway Road, owned by the
327 SBWMA and operated by _____, as its designated MRF.

328 **Measured Contamination Level**

329 “Measured Contamination Level” shall be the Contamination Level of the Recyclable Materials, Plant
330 Materials, and Organic Materials Delivered by Contractor to the Designated Transfer and Processing Site
331 measured on a periodic basis by performing a characterization study of the delivered materials in
332 accordance with procedures presented in ____.

333 **Member Agency(ies)**

334 “Member Agency(ies)” means one or more of the following jurisdictions: the cities of Belmont,
335 Burlingame, East Palo Alto, Foster City, Menlo Park, Redwood City, San Carlos, and San Mateo; the
336 towns of Atherton and Hillsborough; the County of San Mateo; and the West Bay Sanitary District.

337 **Multi-Family Dwelling (MFD) or Multi-Family Residential Complex**

338 “Multi-Family Dwelling,” “MFD,” or “Multi-Family Residential Complex” means any Residential
339 Premises, other than a Single-Family Dwelling, used for Residential purposes. Multi-Family Dwellings or
340 Residential Complexes are further defined as a Residential Premises containing five (5) or more
341 residential living units. Such Premises normally have centralized Solid Waste and Recyclable Materials
342 Collection service for all units in the building and are billed to one address (typically the Owner or
343 property manager). A MFD is defined as one residential living unit in a Multi-Family Residential
344 Complex.

345 **Non-Putrescible**

346 "Non-Putrescible" means not liable to decay or spoil or become putrid or as otherwise defined in the
347 Agency's municipal code.

348 **Occupant**

349 "Occupant" means the Person who occupies Premises.

350 **On-Call Service**

351 "On-Call Service" means collection service provided by Contractor that is not regularly scheduled or is
352 scheduled more than twenty-four (24) hours in advance. On-Call Service is initiated by Customer by
353 calling, emailing, or requesting said service in person at Contractor's office.

354 **Operating Cost**

355 "Operating Cost" means those costs reasonably necessary and actually incurred by Contractor to perform
356 under this Agreement, excluding only those costs specifically excluded in this Agreement.

357 **Organic Materials**

358 "Organic Materials" means those materials that will decompose and/or putrefy and that the Agency's
359 Municipal Code permits, directs, and/or requires Generators to separate from Solid Waste and Recyclable
360 Materials for Collection in specially designated Containers for Organic Materials Collection. Organic
361 Materials include Plant Materials and Food Scraps such as, but are not limited to, green trimmings, grass,
362 weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small wood pieces,
363 other types of organic yard waste, vegetable waste, fruit waste, grain waste, dairy waste, meat waste, fish
364 waste, paper, paper contaminated with Food Scraps, biodegradable plastic food service ware, pieces of
365 unpainted and untreated wood, and pieces of unpainted and untreated wallboard. No Discarded material
366 shall be considered Organic Materials, however, unless such material is separated from Solid Waste and
367 Recyclable Material.

368 **Owner**

369 "Owner" means the Person holding the legal title to the real property constituting the Premises to which
370 Solid Waste, Recyclable Materials, and/or Organic Materials Collection service is to be provided under
371 this Agreement.

372 **Party(ies)**

373 "Party(ies)" refers to the Agency and Contractor, individually or together.

374 **Pass-Through Cost**

375 "Pass-Through Cost" means a particular cost to which no element of overhead, administrative expense,
376 profit, or other cost is added nor with respect to which any other amount is credited, such that the specific
377 amount of such cost is included without modification in the calculations or reports to which such costs
378 pertain.

379 **Person**

380 "Person" means any individual, firm, association, organization, partnership, corporation, business trust,
381 joint venture, the United States, the State, the County, towns, cities, or special purpose districts.

382 **Plant Materials**

383 "Plant Materials" means a subset of Organic Materials consisting of grass cuttings, weeds, leaves,
384 prunings, branches, dead plants, brush, tree trimmings, dead trees (not more than six (6) inches in
385 diameter) and five (5) feet in length, and similar materials generated at Premises, separated and set out for
386 Collection, processing, and Recycling. Plant Materials does not include materials not normally produced
387 from farms, gardens or landscapes, such as, but not limited to, brick, rock, gravel, large quantities of dirt,
388 concrete, sod, non-organic wastes, oil, and painted or treated wood products. Diseased plants and trees
389 may be excluded from Plant Materials upon mutual consent of Agency and Contractor.

390 **Premises**

391 "Premises" means any land, or building in Service Area where Solid Waste, Recyclable Materials, or
392 Organic Materials is generated or accumulated.

393 **Process**

394 "Process" means to prepare, separate, treat, or convert material(s) or commodity(ies) by a method
395 designed to prepare said materials or commodity(ies).

396 **Rates**

397 "Rates" means the dollar unit to be charged a Customer by Contractor for providing Collection of Solid
398 Waste, Recyclable Materials, Organic Materials, and other materials Collected pursuant to this
399 Agreement.

400 **Rate Year**

401 "Rate Year" means the twelve-month period, commencing January 1, of one year and concluding
402 December 31 of the same year, for which Contractor's Compensation is calculated.

403 **Recycling**

404 "Recycling" means the process of sorting, cleansing, treating and reconstituting, at a Recyclable Materials
405 Processing site, materials that would otherwise be Disposed of at a landfill for the purpose of returning
406 such materials to the economy in the form of raw materials for new, reused or reconstituted products.

407 **Recycling Tote-Bag**

408 "Recycling Tote-Bag" means a durable, mesh, plastic bag with handles and a carrying capacity of
409 approximately eight (8) gallons distributed to individual tenant units at MFD Complexes for personal
410 Recycling use.

411 **Recyclable Containers**

412 "Recyclable Containers" means food and beverage packaging receptacles.
413

414 **Recyclable Materials**

415 "Recyclable Materials" means Discarded Materials that can be re-used, remanufactured, reconstituted, or
416 Processed.

417 **Related Party Entity**

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

420 **Residential**

421 “Residential” shall mean of, from, or pertaining to a Single-Family Premises, and Multi-Family Premises,
422 including single-family homes, apartments, condominiums, townhouse complexes, mobile home parks,
423 cooperative apartments, and yacht harbors and marinas where residents live aboard boats.

424 **Residential Property**

425 "Residential Property" means property used for residential purposes.

426 **SBWMA**

427 “SBWMA” refers to South Bayside Waste Management Authority, which is the twelve (12) member joint
428 powers authority formed in San Mateo County, California, comprised of the following Member Agencies:
429 the cities of Belmont, Burlingame, East Palo Alto, Foster City, Menlo Park, Redwood City, San Carlos,
430 and San Mateo; the towns of Atherton and Hillsborough; the County of San Mateo; and the West Bay
431 Sanitary District.

432 **Service Area**

433 “Service Area” means that territory within, and, if applicable, outside Agency’s boundaries with respect
434 to which Agency exercises franchising authority for the Collection of Solid Waste, Recyclable Materials,
435 Organic Materials, or other materials pursuant to this Agreement, which territory is shown on a map on
436 file in the office of Agency’s Manager, to which reference is hereby made for the description of said area.

437 **Service Day**

438 “Service Day” means Monday through Saturday excluding designated Holidays.

439 **Service Opportunity**

440 “Service Opportunity” refers to each individual opportunity the Contractor has to Collect Solid Waste,
441 Recyclable Materials, and Organic Materials from a Customer’s Container which is equivalent to the
442 required Single-Family, Multi-Family and Commercial lifts. For example, for a Single-Family Customer,
443 Contractor has three Service Opportunities per week – one for Solid Waste Collection, one for Recyclable
444 Materials, and one for Plant Materials.

445 **Service Sector**

446 “Service Sector” refers separately to the following types of Solid Waste, Recyclable Materials, and
447 Organic Materials Collection services for each of the following types of services: Single-Family, Multi-
448 Family, Commercial, Drop Box, and Residential on-call clean up services.

449 **Single-Family**

450 "Single-Family,” “Single-Family Dwelling,” or “SFD” means each Premises used for or designated as a
451 Single-Family residential dwelling and including each unit of a duplex, triplex, fourplex or townhouse
452 condominium in all cases in which there is separate or individual Solid Waste, Recyclable Materials, and
453 Plant Materials Collection are provided separately to each dwelling unit and each Premises is billed
454 separately, and whereby there are four (4) or fewer living units.

455 **Single-Stream Recyclable Materials**

456 “Single-Stream Recyclable Materials” shall mean Traditional Recyclable Materials which have been
457 Commingled by the Generator and placed in a Container for the purposes of Collection.

458 **Solid Waste**

459 “Solid Waste” means all putrescible and non-putrescible solid, semisolid, and liquid wastes, as defined in
460 California Public Resources Code §40191, as that section may be amended from time to time. For the
461 purposes of this Agreement, “Solid Waste” does not include abandoned vehicles and parts thereof,
462 Hazardous Waste or low-level radioactive waste, medical waste, Source Separated Recyclable Materials,
463 Source Separate Plant Materials, or Source Separated Organic Materials.

464 **Source Separate**

465 "Source Separate" means to have the Generator segregate from Solid Waste any material which otherwise
466 would become Solid Waste, such as Recyclable Materials, Plant Materials, or Organic Materials, for the
467 sole purpose of reuse, Recycling, or composting, to be Collected by Contractor or others.

468
469 **Special Handling Service**

470 “Special Handling Service” means the provision of Collection Service to a SFD in the rear or side
471 premises. This service is provided with no additional charge to Customer. Customers eligible for this
472 service include only those that submit documentation (i.e., a form signed by a doctor) of their inability to
473 abide by the Curbside Collection set-out requirements.

474 **Specialty Recyclable or Reusable Material**

475 “Specialty Recyclable or Reusable Material” means Recyclable Materials or reusable that are not
476 specified as Traditional Recyclable Materials that can be Collected for purposes of Recycling or reuse by
477 any Person operating in accordance with the Agency municipal code. Such Specialty Recyclable or
478 Reusable Material includes, but is not limited, to scrap metal weighing more than ten (10) pounds,
479 Construction and Demolition Debris, pallets, plastic film, reusable furniture, etc.

480 **Speed of Answer**

481 “Speed of Answer” shall mean the amount of time a call is answered after the call is queued (i.e.,
482 upon completion of the introductory voicemail message(s)).

483 **State**

484 “State” means the State of California.

485 **Subcontractor**

486 “Subcontractor” means a party who has entered into a contract, express or implied, with the Contractor
487 for the performance of an act that is necessary for the Contractor’s fulfillment of its obligations under this
488 Agreement and approved by the SBWMA for services such as, but not limited to, Collection,
489 transportation, Processing, diversion, sales or marketing of Recyclable Materials or Organic Materials,
490 staffing, public education, customer service, and billing, or other service whose cost is a substantial
491 portion of the Contractor’s total annual cost.

