

**FRANCHISE AGREEMENT
BETWEEN
CITY OF EAST PALO ALTO
AND
RECOLOGY SAN MATEO COUNTY
FOR
RECYCLABLE MATERIALS,
ORGANIC MATERIALS, AND SOLID WASTE
COLLECTION SERVICES**

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

THIS AGREEMENT is made as of this 6th day of October, 2009, by and between the CITY OF EAST PALO ALTO, a municipal corporation ("Agency"), and RECOLOGY SAN MATEO COUNTY, a California corporation ("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 solid waste, 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 ("Authority" or "SBWMA"), established pursuant to the California Joint Exercise of Powers Act. In November, 2007, the Authority, acting on behalf of Agency and its other members, issued a Request for Proposals to provide collection of solid waste, recyclable materials, and organic materials and related services to Agency and other members of Authority.
4. Contractor submitted a proposal to provide these services, which was evaluated by the Authority. On the basis of that evaluation, the Authority has recommended that Agency enter into an agreement with Contractor.
5. Agency has independently evaluated Contractor's proposal and has determined that Contractor has proposed to provide solid waste handling services including Collection of Recyclable and Organic Materials in a manner and on terms which are in the best interests of Agency, its residents and businesses, taking into account the qualifications and experience of Contractor and the cost of providing such services.

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

42 NOW, THEREFORE, in consideration of the mutual promises contained in this
43 Agreement, and for other good and valuable consideration, Agency and Contractor
44 agree as follows:

45

ARTICLE 1 DEFINITIONS

46 **1.01 DEFINITIONS**

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

49 **1.02 STATUTORY DEFINITIONS**

50 Unless a term is otherwise defined in this Agreement, terms used in this Agreement shall
51 have the same meaning as the definitions of those terms contained in the Act. In the
52 event of a conflict between the definition of a term in the Act and in this Agreement, the
53 definition in the Agreement shall prevail.

54 **ARTICLE 2 REPRESENTATION AND WARRANTIES OF**
55 **CONTRACTOR**

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

57 **2.01 CORPORATE STATUS**

58 Contractor is a corporation, duly organized, validly existing and in good standing under
59 the laws of the State of California, and is qualified to do business in the State of
60 California.

61 **2.02 CORPORATE AUTHORIZATION**

62 Contractor has the authority to enter into and perform its obligations under this
63 Agreement. The directors (and shareholders if necessary) of Contractor have taken all
64 actions required by law, the articles of incorporation and bylaws or otherwise to
65 authorize the execution of this Agreement.

66 **2.03 AGREEMENT DULY EXECUTED**

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

69 **2.04 NO CONFLICT WITH APPLICABLE LAW OR OTHER DOCUMENTS**

70 Neither the execution and delivery by Contractor of this Agreement, nor the performance
71 by Contractor of its obligations hereunder (i) conflicts with, violates or will result in a
72 violation of any existing Applicable Law; or (ii) conflicts with, violates or will result in a
73 breach or default under any term or condition of any existing judgment, order or decree
74 of any court, administrative agency or other governmental authority, or of any existing
75 contract or instrument to which Contractor is a party or by which Contractor is bound.

76 **2.05 NO LITIGATION**

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

84 **2.06 FINANCIAL CONDITION**

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

91 **2.07 ABILITY TO PERFORM**

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

94 **2.08 CONTRACTOR'S INVESTIGATION**

95 Contractor has made an independent investigation and analysis, the results of which are
96 satisfactory to Contractor, of the conditions and circumstances surrounding the
97 Agreement, its content and preparation, and the work to be performed by Contractor
98 under the Agreement. The Agreement accurately and fairly represents the intentions of
99 Contractor, and Contractor enters into this Agreement on the basis of that independent
100 investigation and analysis.

101 **2.09 STATEMENTS AND INFORMATION IN PROPOSAL**

102 The Proposal and supplementary information submitted to the Authority and Agency do
103 not contain any untrue statement of a material fact nor omit to state a material fact
104 necessary in order to make the statements made, in light of the circumstances in which
105 they were made, not misleading.

ARTICLE 3 TERM OF AGREEMENT

3.01 EFFECTIVE DATE

The Effective Date of this Agreement shall be January 1, 2010.

3.02 TERM

The Term of this Agreement shall begin on the Effective Date and shall end at midnight on December 31, 2020, unless earlier terminated, or extended as provided in Section 3.03. Contractor's obligation to Collect Solid Waste, Targeted Recyclable Materials and Organic Materials shall begin on January 1, 2011 at 12:01 a.m. and shall continue for the remainder of the Term.

3.03 EXTENSION OF TERM

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

3.04 CONDITIONS TO EFFECTIVENESS OF AGREEMENT.

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

1. Accuracy of Representations. The representations and warranties made by Contractor in Article 2 shall be true and correct on and as of the Effective Date.
2. Absence of Litigation. There shall be no litigation pending on the Effective Date in any court challenging the execution of this Agreement or seeking to restrain or enjoin its performance.
3. Effectiveness of Agency's Approval. The approval of this Agreement by Agency shall have become effective, pursuant to California law, on or before the Effective Date.
4. Performance Bond. Contractor shall have provided a performance bond meeting the requirements of Section 13.03.

B. Obligation of Contractor to Perform. The obligation of Contractor to perform under this Agreement is subject to the satisfaction of the conditions set forth below, each of which may be waived in whole or in part by Contractor.

1. Absence of Litigation. There shall be no litigation pending on the Effective Date in any court challenging the execution of this Agreement, or seeking to enjoin its performance.
2. Effectiveness of Agency's Approval. The approval of this Agreement by Agency shall have become effective, pursuant to California law.

142 3. Approvals by Other Member Agencies. The governing bodies of a majority
143 (seven) of the SBWMA's Member Agencies, collectively representing at
144 least seventy percent (70%) of the total Revenue Requirement for 2011
145 shown on Attachment N Form C (i.e., \$74,999,148), have also approved
146 franchise agreements with Contractor substantially similar to this Agreement
147 on or before the Effective Date.

148 C. Notice. If either Party wishes to assert that a condition for its benefit has not
149 been satisfied and has not been waived, it must deliver written notice to that
150 effect to the other party on or before the Effective Date. If no such notice is
151 received, the Agreement will become effective on the Effective Date.

152 D. Good Faith. Each Party is obligated to perform in good faith the actions, if any,
153 which this Agreement requires it to perform before the Effective Date and to
154 cooperate towards the satisfaction of the conditions set forth above.

155

ARTICLE 4 SCOPE OF AGREEMENT

156 4.01 SCOPE OF AGREEMENT

157 A. Through this Agreement, Agency grants to Contractor an exclusive franchise,
158 except as provided in subsection B and in Section 4.02, to Collect the following
159 materials in the Service Area:

160 1. Solid Waste generated at Residential Premises, Commercial Premises and
161 Agency Facilities; and

162 2. Source Separated Targeted Recyclable Materials and Source Separated Organic
163 Materials generated at Residential Premises.

164 B. Through this Agreement, Agency grants to Contractor a non-exclusive right to
165 Collect the following materials in the Service Area:

166 1. Source Separated Targeted Recyclable Materials and Source Separated Organic
167 Materials generated at Commercial Premises;

168 2. Major Appliances and Specialty Recyclable or Reusable Materials generated at
169 Residential Premises;

170 3. Non-putrescible wastes placed in Drop Boxes.

171 4.02 LIMITATIONS ON SCOPE

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

175 A. Solid Waste, Targeted Recyclable Materials, and Organic Materials which are
176 transported personally by the Owner or Occupant of the Premises at which they are
177 generated (or by his or her employees) to a processing or Disposal facility;

178 B. Targeted Recyclable Materials and Organic Materials which are Source Separated
179 by the Generator and donated to youth, civic, or charitable organizations;

180 C. Recyclable beverage containers delivered for Recycling under the California
181 Beverage Container Recycling Litter Reduction Act, Section 14500 *et seq.*
182 California Public Resources Code;

183 D. Animal waste and remains from slaughterhouse or butcher shops, grease waste,
184 and used cooking oil;

185 E. By-products of sewage treatment including sludge, sludge ash, grit, and screenings;

186 F. Hazardous Waste, Household Hazardous Waste, and Infectious Waste;

187 G. Source Separated E-Scrap and Source Separated Universal Waste;

188 H. Organic Materials composted at Residential and Commercial Premises;

189 I. Materials generated by State facilities (including public schools), provided that the
190 Generator has arranged services with other Persons or has arranged services with
191 the Contractor through a separate agreement;

- 192 J. The incidental removal of Solid Waste when the primary service performed is either
193 of the following:
- 194 1. Landscaping, gardening, weed or refuse abatement, yard clean-up, or
195 grading of a lot; or
- 196 2. Construction, remodeling, or demolition of a building or structure.
- 197 K. Solid Waste generated at Residential Premises Collected on an infrequent,
198 unscheduled, "on-call" basis (other than On-Call Bulky Item Collection Service
199 scheduled by Customers per Section 5.12).

200 **4.03 GEOGRAPHIC LIMITS ON CONTRACTOR'S OPERATIONS**

201 Contractor was established specifically to perform services for some or all of the
202 SBWMA Member Agencies. The methodology established in this Agreement, and in
203 those between Contractor and other Member Agencies, for adjusting Contractor's
204 Compensation annually and allocating it among Member Agencies depends on accurate
205 financial and accounting records. For that reason, Contractor will limit its operations to
206 only SBWMA Member Agencies so that its annual financial reports will contain only
207 costs and revenues associated with service to those Member Agencies.

208 Affiliates of Contractor may perform services for other communities in San Mateo County
209 so long as they do not use Contractor's resources (equipment or labor) and so long as
210 costs associated with their operations are not included in Contractor's financial
211 statements.

ARTICLE 5 COLLECTION SERVICES

5.01 GENERAL

The work to be performed and services to be provided by Contractor includes the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the work and provide the services described, at the times and in the manner required by this Agreement. The enumeration of, and specification of requirements for, particular items of labor, supervision, equipment, materials or supplies shall not relieve Contractor of the duty to furnish all others, as may be required, whether enumerated elsewhere in the Agreement or not.

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

Provided that this Agreement is effective on or before January 1, 2010, Contractor agrees that it will have sufficient time to take all steps necessary to provide all services described in this Article 5 commencing January 1, 2011. Contractor shall order equipment, hire employees, obtain permits and licenses, initiate public education and Recycling Blitz programs, and complete all of the steps necessary to implement an orderly transition as specified in the Implementation Plan (Attachment L).

5.02 SOLID WASTE COLLECTION

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

A. **Single-Family Dwelling (SFD).** Contractor shall Collect Solid Waste from SFD once per week from Contractor-provided Carts. Contractor shall provide unscheduled Collection service within one (1) Business Day of Customer's request and shall be entitled to bill Customer as specified in Attachment Q. Contractor shall provide each Customer with Carts as specified in Section 8.05. Approximately one (1) month prior to distribution of SFD Solid Waste Carts, Contractor shall mail a notice to each SFD Customer indicating that the Customer will receive the default Solid Waste Cart size specified in Attachment D, unless the Customer responds to the notice (i.e., by mail, email, phone or website form) and requests an alternate Cart size by selecting the preferred size.

Contractor shall Collect Carts Curbside unless: (i) the Occupant is provided a Special Handling Service exemption; or, (ii) the Customer has requested Backyard Collection Service and has agreed to pay the premium service Rate approved by the Agency. The Rate charged by Agency shall be based on Contractor's cost as

specified in Attachment Q. In such case, Contractor shall Collect Carts from and return Carts to the alternative service location (such as the side yard or backyard) specified by the Customer.

The Contractor shall make reasonable accommodations with regard to provision and servicing of Containers (e.g., Container size and type, placement of Containers for Collection, etc.) at no additional cost to Customers who meet the Agency's Special Handling criteria. Contractor will notify all Residential Customers annually of the Special Handling and Backyard Collection Service options and submit, for approval, a draft notification to Agency thirty (30) days prior to anticipated distribution to Customers. New service recipients shall be notified upon signing up for service of the Special Handling and Backyard Collection Service options. Customers desiring Special Handling Service will be required to submit an application, in a form approved by Agency. Contractor shall review applications to determine whether the Customer meets Agency's eligibility criteria and shall provide a written response within five (5) Business Days after receipt of the application. Unless otherwise directed by Agency, Customers are eligible if they provide (i) evidence of their "handicap status" by the California Department of Motor Vehicles or (ii) evidence that no Occupant of the Residential Premises is physically able to place Carts Curbside for Collection.

- B. **Multi-Family Dwellings.** Contractor shall Collect Solid Waste from Multi-Family Dwellings as frequently as scheduled by Customer, but not less than once per week. Contractor shall provide unscheduled Collection service within one (1) Business Day of Customer's request and shall be entitled to bill Customer as specified in Attachment Q. Customers must subscribe to a minimum service level of three (3) times per week Collection in order to be eligible for Collection on Saturday and/or Sunday. Contractor shall allow Multi-Family Dwelling Customers to use Carts or Bins for Solid Waste Collection that are shared by the Occupants of the Premises. Contractor shall provide one (1) or more Cart(s) or Bin(s) to such Customers as requested by Customer, provided that no less than ninety-six (96) gallons of Container capacity are provided for every five (5) dwelling units in the Multi-Family Residential complex. Contractor shall provide each Customer with a choice of one or more Carts or Bins as specified in Attachment D.

Contractor shall service Containers provided to MFD Customers that are three (3) cubic yards or less in capacity, and Drop-Boxes stored in enclosures or on private or public property within fifty (50) feet of the public right of way, if access to the Containers is paved and the slope is less than seven percent (7%). Agency will make the final determination on the slope of the access if a dispute arises between Customer and Contractor. Containers that are four (4) cubic yards or larger must be stored within fifteen (15) feet of the Curbside or brought to within fifteen (15) feet of the Curbside by Customer to be serviced by Contractor. Contractor shall provide service to Containers that are located at distances in excess of those described in this paragraph and shall be entitled to bill Customer as specified in Attachment Q.

Contractor shall give special consideration when determining the Collection location for Multi-Family Residential complexes to ensure that the flow of traffic is not impeded and that it does not result in aesthetic degradation of an area. The designated Collection location, if disputed by Customer or Contractor, shall be determined by the Agency. Additionally, if in the Agency's opinion the location of an

existing Collection location is inappropriate, Agency may require the Customer or Contractor to relocate the Collection Containers.

- C. **Commercial Premises.** Contractor shall Collect Solid Waste from Commercial Premises as frequently as scheduled by the Customer, but not less than once per week. Contractor shall provide unscheduled Collection service within one (1) Business Day of Customer's request and shall be entitled to bill Customer as specified in Attachment Q. Customers must subscribe to a minimum service level of three (3) times per week Collection in order to be eligible for Collection on Saturday and/or Sunday.

Contractor shall service Containers provided to Commercial Customers that are three (3) cubic yards or less in capacity, and Drop-Boxes stored in enclosures or on private or public property within fifty (50) feet of the public right of way, if access to the Containers is paved and the slope is less than seven percent (7%). Agency will make the final determination on the slope of the access if a dispute arises between Customer and Contractor. Containers that are four (4) cubic yards or larger must be stored within fifteen (15) feet of the Curbside or brought to within fifteen (15) feet of the Curbside by Customer to be serviced by Contractor. Contractor shall provide service to Containers that are located at distances in excess of those described in this paragraph and shall be entitled to bill Customer as specified in Attachment Q.

Specifically, the Contractor shall offer the following Collection service methodologies to Commercial Customers:

1. Individual Cart or Bin Service. Contractor shall allow each Commercial Premises to use Carts, Bins, Compactors, or Drop Boxes for Solid Waste Collection. Contractor shall provide each Customer with a choice of one (1) or more Carts or Bins as specified in Section 8.05.
2. Centralized Bin or Cart Service. Contractor shall allow each Commercial Premises to use Carts or Bins for Solid Waste Collection that are shared by the Occupants of two (2) or more adjacent Commercial Premises. In such case, Contractor shall provide one or more Carts or Bins as requested by the Customer(s) provided that no less than ninety-six (96) gallons of Container capacity is provided for every four (4) Commercial Premises. Contractor shall provide each Customer with a choice of one (1) or more Carts or Bins as specified in Section 8.05.
3. Drop Boxes and Compactors. Contractor shall allow a Customer to use a Drop Box or Compactor for Solid Waste Collection to meet the Customer's Disposal needs. In such case, Contractor shall provide Customer with a choice of Container capacities ranging from three (3) to forty (40) cubic yards (or similar sizes). Contractor shall offer Customers the option to purchase or lease Compactors through either the Contractor or an outside vendor. Regular maintenance of Compactors shall be provided by Contractor (or outside vendor) as frequently as needed to keep the Compactors in good working order and functioning at high compaction levels.

- D. **Agency Facilities.** Contractor shall Collect Solid Waste from Agency Facilities as frequently as scheduled by the Agency, but not less than once per week. Agency must subscribe to a minimum service level of three (3) times per week Collection in order to be eligible for Collection on Saturday and/or Sunday. Specifically, the

Contractor shall offer the following Collection service methodologies to Agency Facilities:

1. Individual Cart or Bin Service. Contractor shall allow each Agency Facility to use Carts, Bins, Compactors, or Drop Boxes for Solid Waste Collection. Contractor shall provide each Agency Facility with a choice of one (1) or more Carts or Bins as specified in Attachment D.
2. Centralized Bin or Cart Service. Contractor shall allow each Agency Facility to use Carts or Bins for Solid Waste Collection that are shared by the Occupants of two or more adjacent Agency Facilities. In such case, Contractor shall provide one or more Carts or Bins as requested by the Agency provided that no less than ninety-six (96) gallons of Container capacity is provided for every four (4) Agency Facilities. Contractor shall provide Agency with a choice of one (1) or more Carts or Bins as specified in Attachment D for each Agency Facility.
3. Drop Boxes and Compactors. Contractor shall allow Agency to use a Drop Box or Compactor for Solid Waste Collection to meet the Agency's Disposal needs. In such case, Contractor shall provide Agency with a choice of Container capacities ranging from three (3) to forty (40) cubic yards (or similar sizes). Contractor shall offer Agency the option to purchase or lease Compactors through either the Contractor or an outside vendor. Regular maintenance of Compactors shall be provided by Contractor (or outside vendor) as frequently as needed to keep the Compactors in good working order and functioning at high compaction levels.
4. Public Street, Parks and Parking Lot Litter and Recycling Receptacles. Contractor shall Collect Solid Waste from public litter receptacles located on streets and in parking lots, and from public litter receptacles in parks that are accessible for Curbside Collection. Contractor shall also Collect Solid Waste from public Recycling receptacles in these locations, if the Recyclables have been so Contaminated as to be unacceptable at the MRF as Recyclables. Contractor shall also Collect Solid Waste that is contained in bags or boxes and placed adjacent to public litter receptacles. These Collections will be made between one (1) and seven (7) Days per week, as determined by Agency. Contractor is responsible for notifying Agency if a public litter receptacle is inoperable within twenty-four (24) hours of observing or being notified of the defect. A list of public litter receptacles is included in Attachment B. Agency shall annually be allowed to increase the number of public litter receptacles provided Collection service by an additional five percent (5%) of the total number of receptacles in service as of January 1 of each Rate Year at no additional cost. The allocation of additional public litter receptacles placed in service will accrue from year to year for the Term of this Agreement.

Contractor shall provide the Agency with the Collection services described above at the service locations, service levels and frequencies identified in Attachment B. Contractor shall provide and maintain Collection Containers for the Agency's use, with the exception of public litter (or Solid Waste) and public Targeted Recyclable Materials receptacles, which shall be provided and maintained by the Agency. Contractor shall offer the type and size of Collection Containers that Contractor provides Commercial Customers pursuant to Section 5.02.C.

Contractor may integrate Collection of Solid Waste, Targeted Recyclable Materials, and Organic Materials from Agency Facilities with other Collection services in the Service Area, provided that Contractor attributes estimated Tonnage Collected from Agency Facilities separately from other Customers upon the Agency's request.

5.03 TARGETED RECYCLABLE MATERIALS COLLECTION

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

In accordance with Section 15.12, the Agency may direct that Contractor modify its scope of service to include Collection of additional types of Recyclable Materials beyond those materials defined as Targeted Recyclable Materials in Attachment A. If the Agency directs Collection of additional Recyclable Materials, such Recyclable Materials shall thereafter be considered Targeted Recyclable Materials and Contractor shall not receive additional Contractor's Compensation for Collection service if the Targeted Recyclable Materials are placed by Generator in the Recyclable Materials Container unless Contractor can demonstrate that Collection of the additional material(s) requires modification to Collection routes to accommodate the additional volume of the material(s).

A. Single-Family Dwellings.

1. General. Once per week, Contractor shall Collect Single-Stream Targeted Recyclable Materials from SFD. Contractor shall provide each SFD Customer with one (1) Cart for Single-Stream Targeted Recyclable Materials. Contractor shall provide each Customer with a Cart specified in Attachment D, unless Customer requests an alternative Cart specified in Attachment D. Customer can rent or purchase additional Targeted Recyclable Materials Carts from Contractor and Contractor shall be entitled to bill Customer as specified in Attachment Q. Purchased Carts shall become the property of Customer. Approximately one (1) month prior to distribution of SFD Targeted Recyclable Materials Carts, Contractor shall mail a notice to each SFD Customer indicating that the Customer will receive the default Targeted Recyclable Materials Cart size specified in Attachment D, unless the Customer responds to the notice (i.e., by mail, email, phone or website form) and requests an alternate Cart size by selecting the preferred size.

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

2. Used Motor Oil and Used Motor Oil Filters. Contractor shall Collect Used Motor Oil and Used Motor Oil Filters placed at the Collection location by Customer for Collection in Contractor-provided or Contractor-approved Containers. Contractor shall not be required to Collect more than five (5) gallons of Used Motor Oil per Customer per Collection. Contractor shall provide up to five (5) one-gallon translucent plastic Used Oil jugs with screw-

on tops for Used Motor Oil Collection and up to five (5) six (6) mil plastic zip-close type bags for Used Motor Oil Filter Collection to SFD Customers, upon Customer's request, within five (5) Business Days of such request, at no additional cost to Customer. Information in English and Spanish, regarding the Used Motor Oil and Used Motor Oil Filter Collection program and instructions for the use and set out of the these materials shall be provided with the Used Motor Oil jugs and Used Motor Oil Filter bags. Diversion of Used Motor Oil shall be calculated with a conversion factor of one (1) gallon of Used Motor Oil equaling seven (7) pounds.

3. Household Batteries and Cell Phones. Contractor shall Collect from SFD Premises Household Batteries and Cell Phones placed on top of the Recyclable Materials Cart in Contractor-provided or Customer-provided clear zip-close or tie-close plastic bags clearly marked "Used Batteries and Cell Phones." Contractor shall empty the bag at the point of Collection and leave it to be reused by the Customer by placing it inside the Cart handle. Customers will be notified to place all Household Batteries in a clear zip-close plastic bag; tape the contacts of button cell batteries; and wrap Cell Phones in paper (for protection) prior to placing in the plastic bag. While Customers will be encouraged to follow the participation parameters, Contractor shall be required to Collect if Customers do not follow these instructions.

Contractor shall Collect Targeted Recyclable Materials from SFD on the same day that Solid Waste Collection is provided.

B. Multi-Family Residential Premises

1. General. Multi-Family Dwelling Customers that subscribe to Solid Waste Collection service shall be entitled to Single-Stream Targeted Recyclable Materials Collection at no additional charge, and Contractor shall provide the level of service required by Multi-Family Dwelling Customers requesting Recyclable Materials Collection services. Contractor shall provide each Multi-Family Dwelling Customer with Containers for Single-Stream Targeted Recyclable Materials Collection. At a minimum, Contractor shall provide twenty (20) gallons per week of Container capacity for Single-Stream Targeted Recyclable Materials Collection for every Multi-Family Dwelling at the Premises. Contractor shall provide each Customer with Carts or Bins as specified in Attachment D, as requested by the Customer.

Contractor shall Collect Single-Stream Targeted Recyclable Materials Generated at Multi-Family Residential Complexes at least once per week or more frequently, up to six (6) times per week, as scheduled by the Customer provided that the Generator has Source Separated the Targeted Recyclable Materials from Solid Waste and placed the materials in the appropriate Contractor-provided Container. Contractor shall Collect Single-Stream Targeted Recyclable Materials at the designated location agreed upon by Contractor and Multi-Family Dwelling Customer. The designated Collection location, if disputed by Customer or Contractor, shall be determined by the Agency. Carts and Bins may be shared by the Occupants of the Multi-Family Residential complexes. Contractor shall provide extra Carts for use in the mail room of the Multi-Family Residential complexes if requested by the Customer.

2. Personal Recycling Tote-Bag Distribution. Upon receipt of a request for Recycling Tote-Bags from a Multi-Family Dwelling Customer or Occupant, Agency or SBWMA, Contractor shall: (i) deliver the Recycling Tote-Bags within five (5) Business Days to the property Owner, property manager or Occupant who requested the Recycling Tote-Bags; (ii) prior to complying with (i), contact the property Owner or property manager directly by phone or in person to determine if additional Recycling Tote-Bags are needed and/or if they are interested in a site assessment of the property; (iii) upon request for a site assessment, ensure that a site assessment is done per the requirements set forth in Section 7.05. Contractor shall provide notification to Agency and SBWMA of the Day which the Tote Bags were delivered and to whom they were delivered with submittal of Contractor's monthly reports per Section 9.05. Contractor's monthly reports shall also include an inventory of Recycling Tote-Bags in stock.

3. Household Battery and Cell Phone Collection.

a. Multi-Family Residential Complexes with individual Recycling Carts for each dwelling unit. Contractor shall Collect Household Batteries and Cell Phones placed on top of the Recyclable Materials Cart in Contractor-provided or Customer-provided clear zip-close or tie-close plastic bags clearly marked "Used Batteries and Cell Phones." Customers will be notified to place all Household Batteries in a clear zip-close plastic bag; tape the contacts of button cell batteries; and wrap cell phones in paper (for protection) prior to placing in the plastic bag. While Customers will be encouraged to follow the participation parameters, Contractor shall be required to Collect the Household Batteries and Cell Phones if Customers do not follow these instructions.

b. Multi-Family Residential Complexes with shared or centrally stored Recycling Carts or Bins. Contractor shall provide one (1) or more centrally located Containers for the accumulation of Household Batteries and Cell Phones. The number and location of the Containers and the frequency of Collection shall be mutually agreed to between the Contractor and the Owner or manager of the complex. In the event the Owner or property manager requests that the materials be Collected on an on-call basis, Contractor shall provide that service at no additional cost.

4. Universal Implementation to All Customers. If requested by Agency, Contractor shall make all necessary arrangements to implement this service within one hundred and twenty (120) days and ensure the service is implemented within the time frame agreed to by Agency and Contractor. To maximize participation in the Single-Stream Targeted Recyclable Materials Collection program, the Contractor shall distribute Recyclable Materials Containers to all Multi-Family Dwelling Customers unless the Customer has notified the Contractor that they do not want to participate in the Targeted Recyclable Materials Collection program.

Prior to distribution of the Targeted Recyclable Materials Containers, the Contractor shall conduct a site assessment of each Multi-Family Residential

complex. The site assessment shall include a meeting with the Owner or property manager to describe the Single Stream Recycling Program; an evaluation of the components of the waste stream generated at the complex, identification of the volumes and types of Targeted Recyclable Materials Collected at the complex and the development of an estimate of the volume of Single Stream Targeted Recyclable Material that could be Collected at the complex. Based on the results of the site assessment, Contractor will develop an estimate of the Recycling capacity needs of the complex.

Using the information obtained from the site assessment and prior to distribution of the Targeted Recyclable Materials Containers, the Contractor shall mail each Multi-Family Dwelling Customer a notice describing the "universal" implementation of Single-Stream Targeted Recyclable Materials Collection; the number and size of Containers the Contractor plans to deliver to the Multi-Family Dwelling Complex (based on Contractor's estimate of the service volume needed for the complex with a minimum of twenty (20) gallons per week per Multi-Family Dwelling); and a description of how Customers can contact the Contractor and request additional or different sized Containers or request not to participate in the Targeted Recyclable Materials Collection program. If Contractor delivers Targeted Recyclable Materials Collection Containers to a Multi-Family Residential Complex and the Customer requests a change in the number or size of Containers or states that they do not want to participate in the Collection program, Contractor shall adjust the service level or remove the Collection Containers within ten (10) Business Days of the Customer's request. For Multi-Family Dwelling Customers that subscribe to Solid Waste Collection service during the Term of the Agreement, Contractor shall automatically deliver and service Single-Stream Recyclable Materials Collection Containers at the Multi-Family Residential Complex unless the Customer specifically refuses to participate in the Targeted Recyclable Materials Collection program.

C. **Commercial Premises**

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

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

- 579 2. Collection Containers. Contractor shall allow Commercial Customers to select a
580 Collection service method that best suits the needs of its Premises. Specifically,
581 the Contractor shall offer the following choices to Commercial Customers:
- 582 a. Cart service. Contractor shall allow Commercial Customers to use Carts
583 for Targeted Recyclable Materials Collection. Contractor shall provide each
584 Customer with a choice of one (1) or more Carts as specified in Section
585 8.05.
- 586 b. Bin service. Contractor shall allow Commercial Customers to use Bins for
587 Targeted Recyclable Materials Collection. Contractor shall provide each
588 Customer with a choice of one (1) or more Bins as specified in Section
589 8.05.
- 590 c. Shared Cart or Bin service. Contractor shall allow Commercial Customers
591 to use Carts or Bins for Targeted Recyclable Materials Collection that are
592 shared by the Occupants of two (2) or more Commercial Premises. In such
593 case, Contractor shall provide one (1) or more Carts or Bins to such
594 Premises as requested by Customer(s). In order to minimize the impact or
595 occurrence of illegal dumping and theft of Recyclable Materials, Contractor
596 will provide to Customer at no additional cost, locks for enclosures used to
597 store Containers or locks for Containers and ensure the enclosures or
598 Containers are locked after providing Collection Service. Only Contractor,
599 Agency, and the participating Customers will be provided with a key to the
600 enclosures and access to the Containers. The service schedule will be
601 prominently displayed on the enclosure and any changes in service will be
602 displayed on the enclosure by Contractor within one (1) Business Day of
603 making the change. If the Carts or Bins are left "outside" in a designated
604 area, each Container will be locked (keyed alike), and only Contractor staff,
605 Agency staff, and the participating Customers will be provided with a key to
606 access the Containers. At least once each calendar year, Contractor's route
607 supervisor will visit each of the participating Customers with shared
608 Containers, respond to any questions or concerns, check the areas for
609 contamination, litter, or damage and change the lock and distribute new
610 "keyed alike" keys to Agency staff and Customers.
- 611 d. Drop Boxes and Compactors. Contractor shall allow Commercial
612 Customers to use Drop Boxes or Compactors for Targeted Recyclable
613 Materials. In such case, Contractor shall provide Customers with a choice
614 of Container capacities as specified in Section 8.05. Contractor shall offer
615 Customers the option to purchase or lease Compactors through Contractor
616 or an outside vendor. Regular maintenance of Compactors shall be
617 provided by Contractor (or outside vendor) as frequently as needed to keep
618 the Compactors in good working order and functioning at high compaction
619 levels.
- 620
- 621 3. Universal Implementation of Service. Upon request by Agency, Contractor shall
622 "universally" implement Single-Stream Targeted Recyclable Materials Collection
623 services to all Commercial Customers in the same manner as that described for
624 Multi-Family Customers pursuant to Section 5.03.B.4.

625 **D. Agency Facilities**

- 626 1. General. Agency Facilities that subscribe to Solid Waste Collection service
627 shall be entitled to Collection of Targeted Recyclable Materials at no additional
628 charge, and Contractor shall provide the level of service required by Agency
629 Facilities requesting Targeted Recyclable Materials Collection services. The
630 level of service Contractor shall provide includes: Single-Stream Targeted
631 Recyclable Materials Collection or Source Separated Collection of cardboard,
632 mixed paper, food and recyclable beverage containers, or other Targeted
633 Recyclable Materials in a manner that best suits the needs of the Agency
634 Facility.

