

1 ADDENDUM #2
2 SBWMA Operations RFP

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

5 **ATTACHMENT 1 - DEFINITIONS**

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

8 **Acceptable Material(s)/ Targeted Recyclable Materials**

9 "Acceptable Material(s)/Targeted Recyclable Materials" means the following items delivered to
10 the Shoreway Center co-mingled or separated: newspaper (including inserts, coupons, and
11 store advertisements); mixed paper (including office paper, computer paper, magazines, junk
12 mail, catalogs, brown paper bags, office paper, paperboard, paper egg cartons, telephone
13 books, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, cereal
14 and other similar food boxes); chipboard; corrugated cardboard; paper milk cartons; glass
15 containers of any color (including brown, blue, clear, and green glass containers); aluminum
16 (including food and beverage containers and foil; small pieces of scrap metal weighing less than
17 10 pounds and fitting into the Recyclable Materials Collection Container (excluding chain, cable,
18 wire, banding, hand tools, and automotive parts); steel, tin or bi-metal containers; plastic
19 containers (i.e., all plastic containers stamped with the Society for the Plastics Industry (SPI)
20 code #1 through #7; and, plastics that are not stamped but clearly can be identified as PET,
21 HDPE, and PP). For Single-Family and Multi-Family Premises, Acceptable Recyclable Materials
22 shall also include Used Motor Oil, Used Motor Oil Filters, Household Batteries, and Cell Phones.

23 **Act**

24 "Act" means the California Integrated Waste Management Act of 1989 (AB 939) Public
25 Resources Code, Section 40000 et seq.

26 **Affiliate**

27 "Affiliate" means a Person which is related to Contractor by virtue of direct or indirect ownership
28 interest or common management. An Affiliate includes a Person in which Contractor owns a
29 direct or indirect ownership interest, a Person which has a direct or indirect ownership interest in
30 Contractor and/or a Person which is also owned, controlled or managed by any Person or
31 individual which has a direct or indirect ownership interest in Contractor.

32 **Authority**

33 "Authority" means the SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY, formed under
34 the California Joint Exercise of Powers Act by the Member Agencies.

35 **Agreement**

36 "Agreement" means this Agreement, including the Attachments.

37 **Applicable Law**

38 "Applicable Law" means all federal, State, and local laws, regulations, rules, orders, judgments,
39 decrees, permits, approvals, or other requirements of any governmental agency having

1 jurisdiction over the processing, transportation, and Disposal of Solid Waste, Recyclable
2 Materials, Organic Materials and other materials covered by this Agreement that are in force on
3 the Effective Date and as they may be enacted, issued or amended during the Term.
4

5 **Basic Compensation:** “Basic Compensation” means the payments to Contractor provided by
6 Section 7.03.

7 **Board of Directors**

8 “Board of Directors” means the Authority board of directors.
9

10 **Bunker Program**

11 “Bunker Program” means the transfer station area and program designated for Self-haul
12 Customers to deposit separated materials for recycling. Materials targeted for the Bunker
13 Program include but are not limited to concrete, dirt, aggregate, carpet and carpet padding.
14

15 **Buyback/Drop off Center**

16 “Buyback/Drop off Center” means the area at the Shoreway Center designated to receive
17 recyclable materials from Self-Haul customers for fee or payment.

18 **Cell Phones**

19 “Cell Phones” means all telephones used for mobile or cellular communications including
20 batteries used to power cell phones.

21 **Change in Law**

22 “Change in Law” means any of the following events or conditions which has a material and
23 adverse effect on the performance by the Parties of their respective obligations under this
24 Agreement:

- 25 a. The enactment, adoption, promulgation, issuance, modification, or written change in
26 administrative or judicial interpretation on or after the Effective Date of any Applicable
27 Law; or
- 28 b. The order or judgment of any governmental body, on or after the Effective Date, to the
29 extent such order or judgment is not the result of willful or negligent action, error or
30 omission or lack of reasonable diligence of the Agency, or of the Contractor, whichever
31 is asserting the occurrence of a Change in Law; provided, however, that the contesting
32 in good faith or the failure in good faith to contest any such order or judgment shall not
33 constitute such a willful or negligent action, error or omission or lack of reasonable
34 diligence.

35 **Collection Contractor**

36 “Collection Contractor” means the company or companies under contract with one or more
37 Member Agencies to collect Solid Waste, Organic Materials and Recyclable Materials and
38 deliver them to the Shoreway Center.