492 **Term**

493 “Term” means the Term of this Agreement, including extension periods if granted, as provided for in
494 Article 3.

495 **Ton (or Tonnage)**

496 “Ton (or Tonnage)” means a unit of measure for weight equivalent to 2,000 standard pounds where each
497 pound contains 16 ounces.

498 **Targeted Recyclable Materials**

499 “Targeted Recyclable Materials” shall include, but not be limited to: newspaper (including inserts,
500 coupons, and store advertisements); mixed paper (including office paper, computer paper, magazines,
501 junk mail, catalogs, brown paper bags, brown paper, paperboard, paper egg cartons, telephone books,
502 books, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, cereal and other
503 similar food boxes); chipboard; corrugated cardboard; paper milk cartons; glass containers of any color
504 (including but not limited to brown, blue, clear, and green glass containers); aluminum (including food
505 and beverage containers, foil, small pieces of scrap metal); small pieces of scrap metal weighing less than
506 10 pounds and fitting into the Recyclable Materials Collection Container (excluding chain, cable, wire,
507 banding, hand tools, and automotive parts); steel, tin or bi-metal containers; plastic containers (i.e., all
508 plastic containers stamped with the Society for the Plastics Industry (SPI) code #1 through #7; and,
509 plastic containers that are not stamped but clearly can be identified as PET, HDPE, polypropylene). For
510 Single-Family and Multi-Family Premises, Targeted Recyclable Materials shall also include Used Motor
511 Oil, Used Motor Oil Filters, Household Batteries, and Cell Phones. Targeted Recyclable Materials are a
512 subset of Recyclable Materials.

513 **Transfer Station**

514 “Transfer Station” means a Facility primarily used for the purpose of transferring Solid Waste from
515 Collection vehicles to transfer vehicles (but which may include recovery attributes) to more efficiently
516 transport said Solid Waste to its ultimate Disposal Site. For the purposes of this Agreement, Agency has
517 designated the Shoreway Recycling and Disposal Center, located at 225 Shoreway Road, owned by
518 SBWMA and operated by _____ {insert future operator’s name}, as its designated Transfer Station.

519 **Unacceptable Spillage**

520 “Unacceptable Spillage” means any Solid Waste spilled or left at established Collection sites by
521 Contractor after Collection, except that small particles of grass clippings and leaves of the size and
522 volume that may be collected by regular street sweeping operations may be left behind.

523 **Universal Waste (or U-Waste)**

524 “Universal Waste,” or “U-Waste,” means all wastes as regulated and defined by Title 22, Article 1,
525 Subsections 66273.1 through 66273.9 of the California Code of Regulations. These include, but are not
526 limited to, batteries, fluorescent light bulbs, mercury switches, and Electronic Waste, as previously
527 defined.

528 **Unpermitted Materials**

529 “Unpermitted Materials” mean wastes or other materials that the Designated Transfer and Processing Site
530 has not been permitted to receive, including Hazardous Waste and Hazardous Substances.

531 **Used Motor Oil**

532 “Used Motor Oil” means all used motor oil from automobiles and other light duty vehicles intended for
533 personal use which is removed from cars at a Residential Premises and not as a part of a for-profit or
534 other business activity.

535 **Used Motor Filter**

536 “Used Motor Filter” means all used motor oil filter(s) from automobiles and other light duty vehicles
537 intended for personal use which is removed from cars at a Residential Premises and not as a part of a for-
538 profit or other business activity.

539 **Venue**

540 “Venue” means a permanent facility that annually seats or serves an average of more than 2,000
541 individuals within the grounds of the facility per day of operation (both people attending the event and
542 those working at it, including volunteers, are included in this number).

543

544 **Weekly Collection Service**

545 “Weekly Collection Service” means Collection Service that is scheduled in advance from Monday
546 through Friday and provided once-per-week on the same day or days each week.

547

548 **White Goods**

549 “White Goods” means any discarded Residential device, including, but not limited to, washing machines,
550 clothes dryer, hot water heaters, dehumidifiers, conventional ovens, microwave ovens, stoves,
551 refrigerators, freezers, air-conditioners, trash compactors, and residential furnaces discarded by
552 Residential Generators. White Goods are commonly referred to as Major Appliances.

ATTACHMENT I

PERFORMANCE INCENTIVES/DISINCENTIVES

{Note to Proposers: The inclusion of the performance incentive/disincentive mechanism in this Agreement is optional for Member Agencies. Some Member Agencies may choose to include this requirement in their Collection Agreement while others may not. In addition, it is anticipated that the Performance Incentives provisions contained herein will commence after full implementation of the roll-out. In some cases the performance levels that are associated with incentives/disincentives will be established after Year 1 of the Agreement. In other cases, incentives/disincentives may be deferred until after the first six (6) months of the collection operations.}

1. GENERAL

The Agency will provide an incentive payment to Contractor for exceptional performance on three (3) performance measures. The performance measures are:

- Overall Diversion Level
- Missed Pick-Up Initial Complaints
- Average Hold Time

In addition, the Agency will assess a disincentive payment to the Contractor for substandard performance on ten (10) performance measures as follows:

- Minimum Single Family Diversion Level
- Minimum Commercial Diversion Level
- Maximum Contamination Level – Targeted (Residential) Recyclable Materials
- Maximum Contamination Level – Residential Organic Materials
- Maximum Contamination Level – Commercial Organic Materials
- Maximum Contamination Level – Commercial Plant Materials
- Missed Pick-Up Initial Complaints
- Missed Pick-Up Collection Events
- Average Hold Time
- Three (3) Minute Maximum Hold Time

In this Attachment, the performance incentives/disincentives designed to encourage Contractor's exceptional performance in the above areas are presented. These performance incentives/disincentives include an incentive payment to Contractor for exceeding goals and a disincentive payment assessed to Contractor for failure to achieve the performance standards. The table below provides a summary of the incentive/disincentive structure, which is described in detail in Sections 2 - 7 of this Attachment. Section 8 of this Attachment describes the frequency and method for distributing incentive payments and assessing disincentive payments.

Summary of Incentives/Disincentives

	Disincentive payment threshold	Incentive payment threshold	Performance Incentive/Disincentive Payment Amount
Annual Diversion Level			
Overall Annual Diversion Level*	Not applicable	Calculated Overall Diversion Level > the targeted Overall Diversion Level	Incentive Payment = \$70.00 per ton
Minimum Single-Family Diversion Level*	Level < __% (to be determined after Rate Year 1)	Not applicable	Disincentive Payment = \$70.00 per ton
Minimum Commercial Diversion Level*	Level < __% (to be determined after Rate Year 1)	Not applicable	Disincentive Payment = \$70.00 per ton
Maximum Contamination Level – Residential Recyclable Materials*	Level > 8% of Residential Recyclable Materials	Not applicable	Disincentive Payment = \$175.00 per ton
Maximum Contamination Level – Residential Organic Materials*	Level > 5% of Residential Organic Materials	Not applicable	Disincentive Payment = \$70.00 per ton
Maximum Contamination Level – Commercial Organic Materials*	Level > 10% of Commercial Organic Materials	Not applicable	Disincentive Payment = \$70.00 per ton
Maximum Contamination Level – Commercial Plant Materials*	Level > 5% of Commercial Plant Materials	Not applicable	Disincentive Payment = \$70.00 per ton
Missed Pick-Up Initial Complaints*	Actual % > 0.1% (1 miss per 1,000)	Actual % < 0.067%	Incentive or Disincentive Payment = \$50.00 per

	Disincentive payment threshold	Incentive payment threshold	Performance Incentive/Disincentive Payment Amount
(as a percentage of Service Opportunities)	Service Opportunities)	(1 miss per 1,500 Service Opportunities)	Complaint
Missed Pick-Up Collection Event*	Actual > 0	Not applicable	Disincentive Payment = \$50.00 per Collection Event
Average Hold Time*	Actual > 30 seconds	Actual < 17 seconds	Incentive or Disincentive Payment = \$500 per second
Three (3) Minute Maximum Hold Time*	Actual < 100% of all calls received are answered in three (3) minutes or less	Not applicable	Incentive or Disincentive Payment = \$5.00 per second

* Definitions provided in the following sections

2. DIVERSION LEVELS

Definition of Calculated Diversion Level

The Diversion Levels achieved shall be calculated based on the methodology shown in the following example.

Assumptions (will be based on actual Contractor performance):

Annual Recyclable Materials Collected = 80,000 tons

Recyclable Materials Contamination Level = 7%

Annual Organic Materials Collected = 90,000 tons

Organic Materials Contamination Level = 8%

Annual Solid Waste Collected = 325,000 tons

Calculated Overall Annual Diversion Level

80,000 tons + 90,000 tons = 170,000 tons

7% (contamination level) x 80,000 tons = 5600 tons

8% (contamination level) x 90,000 tons = 7200 tons

170,000 – (5600 + 7200) = 157,200 tons (net annual tons diverted)

325,000 + 170,000 = 495,000 tons (total tons generated)

$(157,200 / 495,000) \times 100 = 32\%$ (Overall annual diversion level)

Calculated Single-Family Diversion Level (as a percentage)

Assumptions (will be based on actual Contractor performance):

Annual SFD Recyclable Materials Collected = 40, 000 tons

Recyclable Materials Contamination Level = 8%

Annual SFD Organic Materials Collected = 65, 000 tons

Organic Materials Contamination Level = 5%

Annual Residential Solid Waste Collected = 135, 000 tons

$40,000 \text{ tons} + 65,000 \text{ tons} = 105,000 \text{ tons}$

$8\% \text{ (contamination level)} \times 40,000 = 3200 \text{ tons}$

$5\% \text{ (contamination level)} \times 65,000 = 3250 \text{ tons}$

$105,000 - (3200 + 3250) = 98,550 \text{ tons (net annual tons diverted)}$

$135,000 + 105,000 = 240,000 \text{ tons (total tons generated)}$

$(98,550/240,000) \times 100 = 41\% \text{ (Single family diversion level)}$

Calculated Commercial Diversion Level (as a percentage)

Assumptions (will be based on actual Contractor performance):

Annual Commercial Recyclable Materials Collected = 40, 000 tons

Commercial Recyclable Materials Contamination Level = 7%

Annual Commercial Organic Materials Collected = 25, 000 tons

Organic Materials Contamination Level = 8%

Annual Commercial Solid Waste Collected = 190, 000 tons

$40,000 \text{ tons} + 25,000 \text{ tons} = 65,000 \text{ tons}$

$7\% \text{ (contamination level)} \times 40,000 = 2,800 \text{ tons}$

$8\% \text{ (contamination level)} \times 25,000 = 2000 \text{ tons}$

$65,000 - (2800 + 2000) = 60,200 \text{ tons (net annual tons diverted)}$

$190,000 + 65,000 = 255,000 \text{ tons (total tons generated)}$

$(60,200/255,000) \times 100 = 24\% \text{ (Commercial diversion level)}$

To calculate the Diversion Levels, the most-recently determined quarterly Measured Contamination Level shall be used per Section 6.02.B.