635 Contractor shall Collect Single-Stream Targeted Recyclable Materials or other
636 Source Separated Targeted Recyclable Materials Generated at Agency
637 Premises at least once per week or more frequently, up to seven (7) times per
638 week, as scheduled by the Agency provided that the Generator has Source
639 Separated the Targeted Recyclable Materials from Solid Waste and placed the
640 materials in the appropriate Contractor-provided Container. Contractor shall
641 Collect Targeted Recyclable Materials at the designated location agreed upon
642 by Contractor and Agency.

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

646 a. Cart service. Contractor shall allow Agency Facilities to use Carts for
647 Targeted Recyclable Materials Collection. Contractor shall provide each
648 Customer with a choice of one (1) or more Carts as specified in Attachment
649 D.

650 b. Bin service. Contractor shall allow Agency Facilities to use Bins for
651 Targeted Recyclable Materials Collection. Contractor shall provide each
652 Agency with a choice of one (1) or more Bins for each Agency Facility.

653 c. Centralized Cart or Bin service. Contractor shall allow Agency Facilities to
654 use Carts or Bins for Targeted Recyclable Materials Collection that are
655 shared by the Occupants of two (2) or more adjacent Agency Facilities. In
656 such case, Contractor shall provide one (1) or more Carts or Bins to such
657 Premises as requested by Agency.

658 d. Drop Boxes and Compactors. Contractor shall allow Agency Facilities to
659 use Drop Boxes or Compactors for the Collection of Targeted Recyclable
660 Materials. In such case, Contractor shall provide Agency with a choice of
661 Container capacities as specified in Section 8.05. Contractor shall offer
662 Agency the option to purchase or lease Compactors through Contractor or
663 an outside vendor. Regular maintenance of Compactors shall be provided
664 by Contractor (or outside vendor) as frequently as needed to keep the
665 Compactors in good working order and functioning at high compaction
666 levels.

- 667 3. Public Recycling Receptacles. Contractor shall Collect Recyclable Materials
668 from public Recycling receptacles located on streets and parking lots, and from
669 public Recycling receptacles in parks that are accessible for Curbside
670 Collection. Contractor shall also Collect Recyclable Materials that are contained
671 in bags or boxes and placed adjacent to public Recycling receptacles. These
672 Collections will be made between one (1) and seven (7) Days per week, as

determined by Agency. Contractor is responsible for notifying Agency if a public Recycling receptacle is inoperable within twenty-four (24) hours of observing or being notified of the defect. A list of public Recycling receptacles is included in Attachment B.

5.04 ORGANIC MATERIALS COLLECTION

A. **Single-Family Dwelling.** Contractor shall Collect Source Separated Organic Materials from SFD once per week. Collection of Organic Materials, Targeted Recyclable Materials, and Solid Waste from the SFD shall occur on the same Day each week. Contractor shall provide each Customer with one (1) Cart to be used for storage and Collection of Organic Materials. Customer can rent or purchase additional Organic Materials Carts from Contractor and Contractor shall be entitled to bill Customer as specified in Attachment Q. Purchased Carts shall become the property of Customer. Customer will be provided the opportunity to subscribe to service levels of additional Organics Materials Carts and shall be billed in accordance with Agency-approved rates for additional Organic Materials Carts service. The Contractor shall provide each Customer a Cart as specified in Attachment D, unless the Customer requests an alternative Cart size, in which case, the Contractor shall provide an alternative Cart as specified in Attachment D. Approximately one (1) month prior to distribution of SFD Organic Material Carts, Contractor shall mail a notice to each SFD Customer indicating that the Customer will receive the default Organic Materials Cart size specified in Attachment D, unless the Customer responds to the notice (i.e., by mail, email, phone or website form) and requests an alternate Cart size by selecting the preferred size.

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

Contractor shall provide each SFD with a Kitchen Pail at the inception of Collection services. Contractor must submit Kitchen Pail specifications (including material and design specifications, colors, and identification marks) to Agency for Agency's written approval prior to submitting the order to the manufacturer. During the Term of the Agreement, Contractor shall provide, within five (5) Business Days of request by Occupant, Kitchen Pails to new SFD Customers and to SFD Customers whose Kitchen Pail is lost, stolen, damaged, or destroyed (such replacement shall be limited to one (1) per year per Customer at no additional cost). Residents will be discouraged from placing Kitchen Pail Curbside for Collection and will be instructed to deposit the contents of the Kitchen Pail into the Organic Materials Cart.

B. **Multi-Family Premises.** Multi-Family Dwelling Customers shall have the option of voluntarily subscribing to Organic Materials or Plant Materials Collection services and shall pay Contractor for such service in accordance with Agency-approved Rates. Contractor shall Collect Source Separated Organic Materials or Plant Materials from Multi-Family Residential Complexes that have subscribed to Organic Materials or Plant Materials Collection service as frequently as scheduled by Customer, but not less than once per week. Contractor shall provide each Customer with a choice of Carts or Bins as specified in Attachment D. Contractor shall Collect Organic Materials and Plant Materials at the location agreed upon by

719 Contractor and Customer. The designated Collection location, if disputed by
720 Customer or Contractor, shall be determined by the Agency.

721 C. **Commercial Premises.** Commercial Customers shall have the option of voluntarily
722 subscribing to Organic Materials or Plant Materials Collection services and shall pay
723 Contractor for such service in accordance with Agency-approved Rates. Contractor
724 shall provide Organic Materials or Plant Materials Collection service to any and all
725 Customers requesting service. Contractor shall Collect Organic Materials or Plant
726 Materials from Commercial Premises that have subscribed to Organic Materials or
727 Plant Materials Collection service as frequently as scheduled by Customer, but not
728 less than once per week.

729 Contractor shall allow Commercial Customers to select a Collection service method
730 that best suits the needs of its Premises. Specifically, the Contractor shall offer to
731 Commercial Organic Materials or Plant Materials Customers the Containers and
732 service choices that are similar to that offered for Commercial Solid Waste
733 Collection pursuant to Section 5.02.C.

734 D. **Agency Facilities.** Agency Facilities shall have the option of voluntarily subscribing
735 to Organic Materials or Plant Materials Collection services.

736 Contractor shall provide Organic Materials or Plant Materials Collection service to
737 Agency Facilities requesting service. Contractor shall Collect Organic Materials or
738 Plant Materials from Agency Facilities that have subscribed to Organic Materials or
739 Plant Materials Collection service as frequently as scheduled by Agency, but not
740 less than once per week.

741 Contractor shall allow Agency to select a Collection service method that best suits
742 the needs of its Facilities. Specifically, the Contractor shall offer to Agency Facilities
743 the service choices that are similar to that offered for Commercial Solid Waste
744 Collection pursuant to Section 5.02.C.

745 E. **Holiday Tree Collection.** Contractor shall annually Collect Holiday Trees from
746 Residential Premises from December 26 through January 31. Contractor shall
747 provide this service on the regularly scheduled Organic Materials Collection Day.
748 Contractor will be required to Collect trees or pieces of trees, which are eight feet
749 (8') or less in length, void of tinsel, lights, ornaments, other decorations, and metal
750 or plastic stands (although flocked trees are acceptable) and are placed adjacent to
751 an Organic Materials Cart. Contractor shall make accommodations and provide
752 Collection service for Customers who are unable to cut trees into lengths of eight
753 feet (8') or less at no additional cost to the Customer or Agency. After January 31,
754 Contractor will be required to Collect trees placed inside an Organic Materials Cart.
755 These Collection parameters apply to both Special Handling and Backyard
756 Collection Service.

757 Contractor shall deliver a Bin or Drop Box for Holiday Tree Collection to Multi-
758 Family Residential Complexes upon request of the Owner or property manager.
759 Contractor shall provide this Collection service annually commencing December 26
760 and shall continue to provide this service as long as requests are submitted to
761 Contractor, at no additional cost to Customer(s) or Agency. The location for delivery
762 of the Bin or Drop Box shall be agreed upon by the Owner or property manager,

and Contractor shall remove the Bin or Drop Box, or Collect the trees loose, on the date requested by the Owner or property manager. If the use of a Bin or Drop Box is not feasible, Contractor shall Collect the uncontainerized Holiday Trees from one (1) or more designated consolidation locations (e.g., adjacent to a Solid Waste enclosure) at each Multi-Family Residential Complex as determined by the Owner or property manager. Contractor shall be required to Collect all trees or pieces of trees, which are eight feet (8') or less in length, void of tinsel, lights, ornaments, other decorations, and metal or plastic stands (although flocked trees are acceptable) and are placed in the Bin or Drop Box or at the agreed upon location. Contractor shall make accommodations and provide Collection service for Customers who are unable to cut trees into lengths of eight feet (8') or less at no additional cost to the Customer or Agency.

Prior to December of each year, Contractor shall notify all Multi-Family Dwelling Customers of this program and explain the limitations to the program, the dates of service, and any materials preparation or participation requirements, including the option to order a Bin or Drop Box, or Collect the trees loose from designated Collection locations. To encourage participation in this program, Contractor shall not charge Customers an additional fee for this service.

5.05 SINGLE-FAMILY AND MULTI-FAMILY TWICE ANNUAL ON-CALL CURBSIDE BULKY ITEM COLLECTION SERVICE

- A. **General.** Contractor shall provide two (2) separate On-Call Curbside Bulky Item Collection Service events to each Single-Family Dwelling Residential Premise annually upon Owner or Occupant's request. Contractor will schedule the On-Call Bulky Item Collection Service events on the regularly scheduled Solid Waste Collection Day for Single-Family Dwellings, no more than ten (10) Business Days after the Owner or Occupant's request.

Contractor shall provide two (2) separate On-Call Bulky Item Collection Service events to each Multi-Family Residential Complex annually upon Owner's or property manager's request. Contractor will schedule the On-Call Bulky Item Collection Service events no more than ten (10) Business Days after Multi-Family Residential Complex Owner or property manager's request. Contractor will be required to accommodate the Multi-Family Residential Complex's on-site constraints to ensure convenient and safe collection events in an effort to maximize diversion and minimize environmental impacts.

Contractor shall assist Owners and property managers of Multi-Family Residential Complexes with scheduling events to effectively and efficiently provide the volume of Collection service to which the complex is entitled annually based on the number of Residential Premises at the complex. The provision of On-Call Collection of Bulky Items is not intended to encourage or permit Multi-Family Residential Premises to reduce the level of regularly scheduled Solid Waste Collection service that has been previously provided to the complex. If Contractor, in its reasonable business judgment, concludes that an Owner or property manager of a Multi-Family Residential Complex is requesting On-Call Bulky Item Collection in order to reduce its historical level of regular Solid Waste Collection service, Contractor may present a factual report to Agency in support of an application to decline further requests for On-Call Bulky Item Collection events at that complex for the remainder of the

calendar year. Agency will review the application and report and determine whether Contractor may decline all subsequent requests from that complex for that calendar year or may limit the number of On-Call Bulky Item Collection events it must provide. Until Agency makes, and notifies Contractor of, its determination, Contractor is not required to provide additional On -Call Bulky Item Collection service events to the complex in question.

Contractor will allow the scheduling of On-Call Bulky Item Collection Service events from January 2 through December 1 of each Rate Year. Contractor may provide additional On-Call Bulky Item Collection Service events for a Customer beyond two (2) per Rate Year, and shall be entitled to bill Customer as specified in Attachment Q. Contractor is required to notify Customer if they have already received the annually allocated two (2) Collection events within one (1) Business Day of Customer request. If Contractor fails to notify Customer that they have received the annually allocated two (2) Collection events, Contractor shall provide the service and is not entitled to additional Contractor's Compensation from Customer or Agency for a third or subsequent On-Call Bulky Item Collection Service event.

B. **Accepted Materials.** Residential Premises may place Solid Waste, Targeted Recyclable Materials, and/or Organic Materials for Collection with the following allowances:

1. Solid Waste, Recyclable Materials, Organic Materials – Up to two (2) cubic yards of materials per event, provided that such materials, except as set forth below have been bagged, boxed, bundled, or containerized by the Customer.
2. Major Appliances – One (1) large appliance per event (e.g., washing machine, clothes dryer, refrigerator, freezer).
3. Bulky Items – One (1) large Bulky Item per event (e.g., reusable furniture, mattresses, four tires).
4. E-Scrap – One (1) item per event (e.g., a computer, computer monitor or television).

Contractor shall reject: liquids or sludges; dirt, rock, concrete or asphalt; materials which exceed five (5) feet in length; commercial-sized refrigerators or freezers; Construction and Demolition Debris; Hazardous Waste; or Infectious Waste. Contractor may reject any individual item that weighs more than two-hundred (200) pounds (excluding Major Appliances) unless Customer has paid, or has agreed in advance to pay, an additional fee for service. Contractor may reject un-containerized Discarded Materials with the exception of Major Appliances, Bulky Items, E-Scrap and large pieces of Organic Material such as tree limbs and dimensional lumber.

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

D. **Handling Major Appliances.** Major Appliances, Universal Waste, and E-Scrap shall be reused, Recycled or Disposed by Contractor in accordance with requirements of Applicable Law and in accordance with the State of California Department of Toxic Substances Control and California Integrated Waste Management Board regulations. Any changes to such regulations made after the Effective Date shall be addressed as though they are a Change in Law in accordance with Section 11.05.

E. **Collection and Processing Methods.**

A Route Supervisor will visit each On-Call Bulky Item Collection location on the morning of the scheduled Collection Day to evaluate the material being placed at Curbside for Collection, and to verify that its Collection has been assigned to the proper Collection vehicle. All materials that can be handled by the SFD Single-Stream Recycling, Organic Materials, or Solid Waste route Collection vehicle would be assigned to one of these vehicles for Collection, with the goal of maximizing diversion. All Collection of Bulky Items will be assigned for Collection by a flatbed truck, and the driver will segregate items Collected according to their suitability for: (1) reuse or Recycling, and (2) Disposal, prior to their transport to the SRDC for processing. Any remaining items will be Collected by a dispatched rear-loader truck. Contractor shall utilize these procedures and vehicles in a manner that provides the maximum diversion of the material Collected from the On-Call Bulky Item Collection Service event.

5.06 AGENCY FACILITY ANNUAL ON-CALL BULKY ITEM COLLECTION SERVICE

Contractor shall provide all Agency Facilities an Annual On-Call Bulky Item Collection service event. The On-Call Bulky Item Collection Service provisions set forth in Section 5.05 shall apply to the On-Call Bulky Item Collection Service provided to Agency Facilities with the following exceptions for frequency and service level/acceptable materials.

A. **Frequency of Service.**

Contractor shall provide this service to each Agency Facility annually.

B. **Service Level/Accepted Materials.**

Agency Facilities may place for Collection, Solid Waste, Recyclable Materials, and/or Organic Materials with the following allowances:

1. Solid Waste – Contractor shall provide a six (6) cubic yard or smaller Bin upon request.
2. Recyclable Materials, Organic Materials – Up to two (2) cubic yards of materials per event, provided that such materials, except as set forth below have been bagged, boxed, bundled, or containerized by the Customer.
2. Major Appliances – One (1) large appliance per event (e.g., washing machine, clothes dryer, refrigerator, freezer).
3. Bulky Items – One (1) large Bulky Item per event (e.g., reusable furniture, mattresses, four tires).
4. E-Scrap – One (1) item per event (e.g., a computer, computer monitor or television).

897 Contractor shall reject: liquids or sludges; dirt, rock, concrete or asphalt; materials
898 which exceed five (5) feet in length; commercial-sized refrigerators or freezers;
899 Construction and Demolition Debris; Hazardous Waste; or, Infectious Waste.
900 Contractor may reject any individual item that weighs more than two-hundred (200)
901 pounds (excluding Major Appliances) unless Customer has paid, or has agreed in
902 advance to pay an additional fee for service, and Contractor may reject un-
903 containerized Discarded Materials with the exception of Major Appliances, Bulky
904 Items, E-Scrap and large pieces of Organic Material such as tree limbs and
905 dimensional lumber.

906 **5.07 CONFIDENTIAL DOCUMENT DESTRUCTION SERVICE EVENT**

907 Contractor shall provide one confidential document destruction service event in
908 Agency annually at no additional cost to Agency or Customers. Upon receipt of a
909 request to schedule a confidential document destruction event by Agency,
910 Contractor shall schedule the event within ten (10) Business Days. Contractor shall
911 provide adequate equipment and staffing necessary for the event and shall ensure
912 full destruction of confidential documents and other materials delivered by
913 Customers to the site of the event. Upon request from Agency, Contractor shall
914 provide additional events and shall be compensated by Agency as specified in
915 Attachment Q.

916 **5.08 COLLECTION FOR LARGE VENUES AND EVENTS**

917 Contractor shall provide Collection services, upon request, to any Venue and Event
918 within Service Area. Specifically, Contractor shall provide, at a minimum, Solid Waste
919 and Targeted Recyclable Materials Collection services, and shall also provide Organic
920 Materials Collection services if one (1) cubic yard or more of Organic Material is
921 generated per day at the Venue or Event. Contractor shall provide Collection as
922 frequently as requested by the Agency or the Event organizer. Contractor shall provide
923 an adequate number and type of Collection Container(s) for the Venue or Event and
924 shall coordinate its Collection services with Agency or Event organizer. Containers shall
925 be appropriately labeled to collect Solid Waste, Recyclable Materials or Organic
926 Material, per the requirements specified by the SBWMA. Upon request of the Agency or
927 the Event organizer, Contractor shall provide an adequate number of its employee(s) for
928 each Event to ensure all Solid Waste, Recyclable Materials and Organic Materials
929 Collection locations (i.e., Containers that are placed on-site for use by event patrons) are
930 kept clean and uncontaminated; to empty or exchange Containers as the need arises;
931 and to respond to overages or spills.

932 Within ten (10) Business Days of Contractor receiving a request to supply an Event with
933 Solid Waste, Targeted Recyclable Materials, Organic Materials Collection services, the
934 Contractor will either meet with or schedule a meeting with the Event organizer to
935 discuss the Event's parameters, including location, number of people attending, type of
936 Event, type of food being provided, and other related issues. Once parameters of the
937 Event are determined, proper Containers will be provided by Contractor, with emphasis
938 on recycling and diversion of the materials generated.

939 Contractor shall also supply and staff an information booth at each Venue and Event,
940 upon request from Agency. In addition, Contractor shall prepare and distribute
941 information to the public at Venues and Events describing the Collection options

available at the Venue or Event and promoting Recycling programs in the Agency, upon request from Agency. All information prepared for distribution to Venues and Events shall be approved by Agency prior to distribution. The Contractor shall report the Tonnage of material Collected at each Venue and Event to the Agency and, upon Agency request, to the Event organizer.

For Venues and Events which are required to comply with the Large Venues and Events Recycling Law, codified at Public Resources Code Section 42648 et seq., Contractor shall assist the Venue or Event organizer in preparing a Recycling plan and reporting all information required by those provisions of the law. Contractor shall be required to provide, at a minimum, the following information for each Venue or Event:

1. List of qualifying large Venues and Events in Service Area.
2. Physical and mailing address.
3. Contact name, address, phone number and email address.
4. Type of Venue or Event (e.g., museum, concert, sporting event).
5. Status of the Venue or Event written waste diversion/Recycling plan.
6. A description of the extent in which the plan has been implemented.
7. Service level provided (i.e., Solid Waste, Recyclable Materials and Organic Materials).
8. Tons disposed and diverted, by material type.
9. Description of the scope and types of diversion programs provided.
10. Other information required by law.

For Agency-sponsored Venues and Events listed in **Attachment C**, Contractor shall provide the Collection services required by this Section at no charge to the Agency or the Event organizer. Agency may add additional events to those listed in **Attachment C** or modify this list if events change during the Term. If the number of events listed in Attachment C increases during the Term, Contractor shall be entitled to receive compensation for the number of events provided service each Rate Year based on the cost for additional events specified in Attachment Q. For other Venues and Events, Contractor may charge the Venue or Event organizer at the Rates established by Agency for comparable On-Call Commercial Solid Waste and Organic Materials Collection Service. Recyclable Materials Collection service shall be provided at no additional cost to Events that subscribe to Solid Waste or Organic Materials Collection service.

5.09 ABANDONED WASTE CLEANUP COLLECTION SERVICE

Contractor shall provide abandoned waste cleanup collection service within one (1) Business Day of being notified by Agency, SBWMA, Customer, or Contractor's vehicle drivers and route supervisors of the occurrence of abandoned waste or illegal dumping, at no additional cost to Agency or Customer. If a report of abandoned waste or illegal dumping is received by Contractor from a party other than Agency, Contractor shall notify Agency of the reported location within one (1) Business Day and shall notify Agency of the estimated or actual time Contractor Collected the material or will Collect the material. This service shall require Contractor to Collect all abandoned or illegally

984 dumped Solid Waste, Recyclable Materials and Organic Materials. This service does
985 not include Collection of litter or litter abatement activities.

986 For abandoned Recyclable Materials, Organic Materials, and Solid Waste, Contractor
987 shall dispatch its regular route drivers to provide Collection service. For Bulky Items,
988 Contractor shall dispatch a flatbed truck to provide Collection service. For other items
989 including, but not limited to, Hazardous Waste, Household Hazardous Waste and
990 Sharps, Contractor shall promptly notify Agency.

991 All abandoned or illegally dumped materials Collected by Contractor shall be transported
992 to the SRDC for processing, with the exception of scrap metal, and all related diversion
993 statistics will be included in the appropriate reports to the Agency for all materials
994 collected. Contractor shall be allowed to transport scrap metal directly to a licensed
995 scrap metal recycler. Contractor shall, to the greatest extent possible, deliver all
996 reusable non-metal abandoned waste items to organizations such as Society of St.
997 Vincent de Paul and Goodwill Industries, or other organizations as directed by Agency.

998 **5.10 COATS FOR KIDS PROGRAM**

999 If requested by Agency, Contractor shall implement a "Coats for Kids Program" annually
1000 at no additional cost to Agency or Customers. The program shall consist of Contractor's
1001 drivers Collecting coats from Customers on their route over a one (1) to two (2) week
1002 period during the fall, as well as from Collection Containers placed by Contractor in
1003 various public locations specified by Agency, such as libraries, City Hall and businesses.
1004 The coats collected through this program will be sorted and laundered by Contractor,
1005 and arrangements made by Contractor for distribution to a local non-profit organization,
1006 such as the Family Services Agency. Prior to the implementation of the program,
1007 Contractor shall present a detailed program plan to Agency for review and approval. All
1008 related diversion statistics will be included in the appropriate reports to the Agency.

1009 **5.11 COMPOST GIVE-AWAY**

1010 Contractor will coordinate with the Agency to host "Bring Your Own Bucket" (BYOB)
1011 giveaway of compost to residents. The BYOB compost giveaway will provide residents
1012 with free compost to enrich their gardens while also educating residents on the benefits
1013 of home composting. In addition, Contractor representatives will be on hand to distribute
1014 recycling guides and other educational material promoting waste reduction and
1015 recycling. Contractor is required to deliver to Agency thirty (30) cubic yards of compost
1016 annually in one (1) or two (2) deliveries at no additional cost. Agency shall provide
1017 Contractor ten (10) Business Days notice to deliver additional compost to Agency and
1018 Contractor shall be entitled to increase Contractor's Compensation for the Rate Year
1019 that the compost is delivered to Agency based on the costs specified in Attachment Q.

1020 **5.12 FEE FOR SERVICE ON-CALL BULKY ITEM COLLECTION**

1021 In addition to collections provided under Section 5.05 and Section 5.06, Contractor shall
1022 Collect Bulky Items from Single-Family, Multi-Family, and Commercial Customers and
1023 Agency Facilities and shall charge Customers the Rate established by Agency, which
1024 will cover the cost of service. The cost of service in 2011 is specified in Attachment Q.
1025 Contractor will schedule fee for service On-Call Bulky Item Collection service on the
1026 Customer's regularly scheduled Collection Day or a Business Day scheduled by

1027 Contractor, no more than ten (10) Business Days after Customer's request. The fee for
1028 service On-Call Bulky Item Collection Service shall be limited to Collection of Bulky
1029 Items, Major Appliances, and E-Scrap.

1030 When a Commercial Customer calls to request and schedule the collection of Bulky
1031 Items, Contractor shall ask the caller to describe the items to be collected, and will
1032 provide the caller with an estimate of the cost to provide the service, based on Rates
1033 established by Agency.

1034 If Contractor determines that the volume of the described items can be accommodated
1035 in a single load on a flatbed boom truck equipped with a hydraulic-lift tailgate, Contractor
1036 shall instruct the caller to set out the items for pickup on the next regular Solid Waste
1037 Collection Day at a location where Solid Waste Collection occurs for the Customer, or at
1038 an alternative nearby location that avoids interference with regular Solid Waste,
1039 Recyclable Materials, or Organic Materials Collection service.

1040 If Contractor determines the volume of the described items cannot be accommodated in
1041 a single load on a flatbed boom truck, Contractor shall schedule a site visit and meet
1042 with the Customer within five (5) Business Days to: (1) develop a plan for the most
1043 effective mode and location for Collection service, and (2) schedule the Collection
1044 service event.

1045 **5.13 COMMUNITY DROP-OFF EVENTS**

1046 Upon request by Agency, Contractor shall hold drop-off events at a location selected by
1047 the Agency to allow Residential Customers to drop off acceptable materials. Acceptable
1048 materials, which shall be determined by the Agency, may include one or more of the
1049 following: E-Scrap, Universal Waste, Recyclable Materials, Organic Materials, and
1050 Solid Waste.

1051 A. General Requirements. Contractor shall promote, manage, staff, and operate
1052 drop-off event(s) for Residential Customers scheduled for one (1) weekend Day
1053 (i.e., Saturday or Sunday) or two (2) consecutive weekend Days upon request from
1054 Agency.

1055 The Agency shall approve the date of the drop-off event and all advertisements or
1056 public announcements related to such event. Contractor shall promote the event by
1057 preparing Billing inserts to be included in each Customer's Bill and by advertising in
1058 a minimum of two local area newspapers as approved by the Agency.

1059 Contractor shall manage, staff, and supervise the event. Contractor shall provide
1060 traffic control and signage; inspect materials delivered to the event; separate
1061 materials; document each material type and quantity; transport Collected materials
1062 to reuse, processing or Disposal locations; and clean up the location at the end of
1063 the event.

1064 Contractor shall not charge Customers delivering materials to the event.

1065 B. Accepted Materials. Customers may deliver and Contractor shall accept Major
1066 Appliances, Bulky Items, Source Separated Targeted Recyclable Materials, Source
1067 Separated Organic Materials, tires (i.e., four (4) per Customer, removed from rims,
1068 no commercial tires), clean unpainted wood, construction and demolition debris,
1069 Universal Waste, E-Scrap and Solid Waste. Contractor shall be allowed to reject:
1070 liquids or sludges; cement; dirt; asphalt; concrete; Hazardous Waste; or Infectious

Waste. Contractor shall not establish a limit on the volume or weight of materials that a Customer may bring for Collection.

C. Participants. Contractor shall verify Residents live in the Agency by reviewing a driver's license or utility bill.

D. Event Hours. Contractor shall accept materials from Residential Customers over one (1) weekend Day (i.e., Saturday or Sunday) or two (2) consecutive weekend Days from 8:00 a.m. to 5:00 p.m.

E. Recycling and Reuse. Contractor shall Collect materials in a manner that maximizes reuse, Recycling, composting, and diversion of materials from Disposal. Contractor shall make reasonable efforts to ensure that diversion goals are met or exceeded. Contractor shall separate Recyclable Materials and Organic Materials and transport such materials to the Designated Transfer and Processing Facility or an alternative processing site with advance authorization from Agency. Contractor shall coordinate with re-use vendor(s) to have a representative present at the drop-off event to accept donated clothes or other reusable items. Disposal of materials shall be the Contractor's last option.

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

G. Scheduling Community Drop-Off Events. Upon request from Agency, Contractor shall promote, manage, staff, and operate community drop-off events described in this Section. If Agency exercises such right, it shall provide written notice to Contractor at least three (3) months before the first day of the requested drop-off event. The Contractor's Compensation attributable to Agency for such service shall be based on Contractor's proposed cost, provided in Attachment Q.

H. Confidential Document Destruction Service. If requested by Agency, Contractor shall provide confidential document destruction service at the drop off event(s). Contractor will provide adequate equipment and staffing necessary for the event and shall ensure full destruction of confidential documents and other materials delivered by Customers at the site of the event. This service will be provided by Contractor at no additional cost to the Agency or Customers.

5.14 WEEK-LONG AGENCY-WIDE BULKY ITEMS COLLECTION SERVICE EVENT

Upon request by Agency, Contractor shall hold a one (1) week-long Agency-wide Bulky Items Collection service event for Residential Customers. Agency shall select the dates of the event and provide Contractor four (4) months notice to provide this service. Contractor shall schedule these events for SBWMA Member Agencies on a first-come, first-serve basis, such that Contractor shall not be required to provide more than one (1) event any given week. The acceptable materials and participation requirements for the week-long Agency-wide Bulky Items Collection service event shall be the same as specified in section 5.05. Customers shall be provided this service on their regularly scheduled Solid Waste Collection Day. Contractor shall be entitled to increase Contractor's Compensation attributable to Agency pursuant to the costs specified in Attachment Q for the Rate Year that this service is provided with its submittal of the annual Application.

ARTICLE 6 TRANSPORTATION

6.01 TRANSPORTATION OF COLLECTED MATERIALS

Contractor shall transport and deliver all Solid Waste, Source Separated Targeted Recyclable Materials and Organic Materials Collected under this Agreement to the Designated Transfer and Processing Facility. Once Collected materials are deposited by Contractor at the Designated Transfer and Processing Facility, such materials shall become the property of SBWMA or Operator. The Contractor is not responsible for providing processing services except as provided in Section 6.04.

6.02 LIMITATIONS ON CONTAMINATION

A. General. The Agency is required by the Act and implementing regulations to divert a substantial portion of Solid Waste generated by residents, businesses and institutions within its Service Area from disposal at a landfill. In order to accomplish this, the Agency, through the SBWMA, is making a major investment in new recycling equipment and facilities at the Shoreway Recycling and Disposal Center. In order for that equipment to operate efficiently, the amount of Contamination in loads of Recyclable Materials, Organic Materials and Plant Materials delivered to the Shoreway Recycling and Disposal Center must be limited to specific levels. Moreover, higher levels of Contamination can make processed Recyclable Materials unmarketable or substantially reduce the price that purchasers are willing to pay. The cost that the SBWMA must charge users of the Shoreway Recycling and Disposal Center (including Agency) is directly affected by the amount of revenue generated by sales of Recyclable Materials processed by its Operator. Therefore, for both environmental and financial reasons, it is important that Contractor place a high priority on ensuring that Contamination in loads of Recyclable Materials, Plant Materials and Organic Materials delivered to the Shoreway Recycling and Disposal Center is minimized. Contractor shall work collaboratively with Agency and SBWMA to accomplish this and will implement the specific measures described in this Section and Section 6.03.

B. Disincentive Payments Based on Quarterly Performance. The maximum contamination levels for each category of Recyclable Materials, Plant Materials and Organic Materials are specified in Table 1:

Table 1	
Material Category	Maximum Contamination Level (% by weight)
Commercial Source Separated or Targeted Recyclable Materials	8%
MFD and Commercial Plant Materials	5%
Single-Family Organic Materials	5%
Commercial Organic Materials	10%
Single-Family Targeted Recyclable Materials	20% ¹

(Rate Year One)	
Single-Family Targeted Recyclable Materials (Years Two - Ten)	TBD ²

1148 ¹ Disincentives shall only be assessed for the last six (6) months of Rate Year
1149 One.

1150 ² “TBD” means “to be determined” and shall equal the arithmetic average of the
1151 Measured Contamination Levels calculated for four (4) quarters of samples of
1152 Single-Family Targeted Recyclable Materials taken pursuant to Attachment
1153 E-2 during Rate Year One (2011).

1154 The Measured Contamination Level for each category will be determined through
1155 sampling of loads of Recyclable Materials, Organic Materials, and Plant Materials
1156 generated within the SBWMA Service Area and delivered to the Shoreway
1157 Recycling and Disposal Facility. The methodology for sampling is set forth in
1158 Attachment E-2. For purposes of assessing performance disincentives, the
1159 Contamination Level of each material category shall be the arithmetic average of
1160 the Measured Contamination Level of the samples of such material category
1161 taken during each calendar quarter pursuant to Attachment E-2. Under no
1162 circumstances shall samples taken pursuant to Section 6.02.C be used for
1163 purposes of assessing performance disincentives.

