

ATTACHMENT 10

LIQUIDATED DAMAGES

The following table lists the events that constitute Breaches of the Agreement's standard of performance warranting the imposition of Liquidated Damages (LD's). The table describes the incident or event(s) that trigger a Liquidated Damages event, the method by which occurrences will principally be tracked by Contractor or SBWMA, and the dollar amount of Liquidated Damages for failure to meet the contractually-required performance.

Agency may require the Liquidated Damages to be paid concurrently with submission of each quarterly report or factor the payment of the Liquidated Damages in establishing Contractor's compensation for the following Rate Year.

Agency intends to suspend imposition of Liquidated Damages for the initial six months of Operating Agreement, provided that Contractor diligently applies its best efforts to minimize the occurrence of events which can result in the imposition of Liquidated Damages. If Contractor does not exert such best efforts, Agency may, after notice to Contractor, end this policy and begin enforcement of the performance standards through Liquidated Damages.

	<u>Event of Non-Performance</u>	<u>Definition of Complaint, Incident, or Event</u>	<u>Tracking Method</u>	<u>Liquidated Damage (LD) Amount</u>
SHOREWAY CENTER OPERATIONS				
1.	Failure to meet Vehicle Turnaround Guarantee.	Contractor shall operate the Shoreway Center so that: Collection vehicles of Member Agencies and their Collection Contractor(s) are: 1.) processed through the scale house operation in no more than five (5) minutes per vehicle, measured from the vehicle's entry into the scale house vehicle queue, and 2.) are able to unload and depart from the Facilities in no more than fifteen (15) minutes from the time they leave the scale house. Self-haul customers do not wait more than fifteen minutes (15) to be processed by the scale and assigned a place to dump.	Information collected and validated by the SBWMA.	LD of \$100 per vehicle delayed.
2.	Failure to receive vehicles during Operating Hours.	Failure of the Contractor to open the Shoreway Center to users of the Facility during Facility Operating Hours.	Information collected and validated by the SBWMA.	\$1,000 per hour that the Shoreway Center is not open to receive customers.
3.	Failure to remedy a litter complaint within 5 hours of notification.	Failure of the Contractor to cleanup litter that is on-site or is within 1,000 feet of the Shoreway Center property boundary after Contractor has been notified of the problem by the SBWMA, neighbor, customer or Regulatory Agency.	Information collected and validated by the SBWMA or other regulatory bodies.	\$100 per hour that litter remains and is not cleaned up plus any fines levied by other regulatory bodies.
4.	Failure of Contractor to provide excellent customer service.	Failure of Contractor to provide excellent customer services and provide trained employees that can provide information to customers about the Shoreway Center and its operation.	Written, verbal or email complaints from customers of the Shoreway Center documented and verified by the SBWMA.	\$100 per complaint (maximum of one complaint per complainant per month).
5.	Failure to maintain Self-haul Ratio.	The Contractor will ensure that the annual, average bulk density for Self-haul (volumetric based loads) is above the Self-haul Ratio of 2.76 cubic yards per ton.	SBWMA will monitor transfer station tonnage and scale house transaction information that is maintained and/or reported by the Contractor.	Dollar amount equal to annual lost tipping revenues (calculated from the annual volume undercounted (below the Self-haul Ratio) times the average Self-haul tip rate per cu. yard)

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RECORDS AND REPORTS				
6.	Timeliness of Submissions of reports to the SBWMA.	Failure to submit any report on time to the SBWMA (any report shall be considered late until such time as a correct and complete report is received by the SBWMA).	Dates recorded by US postal stamp, or by the SBWMA fax or email.	\$500 per day for each calendar day a report is late.
7.	Failure to make records available upon request.	Reports and records collected and retained by the Contractor shall be accessible to the SBWMA or its authorized representatives within 1 day of making a records request.	SBWMA records request.	\$500 per day for each calendar day that the requested records are not available to the SBWMA.
8.	Failure of the Contractor to notify the SBWMA of intent to use subcontractor(s).	Contractor is to notify the SBWMA anytime that a subcontractor is used to perform the operational requirements of the Agreement.	SBWMA monitoring of Facility and operations.	\$1,000 per incident that the Contractor fails to notify the SBWMA of its intent to use a subcontractor.
COMMODITY MARKETING AND PRICING				
9.	Failure to pay comparable Buyback prices at the Buyback center.	For each commodity where payment price is less than the commodity price paid at other similar Bay Area Buyback centers.	Buyback center posted rates compared to SBWMA survey of Similar Bay Area Buyback centers.	Dollar amount equal to two times the difference between the survey average per pound buy price and the average per pound price paid by the Contractor times the total number of pounds purchased during the months that Contractor is non-compliant.
10.	Failure to obtain market pricing for MRF commodities.	Failure of the Contractor to market the MRF materials and obtain overall per ton revenues for recyclable materials equal to or greater than the averages achieved by other single stream facilities in the nine (9) Counties in the Bay Area.	Sale price of Shoreway Center materials reported by the Contractor compared to a survey of 3-5 single stream MRF processors in the 9 County Bay Area performed by the SBWMA or representative.	Dollar amount equal to two times the difference between the survey average per ton revenue and the average per ton rate materials are sold by the Contractor times the total number of tons in the year.