39 **Commencement Date**

40 “Commencement Date” means the date specified in Section 2.02 when the Contractor is to
41 begin providing services required by this Agreement.

1 **Construction and Demolition Debris**

2 "Construction and Demolition Debris" means materials resulting from construction, renovation,
3 remodeling, repair, or demolition operations on any residential, commercial or other structure or
4 pavement.

5
6 **Contamination**

7 "Contamination" means materials that are delivered to the MRF and that accompany Acceptable
8 Materials but which are not an Acceptable Material.

9 **Contractor**

10 "Contractor" means _____ {Insert name of contractor}.

11 **Contractor's Compensation**

12 "Contractor's Compensation" means the monetary compensation to be received by Contractor
13 in return for providing services in accordance with this Agreement, as described in Article ____.

14 **Contractor's Proposal**

15 "Contractor's Proposal" means the proposal submitted by Contractor and received by
16 _____, 2008 by the Authority in response to the November 1, 2007 Request for
17 Proposals, and certain supplemental written materials {insert description of supplemental
18 materials}.

19 **County**

20 "County" means the County of San Mateo.

21 **Day**

22 "Day" means calendar day unless otherwise specified.

23 **Designated Disposal Site**

24 "Designated Disposal Site" means the facility or facilities utilized for the landfill Disposal of Solid
25 Waste, which shall be the Ox Mountain Sanitary Landfill near Half Moon Bay, unless and until
26 the Authority designates a different or additional site.

27 **Designated Processing Facility**

28 "Designated Processing Facility" means _____.

29 **Disposal**

30 "Disposal" means the ultimate disposition of Solid Waste by Contractor at the Designated
31 Disposal Site.

32 **Disposal Agreement**

33 "Disposal Agreement" means the agreement dated as of January 1, 2005 between the Authority
34 and the operator of the Ox Mountain Sanitary Landfill.

35
36 **Diversion**

37 "Diversion" means the processing and recycling of materials received at the Shoreway Center
38 for purposes other than Disposal.

1 **Effective Date**

2 “Effective Date” means the date identified in Section 2.01.

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

4 “Electronic Waste” or “E-Waste” means “Covered Electronic Wastes” as defined in Act (Section
5 42463 of Public Resources Code) including discarded electronic equipment such as, but not
6 limited to, television sets, computer monitors, central processing units (CPUs), laptop
7 computers, and peripherals (e.g., external computer hard drives, computer keyboards,
8 computer mice, and computer printers).

9 **Environmental Laws**

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

22 **Executive Director**

23 “Executive Director” means the executive director of the Authority.

24 **Federal**

25 “Federal” means pertaining to the national government of the United States.

26 **Food Scraps**

27 "Food Scraps" means a subset of Organic Materials including: (i) all kitchen and table food
28 waste, and animal or vegetable waste that attends or results from the storage, preparation,
29 cooking or handling of foodstuffs, (ii) paper waste contaminated with Food Scraps, and (iii)
30 biodegradable plastic food service ware.
31

32 **Gate Fees:** “Gate Fees” means the amounts, set by the Authority, to be collected from Self-
33 Haul Customers by the Contractor and remitted to the Authority.

34 **Generator**

35 “Generator” means any Person whose act or process produces Solid Waste, Recyclable
36 Materials, or Organic Materials, or whose act first causes Solid Waste to become subject to
37 regulation.

1 **Gross Revenue**

2 "Gross Revenues" means any and all revenue or compensation in any form earned by
3 Contractor or an Affiliate from the sale or other transfer of Recyclable Materials, Organic
4 Materials, and other materials delivered to the Shoreway Center.

5 **Guarantor**

6 "Guarantor" means _____ {Insert Name of Guarantor}.

7 **Guaranty**

8 "Guaranty" means the document to be executed by the Guarantor in the form of Attachment ___.

9 **Hazardous Substance**

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

25 **Hazardous Waste**

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

32 **Holidays**

33 "Holidays" means New Year's Day, Thanksgiving Day, and Christmas Day.

34 **Holiday Trees**

35 "Holiday Trees" means trees targeted for diversion that were purchased and used in celebration
36 of Christmas and other holidays in December and January.

37 **Household Batteries**

38 "Household Batteries" means disposable or rechargeable dry cells (e.g., A, AA, AAA, B, C, D, 9-
39 volt, button-type) commonly used as power sources for household or consumer products
40 including, but not limited to, nickel-cadmium, nickel metal hydride, alkaline, mercury, mercuric

1 oxide, silver oxide, zinc oxide, nickel-zinc, nickel iron, lithium, lithium ion, magnesium,
2 manganese, and carbon-zinc batteries, but excluding automotive lead acid batteries.

3 **Infectious Waste**

4 "Infectious Waste" means biomedical waste generated at hospitals, public or private medical
5 clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries,
6 veterinary facilities, and other similar establishments that are identified in State Health and
7 Safety Code Section 25117.5.

8
9 **Incentive Payment Baseline:** "Incentive Payment Baseline" means the amount specified in
10 Section 7.08.A which Contractor must divert in a calendar year in order to qualify for an
11 incentive payment. Initially set at 30,000 Tons.

12 **Liquidated Damages**

13 "Liquidated Damages" means the amounts owed by Contractor to the Agency for failure to meet
14 specific standards of performance as described in Section 11.07.

15 **Materials Recovery Facility (MRF)**

16 "Materials Recovery Facility" and "MRF" each mean the building at the Shoreway Center where
17 Recyclable Materials are processed, sorted or separated for the purposes of recovering
18 reusable or Recyclable Materials.

19 **Member Agencies**

20 "Member Agencies" means the following jurisdictions: the cities of Belmont, Burlingame, East
21 Palo Alto, Foster City, Menlo Park, Redwood City, San Carlos, and San Mateo; the towns of
22 Atherton and Hillsborough; the County of San Mateo; and the West Bay Sanitary District.

23
24 **Minimum Self-Haul Diversion Guarantee:** "Minimum Self-Haul Diversion Guarantee" means
25 the amount of Self-haul materials that are to be Diverted from total inbound Self-haul tons.

26 **Operating Cost**

27 "Operating Cost" means those costs actually incurred by Contractor, reasonably necessary to
28 perform under this Agreement, and not otherwise specifically excluded in this Agreement.

29 **Organic Materials**

30 "Organic Materials" means materials that will decompose and/or putrefy. Organic Materials
31 include Plant Materials such as green trimmings, grass, weeds, leaves, prunings, branches,
32 dead plants, brush, tree trimmings, dead trees, small wood pieces, other types of organic yard
33 waste, Food Scraps, paper, paper contaminated with Food Scraps, biodegradable plastic food
34 service ware, pieces of unpainted and untreated wood, and pieces of unpainted and untreated
35 wallboard.

36 **Party(ies)**

37 "Party(ies)" refers to the Authority and Contractor, individually or together.

1 **Pass-Through Cost**

2 "Pass-Through Cost" means a cost to which no element of overhead, administrative expense, or
3 profit is added, such that the specific amount of such cost is included without modification in the
4 calculations or reports prepared in implementing this Agreement.

5 **Person**

6 "Person" means any individual, firm, company, association, organization, partnership,
7 corporation, trust, joint venture, the United States, the State, the County, towns, cities, or special
8 purpose districts.

9 **Plant Materials**

10 "Plant Materials" means a subset of Organic Materials consisting of grass cuttings, weeds,
11 leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees (not more than six
12 (6) inches in diameter and five (5) feet in length), and similar materials. Plant Materials does not
13 include materials not normally produced from gardens or landscape areas, such as, brick, rock,
14 gravel, large quantities of dirt, concrete, sod, non-organic wastes, oil, and painted or treated
15 wood products.

16 **Rates**

17 "Rates" means the monetary amounts to be charged to Customers by Contractor.

18 **Rate Year**

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

21 **Recycling**

22 "Recycling" means the process of sorting, cleansing, treating and reconstituting materials that
23 would otherwise be disposed of at a landfill for the purpose of returning such materials to the
24 economy in the form of raw materials for new, reused or reconstituted products.

25 **Recyclable Materials**

26 "Recyclable Materials" means discarded materials that can be re-used, remanufactured,
27 reconstituted, or recycled.

28
29 **Recycling Revenue Guarantee:** "Recycling Revenue Guarantee" means the amount, in
30 dollars, which Contractor guarantees to pay the Authority annually pursuant to Section 7.07.

31 **Related Party Entity**

32 "Related Party Entity" means any Affiliate which has a financial transaction with Contractor
33 pertaining to this Agreement.

34
35 **Request for Proposals (RFP)**

36 "Request for Proposals" means the document released by the Authority in November 2007
37 inviting proposals to operate the Shoreway Center and including the following addenda which
38 Contractor acknowledges receiving: Addendum One, issued _____; [Addendum
39 Two, issued _____, etc.].

1 **Residue**
2 “Residue” means any unmarketable material that results from the processing of materials
3 received at the MRF.

4
5 **Revised Incentive Payment Baseline**

6 “Revised Incentive Payment Baseline” means the amount, in Tons, calculated as provided in
7 Section 7.08.A, to reflect Contractor’s performance in diverting materials delivered by Self-Haul
8 Customers.

9 **SBWMA**

10 “SBWMA” means the Authority.

11 **SBWMA Service Area**

12 “SBWMA Service Area” means the geographic area within, and, where applicable, outside the
13 Member Agencies’ combined jurisdictional boundaries wherein the Member Agencies exercise
14 franchising authority for the collection of Solid Waste, Recyclable Materials, and Organic
15 Materials, as those boundaries are currently drawn or as they maybe changed through
16 annexations or the addition of new Member Agencies.

17
18 **Self-Haul / Self-Haul Customer(s)**

19 “Self-Haul / Self-Haul Customer(s)” means materials, and Customer(s) that haul these materials
20 to the Shoreway Center, other than the Collection Contractor(s).

21 **Shoreway Center**

22 “Shoreway Center” means the Shoreway Recycling and Disposal Center owned by the
23 Authority, located at 225 and 333 Shoreway Road, San Carlos, California. The Shoreway
24 Center contains the Transfer Station and the MRF. The Shoreway Center is also referred to as
25 the “SRDC” and the “Facility”.

26 **Single-Stream Recyclable Materials**

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

29 **Solid Waste**

30 “Solid Waste” means all putrescible and non-putrescible solid, semisolid, and liquid wastes, as
31 defined in California Public Resources Code Section 40191. For the purposes of this
32 Agreement, “Solid Waste” does not include abandoned vehicles and parts thereof, Hazardous
33 Waste or low-level radioactive waste, medical waste, Source Separated Recyclable Materials,
34 Source Separated Plant Materials, or Source Separated Organic Materials.

35 **Source Separated**

36 “Source Separated” means materials which otherwise would become Solid Waste, but have
37 been segregated by the generator, such as Recyclable Materials or Organic Materials, for the
38 purpose of reuse, Recycling, or composting, to be Collected by Contractor or others.

1 **Specialty Recyclable or Reusable Material**

2 “Specialty Recyclable or Reusable Material” means Recyclable Materials that are not Traditional
3 Recyclable Materials but that may be collected for purposes of Recycling by any Person
4 operating in accordance with the Agency Municipal Code. Such Specialty Recyclable or
5 Reusable Material includes, but is not limited to, scrap metal weighing more than ten (10)
6 pounds, Construction and Demolition Debris, pallets, plastic film, and reusable furniture.

7 **State**

8 “State” means the State of California.

9 **Subcontractor**

10 “Subcontractor” means a Person which has entered into a contract with the Contractor for the
11 performance of work that is necessary for the Contractor’s fulfillment of its obligations under this
12 Agreement.

13 **Term**

14 “Term” means the Term of this Agreement.

15 **Ton (or Tonnage)**

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

18 **Targeted Recyclable Materials**

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

33 **Transfer Station**

34 “Transfer Station” means the building located at the Shoreway Center whose primary purpose is
35 to effect the transfer of Solid Waste from Collection Vehicles to Transfer Vehicles for more
36 efficient delivery to the Designated Disposal Site.

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

38 “Universal Waste,” or “U-Waste,” means all wastes defined by Title 22, Subsections 66273.1
39 through 66273.9 of the California Code of Regulations. These include, but are not limited to,
40 batteries, fluorescent light bulbs, mercury switches, and Electronic Waste.

1 **Unpermitted Materials**

2 “Unpermitted Materials” mean wastes or other materials that the Shoreway Center is not
3 permitted to receive, including Hazardous Waste and Hazardous Substances.

4 **Used Motor Oil**

5 “Used Motor Oil” means used motor oil from automobiles and other light duty vehicles which are
6 collected from cars at Residential Premises by the Collection Contractor.

7 **Used Motor Oil Filter**

8 “Used Motor Oil Filter” means a used motor oil filter from automobiles and other light duty
9 vehicles which is collected from Residential Premises by the Collection Contractor.

10

11 **Transfer Vehicles:** “Transfer Vehicles” mean the truck and trailer units used to transport Solid
12 Waste from the Shoreway Center to the Designated Disposal Site.

13 **White Goods**

14 “White Goods” means Major Appliances.