1164 If the Measured Contamination Level for a material category in any quarter
1165 exceeds the applicable maximum Contamination Level in Table 1, Contractor
1166 shall be assessed disincentives in the amounts specified in Attachment I
1167 (Performance Incentives and Disincentives). Contractor shall remit
1168 Contamination-related disincentive payments to SBWMA quarterly, as provided
1169 in Section 9.06.

1170 No disincentive will be assessed for exceeding the maximum Contamination
1171 Level for Single Family Targeted Recyclable Materials during the first six (6)
1172 months of Rate Year One (2011).

1173 The maximum Contamination Level for Single-Family Targeted Recyclable
1174 Materials applicable during Rate Years Two (2012) through Ten (2020) shall be
1175 equal to the arithmetic average of the Measured Contamination Levels calculated
1176 for four (4) quarters of samples of Single-Family Targeted Recyclable Materials
1177 taken pursuant to Attachment E-2 during Rate Year One (2011). (As provided in
1178 Attachment E-2, twelve (12) such samples will be taken in each calendar quarter
1179 and forty eight (48) such samples will be taken each year, unless Contractor
1180 requests and pays for additional samples to be taken pursuant to Attachment E-
1181 2, Section 3.)

1182 **C. Inspecting for Excessive Contamination in Single Loads of Recyclable**
1183 **Materials.**

1184 The Operator will inspect loads of materials delivered to the Shoreway Recycling
1185 and Disposal Center. The Operator may set aside for sampling (i) a load of
1186 Source Separated or Targeted Recyclable Materials that appears to contain
1187 more than fifteen percent (15%) contamination, and (ii) a load of Organic

1188 Materials that appears to exceed the applicable maximum contamination level of
1189 five percent (5%) or ten percent (10%).

1190 When setting aside a load for sampling, the Operator will document the truck
1191 number, the date and time of delivery, and will take a photograph of the load.
1192 The methodology for sampling of single loads is set forth in Attachment E-1.

1193 **D. Supplemental Processing Fee for Excessive Contamination in Salvageable**
1194 **Single Loads of Recyclable Materials.**

1195 1. Material Delivered to MRF. If a load of Source Separated or Targeted
1196 Recyclable Materials is determined based on testing pursuant to Section
1197 6.02.C to contain contamination in excess of the levels specified in Table 2,
1198 but is determined by Operator or SBWMA to be salvageable, Contractor will
1199 be required to pay SBWMA a supplemental processing fee of \$25.00 per ton
1200 for the tons exceeding the maximum contamination level.

1201 2. Material Delivered to Transfer Station. If a load of Organic Materials is
1202 determined based on testing pursuant to Section 6.02.C to contain
1203 contamination in excess of the levels specified in Table 1, but is determined
1204 by Operator or SBWMA to be salvageable, Contractor will be required to pay
1205 SBWMA a supplemental processing fee of \$7.00 per ton for the tons
1206 exceeding the maximum contamination level.

Table 2	
Material Category	Maximum Contamination Level (% by Weight)
Commercial Source Separated or Targeted Recyclable Materials	15%
Single Family Targeted Recyclable Materials	15%

1207
1208 The supplemental processing fees for Source Separated or Targeted Recyclable
1209 Materials and Organic Materials will be adjusted in subsequent years by the
1210 same percentage that the MRF Processing Fee described in Section 7.03 of the
1211 2009 agreement between SBWMA and South Bay Recycling LLC for operation of
1212 the Shoreway Facility is adjusted each year.

1213 **E. Payment of Transportation and Disposal of Excessive Contamination in**
1214 **Unsalvageable Single Loads.**

1215 1. Material Delivered to the MRF. If a load of Source Separated or Targeted
1216 Recyclable Materials is determined based on testing pursuant to Section
1217 6.02.C to contain contamination in excess of the levels specified in Table 2,
1218 and is determined by Operator or SBWMA to be unsalvageable (i.e., the
1219 entire load will be disposed of at the Designated Disposal Site), Contractor
1220 shall reimburse SBWMA for the cost of transportation and disposal of the
1221 weight of the load minus the weight of the maximum contamination level.
1222 For example, if the maximum contamination level is 15% and a 10 Ton load

is determined to contain 30% Contamination, and is unsalvageable, the Contractor will be responsible for the cost of transportation and disposal of 8.5 Tons (e.g., 10 Tons x 85% = 8.5 Tons). The transportation cost shall be the Operator's then-current cost per Ton for delivery of loads of that material to the Designated Disposal Site. The disposal cost shall be the then-current cost per Ton at the Designated Disposal Site.

2. Material Delivered to the Transfer Station. If a load of Organic Materials is determined based on testing pursuant to Section 6.02.C to contain contamination in excess of the levels specified in Table 3, and is determined by Operator or SBWMA to be unsalvageable, (i.e., the entire load will be disposed of at the Designated Disposal Site), Contractor shall reimburse SBWMA for the cost of transportation and disposal of the weight of the load. The transportation cost shall be the Operator's then-current cost per Ton for delivery of loads of that material to the Designated Disposal Site. The disposal cost shall be the then-current cost per Ton at the Designated Disposal Site.

Table 3	
Material Category	Maximum Contamination Level (% by Weight)
MFD and Commercial Plant Materials	5%
Single Family Residential Organic Materials	5%
Commercial Organic Materials	10%

F. Agency Directed Change in Controlling Contamination

If Agency requests or directs Contractor to reduce the number or frequency of non-collection notices, courtesy notices, non-collection events or public education and outreach activities described in Section 6.03 and sampling of individual loads from Agency pursuant to Section 6.02.C thereafter results in the imposition by SBWMA of supplemental processing fees under Section 6.02.D or transportation and disposal reimbursements under Section 6.02.E, Agency shall reimburse Contractor for such payments within thirty (30) days of receiving a request for reimbursement, together with supporting documentation (e.g., reports on sampling, and evidence of imposition of assessment by SBWMA and Contractor's payment to SBWMA).

If Agency has requested or directed Contractor to reduce the number or frequency of non-collection notices, courtesy notices, non-collection events, or public education and outreach activities described in Section 6.03, and Contractor is thereafter assessed disincentives under Section 6.02.B for exceeding a maximum contamination level on a quarterly basis, Agency shall reimburse Contractor for its proportional contribution to the excessive level of contamination. That proportional contribution shall be determined by extrapolating the results of single load sampling of Agency loads performed under Section 6.02.C during the quarter in question to the total amount of tonnage in the specific material category for which Contractor has been

1261 assessed a disincentive. For example, samples of Commercial Recyclable
1262 Materials delivered from Agency during a quarter average 10% Contamination
1263 (i.e., in excess of the 8% maximum contamination level), the Agency will
1264 reimburse Contractor for an amount calculated as follows:

1265
$$[\$ \text{ per Ton disincentive payment}] \times [\text{total Tons of Commercial}$$

1266
$$\text{Recyclable Material delivered from Agency during quarter}] \times 2\%$$

1267
$$[10\% - 8\%]$$

1268 Agency shall pay Contractor the amount due within thirty (30) days of receiving a
1269 request for reimbursement, together with supporting documentation (e.g., reports
1270 on sampling, reports on total tonnage of material in relevant category delivered
1271 from Agency, and evidence of assessment of disincentive by SBWMA and
1272 Contractor's payment to SBWMA).

1273 **6.03 CONTRACTOR METHODS OF CONTROLLING CONTAMINATION**

1274 **A. General.** Contractor shall assist in controlling Contamination levels by helping to
1275 educate Customers on acceptable and non-acceptable materials, by monitoring
1276 the contents of Collection Containers and by refusing to Collect Containers of
1277 Targeted Recyclable Materials, Plant Materials and Organic Materials that
1278 appear to exceed the maximum contamination levels in Section 6.02 Table 1, all
1279 as and to the extent set forth in this Section 6.03.

1280 Drivers that dismount from Collection vehicles in order to empty Containers shall
1281 lift the Container lid and observe the contents. If Contamination appears to be
1282 present in excess of the applicable maximum contamination level, the driver will
1283 not empty the Container, but will instead affix a "non-collection notice." The non-
1284 collection notice shall (i) inform the Customer of the reason(s) for non-collection,
1285 (ii) include the date and time the notice was left, and (iii) describe the premium
1286 charge to Customer for Contractor to return and Collect the Container after
1287 Customer removes the contamination. The driver will document the non-
1288 collection event and a customer service representative will update the
1289 Customer's computerized account record to note the event. Upon request from
1290 Customer, Contractor shall Collect Carts that received non-collection notices
1291 within one (1) Business Day of Customer's request if the request is made at least
1292 two (2) Business Days prior to the regularly scheduled Collection day. Contractor
1293 shall be entitled to compensation for the extra Collection service event based on
1294 the costs specified in Attachment Q only if Contractor notifies Customer of the
1295 premium charge for this service at the time the request is made by Customer.

1296 Drivers providing automated collection service shall observe, via the hopper
1297 video camera and monitor system, the contents of the Cart as it is being emptied
1298 into the vehicle. If the driver observes Contamination in excess of the applicable
1299 maximum contamination level, the driver shall affix a "courtesy notice" to the
1300 emptied Cart. The courtesy notice shall (i) inform the Customer of the observed
1301 presence of unacceptable levels of Contamination, (ii) include the date and time
1302 the notice was left, (iii) describe the premium charge to Customer for Contractor
1303 to return and Collect contaminated Containers after Customer removes the
1304 contamination. The next day on which that Customer is to receive service, the
1305 driver shall dismount the Collection vehicle, lift the lid of the Cart and visually

1306 inspect the contents. If the driver determines that the Cart again contains excess
1307 Contamination, the Cart will not be collected. Instead, the driver will record the
1308 non-collection event in the on-board computer system and shall affix a non-
1309 collection notice to the Cart.

1310 If a driver observes Hazardous Materials in an uncollected Container, the driver
1311 shall record that observation in the on-board computer system and also inform
1312 the route supervisor. The route supervisor shall investigate and initiate
1313 applicable action within one (1) Business Day.

1314 Whenever a Container at a Commercial or a Multi-Family Dwelling complex
1315 Customer is not collected, Contractor shall contact the Customer on the
1316 scheduled Collection Day by telephone to explain why the Container was not
1317 collected. Whenever a Container is not Collected because of excess
1318 Contamination, a customer representative will contact the Customer to discuss,
1319 and encourage the Customer to adopt, proper materials-preparation and
1320 separation procedures.

1321 **B. Periodic Route Audits.** Contractor shall conduct a route audit of any route from
1322 which two (2) or more loads are found based on testing pursuant to Section
1323 6.02.C to exceed the applicable maximum contamination levels set forth in
1324 Section 6.02 Table 1 during any thirty (30) day period, as well as any other route
1325 whose loads consistently exceed the maximum contamination levels.

1326 When a route is identified as requiring a route audit, Contractor will provide a
1327 route auditor to precede the Collection vehicle and physically examine the
1328 contents of each Container or Cart prior to emptying. The route auditor shall affix
1329 non-collection notices to at least ninety percent (90%) of all Containers that
1330 contain Contamination in excess of applicable maximum contamination levels.

1331 Contractor shall submit a monthly route audit report within five (5) Business Days
1332 after the end of each route audit that has been conducted during the previous
1333 month. The report shall describe in detail Contractor's conduct of the audit, as
1334 well as the public education and outreach activities that it employed to encourage
1335 and facilitate changes in Customer behavior that will reduce Customers
1336 discarding Contamination in Containers designated for Recyclable Materials or
1337 Organic Materials.

1338 The audit of a route shall continue for a period of four (4) consecutive weeks after
1339 the route has been identified as requiring an audit under the first paragraph of
1340 this Section 6.03.B.

1341 **6.04 PROCESSING OF OTHER MATERIALS**

1342 Upon request by Agency, and with the prior approval of SBWMA, the Contractor shall be
1343 responsible for, or shall arrange for, processing, Recycling, and/or reuse of Bulky Items,
1344 Major Appliances, and Specialty Recyclable or Reusable Materials (excluding
1345 Construction and Demolition Debris) Collected pursuant to this Agreement.

1346

ARTICLE 7

OTHER SERVICES

1347 7.01 CUSTOMER BILLING

1348 A. **Billing.** Agency shall be responsible for Billing Single-Family Customer's the base
1349 monthly Rate for services provided by Contractor through the County of San Mateo
1350 property tax collection system. Contractor shall be responsible for Billing Single-
1351 Family Customer's for the cost of services provided by Contractor to each individual
1352 Customer exceeding the base monthly Rate collected by Agency. Contractor shall
1353 be responsible for Billing Commercial and Multi-Family Dwelling Customers.

1354 1. Frequency. Contractor shall Bill Single-Family Customers quarterly in amounts
1355 equal to the cost for services provided in excess of the base monthly Rate.
1356 Contractor shall issue Bills, as needed for each Customer, for each three (3)
1357 month period (i.e., using a quarterly format), unless the Agency requests a
1358 more frequent Billing interval in which case the Contractor shall be entitled to a
1359 reasonable adjustment in its compensation related to the additional costs for
1360 the Agency-directed change in Billing frequency. Contractor shall Bill Multi-
1361 Family Dwelling and Commercial Customers monthly in arrears in the amount
1362 equal to Customers' subscribed Rate for service for a one (1) month period.

1363 2. Automated Billing and Payment. In an effort to reduce paper waste, Contractor
1364 shall make available to all Customers an automated Billing and payment
1365 system. This system should be website-based and allow Customers to view
1366 and pay Bills through Contractor's website. Through the Contractor's website,
1367 Customers may request to cease paper Billing and receive all bills through e-
1368 mail and/or Contractor's website. Contractor will ensure that the electronic
1369 Billing and payment website conforms to industry-standard practices for
1370 electronic commerce security. However, Contractor must ensure that these
1371 Customers are compiled in a list to ensure that Billing inserts are mailed
1372 directly.

1373 3. Bill Format. Contractor shall Bill Customers using a Bill format (i.e., post- card
1374 Billing format or conventional envelope/insert) approved by the Agency, if
1375 Customer does not opt-out by requesting use of the automated Billing and
1376 payment system. Contractor shall promote the website-based Billing and
1377 payment system on all paper Bills sent to Customers. Agency shall have the
1378 right to revise the Billing format (e.g., size, font, frequency, etc.) and to itemize
1379 certain charges and to review the Billing procedures. Contractor shall be
1380 compensated for any cost increases that result from the Agency-directed
1381 change to the Billing format.

1382 4. Records. Contractor shall maintain, for inspection by the Agency, copies of
1383 Customer Billings and receipts, in chronological order, for a period of five (5)
1384 years after the date of service. Contractor shall maintain those records in
1385 electronic format. SBWMA and Agency staff or representatives shall be given
1386 access to such records upon one (1) Business Day notice. Contractor shall be
1387 allowed to access Agency Billing systems on an appointment basis and such
1388 review shall not be unreasonably withheld by Agency.

1389 5. Rates. Agency shall establish, by resolution, Rates for the types of service
1390 provided as described in Section 11.07. Contractor shall Bill and collect at
1391 those Rates.

- 1392 6. Service Stops. Contractor shall allow Customers to suspend service and
1393 Billings when the Premises are unoccupied. Single-Family Residential
1394 Customers may suspend service for a minimum of one (1) Service Day on a
1395 maximum of three (3) occasions each Rate Year. Commercial Customers may
1396 suspend service for a minimum of two (2) Service Days on a maximum of six
1397 (6) occasions each Rate Year. Multi-Family Customers may not suspend
1398 service without prior written approval from Agency. The Billings for both
1399 Residential and Commercial Customers shall be prorated by Contractor in
1400 accordance with Customer's requests to suspend service.
- 1401 B. **Delinquent Payment**. Residential Customers will be considered delinquent sixty
1402 (60) Days after start of the quarter in which the services are provided and Multi-
1403 Family Dwelling and Commercial Customers will be considered delinquent thirty
1404 (30) Days after payment is due. Contractor shall address the issue of delinquent
1405 payment as specified in Attachment H.
- 1406 C. **Local Office**. Contractor shall maintain a local office in the Shoreway Recycling
1407 and Disposal Center for acceptance of in-person payment of bills. At the local
1408 office, Contractor shall accept as payment personal checks, money orders, cashiers
1409 checks, and credit cards. The local office shall be open for business from 8:00 a.m.
1410 until 5:00 p.m. Monday through Friday, exclusive of Holidays.
- 1411 D. **Contractor Revenue Collection**. Contractor shall collect revenue for services
1412 described herein on behalf of the Agency. Revenues collected on behalf of the
1413 Agency or SBWMA shall be handled as described in Article 11 of this Agreement.
- 1414 E. **Review of Billings**. Contractor shall review its Billings to Customers, issued
1415 pursuant to Section 7.01.A. The purpose of the review is to determine that the
1416 amount which Contractor is Billing each Customer is correct in terms of the level of
1417 service (i.e., frequency of Collection, size of Container, location of Container) being
1418 provided to such Customer by Contractor. Contractor shall review Customer
1419 accounts not less than once every three (3) calendar years for each Commercial,
1420 Multi-Family Dwelling and SFD Customer, unless Agency shall direct Contractor to
1421 do so more frequently. Contractor shall submit to Agency a written report of the
1422 status of its review annually no later than forty-five (45) Days after the end of each
1423 calendar year. The intent of this Section is for Agency to receive reports on an
1424 annual basis for one-third (1/3) of all Customer accounts, and for all Customer
1425 accounts to be reviewed every third year of the Agreement. The scope of the
1426 review and the reviewer's work plan shall be submitted to Agency for approval no
1427 later than six (6) months before the submission of the first report.
- 1428 F. **Agency or SBWMA Billing Review**. Contractor acknowledges that Agency or
1429 SBWMA may perform, or cause to be performed, Billing reviews periodically.
1430 Contractor agrees to participate and cooperate with SBWMA and Agency and its
1431 agents to accomplish these reviews and conduct any data collection and report
1432 preparation that may be requested. The Contractor's full cooperation with these
1433 reviews may include, but is not limited to: allowing Agency or SBWMA staff or
1434 consultants to ride along with drivers in Collection vehicles during daily Collection
1435 operations; providing for interviews of personnel at all levels, with or without
1436 management oversight; providing reporting related to franchised operations
1437 available through Contractor's automated systems; and adjusting routing, public

1438 information, outreach, or program availability based upon the recommendations of
1439 the audit, if approved by the SBWMA or Agency.

1440 G. **Privacy of Customer Information.** Contractor shall not distribute or sell Customer,
1441 Owner, or Occupant information such as names, addresses, and telephone
1442 numbers to other Persons with the exception of distribution to the Agency, SBWMA,
1443 or its agents for reporting and contract compliance purposes and distribution to
1444 Contractor's Billing agent (if Contractor uses a Related Party Entity or Subcontractor
1445 for Billing purposes).

1446 **7.02 CUSTOMER SERVICE**

1447 Contractor is responsible for ensuring that all staff and Customer Service
1448 representatives (CSR) maintain a professional and courteous demeanor when in contact
1449 with Agency, SBWMA and the public. Contractor shall be responsible for all employee
1450 interactions with Customers, SBWMA, and Agency staff. Contractor is required to ensure
1451 that its Customers are consistently treated courteously and are presented with timely,
1452 responsive and thorough solutions to problems and requests for information. Contractor
1453 shall meet monthly to discuss compliance with the Customer Service standards
1454 described herein if requested by Agency.

1455 **A. Local Office**

1456 Contractor shall operate a local office at the Shoreway Recycling and Disposal
1457 Center, located at 225 Shoreway Road, San Carlos. Office hours shall be at a
1458 minimum, from 8:00 a.m. to 5:00 p.m., Monday through Friday, exclusive of
1459 Holidays. Contractor shall be responsible for ensuring that a qualified
1460 representative is available at the local office during office hours to communicate
1461 with the public and accept Bill payments from Customers. Contractor shall offer bi-
1462 lingual customer service at the local office by employing CSR's with English and
1463 Spanish language capabilities. The local office and customer service telephone
1464 number(s) shall either be a local or toll free call.

1465 Contractor's telephone system shall adequately handle the volume of calls typically
1466 experienced on the busiest days. Contractor shall have a company representative,
1467 an answering service, or voice-mail system available for calls received during non-
1468 business hours and Holidays.

1469 Contractor shall employ sufficient customer service staff and management practices
1470 to ensure that the Average Speed of Answer is equal to or less than thirty (30)
1471 seconds and the maximum Hold Time is ninety (90) seconds or less.

1472 Contractor will be required to track all informational requests so that appropriate
1473 public outreach materials can be designed to target commonly asked questions.
1474 Contractor shall be responsible for promoting use of the Contractor's website for
1475 scheduling of On-Call Collection Service events and obtaining answers related to
1476 common informational requests through: (i) public education and promotion
1477 materials; and (ii) a recorded message Customers will hear while on-hold with the
1478 customer service department.

1479 Contractor shall maintain and publicize an e-mail address whereby Customers can
1480 communicate with the Contractor's customer service staff. Contractor shall monitor
1481 the email at least once per Business Day, and ensure that a twenty-four (24) hour
1482 response time is maintained.

1483 **B. Customer Service Call Center and Staffing**

1484 Contractor is required to operate a Customer service call center that will serve as
1485 the primary telephone point of contact and information for all services. The
1486 Customer service call center hotline is required to be staffed live during regular
1487 business hours (i.e., Monday through Friday 8:00 a.m. to 5:00 p.m.) by sixteen (16)
1488 customer service representatives (includes one (1) receptionist who performs
1489 customer service activities). In addition, the Customer service call center will offer
1490 multi-lingual Customer service by employing a minimum of two (2) bilingual
1491 customer service representatives with English and Spanish language capabilities,
1492 and contracting with a service to provide bilingual capacity for other languages
1493 including Cantonese, Mandarin, and Vietnamese. Contractor shall provide
1494 immediate access to interpreters for over one-hundred and seventy-five (175)
1495 languages through the use of Language Line service, or a similar service.

1496 **C. Website**

1497 Contractor shall maintain and publicize an up-to-date website whereby Customers
1498 can conduct business with Contractor in both English and Spanish. Contractor is
1499 required to update the Website monthly, and more frequently if necessary. At a
1500 minimum, the website shall:

- 1501 1. Allow Customers to view and pay Bills issued by Contractor, as required in
1502 Section 7.01;
- 1503 2. Allow Customers to schedule services such as, but not limited to, On-Call
1504 Collection service events, On-Call Bulky Item Collections, extra Collections,
1505 service changes, temporary Drop Box service, service terminations, and
1506 service stops;
- 1507 3. Provide answers to frequently asked questions including, but not limited to:
1508 proper Container set-out instructions; list of acceptable Recyclable and Organic
1509 Materials; Collection Days (in response to Customer input of service address);
1510 Billing issues, customer service telephone and e-mail contact information; and
1511 the Designated Transfer and Processing Site hours, directions, and acceptable
1512 materials;
- 1513 4. Provide complete list of Agency-approved Rates for all Customers;
- 1514 5. Allow Customers to file Complaints and receive from Contractor e-mail
1515 responses to Complaints;
- 1516 6. Provide a link to enable Customers to email Contractor; and
- 1517 7. Maintain and produce visitor logs and reporting including, but not limited to,
1518 website and individual page visitation, number of web-based Bill payments per
1519 month, number of website-submitted Complaints per month, and individual and
1520 summary Customer Complaint and resolution reporting.

1521 **D. Customer Information System Requirements**

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

1. Date and time of Customer correspondence or contact with Contractor (e.g., phone call, email)
2. Date and time response was provided
3. Date and time resolution was provided
4. Customer's name and contact information (multiple phone numbers and email addresses)
5. Account address
6. Service address
7. Occupant address
8. Service location information including:
 - a. Number of units
 - b. Number, size and type of Solid Waste, Organic Materials, and Targeted Recyclable Materials Containers
 - c. Collection Service Day
 - d. Route number
 - e. Backyard service status
 - f. Special Handling Service status
 - g. Bulky Item Collection history (e.g., number of annual services performed, date requested, date provided)
9. Service issue, Complaint or Inquiry
10. Time frame stipulated for Contractor to resolve issue
11. Description of Contractor's resolution of service issue or Complaint, or response to Inquiry
12. Date and time that Contractor's resolution took place
13. CSR or Contractor's employee identification code of employee inputting the Complaint or inquiry
14. CSR or Contractor's employee identification code of employee inputting the resolution

The system shall be capable of:

1. Providing real-time access to complete Customer contact history from the commencement of service in 2011;
2. Providing Agency and SBWMA the capacity to submit work orders (e.g., specifying the Inquiry, Complaint or request for service) electronically directly to Contractor using Contractor's web-based software.
3. Documenting non-Collection events including problem description and resolution;
4. Tracking non-Collection events necessary to fulfill the requirements in Section 8.02(F); and
5. Fulfilling Customer service reporting requirements as specified in Article 9.

- 1566 E. **Monthly Meetings with Agency.** If requested, Contractor shall meet monthly with
1567 Agency to discuss compliance with the Customer service standards specified in this
1568 Section 7.02, Attachment I (Performance Incentives and Disincentives) and
1569 Attachment J (Liquidated Damages).
- 1570 F. **Quality Assurance Program.** Each month Contractor's customer service
1571 representatives will contact by telephone a minimum of two-hundred (200)
1572 Customers within the SBWMA Service Area to inquire about their satisfaction with
1573 Contractor's Collection services. The Customers contacted will be (i) representative
1574 of different Service Sectors, (ii) distributed among Member Agencies, and (iii)
1575 randomly selected. Customer service representatives shall ask about (i) Customers'
1576 satisfaction with Solid Waste and Recyclable Materials Collection services, (ii) the
1577 number of Collection Containers the Customer has and the frequency of collections,
1578 in order to ensure that the Customer has subscribed to the appropriate level of
1579 Collection service, and (iii) Customer's suggestions for opportunities to improve
1580 service. The quality assurance program reporting requirements are specified in
1581 subsection 9.05.G.
- 1582 G. **Preprogrammed Call Transfer.** Contractor shall maintain the ability to provide
1583 preprogrammed call transfer service to Agency. With this communications feature
1584 in place, when a Customer calls Contractor about an issue or concern that pertains
1585 to Agency but is not related to Collection services provided by Contractor,
1586 Contractor shall immediately transfer the phone call to the offices of Agency
1587 through a dedicated telephone line. The call transfer shall be seamless, and
1588 appear to the Customer as if Contractor were transferring the call internally.
- 1589 J. **Customer Service Operations Plan.** Contractor shall annually submit its
1590 Customer service operations plan. The Customer service operations plan shall
1591 describe how Contractor uses its Norcal or Recology customer relationship
1592 management system (NCRM), linked to on-board GPS tracking system, to share
1593 real-time information between Customers, drivers, customer service
1594 representatives, managers, and SBWMA and Agency staff. The plan will provide
1595 details on how Contractor automatically detects and records information on each
1596 Customer pickup, real-time transmission of service extras, blocked cars, safety
1597 notes, and exceptions to service.

1598 **7.03 PUBLIC EDUCATION AND PROMOTION**

1599 Contractor and Agency agree that all public education activities will be a collaborative
1600 effort among the SBWMA, Agency, and Contractor. Contractor shall be responsible for
1601 ensuring that its Customers consistently receive a high level of service and
1602 responsiveness.

- 1603 A. **General.** Contractor acknowledges and agrees that education and public
1604 awareness are critical and essential elements of any effort to achieve diversion.
1605 Contractor shall educate Residential and Commercial Customers on the following:
1606 (i) the benefits of source reduction, reuse, Recycling, and Composting and related
1607 program opportunities; (ii) proper handling of Hazardous Waste; (iii) specific
1608 services offered by the Contractor; and (iv) Rates for Collection services. The
1609 public education program shall include distribution of public education materials at
1610 the commencement of the Agreement; when Collection services are changed during

1611 the Term; and when new Collection services are implemented during the Term. In
1612 addition, the public education program shall include on-going education activities
1613 throughout the Term. Educational materials that Contractor must pay for, produce
1614 and distribute shall include, but not be limited to, those listed in Section 7.03 (E).

1615 B. **Annual Public Education Plan.** On or before September 1st of each Rate Year,
1616 Contractor shall submit to Agency and SBWMA a public education plan outlining its
1617 public education activities for the coming Rate Year. Agency and SBWMA shall
1618 review and approve the plan or request modifications to the plan by October 1.
1619 Contractor shall revise and resubmit the plan to Agency and SBWMA by October
1620 15. If Agency and SBWMA determine the plan has not been adequately revised,
1621 Contractor shall ensure its public education manager is available to meet and confer
1622 with Agency and SBWMA to ensure the plan is finalized by November 1. The plan
1623 shall list each public education piece or activity (e.g., newsletters, Bill inserts, flyers,
1624 newspaper advertisements, website enhancements, etc.) to be prepared, the
1625 purpose of the piece, the key subject(s) to be covered, and the anticipated date of
1626 issuance. In addition, the plan shall list all Events the Contractor plans to attend
1627 and the public education it intends to provide (e.g., exhibit at Earth Day Event,
1628 Chamber of Commerce meetings, etc.). During the Rate Year, Contractor shall
1629 complete all elements and tasks specified in the annual public education plan in
1630 accordance with the schedule presented in the plan unless the Agency or SBWMA
1631 has provided written approval to waive or postpone a requirement.

1632 C. **Content and Production Requirements.** Prior to preparing public education
1633 materials, Contractor shall discuss with the Agency and SBWMA its general
1634 approach to preparing the materials and shall determine if the Agency has any
1635 Agency-specific guidelines to be followed and if the Agency wants the Contractor to
1636 work with templates prepared by SBWMA or others.

1637 The public education materials shall emphasize use of visual/graphic images as
1638 much as practical. Furthermore, the materials shall include a clear listing of
1639 program participation parameters and targeted materials.

1640 All public education materials shall be printed on paper containing the highest levels
1641 of recycled-content material reasonably practical.

1642 The Contractor shall develop a multi-lingual approach to preparing all public
1643 education materials, and all public education materials shall be provided in both
1644 English and Spanish.

1645 D. **SBWMA and Agency Responsibilities**

1646 SBWMA shall take primary responsibility for implementation of the public education
1647 and outreach campaign that will be used to announce changes in collection
1648 services. SBWMA will fund the new services kick-off public education campaign.
1649 Development of the public education and promotion strategy and implementation
1650 schedule will be a collaborative process among Contractor, SBWMA, and Agency.

1651 The SBWMA and Agency's responsibilities with regard to public education and
1652 promotion activities shall include, but not be limited to, the following:

- 1653 1. Provision of public education to SFD, MFD, Commercial and Agency Facility
1654 Customers with a broad focus on waste prevention, reuse, and Recycling.
1655 2. Preparation and distribution of a quarterly newsletter for all SFD and MFD
1656 Occupants.
1657 3. Preparation and distribution of Multi-Family Dwelling toolkits for MFD complex
1658 Owners and managers.
1659 4. Purchase of desk-side and other interior Targeted Recyclable Materials and
1660 Organic Materials receptacles for Commercial Customers.
1661 5. Purchase of Recycling Tote-Bags for distribution to MFD complexes.
1662 6. Preparation and distribution of an electronic newsletter for the Commercial
1663 sector and MFD complex managers.
1664 7. Preparation and provision of outreach materials to schools.
1665 8. Development and maintenance of SBWMA website.
1666 9. Production of decals for Used Motor Oil jugs.
1667 10. Upon request from Agency, produce Household Battery and Cell Phone
1668 Recycling bags.

1669 **E. Contractor Responsibilities**

1670 Contractor will be required to provide the following services:

- 1671 1. Distribute public education and promotion materials during roll-out of the new
1672 Collection services program. This will entail distributing program literature and
1673 other promotional items with delivery of the Carts, Kitchen Pails and Bins to all
1674 Customers at inception of the new program.
1675 2. Actively collaborate with Agency and SBWMA on the public education strategy
1676 and development of materials to support roll-out of new Collection services.
1677 3. Distribute public education and promotion materials to new Customers during
1678 the Term.
1679 4. Provide public education door hangers, posters and other promotional
1680 materials to Multi-Family Dwelling Customers at inception of new services and
1681 during the Term.
1682 5. Deliver Recycling Tote-Bags to MFD complexes.
1683 6. Deliver desk-side and other interior Targeted Recyclable Materials and Organic
1684 Materials receptacles for Commercial Customers and Agency Facilities.
1685 7. Produce and deliver non-collection notices. The format and content of the non-
1686 collection notices must be approved in advance by Agency and SBWMA.
1687 8. Produce and affix Targeted Recyclable Materials, Organic Materials and Solid
1688 Waste cart hangers to corresponding Carts. The format and content of the cart
1689 hangers must be approved in advance by Agency and SBWMA.
1690 9. Affix Used Motor Oil Recycling decals to jugs for inclusion in Used Motor Oil
1691 Recycling kits.
1692 10. Assemble and deliver Used Motor Oil Recycling kits upon request from SFD
1693 Customers. Kits must be provided to Customer within five (5) Business Days of
1694 Customer request.