Exceptional Diversion Level Performance

Contractor shall receive an incentive payment if the annual Calculated Overall Diversion Level exceeds the targeted Overall Diversion Level. The targeted Overall Diversion

Level shall be set for Rate Year 2 after completion of Rate Year 1 and shall be adjusted each Rate Year thereafter if the Contractor exceeds the targeted Overall Diversion Level. In such cases, the adjusted targeted Overall Diversion Level shall be calculated based on the methodology used in the following example.

Assumptions (will be based on actual Contractor performance):

Current Year Overall Diversion Level = 42%

Prior Year Overall Diversion Level = 40%

Incentive payment

Overall Annual Diversion Level = 42%

Targeted Annual Overall Diversion Level = 40%

Total Annual Solid Waste Collected = 325,000 tons

Total Annual Recyclable Materials Collected = 110, 000 tons

Total Annual Organic Materials Collected = 125, 000 tons

Incentive Payment = \$70.00

$42/100 = 0.42$

$40/100 = 0.40$

$325,000 + 110, 000 + 125, 000 = 560, 000$ (total tons generated)

$0.42 - 0.40 = 0.02$ (% increase in annual diversion level)

$0.02 \times 560,000$ tons = 11,200 tons (net increase in tons diverted)

$\$70.00 \times 11,200$ tons = \$784,000 (incentive payment)

If the annual Calculated Overall Diversion Level is less than or equal to ___% {to be determined after Rate Year 1}, no incentive payment shall be distributed for the reporting period.

Minimum Diversion Level Requirements

Contractor shall achieve a minimum annual Single-Family Diversion Level of ___% **{to be determined after Rate Year 1}** and a minimum annual Commercial Diversion Level of ___% **{to be determined after Rate Year 1}**. The Agency may assess disincentive payments, if the:

- Calculated Single-Family Diversion Level for the Rate Year is less than the minimum Single-Family Diversion Level of ___% **{to be determined after Rate Year 1}** and/or,
- Calculated Commercial Diversion Level for the Rate Year is less than the minimum Commercial Diversion Level of ___% **{to be determined after Rate Year 1}**.

3. CONTAMINATION LEVELS

Contamination Level Requirements

The minimum contamination levels must not exceed:

Residential Recyclable Materials Contamination Threshold = 8%

Residential Organic Materials = 5%

Commercial Organic Materials = 10%

Commercial Plant Materials = 5%

Contamination Disincentive Payment = \$175.00 per ton for recyclables and \$70.00 per ton for organics and plant materials.

The contamination levels achieved will be determined based on the results of the quarterly waste composition study performed by SBWMA per Section 6.02.B.

Contamination Disincentive Payment

In the event Contractor exceeds the allowable contamination thresholds, it shall be assessed a disincentive payment based on the methodology shown in the following example:

Residential Recyclable Materials Contamination Level = 9.1%

Total Recyclable Materials Collected = 40, 000 tons

Contamination Disincentive Payment = \$175.00 per ton

9.1 % - 8.0% = 1.1%

0.011 x 40, 000 = 440 tons

440 x \$175.00 = \$77,000

4. MISSED PICK-UP INITIAL COMPLAINTS

Definition of Missed Pick-Up Initial Complaints

Missed pick-ups Initial Complaints shall be considered all complaints received by Contractor for missed pick-up of Solid Waste, Recyclable Materials and Organic Materials with the exception of missed pick-up Complaints for which Contractor: (i) documented in its Customer service system the Customer's failure to properly set out Container or that the Containers were blocked for Collection based on the route driver's report; and, (ii) coded the call for a recollection request or courtesy pick-up rather than missed pick-up Complaint pursuant to Section 8.02.B.2.

Incentive Payment for Exceptionally Low Missed Pick-Up Initial Complaint Level

Contractor shall receive an incentive payment if the percentage of missed pick-up Initial Complaints is less than one (1) per one-thousand and five hundred (1,500) of the total Service Opportunities during the monthly reporting period (e.g., 90,000 SFD that are

provided service for three carts or 270,000 total weekly service opportunities x 4.33 weeks per month = 1,169,100 service opportunities per month, which equates to a total allowance of 783 or fewer Missed Pick Up Complaints each month for both Service Districts; or, the total number of Complaints is less 0.067% of all Service Opportunities). In such cases, the incentive payment shall be calculated based on the following example:

Actual Number of Missed Pick-Up Initial Complaints = 607

Allowable Threshold of Missed Pick-Up Complaints = 783

Incentive Payment = \$50 per complaint

$783 - 607 = 176$

$176 \times \$50 = \$8,800$

If the percentage of missed pick-up Complaints is equal to or greater than one tenth of one percent (0.1%) of Service Opportunities during the quarterly reporting period, no incentive payment shall be distributed for the quarterly reporting period.

Disincentive Payment for Excessive Initial Missed Pick-Up Complaints

At a minimum, Contractor's actual percentage of Missed Pick-Up Initial Complaints shall be less than or equal to one-tenth of one percent (0.1%) of Service Opportunities per monthly reporting period (e.g., number of Complaint is less than or equal to 1 missed pick-up Complaints per 1,000 Service Opportunities). If Contractor fails to achieve this minimum missed pick-up threshold (i.e., the actual percentage of missed pick-up Complaints is greater than 0.1% of the Service Opportunities), the Agency shall assess a disincentive payment based on the following example:

Actual Number of Missed Pick-Up Initial Complaints = 1300

Allowable Threshold of Missed Pick-Up Complaints = 1169

Disincentive Payment = \$50 per complaint

$1300 - 1169 = 131$

$131 \times \$50 = \$6,550$

Incentive < 0.067% (i.e., 783) ≤ Nothing ≤ 0.1% (i.e., 1,169) < Disincentive

5. MISSED PICK-UP COLLECTION EVENTS

Definition of Missed Pick-Up Collection Events

Missed Pick-Ups Collection Events shall be considered all missed pick-up initial complaints received by Contractor that were not collected on or before the business day following Contractor's receipt of the Initial Complaint for Contractor's failure to collect Solid Waste, Recyclable Materials and Organic Materials. The only exceptions to this definition include: missed pick-up Initial Complaints for which Contractor: (i) documented in its Customer service system the Customer's failure to properly set out Container or that the Containers were blocked for Collection based on the route driver's report; and,

(ii) coded the call for a recollection request or courtesy pick-up rather than missed pick-up Complaint pursuant to Section 8.02.B.2.

Missed Pick-Up Collection Events Threshold

Contractor shall be assessed a disincentive payment for the actual number of Missed Pick-Up Collection Events accrued during each monthly reporting period. If Contractor fails to achieve this Missed Pick-Up Collection Event requirement, the Agency shall assess a disincentive payment based on the following example:

Actual Number of Missed Pick-Up Collection Events= 87

Allowable Threshold of Missed Pick-Up Collection Events = 0

Disincentive Payment = \$50 per missed pick-up

87 x \$50 = \$4,350

6. AVERAGE SPEED OF ANSWER OF CUSTOMER SERVICE CENTER

Definition of Average Speed of Answer

The Average Speed of Answer shall be the average time that Customers have to wait for their call to be answered, as determined using a methodology and monthly reports from contractor's customer service call center system that are approved by the Agency or SBWMA pursuant to Section 7.02.A. ("Average Speed of Answer shall be defined as the amount of time that a call is left unanswered after contractor's introductory voicemail message(s) are ended either by completion of the message or by action performed by customer.

Exceptionally Low Average Speed of Answer

Contractor shall receive an incentive payment if the actual Average Speed of Answer time is less than seventeen (17) seconds on a monthly basis. In such cases, the incentive payment shall be calculated based on the following example:

Actual Average Speed of Answer = 14 seconds

Speed of Answer Incentive Payment = \$500.00 per second

17 – 14 = 3 seconds

3 x \$500.00 = \$1,500

If the actual average Speed of Answer is equal to or greater than 17 seconds over the monthly reporting period, no incentive payment will be earned.

Maximum Average Speed of Answer

Contractor's average Speed of Answer shall be less than or equal to thirty (30) seconds on a monthly basis. If Contractor fails to achieve this maximum average Speed of answer, the Agency shall assess a disincentive payment based on the following example:

Actual Average Speed of Answer= 47 seconds

Speed of Answer Disincentive Payment = \$500.00 per second

47 - 30 = 17 seconds

17 x \$500.00 = \$8,500

Incentive < 17 seconds ≤ Nothing ≤ 30 seconds < Disincentive

7. THREE (3) MINUTE MAXIMUM HOLD TIME

Definition of Three (3) Minute Maximum Hold Time

All calls received at the Customer Service Center must be answered by an agent within three (3) minutes after contractor's introductory voicemail message(s) are ended either by completion of the message or by action performed by customer, as determined using a methodology and monthly reports from the customer service call center system that are approved by the Agency or SBWMA pursuant to Section 7.02.A. ("Hold Time" shall be defined as the amounts of time per answered call that a customer service agent (or agents) placed a call on hold, plus the amounts of time a call is left unanswered after contractor's introductory voicemail message(s) are ended either by completion of the message(s) or by action performed by customer. "Average Hold time" shall be defined as the sum of all call Hold Times divided by the number of calls answered by the agent or queue of agents.)

Three Minute Maximum Hold Time

Contractor shall answer all calls received within three (3) minutes after the introductory voicemail messages are ended by completion of by customer. If Contractor fails to achieve this performance standard, the Agency shall assess a disincentive payment based on the following example:

Number of Calls Exceeding the Three (3) Minute Threshold = 312

Disincentive Payment = \$5.00 per call

312 x \$5.00 = \$1,560

8. INCENTIVE/DISINCENTIVE PAYMENT PROCEDURES

- A. **Record Keeping.** In accordance with Section 9.01, records shall be maintained by Contractor for Agency in a manner that adequately demonstrates and documents Contractor's performance in accordance with this Agreement. They shall be sufficient for the determination that Contractor has (or has not) performed in accordance with the performance standards presented in the Attachment I.
- B. **Determination of Achievement of Performance Standards.** Agency shall on a quarterly basis, or more frequently at its discretion, review the reports submitted by Contractor pursuant to the requirements of Article 9 and determine if Contractor has achieved performance levels specified in this attachment that warrant incentive/disincentive payments. No later than twenty (20) Business Days after receipt of the Contractor's reports for the reporting periods ending in March, June, September, and December, Agency shall provide written notice to the Contractor of its determination of incentive/disincentive payments, if any due, and shall include a description of its method of determination and its calculations of incentivedisincentive payments.