11. If approved by Agency, deliver Household Battery and Cell Phone Recycling bags upon request from Customers. Bags must be provided to Customer within five (5) Business Days of Customer request.
12. Staff a booth at local public events and distribute promotional and educational materials.
13. Arrange student tours at the SRDC (in coordination with Operator); make classroom presentations upon request; provide school activities for students about the 4Rs; and provide "rainy day" DVDs to schools that educate children about waste reduction and preserving the environment.
14. Conduct presentations at community meetings, service clubs, senior centers and neighborhood associations.
15. Promote recycling and organics collection programs on the sides of Collection and Route Supervisors' vehicles. These advertising campaigns must be approved in advance by Agency and SBWMA.
16. Each Rate Year insert with its bills, up to twelve (12) Solid Waste Bill inserts produced by SBWMA or Agency. A total of nine (9) Bill inserts are specified below.
- If Agency has specified a post card Bill format, the notices described as "Bill inserts" shall be separately mailed by Contractor. In addition, if Bills (in whatever format) are mailed at intervals that do not accommodate the timely distribution of the specified notices, notices will be separately mailed as necessary by Contractor.
17. Each Rate Year Contractor shall develop, produce and distribute the following public education and promotion materials:
- a. Annual On-Call Collection Services Collection notice (one (1) SFD Solid Waste Bill insert).
 - b. Annual Holiday Tree Recycling notice (separate for SFD and MFD - two (2) Solid Waste Bill inserts).
 - c. Annual "Reduce Holiday Packaging" notice (one (1) SFD and MFD Solid Waste Bill insert).
 - d. Twice annual compost giveaway notice (two (2) SFD and MFD Solid Waste Bill inserts).
 - e. Twice annual Commercial Recycling notice (two (2) Commercial Solid Waste Bill inserts).
 - f. Annual Commercial Recycling awards notice (one (1) Commercial Solid Waste Bill insert).
 - g. Non-collection notice (set-out correction notice)..
13. Contractor's outreach and education material will place a strong emphasis on Recycling and reuse, encouraging Customers to take advantage of donation opportunities offered by local non-profit organizations such as the Society of St. Vincent de Paul, Goodwill Industries, and the Salvation Army. In addition, Contractor will promote other resources for reuse, such as the Freecycle Network™ an online resource for the free and local exchange of goods, the Resource Area for Teachers (RAFT), local schools, and other community organizations that are in need of reusable goods.

1740 14. Contractor shall develop and distribute to all Customers a professionally
1741 produced DVD. Contractor shall work collaboratively with the SBWMA to
1742 produce a DVD using local settings, that illustrates and explains the Recyclable
1743 Materials, Organic Materials and Solid Waste Collection services provided by
1744 Contractor and Customer participation protocols and other pertinent
1745 sustainability-related information.

1746 15. Upon request by Agency, Contractor shall promote its services to Customers
1747 using Agency's email distribution list or an email distribution list authorized by
1748 Agency.

1749 **F. Staffing**

1750 Contractor will have on staff a full-time management level employee who will serve
1751 as the public education manager. Contractor must notify Agency and SBWMA
1752 within two (2) Business Days if this individual resigns or is terminated from
1753 employment. Contractor shall provide to Agency and SBWMA a current job
1754 description and resume of the public education manager.

1755 **G. Meeting Requirements**

1756 Upon request from Agency or SBWMA, the public education manager is required to
1757 meet quarterly, and more frequently if necessary, with Agency and/or SBWMA staff
1758 to review public education and promotion activities. In addition, the public education
1759 manager will be required to represent Contractor at all monthly SBWMA Board of
1760 Director meetings.

1761 **H. Agency Rights**

1762 Contractor acknowledges that the public education and promotion activities listed
1763 are critical to the success of Agency's diversion performance relative to the Act. As
1764 such, Contractor acknowledges Agency's rights to the following:

- 1765 1. Contractor shall make available to Agency and SBWMA all public educational
1766 materials used by Contractor, which Agency and SBWMA shall approve prior to
1767 their use;
- 1768 2. Agency and SBWMA shall retain the right to modify, expand, or reduce the
1769 minimum public education requirements;
- 1770 3. Agency may require Contractor to work with a public education consultant
1771 selected by Agency or the SBWMA;
- 1772 4. Agency may perform, or request that the SBWMA perform on its behalf, the
1773 public education efforts assigned to the Contractor; and
- 1774 5. Agency or SBWMA may provide additional, supplemental public education
1775 materials as it deems appropriate.

1776 **I. Reporting Requirements**

1777 Contractor is required to prepare quarterly and annual public education activity
1778 status reports. The annual reports will in part summarize the prior twelve (12)
1779 months and also contain adjustments to current and ongoing event calendars.

1780 J. **Service Notice**

1781 Contractor shall periodically prepare and distribute to each Customer a notice listing
1782 Contractor's Rates for standard Collection services, Rates for other services, annual
1783 Holiday schedule, and a general summary of services required under this
1784 Agreement to be provided Customers and optional services which may be furnished
1785 by Contractor. Such notice shall be approved by the Agency prior to distribution.

1786 **7.04 COMMERCIAL RECYCLING PROMOTION PROGRAM**

1787 A. **Commercial Recycling Promotion Program Staff.** Contractor shall maintain a
1788 Commercial Recycling promotion program staff that will be primarily responsible for
1789 supporting Commercial and Multi-Family Dwelling Accounts and Agency Facilities
1790 Recycling-related Collection services. The Commercial Recycling promotion staff for
1791 the SBWMA Service Area shall consist of a minimum of the following full-time staff:
1792 eight (8) "sales" representatives (recycling coordinators), two (2) diversion auditors
1793 and one (1) supervisor (commercial recycling manager), as specified in Attachment
1794 O.

1795 B. **Signs and Placards.** Contractor shall be responsible for preparing, distributing,
1796 and posting signs at Commercial Collection Premises that promote Targeted
1797 Recyclable Materials and Organic Materials Collection services, describe the
1798 program requirements, and identify allowable and prohibited types of materials for
1799 Collection. At a minimum, the signs or placards shall be durable and weather
1800 resistant and affixed in the Container areas. Upon request from Customer,
1801 Contractor shall provide signs and Container labeling in a second language such
1802 as, but not limited to, Spanish. Within ten (10) Business Days of a Customer's
1803 request, Contractor shall provide extra signs for use in areas such as employee
1804 training areas, break rooms, kitchens, and janitorial areas at Commercial Premises.

1805 C. **Community Events.** At the direction of Agency or SBMWA, Contractor shall
1806 participate in and promote diversion techniques at community events and local
1807 activities. The events requiring Contractor assistance are not limited to the list of
1808 Agency-sponsored or other events contained in Attachment C. Participation
1809 includes providing educational and public outreach information and promotional
1810 giveaways in an effort to promote the Agency's waste reduction and Recycling
1811 program goals.

1812 D. **Notification to Commercial Customers.** Immediately upon request from a new or
1813 current Customer for new or changes in service, Contractor shall notify Customer by
1814 phone or email of the Targeted Recyclable Materials and Organic Materials
1815 Collection services offered by Contractor. Such notification shall be provided in
1816 English and Spanish and shall be provided prior to finalizing a Customer's request
1817 for a subscription to new service(s).

1818 E. **Targeted Commercial Recycling Promotion.** Contractor shall provide full on-site
1819 waste assessment and technical assistance to, at a minimum, one-hundred (100) of
1820 Agency's largest Commercial Generators (based on weekly Solid Waste
1821 generation) annually to assist in maximizing diversion. For all other Commercial
1822 Generators, Contractor shall provide technical assistance as needed or requested
1823 and visual on-site Collection Container assessments at least once every three (3)

years. Contractor shall document the site assessments, the date of the assessment, the Person contacted, the Solid Waste, Source Separated or Targeted Recyclable Materials, and Organic Materials service levels at the time of the assessment, and recommended changes to service level(s). Contractor shall submit results of site assessments monthly, or upon request, provide copies of assessment data and recommendations for individual site assessments.

- F. **Enclosure Specifications.** Contractor shall work with the Agency to develop standard specifications for Collection Container enclosures at Multi-Family Residential Complexes and Commercial Premises to ensure that Container enclosures have adequate space and suitable configuration to allow the Contractor to safely and efficiently service the Containers. The enclosure specifications shall require provision of adequate space for Solid Waste, Targeted Recyclable Materials, and Organic Materials Collection Containers. Contractor shall provide the enclosure specifications to the Agency on or before the Effective Date and shall update as frequently as needed or as requested by Agency.

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

1. Adequacy of the Container enclosure space to store Containers for the anticipated volume of Solid Waste, Targeted Recyclable Materials, and Organic Materials generated by a development of the size and purpose contemplated;
2. Adequacy of Container enclosure space to store Containers for Solid Waste, Targeted Recyclable Materials, and Organic Materials in a fashion that allows for the greatest possible diversion of materials; and,
3. Adequacy and accessibility of the Container enclosure space for Contractor to safely and efficiently service all Containers in the contemplated service locations taking into account the dimensions of the enclosure space, the access road dimensions, parking arrangements, pedestrian traffic, change in elevation, other site considerations, and Collection vehicle capabilities.

- H. **Reporting.** Contractor shall prepare and submit reports related to the Commercial Recycling promotion program as provided in Article 9.

- I. **Mandatory Commercial Recycling Assistance to Agency.** In the event Agency adopts a policy or strategy to encourage or require Recycling at Commercial and Multi-Family Dwelling Customers, Contractor shall assist Agency and SBWMA with implementing the policy or strategy. Contractor shall be required to provide Agency with prompt notification of Customers that do not comply with the policy or strategy based on the observations of Contractor's employees. Contractor shall assist the

Agency and SBWMA with collecting related data from Commercial and Multi-Family Dwelling Customers and facilitating outreach and education programs focusing on encouraging participation by these Customers in the mandatory Recycling policy or strategy. Upon request from Agency, Contractor shall modify its protocol regarding use of non-collection notices pursuant to subsection 8.02.F to include Solid Waste Containers, in order to assist with implementing Agency's mandatory Commercial Recycling policy or strategy.

7.05 MULTI-FAMILY RECYCLING PROMOTION

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

1. Site Assessments. Contractor shall meet in person with Owner or property manager to explain the Single-Stream Targeted Recyclable Materials Collection program and conduct an on-site assessment of Multi-Family Residential Complexes containing twenty (20) or more Residential units to determine the appropriate number and type of Solid Waste and Recyclable Materials Containers and the frequency of Collection. Contractor shall provide Containers for Single-Stream Targeted Recyclable Materials or Source Separated Targeted Recyclable Materials such as newspaper, cardboard, mixed paper, glass, aluminum, etc. depending on the needs of the Multi-Family Residential Complex. If practical, Contractor shall locate the Solid Waste and Recyclable Materials Containers in the same area so tenants carry materials to one location. Contractor shall also offer Recyclable Materials Carts for use in the mail area of the Premises. The site assessment shall be conducted by Contractor when Targeted Recyclable Materials Collection services are initially provided at a Multi-Family Residential Complex, and once every three (3) years thereafter.
2. Service Level Adjustments. Within five (5) Business Days of completing the site assessment or receiving a request from a Customer, Contractor shall adjust the Customer's service level by providing any Solid Waste or Recyclable Materials Containers needed for change in service, removing unneeded Containers, and revising the billing system to reflect the monthly Rate for the new service level. At the time new Containers are delivered or existing Containers are removed, the Contractor shall confirm that all Containers are properly labeled and shall provide public education signage for the Container areas and extra signs for public and common areas such as mail and laundry rooms, etc.
3. Preparation and Distribution of Public Education Materials. Contractor shall provide Owner or property manager with education materials developed by Agency or SBWMA which describe the requirements of the Recyclable Materials Collection program, including flyers, door hangers and Recycling

1917 Tote-Bags for distribution to tenants, signage for common areas such as mail
1918 rooms and laundry rooms, and move-in kits for new tenants.

1919 B. **Notification to Multi-Family Dwelling Customers.** Upon request from a new or
1920 current Customer for new or changes in service, Contractor shall notify the
1921 Customer by mail of the Targeted Recyclable Materials and Organic Materials
1922 Collection services offered by Contractor. Such notification shall be provided in
1923 English and Spanish.

1924 C. **Signs and Placards.** Contractor shall be responsible for preparing, distributing,
1925 and posting signs and placards at Multi-Family Dwelling Premises that promote
1926 Targeted Recyclable Materials and Organic Materials Collection services, describe
1927 the program requirements, and identify allowable and prohibited types of materials
1928 for Collection. At a minimum, these signs shall be durable, weather resistant and
1929 posted in the Container areas. Upon request of the Customer, Contractor shall
1930 provide signage and Container labeling in a second language such as, but not
1931 limited to, Spanish. Within ten (10) Business Days of a Customer's request,
1932 Contractor shall provide extra signage for use in areas such as laundry and mail
1933 rooms at Multi-Family Residential Complexes.

1934 **7.06 WASTE GENERATION/CHARACTERIZATION STUDIES**

1935 Contractor acknowledges that Agency may perform Solid Waste generation and
1936 characterization studies periodically to determine the composition and contamination
1937 levels of Collected materials. Contractor agrees to participate and cooperate with
1938 SBWMA and Agency and its agents and to accomplish studies and data collection and
1939 prepare reports, as needed, to determine weights and volumes of Solid Waste, Targeted
1940 Recyclable Materials, Plant Materials and Organic Materials and characterize materials
1941 generated, Disposed, transformed, diverted or otherwise handled/processed to satisfy
1942 requirements of the Act. Contractor shall also facilitate visual audits of Multi-Family
1943 Dwelling, Commercial and Agency Cart and Bin service accounts. The visual audits will
1944 entail tipping the contents of Customers Container on the tipping floor at the Designated
1945 Transfer and Processing Facility and visually observing and documenting the contents
1946 (without pursuing a detailed weight-based characterization study). The materials will
1947 then be processed at the Designated Transfer and Processing Facility. Contractor will be
1948 required to facilitate said visual audits at the request of Agency; however, the annual
1949 total quantity of requests for visual audits for each Service Sector shall be limited to ten
1950 percent (10%) of the total number of accounts for each Service Sector.

1951 The SBWMA will use the Contamination Measurement Procedures set forth in
1952 Attachment E-1 and E-2, to determine the Contamination levels of single loads and
1953 quarterly Contamination Levels, respectively, of Source Separated and Targeted
1954 Recyclable Materials, Plant Materials and Organic Materials delivered to the Designated
1955 Transfer and Processing Facility.

1956 **7.07 PROGRAM EVALUATION**

1957 The Agency may require the Contractor to periodically conduct audits of the Residential
1958 and Commercial Solid Waste, Targeted Recyclable Materials, and Organic Materials
1959 Collection programs to assess one (1) or more of the following performance indicators:
1960 average volume of Targeted Recyclable Materials per set-out per Customer, average

1961 volume of Organic Materials per set-out per Customer, participation level (i.e., number of
1962 Customers setting out Containers per week), Contamination levels, etc. Contractor shall
1963 perform up to five (5) Days of route auditing at no additional cost to the Agency or
1964 Customers once per calendar year. Prior to the program evaluation audit, Agency and
1965 Contractor shall meet and discuss the purpose of the audit and agree on the method,
1966 scope, and data to be provided by the Contractor. If Agency requires more than five (5)
1967 Days of auditing for the purposes of program evaluation, the activity shall be considered
1968 an Agency-directed change in scope and handled in accordance with provisions in
1969 Section 15.12.

1970 If the Contractor does not Collect Multi-Family Dwelling Solid Waste, Targeted
1971 Recyclable Materials, and Organic Materials using dedicated Collection vehicles,
1972 thereby precluding regular and accurate reporting of the Tonnage of Solid Waste,
1973 Targeted Recyclable Materials, and Organic Materials Collected from Multi-Family
1974 Residential Complexes, the Agency may require the Contractor to conduct a semi-
1975 annual or annual Tonnage assessment that involves separately Collecting, weighing,
1976 and reporting Multi-Family Dwelling Solid Waste, Targeted Recyclable Materials, and
1977 Organic Materials to quantify Tonnage Collected during a given week. This assessment
1978 shall be performed by Contractor at no additional cost to the Agency or Customers.

1979 If the Agency wants to collect program data, perform field work, conduct route audits to
1980 investigate Customer participation levels and set-out volumes, and/or evaluate and
1981 monitor program results related to Solid Waste, Targeted Recyclable Materials, and
1982 Organic Materials Collected in the Agency by the Contractor, the Contractor shall
1983 cooperate with the Agency and its agent(s), which may include the SBWMA and its
1984 consultants.

1985 **7.08 PROVISION OF EMERGENCY SERVICES**

1986 Contractor shall provide emergency services at the Agency's request in the event of
1987 major accidents, disruptions, or natural calamities. Emergency services may include,
1988 but are not limited to: assistance handling, salvaging, processing, composting, or
1989 Recycling materials; or Disposing of Solid Waste following a major accident, disruption,
1990 or natural calamity. Contractor shall be capable of providing emergency services within
1991 twenty-four (24) hours of notification by the Agency or as soon thereafter as is
1992 reasonably practical in light of the circumstances. Emergency services which exceed
1993 the Contractor's obligations shall be compensated in accordance with Article 11. If
1994 Contractor cannot provide the requested emergency services, the Agency shall have the
1995 right to temporarily take possession of the Contractor's equipment for the purposes of
1996 providing emergency services in accordance with Article 12.

1997 **7.09 MFD AND COMMERCIAL RECYCLING BLITZ**

1998 Contractor has developed a comprehensive early roll-out recycling promotion plan
1999 (Recycling Blitz) that will target Multi-Family Dwelling and Commercial Customers over a
2000 six (6) month period prior to the start of Collection Services on January 1, 2011.
2001 Contractor shall offer to provide Single-Stream Targeted Materials Recycling Collection
2002 Service to Multi-Family Dwelling and Commercial Customers that are currently receiving
2003 limited or no recycling service. The promotional materials, messages and
2004 communications used by Contractor to support Recycling Blitz activities shall be
2005 developed collaboratively with the SBWMA and production of materials shall be paid for

2006 by Contractor at no additional cost to Agency or SBWMA. All promotional materials used
2007 by Contractor shall be authorized by the SBWMA.

2008 Contractor will form a Recycling Blitz team, utilizing resources from within the Norcal
2009 organization, such as managers, recycling coordinators and operational staff of other
2010 Norcal subsidiaries, who will be recruited in one (1) to two (2) week assignments, to
2011 assist in this promotion campaign. The focus of the Recycling Blitz program will be on
2012 Customers that are either not currently recycling, or have only limited service. The
2013 Recycling Blitz team will work with Customers to expand Collection of Targeted
2014 Recyclable Materials and make recommendations for reduced Solid Waste Container
2015 sizes and/or frequency of Solid Waste Collection service. Contractor shall work
2016 collaboratively with the SBWMA and the Agency's Previous Contractor.

2017 Contractor projects that, as the result of undertaking this recycling promotion program, it
2018 will increase the volume of Targeted Recyclable Materials collected in the SBWMA
2019 Service Area by 9,800 annual tons starting January 1, 2011.

2020 All Recycling tons Collected through the Recycling Blitz will be delivered by Contractor to
2021 the SRDC or to an alternate Recycling processor approved by the SBWMA. All revenue
2022 received by Contractor from an alternate recycling processor for Targeted Recyclable
2023 Materials Collected during the Recycling Blitz will be remitted by Contractor to the
2024 SBWMA. Contractor shall provide SBWMA with monthly tonnage reports of materials
2025 Collected during the Recycling Blitz.

2026 **7.10 CARBON FOOTPRINT MEASURING**

2027 Contractor shall develop and submit to Agency and SBWMA an annual climate action
2028 report. Contractor shall annually file its emissions data with the California Climate Action
2029 Registry (CCAR). The annual climate action report shall be submitted with Contractor's
2030 annual report. This report shall include: information on Contractor's emissions data filed
2031 with CCAR; a description of Contractor's carbon footprint; and, a description of
2032 Contractor's activities both planned and implemented to reduce its carbon footprint.

2033 **7.11 ENVIRONMENTAL MANAGEMENT PROGRAM**

2034 Contractor shall implement and maintain an environmental management program
2035 combining several elements to minimize the environmental impacts of its operations in
2036 the Service Area. Contractor shall provide upon request from Agency a description of
2037 topics discussed at its bi-monthly environmental team roundtable and training program
2038 meeting(s) and the semiannual corporate environmental compliance staff meetings.
2039 Contractor shall provide Agency access to its "Norcal's Environmental and Safety
2040 Tracking" (NEST) system upon request. Contractor shall provide Agency copies of its
2041 internal environmental compliance audits, third-party audits and disposition of corrective
2042 actions, within thirty (30) Days upon request from Agency.

2043 **7.12 ANNUAL ROUTE ASSESSMENT**

2044 Contractor shall conduct a route assessment of the Service Area each Rate Year. This
2045 comprehensive route assessment shall require Contractor to assess all of its Solid
2046 Waste, Targeted Recyclable Materials and Organic Materials Collection Customers over
2047 a one (1) week period during the same month each year for the Term. The assessment
2048 is intended to annually confirm and update Contractor's data related to Customer

2049 accounts, service levels and operations, including, but not limited to: (i) number of
2050 Accounts; (ii) Customer address; (iii) number and type of Containers at each Account;
2051 and (iv) Collection frequency of each Container at each Account; (v) . Bin and Cart lifts;
2052 (vi) Drop Box pulls; (vii) service stops; (viii) route hours per year; and (ix) tonnage
2053 Collected. All service level information related to lifts and pulls will be derived in part
2054 from Contractors database management system. All route labor hours shall be based
2055 on total route hours for routes exclusive to each Agency and Tonnage information shall
2056 be based on actual tons Collected. For routes that service more than one Agency, the
2057 Tonnage Collected on these routes and total route hours shall be allocated to the
2058 respective Agencies based on the type and number of accounts and service levels
2059 attributable to each Agency.

ARTICLE 8
REQUIREMENTS FOR OPERATIONS, EQUIPMENT, AND PERSONNEL

8.01 COLLECTION HOURS AND SCHEDULES

A. Hours of Collection

1. Residential. Residential Solid Waste, Targeted Recyclable Materials, and Organic Materials (including all such services provided to SFD and Multi-Family Dwelling Premises) shall be Collected on weekdays (i.e., Monday through Friday) between 6:00 a.m. and 6:00 p.m. exclusive of Holidays.
2. Commercial. Commercial and Agency Facilities Solid Waste, Targeted Recyclable Materials, and Organic Materials shall be Collected on weekdays (i.e., Monday through Friday) between 3:00 a.m. and 6:00 p.m. and weekends (i.e., Saturday and Sunday) between 6:00 a.m. and 5:00 p.m., exclusive of Holidays. The Agency may restrict or require modifications to hours for Collection from Commercial Premises and Agency Facilities to resolve noise Complaints, and, in such case, the Agency Manager may restrict the allowable operating hours.
3. Commercial Exception. Collection from Commercial Premises that are two-hundred (200) feet or less from Residential Premises shall only occur between the hours of 6:00 a.m. and 6:00 p.m., Monday through Saturday and all such operations shall be in accordance with permissions provided to Contractor by Agency. The Agency may restrict or require modifications to hours for Collection from Commercial Premises and Agency Facilities to resolve noise Complaints, and, in such case, the Agency Manager may restrict the allowable operating hours.
4. Exception. In the event of an unforeseen circumstance, the Contractor may Collect materials from Residential Premises, Commercial Premises, or Agency Facilities that are two-hundred (200) feet or less from Residential Premises between the hours of 3:00 a.m. and 6:00 p.m., Monday through Saturday, upon prior written approval from the Agency Manager.
5. Local Noise Ordinance. If an Agency ordinance regulating noise limits the hours of Collection more restrictively than the preceding subsections, the terms of the ordinance shall govern.

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

Contractor shall be prepared to review its operations plan outlining the Collection routes, intervals of Collection and Collection times for all materials Collected under this Agreement with the Agency or its representatives at least annually. More frequent reviews may be required if operations are not satisfactory based on

2104 documented observations or reports or Complaints. If the plan is determined to
2105 inadequately address the unsatisfactory performance as documented by
2106 observations and Complaints, the Agency may direct Contractor to revise the plan
2107 incorporating any changes into a revised plan and review said revised plan with the
2108 Agency within thirty (30) Days of the initial meeting with the Agency.

2109 C. **Contingency Plan.** Contractor shall submit to Agency ninety (90) Days prior to
2110 Commencement Date, a written contingency plan demonstrating Contractor's
2111 arrangements to provide vehicles and personnel and to maintain uninterrupted
2112 service during breakdowns, and in case of natural disaster or other emergency,
2113 including the events described in Section 14.09.

2114 **8.02 COLLECTION STANDARDS**

2115 A. **Implementation of Services.** The Contractor's implementation of the services
2116 required by this Agreement shall occur in a smooth and seamless manner so that
2117 Customers and/or Generators do not experience disruption in Collection services
2118 when services are initiated on the Commencement Date. Contractor shall be
2119 responsible for managing implementation of new Collection services and other
2120 related services and shall do so in accordance with the Implementation Plan
2121 prepared by the Contractor and incorporated into this Agreement as Attachment L.

2122 **B. Servicing Containers and Missed Pick-Ups**

2123 1. General. Contractor shall Collect the contents and return each Container to the
2124 location where the Occupant properly placed the Container for Collection.
2125 Contractor shall place the Containers upright with lids properly closed and
2126 secured.

2127 Contractor shall use due care when handling Containers. Contractor shall not
2128 throw, roughly handle, damage, or break Containers.

2129 Upon Customer request, Contractor shall provide special services including:
2130 unlocking and locking Containers; accessing locked Container enclosures (e.g.,
2131 with a key or combination lock); and pulling or pushing Containers to the
2132 Collection vehicle. Contractor shall provide the special services described in
2133 this paragraph upon request from Customer and Contractor shall be entitled to
2134 bill Customer as specified in Attachment Q.

2135 2. Missed Pick-Ups. When notified of a missed pick-up, Contractor shall Collect
2136 the Solid Waste, Targeted Recyclable Materials, or Organic Materials on the
2137 day the notice is received, if possible, and in all cases shall Collect the missed
2138 pick-up by 6:00 p.m. of the next Business Day following receipt of the missed
2139 pick-up notification.

2140 C. **New Customers and Change in Service Levels.** Contractor shall deliver
2141 Containers and initiate Collection services for a new Customer within five (5)
2142 Business Days of the Customer's request for service. If an existing Customer
2143 requests a change in the number or size of their Solid Waste, Recyclable Materials,
2144 or Organic Materials Containers and/or frequency of Collection, the Contractor shall
2145 deliver additional Containers and/or remove Containers and shall initiate changes in

2146 the Collection services within five (5) Business Days of the Customer's request for a
2147 change in service.

2148 **D. Separate Collection of Materials and Allocation of Agency Materials.**
2149 Contractor shall separately Collect and segregate Solid Waste, Targeted
2150 Recyclable Materials, and Organic Materials from each other and shall not
2151 Commingle these materials at any time during the transportation or delivery of those
2152 materials to the Designated Transfer and Processing Facility. Solid Waste,
2153 Targeted Recyclable Materials, and Organic Materials Collected in the Agency,
2154 which are combined with materials Collected from other SBWMA Member
2155 Agencies, shall be allocated by Contractor to the Agency's Collection program
2156 based on volume or Tonnage using a method approved by the Agency and
2157 SBWMA. Contractor shall not collect materials from within Agency in the same
2158 Collection vehicles used to provide Collection service to non-SBWMA Member
2159 Agencies, unless provided written approval by Agency.

2160 **E. Setout Instructions to Customer.** Contractor shall instruct Customers as to any
2161 preparation of Solid Waste, Targeted Recyclable Materials, or Organic Materials
2162 and the proper placement of Containers. If Customers are not adhering to
2163 Contractor's instructions, Contractor shall notify such Customers in writing. In
2164 cases of extreme or repeated failure to comply with the instructions, Contractor may
2165 decline to pick-up the Targeted Recyclable Materials or Organic Materials provided
2166 that Contractor leaves an adequate number of non-collection notices on the
2167 Container, as determined by the Agency, indicating the reason for refusing to
2168 Collect the material. Such notices shall also identify the steps Generator must take
2169 to recommence Collection service.

2170 **F. Non-Collection Notices.** Contractor may choose not to Collect materials for the
2171 following reasons: (i) Source Separated or Targeted Recyclable Materials or
2172 Organic Materials do not comply with the allowable Contamination thresholds; (ii)
2173 materials contain Hazardous Waste; or (iii) the loaded weight of a Container
2174 exceeds the maximum load limit specified by the Cart manufacturer and specified in
2175 Attachment D. In such case, Contractor shall issue non-collection notices stating
2176 the reason(s) the materials were not Collected. The non-collection notice shall be
2177 affixed prominently onto the Cart to ensure that it is not inadvertently removed from
2178 Cart due to weather conditions. The non-collection notices must be protected from
2179 rain, if precipitation is present or forecasted, by placing the notice in a clear plastic
2180 bag prior to affixing to Cart.

2181 Contractor shall document the use of non-collection notices by recording the date
2182 and time of issuance, address of service recipient, reason(s) for issuance, name of
2183 employee who issued the notice, and truck and route numbers. The notice shall
2184 conform to the requirements specified in Section 6.03.A, be at least two inches by
2185 six inches (2" x 6") in size and shall be approved by the SBWMA. The non-
2186 collection notices must identify the steps the Generator must take to recommence
2187 Collection service. In the event a Container is not collected due to excessive
2188 Contamination and Customer does not take the necessary steps to recommence
2189 Collection service, Customer shall be assessed a fee approved by Agency for
2190 Collection of the Container as Solid Waste by Contractor. This additional fee
2191 charged to Customer may include: (i) a return trip charge and (ii) a extra Solid
2192 Waste Collection charge.

2193 Contractor shall report monthly to Agency any non-collection notices issued.
2194 Contractor shall take direction from the Agency with regard to termination or
2195 reinstatement of service to a service recipient due to numerous non-collection
2196 notices issued to the same Customer.

2197 G. **Collection of Excess Materials (Overages).** Contractor shall direct its employees
2198 to Collect an Overage on two (2) occasions each Rate Year at no additional cost to
2199 Customer. Contractor must provide a notice to Customer documenting the Overage
2200 in order to count the Overage Collection towards the allocated two (2) per Rate
2201 Year for each Customer. Customers that place an Overage for Collection for a third
2202 and subsequent events, may be assessed an Overage fee by Contractor if
2203 Contractor documents said Overage with a photograph and sends the Customer a
2204 letter within two (2) Business Days notifying them of the Overage Collected. The
2205 Overage fee billed by Contractor to Customer for a third and subsequent Overage
2206 event is specified in Attachment Q.

2207 Contractor shall provide Customers the opportunity to subscribe to Overage
2208 Collection service, in advance, or purchase Overage bag(s) from the Contractor.
2209 Contractor shall provide Customers the opportunity to purchase Overage bags
2210 through its customer service department or electronically via Contractor's website.
2211 The Overage bag(s) shall have markings identifying it as the Contractor's Overage
2212 bag. Contractor shall mail or deliver Overage bags to Customers within three (3)
2213 Business days of Customer's request. The cost for Overage bags is specified in
2214 Attachment Q and includes all aspects of purchasing the bags, printing and
2215 distribution (i.e., mailing or direct delivery by Contractor). Customers shall also be
2216 provided the opportunity to purchase Overage bags at Contractor's local office. The
2217 quantity of Overage bags per request from Customer shall be limited to five (5) per
2218 request.

2219 If the Agency and/or Contractor receive numerous Complaints (as determined by
2220 the Agency) from Customers regarding Customer dissatisfaction with the
2221 requirement to purchase Overage bags, the Agency reserves the right to require the
2222 Contractor to modify its Overage program to better serve its Customers and/or
2223 require the Customer to subscribe to additional Collection service.

2224 H. **Care of Private Property.** Contractor shall not damage private property.
2225 Contractor shall ensure that its employees: (i) close all gates opened in making
2226 Collections, unless otherwise directed by the Customer, (ii) do not cross landscaped
2227 areas, and (iii) do not climb or jump over hedges and fences.

2228 Agency shall refer Complaints about damage to private property to Contractor.
2229 Contractor shall repair, to its previous condition, all damage to private or public
2230 property caused by its employees.

2231 Contractor shall endeavor to resolve all claims regarding damage to private property
2232 as soon as reasonably practicable following receipt thereof, made by Owners or
2233 Occupants of property served by Contractor, for damages to property including, but
2234 not limited to, Containers. In the event such damage shall have been caused by the
2235 negligence or intentional acts of Contractor, its officers, agents, or employees,
2236 Contractor shall promptly repair or replace such damaged property. The provisions
2237 of this Section 8.02.H shall not be deemed a limitation upon any other provisions of

2238 this Agreement, or any rights or remedies which may accrue to Agency by reason of
2239 Contractor's acts or omissions to act hereunder. Contractor is required to repair
2240 damage and/or resolve claims regarding damage to property within thirty (30) Days
2241 of receipt of the Complaint.

2242 I. **Litter Abatement**

2243 1. Minimization of Spills. If any Solid Waste, Targeted Recyclable Materials, or
2244 Organic Materials are spilled or scattered during Collection or transportation
2245 operations, the Contractor shall promptly clean up all spilled and scattered
2246 materials. Contractor shall use due care to prevent vehicle oil, vehicle fuel, or
2247 other liquids from being spilled during Collection or transportation operations
2248 including maintenance of the Collection vehicles to minimize and correct any
2249 leaks. Contractor shall ensure that all liquid spills or leaked liquids fluids are
2250 cleaned up promptly on the same day that they occur.

2251 Contractor shall not transfer loads from one vehicle to another on any public
2252 street, unless it is necessary to do so because of mechanical failure,
2253 emergency (e.g., combustion of material in the vehicle), accidental damage to
2254 a vehicle, or unless approved by the Agency.

2255 2. Clean-Up. During Collection operations, the Contractor shall clean-up litter in
2256 the immediate vicinity of any Container storage area (including the areas where
2257 Containers are delivered for Collection) if Contractor's actions are the cause of
2258 the litter. Each Collection vehicle shall be equipped with protective gloves, a
2259 broom, and shovel at all times for cleaning up litter. Absorbent material shall
2260 be carried on each Collection vehicle at all times and used by Contractor for
2261 cleaning up liquid spills. The Contractor shall document and discuss instances
2262 of repeated spillage not caused by it with the Customer where spillage occurs,
2263 and Contractor shall report such instances to Agency. If the Contractor has
2264 attempted to have a Customer stop creating spillage but is unsuccessful, the
2265 Agency will attempt to rectify such situation with the Customer.

2266 3. Covering of Loads. Contractor shall cover all open Drop Boxes with an
2267 Agency-approved cover, at the Collection location before transporting materials
2268 to the Designated Transfer and Processing Facility.

2269 J. **Noise.** All Collection operations shall be conducted as quietly as possible and shall
2270 conform to applicable federal, State, County, and Agency noise level regulations.
2271 Contractor shall promptly resolve any Complaints of noise to the satisfaction of the
2272 Agency.

2273 K. **Route Books and Route Maps.** For each Collection route, Contractor shall
2274 maintain a route book and route map that documents each Customer on the route,
2275 their service address, service level, and the order in which Customers shall be
2276 serviced (e.g., the order in which routes shall be driven). Contractor shall distribute
2277 new route books and route maps to its Collection vehicle drivers as frequently as
2278 necessary; and each driver shall note differences in the service levels shown in the
2279 route book, adding and subtracting Customers and service levels, as necessary.
2280 Route supervisors shall periodically check the routes to ensure that drivers are
2281 providing service in accordance with their route books. Contractor shall provide
2282 Agency with route books and maps within ten (10) Business Days of request.

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

8.03 UNLOADING MATERIALS AT THE DESIGNATED TRANSFER AND PROCESSING FACILITY

Contractor shall be required to unload at the Designated Transfer and Processing Facility all materials from its Collection vehicles by its own personnel. Contractor shall be required to ensure that unloaded materials are properly placed in the designated areas and containers as directed by Operator and SBWMA. For example, Contractor shall be required to deposit at the Designated Transfer and Processing Facility Batteries and Cell Phones, Used Motor Oil and Used Motor Oil Filters in the containers provided by Operator and designated for storage of these materials. Contractor shall cooperate with Operator to ensure its Collection vehicles unload Solid Waste, Targeted Recyclable Materials, Organic Materials and all other Discarded Materials Collected by Contractor in the locations designated by Operator and SBWMA.

8.04 VEHICLES

- A. **General.** Contractor shall provide a fleet of Collection vehicles sufficient in number and capacity to efficiently perform the work required by the Agreement in strict accordance with its terms. Contractor shall have available sufficient back-up vehicles for each type of Collection vehicle used (e.g., side loader, front loader, and roll-off vehicles) to respond to mechanical breakdowns, Complaints, and emergencies. Contractor shall maintain a spare ratio of ten percent (10%) for all Collection vehicles used in the SBWMA Service Area. As of the Commencement Date, all Residential and Commercial Collection vehicles shall be new; and other vehicles such as roll-off trucks, support vehicles, and spare vehicles may be new or used. At no time during the Term shall any vehicle used to perform the services required under this Agreement exceed ten (10) years of age from the first date the vehicle was registered. Contractor shall provide Collection vehicles in accordance with the specifications contained in Attachment P. Collection vehicles whose acquisition cost is included in the calculation of Contractor's Compensation may be used only in the SBWMA Service Area.

B. General Vehicle Specifications

1. All vehicles used by Contractor in providing Solid Waste, Targeted Recyclable Material, and Organic Material Collection services shall be registered with the California Department of Motor Vehicles.
2. All Collection vehicles shall have leak-proof bodies designed to prevent leakage, spillage and/or overflow and shall be designed so that Collected materials are not visible.

- 2329 3. All vehicles shall comply with California Environmental Protection Agency
2330 (EPA) noise emission regulations and California Air Resources Board air
2331 quality regulations and other applicable pollution control regulations.
- 2332 4. All Collection vehicles shall have cameras to monitor driving and loading
2333 activities including, at a minimum: (i) back-up cameras mounted at the rear and
2334 side of the vehicle; and, (ii) a hopper camera clearly displaying the contents of
2335 the hopper prior to compaction.
- 2336 5. Contractor shall be required to operate an adequate number of Collection
2337 vehicles that shall be capable of servicing hard-to-service areas and accessing
2338 long driveways in the Service Area.
- 2339 6. All Collection vehicles shall be capable of unloading materials in the
2340 Designated Transfer and Processing Facility buildings taking clearance
2341 heights, especially in the MRF, into consideration.
- 2342 7. All Collection vehicles shall be equipped with and utilize Routeware on-board
2343 computer system and an on-board GPS tracking device with real-time
2344 transmission to all levels of Contractor's operations.
- 2345 8. All Collection vehicles shall use the biodiesel fuel blend formulated to contain
2346 the highest percentage of biofuel approved for use in Contractor's vehicles by
2347 the California Air Resources Board. Currently, the highest approved blend is B-
2348 20.
- 2349 9. All Collection vehicles shall be equipped with a broom, shovel, absorbent
2350 materials, and other approved cleanup devices and materials for emergencies,
2351 or any spillage or leaks that may occur.
- 2352 10. Route supervisors and management personnel shall use one-half (½) ton
2353 hybrid pickup trucks while performing services.
- 2354 C. **Vehicle Identification.** Contractor's name, local telephone number, and a unique
2355 vehicle identification number designated by Contractor for each vehicle shall be
2356 prominently displayed on all four (4) sides of the vehicles, in letters and numbers
2357 with a maximum five (5) digit sequence, that are no less than two and one-half (2.5)
2358 inches in height. Contractor shall not place any other information or logo on
2359 Contractor vehicles, unless approved in writing by SBWMA. Vehicles shall be
2360 clearly labeled to indicate the materials Collected by that vehicle, specifically; "Solid
2361 Waste," "Recyclables," or "Organic Materials," as directed by SBWMA.
- 2362 D. **Inventory.** Contractor shall furnish the Agency and SBWMA a written inventory of
2363 all vehicles used in providing service, and shall update the inventory annually. The
2364 inventory shall list all vehicles by manufacturer, identification number, date of
2365 acquisition, type, capacity, decibel rating, average weight of load, and average
2366 loaded axle weights.
- 2367 E. **Cleaning and Maintenance**
- 2368 1. General. Contractor shall maintain all of its properties, vehicles, facilities, and
2369 equipment used in providing service under this Agreement in a good, safe,
2370 neat, clean, and operable condition at all times.
- 2371 2. Cleaning. Vehicles used in the Collection of Solid Waste, Targeted Recyclable
2372 Materials, and Organic Materials shall be thoroughly washed, and thoroughly

2373 steam cleaned weekly so as to present a clean appearance. Agency may
2374 inspect vehicles at any time to determine compliance with this Agreement.
2375 Contractor shall also make vehicles available to the San Mateo County Health
2376 Department for inspection, at any frequency it requests.

2377 3. Repainting or Refurbishing. Contractor shall repaint or refurbish to the
2378 satisfaction of the Agency all vehicles used in the Collection of Solid Waste,
2379 Targeted Recyclable Materials and Organic Materials within thirty (30)
2380 Business Days notice from Agency, if Agency determines that their appearance
2381 warrants painting. The cost for Agency-directed repainting shall be incurred by
2382 Contractor.

2383 4. Maintenance. Contractor shall inspect each vehicle daily to ensure that all
2384 equipment is operating properly. Vehicles which are not operating properly
2385 shall be removed from service until repaired and operating properly.
2386 Contractor shall perform all scheduled maintenance functions in accordance
2387 with the manufacturer's specifications and schedule or in accordance with
2388 California Highway Patrol standards, whichever are more stringent. Contractor
2389 shall keep accurate records of all vehicle maintenance, recorded according to
2390 date and mileage and shall make such records available to Agency upon
2391 request. Hydraulic oil, engine oil, and other spills from Collection vehicles in
2392 the Service Area are a concern to the Agency. Contractor shall include as part
2393 of maintenance activities a process for tracking the number and nature of
2394 automotive spills (type of fluid, amount lost, failure point) and diagnosing the
2395 cause of those spills. Based on the results of the process, Contractor shall
2396 implement appropriate corrective actions to address issues that are
2397 contributing factors to vehicle spills (e.g., revise specifications for specific part
2398 failures, revise preventative maintenance schedule to address timing of
2399 failures), so that each occurrence is controlled and minimized.

2400 5. Repair. Contractor shall repair, or arrange for the repair of, all of its vehicles
2401 and equipment for which repairs are needed because of accident, breakdown,
2402 hydraulic oil or engine oil leaks, or any other cause so as to maintain all
2403 equipment in a safe and operable condition. If an item of repair is covered by a
2404 warranty, Contractor shall obtain warranty performance. Contractor shall
2405 maintain accurate records of repair, which shall include the date and mileage,
2406 nature of repair and the verification by signature of a maintenance supervisor
2407 that the repair has been properly performed.

2408 6. Storage. Contractor shall arrange to store all vehicles and other equipment in
2409 safe and secure location(s) in accordance with all applicable zoning
2410 regulations.

2411 F. **Operation.** Vehicles shall be operated in compliance with federal, State and local
2412 laws and regulations including, but not limited to, the California Vehicle Code, the
2413 regulations of the California Air Resources Board (CARB) Waste Collection Vehicle
2414 Regulations as established in the California Code of Regulations Title 13 Section
2415 2700 et seq. and all applicable safety and local ordinances. Annually, Contractor
2416 shall provide the SBWMA and Agency with documentation of such compliance for
2417 each vehicle. For example, with regard to CARB regulations, such documentation
2418 shall demonstrate, at a minimum, the vehicle number, make, model, year, control
2419 technology used or planned, and the year that the control technology was applied or
2420 is planned to be applied. Contractor shall not load vehicles in excess of the

2421 manufacturer's recommendations or limitations imposed by federal, State, or local
2422 weight restrictions on vehicles or roads.

2423 Contractor equipment used for Solid Waste, Targeted Recyclable Materials, and
2424 Organic Materials services shall be registered with the California Department of
2425 Motor Vehicles. Equipment shall comply with US EPA noise emission regulations,
2426 currently codified at 40 CFR Part 205 and other applicable noise control regulations,
2427 and shall incorporate noise control features throughout the entire vehicle.

2428 Annually, Contractor shall have each Collection vehicle weighed at the Designated
2429 Transfer and Processing Facility to determine the unloaded weight ("tare weight") of
2430 the vehicle, and the total loaded weight of each load delivered to the Designated
2431 Transfer and Processing Facility. Upon a major repair that could affect the
2432 Collection vehicle tare weight, Contractor shall have the Collection vehicle re-
2433 weighed to establish a new tare weight. Contractor shall track and make
2434 adjustments to routes to eliminate ongoing over-weights associated with individual
2435 routes.

2436 8.05 CONTAINERS

2437 A. **General.** Contractor shall provide all Carts, Bins, Compactors, Kitchen Pails, and
2438 Drop Boxes, as appropriate, to all Customers as part of its obligations under this
2439 Agreement. As of the Commencement Date, all Single-Family Carts and Kitchen
2440 Pails must be new while other Containers may be used. Contractor-provided
2441 Containers shall be designed and constructed to be watertight and prevent the
2442 leakage of liquids. All Carts shall be manufactured by injection or rotational molding
2443 methods; contain post-consumer content; and meet the Cart design and
2444 performance requirements provided in Attachment D – Container Specifications.
2445 Carts provided to Customers shall have a useful life of ten (10) years as evidenced
2446 by a manufacturer's warranty or other documentation acceptable to the Agency.

2447 All Containers with a capacity of one (1) cubic yard or more shall meet applicable
2448 federal, State, and local regulations for Bin safety; shall be covered with attached
2449 lids; and shall have the capability to be locked if required or requested by Customer
2450 or Agency.

2451 All Containers shall be maintained in a safe, serviceable, and functional condition.

2452 B. Container Specifications

- 2453 1. Sizes. The Container sizes to be provided to Single-Family, Multi-Family,
2454 Commercial, and Agency Facility Customers are specified in Attachment D.
- 2455 2. Color. The colors of the Containers provided to Single-Family, Multi-Family,
2456 Commercial, and Agency Facility Customers are specified in Attachment D.
- 2457 3. Loading. Minimum allowable loading requirements for the Bin and Drop Box
2458 contents shall be approved by the Agency prior to purchase based on the
2459 minimum manufacturer's load limits, as specified in Attachment D.

2460 C. **Container Labeling.** Contractor shall label each Container with white, hot-stamped
2461 lettering, and in-mold or heavy duty vinyl adhesive labels with graphics, illustrations
2462 or artwork that clearly conveys the type of materials (e.g., Solid Waste, Recyclable

2463 Materials, cardboard, mixed paper, Organic Materials, wood waste, metal, etc.) to
2464 be placed in the Container for Collection. The labeling shall be positioned on each
2465 Container so it is visible to the Customer and Collection vehicle drivers on the front
2466 side and top. The labeling shall be durable and weather resistant to outdoor
2467 conditions and have a minimum ten (10) year lifetime.

2468 All Containers shall prominently display information and graphics agreed upon by
2469 Agency, SBWMA and Contractor pursuant to Article 7.

2470 Final Container labeling layout, graphics and text shall be approved by the Agency
2471 and SBWMA prior to distribution to Customers.

2472 D. **Cleaning and Painting.** Contractor shall be responsible for steam cleaning and
2473 repainting all Containers, except Carts, to present an aesthetically pleasing clean
2474 appearance and to ensure this equipment is safely maintained and operationally
2475 sound. Contractor shall repaint all used Containers within eighteen (18) months of
2476 the Commencement Date and thereafter on an as needed basis. Upon Customer's
2477 request, Contractor shall steam clean all Solid Waste and Recyclable Materials
2478 Containers (or exchange existing Containers with clean Containers) twice annually,
2479 except Carts provided to Residential Premises, which Contractor is not obligated to
2480 clean or exchange. Contractor shall clean all Organic Materials Containers (or
2481 exchange existing Containers with clean Containers) quarterly, except Carts
2482 provided to Residential Premises, which Contractor is not obligated to clean or
2483 exchange. Contractor shall offer additional cleaning (or clean Container exchange)
2484 to Customers requesting such service and shall be entitled to bill Customers for
2485 such cleaning (or Container exchange) as specified in Attachment Q.

2486 Contractor shall be responsible for cleaning Containers at no additional charge to
2487 Customer to ensure that nuisance or public health concerns associated with vectors
2488 are addressed within two (2) Business Days after receipt of notification of said
2489 condition.

2490 If any Container is impacted by graffiti, Contractor shall remedy the situation within
2491 forty-eight (48) hours of being notified.

2492 E. **Repair and Replacement.** Contractor shall repair or replace all Containers
2493 damaged by Collection operations (e.g., vehicle apparatus interface) within three (3)
2494 Business Days of being notified by Customer or observing the damaged Container.
2495 If the repair or replacement cannot be completed within three (3) Business Days,
2496 the Contractor shall notify Customer and provide a Container of the same size or
2497 larger until the original Container can be replaced.

2498 At no additional cost, Contractor shall replace Customer Carts that have been
2499 stolen, lost, damaged or destroyed within five (5) Business Days. Contractor shall
2500 allow Customer to exchange Containers for a Container of a different size at no
2501 additional cost and shall replace Containers within five (5) Business Days of
2502 Customer request. Upon written approval from Agency, Contractor shall allow
2503 Customers to rent or purchase additional Carts and shall be entitled to bill
2504 Customers as specified in Attachment Q.

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

At its sole discretion, the Agency may elect not to exercise its rights under this subsection. In such case, the Containers shall remain the property of the Contractor upon the expiration or earlier termination of this Agreement. In such case, Contractor shall be responsible for removing all Containers in service from Premises within ten (10) Business Days.

8.06 PERSONNEL

A. **General.** Contractor shall furnish such qualified drivers, mechanical, supervisory, customer service, clerical and other personnel as may be necessary to provide the services required by this Agreement in a safe, thorough, professional and efficient manner and shall provide, at a minimum, the number and type of personnel listed in Attachment O. All personnel furnished by Contractor shall be subject to the "relationship of parties" provisions of Section 15.01.

B. **Employees of Previous Contractor.** The Contractor shall offer employment to Collection vehicle drivers and helpers, mechanics, technicians, welders, and shop laborers by seniority under the Agreement who are qualified employees working under the prior franchise agreement who would otherwise become unemployed by reason of the change in contractors, provided that (i) the Contractor shall not be obligated to offer employment to more existing employees than the Contractor needs to perform the services required under this Agreement and (ii) the Contractor shall not be obligated to offer employment to existing employees that have not been employed by the Previous Contractor for at least one-hundred-twenty (120) Days immediately prior to the Commencement Date.

For the purposes of Section 8.06.B, "qualified employee" shall mean an employee who: (i) is eligible for employment under federal and state law, (ii) meets the Contractor's minimum employment standards for new employees, (iii) is in a bargaining unit covered by collective bargaining agreements between the Previous Contractor and Teamsters Local 350 or Machinists Local 1414, (iv) does not present a demonstrable danger to customers, co-workers or employees of the Agency or the Collection Contractor and (v) possesses a valid and proper commercial driver's license and California Department of Transportation medical certificate.

Contractor shall not discharge any retained workers for at least ninety (90) Days after the Commencement Date, except for cause.

Additional employees, if needed, shall be obtained by Contractor pursuant to procedures in effect under the collective bargaining agreement of the Agency's

2548 Previous Contractor that provided Solid Waste Collection services prior to the
2549 Effective Date.

2550 Contractor shall maintain a list of the Previous Contractor's qualified employees
2551 who were not offered employment by the Contractor pursuant to this section prior to
2552 the Commencement Date or during the two (2) months following the
2553 Commencement Date. If any positions become available during the three (3)
2554 months following the initial two (2) month contract period (i.e., from March 1, 2011
2555 through May 30, 2011), Contractor shall offer employment to qualified employees
2556 on the list by seniority within the collective bargaining unit (if it exists). Contractor
2557 shall include this language in the collective bargaining agreements, if any such
2558 agreement exists or is negotiated.

2559 Contractor shall pay employees who (i) are retained by Contractor pursuant to this
2560 Section 8.06 and (ii) were in bargaining units covered by collective bargaining
2561 agreements in effect as of the Effective Date between the Previous Contractor and
2562 Teamsters Local 350 or Machinists Local 1414, wages and benefits no less than
2563 those included in the collective bargaining agreements in place in 2010.

2564 This Section 8.06.B does not apply to management and supervisory personnel,
2565 non-represented employees, or workers furnished by an employment agency
2566 operating as an independent contractor.

2567

2568 C. **Collective Bargaining Agreements.** This Agreement does not obligate Contractor
2569 to become a party to a collective bargaining agreement entered into by the Previous
2570 Contractor. If Contractor negotiates a new collective bargaining agreement with a
2571 union representing employees of the Previous Contractor, or an amendment to a
2572 collective bargaining agreement currently in force, either of which increases wages
2573 or benefits payable prior to October 2013 above those required by the collective
2574 bargaining agreement currently in force, the Agency is not required to include costs
2575 attributable to the increased wages or benefits in Contractor's Compensation for
2576 Rate Years One (2011) through Three (2013).

2577 D. **Approval of Management.** Contractor recognizes the importance of establishing a
2578 successful relationship between its management and Agency and SBWMA staff.
2579 Before extending an offer of employment for the position of general manager, both
2580 initially and throughout the Term, Contractor shall provide the SBWMA with the
2581 description of the proposed position, an opportunity to review and comment upon
2582 the position description, the background, experience and qualifications of each
2583 candidate being considered for the position, and an opportunity to meet with each
2584 candidate. Contractor shall give thoughtful consideration to the SBWMA's
2585 comments on the descriptions of the proposed position and each candidate, but
2586 shall have the ultimate right to make employment decisions in its best business
2587 judgment.

2588 If the Agency is dissatisfied with the performance of the management personnel, the
2589 Agency shall contact the general manager to discuss the employee's performance.
2590 If the Agency is dissatisfied with the general manager, the Agency shall contact the
2591 group manager to discuss the general manager's performance.

- 2592 Contractor shall advise the affected management employee of any complaints
2593 made by the Agency regarding the employee's performance. The Parties shall
2594 meet and confer in good faith to address the Agency's concerns, and shall agree on
2595 a corrective course of action to be implemented immediately. Contractor agrees to
2596 consider in good faith, but shall not be bound by, any requests by the Agency to
2597 transfer or re-assign a management employee should the Agency maintain in good
2598 faith that it can no longer work constructively with said employee.
- 2599 E. **Provision of Field Supervision.** Contractor shall designate qualified employees
2600 as supervisors of field operations. The field supervisor shall devote their time in the
2601 field supervising, managing, and monitoring Collection operations for reliability,
2602 quality, efficiency, safety, and for responding to Complaints. The number of field
2603 supervisors is specified in Attachment O.
- 2604 F. **Driver Qualifications.** All drivers shall be trained and qualified in the operation of
2605 Collection vehicles, and must have in effect a valid license, of the appropriate class,
2606 issued by the California Department of Motor Vehicles. Contractor shall use the
2607 Class II California Department of Motor Vehicles employer "Pull Notice Program" to
2608 monitor its drivers for safety.
- 2609 G. **Customer Service Representative Training.** Customer service representatives
2610 shall be trained on specific Agency service requirements, a minimum of once per
2611 quarter. An Agency information sheet shall be provided to each customer service
2612 representative for easy reference of Agency requirements and general Customer
2613 needs. Contractor shall provide the information sheet, training agenda, and
2614 associated documentation within five (5) Business Days of request from Agency.
- 2615 H. **Safety Training.** Contractor shall provide suitable operational and safety training
2616 for all of its employees who operate Collection vehicles or equipment or who are
2617 otherwise directly involved in such Collection. Contractor shall train its employees
2618 involved in Collection to identify, and not to Collect, Hazardous Waste or Infectious
2619 Waste. Upon the Agency's request, Contractor shall provide a copy of its safety
2620 policy and safety training program, the name of its safety officer, and the frequency
2621 of its trainings.
- 2622 I. **No Gratuities.** Contractor shall not permit its employees to demand or solicit,
2623 directly or indirectly, any additional compensation or gratuity from members of the
2624 public for Collection services or accept gratuities or compensation in exchange for
2625 additional collection services.
- 2626 J. **Employee Conduct and Courtesy.** Contractor shall employ only competent and
2627 qualified personnel who serve the public in a courteous, helpful, and impartial
2628 manner. Contractor shall use its best efforts to assure that all employees present a
2629 neat appearance and conduct themselves in a courteous manner. Contractor shall
2630 regularly train its employees in Customer courtesy, shall prohibit the use of loud or
2631 profane language, and shall instruct Collection employees to perform the work as
2632 quietly as possible. If any employee is found not to be courteous or not to be
2633 performing services in the manner required by this Agreement, Contractor shall take
2634 all appropriate corrective measures. The Agency may require Contractor to
2635 reassign an employee, if the employee has conducted himself or herself
2636 inconsistently with the terms of this Agreement.

2637 Contractor shall adopt policies and procedures consistent with State and federal law
2638 that ensure a sober and drug-free workplace. This includes strictly prohibiting
2639 unlawful manufacture, distribution, possession, or use of any controlled substance
2640 in the workplace, regardless of whether the employee is on duty at the time.
2641 Further, the policies and procedures shall prohibit an employee from operating
2642 either Agency or Contractor equipment and vehicles (whether on or off duty) while
2643 under the influence of alcohol or drugs. The purpose of these policies and
2644 procedures is to ensure workplace safety, productivity, efficiency, and the quality of
2645 Contractor's service to Customers.

2646 K. **Uniforms.** While performing services under this Agreement, all Contractor's
2647 employees performing field service shall be dressed in clean uniforms and shall
2648 wear visible identification that include the employee's name and/or employee
2649 number, and Contractor's name. Uniform type, style, colors, and any modifications
2650 may be subject to approval by the Agency.

2651 **8.07 HAZARDOUS WASTE INSPECTION AND HANDLING**

2652 A. **Inspection Program and Training.** Contractor is required to inspect Solid Waste,
2653 Targeted Recyclable Materials, Organic Materials, and other materials put out for
2654 Collection and may reject Solid Waste, Targeted Recyclable Materials, Organic
2655 Materials, and other materials observed to be contaminated with Hazardous Waste
2656 and not Collect Hazardous Waste put out with Solid Waste, Targeted Recyclable
2657 Materials, and Organic Materials. Contractor shall develop a load inspection
2658 program that includes the following components: (i) personnel and training; (ii) load
2659 checking activities; (iii) management of wastes; and (iv) record keeping and
2660 emergency procedures.

2661 Contractor's load checking personnel, including its Collection vehicle drivers, shall
2662 be trained in: (i) the effects of Hazardous Substances on human health and the
2663 environment; (ii) identification of prohibited materials; and (iii) emergency
2664 notification and response procedures. Collection vehicle drivers shall inspect
2665 Containers before Collection when practical.

2666 B. **Response to Hazardous Waste Identified During Collection.** Under no
2667 circumstances shall Contractor's employees knowingly Collect Hazardous Waste or
2668 remove unsafe or poorly containerized Hazardous Waste from a Collection
2669 Container. If Contractor determines that material placed in any Container for
2670 Collection is Hazardous Waste or other material that may not legally be accepted or
2671 safely processed at the Designated Transfer and Processing Facility or presents a
2672 hazard to Contractor's employees, or those at the Designated Transfer and
2673 Processing Facility, the Contractor shall have the right to refuse to accept such
2674 material. The Generator shall be contacted by the Contractor and requested to
2675 arrange proper Disposal. If the Generator cannot be reached immediately, the
2676 Contractor shall, before leaving the Premises, leave a non-collection notice, which
2677 indicates the reason for refusing to Collect the material and lists the phone number
2678 for the San Mateo County Household Hazardous Waste Facility, or other resources
2679 as directed by Agency. Contractor's environmental technician shall be notified to
2680 handle the issue with the Generator. The Contractor's environmental technician
2681 shall be required to guide the Generator to safely containerizing the Hazardous

2682 Waste and shall explain the Generator's options for proper disposition of such
2683 material.

2684 If Hazardous Waste is found in a Collection Container or Collection area that could
2685 possibly result in imminent danger to people or property, the Contractor shall
2686 immediately notify the Agency's Fire Department using the nine-one-one (911)
2687 emergency telephone number. The Contractor shall notify the Agency of any
2688 Hazardous Waste identified in Containers or left at any Premises within twenty-four
2689 (24) hours of identification of such material.

2690 C. **Response to Hazardous Waste Identified at Designated Transfer and**
2691 **Processing Facility.** Contractor shall not knowingly deliver Unpermitted Material to
2692 the Designated Transfer and Processing Facility. The Operator shall use
2693 reasonable business efforts and standard industry practices to detect and discover
2694 Unpermitted Material at the facility and shall not knowingly accept Unpermitted
2695 Material. In the event that Unpermitted Material is delivered to the Designated
2696 Transfer and Processing Facility, the Operator shall be entitled to pursue whatever
2697 remedies, if any, it may have against the Generator or Person(s) bringing such
2698 Unpermitted Material to the Designated Transfer and Processing Facility provided
2699 that in no case shall the Agency be considered the Person bringing such
2700 Unpermitted Material to the Designated Transfer and Processing Facility.

2701 Contractor acknowledges that in the event the operator identifies Unpermitted
2702 Materials in the materials delivered by Contractor before the materials are unloaded
2703 at the facility, the Operator has the right to reject the load and direct the Contractor
2704 to cause removal and Disposal of the Unpermitted Material in a safe and lawful
2705 manner, at the sole expense of the Contractor. If the Unpermitted Materials are
2706 delivered to the Designated Transfer and Processing Facility by Contractor and
2707 unloaded at the facility before their presence is detected, and the Generator cannot
2708 be identified or fails to remove the material after being requested to do so, the
2709 Contractor shall arrange for and/or pay for its proper Disposal. Contractor shall
2710 make reasonable efforts to identify and notify the Generator. The Contractor shall
2711 make a good faith effort to recover the cost of any transportation and Disposal from
2712 the Generator, and the cost of this effort, as well as the cost of Disposal shall be
2713 chargeable to the Generator, if appropriate documentation, as deemed necessary
2714 by the Agency, is provided to the Agency within five (5) Business Days of the
2715 occurrence.

2716 In the event Contractor delivers Unpermitted Materials on a frequent or continuous
2717 basis to the Designated Transfer and Processing Facility and the Contractor refuses
2718 to provide for the proper handling and disposition of such Unpermitted Material, the
2719 Operator may provide written notice to Agency of such refusal by Contractor.

2720 D. **Reporting, Regulations, and Record Keeping.** Contractor shall comply with
2721 emergency notification procedures required by Applicable Laws and regulatory
2722 requirements. Contractor shall notify all appropriate agencies, including the
2723 California Department of Toxic Substances Control and Local Emergency
2724 Response Providers and the National Response Center of reportable quantities of
2725 Hazardous Waste found or observed in Solid Waste, Targeted Recyclable
2726 Materials, Organic Materials, Electronic Waste, Universal Waste, and Construction
2727 and Demolition Debris anywhere within Service Area. In addition to other required

2728 notifications, if Contractor observes any substances which it or its employees
2729 reasonably believe or suspect to contain Hazardous Wastes unlawfully Disposed of
2730 or released on any Agency property, including storm drains, streets or other public
2731 rights of way, Contractor will immediately notify the Agency and SBWMA.

2732 All records required by regulations shall be maintained at the Contractor's Facility.
2733 These records shall include: waste manifests, waste inventories, waste
2734 characterization records, inspection records, incident reports, and training records.
2735 Contractor shall maintain records showing the types and quantities, if any, of
2736 Hazardous Waste found in Solid Waste, Targeted Recyclable Materials, and
2737 Organic Materials which was inadvertently Collected from Customers within the
2738 Service Area, but diverted from landfilling.