On an annual basis, Agency shall review the annual report submitted by the Contractor pursuant to the requirements of Article 9 and determine if the Contractor has achieved the Overall Diversion Level that warrants Agency distribution of incentive payments. No later than twenty (20) Business Days after receipt of the Contractor's annual report, Agency shall provide written notice to the Contractor of its determination of incentive payments, if any due, and shall include a description of its method of determination and any calculations of incentive payments.
- C. **Amount.** The incentive/disincentive net payment amounts shall be determined in accordance with the formulas presented in Sections 2 - 7 of this Attachment I.
- D. **Timing of Payment.** If an incentive payment is due to the Contractor, Agency shall provide payment in the form of a check or wire transfer no later than twenty (20) calendar days after the issuance of the Agency's written notice of incentive net payment determination. Alternatively, Agency may reimburse Contractor for some or all of the incentive payments or account for disincentive payments as an adjustment to Contractor's Compensation for the coming Rate Year. This adjustment may be a net positive or negative (dollar amount) depending upon the calculations described above.
- E. **Disputes by Contractor.** Contractor may, within ten (10) calendar days after receiving the Agency's written notice regarding its determination of incentive/disincentive payments, provide written notice to the Agency of any disagreement with the Agency's determination. Contractor may present evidence in writing to support its position. Agency shall review Contractor's submission and within ten (10) calendar days shall make its final determination of incentive/disincentive payments. The decision of Agency shall be final.

ATTACHMENT J

Liquidated Damages

The following table lists the events that constitute breaches of the Agreement's standard of performance warranting the imposition of liquidated damages; the acceptable performance level; the definition of the complaint, incident or event; the method by which occurrences will principally be tracked (by Contractor or Agency), and the amount of liquidated damages for failure to meet the contractually-required standard of performance.

Contractor is required to maintain records of customer complaints which show for each complaint: date and time received; name, address and telephone number of caller; nature of complaint (e.g., missed pick-up, excessive noise, property damage, etc.); name of employee receiving complaint; action taken by Contractor to respond to complaint; and date complaint was resolved.

Within 30 days after the end of each calendar quarter, Contractor shall submit to Agency a report which summarizes the number of complaints in each category and computes the amount (if any) of liquidated damages accrued by month during the preceding calendar quarter. If Agency requests, Contractor shall also provide a printout of the full records for the quarter.

Agency may require the liquidated damages to be paid concurrently with submission of each quarterly report or may take some or all of them into account in establishing Contractor's compensation for the following Rate Year.

Agency intends to suspend imposition of liquidated damages for the initial six months of collection service, provided that Contractor diligently applies its best efforts to minimize the occurrence of events which can result in the imposition of liquidated damages. If Contractor does not exert such best efforts, Agency may, after notice to Contractor, end this policy and begin enforcement of the performance standards through liquidated damages.

	Event of Non-Performance	Acceptable Performance Level	Definition of Complaint, Incident, or Event	Tracking Method	Liquidated Damage Amount
	COLLECTION QUALITY				
1.	Other Collection Quality Complaint (includes Solid Waste, Recycling and Organics Collection)	Number of "Other Collection Quality Complaints" is less than or equal to 1 per 20,000 of the service opportunities per month (e.g., 90,000 SFD that are provided service for three carts or 270,000 total weekly service opportunities x 4.33 weeks per month = 1,169,100 service opportunities per month, which equates to a total allowance of 58 or fewer "Other Collection Quality Complaints" each month for both Service Districts. The allowance for each Member Agency shall be divided equitably based on total number of service opportunities).	"Other Collection Quality Complaints" shall include all Complaints received regarding events described under Items 1A through 1C herein.	Contractor shall print a report on a quarterly basis from its Customer service system listing the total number of Complaints coded for each category (Items 1A through 1C) for the Agency	\$150 per Complaint received above the acceptable performance level
	A. Unauthorized Collection Hours (includes: Solid Waste, Recycling and Organics Collection)	See above	Each Complaint that Contractor has performed Collection services outside of hours authorized in Article 8.01.A.	See above	See above
	B. Inadequate Care of or Damage to Private Property	See above	Each Complaint that Contractor has not closed a Customer's gate, has crossed planted areas, or has damaged private property (including damage of private vehicles) pursuant to Article 8.02.H.	See above	See above
	C. Failure to Resolve Property Damage Claims	See above	Each Complaint of Contractor's failure to resolve claims of damage to property within thirty (30) calendar days of the date the Complaint damage was reported by Person pursuant to Article 8.02.H.	See above	See above

	Event of Non-Performance	Acceptable Performance Level	Definition of Complaint, Incident, or Event	Tracking Method	Liquidated Damage Amount
2.	Failure to Provide New Service or Initiate Change in Service	Number of "Failures to Provide New Service or Initiate Change in Service" is less than or equal to 120 each month for both Service Districts . (The allowance for each Member Agency shall be divided equitably based on total number of service opportunities).	Each Complaint of Contractor's failure to provide new service or change an existing service level within five (5) business days of receiving the request pursuant to Article 8.02.C.	Contractor shall print a report on a quarterly basis from its Customer service system listing the total number of Complaints coded to this category for the Agency.	\$100 per Complaint received above the acceptable performance level
3.	Improper Container Placement Complaints	The number of "Improper Container Placement Complaints" shall be less than or equal to 1 per 1,000 of the total service opportunities each month (e.g., 90,000 SFD that are provided service for three carts or 270,000 total weekly service opportunities x 4.33 weeks per month = 1,169,100 service opportunities per month, which equates to a total allowance of 1,169 or Improper Container Placement Complaints each month for both Service Districts . The allowance for each Member Agency shall be divided equitably based on total number of service opportunities).	Each Complaint of Contractor's failure to return empty Containers to original location (or alternate location if original location was not safe with regard to pedestrian and vehicular traffic), and each Complaint of failure to place Containers in an upright position with lids closed pursuant to Article 8.02.B.1.	Contractor shall print a report on a quarterly basis from its Customer service system listing the total number of Complaints coded to this category for the Agency.	\$50 per Complaint

	Event of Non-Performance	Acceptable Performance Level	Definition of Complaint, Incident, or Event	Tracking Method	Liquidated Damage Amount
4.	Excessive Noise Complaints	The number of "Excessive Noise Complaints" shall be less than or equal to 1 per 10,000 of the total service opportunities each month (e.g., 90,000 SFD that are provided service for three carts or 270,000 total weekly service opportunities x 4.33 weeks per month = 1,169,100 service opportunities per month, which equates to a total allowance of 117 or fewer Excessive Noise Complaints each month for both Service Districts . The allowance for each Member Agency shall be divided equitably based on total number of service opportunities).	Each Complaint of excessive noise reportedly related to Contractor's Collection operations pursuant to Article 8.02.J.	Contractor shall print a report on a quarterly basis from its Customer service system listing the total number of Complaints coded to this category for the Agency.	\$50 per Complaint
5.	Unacceptable Employee Behavior	No incidents or Complaints in this category are acceptable; therefore, any Complaint of this nature shall be considered unacceptable.	Each Complaint of reportedly discourteous, rude, or inappropriate behavior by Collection vehicle personnel, Customer service personnel, or other employees of Contractor pursuant to Article 8.06.H.	Contractor shall print a report on a quarterly basis from its Customer service system listing the total number of Complaints coded to this category for the Agency.	\$250 per Complaint

	Event of Non-Performance	Acceptable Performance Level	Definition of Complaint, Incident, or Event	Tracking Method	Liquidated Damage Amount
6.	Spills of Discarded Materials	The number of “Spills of Discarded Materials Complaints” shall be less than or equal to 1 per 5,000 of the total service opportunities each month (e.g., 90,000 SFD that are provided service for three carts or 270,000 total weekly service opportunities x 4.33 weeks per month = 1,169,100 service opportunities per month, which equates to a total allowance of 234 or fewer Spills of Discarded Materials Complaints each month for both Service Districts. The allowance for each Member Agency shall be divided equitably based on total number of service opportunities).	Each Complaint of litter, or spills of Solid Waste, Recyclable Materials, or Organic Materials near Containers or on public streets and Contractor’s failure to pick up or clean up such material immediately pursuant to Article 8.02.I.2.	Contractor shall print a report on a quarterly basis from its Customer service system listing the total number of Complaints coded to this category for the Agency.	\$50 per Complaint
	A. Failure to Clean Up Spills of Discarded Materials	See above	Each Complaint of Contractor failing to clean up Solid Waste, Recyclable Materials, or Organic Materials that were littered on public property pursuant to Article 8.02.I.2.	See above	See above
7.	Spills of Vehicle Fluids	No incidents or Complaints in this category are acceptable; therefore, any Complaint of this nature shall be considered unacceptable.	Each Complaint of unreasonable leaks or spills of hydraulic fluids, fuel, motor oil, and other motor vehicle fluids and liquids from the Collection vehicle on public streets pursuant to Article 8.02.I.1.	Contractor shall print a report on a quarterly basis from its Customer service system listing the total number of Complaints coded to this category for the Agency.	\$500 per Complaint received above the acceptable performance level

	Event of Non-Performance	Acceptable Performance Level	Definition of Complaint, Incident, or Event	Tracking Method	Liquidated Damage Amount
	Customer Service Quality				
1.	Untimely Resolution of Complaints and Inquiries	No failures or Complaints in this category are acceptable; therefore, any Complaint of this nature shall be considered unacceptable.	Each failure to resolve or remedy a Complaint or Inquiry within ten (10) Business Days of receipt of Complaint or Inquiry pursuant to Article 7.02.D, with the exception of missed pick-ups which are addressed above or other service related events that have Liquidated Damages associated with them.	Contractor shall document all Complaints and Inquiries including the date of response pursuant to Article 7.02.D, and, upon request, shall provide detailed reports for the Agencies review	\$100 per incident
	Reporting				
1.	Late Submittal of Reports, Application, Proposal, or Other Submittals	Report, application, proposal, or submitted on the date or in accordance with the timeframe specified in this Agreement.	For each day Contractor fails to submit: (i) reports in the timeframe specified in Article 9.04 of this Agreement, (ii) application for determination of Contractor's Compensation in the timeframe specified in Article 11.04 of this Agreement; (iii) proposal requested by Agency for change in service in the timeframe specified in Article ___ of this Agreement; and (iv) other submittals required by this Agreement in the timeframe specified in this Agreement.	Contractor's submittal dates shall be recorded and compared to the submittal requirements of the Agreement	\$250 per day for each day report is overdue
2.	Failure to Perform and Report on Billing Review	For each day a billing review submittal is late.	Failure to conduct Billing reviews and report on the findings of the review pursuant to Article 7.01.F of this Agreement.	Contractor's submittal dates shall be recorded and compared to the submittal requirements of the Agreement	\$250 per day for each day report is overdue

	Event of Non-Performance	Acceptable Performance Level	Definition of Complaint, Incident, or Event	Tracking Method	Liquidated Damage Amount
	Other				
1.	Disposal of Diversion Program Materials	Contractor does not Dispose of Recyclable Materials or Organic Materials Collected.	For each Ton of Recyclable Materials or Organic Materials Disposed of without written approval of the Agency pursuant to Article 8.02.D.	Alleged incidents shall be investigated by Agency	\$175 per Ton Disposed for Recyclables \$100 per Ton Disposed for Organics
2.	Use of Unauthorized Facilities	Each Ton of material shall be delivered to the Designated Transfer and Processing Site.	For each Ton of Solid Waste, Recyclable Materials or Organic Materials that is not delivered to the Designated Transfer and Processing Site pursuant to Article 6.01.A and 6.02.A.	Alleged incidents shall be investigated by Agency	\$175 per Ton Delivered to unauthorized facility for Recyclables \$100 per Ton Delivered to unauthorized facility for Organics and solid waste

In placing Designee's initials at the places provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party has had ample opportunity to consult with legal counsel and obtain an explanation of Liquidated Damages provisions of the time that the Agreement was made.

Contractor

Agency

Initial Here: _____

Initial Here: _____

Attachment K

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K Contractor Compensation and Rate-Setting Process

The SBWMA shall conduct, on the Member Agencies' behalf, review of the Contractor's application for its annual adjustment to its compensation and determine: the following year compensation; the allocated Contractor's compensation to member agencies; and proposed rate adjustments. Attachment 15 describes the process for setting Contractor's compensation and Member Agency rates. In summary, the process is as follows:

- Solicit proposed costs for franchised collection services in 2008 dollars;
- Adjust proposed costs during contract negotiations in 2009 to adjust for any Member Agencies that opt out and for optional programs included in the scope;
- Adjust proposed costs during 2010 to determine 2011 compensation to reflect several changes related to inflation, number of accounts, bin lifts, drop box pulls, wage and benefits, etc.
- For 2012 compensation and later rate periods (Agreement years), adjust 2011 calculated costs (which are based on proposed not actuals) annually primarily using indices; and,
- After each rate period, conduct a reconciliation of revenues and disposal and processing costs.

This compensation process eliminates detailed reviews so that Contractor's compensation will never be "trued up" to contractor's actual costs (with the exception of an annual cost reconciliation related to actual tonnage collected and actual disposal and processing costs).

K.1 Overview of the Compensation Methodology

The SBWMA will assist Member Agencies in the determination of Contractor's compensation; however, the Member Agencies retain the right for final approval of Contractors compensation and Member Agency rates. The role of SBWMA shall be to review Contractor's annual application for adjustment to its compensation; determine Contractor's compensation for each rate period; allocate Contractor's compensation to Member Agencies; and propose rate adjustments. Member Agencies shall review and approve or modify: the SBWMA determination of the Contractors annual compensation; the SBWMA allocation of compensation to the Member Agency; and, the proposed rate adjustments.

The process of determining Contractor's compensation eliminates all detailed reviews and does not involve reconciliation of actual costs or projection of future costs based on actual costs. This methodology relies on proposed costs throughout the Agreement Term and is subject to the adjustments described herein.

Costs initially proposed by Contractor(s) will be adjusted twice prior to the commencement of providing the scope of collection services specified in the Agreement.

The proposed costs will first be adjusted during the contract negotiations process in 2009 to reflect: (i) changes to costs if one or more Member Agencies choose not to participate; (ii) optional programs which will be included in the scope; (iii) any scope expansion to integrate programs for management of HHW, u-waste, sharps, or other programs; and (iv) any unique Member Agency Agreement terms. These "adjusted proposed costs" will be included in the executed Collection Agreements.

Second, the "adjusted proposed costs" shall be adjusted in 2010 to establish Contractor's compensation for 2011 using the prescribed method presented herein. This adjustment is needed to reflect changes (from 2008 to 2011) for several factors:

- Inflation as proposed costs will be presented in 2008 dollars;
- Estimated tonnage collected and related disposal and processing costs;
- Service level conditions (i.e., number of accounts, lifts, pulls);
- Wage and benefits per the new collective bargaining agreements; and,
- Equipment capital expense if impacted by more than inflation.

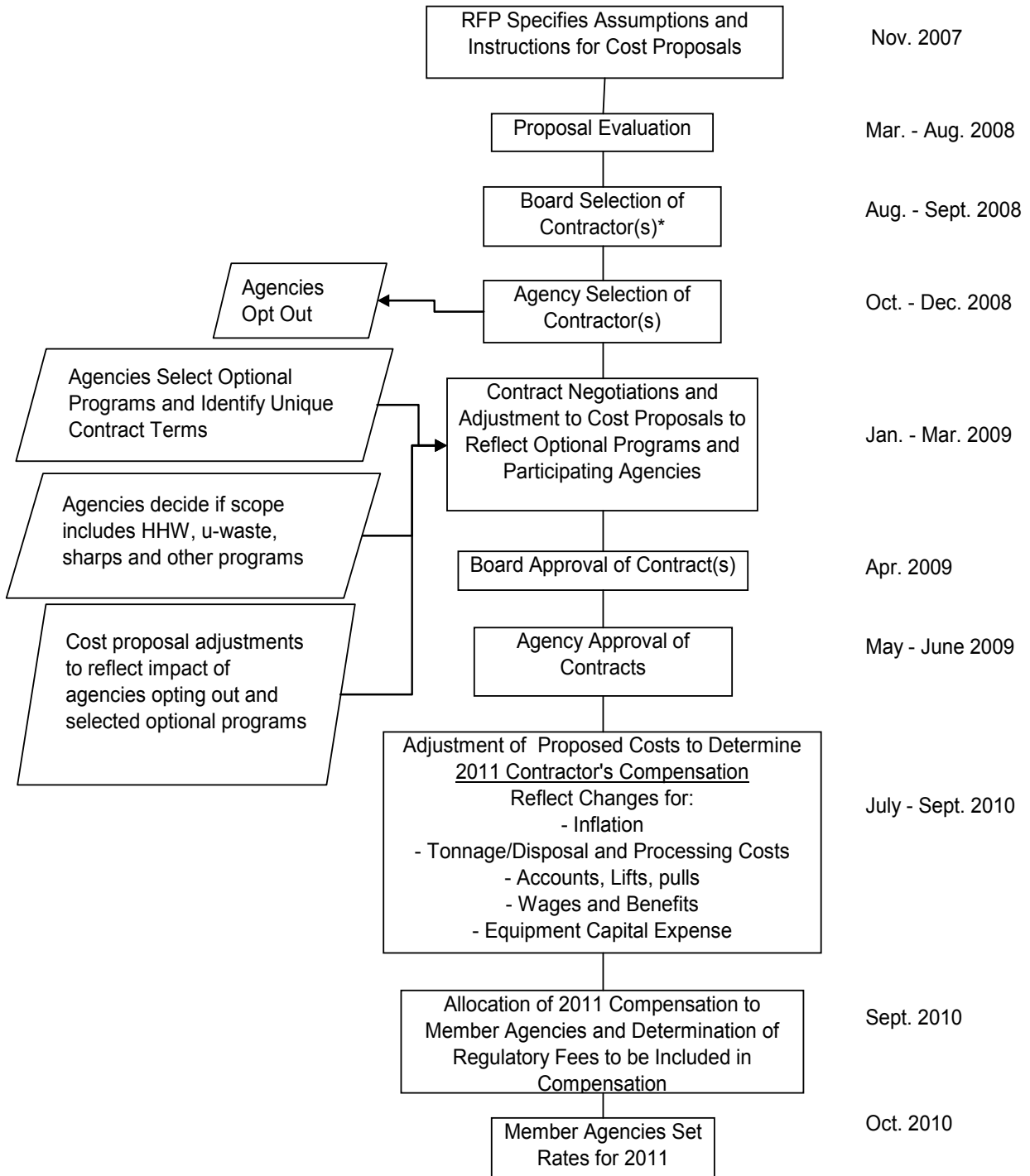
Annually thereafter, Contractor's compensation shall be adjusted using various indices with the following exceptions: (i) wages for route labor and mechanics will be adjusted based on wage rates in the Allied-negotiated collective bargaining agreements until those agreements expire (thereafter wages shall be adjusted using a cost index) (ii) costs will be adjusted in 2012 when determining 2013 compensation to reflect the then current data for accounts, bin lifts, and drop box pulls; and (iii) disposal and processing costs will be adjusted annually to reflect estimated tonnage and projected Shoreway facility gate fees.

Following completion of each rate year, a reconciliation process shall be performed to "true-up" revenues and disposal and processing expenses only (with the exception that the reconciliation shall not occur for the final year of the agreement). Contractor will be compensated for any shortfalls in revenue collected in the following rate period; and, any surpluses will be used to offset future rates. In addition, performance incentive payments and disincentive assessments shall be applied during the reconciliation process. If Contractor's actual costs for other expenses are more or less than the calculated annual Contractor's compensation, adjustments will not be made.

Figure K-1 on the following page presents a flow chart of the process for determining Contractor's compensation and rates for the first rate period (2011).

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Figure K-1 Determination of Contractor's Compensation for 2011



* One contractor may be selected for the entire SBWMA service area or two contractors may be selected for the North and South Districts.

K.2 Contractor Accountability to Proposal Assumptions

The structure of this compensation mechanism described herein holds Contractor accountable to several projections specified in Attachment N, including, proposed technology, route productivity, single-family container location (curbside and backyard placement) assumptions; and single-family participation rates, as follows:

- Proposed Technology – No adjustments will be granted during the Agreement Term if the technology proposed by Contractor does not achieve the Contractor's intended results or route productivity. If a change in law or regulations require consideration of new or alternative technology or the parties mutually agree to consider a change in technology, and cost impacts related to the change in technology will be reviewed.
- Route Productivity – The assumptions Contractor specifies in Attachment N regarding route productivity are critical to all aspects of calculating their compensation as these productivity assumptions directly impact costs related to labor, route hours, vehicles, fuel use, vehicle maintenance costs, etc. For this reason, no adjustments to the compensation are planned for differences in actual and proposed route productivity levels. Contractor will be held to the proposed route productivity levels as these assumptions will serve as the basis for adjusting changes in service levels (i.e., number of accounts, lifts, pulls), and the number of routes or changes in costs associated with routes.
- Container Placement (Curbside or Backyard) Rates – Attachment N specifies Contractor's estimate of the number of single-family customers that will place (setout) containers curbside for collection or choose to pay additional fees for backyard collection. No adjustments to the compensation will be made for differences in actual and proposed setout levels.
- Weekly Participation Levels – Attachment N specifies Contractor's estimate of the number of Single-Family Customers that will be provided weekly Recyclable Materials and Organic Materials Collection Service by preparing Carts for collection. No adjustments to the compensation will be made for differences in actual and proposed participation levels.

Contractor will not be held accountable for proposed costs that will be impacted by changes in tonnage collected (i.e., disposal and processing costs), wage and benefit rates, and the number of accounts, lifts, and pulls. (However, Contractor will be held accountable for proposed collection costs.) SBWMA and Member Agencies are prepared to make adjustments to Contractor's compensation for these variables. To obtain proposals from companies that can be fairly compared to one another and to obtain cost proposals which are "prepared" in advance to be adjusted in accordance with the compensation method described in this Attachment, the RFP requests that the cost proposals be presented in 2008 dollars and be based on SBWMA-specified conditions related to:

- Tonnage collected
- Wage and benefit assumptions by personnel classification
- Accounts, lifts, pulls

The assumptions for these conditions are included in the cost proposals forms presented in Attachment 9.

K.3 Adjustments to Contractor's Compensation

Throughout the Agreement Term, costs shall be adjusted using the proposed costs specified in Attachment N as a basis. The adjustments shall be calculated separately for each line of business (e.g., single-family solid waste, single-family recycling, commercial solid waste, commercial recycling, etc.) and separately for each category of indirect costs (e.g., general and administration, container maintenance, vehicle maintenance, and contract implementation) and then totaled for calculation of Contractor's annual compensation.

Contractor's compensation has been separated into three components – annual cost of operations, profit, and pass-through costs. The process for adjusting these costs is summarized in the table ATT 15.1. Table ATT 15-1 describes the adjustment method for three different stages: (i) first adjustment to proposed costs during negotiations in 2009; (ii) second adjustment to the proposed costs in 2010 to set 2011 compensation; and (iii) annual adjustments to determine Contractor's compensation for 2012 and each year thereafter.

Note that when an index is applied to the prior year's calculated costs, the costs are based on proposed costs not actual costs.

With regard to changes in service levels (i.e., accounts, lifts, pulls), adjustments to Contractor's proposed costs in 2010 will reflect actual changes in service levels from 2008 to 2010 and projected changes for 2011. In 2012, Contractor's compensation for the third rate year (i.e., 2013) will be determined; and, at such time, changes in service levels from 2011 assumptions to actual 2012 will be reflected in changes in costs. No adjustments to costs to reflect changes in service levels shall be made after the change made in 2012 (when setting compensation for 2013).

Cost	First Adjustment to Proposed Costs in 2009 during Contract Negotiations	Second Adjustment to Proposed Costs in 2010 to Set 2011 Compensation	Annual Adjustment to Contractor's Compensation Conducted in July of Each Year Commencing in 2011
ANNUAL COST OF OPERATIONS			
Wages and benefits for route personnel and mechanics (represented through collective bargaining agreements)	<p>Two adjustments may be necessary:</p> <ul style="list-style-type: none"> • If one or more member agencies opt out, reduce wages and benefits by the percentage change in the total annual route hours required for the service area. • If optional programs are added or the scope is expanded, wage and benefit costs to be increased to reflect the additional proposed wage and benefit costs for the optional or new program (unless contractor will be compensated for the optional or new program on a per-unit, per-fee or per-event basis). 	<p>Two adjustments will be necessary:</p> <ul style="list-style-type: none"> • Revise proposed wages to reflect forecasted 2011 wage and benefits based on the then-current Allied-negotiated labor contracts (which will be negotiated in 2008 and 2009). Proposed wages and benefits will be based on hourly rates and benefits specified in the RFP and adjustments to proposed costs will be made to reflect the percentage change in the wage and benefits used for the proposal and those that will be in effect in 2011. Proposers will be required to specify the number of full-time equivalents in each labor category in their proposal to provide a basis for the 2010 adjustment. • Revise to reflect changes in accounts, lifts, and pulls by increasing or decreasing wages and benefits by the percentage change in the accounts, lifts, and pulls. 	<ul style="list-style-type: none"> • Annually adjust direct labor costs based on the then-current Allied-negotiated labor contracts until these labor agreements expire. • After expiration of the Allied-negotiated labor agreements, annually adjust labor and benefit costs for one-year change in the U.S. Department of Labor, Bureau of Labor Statistics, Private Industry Employment Cost Index for Service-Producing Industries (seasonally adjusted, total compensation, series no. ecs12102i). • In 2012 when determining compensation for 2013, adjust wages and benefits to reflect then-current account data (using average number of accounts for most recently completed four quarters); cost adjustments to be made as described for 2010.

Cost	First Adjustment to Proposed Costs in 2009 during Contract Negotiations	Second Adjustment to Proposed Costs in 2010 to Set 2011 Compensation	Annual Adjustment to Contractor's Compensation Conducted in July of Each Year Commencing in 2011
Wages and benefits for all other personnel (which are not represented through collective bargaining agreements)	<ul style="list-style-type: none"> • If one or more member agencies opt out, reduce wages and benefits for customer service agents by the percentage change in the total annual route hours required for the service area. Wage and benefits for other personnel will not be adjusted. • If optional programs are added or the scope is expanded, wages and benefits shall be adjusted to reflect the proposed wage and benefits for the optional/new program (unless contractor will be compensated for the optional program on a per-unit, per-fee, or per-event basis). 	Inflation adjustment of 2008 proposed costs to estimate 2011 cost. Adjust using the U.S. Department of Labor, Bureau of Labor Statistics, Private Industry Employment Cost Index for Service-Producing Industries (seasonally adjusted, total compensation, series no. ecs12102i).	Inflation adjustment to reflect one-year change in the U.S. Department of Labor, Bureau of Labor Statistics, Private Industry Employment Cost Index for Service-Producing Industries (seasonally adjusted, total compensation, series no. ecs12102i).
Payroll taxes	Adjustment equals the percentage change to regular wages	Same method as prior year	Same method as prior year

Cost	First Adjustment to Proposed Costs in 2009 during Contract Negotiations	Second Adjustment to Proposed Costs in 2010 to Set 2011 Compensation	Annual Adjustment to Contractor's Compensation Conducted in July of Each Year Commencing in 2011
Workers compensation	Adjustment equals the percentage change to regular wages	<ul style="list-style-type: none"> • Inflation adjustment of 2008 proposed costs to estimate 2011 cost. Adjust using the U.S. Department of Labor, Bureau of Labor Statistics, Private Industry Employment Cost Index for Total All workers (not seasonally adjusted, total benefits, series no. CIU2030000000000A). • Revise to reflect changes in accounts, lifts, and pulls by increasing or decreasing workers compensation by the percentage change in the accounts, lifts, and pulls. 	<ul style="list-style-type: none"> • Inflation adjustment to reflect one-year change in the U.S. Department of Labor, Bureau of Labor Statistics, Private Industry Employment Cost Index for Total All workers (not seasonally adjusted, total benefits, series no. CIU2030000000000A). • In 2012 when determining compensation for 2013, adjust workers compensation to reflect then-current account data (using average number of accounts for most recently completed four quarters); cost adjustments to be made as described for 2010.

Cost	First Adjustment to Proposed Costs in 2009 during Contract Negotiations	Second Adjustment to Proposed Costs in 2010 to Set 2011 Compensation	Annual Adjustment to Contractor's Compensation Conducted in July of Each Year Commencing in 2011
Fuel for route vehicles	<ul style="list-style-type: none"> If one or more member agencies opt out, reduce fuel costs by the percentage change in the total annual route hours required for the service area. If optional programs are added or the scope is expanded, fuel costs to be increased to reflect the additional proposed wage and benefit costs for the optional or new program (unless contractor will be compensated for the optional or new program on a per-unit, per-fee or per-event basis). 	<ul style="list-style-type: none"> Inflation adjustment of 2008 proposed costs to estimate 2011 cost. Adjust using the U.S. Department of Labor, Bureau of Labor Statistics, Producer Price Index - Commodity Index for #2 diesel fuel (not seasonally adjusted, fuels and related products and power, series no. wpu057303). Revise to reflect changes in accounts, lifts, and pulls by increasing or decreasing fuel costs by the percentage change in the accounts, lifts, and pulls. 	<ul style="list-style-type: none"> Inflation adjustment to reflect one-year change in the U.S. Department of Labor, Bureau of Labor Statistics, Producer Price Index - Commodity Index for #2 diesel fuel (not seasonally adjusted, fuels and related products and power, series no. wpu057303). In 2012 when determining compensation for 2013, adjust fuel costs to reflect then-current account data (using average number of accounts for most recently completed four quarters); cost adjustments to be made as described for 2010.

Cost	First Adjustment to Proposed Costs in 2009 during Contract Negotiations	Second Adjustment to Proposed Costs in 2010 to Set 2011 Compensation	Annual Adjustment to Contractor's Compensation Conducted in July of Each Year Commencing in 2011
Other direct costs	Same method as that described for fuel except the change shall be based on the percentage change in the accounts, lifts, and pulls.	<ul style="list-style-type: none"> • Inflation adjustment of 2008 proposed costs to estimate 2011 costs. Adjust using 75% of the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index – All Urban Consumers, U.S. city average (not seasonally adjusted, all items, base period: 1982-84=100, series no. cuur0000sa). • Revise to reflect changes in accounts, lifts, and pulls by increasing or decreasing other direct costs by the percentage change in the accounts, lifts, and pulls. 	<ul style="list-style-type: none"> • Inflation adjustment to reflect 75% of one-year change in the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index – All Urban Consumers, U.S. city average (not seasonally adjusted, all items, base period: 1982-84=100, series no. cuur0000sa). • In 2012 when determining compensation for 2013, adjust fuel costs to reflect then-current account data (using average number of accounts for most recently completed four quarters); cost adjustments to be made as described for 2010.

Cost	First Adjustment to Proposed Costs in 2009 during Contract Negotiations	Second Adjustment to Proposed Costs in 2010 to Set 2011 Compensation	Annual Adjustment to Contractor's Compensation Conducted in July of Each Year Commencing in 2011
Depreciation for collection vehicles and containers	<ul style="list-style-type: none"> If one or more member agencies opt out, reduce depreciation by calculating the reduction in the number of vehicles and containers and the correlating depreciation expense based on proposed equipment costs and operating statistics. If optional programs are added or the scope is expanded, depreciation to be increased to reflect the additional proposed depreciation for the optional or new program (unless contractor will be compensated for the optional or new program on a per-unit, per-fee or per-event basis). 	<ul style="list-style-type: none"> Inflation adjustment of 2008 proposed costs to estimate 2011 cost. Adjust using the U.S. Department of Labor, Bureau of Labor Statistics, Producer Price Index Industry Data for motor vehicle body manufacturing, truck, bus, car, and other vehicle bodies, for sale separately (not seasonally adjusted, base date: 8212, series no. pcu3362113362111). If equipment capital costs increase more than the inflation adjustment, then contractor may request additional adjustment to depreciation in 2010 if the equipment costs have increased more than that reflected by the indices; in such case; contractor must demonstrate that proposed costs and adjusted costs reflected market rates for equipment. Revise to reflect changes in accounts, lifts, and pulls by increasing or decreasing depreciation by the percentage change in the accounts, lifts, and pulls. 	<ul style="list-style-type: none"> No adjustments shall be made to depreciation over the term with the exception that in 2012 when determining compensation for 2013, adjust depreciation to reflect then-current account data (using average number of accounts for most recently completed four quarters); adjustments to be made as described for 2010. Following the adjustment reflected in 2013 compensation, no other adjustments to depreciation shall be made.

Cost	First Adjustment to Proposed Costs in 2009 during Contract Negotiations	Second Adjustment to Proposed Costs in 2010 to Set 2011 Compensation	Annual Adjustment to Contractor's Compensation Conducted in July of Each Year Commencing in 2011
Allocated Depreciation Costs (related to facilities, vehicle and container maintenance equipment, shop equipment, office equipment)	No adjustment	Inflation adjustment of 2008 proposed costs to estimate 2011 cost. Adjust using the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index – All Urban Consumers, U.S. city average (not seasonally adjusted, all items, base period: 1982-84=100, series no. cuur0000sa).	No adjustments shall be made to depreciation over the term.
Interest expense (both direct and allocated interest)	Same method as that described for depreciation	Same method as that described for depreciation.	Same method as that described for depreciation.
Total Annual Cost of Operations	Recalculated by summing the adjusted costs	Same method as prior year	Same method as prior year
PROFIT	Recalculated profit using the proposed operating ratio and the adjusted total annual cost of operations	Same method as prior year	Same method as prior year
PASS-THROUGH COSTS			

Cost	First Adjustment to Proposed Costs in 2009 during Contract Negotiations	Second Adjustment to Proposed Costs in 2010 to Set 2011 Compensation	Annual Adjustment to Contractor's Compensation Conducted in July of Each Year Commencing in 2011
Shoreway facility disposal and processing costs	Adjustments will be needed if one or more member agencies opt out and to reflect impact of any optional programs or expanded scope. Estimated tonnages to be adjusted by subtracting the tonnage allocated for each member agency that opts out and adding estimated tonnage for optional or new programs. Adjusted disposal and processing costs can then be calculated using the revised tonnage figures and the per-ton tipping fees for the Shoreway facility.	Adjust disposal and processing costs to reflect any changes to tonnage estimates based on projected 2011 tonnage that reflects the most-recently available tonnage data and expected impacts of the collection program. Calculate costs using projected 2011 Shoreway facility tipping fees. (Note that an annual reconciliation process conducted after each rate period will make contractor whole for disposal and processing costs.)	Same method as prior year (Note that an annual reconciliation process conducted after each rate period will make contractor whole for disposal and processing costs.)
Regulatory fees	To be determined in 2010 after costs are allocated to member agencies.	To be calculated separately for each member agency based on member agency specific fees (e.g., franchise fees, vehicle impact fees, etc.).	Annual calculation to be conducted separately for each member agency based on member agency specific fees (e.g., franchise fees, vehicle impact fees, etc.).
Allocated lease costs, if any (e.g., lease costs for vehicle parking facilities, offices, maintenance yard)	No adjustments; lease costs shall be fixed over the term.	No adjustments; lease costs shall be fixed over the term.	No adjustments; lease costs shall be fixed over the term.
Total Pass-Through Costs	Recalculated as the sum of the adjusted proposed costs	Same method as prior year	Same method as prior year
TOTAL CONTRACTOR'S COMPENSATION	Recalculated by summing total annual operating costs, profit, and pass-through costs	Same method as prior year	Same method as prior year

K.4 Contractor Compensation Adjustment Application

K.4.1 Preparation of Compensation Adjustment Application

Contractor is required to submit an Application annually by August 1 for determination of Contractor's Compensation for each Rate Year. This Section describes the content of the Application.

A. Reporting of Operational Information

Operational information shall be prepared for each Line of Business, for each Member Agency, and for the entire Service District, and shall be submitted on the forms similar in format to the Forms 10 through 22A from the {insert date of release} RFP for Collection Services, documenting operating statistics included in Attachment N of this Agreement. This data is required to allocate Contractor's compensation to the Member Agency based on operating statistics. Operational information to be provided includes, but is not limited to:

- Tonnage collected by Line of Business;
- Number of accounts by account type (i.e., Container size, Collection frequency, and material type) by Line of Business;
- Number of Containers in service by Line of Business;
- Set-out rates by Line of Business;
- Number of routes and annual route hours by Line of Business;
- Number and type of vehicles by Line of Business; and,
- Number of personnel and annual route hour labor by Line of Business.

B. Audited Financial Statements

Annual audited financial statements for the Service District operations are required by this Agreement for each Agreement calendar year. The audited financial statements, including the auditor's management letter and expressed opinion on accounting controls, provide assurance that the financial records fairly present the financial results of Contractor's operation. Statements of revenues contained in the Application will be reconciled by the Agency or SBWMA to the audited financial statements.

C. Preparation of Management Representation Letter

The Application shall include a management representation letter, which states that:

- Management accepts responsibility for the Application;
- The Application is based upon the compensation adjustment procedures described in Article 11 and this Attachment K; and,
- All significant information and documents relevant to the compensation adjustment process are available for review.

D. Documentation of Calculation of Contractor's Compensation

Worksheets used to calculate Contractor's Compensation for the coming Rate Year will be prepared in a format similar to the forms contained in the {insert release datae} SBWMA Collection Services RFP and Adjusted Proposed Costs specified in Attachment N and such worksheets shall be approved by Agency and SBWMA. Additional worksheets shall be prepared as needed when service level adjustments and reconciliations of revenues and Disposal and Processing Costs are performed and for other necessary calculations.

Contractor shall complete and include the worksheets as part of the Application. The worksheets shall present expenses by Line of Business, as appropriate.

E. Preparation of Gross Revenue Collected Information

Gross Revenues Collected for the most-recently completed Rate Year shall be reported annually (in a format to be approved by the Agency and SBWMA) commencing with the Application submitted in 2012 and shall include the following:

- Statement of Actual Gross Revenue Collected for the most-recently completed Rate Year for each Member Agency by Line of Business (including, but not limited to: Rate revenue for regular Collection service, extra service, bulky waste collection, lock and push-out fees).
- Description of changes to revenues from those projected for the most-recently completed Rate Year.

F. Preparation of Disposal and Processing Cost Information

Actual Disposal and Processing Costs incurred by the Contractor at the Shoreway Facility for the most-recently completed Rate Year shall be reported annually (in a format to be approved by the Agency and SBWMA) commencing with the Application submitted in 2012 and shall include the following:

- Statement of Actual Disposal and Processing Costs for the most-recently completed Rate Year for each Member Agency by Line of Business (including, but not limited to: Disposal costs for Solid Waste, Processing costs for Recyclable Materials and Organic Materials).
- Description of changes to Tonnages or Shoreway Facility gate rates from those projected for the most-recently completed Rate Year and justification for the changes.

G. Preparation of Supporting Documentation

The Contractor will be expected to provide supporting documentation for all calculations, assumptions, and data used in the determination of the Contractor's Compensation for the coming Rate Year. Typical supporting documents may include:

- Audited Financial Statements for the most-recently-completed Calendar Year
- Labor Agreements
- General Ledger
- Revenue and Accounts Receivable Ledgers
- Solid Waste Transfer and Disposal Tickets (transfer, disposal, and processing)/Monthly Disposal Reports
- Recyclables Materials, Plant Materials, and Organic Materials Processing Cost/Invoices
- Copies of Index Data

Other information may be requested by the Agency or SBWMA based on unusual or unexpected changes in the Contractor's Compensation.

K.5 Verification of the Completeness of Contractor's Application

SBWMA shall ensure that Contractor's Application and Compensation adjustment and any supporting documentation has been prepared in a manner consistent with the guidelines specified herein. The Agency or SBWMA shall request, in writing, that Contractor provide any missing information necessary to complete the Application. Agency shall participate in meetings with the SBWMA and the Contractor to discuss the Application, upon request of Agency or SBWMA.

A. Compliance Review

Within thirty (30) Business Days of receipt of the Application, the SBWMA shall review the Application to determine if it is complete and ready for analysis.

1. Completeness of Application. The SBWMA shall determine if:
 - a. The Contractor included all required forms and financial statements;
 - b. All forms are completed; and,
 - c. All calculations mathematically correct.
2. Verification of Operating Statistics. SBWMA may perform an on-site review of Contractor's operations to verify the then-current operating statistics to assess the cost allocations for the coming Rate Year.
3. Verification of Supporting Documents and Schedules. Various documents will be included in the Application to support the compensation adjustment. The purpose of each supporting document shall be clearly identified by Contractor and any missing support information identified by the Agency or SBWMA may be requested from Contractor.
4. Contractor Notification. SBWMA shall notify Contractor that the Application is complete, if appropriate. If the Application is incomplete, SBWMA shall request in writing, that Contractor provide the necessary additional information. Upon receipt and review of the additional information, SBWMA will notify Contractor that the Application is complete, or request additional information as necessary.

B. Review of Compensation Adjustment Application

The compensation review process is intended to allow the Agency and SBWMA to determine whether Contractor's Application is consistent with the Agreement and this Attachment K and accurately calculates Contractor's Compensation for the coming Rate Year. The SBWMA shall pursue the steps below during its review of the Contractor's Application.

1. Review of Compensation Calculations. SBWMA shall review Contractor's Compensation adjustment calculations to verify that the calculations are performed in accordance with Article 11 and this Attachment K. SBWMA shall identify any discrepancies in the calculation of compensation and recommend adjustments to the calculations as appropriate.
2. Review of Revenues. The SBWMA will review the historical, actual and forecasted revenues and calculate current revenues based on then-current Customer counts and Rates. Any unusual trend will be identified and explanations obtained from the Contractor's management. Any adjustments to the revenue reconciliation calculation will be identified and documented.
3. Review of Disposal and Processing Costs. The SBWMA will review historical Disposal and Processing expenses. The SBWMA may select a judgmental sample of transactions

for testing each year. The selected items may be tested to ensure that they are properly supported by invoices, transfer and processing site gate house tickets, recyclable processing invoices, or other appropriate source documents.

The SBWMA may review variances in Disposal and Processing costs from year to year and obtain explanations for significant variances. Costs will be correlated with the revenues and operating statistics provided by the Contractor and explanations for unusual trends or variances may be sought. For example, the SBWMA may wish to correlate changes in subscription revenues to Disposal volumes. Explanations may be requested from Contractor for significant variances.

4. Determine Revenue Surplus/Shortfall. The SBWMA shall identify the surplus due to Agency, or the shortfall due to Contractor resulting from the difference between Gross Revenues Collected and Contractor's Compensation calculated for the most-recently completed Rate Year. The SBWMA should then determine the overall Percentage Change or decrease to Rates based on the then-current Rate structures and/or provide analysis for alternative means of reimbursement to Contractor or Agency as may be appropriate.

K.6 Preparation and Review of Reports

The review of Contractor's Application and reporting of the findings and recommendations from the review is assumed to be conducted by the SBWMA. The Agency delegates this authority to the SBWMA for the responsibility of conducting the review on its behalf. The results shall presented to the SBWMA Board, which in turn shall make recommendations to the Agency and other Member Agencies.

The SBWMA shall prepare a draft report and final report regarding its review of the Contractor's Application as follows:

1. Draft Report. The SBWMA staff shall summarize its review, findings, and recommendations in a draft report. The draft report shall include all of the following:
 - a. An Executive Summary;
 - b. A summary of the Contractor's Application;
 - c. A description of and the basis for all recommended adjustments to the Contractor's Compensation contained in the Contractor's Application;
 - d. Revenue surplus/shortfall for the Agency;
 - e. Reconciliation adjustments for revenues and Disposal and Processing costs;
 - f. Calculation of the required adjustment to the then-current Contractor's Compensation for each SBWMA Service District and each Member Agency as well as each Member Agency's Rates based on then-current account totals (e.g., type, size and frequency); and,
 - g. A discussion of outstanding issues for SBWMA consideration.

During preparation of its draft report, SBWMA shall provide interim findings and recommendations to Contractor to verify the accuracy of calculations prepared by SBWMA. Thereafter, SBWMA shall prepare a draft report that shall be provided to the Contractor for review. If necessary, the Contractor may request additional information or

data from SBWMA. The request may be to clarify assumptions used by SBWMA in preparing its recommendations. Contractor shall provide any comments to the SBWMA staff within a five (5) Business Days of receipt of the draft report.

2. Final Report. The SBWMA shall incorporate comments from the Contractor as appropriate and prepare a final report to include on the agenda for the September or October SBWMA Board meeting. At that meeting, the SBWMA Board will obtain public comments and may direct SBWMA staff to make adjustments to its recommendations. The approved Final Report will then be forwarded to the Agency for their consideration and approval of Rates for the new rate year.

K.7 Annual Reconciliation of Revenues and Disposal and Processing Expenses

Annually, Contractors billed revenues will be reconciled to the approved (e.g., calculated) annual Contractor's compensation. The difference will be added to or subtracted from the approved annual Contractors' compensation for the forthcoming rate period(s).

The Contractor's actual annual disposal and processing expenses for materials collected and delivered to the Shoreway facility will be compared to the estimated disposal and processing expenses included in the approved annual Contractor's compensation. The difference will be added to or subtracted from the approved annual contractors' compensation for the forthcoming rate period. For example, if the reconciliation process conducted during 2014 concluded that the actual disposal cost for the most-recently completed rate period (i.e., 2013) was \$200,000 more than the estimated disposal cost included in the Contractor's compensation for that rate period, \$200,000 would be added to the approved Contractor's compensation for the then-coming rate period (i.e., 2015).

The reconciliation process will not occur for the last year of the agreement.

K.8 Member Agency Compensation Allocation Methodology

After determining the 2011 Contractor's Compensation for the Service District, Contractor's Compensation shall be allocated between the Member Agencies. The following describes the methodology to be used in allocating Contractor's Compensation for the Service District to each of the Member Agencies when Contractor's Compensation for 2011 is determined.

1. Operating Statistics. The allocation of costs shall be performed based on projected 2011 operating statistics for each Member Agency. These operating statistics shall include route labor hours per year (for CBA employees), route hours per year, number of accounts, service stops, Bin lifts, Drop Box pulls, and number of containers and shall be specified separately for each Member Agency. Route labor hours and route hours shall include hours related to on and off route time, collection time, and hauling time to deliver materials to the Designated Transfer and Processing Site. The projected 2011 operating statistics shall be based on historical statistics adjusted to anticipate changes, if any, in the coming Rate Year. Contractor shall prepare these operating statistics based on the best available information (which shall be provided by the Agency in 2010 and by the Contractor thereafter) and knowledge of future needs.

2. Allocation of Line of Business Costs to Member Agencies. The process below describes the method of allocating costs for each Line of Business. If expenses can be assigned to a specific Member Agency, such costs shall be attributed to the specific Member Agency when possible. Otherwise, expenses shall be assigned to each Member Agency as follows:
- a. Wages for CBA Employees. Wages for CBA Employees shall be allocated to each Member Agency based on their proportional share of projected 2011 annual route labor hours to perform Collections in the Service District. For example, if the number of annual route labor hours for Atherton is 10% of the total annual route labor hours for the Service District, 10% of the costs for Wages for CBA Employees shall be allocated to Atherton.
 - b. Benefits for CBA Employees. Costs shall be allocated to each Member Agency based on their proportional share of projected 2011 annual route labor hours for the Service District.
 - c. Payroll Taxes. Costs shall be allocated to each Member Agency based on their proportional share of projected 2011 annual route labor hours for the Service District.
 - d. Workers Compensation Insurance. Costs shall be allocated to each Member Agency based on their proportional share of projected 2011 annual route labor hours for the Service District.
 - e. Direct Fuel Costs. Costs shall be allocated to each Member Agency based on their proportional share of projected 2011 annual route hours for the Service District.
 - f. Other Direct Costs. Costs shall be allocated to each Member Agency based on their proportional share of projected 2011 annual route hours for the Service District.
 - g. Depreciation for Collection Equipment:
 - i. Route Vehicles - Costs shall be allocated to each Member Agency based on their proportional share of the projected 2011 annual route hours for the Service District.
 - ii. Collection Containers - Costs shall be allocated to each Member Agency based on their proportional share of projected number of Containers in service in 2011 in the Service District.
 - iii. Other - Costs shall be allocated to each Member Agency based on their proportional share of projected 2011 annual route hours for the Service District.
 - h. Allocated Indirect Costs Excluding Depreciation and Interest:
 - i. General and Administration – Allocate Indirect General and Administration Costs (excluding depreciation and interest) to each Member Agency based on their proportional share of projected 2011 accounts serviced in the Service District.
 - ii. Vehicle Maintenance - Allocate Indirect Vehicle Maintenance Costs (excluding depreciation and interest) to each Member Agency based on

their proportional share of projected 2011 annual route hours for the Service District.

- iii. Container Maintenance - Allocate Container Maintenance Costs (excluding depreciation and interest) to each Member Agency based on their proportional share of projected 2011 Containers in service in the Service District.
- iv. Implementation - Allocate Implementation Costs (excluding depreciation and interest) to each Member Agency based on their proportional share of projected 2011 annual route hours for the Service District.
- i. Allocated Indirect Depreciation. The Allocated Indirect Depreciation Expenses shall be allocated in the manner described in Section 2.h.
- j. Total Annual Cost of Operations. The Projected 2011 Total Annual Cost of Operations for each Member Agency shall equal the sum of the projected costs listed above in Sections 2.a through 2.i.
- k. Profit. Profit will be calculated for each Member Agency by dividing the Total Annual Cost of Operations as allocated to the Member Agency by the 0.____ {Note to proposers: the selected Contractor's proposed operating ratio shall be inserted here} and subtracting the Total Annual Cost of Operations for the Member Agency from the dividend.
- l. Shoreway Facility Disposal and Processing Costs. Disposal and Processing Costs shall be allocated based on the proportional share of projected 2011 Tonnage Collected for each Member Agency.
- m. Regulatory Fees. Allocation of Regulatory Fees shall be made based on projected 2011 annual route hours. Agency fees required by Article 10 of the Agreement shall not be included in this calculation, as they will be calculated later in the process.
- n. Direct Interest Expense. The Direct Interest Expenses shall be allocated in the manner described in Section 2.g.
- o. Allocated Indirect Interest Expense. The Allocated Indirect Interest Expenses shall be allocated in the manner described in Section 2.h.
- p. Allocated Indirect Lease Costs. The Allocated Indirect Lease Costs shall be allocated in the manner described in Section 2.h.
- q. Total Pass-Through Costs. The 2011 Total Pass-Through Costs for each Member Agency shall equal the sum of the Agency's allocated 2011 Shoreway Facility Disposal and Processing Fees, Regulatory Fees, Interest Expense, Allocated Indirect Interest Expense, and Allocated Indirect Lease Costs.
- r. Total 2011 Costs. The 2011 Total Costs for each Member Agency shall equal the sum of the Agency's allocated 2011 Total Annual Cost of Operations, 2011 Profit, and 2011 Total Pass-Through Costs.

K.9 Rate Setting

Member Agencies will review collection rates charged to Customers and adjust rates (as appropriate) with Member Agency Council or Board approval. To facilitate the rate setting process, SBWMA shall annually review and adjust (as appropriate) the Contractor's proposed allocation of the Contractor's compensation to each Member Agency, and recommend each Member Agency's portion of Contractor's compensation for Member Agency approval. Annually, the SBWMA will review and adjust (as appropriate) gate rates for the Shoreway facility.

For collection rates charged to customers, the SBWMA shall annually review, adjust (as appropriate), and recommend the annual Contractor's compensation for SBWMA services in the North and South Districts.

SBWMA shall annually review, adjust (as appropriate), and recommend the allocation of Contractor's compensation to each Member Agency for Member Agency approval. Member Agencies shall approve collection rates annually (or as frequently as they determine necessary) based on a revenue requirement that includes: (i) their allocated portion of Contractor's annual compensation; and, (ii) an account adjustment to reflect revenue and disposal and processing cost shortfalls or surpluses for prior year(s).

A cost allocation process will be used to attribute the Contractor's costs to the individual Member Agencies it services. The allocation process will rely on:

1. Sampling of customer data and operating statistics to provide a representative allocation;
2. Use of operating statistics to refine the allocation of costs;
3. Monitoring and allocating collection costs using monthly operating statistics;
4. The collection contractors' use of a database to improve the speed and timeliness of the allocation process;
5. Cost and operating data needed to calculate the allocation; and,
6. Calculation of each member agency's allocated portion of the annual collection contractors' compensation using the database.

K.10 Performance Incentives and Disincentives for Contractor's Performance

Contractor performance will be monitored against established and quantifiable standards in the areas of Diversion, Collection Performance, and Customer Service. Incentives have been designed to reward Contractor for extraordinary levels of performance with regard to Diversion, Number of Missed Pick-Up Initial Complaints, and Average Hold Time for customer service calls. Disincentives (in the form of deferred compensation to Contractor) may be assessed by the Agency for substandard performance related to: diversion level attained (i.e., Single-Family and Commercial sectors), Contamination Level (i.e., Targeted Recyclable Materials, Residential and Commercial Organic Materials, and Commercial Plant Materials), Missed Pick-Up Initial Complaints, Missed Pick-Up Collection Events, Average Hold Time, and Calls Answered in Three (3) Minutes.

The Performance Incentives and Disincentives are detailed in Attachment I.