2739 **8.08 COMMUNICATION AND COOPERATION WITH AGENCY**

2740 A. **Communications.** The Contractor's general manager shall have e-mail capabilities
2741 to enable the Agency and the Contractor's general manager to communicate via e-
2742 mail. Contractor's general manager shall respond to Agency email correspondence
2743 within twenty-four (24) hours.

2744 B. **Monthly Meetings.** Upon request from Agency, beginning on the Commencement
2745 Date, and then on a monthly basis thereafter, Contractor shall meet with the Agency
2746 to discuss progress of each active diversion program, quality and reliability of
2747 Collection services, and compliance with the terms of the Agreement. SBWMA may
2748 attend and participate in these meetings. At each monthly meeting, the Agency,
2749 Contractor and SBWMA, if attending, shall have the opportunity to present and
2750 discuss proposed changes in service such as changing program requirements or
2751 modifying Collection methods.

2752 C. **Inspection by Agency.** Agency shall have the right, but not the obligation, to
2753 observe and inspect all of the Contractor's operations under this Agreement. In
2754 connection therewith, Agency shall have the right to enter facilities used by
2755 Contractor during operating hours, speak to any of Contractor's employees and
2756 receive cooperation from such employees in response to inquiries. In addition,
2757 upon reasonable notice and without interference with Contractor's operations,
2758 Agency may review and copy any of Contractor's operational and business records
2759 related to this Agreement. If Agency so requests, Contractor shall make specified
2760 personnel available to accompany Agency employees on inspections and shall
2761 provide electronic copies of records stored in electronic media.

2762 **8.09 COOPERATION WITH DESIGNATED TRANSFER AND PROCESSING FACILITY** 2763 **OPERATOR**

2764 A. **Communications.** If requested by SBWMA, the Contractor shall meet with the
2765 SBWMA and Operator at least once each month to discuss issues related to the
2766 interaction of operations between Contractor and Operator including, but not limited
2767 to:

- 2768 1. Traffic flow;
2769 2. Vehicle weighing procedures;
2770 3. Targeted Recyclable Materials and Organic Materials Contamination;

- 2771 4. Hazardous Waste screening and safety policies;
2772 5. Receiving hours;
2773 6. Billing and payment of gate fees for delivery of materials;
2774 7. Vehicle parking;
2775 8. Employee facilities; and
2776 9. Maintenance facilities.

2777 The Contractor's general manager shall have e-mail capabilities to enable the
2778 Operator and the Contractor's general manager to communicate via e-mail.
2779 Contractor's general manager shall respond to the Operator's email
2780 correspondence within twenty-four (24) hours.

2781 B. **Coordination of Hours.** Contractor shall plan its Collection routes to be
2782 compatible with the Designated Transfer and Processing Facility receiving hours,
2783 which shall be, at a minimum, Monday through Friday from 3:00 a.m. to 6:00 p.m.
2784 and Saturday and Sunday from 6:00 a.m. to 5:00 p.m. Contractor shall deliver
2785 Collected materials to the Designated Transfer and Processing Facility during the
2786 receiving hours of the Designated Transfer and Processing Facility.

2787 C. **Compliance with Facility Rules.** Contractor shall cooperate with Operator and
2788 comply with Operator's requirements including: (i) how and where to unload
2789 Collection vehicles; (ii) respecting operations and construction of new facilities; and
2790 (iii) the Operator's Hazardous Waste exclusion program. Contractor shall also
2791 cooperate with the contamination assessment procedures specified in Attachment
2792 E. All costs charged by the SBWMA for acceptance of Contractor's materials shall
2793 be paid by Contractor. Contractor shall receive compensation for transfer and
2794 processing costs in accordance with Article 11.

2795 **8.10 BUY-RECYCLED POLICY**

2796 The Contractor shall comply with the purchasing requirements described in this Section,
2797 and shall document its on-going compliance with these requirements upon Agency
2798 request.

2799 A. **Recycled Paper.** The Contractor shall use recycled paper for invoices, Bills,
2800 reports, and public education materials. The recycled paper shall have at least
2801 thirty percent (30%) post-consumer recycled content for uncoated paper and ten
2802 percent (10%) post-consumer recycled content for coated paper based on federal
2803 standards. Contractor shall state on all materials prepared with post-consumer
2804 recycled content the following: "Printed on Recycled Paper."

2805 B. **Re-Refined Motor Oil.** Contractor shall be encouraged but not required to use re-
2806 refined motor oil for its Collection vehicles.

2807 C. **Recycled Plastic.** Contractor shall purchase Carts and Kitchen Pails that contain
2808 the minimum post-consumer content as specified in Attachment D. All Carts and
2809 Kitchen Pails shall be 100% recyclable.

8.11 ANNUAL PERFORMANCE HEARING

A. **Objectives.** Agency or SBWMA may hold a public performance hearing in April or May of each Rate Year, at which time Contractor shall be present and shall participate by making a presentation and responding to questions. SBWMA shall convene the hearing to address the positive and negative aspects of Contractor's overall performance. The purpose of the hearing may also involve discussion and review of technological, economic, and regulatory changes in Collection, waste reduction, Recycling, processing, and Disposal practices that can improve quality of service; increase waste reduction and diversion; and ensure services are being provided effectively and economically. Topics for discussion and review at the performance hearing shall include, but not be limited to: Contractor's accomplishments and compliance with various provisions of the Agreement, services provided, feasibility of providing new services, application of new technologies, Customer Complaints, possible amendments to this Agreement, developments in the Applicable Laws and regulations, new initiatives for meeting or exceeding waste reduction and Recycling goals, regulatory constraints, and Contractor performance. SBWMA and Contractor may each select additional topics for discussion at the performance hearing.

B. **Process.** Within sixty (60) Days of notification provided by Agency or SBWMA to Contractor of its intent to conduct a performance hearing, Agency or SBWMA will submit questions to Contractor pertaining to Contractor's performance and Contractor shall submit its written response within thirty (30) days. SBWMA and Contractor shall meet to discuss the questions and Contractor's response prior to submittal by Contractor. SBWMA and Contractor may request from one another information or documents related to the scheduled public hearing and SBWMA and Contractor shall provide such information promptly.

In addition to Contractor's responses to the questions submitted by SBWMA, Contractor may be required to submit a self-assessment report of Contractor's performance and information pertaining to the following:

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

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

2855 SBWMA and Contractor shall attend and participate in the performance hearing.
2856 Contractor may be required to present an oral report on its performance at the
2857 performance hearing. Contractor's failure to attend and participate in the
2858 performance hearing and provide an oral presentation upon request; provide a
2859 written response to the questions or request for a self assessment report submitted
2860 by Agency or SBWMA; or submit an action plan if requested by Agency or SBWMA
2861 may result in Liquidated Damages pursuant to Attachment J.

2862 Within sixty (60) Days after the conclusion of each performance hearing, SBWMA
2863 may issue a report. As a result of the review, Agency may require Contractor to
2864 provide expanded or new services within a reasonable time frame and for
2865 reasonable compensation; and Agency or SBWMA may direct Contractor to take
2866 corrective actions for any performance inadequacies.

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ARTICLE 9

RECORD KEEPING AND REPORTING

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9.01 GENERAL

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Contractor shall compile and maintain records related to its performance as necessary to develop the reports required by this Agreement. Contractor agrees to conduct data collection, record keeping, and reporting activities necessary to meet the reporting and Solid Waste program management needs of the Agency, and to comply with the Act, other Applicable Laws (including those specified in Section 15.14), and the requirements of this Agreement.

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

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

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9.02 GENERAL RECORD KEEPING PROVISIONS

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

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

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

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The Agency, its auditors and other agents selected by the Agency, shall have the right, during regular business hours, to conduct unannounced on-site inspections and review of the records and accounting systems of Contractor and to make copies of any of Contractor's documents relevant to this Agreement. Upon request, Contractor shall arrange for records of Related Party Entities to be made available to Agency and its official representatives for review, to the extent such records are

2909 reasonably necessary to evaluate annual reports, compensation applications,
2910 Contractor's performance, or other matters related to this Agreement.

2911 C. **Retention of Records.** Unless otherwise herein required, Contractor shall retain all
2912 records and data required to be maintained by this Agreement for the Term plus at
2913 least five (5) years after expiration or early termination of the Agreement. Records
2914 and data shall be in a chronological and organized form and readily and easily
2915 interpreted. At the Agency's request, records and data required to be retained shall
2916 be retrieved in a timely manner (which shall not exceed more than ten (10)
2917 Business Days unless Contractor obtains prior written approval from the Agency) by
2918 Contractor and made available to the Agency.

2919 Contractor shall maintain copies of all Billings and Billing collections (e.g., Customer
2920 payments) records or copies of Billing summary reports (that document all Billings
2921 and Billing Collections for each Customer) for five (5) years, following the date of
2922 Billings, for inspection and verification by Agency.

2923 Records and data required to be maintained that are not specifically directed to be
2924 retained that are, in the sole opinion of the Agency, material to the determination of
2925 Contractor's Compensation or Rates or to determination of Contractor's
2926 performance, shall be retrieved by Contractor and made available to the Agency in
2927 a timely manner (which shall not exceed ten (10) Business Days unless Contractor
2928 obtains prior written approval from the Agency). When records and data are not
2929 retained or provided by the Contractor, the Agency may make reasonable
2930 assumptions regarding what information is contained in such records and data, and
2931 such assumption(s) shall be conclusive in whatever action the Agency takes.

2932 D. **Record Security.** Contractor shall maintain adequate record security to preserve
2933 records from events that can be reasonably anticipated such as a fire, theft, and an
2934 earthquake. Electronically-maintained data and/or records shall be protected,
2935 backed up, and stored at a separate site from the original data.

2936 9.03 RECORD KEEPING REQUIREMENTS

2937 A. Maintenance of Financial and Operational Records

2938 1. General. In order to effectuate Contractor's Compensation pursuant to Article
2939 11, it is necessary for Contractor to maintain accurate, detailed financial and
2940 operational information in a consistent format and to make such information
2941 available to the Agency and the SBWMA in a timely fashion.

2942 2. Contractor's Accounting Records. Contractor shall maintain accurate and
2943 complete accounting records containing the underlying financial and operating
2944 data relating to, and showing the basis for computation of, all costs associated
2945 with providing services under this Agreement. The accounting records shall be
2946 prepared in accordance with Generally Accepted Accounting Principles (GAAP)
2947 consistently applied.

2948 B. Collection Service Records

2949 Records shall be maintained and retained by Contractor for Agency relating to:

2950 1. Customer and Billing information including, but not limited to, the following for
2951 each Customer:

- 2952 a. Names, addresses, and phone numbers of Customer, Billing contact
2953 Person, and, if appropriate, for property manager or on-site contact Person;
- 2954 b. Solid Waste service level, Targeted Recyclable Materials service level, and
2955 Organic Materials service level (where service level includes the number of
2956 Containers, size of each Container, and the Collection frequency of each
2957 Container);
- 2958 c. Number of tenant or living units at Multi-Family Residential Complexes;
- 2959 d. Service exemptions for SFD Premises (if applicable);
- 2960 e. Special services (e.g., Backyard and Special Handling Collection for SFD
2961 Premises, push/pull charges, lock/unlock charges, etc.).
- 2962 Contractor's Customer and Billing system shall allow for information to be compiled
2963 easily and separately for each Service Sector.
- 2964 2. Weight and volume of material Collected by type (e.g., Solid Waste, Targeted
2965 Recyclable Materials, Organic Materials). Where possible, information shall be
2966 provided separately for each Service Sector.
- 2967 3. Route sheets and route maps identifying the accounts serviced by each
2968 Collection vehicle on a daily basis (e.g., detailed GPS reports).
- 2969 4. Facilities, equipment and personnel used.
- 2970 5. Facilities and equipment operations, maintenance and repair.
- 2971 6. Tonnage of Solid Waste, Targeted Recyclable Materials, Universal Waste, and
2972 Organic Materials listed separately by materials type and Service Sector and
2973 the facility where materials were delivered (e.g., Designated Transfer and
2974 Processing Facility).
- 2975 7. Monthly Overall Diversion Level, monthly SFD Diversion Level, and the monthly
2976 Commercial Diversion Level (each stated as a percentage) and calculated in
2977 accordance with Attachment I.
- 2978 8. Targeted Recyclable Materials, Used Motor Oil and Used Motor Oil Filters,
2979 Household Batteries, Cell Phones and Organic Materials Collection
2980 participation and set-out rates.
- 2981 9. Tonnage of materials Collected from On-Call Bulky Item Collection services
2982 described in sections 5.05, 5.06 and 5.12, community collection events as
2983 described in sections 5.13 and 5.14, and abandoned waste clean-up events
2984 described in section 5.09, reported separately by material type Collected and
2985 listing destination where materials were delivered (e.g., Goodwill Industries,
2986 Designated Transfer and Processing Facility, etc.).
- 2987 10. Tonnage of Solid Waste, Recyclable Materials, and Organic Materials
2988 Collected from Venues and Events as described in Section 5.08 reported
2989 separately by material type Collected and reported separately for each Venue
2990 and Event as the total Tonnage of each material type for each Venue or Event
2991 monthly.
- 2992 11. Volume of Used Motor Oil and number of Used Motor Oil Filters Collected by
2993 Contractor reported separately for each facility where materials were delivered.

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- C. Other Programs Records**
- Records for other programs shall be tailored to specific needs. In general, Contractor shall maintain and retain the following records:
1. Plans, tasks, and milestones; and
 2. Accomplishments including activities conducted, dates, quantities of products used, produced or distributed, and numbers of participants and responses.
- D. Customer Service Records.** Daily logs of all Complaints and Inquiries shall be retained for a minimum of thirty-six (36) months. Contractor shall maintain and retain customer service center records which include, but are not limited to the following statistics:
1. Number of calls received on a daily and monthly basis;
 2. Number of calls answered on a daily and monthly basis;
 3. Number of abandoned (dropped) calls on a daily and monthly basis;
 4. Average abandoned time (i.e., Hold Time before abandoning call);
 5. Number of delayed calls (i.e., calls where caller is placed on hold before speaking with a customer service agent) on a daily and monthly basis;
 6. Average Hold Time for incoming calls on a daily and monthly basis;
 7. Percentage of calls answered by a Person within thirty (30) seconds on a daily and monthly basis;
 8. Percentage of calls answered within three (3) minutes on a daily and monthly basis;
 9. Number of e-mail responses sent from the customer service department to Customers on a monthly basis;
 10. Number and percentage of Complaint and Inquiry e-mails or submissions through Contractor website that received responses before close of business on the Day received on a monthly basis;
 11. Number and percentage of Complaint and Inquiry e-mails that received responses by the close of business on the Day following the receipt of the Complaint or Inquiry;
 12. Number of Complaints and Inquiries received through Contractor's website on a daily and monthly basis;
 13. Names of all Customer service representatives employed; and,
 14. Minimum, average, and maximum number of customer service representatives employed during each month.
- E. CERCLA Defense Records.** Agency views the ability to defend against CERCLA and related litigation as a matter of great importance. For this reason, the Agency regards the ability to prove where Solid Waste Collected in the Agency area was taken for transfer or Disposal, to be matters of concern. Contractor shall maintain data retention and preservation systems which can establish where Solid Waste

3033 Collected in the Service Area was delivered for transfer or Disposal. This provision
3034 shall survive the expiration of this Agreement.

3035 F. **Compilation of Information for State Law Purposes.** Contractor shall compile
3036 information on amounts of Solid Waste delivered to the Designated Transfer and
3037 Processing Facility and to other locations, as well as other information which the
3038 Agency may reasonably request.

3039 Contractor shall maintain these records for a minimum of ten (10) years after
3040 expiration or earlier termination of the Agreement. Contractor shall provide these
3041 records to Agency (upon request or at the end of the record retention period) in an
3042 organized and indexed manner rather than destroying or Disposing of them.

3043 9.04 GENERAL REPORTING REQUIREMENTS

3044 A. **Purpose.** Records shall be maintained and retained in forms, on media, and by
3045 methods that facilitate flexible use of data contained in them to structure reports, as
3046 needed. Reports are intended to compile recorded data into useful forms of
3047 information that can be used to, among other things:

- 3048 1. Evaluate Diversion performance
- 3049 2. Evaluate Contractor's performance
- 3050 3. Monitor Customer participation in Targeted Recyclable Materials and Organic
3051 Materials Collection programs and in other programs using several different
3052 performance measures
- 3053 4. Monitor changes in the number of Customers and Customers' service levels
- 3054 5. Determine needs for adjustment to programs and cost for such changes
- 3055 6. Evaluate customer service and Complaints
- 3056 7. Determine and set Contractor's Compensation and Rates

3057 B. **Report Format.** Contractor may propose report formats that are responsive to the
3058 objectives and audiences for each report. The format of each report shall be
3059 approved by Agency. The Agency may review and request changes to Contractor's
3060 report formats and content and Contractor shall not unreasonably deny such
3061 requests. Contractor agrees to mail a copy of all reports to the Agency, and submit
3062 all reports by e-mail in a format compatible with the Agency's software and
3063 computers so the Agency can sort and analyze data. Contractor shall provide a
3064 certification statement, under penalty of perjury by the responsible Contractor
3065 official, that the report being submitted is true and correct to the best knowledge of
3066 such official after their reasonable inquiry.

3067 C. **Submittal Schedule and Instructions.** Contractor shall submit monthly reports
3068 within fifteen (15) Days after the end of the reporting month. Contractor shall submit
3069 quarterly reports within thirty (30) Days after the end of the reporting quarter.
3070 Contractor shall submit annual reports within forty-five (45) Days after the end of
3071 each Rate Year.

3072 Contractor shall submit (via mail and e-mail) all reports to the person(s) designated
3073 by SBWMA and Agency.

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

E. **Accuracy of Reports.** The failure of Contractor to file accurate and timely reports, proposal(s), information or correspondence to Agency or SBWMA, or the inclusion of any inaccurate or misleading data, statement or representation by Contractor in such report(s), proposal(s), information or correspondence to Agency or SBWMA, shall be subject to Liquidated Damages as set forth in Attachment J. In addition, the inclusion of any materially false or misleading statement or representation by Contractor in such report shall be deemed a Contractor default as described in Section 14.01 subject to the notice and cure provisions of that section and shall subject Contractor to all remedies which are available to the Agency under the Agreement or otherwise.

9.05 MONTHLY REPORTS

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

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

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

If Contractor does not separately track Multi-Family Tonnage data, Contractor shall conduct a semi-annual or annual Tonnage assessment if requested by the Agency in accordance with Section 7.06, which involves separately Collecting and weighing Multi-Family Solid Waste, Targeted Recyclable Materials, and Organic Materials to quantify Tonnage Collected during a given week.

B. **Diversion Level.** Contractor shall provide the monthly and year-to-date Calculated Overall Diversion Level, the monthly and year-to-date Residential Diversion Level, and the monthly and year-to-date Commercial Diversion Level (each stated as a percentage) calculated in accordance with Attachment I. In addition, Contractor shall present the calculations used to determine the diversion levels.

3117 C. **Complaint, Inquiry and Service Requests Data.** Contractor shall provide
3118 information on the number of Complaints, Inquiries service requests received from
3119 Customers, Generators, or other Person by category (e.g., missed pickups, noise
3120 Complaints, scheduled On-Call Bulky Item Collection Events, Overage events,
3121 Billing concerns, property damage claims, requests for information, delivery of
3122 Recycling Tote-Bags, inventory of Recycling Tote-Bags etc.). Complaint summary,
3123 for each month and cumulative for Rate Year to date, summarized by nature of
3124 Complaint, Inquiry and service request on a compatible computer disc or other
3125 memory device approved by Agency. The categorization of Complaints, Inquiries
3126 and service requests shall be agreed-upon by the Agency, SBWMA, and Contractor
3127 prior to the Commencement Date, and shall be adjusted during the Term upon
3128 agreement between Agency, SBWMA and Contractor.

3129 D. **Call Center Data.** Number of calls received, number of calls answered, number of
3130 dropped calls, percentage of dropped calls, Average Hold Time, percentage of calls
3131 answered in thirty (30) seconds.

3132 E. **Monthly Gross Revenues and Fee Reports.** Pursuant to Article 10, a statement
3133 itemizing each fee paid by Contractor to Agency in the month; detailing calculation
3134 of each monthly fee amount; and stating monthly Gross Revenues, by Service
3135 Sector, for all operations conducted or permitted by this Agreement.

3136 F. **On-Site Customer Assessments and Visual Audits.** Contractor shall report the
3137 number of and results of the site assessments and visual audits conducted for Multi-
3138 Family Dwelling, Commercial, and Agency Customers, which are required by
3139 Section 7.06.

3140 G. **Quality Assurance Program.** Contractor shall report monthly on its implementation
3141 of this program, described in Section 7.02.F, during the prior month. The report shall
3142 include (i) name and Service Sector of each Customer contacted, (ii) date, time and
3143 length of telephone call, (iii) name of customer service representative placing call,
3144 (iv) summary of Customer's responses to questions and other information provided,
3145 and (v) follow-up actions taken, if any, in response to calls.

3146 9.06 QUARTERLY REPORTS

3147 Quarterly reports shall present the information described in this Section. Each quarterly
3148 report shall present the information below for the reporting months of that quarter and for
3149 each of the preceding twelve (12) months.

3150 A. **Tonnage Information.** Contractor shall provide the Tonnage information requested
3151 below by Service Sector on a monthly and year-to-date basis. However, the
3152 Agency reserves the right to request the monthly Tonnage data by route.

3153 1. Solid Waste. Total Solid Waste Tonnage Collected and Disposed by Service
3154 Sector.

3155 2. Targeted Recyclable Materials Services. Total Targeted Recyclable Materials
3156 Tonnage Collected and delivered for processing by Service Sector listed
3157 separately by material type Collected (e.g., Single-Stream Targeted Recyclable
3158 Materials, Source Separated cardboard, Source Separated paper, Used Motor
3159 Oil, Used Motor Oil Filters, etc.).

3160 3. Organic Materials Services. Total Organic Materials Tonnage Collected and
3161 delivered for processing by Service Sector listed separately by material type
3162 (e.g., Plant Materials, Food Scraps, or Organic Materials).

3163 If Contractor does not separately track Multi-Family Tonnage data, Contractor shall
3164 conduct a semi-annual or annual Tonnage assessment if requested by Agency in
3165 accordance with Section 7.08 that involves separately Collecting and weighing
3166 Multi-Family Solid Waste, Targeted Recyclable Materials, and Organic Materials to
3167 quantify Tonnage Collected during a given week.

3168 B. **Diversion Level.** Contractor shall provide the quarterly and year-to-date Overall
3169 Diversion Level, the quarterly and year-to-date Single-Family Diversion Level, and
3170 the quarterly and year-to-date Commercial Diversion Level (each stated as a
3171 percentage) calculated in accordance with Attachment I. In addition, Contractor
3172 shall present the calculations used to determine the Diversion Levels.

3173 C. **Education Activities**

- 3174 1. Public education materials produced and total number of each distributed.
3175 2. Dates, times, and names of meetings or events attended.
3176 3. Dates, times, and names of school(s) where presentations were performed.
3177 4. Other educational activities as may be requested by Agency.

3178 D. **Complaint, Inquiry and Service Requests Data.** Number of Complaints, Inquiries
3179 and service requests received from Customers, Generators, or other Person by
3180 category (e.g., missed pickups, noise Complaints, scheduled On-Call Bulky Item
3181 Collection Events, Overages, Billing concerns, property damage claims, requests
3182 for information, etc.). Complaint summary, for each month and cumulative for Rate
3183 Year to date, summarized by nature of Complaints on a compatible computer disc
3184 or other memory device approved by Agency.

3185 E. **Call Center Data.** Number of calls received, number of calls answered, number of
3186 dropped calls, percentage of dropped calls, average delay time, Average Hold
3187 Time, percentage of calls answered in thirty (30) seconds, percentage of calls
3188 answered in ninety (90) seconds reported for the month.

3189 F. **Quarterly Gross Revenues and Fee Reports.** Pursuant to Article 10, a statement
3190 itemizing each fee paid by Contractor to Agency in the quarter; detailing calculation
3191 of each monthly fee amount; and stating monthly Gross Revenues, by Service
3192 Sector, for all operations conducted or permitted by this Agreement.

3193 G. **Determination and Payment of Liquidated Damages.** In accordance with the
3194 requirements of Section 14.07, Contractor shall provide a report that identifies any
3195 non-compliance with performance measures listed in Attachment J (except for
3196 compliance with diversion-related standards which shall be reported as part of the
3197 Contractor's annual report) and include calculation of the Liquidated Damages due.
3198 This report shall be accompanied by supporting documentation identifying either
3199 compliance with or level of non-compliance with the performance measures.
3200 Contractor may include with its report a written request to meet with Agency's
3201 Manager or his or her designee to discuss Contractor's evidence refuting the basis

3202 for assessing Liquidated Damages pertaining to unacceptable employee behavior.
3203 In such cases, Contractor shall include with its report evidence in writing and written
3204 testimony of its employees and others relevant to the incident(s)/non-performance.
3205 Agency's Manager or his or her designee will provide Contractor with a written
3206 explanation of his or her determination on each incident(s)/non-performance. The
3207 decision of Agency's Manager or his or her designee shall be final.

3208 H. **Account Summary.** For monthly reports following the end of each quarter (e.g., for
3209 monthly reports submitted in January, April, July, and October), provide the
3210 following account summary information in table format:

- 3211 1. Number of Customers in each Rate category.
- 3212 2. Total number of Residential, Commercial, and Drop Box Customers
3213 subscribing to Solid Waste, Targeted Recyclable Materials, and Organic
3214 Materials Collection service listed separately by Service Sector and material
3215 type.
- 3216 3. Percentage of Customers subscribing to Targeted Recyclable Materials
3217 Collection service (listed separately for Multi-Family, Commercial, and Drop
3218 Box Customers), which shall be equal to the total number of Targeted
3219 Recyclable Materials Customers divided by the total number of Solid Waste
3220 Customers.
- 3221 4. Percentage of Customers subscribing to Organic Materials Collection service
3222 (listed separately for Multi-Family, Commercial, and Drop Box Customers),
3223 which shall be equal to the total number of Organic Materials Customers
3224 divided by the total number of Solid Waste Customers.

3225 I. **On-Site Customer Assessments and Visual Audits.** Contractor shall report the
3226 number of and results of the site assessments conducted for Multi-Family and
3227 Commercial Customers, which are required by Article 7.

3228 J. **Summary Assessment.** Highlight significant accomplishments and problems.
3229 Identify recommendations and/or plans to improve services.

3230 K. **Public Education Plan.** The quarterly report submitted in October of each year
3231 shall include the public education plan for the coming year pursuant to Section 7.03
3232 of this Agreement.

3233 L. **Hazardous Waste Records.** A summary or copy of the Hazardous Waste records
3234 required under Section 8.07.D.

3235 M. **Operational Data.** Contractor shall provide GPS reports as requested by Agency
3236 or SBWMA. In addition, Contractor shall submit a summary of Collection route
3237 operational data including: average number of Customers and Containers serviced
3238 per route per Day for each Collection route; average number of actual both on-route
3239 and off-route hours per Day by route (distinguishing between normal and hard-to-
3240 serve routes, if appropriate); and, one-hundred (100) largest generators based on
3241 weekly Solid Waste volumes (listed in descending order) within Agency for both
3242 Commercial and Multi-Family Customers. This reporting shall include, at a
3243 minimum: the name of the Customer; the name of the business; the address of the
3244 business; the type(s) of service received (e.g. Collection of Solid Waste, Single-

3245 Stream Targeted Recyclable Materials, Plant Materials, Food Scraps, Organic
3246 Materials, Source Separated cardboard, Source Separated paper, etc.); the volume
3247 of service received weekly measured in cubic yards; the frequency of service
3248 received measured in number of Collections per week; the diversion volume
3249 measured as total service level volume divided by Targeted Recyclables Materials
3250 and/or Organic Materials Collection volume; and, the change in service level from
3251 the prior quarter.

3252 N. **Commercial Recycling Promotion Program Status Report.** Contractor must
3253 prepare and submit, both quarterly and annually, to Agency and SBWMA, a
3254 Commercial Recycling Program Status Report. The Commercial Recycling Program
3255 Status Report shall include, but not be limited to:

3256 1. A summary of training and professional development activities for the
3257 Commercial Recycling Promotion and supervisory staff;

3258 2. A description of the strategy and overall approach to attract and retain a high
3259 quality and effective Commercial Recycling Promotion Program and
3260 supervisory staff;

3261 3. A description and status of meeting the goals and objectives for the
3262 Commercial Recycling Promotion team and how these goals and objectives are
3263 tied to the compensation incentive plan. (Contractor must explain how the
3264 stated goals and objectives will be accomplished if no compensation incentive
3265 plan is used.)

3266 4. A description of Contractor's sales strategy for maintaining and/or expanding
3267 the existing Commercial Recycling account base and diversion levels.

3268 5. A description of the services provided to the Commercial and Agency Facility
3269 sectors.

3270 6. A detailed accounting of diversion statistics for the Commercial and Agency
3271 Facility sectors.

3272 O. **Other Information.** Other information or reports that Agency may reasonably
3273 request or require be added to quarterly reporting. These requests may include, but
3274 shall not be limited to, information regarding On-Call Collection programs, Used
3275 Motor Oil and Used Motor Oil Filter Collection, and large Events and Venues
3276 Collection.

3277 P. **Determination and Payment of Performance Incentives and Disincentives.** In
3278 accordance with the requirements of Section 11.07, Contractor shall provide with its
3279 quarterly report, a report that identifies compliance with the performance standards
3280 listed in Attachment I and includes calculation of the Performance Incentive
3281 payments and disincentive assessments due. Performance incentives (in the form
3282 of increased compensation to Contractor) will be awarded by Agency for excellent
3283 performance on aspects of Solid Waste diversion, Collection service delivery and
3284 customer service as specified in Attachment I. Performance disincentives will be
3285 assessed by Agency for substandard performance on aspects of Solid Waste
3286 diversion, Targeted Recyclable Materials contamination, Organic Materials

3287 contamination, Plant Materials contamination, Collection service delivery and
3288 customer service specified in Attachment I.

3289 Contractor's payment of performance disincentives related to Contamination are to
3290 be included with submittal of Contractor's quarterly report to the SBWMA. All other
3291 performance incentives and disincentives payments are to be included in
3292 Contractor's annual Rate Application and Contractor's Compensation for the next
3293 Rate Year will be increased or decreased by the net amount of performance
3294 incentive payments and disincentive assessments calculated in the Application.
3295 Performance incentives and disincentives for Overall Diversion Level, Minimum
3296 Single-Family Diversion Level, Minimum Commercial Diversion Level,
3297 Contamination, Average Speed of Answer and Ninety (90) Second Maximum Hold
3298 Time shall be calculated in aggregate for the SBWMA Service Area and Agency's
3299 share shall be proportional based on the tons of Solid Waste Collected by
3300 Contractor for Rate Year One (2011) by Previous Contractor. Performance
3301 incentives and disincentives for Single-Family Missed Pick-Up Initial Complaints
3302 and Single-Family Missed Pick-Up Collection Events shall be calculated separately
3303 for each Agency.

3304

3305 **9.07 ANNUAL REPORTS**

3306 Annual reports shall present the information described in this Section in addition to the
3307 information required for quarterly reports pursuant to Section 9.05.

3308 **A. Operational Information**

3309 **1. Routes by Service Sector**

- 3310 a. Number of routes per Day
- 3311 b. Types of vehicles
- 3312 c. Crew size per route
- 3313 e. Number of full-time equivalent routes
- 3314 f. Number of accounts per route
- 3315 g. Total hours per Service Sector per Day and per year
- 3316 h. Average cost per route
- 3317 i. Route sheets and maps

3318 **2. Personnel**

- 3319 a. Organizational chart
- 3320 b. Job classifications and number of full-time equivalent positions for each
3321 (e.g. administrative, customer service representatives, drivers,
3322 supervisors, educational staff, etc.)
- 3323 c. Annual wages by job classification including benefits

3324 **3. Productivity Statistics**

- 3325 a. Number of accounts per Service Sector
- 3326 b. Number of set-outs per Service Sector
- 3327 c. Tons per route per Day by Service Sector

- 3328 4. Operational Changes
- 3329 a. Number of routes
- 3330 b. Staffing
- 3331 c. Supervision
- 3332 d. Collection services
- 3333 5. Equipment - An inventory of equipment in accordance with Section 8.04.D.
- 3334 6. Billing - Billing review report in accordance with Section 7.01.F.
- 3335 B. **Customer Account Information.** As part of the annual reporting requirement,
- 3336 Contractor shall make available to Agency detailed Customer account information
- 3337 in tabular format and in electronic format (in computer software format that is
- 3338 compatible with the Agency's) that includes, at a minimum, the following information
- 3339 for each Customer: account number; service address; Customer's name, address,
- 3340 and phone number; Billing contact name, Billing address, and phone number; Solid
- 3341 Waste, Targeted Recyclable Materials, and Organic Materials Collection service
- 3342 level (i.e., number of Containers, size of Containers, frequency of Collection, and
- 3343 Day(s) of Collection), and Rate charged. For Multi-Family Customers, the
- 3344 Customer account information shall also include the number of dwelling units at
- 3345 each Multi-Family Residential Complex.
- 3346 C. **Customer Service Operations.** Contractor shall annually prepare and submit, to
- 3347 Agency and SBWMA, a Customer Service Operations Plan that shall include, at a
- 3348 minimum, the following sections:
- 3349 1. Customer Service Call Center
- 3350 A. Provide the number CSR supervisory staff and describe their
- 3351 responsibilities.
- 3352 B. Contractor must describe its training strategy for CSR's and CSR
- 3353 supervisory staff.
- 3354 C. Contractor must describe its strategy and overall approach to attracting
- 3355 and retaining a high quality CSR staff.
- 3356 2. Website
- 3357 A. Number of on-line payments made
- 3358 B. Number of On-Call Collection Services scheduled
- 3359 C. Number of On-Call Bulky Goods Collections scheduled
- 3360 D. Number of extra Solid Waste pick-ups scheduled
- 3361 E. Number of service changes requested
- 3362 F. Number of Complaints documented and resolved
- 3363 3. Customer Information System
- 3364 A. Status of any changes or upgrades made to system software
- 3365 B. Description of proposed changes to system software
- 3366 C. Explanation and schedule of training activities
- 3367 4. Staffing
- 3368 5. Commercial customer service

D. **Related Party Entities.** Contractor agrees that all financial transactions with all Related Party Entities shall be approved in advance in writing and disclosed annually (coinciding with Contractor's annual audited financial statements referred to in this Section 9.07) to the Agency in a separate disclosure letter to the Agency. This letter shall include the following information: a general description of the nature of each transaction, or type of (for many similar) transaction, as applicable. Such description shall include for each (or similar) transaction, amounts, specific Related Party Entity, basis of amount (how amount was determined), and description of the allocation methodology used to allocate any common costs. Amounts shall be reconciled to the Related Party Entity disclosures made in Contractor's annual audited financial statements referred to in this Section.

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

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

F. **Determination and Payment of Liquidated Damages.** In accordance with the requirements of subsections 14.07 and 11.07.D, Contractor shall provide with its annual report, a report that identifies any non-compliance with the performance standards listed in Attachment J and includes calculation of the Liquidated Damages due. This report shall be accompanied by supporting documentation identifying Contractor's compliance or non-compliance with the specified performance standards. The report submittal shall be accompanied by a check from Contractor in the amount of the Liquidated Damages due (per Contractor's calculation and self-reporting) for the reporting period.

G. **Determination and Payment of Performance Incentives and Disincentives.** In accordance with the requirements of subsection 11.07, Contractor shall provide with its annual report, a report that identifies any non-compliance with the performance standards listed in Attachment I and includes calculation of the Performance Incentive payments and Disincentive assessments due. Performance Incentives (in the form of increased compensation to Contractor) will be awarded by Agency for excellent performance on aspects of Solid Waste diversion, Collection service delivery and customer service as specified in Attachment I. Performance disincentives will be assessed by Agency for substandard performance on aspects of Solid Waste diversion, Collection service delivery and customer service specified in Attachment I.

Payment related to Performance Incentives and Disincentives, other than those related to Contamination, are to be included in Contractor's annual Rate Application and Contractor's Compensation for the next Rate Year will be increased or decreased by the net amount of Performance Incentive payments and Disincentive assessments calculated. Performance Incentives and Disincentives shall be calculated as specified in Section 9.06.P.

9.08 EVENT-SPECIFIC REPORTING

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

A. **Report of Accumulated Solid Waste; Unauthorized Dumping.** As required by Section 7.07, Contractor shall report: (i) the addresses of any Premises at which the driver observes that Solid Waste, Targeted Recyclable Materials, and/or Organic Materials is accumulating; and (ii) the address, or other location description, at which Solid Waste, Targeted Recyclable Materials, and/or Organic Materials has been dumped in an apparently unauthorized manner. The report shall be delivered to the Agency within one (1) Business Day of such observation.

B. **Hazardous Waste.** As required by Section 8.07, the Contractor shall notify the Agency of any Hazardous Waste identified in Containers or left at any Premises within twenty-four (24) hours of identification of such material.

C. **Reporting Adverse Information.** Contractor shall provide Agency two (2) copies (one (1) to the Agency Manager, one (1) to the Agency Attorney) of all reports, pleadings, applications, notifications, Notices of Violation, communications or other material relating specifically to Contractor's performance of services pursuant to this Agreement, submitted by Contractor to, or received by Contractor from, the United States or California Environmental Protection Agency, the California Integrated Waste Management Board, the Securities and Exchange Commission or any other federal, State, County, or local agency, including any federal or State court. Copies shall be submitted to Agency simultaneously with Contractor's filing or submission of such matters with said agencies. Contractor's routine correspondence to said agencies need not be submitted to Agency, but shall be made available to Agency promptly upon Agency's written request.

9.09 UPON-REQUEST REPORTING

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

B. **Other.** The Agency reserves the right to request additional reports from the Contractor, and the Contractor shall deliver such reports within twenty-five (25) Business Days of such request provided that such information is similar in nature to the required elements of the monthly, quarterly or annual reporting requirements described in Sections 9.05, 9.06, and 9.07. If the information requested by the Agency is not typically part of the Contractor's reporting requirements described in Sections 9.05, 9.06, and 9.07, Contractor shall provide such information if the Contractor is required to maintain the information under the record-keeping requirements described in Sections 9.01, 9.02, and 9.03.

3451

ARTICLE 10 FRANCHISE FEE AND OTHER FEES

3452 **10.01 GENERAL**

3453 The fees described in this Article shall be treated as Pass-Through Costs for the
3454 purposes of determining Contractor's Compensation and shall be recoverable through
3455 the Rates that Contractor charges to Customers. Contractor shall separately identify
3456 any of the fees established under this Article on Customer bills if directed to do so by
3457 Agency.

3458 **10.02 FRANCHISE FEE**

3459 In consideration of the exclusive franchise granted to Contractor by this Agreement, and
3460 to reimburse Agency for costs incurred in administering this Agreement, Contractor shall
3461 pay to Agency a Franchise Fee specified in Attachment M.

3462 **10.03 OTHER FEES**

3463 Agency has adopted other fees which are intended to recover the costs of services
3464 related to solid waste management, recycling, cleanliness of public streets and/or public
3465 litter and recycling containers through inclusion in solid waste/recycling collection Rates.
3466 The other fees currently in effect, or which are expected to be in effect as of January 1,
3467 2011 are also listed on Attachment M.

3468 **10.04 TIME AND METHOD OF PAYMENT**

3469 On or before the twentieth (20th) day after the end of each month, Contractor shall pay to
3470 Agency (i) the amount of the Franchise Fees due on Gross Revenues Billed during the
3471 immediate previous month, (ii) one-twelfth of any other fee established by Agency unless
3472 Agency directs a different payment schedule for such other fees.

3473 Contractor shall provide, concurrently with the payment of fees, a statement showing the
3474 calculation of each fee, including the Gross Revenues Billed from Customers in each
3475 Service Sector for that month. The statement shall be in a format, and contain the level
3476 of detail, specified by Agency. Payments from Contractor to Agency shall be made by
3477 wire transfer or other method authorized by Agency.

3478 If a fee is not paid on time, Contractor shall pay a late payment charge equal to two
3479 percent (2%) of the fees due for that month. In addition, Contractor shall pay an
3480 additional two percent (2%) on any unpaid balance for each thirty (30) Day period a
3481 portion of the fee due remains unpaid. Late payment charges are not included in
3482 Contractor's Compensation and may not be recovered through Rates. Changes to
3483 Contractor's Compensation to reflect increases or decreases in fees, or the addition of
3484 new fees, are not subject to the Special Compensation Review provisions in Section
3485 11.05.

3486 **10.05 ADJUSTMENTS TO FEES; ADDITIONAL FEES**

3487 Agency may from time to time adjust the amount of the fees described in this Article and
3488 may establish other fees. Changes in the total amount of fees to be collected by
3489 Contractor and remitted to Agency shall be reflected in an adjustment to Contractor's
3490 Compensation and Rates.

**ARTICLE 11 CONTRACTOR'S COMPENSATION, PASS-THROUGH
COSTS, AND RATES**

11.01 OVERVIEW

- A. Contractor's Compensation includes three components:
1. Annual Cost of Operations. These include the cost of labor, equipment, materials and supplies, fuel, insurance, bonds, taxes, overhead and all other costs necessary to perform all the services required, in the manner required, by this Agreement, with the exception of costs identified in subsection A.3.
 2. Profit. Contractor's profit is determined by applying the Operating Ratio of ninety and one-half percent (90.5%) to annual costs of operation described in subsection A.1.
 3. Contractor Pass-Through Costs. These consist of costs which Contractor is obligated to pay but on which Contractor does not earn a profit and currently consist of: (i) interest; and (ii) regulatory agency fees.
- B. Attachment N includes baseline financial and operational information which is used to calculate Contractor's Compensation. The Annual Costs of Operation, Profit, and Contractor Pass-Through Costs shown on Attachment N: (i) are based on Contractor's Proposal; (ii) are allocated among Member Agencies using the methodology specified in Attachment K, Section 6; and (iii) have been adjusted to reflect refinements in the scope of services and decisions by individual Member Agencies as to specific programs, levels of service or other unique factors affecting only their jurisdiction.
- C. Contractor's Compensation for Rate Year One will be determined as provided in Section 11.02.A. Annually thereafter, Contractor's Compensation will be adjusted as provided in Section 11.02.B, C and D.
- D. After the conclusion of each Rate Year, SBWMA will conduct a revenue reconciliation process as provided in Section 11.03. The purpose of this procedure is to reconcile Net Revenues Billed by Contractor for a Rate Year with the approved Contractor's Compensation. Adjustments to Contractor's Compensation will be made in a subsequent year to recover any excess revenue from Contractor or to compensate Contractor for a revenue shortfall.
- E. However, no adjustments to Contractor's Compensation will be made for differences between Costs of Operation or Pass-Through Costs as calculated and as actually incurred, with the exception of cost differences due to changes in scope of services (Section 11.06) or as authorized by a Special Compensation Review (Section 11.05). If Contractor's actual Costs of Operation are more or less than the amounts included in the annual calculation of Contractor's Compensation, Contractor is neither entitled to an increase in compensation, nor subject to a reduction in compensation, in future Rate Years.

11.02 DETERMINATION OF CONTRACTOR'S COMPENSATION

A. **Contractor's Compensation for Rate Year One (2011).** Contractor's Compensation for 2011 shall be determined in 2010. Costs shown on Attachment N will be adjusted to reflect changes from 2008 when Contractor submitted its Proposal, for the following factors:

- Inflation;
- Wage rates and benefits for employees covered by collective bargaining agreements;
- Capital equipment costs; and
- Customer account and service levels.

All as provided in Attachment K, Section 3.

If Contractor enters into a franchise agreement with any other Member Agency which uses a substantially different methodology for calculating Contractor's Compensation than that set forth in Article 11 and Attachments K and N of this Agreement, then (i) for purposes of calculating Contractor's Compensation under this Agreement, Contractor's costs of providing service to such other Member Agency shall continue to be calculated and allocated using the methodology set forth in Attachments K and N and (ii) Contractor's Compensation for providing service to such other Member Agency shall be as set forth in the franchise agreement between it and Contractor. Any such franchise agreement shall (i) implement the performance incentives and disincentives provided for in this Agreement and (ii) require Contractor to pay sums due to SBWMA for delivery of materials from such Member Agency to the SRDC.

B. **Contractor's Compensation for Rate Year Two (2012).** Contractor's Compensation for 2012 shall be based on Contractor's Compensation for 2011 adjusted to reflect inflation, changes in wage rates and benefits for employees covered by collective bargaining agreements.

C. **Contractor's Compensation for Rate Year Three (2013).** Contractor's Compensation for 2013 shall be based on Contractor's Compensation for 2012 adjusted to reflect inflation, changes in wage rates and benefits for employees covered by collective bargaining agreements, 2013 Customer account and service levels, and the difference between Contractor's Compensation approved for 2011 and Net Revenues Billed for 2011. The adjustment for Customer account and service levels shall be the final adjustment made during the Term for those variables.

D. **Contractor's Compensation for Rate Year Four (2014) and Subsequent Years.** Contractor's Compensation shall be adjusted annually, commencing with the determination of Contractor's Compensation for Rate Year Four (2014) and continuing through the remaining Term including any extension periods to reflect inflation, changes in wages and benefits for employees covered by collective bargaining agreements in effect as of the Commencement Date of this Agreement, and the difference between Contractor's Compensation approved for the prior year (e.g., 2012) and Net Revenues Billed for 2012 and similarly for subsequent years.

3572 For Rate Year Four (2014) through the last Rate Year of the Term, no changes to
3573 Contractor's Compensation will be made to reflect actual costs or to reflect changes
3574 in Customer account and service levels.

3575 **11.03 ANNUAL REVENUE RECONCILIATION PROCESS**

3576 After completion of each Rate Year, a revenue reconciliation process will be
3577 implemented as provided in this section and described in Attachment K, Section 8.

3578 The purpose of this process is to determine the difference between the actual Net
3579 Revenues Billed by Contractor for the preceding Rate Year and the Contractor's
3580 Compensation approved for that Rate Year.

3581 The Contractor shall submit a report to Agency and SBWMA on or before March 31 of
3582 each Rate Year, commencing March 31, 2012.

3583 The report shall include the following information (items) for the preceding Rate Year:

3584 **A. Gross Revenue Billed.** Gross Revenue Billed is the total amount billed by
3585 Contractor to Customers for all services attributable to the Rate Year in question.
3586 The report will identify the amount attributable to each Member Agency. (In the case
3587 of agencies that bill Customers directly for some or all of the services provided by
3588 Contractor, Gross Revenue Billed will include all amounts paid to Contractor by
3589 those agencies.)

3590 **B. Payments to SBWMA.** Payments to SBWMA are the amounts charged by SBWMA
3591 for delivery of materials to the Designated Transfer and Disposal Facility. They do
3592 not include payments to SBWMA pursuant to Section 6.02 for excess
3593 contamination. The report will identify the amount of these payments attributable to
3594 each Member Agency, using the methodology described in Attachment K, Section
3595 6.

3596 **C. Payments to Agencies for Franchise Fees and other fees described in Article**
3597 **10.** The report will identify the amount of these payments attributable to the Rate
3598 Year in question made to each Member Agency.

3599 **D. Revenues Attributable to Unscheduled Service.** Contractor is obligated to
3600 provide some services to Customers or Member Agencies on an unscheduled "on-
3601 call" or intermittent basis. A list of these unscheduled services is included as
3602 Attachment Q.

3603 Because the amount of such services may vary from year to year and is
3604 unpredictable, the costs and revenues associated with them are not included in
3605 SBWMA's prospective calculation of Contractor's Compensation. The report shall
3606 identify the amount of billings for unscheduled or intermittent service for each
3607 Member Agency.

3608 Net Revenue Billed equals the result obtained by subtracting the sum of items B, C and
3609 D from item A [i.e., $A - (B+C+D)$].

3610 Liquidated Damages assessed by Member Agencies pursuant to Section 14.07 are not
3611 included in the revenue reconciliation process. Similarly, performance incentive

3612 payments and performance disincentive assessments provided for in Section 11.07 are
3613 not included in the revenue reconciliation process.

3614 The SBWMA will review the report and underlying financial data for accuracy, will confer
3615 with Member Agencies to confirm data as to each agency, and will meet with Contractor
3616 to resolve any errors or inconsistencies.

3617 The SBWMA will incorporate its conclusions as to revenue shortfalls or revenue
3618 surpluses experienced by Contractor as to each Member Agency into its calculation of
3619 Contractor's Compensation for the following Rate Year distributed to all Member
3620 Agencies in the Fall of each year.

3621 The revenue reconciliation process will not be conducted for the last Rate Year of the
3622 Agreement. As a result, Contractor shall not be compensated for, nor obligated to
3623 rebate, any difference between Contractor's Compensation established for that Rate
3624 Year and actual Net Revenue Billed for that Rate Year.

3625 **11.04 APPLICATION PROCESS FOR CONTRACTOR'S COMPENSATION**

3626 A. **Application Date and Content.** Contractor shall prepare and submit to Agency and
3627 SBWMA by July 1 of each year, beginning on July 1, 2010, an Application for
3628 determination of Contractor's Compensation for the next Rate Year. This
3629 Application will cover all Member Agencies and will allocate total costs to each
3630 Member Agency using the allocation methodology prescribed in Attachment K and
3631 illustrated in Attachment N. Contractor shall provide any additional information
3632 requested by the Agency or by SBWMA during its review of the Application.

3633 B. **Review of Application.** The Application shall be reviewed by SBWMA for
3634 accuracy and consistency with the procedures for determining Contractor's
3635 Compensation specified in this Agreement as described in Attachment K. SBWMA
3636 shall share with Contractor any factual or calculation errors identified in the
3637 Application and Contractor shall have the opportunity to revise its Application.

3638 C. **SBWMA Report on Application** As provided in Attachment K, Authority staff shall
3639 distribute, on or before September 1 of each year, a report in draft form which (i)
3640 identifies the amount of Contractor's Compensation and Pass-Through Costs
3641 allocable to Agency for the following Rate Year and (ii) provides an overall
3642 percentage increase or decrease in Agency's collection Rates which SBWMA
3643 calculates will generate Customer revenues sufficient to cover Contractor's
3644 Compensation and Pass-Through Costs.

3645 SBWMA will take into account comments received from Agency and other Member
3646 Agencies within 10 days after distribution of the report in draft form. A final report
3647 will be presented to and considered by the SBWMA Board of Directors and
3648 approved for distribution to all Member Agencies on or before October 1 of each
3649 year. The determination of Contractor's Compensation, the estimation of Pass-
3650 Through Costs, and the allocation of costs among Member Agencies contained in
3651 the final Report shall be binding on Contractor and Agency.

11.05 SPECIAL COMPENSATION REVIEW

A. **Eligible Items.** The Contractor may apply to the Agency for consideration of a special review of Contractor's Compensation, and the Agency may initiate such a review, if one or more of the following occur and cause an increase in or decrease to Contractor's Compensation by two percent (2%) or more for the then-current Rate Year:

1. Provision of emergency services pursuant to Section 7.08.
2. Flood, earthquake, or other similar catastrophic event affecting the Agency which is beyond the control of and not the fault of the Contractor.
3. Change in Law occurring after the Effective Date.
4. Changes in the rates charged for Backyard Collection Service and/or Curbside Collection Service that alter the price differential between the two, causing Customers to migrate from one to the other, with the result of increasing or decreasing Contractor's annual cost of operation by two percent (2%) or more.

A special compensation review must be requested by Contractor, or initiated by Agency, within twelve (12) months after one of the above-described events has occurred.

B. **Ineligible Items.** A special review of Contractor's Compensation may not be initiated for any of the following reasons:

1. Increases or decreases in Contractor's cost of operations in excess of the adjustments provided through the annual adjustment mechanism described in Attachment K.
2. Growth or decline in the number of Customers or their service levels, with the exception of adjustments made when determining Contractor's Compensation for Rate Year One (2011) and Rate Year Three (2013).
3. Changes in the mix of Container sizes or frequency of Collection, with the exception of adjustments made when determining Contractor's Compensation for Rate Year One (2011) and Rate Year Three (2013).

C. **Review of Costs.** Agency shall have the right to review any and all financial and operating records of Contractor. Agency will take into account the net overall impact of the event on Contractor's costs, including reductions in cost resulting from curtailments in service levels or other factors.

D. **Submittal of Request.** Contractor must submit its request for a special review in a form and manner specified by the Agency, together with required cost and operational data. Agency will review the request and determine the amount owed, if any, to Contractor and the time period to be covered by special compensation circumstances.

E. **Burden of Justification.** In a special compensation review under this section, Contractor shall bear the burden of justifying to the Agency by substantial evidence its entitlement to continuation of current, as well as any increases in, Contractor's Compensation. If the Agency determines that the Contractor has not met its burden, it shall notify Contractor that it is prepared to deny Contractor's request for

3694 an increase in compensation, or to proceed with a reduction in compensation.
3695 Within ten (10) days after such notice, Contractor may request a hearing before the
3696 Agency's governing body to produce additional evidence. Upon such request, the
3697 Agency shall provide a hearing before the Agency governing body.

3698 F. **Hearing.** Based on evidence presented to it, including, that submitted by
3699 Contractor, the Agency governing body may grant some, all, or none of the
3700 requested increase in, or may reduce, Contractor's Compensation. In the event
3701 Agency denies Contractor's requested increase in whole or in part, Contractor shall
3702 have the right to present its claim to a court of competent jurisdiction.

3703 G. **Cost of Review.** Contractor shall bear all reasonable costs incurred by Agency
3704 (including assistance provided to it by SBWMA) of a special review which it has
3705 requested up to a maximum of fifty-thousand dollars (\$50,000). Costs of a review
3706 requested by Contractor may not be included in Contractor's Compensation,
3707 charged to Agency or Customers, nor included in the calculation used as rationale
3708 to initiate a special compensation review.

3709 **11.06 COMPENSATION ADJUSTMENTS FOR CHANGES IN SCOPE OF SERVICES OR**
3710 **SERVICE LEVELS**

3711 In the event the Agency directs a change in accordance with Section 15.12 of this
3712 Agreement, an equitable adjustment in Contractor's Compensation will be made,
3713 effective with the commencement of the change, to reflect increases or decreases, if
3714 any, in Contractor's costs. The adjustment in compensation will also reflect the
3715 corresponding change in profit. The change in Contractor's Compensation will therefore
3716 consist of the sum of (i) the incremental change to costs, and (ii) profit adjustment at the
3717 allowed operating ratio of ninety and one-half percent (90.5%).

3718 Within forty-five (45) Days of a request by Agency to initiate a change in service,
3719 Contractor shall present a proposal to Agency containing a complete description of the
3720 following, if and to the extent applicable:

- 3721 1. Collection methodology to be employed.
- 3722 2. Equipment to be utilized (number of vehicles, types, capacity, age, etc.).
- 3723 3. Labor requirements (number of employees by classification).
- 3724 4. Type of Containers to be used.
- 3725 5. Description of program publicity/education/marketing materials to be developed.
- 3726 6. Estimated Tonnage to be diverted and the methodology for determining that
3727 diverted Tonnage.
- 3728 7. Anticipated impacts of the change, if any, on performance incentive and disincentive
3729 measures included in Attachment I.
- 3730 8. Description of end uses of Collected material.
- 3731 9. Three (3) year projection of the financial impact of the program's operations in a
3732 balance sheet and operating statement format including documentation of the key
3733 assumptions underlying the projections and the support for those assumptions,
3734 giving full effect to the savings or costs to existing services and the rate impact to
3735 affected Customers.

10. Monitoring tools and quantitative measures including: cost per Ton; annual diversion; and pre-implementation as well as expected post-implementation route information including cost per route and accounts or lifts per route per Day.

11.07 RATE-SETTING PROCESS

- A. **General.** The Agency shall be solely responsible for establishing and adjusting Rates as described in this Article.

- B. **Annual Review Process.** The Rates shall be reviewed annually by Agency, commencing with Rate Year One (2011) and continuing through the remaining Term including any extension periods. The Agency shall adjust Rates as necessary to generate annual Gross Revenues Billed equal to Contractor's Compensation approved for the Rate Year and approved Pass-Through Costs.

If Agency elects to set rates that are below those recommended in the SBWMA report, (or delays acting to revise rates such that the recommended rates do not go into effect until after January 1), and the Revenue Reconciliation process conducted by SBWMA for that Rate Year demonstrates that Net Revenues Billed were less than the approved Contractor's Compensation contained in the SBWMA report, the Agency shall owe interest on the difference. Interest shall apply (i) to fifty percent (50%) of the difference during the Rate Year in which the shortfall in revenue occurred, and (ii) one-hundred percent (100%) of the difference during the immediately following Rate Year. The interest rate applied to both years shall be the prime rate in effect when SBWMA issued the report for that Rate Year plus one percent (1%).

- C. **Rate Structure.** The Agency shall have the sole and exclusive right to change the relationship of individual Rates in comparison with other Rates and to allocate total costs among Service Sectors and Lines of Business. However, Agency will not direct Contractor to charge Customers a Rate less than the cost for Contractor to provide Backyard Collection Service specified in Attachment Q without considering Contractor's written comments regarding the proposed change. If a change in the Rates charged for Backyard Collection service or Curbside Collection service causes a Customer migration from one to the other which in turn increases or decreases Contractor's annual cost of operation by two percent (2%), or more, either party may initiate a special compensation review as specified in Section 11.05.

If at any time Contractor believes that a Rate not included in the Agency approved Rate schedule would be necessary or useful, Contractor shall notify the Agency and recommend establishment of such Rate. For example, if a Customer requests Collection of a fifteen (15) cubic yard Compactor five (5) times per week and the Agency-approved Rate schedule does not include this level of service, the Contractor shall recommend that the Agency establish a Rate for this level of service.

- D. **Liquidated Damages.** Contractor shall pay Agency the amounts, if any, due for Liquidated Damages under Section 14.07 and Attachment J with submittal of its annual report to Agency pursuant to Section 9.07.

E. **Performance Incentives and Disincentives.** Contractor shall submit an annual report on the Performance Incentives and Disincentives detailed in Attachment I with submittal of its quarterly and annual reports to Agency and SBWMA pursuant to Section 9.06 and Section 9.07. Contractor shall pay Agency or Agency shall pay Contractor the net amount, if any, due for Performance Incentives and Disincentives calculated pursuant to section 11.07, Attachment I, and Attachment N.

Payment related to Performance Incentives and Disincentives are to be included in Contractor's Application, with the exception of Disincentive assessments calculated quarterly pertaining to Contamination which are paid directly to the SBWMA, and Contractor's Compensation for the next Rate Year will be increased or decreased by the net amount of Performance Incentive payments and Disincentive assessments calculated.

11.08 NOTICE OF RATE ADJUSTMENTS

If requested by Agency, Contractor shall provide Agency with a complete and current list of its Customer addresses within ten (10) Days of the request. In addition, if requested by Agency, Contractor shall arrange for notices (prepared by Agency) to be mailed.

11.09 POTENTIAL RATE CONSTRAINTS

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

Until such authoritative judicial guidance is available, the Agency intends to provide notice of proposed Rate increases, and an opportunity for public hearing and protest as required by Article 13.D. – Each Agency must decide to include this sentence.

The Agency will not be in default of this Agreement if (i) a majority protest prevents a proposed Rate increase from being adopted, (ii) a court rules that Rates adopted by the Agency are not consistent with Article 13.D, or (iii) an initiative reduces Rates from those in effect. After any such event, the Parties shall promptly meet and confer in good faith to consider modifications to service levels commensurate with the Rates that Contractor may legally charge.

ARTICLE 12 AGENCY RIGHT TO USE EQUIPMENT AND FACILITIES

12.01 PURPOSE

The Parties recognize (i) that frequent and continuous collection of Solid Waste, Targeted Recyclable Materials and Organic Materials is an essential public service and an important element of public health in developed communities such as Agency, and (ii) that even a temporary interruption in the Collection and transport services entrusted to Contractor may threaten the public health and safety, as well as causing serious financial harm to business operations in the Agency.

The purpose of this Article is to provide the Agency the ability to respond to such threats to the public health, safety and welfare by making use of Contractor's Facilities and equipment. This Article applies to any interruption of services, regardless of whether or not Contractor's failure to perform is excused under Section 14.09.

12.02 CONDITIONS AUTHORIZING AGENCY'S RIGHT TO USE OF FACILITIES AND EQUIPMENT

If Contractor, for any reason, fails, refuses or is unable to Collect Solid Waste, Targeted Recyclable Materials and Organic Materials at the times and in the manner required by this Agreement, and transport them to the Designated Transfer and Processing Facility, for more than two (2) Business Days, Agency may invoke this Article. Agency shall provide Contractor written notice that it intends to consider invoking this Article at a public meeting of its governing body, to be held two (2) or more Business Days from the date of the notice.

At the meeting, the governing body may invoke its rights under this Article if it determines that there has been an interruption in Collection service and that such interruption may continue, thereby threatening the public health, safety and welfare. If the governing body makes that determination, it may also determine to exercise the Agency's right to (i) perform Collection and transport services with its own personnel and/or those of other Member Agencies which have invoked this right under their Franchise Agreements with Contractor or authorize a third party to do so, and (ii) take possession of any of Contractor's property, including vehicles and other equipment used or useful in providing such services or in the Billing and collection of fees for such services (collectively "Properties").

12.03 NOTICE TO CONTRACTOR

Agency shall deliver written notice to Contractor of its determination to exercise its right to provide Collection services and to make use of Contractor's Properties to do so. Upon receipt of the notice, Contractor shall immediately take all steps necessary to make available to Agency any of its vehicles and equipment that are requested by Agency. Contractor shall also cooperate in any other way requested by Agency to assist Agency in providing Collection services on a temporary basis.

12.04 RIGHTS AND RESPONSIBILITIES OF PARTIES

Agency will be responsible for the proper use and operation of Contractor's Properties, including maintenance and repair of vehicles and equipment. Agency will defend,

3852 indemnify and hold Contractor harmless from claims by third parties that are due solely
3853 to Agency's negligence in operating Contractor's vehicles or equipment, and not due in
3854 whole or in part to defects in the design or manufacture of the vehicles or equipment or
3855 to Contractor's failure to maintain them in good and safe operating condition.

3856 If the interruption in service is excused under Section 14.09, Agency will pay Contractor
3857 one hundred dollars (\$100) per Business Day per vehicle, which will constitute full
3858 compensation for use of all Properties. If the interruption in service constitutes a breach
3859 of contract or default, no payment is required.

3860 Revenue received from Customers that is attributable to the period of time during which
3861 Agency provides temporary Collection service shall accrue to Agency rather than
3862 Contractor.

3863 Agency may delegate the use and operation of any or all of Contractor's Properties to a
3864 third party.

3865 If the interruption of Collection service is caused by a breach of contract or default by
3866 Contractor, Liquidated Damages and performance disincentives will continue to accrue
3867 until Contractor resumes the provision of Collection services in full compliance with the
3868 Agreement.

3869 **12.05 DURATION OF AGENCY'S RIGHT TO POSSESSION AND USE OF**
3870 **VEHICLES/EQUIPMENT**

3871 Agency may retain possession of Contractor's Properties and provide Collection
3872 services until the Contractor demonstrates to Agency's satisfaction that it is ready, willing
3873 and able to resume providing such services, or one hundred eighty (180) Days from the
3874 notice given under Section 12.03, whichever occurs first.

3875 Agency has no obligation to exercise its rights under this Article or, having done so, to
3876 continue to provide Collection services. It may at any time, in its sole discretion,
3877 relinquish possession of Contractor's Properties to Contractor.

3878 Contractor's Properties shall be returned to Contractor in a condition substantially the
3879 same as that which existed at the time the Agency took possession of them, ordinary
3880 wear and tear excepted.

3881 **12.06 GENERAL**

3882 The Agency's exercise of its rights under this Article, (i) does not constitute taking or
3883 damaging of property for which compensation (other than as provided in this Article)
3884 must be paid, (ii) does not exempt Contractor from its indemnity obligations under Article
3885 13, which are meant to extend to circumstances arising under this Article, provided that
3886 Contractor is not required to indemnify Agency against claims arising from the sole
3887 negligence of Agency's employees or agents in the operation and use of Contractor's
3888 Properties during the time the Agency has sole possession of them.

3889 The Agency's exercise of its rights under this Article does not limit its ability to seek any
3890 of the remedies available to it under Article 14.

The Agency's rights under this Article do not preclude its permanent acquisition of Contractor's vehicles and equipment used in providing service to Agency through the exercise of eminent domain.

ARTICLE 13 INDEMNITY, INSURANCE, BOND, GUARANTY

13.01 INDEMNIFICATION

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

13.02 INSURANCE

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

1. **Workers' Compensation and Employer's Liability.** Contractor shall maintain workers' compensation insurance covering its employees in statutory amounts and otherwise in compliance with the laws of the State of California. Contractor shall maintain employer's liability insurance in an amount not less than one million dollars (\$1,000,000) per accident or disease. Contractor shall not be obligated to carry workers compensation insurance if (i) it qualifies under California law and continuously complies with all statutory obligations to self-insure against such risks; (ii) furnishes a certificate of Permission to Self Insure issued by the Department of Industrial Relations; and (iii) furnishes updated certificates of Permission to Self Insure periodically to evidence continuous self insurance.
2. **Comprehensive General Liability.** Contractor shall maintain comprehensive general liability insurance with a combined single limit of not less than ten million dollars (\$10,000,000) per occurrence covering all claims and all legal liability for personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out of, or occasioned in any way by, directly or indirectly, Contractor's performance of, or its failure to perform, services under this Agreement.

The insurance required by this subsection shall include:

- 3934 (i) Premises Operations (including use of owned and non-owned
3935 equipment);
- 3936 (ii) Personal Injury Liability with employment exclusion deleted;
- 3937 (iii) Broad Form Blanket Contractual with no exclusions for bodily injury,
3938 personal injury or property damage (including coverage for the
3939 indemnity obligations contained herein);
- 3940 (iv) Owned, Non-Owned, and Hired Motor Vehicles;
- 3941 (v) Broad Form Property Damage.

3942 The comprehensive general liability insurance shall be written on an "occurrence"
3943 basis (rather than a "claims made" basis) in a form at least as broad as the most
3944 current version of the Insurance Service Office commercial general liability
3945 occurrence policy form (CG0001). If occurrence coverage is not obtainable,
3946 Contractor must arrange for "tail coverage" on a claims made policy to protect
3947 Agency from claims filed within four (4) years after the expiration or earlier
3948 termination of this Agreement relating to incidents that occurred prior to such
3949 expiration or termination.

3950 3. Automobile Liability. Contractor shall maintain automobile liability insurance
3951 covering all vehicles used in performing service under this Agreement with a
3952 combined single limit of not less than ten million dollars (\$10,000,000) per
3953 occurrence for bodily injury and property damage.

3954 4. Pollution (Environmental Impairment) Liability. Contractor shall maintain pollution
3955 liability insurance coverage of not less than ten million dollars (\$10,000,000) per
3956 occurrence covering claims for on-site, under-site, or off-site bodily injury and
3957 property damage as a result of pollution conditions arising out of its operations
3958 under this Agreement.

3959 **B. Acceptability of Insureds.** The insurance policies required by this section shall be
3960 issued by an insurance company or companies admitted to do business in the State
3961 of California, subject to the jurisdiction of the California Insurance Commissioner,
3962 and with a rating in the most recent edition of Best's Insurance Reports of size
3963 category XV or larger and a rating classification of A+ or better.

3964 **C. Required Endorsements.** Without limiting the generality of Sections 13.02.A and
3965 B, the policies shall contain endorsements in substantially the following form:

- 3966 1. Workers' Compensation and Employers' Liability Policy.
3967 (a) "Thirty (30) Days prior written notice shall be given to the East
3968 Palo Alto in the event of cancellation or non-renewal of this
3969 policy." Such notice shall be sent to:
- 3970 Office of the City Manager
3971 2415 University Avenue.
3972 East Palo Alto, CA 94303
3973 Attention: City Manager

3974 (b) "Insurer waives all right of subrogation against East Palo Alto and its officers
3975 and employees for injuries or illnesses arising from work performed for East
3976 Palo Alto."

3977 2. Comprehensive General Liability Policy; Automobile Liability Policy; Pollution
3978 Liability Policy; and Hazardous Materials Policy.

3979 (a) "Thirty (30) Days prior written notice shall be given to the City of East Palo
3980 Alto in the event of cancellation, reduction of coverage, or non-renewal of
3981 this policy." Such notice shall be sent to:

3982 Office of the City Manager
3983 2415 University Avenue.
3984 East Palo Alto, CA 94303
3985 Attention: City Manager

3986
3987 (b) "The East Palo Alto, its officers, employees, and agents are additional
3988 insureds on this policy."

3989 (c) "This policy shall be considered primary insurance as respects any other
3990 valid and collectible insurance maintained by the City of East Palo Alto,
3991 including any self-insured retention or program of self-insurance, and any
3992 other such insurance shall be considered excess insurance only."

3993 (d) "Inclusion of the City of East Palo Alto as an insured shall not affect the City
3994 of East Palo Alto's rights as respects any claim, demand, suit or judgment
3995 brought or recovered against the Contractor. This policy shall protect
3996 Contractor and the East Palo Alto in the same manner as though a separate
3997 policy had been issued to each, but this shall not operate to increase the
3998 company's liability as set forth in the policy beyond the amount shown or to
3999 which the company would have been liable if only one party had been
4000 named as an insured."

4001 **D. Deductibles and Self-Insured Retentions.** The liability policies described in
4002 Sections 13.02.A(2) and (3) may contain a deductible or self-insured retention not to
4003 exceed \$500,000 per occurrence. This amount may not be increased without
4004 Agency's prior written consent.

4005 Contractor remains responsible for the payment of all losses and investigation,
4006 claim administration and defense expenses, including those of the Agency.

4007 **E. Delivery of Proof of Coverage.** No later than ninety (90) Days before the
4008 commencement of operations which includes the Recycling Blitz, Contractor shall
4009 furnish Agency one or more certificates of insurance on a standard ACORD form
4010 substantiating that each of the coverages required hereunder is in force, in form and
4011 substance satisfactory to Agency. Such certificates shall show the type and amount
4012 of coverage, effective dates and dates of expiration of policies and shall be
4013 accompanied by all required endorsements. If Agency requests, copies of each
4014 policy, together with all endorsements, shall also be promptly delivered to Agency.
4015 Contractor shall furnish renewal certificates to Agency to demonstrate maintenance
4016 of the required coverages throughout the Term.

4017 **F. Other Insurance Requirements**

- 4018 1. In the event performance of any services is delegated to a Subcontractor,
4019 Contractor shall require such subcontractor to provide statutory workers'
4020 compensation insurance and employer's liability insurance for all of the
4021 Subcontractor's employees engaged in the work. The liability insurance
4022 required by Subsection A.2 and the automobile liability policy required by
4023 subsection A.3 shall cover all Subcontractors or the Subcontractor must furnish
4024 evidence of insurance provided by it meeting all of the requirements of this
4025 Section 13.02.
- 4026 2. Contractor shall comply with all requirements of the insurers issuing policies.
4027 The carrying of insurance shall not relieve Contractor from any obligation under
4028 this Agreement, including those imposed by Section 13.01. If any claim is
4029 made by any third Person against Contractor or any Subcontractor on account
4030 of any occurrence related to this Agreement, other than claims by employees
4031 for work-related incidents, Contractor shall promptly report the facts in writing to
4032 the insurance carrier and to the Agency.
- 4033 3. If Contractor fails to procure and maintain any insurance required by this
4034 Agreement, Agency may take out and maintain such insurance as it may deem
4035 proper and may require Contractor to reimburse it for the cost incurred within
4036 thirty (30) Days and/or deduct the cost from any monies due Contractor.
4037 Agency may also treat the failure as a Contractor default.
- 4038 4. Agency is not responsible for payment of premiums for or deductibles under
4039 any required insurance coverages.
- 4040 5. Any excess or umbrella policies shall be written on a "following form" basis.

4041 **13.03 FAITHFUL PERFORMANCE BOND**

4042 On or before the Effective Date, Contractor shall file with Agency a bond securing the
4043 Contractor's faithful performance of its obligations under this Agreement. The principal
4044 sum of the bond shall be no less than ten percent (10%) of the amount of the 2011
4045 annual Revenue Requirement for Agency shown on Attachment N. The form of the
4046 bond shall be as set out in Attachment F. The bond shall be executed as surety by a
4047 corporation admitted to issue surety bonds in the State of California, regulated by the
4048 California Insurance Commissioner, and with a financial condition and record of service
4049 satisfactory to Agency.

4050 The term of the bond shall be twenty-four (24) months. The bond shall be extended, or
4051 replaced by a new bond in the same principal sum (adjusted by the percentage change
4052 in the Consumer Price Index), for the same Term (i.e., twenty-four (24) months) and in
4053 the same form, bi-annually thereafter. Not less than ninety (90) Days before the
4054 expiration of the initial, or any subsequent, bond, Contractor shall furnish either a
4055 replacement bond or a continuation certificate substantially in the form attached as
4056 Attachment F, executed by the surety.

4057 It is the intention of this section that there be in full force and effect at all times a bond
4058 securing the Contractor's faithful performance of the Agreement, throughout its Term.

13.04 ALTERNATIVE SECURITY

Agency may, in its sole discretion, allow Contractor to provide alternative security in the amount set forth in Section 13.03, in the form of (a) a prepaid irrevocable standby letter of credit in form and substance satisfactory to Agency, approved by the Agency's Attorney and issued by a financial institution acceptable to Agency, or (b) a certificate of deposit in the name of the Agency and in a form and with a Term satisfactory to Agency, accompanied by an agreement giving Agency the right to draw on the funds deposited satisfactory to Agency and with a financial institution acceptable to Agency. Interest on the certificate of deposit will be payable to Contractor.

13.05 HAZARDOUS WASTE INDEMNIFICATION

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

13.06 CALIFORNIA INTEGRATED WASTE MANAGEMENT ACT INDEMNIFICATION

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

13.07 GUARANTY

Concurrently with execution of this Agreement, Contractor shall furnish a Guaranty of its performance under this Agreement, in the form of Attachment G, properly executed by Recology Inc., a California corporation which owns all of the issues and outstanding common stock of Contractor.

4100

ARTICLE 14 DEFAULT AND REMEDIES

4101 **14.01 EVENTS OF DEFAULT.**

4102 Each of the following shall constitute an event of default ("Contractor default"):

4103 A. Contractor fails to perform its obligations under Article 5, 6 or 7 of this Agreement
4104 and its failure to perform is not cured within ten (10) Business Days after written
4105 notice from Agency.

4106 B. Contractor fails to perform its obligations under any other Article of this Agreement
4107 and its failure to perform is not cured within ten (10) Days after written notice from
4108 Agency, provided that if the nature of the failure is such that it will reasonably
4109 require more than ten (10) Days to cure, Contractor shall not be in default so long
4110 as it promptly commences the cure and diligently proceeds to completion of the
4111 cure, and provided further that neither notice nor opportunity to cure applies to
4112 events described in subsections C through H.

4113 C. Contractor ceases to provide Collection and transportation services for a period of
4114 two (2) Business Days for any reason within the Contractor's control, including labor
4115 unrest such as strike, work stoppage or slowdown, sickout, picketing, or other
4116 concerted job action by Contractor's employees.

4117 D. Contractor files a voluntary petition for relief under any bankruptcy, insolvency or
4118 similar law.

4119 E. An involuntary petition is brought against Contractor under any bankruptcy,
4120 insolvency or similar law which remains un-dismissed or un-stayed for ninety (90)
4121 Days.

4122 F. Contractor fails to furnish a replacement bond or a continuation certificate of the
4123 existing bond not less than ten (10) Days before expiration of the performance
4124 bond, as required by Section 13.03 or fails to maintain all required insurance
4125 coverage in force.

4126 G. Contractor fails to provide reasonable assurance of performance when required
4127 under Section 14.10.

4128 H. A representation or warranty contained in Article 2 proves to be false or misleading
4129 in a material respect as of the date such representation or warranty was made.

4130 **14.02 RIGHT TO SUSPEND OR TERMINATE UPON DEFAULT.**

4131 A. Upon any Contractor default, Agency may terminate this Agreement or suspend it, in
4132 whole or in part. Such suspension or termination shall be effective thirty (30) Days
4133 after Agency has given notice of suspension or termination to Contractor, except that
4134 such notice may be effective in a shorter period of time, or immediately, if the
4135 Contractor default is one which endangers the health, welfare or safety of the public,
4136 such as the failure to collect Solid Waste, Recyclable Materials, or Organic Materials
4137 for the period of time specified in Section 14.01.C. Notice may be given orally in
4138 person or by telephone to the representative of Contractor designated in or under

4139 Section 15.10 (or, if he/she is unavailable, to a responsible employee of Contractor)
4140 and shall be effective immediately. Written confirmation of such oral notice of
4141 suspension or termination shall be sent by personal delivery, facsimile, or other
4142 expedited means of delivery to Contractor within twenty-four (24) hours of the oral
4143 notification at the address shown in Section 15.09. Contractor shall continue to
4144 perform the portions of the Agreement, if any, not suspended, in full conformity with
4145 its terms.

4146 B. Agency may also suspend or terminate this Agreement, upon the same notice
4147 provisions, if Contractor's ability to perform is prevented or materially interfered with
4148 by a cause which excuses nonperformance under Section 14.09, despite the fact
4149 that nonperformance in such a case is neither a breach nor a Contractor default.

4150 **14.03 SPECIFIC PERFORMANCE**

4151 By virtue of the nature of this Agreement, the urgency of timely, continuous and high-
4152 quality service, the lead time required to effect alternative service, and the rights granted
4153 by Agency to Contractor, the remedy of damages for a breach hereof by Contractor is
4154 inadequate and Agency shall be entitled to injunctive relief.

4155 **14.04 RIGHT TO PERFORM; USE OF CONTRACTOR PROPERTY**

4156 If this Agreement is suspended and/or terminated due to a Contractor default, Agency
4157 shall have the right to perform, by contract, in conjunction with other Member Agencies,
4158 or otherwise, the work herein or such part thereof as it may deem necessary. In the
4159 event of Contractor's default, Agency shall have the right to use any of Contractor's
4160 equipment, facilities and other property reasonably necessary for the provision of
4161 services hereunder and for the Billing and collection of fees for those services, upon the
4162 terms provided in Article 12. Agency shall have the right to continue use of such
4163 property until other suitable arrangements can be made for the provision of such
4164 services, which may include the award of a contract to another service provider.

4165 **14.05 DAMAGES**

4166 Contractor shall be liable to Agency for all direct, indirect, special and consequential
4167 damages arising out of Contractor's default. This section is intended to be declarative of
4168 existing California law.

4169 **14.06 AGENCY'S REMEDIES CUMULATIVE**

4170 Agency's rights to suspend or terminate the Agreement under Section 14.02, to obtain
4171 specific performance under Section 14.03 and to perform under Section 14.04 are not
4172 exclusive, and Agency's exercise of one such right shall not constitute an election of
4173 remedies. Instead, they shall be in addition to any and all other legal and equitable
4174 rights and remedies that Agency may have, including a legal action for damages under
4175 Section 14.05 or imposition of Liquidated Damages under Section 14.07.

4176 **14.07 LIQUIDATED DAMAGES**

4177 The Parties acknowledge that consistent, courteous and efficient Collection of Solid
4178 Waste, Targeted Recyclable Materials and Organic Materials is of utmost importance

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

Contractor Initial Here: _____ Agency Initial Here: _____

Contractor agrees to pay (as Liquidated Damages and not as a penalty) the amount set forth in Attachment J.

In addition to considering the reports submitted by Contractor pursuant to Article 9, Agency may determine the occurrence of events giving rise to Liquidated Damages through the observation of its own employees or agents, through discussions with Customers, and through investigation of Customer Complaints made directly to Agency. Prior to assessing Liquidated Damages based on such observations or investigations, Agency shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. Contractor may review (and make copies at its own expense) all non-confidential information in the possession of Agency relating to incident(s)/non-performance. Contractor may, within ten (10) Days after receiving the notice, request a meeting with Agency's Manager or his or her designee. Contractor may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. Agency's Manager or his or her designee will provide Contractor with a written explanation of his or her determination on each incident(s)/non-performance prior to authorizing the assessment of Liquidated Damages. The decision of Agency's Manager or his or her designee shall be final.

Agency's right to recover Liquidated Damages for Contractor's failure to meet the service performance standards shall not preclude Agency from obtaining equitable relief for persistent failures to meet such standards nor from terminating the Agreement for such persistent failures.

14.08 AGENCY DEFAULT

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

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

14.09 EXCUSE FROM PERFORMANCE

- A. **Force Majeure.** Neither Party shall be in default of its obligations under this Agreement in the event, and for so long as, it is impossible or extremely impracticable for it to perform its obligations due to an “act of God” (including, but not limited to, flood, earthquake or other catastrophic events), war, insurrection, riot, labor unrest of other than the Party’s employees (including strike, work stoppage, slowdown, sick out, picketing, or other concerted job action), or other similar cause not the fault of, and beyond the reasonable control of, the Party claiming excuse. A Party claiming excuse under this Section must (i) have taken reasonable precautions, if possible, to avoid being affected by the cause, and (ii) notify the other party in writing as provided in Subsection C.
- B. **Obligation to Restore Ability to Perform.** Any suspension of performance by a Party pursuant to this Section shall be only to the extent, and for a period of no longer duration than, required by the nature of the event, and the Party claiming excuse shall use its best efforts to remedy its inability to perform as quickly as possible and to mitigate damages that may occur as result of the event.
- C. **Notice.** The Party claiming excuse shall deliver to the other Party a written notice of intent to claim excuse from performance under this Agreement by reason of an event of Force Majeure. Notice required by this Section shall be given promptly in light of the circumstances, but in any event not later than five (5) Days after the occurrence of the event of Force Majeure. Such notice shall describe in detail the event of Force Majeure claimed, the services impacted by the claimed event of Force Majeure, the expected length of time that the party expects to be prevented from performing, the steps which the party intends to take to restore its ability to perform, and such other information as the other party reasonably requests.
- D. **Agency's Rights in the Event of Force Majeure.** The partial or complete interruption or discontinuance of Contractor’s services caused by an event of Force Majeure shall not constitute a Contractor default. Notwithstanding the foregoing: (i) Agency shall have the right to make use of Contractor’s Facilities and equipment in accordance with Article 12 in the event of non-performance excused by Force Majeure; (ii) if Contractor’s failure to perform by reason of Force Majeure continues for a period of thirty (30) Days or more, Agency shall have the right to immediately terminate this Agreement; (iii) if Contractor is unable to Collect and transport Solid Waste as required by this Agreement for a period of two (2) or more consecutive Business Days or for any three (3) Business Days in a seven (7) Day period as a result of Force Majeure, Agency shall have the right to make use of Contractor’s property in accordance with Article 12, and (iv) if Contractor’s inability to Collect and transport Solid Waste continues for two (2) Days or more from the date by which Contractor gave or should have given notice under Subsection C, Agency may terminate this Agreement.

14.10 ASSURANCE OF PERFORMANCE

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

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ARTICLE 15

OTHER AGREEMENTS OF THE PARTIES

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15.01 RELATIONSHIP OF PARTIES

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

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15.02 COMPLIANCE WITH LAW

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

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15.03 ASSIGNMENT

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

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

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B. **Assignment Defined.** For the purpose of this Section, "assignment" shall include, but not be limited to, (i) a sale, exchange or other transfer to a third party of substantially all of Contractor's assets dedicated to service under this Agreement; (ii) a sale, exchange or other transfer of outstanding common stock of Contractor to a Person who is not a shareholder as of the Effective Date which results in a change in control of Contractor; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or reissuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of ownership or control of Contractor; (iv) any assignment by operation of law, including insolvency or bankruptcy, an assignment for the benefit of creditors, a

writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Contractor's property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, or change of control of Contractor.

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

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

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

3. Contractor shall furnish Agency with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Solid Waste/Recycling management experience on a scale equal to or exceeding the scale of operations conducted by Contractor under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not been the subject of any administrative or judicial proceedings initiated by a federal, State or local agency having jurisdiction over its operations due to an alleged failure to comply with federal, State or local laws or that the proposed assignee has provided Agency with a complete list of such proceedings and their status; (iii) that the proposed assignee conducts its operations in a safe and environmentally conscientious manner, in accordance with sound Solid Waste management practices in full compliance with all federal, State and local laws regulating the Collection and Disposal of Solid Waste and all Environmental Laws; (iv) of any other information required by Agency to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

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

15.04 SUBCONTRACTING

Contractor shall not engage any Subcontractors to perform any of the services required of it by Articles 5 or 6 of this Agreement without the prior written consent of Agency. Contractor shall notify Agency no later than ninety (90) Days prior to the date on which it proposes to enter into a subcontract. Agency may approve or deny any such request at its sole discretion. As of the Effective Date, Contractor shall contract with a consultant, approved by Agency and SBWMA, for a minimum sum of \$50,000 to provide additional outreach, diversion training, Organic Materials collection program training, monitoring,

4363 and education to Multi-Family Dwelling and Commercial Customers during Rate Year
4364 One (2011).

4365 **15.05 AFFILIATED ENTITY**

4366 Contractor will not form or use any Affiliate to perform any of the services or activities
4367 which Contractor is required or allowed to perform under this Agreement, other than as a
4368 Subcontractor approved by Agency under Section 15.04.

4369 If Contractor enters into any financial transactions with an Affiliate for the provision of
4370 labor, equipment, supplies, services, or capital related to the furnishing of service under
4371 this Agreement, that relationship shall be disclosed to Agency, and in the financial
4372 reports submitted to Agency. In such event, Agency's rights to inspect records and
4373 obtain financial data shall extend to records and data of such Affiliate that are relevant to
4374 those specific financial transactions.

4375 **15.06 CONTRACTOR'S INVESTIGATION**

4376 Contractor has made an independent investigation, satisfactory to it, of the conditions
4377 and circumstances surrounding the Agreement and the work to be performed by it.
4378 Contractor has carefully reviewed the information in the Request for Proposals, and
4379 Addenda if any. Contractor has had the opportunity to inspect the Designated Transfer
4380 and Processing Facility and to review the permits governing its operation, as well as the
4381 Source Reduction and Recycling Element adopted by Agency. Contractor has taken
4382 such matters into consideration in agreeing to provide the services required by, for the
4383 compensation to be provided under, this Agreement.

4384 **15.07 NO WARRANTY BY AGENCY**

4385 While Agency believes that the information contained in the Request for Proposals is
4386 substantially correct, Agency makes no warranties in connection with this Agreement,
4387 including but not limited to the accuracy or completeness of the information contained in
4388 the Request for Proposals.

4389 **15.08 CONDEMNATION**

4390 Agency reserves the rights to acquire the Contractor's property utilized in the
4391 performance of this Agreement through the exercise of eminent domain.

4392 **15.09 NOTICE**

4393 All notices, demands, requests, proposals, approvals, consents and other
4394 communications which this Agreement requires, authorizes or contemplates shall,
4395 except as provided in Article 14, be in writing and shall either be personally delivered to
4396 a representative of the Parties at the address below or be deposited in the United States
4397 mail, first class postage prepaid, addressed as follows:

4398 If to Agency:

4399 Office of the City Manager
4400 2415 University Avenue.

4401 East Palo Alto, CA 94303
4402 Attention: City Manager

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4405 If to Contractor:

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4407 Mr. Mario Puccinelli, General Manager
4408 Recology San Mateo County
4409 225 Shoreway Rd.
4410 San Carlos, CA 94070

4411 The address to which communications may be delivered may be changed from time to
4412 time by a notice given in accordance with this Section.

4413 Contact information for Contractor's General Manager is as follows:

4414 Mr. Mario Puccinelli, General Manager
4415 Recology San Mateo County
4416 225 Shoreway Rd.
4417 San Carlos, CA 94070
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4419 Contact information for Contractor's Environmental Technician is as follows:

4420 Mr. Christopher Gibson
4421 Recology San Mateo County
4422 225 Shoreway Rd.
4423 San Carlos, CA 94070

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4425 Contractor shall promptly provide Agency the name and contact information for the
4426 above employees if there is a change during the Term.

4427 **15.10 REPRESENTATIVES OF THE PARTIES.**

4428 A. **Representatives of Agency.** References in this Agreement to "Agency" shall
4429 mean the City Council and all actions to be taken by Agency shall be taken by the
4430 City Council except as provided below. The City Council may delegate authority to
4431 the City Manager, and/or to other Agency officials and may permit such officials, in
4432 turn, to delegate in writing some or all of such authority to subordinate officers.
4433 Contractor may rely upon actions taken by such delegates if they are within the
4434 scope of the authority properly delegated to them.

4435 B. **Representative of Contractor.** Contractor shall, by the Effective Date, designate
4436 in writing a responsible officer who shall serve as the representative of Contractor in
4437 all matters related to the Agreement and shall inform Agency in writing of such
4438 designation and of any limitations upon his or her authority to bind Contractor.
4439 Agency may rely upon action taken by such designated representative as actions of
4440 Contractor unless they are outside the scope of the authority delegated to him/her
4441 by Contractor as communicated to Agency.

15.11 DUTY OF CONTRACTOR NOT TO DISCRIMINATE

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

15.12 RIGHT OF AGENCY TO MAKE CHANGES IN SERVICES AND SERVICE LEVELS

- A. Agency may, without amending this Agreement, direct Contractor to cease performing one or more types of service described in Articles 5 or 6, may direct Contractor to modify the scope of one or more such services, may direct Contractor to perform additional Solid Waste, Targeted Recyclable Materials, Organic Materials or Plant Materials handling services, or may otherwise direct Contractor to modify its performance under any other Section of this Agreement. Contractor shall promptly and cooperatively comply with such direction.
- B. If such changes cause an increase or decrease in the cost of performing the services, an equitable adjustment in the Contractor's Compensation shall be made pursuant to Article 11. Contractor will continue to perform the new or changed service while the appropriate adjustment in compensation is being determined.
- C. The Agency shall have the right to terminate a program if, in its discretion, the Contractor is not cost-effectively achieving the program's goals and objectives. Thereafter, the Agency may utilize a third party to perform these services if the Agency reasonably believes the third party can improve on Contractor's performance and cost effectiveness. Notwithstanding these changes, Contractor shall continue the program during the meet and confer period and, thereafter, until the third party takes over the program. This subsection C applies to programs initiated at Agency's direction after the Commencement Date that are beyond the basic scope of services described in Section 4.01.A.

15.13 TRANSITION TO NEXT SERVICE PROVIDER

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

Contractor shall upon Agency request, at least one-hundred-eighty (180) Days prior to the transition of services, attend meetings with the next service provider and with Agency and SBWMA staff and consultants to plan the recovery of Contractor's Containers and placement of the new Containers. Contractor shall perform in accordance with such plan and direct route supervisors to provide "ride-alongs" so that the new service provider's employees may ride with drivers in Collection vehicles during Collection operations. Contractor will direct its drivers and other employees to provide accurate information to the new provider about routing and Customers.

4487 **15.14 REPORTS AS PUBLIC RECORDS**

4488 The reports, records and other information submitted or required to be submitted by
4489 Contractor to Agency (and documents copied pursuant to Section 9.02) are public
4490 records within the meaning of that term in the California Public Records Act,
4491 Government Code Section 6250 *et seq.* Unless a particular record is exempted from
4492 disclosure by the California Public Records Act, it must be disclosed to the public by
4493 Agency upon request.

4494 Contractor will not object to Agency making available to the public any information
4495 submitted by the Contractor, or required to be submitted in connection with the
4496 Contractor's Compensation, including but not limited to records described in Article 11.

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ARTICLE 16 MISCELLANEOUS PROVISIONS

4498 **16.01 GOVERNING LAW**

4499 This Agreement shall be governed by, and construed and enforced in accordance with,
4500 the laws of the State of California.

4501 **16.02 JURISDICTION**

4502 Any lawsuits between the Parties arising out of this Agreement shall be brought and
4503 concluded in the courts of the State of California, which shall have exclusive jurisdiction
4504 over such lawsuits. With respect to venue, the Parties agree that this Agreement is
4505 made in and will be performed in San Mateo County.

4506 **16.03 BINDING ON SUCCESSORS**

4507 The provisions of this Agreement shall inure to the benefit of and be binding on the
4508 successors and permitted assigns of the Parties.

4509 **16.04 PARTIES IN INTEREST**

4510 Nothing in this Agreement is intended to confer any rights on any Persons other than the
4511 Parties to it and their permitted successors and assigns.

4512 **16.05 WAIVER**

4513 The waiver by either Party of any breach or violation of any provisions of this Agreement
4514 shall not be deemed to be a waiver of any breach or violation of any other provision nor
4515 of any subsequent breach or violation of the same or any other provision.

4516 **16.06 ATTACHMENTS**

4517 Each of the attachments, identified as Attachments "A" through "Q," is attached hereto
4518 and incorporated herein and made a part hereof by this reference.

4519 **16.07 ENTIRE AGREEMENT**

4520 This Agreement, including the attachments, represents the full and entire agreement
4521 between the Parties with respect to the matters covered herein and supersedes all prior
4522 negotiations and agreements, either written or oral.

4523 **16.08 SECTION HEADINGS**

4524 The article headings and section headings in this Agreement are for convenience of
4525 reference only and are not intended to be used in the construction of this Agreement nor
4526 to alter or affect any of its provisions.

4527 **16.09 INTERPRETATION**

4528 This Agreement shall be interpreted and construed reasonably and neither for nor
4529 against either Party, regardless of the degree to which either Party participated in its
4530 drafting.

4531 **16.10 AMENDMENT**

4532 This Agreement may not be modified or amended in any respect except by a writing
4533 signed by the Parties.

4534 **16.11 SEVERABILITY**

4535 If a court of competent jurisdiction holds any non-material provision of this Agreement to
4536 be invalid and unenforceable, the invalidity or unenforceability of such provision shall not
4537 affect any of the remaining provisions of this Agreement which shall be enforced as if
4538 such invalid or unenforceable provision had not been contained herein.

4539 **16.12 COSTS AND ATTORNEYS' FEES**

4540 The prevailing Party in any action brought to enforce the terms of this Agreement or
4541 arising out of this Agreement may recover its reasonable costs expended in connection
4542 with such an action from the other Party. However, each Party shall bear its own
4543 attorneys' fees.

4544 **16.13 NO DAMAGES FOR INVALIDATION OF AGREEMENT**

4545 If a final judgment of a court of competent jurisdiction determines that this Agreement is
4546 illegal or was unlawfully entered into by Agency, neither party shall have any claim
4547 against the other for damages of any kind (including but not limited to loss of profits) on
4548 any theory.

4549 **16.14 REFERENCES TO LAWS**

4550 All references in this Agreement to laws and regulations shall be understood to include
4551 such laws and regulations as they may be subsequently amended or recodified, unless
4552 otherwise specifically provided. In addition, references to specific governmental
4553 agencies shall be understood to include agencies that succeed to or assume the
4554 functions they are currently performing.

4555 **16.15 INDEMNITY AGAINST CHALLENGES TO AGREEMENT**

4556 Contractor shall indemnify, defend and hold harmless SBWMA, Agency, and its and their
4557 officers, employees and agents (collectively, the "Indemnitees") from and against any
4558 and all liability, claim, demand, action, proceeding or suit of any and every kind and
4559 description brought by a third party challenging the process by which proposals were
4560 solicited and evaluated, or this Agreement was negotiated or awarded to the extent that
4561 such liability, claim, demand, action, proceeding or suit was caused by Contractor's
4562 failure to comply with applicable law or the instructions of any indemnitee with respect to
4563 such process.
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LAST PAGE OF AGREEMENT

IN WITNESS WHEREOF, Agency and Contractor have executed this Contract as of the day and year first above written.

CITY OF EAST PALO ALTO

RECOLOGY SAN MATEO
COUNTY

By: _____
Name: Alvin D. James
Title: City Manager

By: _____
Name: Michael J. Sangiacomo
Title: President and CEO

ATTEST: _____
Name:
Title: City Clerk

By: _____
Name: Roxanne L. Frye
Title: Corporate Secretary

APPROVED AS TO FORM:
