

AGREEMENT FOR OPERATION
OF THE
SHOREWAY RECYCLING AND DISPOSAL
CENTER

SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY
AND

_____, 2009

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LIST OF ATTACHMENTS

1. Definitions
- 2-A. List of MRF Sorting Equipment Showing Manufacturer, Model Number, Description
{to be included upon execution of Agreement}
- 2-B. Latest Version of Site Plan for Shoreway Recycling and Disposal Center
{to be included upon execution of Agreement}
- 2-C. Plan and Elevation Drawings of New MRF Sorting Equipment
{to be included upon execution of Agreement}
- 2-D. Transfer Station Materials Flow Diagram
{to be included upon execution of Agreement}
- 2-E. MRF Equipment Performance Specifications
{to be included upon execution of Agreement}
- 2-F. MRF Equipment Acceptance Test
- 2-G. Product Quality Standards
3. General Operating Standards and Procedures
4. Contractor's Implementation and Operating Plan
{to be included upon execution of Agreement}
5. Site Map/Vehicle Parking Area
6. Permits
7. Hazardous Waste Exclusion Plan (HWEP)
{to be included upon execution of Agreement}
- 8-A. Authority-Supplied Stationary Equipment
{to be determined during contract negotiations}
- 8-B. Contractor-Supplied Equipment List
{to be determined during contract negotiations}
9. Minimum Number of Employees
{to be determined during contract negotiations}
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{to be included upon execution of Agreement}
- 12-A. Procedure for Initial Rate Adjustment Process
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{to be determined during contract negotiations}
- 13-A. Procedure for Annual Rate Adjustment Process
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{to be determined during contract negotiations}
14. Self-haul Reconciliation Formula
15. Reports to be Provided by Contractor
{to be determined during contract negotiations}
16. Performance Bond and Continuation Certificate
17. Guaranty
18. Contractor's Safety Plan
{to be included upon execution of Agreement}

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

3
4 THIS AGREEMENT is made and entered into as of this _____ day of _____,
5 2009, by and between the SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY (the
6 "Authority"), and _____, a
7 _____ (the "Contractor").

8 **RECITALS**

9 1. The State of California, through the California Integrated Waste Management Act
10 of 1989, codified at Public Resources Code Section 40000, *et seq.* (the "Act"), found and
11 declared that the amount of solid waste generated in California, coupled with diminishing landfill
12 space and potential adverse environmental impacts from landfill disposal, has created a need
13 for state and local agencies to enact and implement an aggressive integrated waste
14 management program.

15 2. The Act directs the California Integrated Waste Management Board and local
16 agencies to promote recycling and to maximize the use of feasible source reduction, recycling
17 and composting options in order to reduce the amount of solid waste that must be disposed in
18 landfills.

19 3. The Authority is a joint powers agency organized under the Joint Exercise of
20 Powers Act by cities and other local government agencies in San Mateo County (the "Member
21 Agencies"), each of which oversees the collection of solid waste and recyclable materials within
22 its jurisdiction.

23 4. The Authority owns and oversees the operation of the Shoreway Recycling and
24 Disposal Center in San Carlos ("Shoreway Center"). The recycling and materials recovery
25 operations conducted at the Shoreway Center are an integral component of each of the Member
26 Agencies' Source Reduction and Recycling Elements, which have in turn been incorporated into
27 San Mateo County's Integrated Waste Management Plan.

28 5. The Member Agencies, acting in coordination with each other and the Authority,
29 are planning to expand the recycling operations within each of their jurisdictions through a

1 variety of measures, including the institution of "single stream" recycling, i.e., the collection of
2 commingled recyclables in a single, wheeled container.

3 6. As a result of these new and expanded recycling programs within its Member
4 Agencies, the Authority anticipates that the amount of recyclable materials, including organic
5 materials, delivered to the Shoreway Center will increase.

6 7. In order to prepare for this anticipated increase in the amount of recyclable
7 materials, and to improve the ability of the Shoreway Center to recover recyclable materials
8 from solid waste delivered to it, the Authority is planning a substantial renovation and expansion
9 of the facilities at the Shoreway Center.

10 8. One of the anticipated improvements is the installation of a new system designed
11 specifically for sorting and recovering recyclable materials from single stream collection
12 programs. The new system has been selected by the Contractor and is to be installed by the
13 Contractor within the Materials Recovery Facility at the Shoreway Center so that it will be ready
14 for full-scale operation by January 1, 2011, when the Contractor will assume responsibility for
15 operations at the Shoreway Center.

16 9. In November 2007, the Authority issued a Request for Proposals to select and
17 install the new recyclable materials processing equipment, operate the Shoreway Center,
18 transport recyclable materials to various specialized processors and transport residual solid
19 waste to the Ox Mountain Landfill.

20 10. Contractor submitted a Proposal which, in the judgment of the Authority,
21 represented the greatest value to the Authority, its Member Agencies and their residents and
22 businesses.

23 NOW, THEREFORE, in consideration of the foregoing and for other good and valuable
24 consideration, the parties agree as follows:

1

ARTICLE 1 DEFINITIONS

2

1.01 DEFINITIONS

3

Unless the context otherwise requires, capitalized terms used in this Agreement will

4

have the meanings specified in Attachment 1.

1 **ARTICLE 2 TERM OF AGREEMENT**

2 **2.01 EFFECTIVE DATE**

3 Effective Date. The Effective Date of this Agreement shall be
4 _____, 2009. [40 days after signing]

5 **2.02 TERM**

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

9 **2.03 OPTION TO EXTEND TERM**

10 The Authority may extend the Term for one (1) or more periods of one (1) year,
11 up to a maximum of three (3) years (i.e., until December 31, 2023), on the same
12 terms and conditions. If Authority wishes to extend the Term it shall deliver a
13 written notice to Contractor at least six (6) months before the expiration of the
14 then-current Term, specifying the number of additional years by which it wishes
15 to extend the Term. If the Authority initially elects to extend the Term for less
16 than three (3) years, it may subsequently elect to extend the Term in increments
17 of one or two years, up to a total of three years.

18 **2.04 CONDITIONS TO EFFECTIVENESS OF AGREEMENT**

19 The obligation of Authority to perform under this Agreement is subject to
20 satisfaction, on or before the Effective Date, of each and every one of the
21 conditions set out below, which may be waived in whole or in part by Authority:

- 22 **A. Accuracy of Representations.** The representations and warranties made by
23 Contractor in Article 3 of this Agreement shall be true and correct on and as of the
24 Effective Date, and a certification to that effect dated as of the Effective Date shall
25 be delivered by Contractor to Authority on the Effective Date.
- 26 **B. Absence of Litigation.** There shall be no litigation pending on the Effective Date in
27 any court challenging the execution of this Agreement or seeking to restrain or
28 enjoin its performance.
- 29 **C. Furnishing of Bond and Insurance [, and Guaranty].** Contractor shall have
30 furnished the performance bond required by Section 9.03, [*the Guaranty required by*
31 *Section 10.07*] and evidence of the insurance policies required by Section 10.02.
- 32 **D. Effectiveness of Authority's Approval.** Authority's approval of this Agreement
33 shall have become effective, pursuant to California law, on or before the Effective
34 Date.

35 If any condition is not satisfied or waived by Authority by the Effective Date, this
36 Agreement shall be void and have no further force or effect. The Authority may waive
37 the satisfaction or conditions described in this section, allow this Agreement to become
38 effective, and exercise its rights and remedies under this Agreement for Contractor's
39 failure to deliver the bond and/or evidence of insurance. Each party is obligated to
40 perform in good faith the actions, if any, which this Agreement requires it to perform
41 before the effective date and to cooperate towards the satisfaction of the conditions set
42 forth above.

1 **ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF CONTRACTOR**

2 **3.01 CORPORATE STATUS**

3 Contractor is a corporation duly organized, validly existing and in good standing under
4 the laws of the State of California, and is qualified to do business in the State of
5 California. It has the corporate power to own its properties and to carry on its business
6 as now owned and operated and as required by this Agreement. **[Modify as**
7 **appropriate to reflect Contractor’s business structure.]**

8 **3.02 CORPORATE AUTHORIZATION**

9 Contractor has the authority to enter into and perform its obligations under this
10 Agreement. The board of directors of Contractor (and the shareholders, if necessary)
11 has taken all actions required by law, its articles of incorporation, its bylaws or otherwise
12 to authorize the execution of this Agreement. The persons signing this Agreement on
13 behalf of Contractor have authority to do so. **[Modify as appropriate.]**

14 **3.03 STATEMENTS AND INFORMATION IN PROPOSAL.**

15 The Proposal submitted to Authority by Contractor and information submitted to
16 Authority supplementary thereto, on which Authority has relied in entering into this
17 Agreement does not contain any untrue statement of a material fact nor omit to state a
18 material fact necessary in order to make the statements made, in light of the
19 circumstances in which they were made, not misleading.

20 **3.04 NO CONFLICT WITH APPLICABLE LAW OR OTHER DOCUMENTS**

21 Neither the execution and delivery by Contractor of this Agreement, nor the performance
22 by Contractor of its obligations hereunder (i) conflicts with, violates or will result in a
23 violation of any existing applicable law; or (ii) conflicts with, violates or will result in a
24 breach or default under any term or condition of any existing judgment, order or decree
25 of any court, administrative agency or other governmental authority, or of any existing
26 contract or instrument to which Contractor is a party, or by which Contractor is bound.

27 **3.05 NO LITIGATION.**

28 There is no action, suit, proceeding, or investigation at law or in equity, before or by any
29 court or governmental entity, pending or threatened against Contractor, or otherwise
30 affecting Contractor, wherein an unfavorable decision, ruling, or finding, in any single
31 case or in the aggregate, would materially adversely affect Contractor’s performance
32 hereunder, or which, in any way, would adversely affect the validity or enforceability of
33 this Agreement, or which would have a material adverse effect on the financial condition
34 of Contractor.

35 **3.06 FINANCIAL CONDITION**

36 Contractor has made available to Authority information on its financial condition.
37 Contractor recognizes that Authority has relied on this information in evaluating the
38 sufficiency of Contractor’s financial resources to perform this Agreement. To the best of
39 Contractor’s knowledge, this information is complete and accurate, does not contain any
40 material misstatement of fact and does not omit any fact necessary to prevent the
41 information provided from being materially misleading.

1 **3.07 EXPERTISE**

2 Contractor has the expertise and professional and technical capability to perform all of
3 its obligations under this Agreement and is ready, willing and able to so perform.

ARTICLE 4 INSTALLATION OF NEW SORTING EQUIPMENT

4.01 GENERAL.

Contractor has recommended that the Authority purchase the sorting equipment described on Attachment 2-A. This recommendation has been made based on Contractor's analysis of the types and volumes of Recyclable Materials expected to be delivered to the MRF after the Member Agencies initiate a single stream collection process, the Authority's goals for materials recovery as incorporated in this Agreement, and the site constraints of the MRF as it is planned to be reconstructed as shown on Attachment 2-B. Contractor has had the opportunity to provide input to the design process so that equipment and operational aspects have been incorporated in the design of the MRF building shown on Attachment 2-B. Contractor has assured the Authority that the equipment recommended will process single stream Recyclable Materials as specified and required in Attachment 2-E, MRF equipment performance specification, with the composition described in the system's acceptance test set forth in Attachment 2-E and will produce materials that meet the product quality standards set forth in Attachment 2-G.

4.02 PURCHASE OF EQUIPMENT.

The Authority will execute a contract with [the equipment supplier(s)/manufacturer(s) listed on Attachment 2-C] on or before September __, 2009. The Authority will be responsible for payment of a total price not to exceed _____ Dollars (\$_____) for fabrication and delivery, including taxes and insurance. The Contractor will be responsible for paying all costs in excess of _____ Dollars (\$_____) or reimbursing Authority for such excess within thirty (30) days after Authority has paid the equipment supplier(s)/manufacturer(s).

4.03 INSTALLATION OF EQUIPMENT

The equipment will be installed as shown on Attachment 2-C and will operate as shown on the materials flow diagram, Attachment 2-D.

Contractor has represented to Authority that the equipment, as installed, will achieve the performance specifications described in Attachment 2-E and the product quality standards as described in Attachment 2-G.

Contractor will install, or arrange for installation of, the equipment on the following schedule:

	<u>Day</u>
Equipment Delivered to Site	1
Installation Begins	
Installation Completed	
Start-Up and Shakedown	
Acceptance Testing	
Full-Scale Operations Begin	182

1 The installation will be performed by a company holding the appropriate license issued
2 by the California Contractor's Licensing Board. The installation will constitute a "public
3 work" under California law and the award of the contract and the conduct of the work will
4 be done in compliance with California Government Code, Public Contracts Code and
5 Labor Code which require, among other things, payment of prevailing wages and
6 provision of a labor and materials payment bond. The work must be done while other
7 construction work is being carried out by other contractors at the Shoreway Center and
8 must not interfere with that work or with the operations of the Shoreway Center, which
9 will continue during construction and MRF equipment installation.

10 The company performing the installation must have insurance in place meeting the
11 requirements of Section 10.02 before commencing work. The Authority will be provided
12 adequate opportunity to review and approve the contract between Contractor and the
13 company installing the equipment. Contractor will modify the contract as Authority may
14 reasonably require to protect its interests as owner. Contractor will pay the installation
15 company directly.

16 **4.04 SYSTEMS ACCEPTANCE TEST.**

17 Contractor will start up and operate the MRF equipment for a shakedown period of no
18 less than ___ days and no more than ___ days prior to commencing the Acceptance
19 Tests.

20 The Acceptance Test will be conducted as provided in Attachment 2-F

21 The Authority will accept the equipment and allow Contractor to commence full-scale
22 operation of the MRF when the tests demonstrate that all the equipment as installed
23 meets all requirements of this Agreement and the manufacturer's performance
24 representations.

25 **4.05 DELAY IN ACCEPTANCE**

26 If the equipment is not installed and has not passed the Acceptance Test by the
27 Commencement Date (January 1, 2011) or 182 days after the equipment has been
28 delivered to the site, whichever is later, Contractor will be responsible for additional costs
29 incurred by Authority in arranging for Recycled Materials to be delivered to and
30 processed at a different location, as well as from decreased revenue from sales of
31 Recyclable Materials.

1 **ARTICLE 5 OPERATION OF SHOREWAY CENTER**

2 **5.01 SCOPE OF WORK – GENERAL**

3 The work to be done by Contractor includes the furnishing of all labor, supervision,
4 equipment, materials, supplies and all other items necessary to perform the services
5 required in a thorough, workmanlike and efficient matter, so that users of the Shoreway
6 Center are provided reliable, courteous and high-quality services at all times. The
7 enumeration of, and specification of requirements for, particular items of labor or
8 equipment shall not relieve Contractor of the duty to furnish all others that may be
9 required, whether enumerated or not.

10 Contractor shall perform all work in accordance with Attachment 3, all provisions of
11 which are incorporated herein whether or not such provisions are specifically referred to
12 in any other section of this Agreement. In addition, to the extent that Contractor's
13 proposal includes promises to perform services in addition to, or at a higher standard of
14 service than those required by the Request for Proposals, those promises are
15 incorporated into this Agreement and Contractor hereby ratifies its agreement to perform
16 as promised.

17 **5.02 IMPLEMENTATION PLAN**

18 The parties recognize that substantial planning and preparation will be required to
19 ensure a successful initiation of operations by Contractor on January 1, 2011. To that
20 end, Contractor has prepared a detailed implementation plan addressing the steps
21 Contractor will take, and the schedule on which it will take them, to prepare for
22 commencement of operations. The implementation plan covers Contractor's schedule
23 for hiring and training of personnel, acquiring necessary vehicles and equipment,
24 installing and testing of the new sorting equipment, etc., and is included as Attachment
25 4.

26 Contractor shall diligently adhere to the implementation plan and shall meet periodically,
27 whenever the Authority requests, to review progress. No changes will be made to the
28 schedule without the Authority's prior written approval. Failure to adhere to the
29 implementation plan, including its schedule, shall constitute a breach of this Agreement
30 which, if uncured, shall constitute a default under Section 11.01.

31 The specific plans and other materials required to be submitted by the implementation
32 plan are subject to the Authority's review and approval. The Authority will take actions,
33 make decisions, and provide directions to Contractor in accordance with the schedule
34 and time allowances set forth in Attachment 4, so as not to delay Contractor's adherence
35 to the implementation plan schedule.

36 **5.03 SHOREWAY CENTER FACILITY OPERATIONS - GENERAL.**

37 Contractor recognizes that the Authority and its Member Agencies are committed to
38 recycling materials that have in the past been disposed of in landfills. Contractor shall
39 operate the Transfer Station, Materials Recovery Facility (MRF), Buy-back / Drop-off
40 Center and related facilities to allow for the convenient and efficient management of
41 Solid Waste and recovery of Recyclable Materials, Plant Materials and Organic
42 Materials.

43 Contractor shall receive and accept all Solid Waste, Recyclable Materials, Plant
44 Materials, Organic Materials, Construction and Demolition, E-waste, and U-Waste
45 delivered to the Shoreway Center by:

- 1 A. The Member Agencies and their Collection Contractor(s).
- 2 B. The general public and businesses located within, or outside of, the Service Area
- 3 (i.e., the combined jurisdictions of the Member Agencies).
- 4 C. Commercial haulers doing business within the Service Area.
- 5 D. Other haulers approved by the Authority.

6 Neither the Contractor nor an Affiliated Company may bring materials from outside the
7 Service Area without prior written approval of the Authority.

8 **5.04 DAYS AND HOURS OF OPERATION**

9 Contractor shall operate the Shoreway Center every day of the year, except
10 Thanksgiving, Christmas and New Years Day. Receiving Hours are as follows:

- 11 A. Collection Contractor(s): between 3:00 a.m. and 6:00 p.m. Monday through Friday
- 12 and between 6:00 a.m. and 5:00 p.m. Saturday and Sunday.
- 13 B. Publicly hauled (Self-haul): between 6:00 a.m. and 6:00 p.m. Monday through
- 14 Friday and between 8:00 a.m. and 5:00 p.m. Saturday and Sunday.

15 The Contractor may operate the Shoreway Center beyond the required receiving hours,
16 with the prior permission of the Authority. The Authority may change the permitted
17 operating hours to allow for increased hours of operation.

18 **5.05 USE OF THE SHOREWAY CENTER**

19 A. Contractor shall have the right to use the Shoreway Center (including the
20 administrative, maintenance and repair areas) every day of the year.

21 B. The Authority shall have exclusive use of approximately five-hundred (500) square
22 feet of the office space. In addition five (5) parking spaces will be reserved for the
23 use of Authority staff and invitees. Contractor shall provide, at no charge to the
24 Authority, utilities to this portion of the administrative office/visitor center area,
25 including water, sewer, electrical power, heat and light, as well as janitorial and
26 building maintenance services. The Authority will provide, at its expense,
27 telephones and other communications equipment, furniture, computers, office
28 supplies and moveable partitions. The Authority shall have the right to make
29 reasonable use of the common areas in the buildings. The Authority's use of these
30 areas shall not interfere with Contractor's use, and the parties shall cooperate with
31 each other in the scheduling of the use of facilities.

32 C. Collection Contractor(s) Use of Facilities and Areas. Member Agencies will enter
33 into franchise agreements with one or more Collection Contractors. The Authority
34 expects to allow one of these contractors to occupy and use the area in the
35 northeast parcel of the property, as shown on Attachment 5. The Collection
36 Contractor will have rights to access and use the areas and structures that are
37 located within the areas designated. In addition, there are areas of the property that
38 the Contractor and the Collection Contractor will need to share. It is expected that
39 the Contractor and the Collection Contractor will cooperate in the use of shared
40 areas to minimize interference with the operations of each other. If there is a
41 dispute between the Contractor and the Collection Contractor on the use of the
42 property, the Authority will make a determination as to the extent of use by the
43 Contractor and the Collection Contractor, which determination will be final.

1 **5.06 PERMITS.**

- 2 A. The Authority will be responsible for obtaining the renewal of existing permits listed
3 as its responsibility on Attachment 6. The Contractor will obtain new permits and
4 renewals of all other permits, including those listed as its responsibility on
5 Attachment 6.
- 6 B. If new operating permits and approvals (or amendments to the permits and
7 approvals obtained by the Authority) become necessary by virtue of Contractor's
8 operations or changes in operations, it will be the responsibility of Contractor to
9 obtain them. The Authority will assist the Contractor in obtaining permits provided
10 that the operations which give rise to the need for them are in compliance with this
11 Agreement. Contractor shall submit a draft of all applications for operating permits
12 (and for subsequent renewals or modifications thereof) to the Authority for its review
13 and approval prior to filing an application with the permitting agency(ies).
14 Contractor shall keep the Authority fully informed at all times on the status of all
15 permit applications. Contractor shall apply for permits in its own name or in the
16 name of the Authority, as directed by the Authority. Contractor shall not agree to
17 permit terms and conditions on any permit, which is to be issued in the name of the
18 Authority without the prior written consent of the Authority. Copies of all permits
19 issued in Contractor's name and Contractor shall deliver originals of all permits
20 issued in the Authority's name (and any renewals or amendments) to the Authority
21 promptly and in any case within five (5) working days of their receipt.
- 22 C. The Contractor will notify the Authority of all changes in permit status, involvement
23 by other regulatory agencies, accidents, and operational changes that can
24 materially affect operations at and the movement of materials into/out of the
25 Shoreway Center. Contractor shall comply with the terms of all licenses, permits
26 and approvals governing the Shoreway Center, including any which may require
27 modifications to its operating procedures. Contractor will comply with the terms and
28 conditions contained in the Use Permit issued by the City of San Carlos for the
29 Shoreway Center.
- 30 D. Contractor shall be solely responsible for paying any fines or penalties imposed by
31 governmental agencies for Contractor's noncompliance with permit terms.

32 **5.07 HAZARDOUS WASTE EXCLUSION PROGRAM.**

- 33 A. Contractor shall develop, maintain, update and implement a hazardous waste
34 exclusion program plan (HWEPP), the requirements of which are described in
35 Attachment 7. Should additional measures be incorporated into the HWEPP to
36 comply with changes in law or regulations, Contractor shall comply with such
37 measures. Contractor shall arrange for the safe and lawful temporary storage and
38 disposal of such waste in an appropriate location separate from the U-waste and E-
39 waste materials collected at the Buyback / Drop-off center.

40 As a part of the HWEPP, the Contractor is required to inspect outbound loads of
41 materials that are transported to the Designated Disposal Site and Processing Sites
42 by the Contractor. If the Disposal or Processing Facilities reject loads because they
43 contain materials that should have been removed under the HWEPP, the Contractor
44 shall notify the Authority immediately and manage the disposal of the load in a safe
45 and lawful manner, at its sole expense.

- 46 B. Contractor shall remove and arrange for proper disposal of CFCs and compressor
47 oils from appliances delivered to the Shoreway Center, as well as switches

1 containing mercury. Contractor shall arrange and pay for the safe and lawful
2 disposal of hazardous wastes that are recovered from the inspection and/or the
3 processing of incoming loads to the Transfer Station and MRF.

4 **5.08 HAZARDOUS MATERIALS GENERATED FROM CONTRACTOR'S OPERATIONS.**

5 The Contractor shall be responsible for the costs of transporting, treating and/or
6 disposing of any hazardous materials generated by the Contractor's operations at the
7 Shoreway Center. Contractor shall ensure that all hazardous materials and wastes are
8 properly stored on site. Cleanup costs for any on-site contamination that is the result of
9 the Contractor's activities shall be the sole responsibility of the Contractor.

10 **5.09 EQUIPMENT.**

11 The Authority will furnish Stationary Equipment listed on Attachment 8-A. Contractor
12 shall provide all other equipment required to perform, in a safe and efficient manner, the
13 services required by this Agreement, including equipment listed on Attachment 8-B.

- 14 A. All equipment supplied by the Contractor to perform services under this Agreement
15 shall be new at the commencement of this Agreement and shall comply with all
16 applicable laws and regulations.
- 17 B. All Transfer Vehicles must be capable of loading at the Shoreway Center and
18 capable of unloading at the Designated Disposal Site and Processing Sites by
19 equipment in use at the Disposal Facility and Processing Facilities.
- 20 C. The number of Transfer Vehicles and other pieces of equipment shown in
21 Attachment 8-B is based on the throughput of materials at the level anticipated at
22 the commencement of the Term. The parties recognize that tonnage processed
23 through the Shoreway Center may change over time and that an increase in volume
24 could require the Contractor to supply additional equipment. The Contractor will
25 add equipment as needed to operate the Shoreway Center and achieve the
26 Diversion Program Guarantees, without any increase in the Contractor's
27 compensation.
- 28 D. Whenever there is a material change in the number or composition of equipment,
29 the Contractor shall provide written notification to the Authority.

30 **5.10 AUTHORITY RIGHT TO PURCHASE CONTRACTOR'S EQUIPMENT.**

31 The Authority shall have the right, but not the duty, to purchase any or all equipment
32 owned by Contractor at the expiration or earlier termination of this Agreement, at its net
33 book value as shown on Contractor's financial statements (which shall be no greater
34 than the purchase price less accumulated depreciation claimed by Contractor on its
35 federal income tax returns). Within thirty (30) days of the commencement of operations,
36 the Contractor shall deliver to the Authority properly signed UCC-1 Financing
37 Statements and all other documents necessary or appropriate for the Authority to secure
38 its purchase options and shall file, or allow the Authority to file, such Statements and
39 other documentation. As new or replacement equipment is purchased, similar
40 documentation covering the equipment shall be provided by Contractor.

41 Upon the Authority's exercise of its option to purchase, Contractor will sign and deliver
42 bills of sale or other documents reasonably requested by Authority to evidence the
43 transfer of title to all equipment purchased.

1 If Contractor wishes to lease (rather than purchase) the equipment, which it is to furnish,
2 the leases must provide that the lessor will, if requested, consent to their assignment to
3 the Authority without charge upon the expiration or earlier termination of this Agreement
4 and must provide adequate mechanisms for the Authority to acquire title to equipment if
5 desired.

6 **5.11 PERSONNEL.**

7 A. Contractor shall furnish such qualified drivers, operators, sorters, mechanical,
8 supervisory, clerical and other personnel as may be necessary to provide the
9 services required by this Agreement in a safe and efficient manner. The minimum
10 number of employees to be provided in each job classification shall be as shown on
11 Attachment 9.

12 B. The Contractor shall offer employment to qualified employees of the current
13 operator who become unemployed by reason of the change in contractors, provided
14 that the Contractor shall not be obligated to offer employment to more existing
15 employees than the Contractor needs to perform the services required under the
16 Agreement and provided that the Contractor shall not be obligated to offer
17 employment to workers who have not been employed by the previous contractor for
18 at least one-hundred-twenty (120) days prior to the Commencement Date.
19 Contractor shall not discharge any retained workers for at least ninety (90) days
20 after the Commencement Date, except for cause.

21 C. Contractor shall maintain a list of the predecessor contractor's employees who were
22 not offered employment by the Contractor prior to the Commencement Date or
23 during the two (2) months following the Commencement Date. If any positions
24 become available during the three (3) months following the initial three (3) month
25 operation period (i.e., from April 1, 2011 through June 30, 2011), Contractor shall
26 offer employment to qualified workers on the list by seniority within the collective
27 bargaining unit (if it exists). The hiring requirements in this paragraph and the
28 preceding paragraph shall not be applicable to management or supervisory
29 personnel or non-represented employees.

30 At no time during the Term shall wages and benefits for personnel be less than
31 those paid for the same classification of employee by Allied Waste Services in the
32 collective bargaining agreements with the Teamsters Local 350 or the Machinists
33 Local 1414 in place as of the Commencement Date.

34 D. Contractor shall adopt policies and procedures consistent with State and federal law
35 that ensure a sober and drug-free workplace. This includes strictly prohibiting
36 unlawful manufacture, distribution, possession, or use of any controlled substance
37 in the workplace, regardless of whether the employee is on duty at the time.
38 Further, the policies and procedures shall prohibit an employee from operating
39 either Authority or Contractor equipment and vehicles (whether on or off duty) while
40 under the influence of alcohol or drugs. The purpose of these policies and
41 procedures is to ensure workplace safety, productivity, efficiency, and the quality of
42 Contractor's service to customers.

43 E. Contractor is responsible for providing sufficient training to all workers so that they
44 can perform the work in a safe and competent manner and are thoroughly familiar
45 with the work, which the Contractor is required to perform, and the standards it is
46 required to meet under this Agreement.

- 1 F. If workers provided by a particular independent contractor or party working on
2 behalf of the Contractor prove persistently unsatisfactory, the Authority may require
3 that Contractor either secure workers through a different independent contractor,
4 sub-contractor or hire qualified and competent employees directly.
- 5 G. The parties acknowledge that the services provided by Contractor do not constitute
6 a "public work" and are not subject to any of the provisions of the Public Works Law,
7 Labor §1720-1901, nor the regulations promulgated thereunder.
- 8 H. While performing services under this Agreement, all Contractor's employees shall
9 be dressed in clean uniforms and shall wear visible identification that include the
10 employee's name and/or employee number, and Contractor's name. Uniform type,
11 style, colors, and any modifications may be subject to approval by the Authority.
- 12 I. The parties recognize that tonnage through the Shoreway Center Facilities will
13 change over time and that an increase in volume could require additional personnel.
14 The Contractor will add personnel as needed to operate the Shoreway Center and
15 achieve the Diversion Program Guarantees, without any increase in the
16 Contractor's compensation. Where there is a material change in the number or
17 composition of personnel, the Contractor shall provide written notification to the
18 Authority.

19 **5.12 WEIGHING.**

- 20 A. Contractor shall operate and maintain the scale system at the Shoreway Center.
21 Weighing operations shall be conducted in accordance with standards and
22 procedures set forth in Attachment 3.
- 23 B. The Contractor shall furnish all hardware (including computers, cabling and
24 terminals), software, and all other items necessary to generate, at a minimum, all
25 the reports contained in Attachment 15. The software shall have the capabilities
26 described in Attachment 3, and the Authority prior to use shall approve the specific
27 hardware and software used by the Contractor.
- 28 C. Contractor shall provide the Authority with licenses, documentation and training
29 necessary or useful for the Authority to operate the computers and software during
30 and upon expiration or earlier termination of the Agreement.
- 31 D. Radiation monitoring equipment is used at the entrance to the Shoreway Center to
32 identify loads containing radioactive waste. Contractor shall operate the equipment
33 and respond to alerts by contacting the Authority and local regulatory agencies as
34 required by law.

35 **5.13 COLLECTION OF FEES.**

36 The Authority has the sole and exclusive authority to establish rates and fees charged to
37 users of the Shoreway Center and to modify them from time to time. Contractor shall
38 collect fees established by the Authority from all self-haul customers who use the
39 Shoreway Center. Contractor shall keep complete and accurate records of all fees
40 collected, shall keep safe all monies and funds collected, and shall make all payments to
41 the Authority as provided in Section 8.04.

42 **5.14 VEHICLE TURNAROUND GUARANTEE**

43 Contractor shall operate the Facilities so that:

- 44 A. Collection vehicles of Member Agencies and their Collection Contractor(s) are:

- 1 1. processed through the scale house operation in no more than five (5) minutes
2 per vehicle, measured from the vehicle's entry into the scale house vehicle
3 queue, and
4 2. are able to unload and depart from the Facilities in no more than fifteen (15)
5 minutes from the time they leave the scale house.
6 B. Self-haul customers do not wait more than fifteen minutes (15) to be processed by
7 the scale and assigned a place to dump.
8 Should Contractor fail to meet the Maximum Turnaround Time, Liquidated Damages
9 shall be assessed in the amounts stated in Attachment 10.

10 **5.15 OWNERSHIP OF SOLID WASTE**

11 Once Materials are delivered to the Shoreway Center, ownership shall transfer directly
12 from the deliverer to Contractor.

13 Materials which are transported to a Designated Processing or Disposal Site shall
14 become the property of the owner or operator of the Designated Processing or Disposal
15 Site once they have been delivered by Contractor, subject to any regulations of the
16 owner/operator related to unacceptable materials.

17 **5.16 MARKETING OF RECYCLABLE MATERIALS**

18 A. **General.** Contractor shall use its best efforts in marketing and promoting the sale
19 of all Recyclable Materials to obtain the highest gross sales price (net of freight
20 expense) for Recyclable Materials consistent with prevailing conditions in the
21 market, whether foreign or domestic. Contractor will exert at least the same effort in
22 marketing the Recyclable Materials from the Shoreway Center as it does in
23 marketing materials, which it markets for its own account as principal or as an
24 agent/broker for any third party. Contractor shall not use, sell to, or broker through
25 an Affiliated company in the marketing of Recyclable Materials without notifying the
26 Authority in writing and receiving approval from the Authority in writing.

27 B. **Marketing Plan.** Contractor shall implement the Materials Marketing Plan in
28 Attachment 11. The Contractor shall update the Materials Marketing Plan quarterly
29 and submit to the Authority as part of the quarterly report. The quarterly update will
30 update all sections of the plan, as needed, and will describes the quantities,
31 methods of processing, grade of commodity manufactured, transportation method,
32 market destination, marketing contingency plan, buyer commodity specifications,
33 commodity sales pricing for all materials sold, and marketing process for all
34 materials recovered and diverted through the MRF.

35 C. **No Partnership.** The Parties intend and hereby agree that their relationship shall
36 be that of independent contractors with respect to the marketing of Recyclable
37 Materials. Nothing contained herein shall be construed to create any employment,
38 partnership, joint venture, co-ownership or agency relationship between the Parties,
39 and Contractor shall not by any action allow any presumption to arise that a
40 relationship of partnership exists between the Parties.

41 **5.17 AUTHORITY'S RIGHT TO PERMIT OTHERS TO PROVIDE SERVICES**

42 The Authority may direct the Contractor to perform additional services as provided in
43 Section 12.13. If the Contractor and Authority cannot agree on terms and conditions of
44 such additional services in one-hundred twenty (120) days from the date when the

1 Authority first requests a proposal from Contractor to perform such services, the
2 Authority may, in addition to its other rights under this Agreement, permit Persons other
3 than Contractor to provide such services. Contractor will provide such third party access
4 to and use of land, utilities and Authority-owned equipment as necessary for it to perform
5 additional services.

6 **5.18 SELF-HAUL MATERIALS**

7 **A. Self-haul Material Types.** The Contractor shall identify and segregate for diversion
8 material types from the categories below:

- 9 1. Bunker Program Materials (inert materials such as dirt, concrete, asphalt, and
10 other)
- 11 2. Self-haul Organics Materials (plant materials, food scraps)
- 12 3. Self-haul C&D Materials (i.e., wood, concrete, insulation, roofing, metals, drywall)
- 13 4. Recyclable Materials (i.e., paper, containers, metals)
- 14 5. Other recoverable materials (i.e., tires, carpet, carpet padding, foam, plastics)
- 15 6. Other Material types or categories approved by the Authority.

16 **B. Weighing of All Self-haul materials.** Self-haul materials will be dumped and kept
17 separate from Franchise materials at the transfer station. All outbound loads of
18 diverted Self-haul materials will be weighed before leaving the transfer station and
19 the outbound tonnage will be recorded and reported in the Self-haul Diversion
20 Report. Self-haul materials destined for disposal do not need to be weighed-out
21 separately from Solid Waste at the transfer station provided that accurate, separate
22 and complete weights of the Self-haul materials can be provided by Contractor to
23 the Authority.

24 **C. Self-haul Diversion.** Contractor's performance with respect to meeting the Self-
25 haul Diversion will be calculated based on Diverted tons of Self-haul material
26 shipped to a Designated Processing Site or the Contractor may sort materials onsite
27 and into segregated materials streams and market segregated materials directly to
28 a buyer that is approved in advance by the Authority.

29 Materials shipped from the Shoreway Center by the Contractor for disposal or for
30 any other use at a landfill shall not be considered in the Diversion Calculation.
31 Loads rejected by an off-site processor because of contamination will not count
32 towards Self-haul Diversion and the Contractor shall pay the costs of managing
33 rejected loads.

34 **D. Self-haul Diversion Report.** Contractor shall provide the Authority a Self-haul
35 Diversion Report summarizing the amount (volume, converted tonnage) of Self-haul
36 material received, the weight all Self-haul materials processed on-site or
37 transported to the Designated Disposal and Processing Site, the method of
38 materials processing, and the weight and disposition of all materials Diverted. The
39 Contractor shall provide the report monthly (no later than 15 days after the end of
40 each month) in a format to be approved by the Authority.

1 **5.19 OTHER OPERATING PROCEDURES AND STANDARDS**

2 Contractor shall conduct its operations in accordance with the requirements of the
3 California Integrated Waste Management Board currently in effect (as codified in Title 14
4 and Title 27 of the California Code of Regulations) and as they may be changed from
5 time to time.

1 **ARTICLE 6 TRANSPORTATION OF MATERIALS.**

2 **6.01 GENERAL**

3 Contractor shall use due care to prevent materials being transported from being spilled
4 or scattered during transport. If any materials are spilled, Contractor shall clean up all
5 spilled materials, whether on private or public property.

6 **6.02 TRANSPORTATION OF SOLID WASTE**

7 Contractor shall transport and deliver to the Designated Disposal Site all Solid Waste
8 that is not recycled or reused. No Solid Waste may be disposed of at any location other
9 than the Designated Disposal Site without written consent from the Authority.

10 **6.03 TRANSPORTATION OF HAZARDOUS SUBSTANCES**

11 Contractor shall provide or arrange for transportation and delivery to an appropriately
12 permitted disposal facility of any Hazardous Substances that are not discovered by the
13 Contractor through the hazardous waste exclusion program (HWEPP) or which are
14 rejected by the Designated Disposal or Processing Sites.

15 **6.04 TRANSPORTATION OF RECYCLABLE MATERIALS.**

16 **A. MRF Commodities.** Contractor shall provide or arrange for transportation and
17 delivery of all MRF Commodities to a purchaser, a licensed recycling facility, or a
18 person who will use the materials in a process or product and will not dispose or use
19 them at a landfill.

20 **B. Transfer Station Materials.** Contractor shall provide or arrange for transportation
21 to a Designated Processing Site of Plant Materials, Food Scraps, C&D Materials,
22 and other Recyclable Materials delivered to and recovered at the Transfer Station.

23 **C. E-Waste, U-Waste.** Contractor shall arrange for the transportation of E-Waste, U-
24 Waste, and other materials that may be added to the list of Drop-off Center material.
25 At the request of the Authority, Contractor will pay for the cost of transporting these
26 materials. The handling/disposal costs incurred by Contractor for the use of outside
27 vendors in the transportation and processing of Special Waste collected in the Buy
28 back/Drop-off Center (electronic waste, universal waste, and batteries, oil, and paint
29 collected from Customers as part of the services to Member Agencies) will be
30 reimbursed as a Pass-Through cost.

31 **6.05 PARKING AND MAINTENANCE OF TRANSFER VEHICLES**

32 Contractor may park empty Transfer Vehicles at the Shoreway Center in the area(s)
33 designated for this purpose shown on Attachment 5. Transfer Vehicles containing Solid
34 Waste must be parked in areas that prevent liquids that have come in contact with Solid
35 Waste and/or Recyclable Materials from entering the storm water system.

36 **6.06 ALTERNATIVE FUELS PLAN**

37 ***[This section will implement the Authority's decision on whether or not to require***
38 ***use of alternative fuel vehicles.]***

1 **ARTICLE 7 COMPENSATION TO CONTRACTOR**

2 **7.01 GENERAL**

3 The payments provided for in Sections 7.02, 7.03, 7.06, 7.08 and 7.09 and the share of
4 revenues provided in Section 7.07 are the full, entire and complete compensation due to
5 Contractor for furnishing all labor, equipment, materials and supplies and all other things
6 necessary to perform all of the services required by this Agreement in the manner and at
7 the time prescribed, and for fulfilling all of its obligations under this Agreement, including
8 but not limited to the installation of the new sorting equipment in accordance with Article
9 4, the operation of the Shoreway Center in accordance with Article 5, and the
10 transportation of materials in accordance with Article 6. The compensation provided for
11 in this Article includes all costs for the items mentioned above and also for all taxes,
12 insurance, bonds, overhead, profit and all other costs necessary or appropriate to
13 perform the services in accordance with this Agreement.

14 **7.02 REIMBURSEMENT OF COST OF MRF SORTING EQUIPMENT INSTALLATION**

15 The Authority will reimburse the Contractor for costs actually and reasonably incurred in
16 the installation, start-up and acceptance testing of the MRF sorting equipment up to but
17 not in excess of _____
18 Dollars (\$_____).

19 This amount is the full compensation for all costs associated with installation of the
20 equipment, including design, coordination with the equipment
21 manufacturer(s)/supplier(s) and the Authority's architects, engineers and construction
22 contractor, construction management, payments to the company engaged to install the
23 equipment, start-up and testing.

24 The obligation to reimburse Contractor for these costs accrues upon the equipment's
25 successful completion of the acceptance tests and the Authority's review and approval of
26 Contractor's request for reimbursement, supported by invoices evidencing payment and
27 accompanied by releases of stop notices or mechanics liens by the installation
28 contractor, its workers and suppliers.

29 The amount due will be paid in twelve (12) equal monthly installments concurrently with
30 payment to Contractor of the first twelve (12) monthly payments for operations under
31 Section 7.03.

32 **7.03 BASIC COMPENSATION – GENERAL**

33 Contractor's Basic Compensation consists of three components, related to three
34 separate processes performed by Contractor.

35 A. Transfer Station Receipt/Handling Payment. The amount of this payment is
36 calculated by multiplying the number of Tons of Material delivered to and
37 processed at the Transfer Station by the per Ton Transfer Station Fee then in
38 effect. The Transfer Station Fee proposed by Contractor, and expressed in 2008
39 dollars is \$_____ per Ton.

40 B. Recyclable Materials Processing Payment. The amount of this payment is
41 calculated by multiplying the number of Tons of Recyclable materials delivered to
42 and processed at the MRF by the Per Ton Recyclable Materials Processing Fee
43 then in effect. The Recyclable Materials Processing Fee proposed by Contractor
44 and expressed in 2008 dollars is \$_____per Ton.

1 C. Transportation Payment. The amount of this payment is calculated by
2 multiplying the number of Tons of Materials transported from the Shoreway
3 Center to the Designated Disposal Facility, and the Designated Processing
4 Facilities for Plant Materials, Organic Materials, and Construction and Demolition
5 Debris by the number of one-way miles from the Shoreway Center to the
6 disposal or processing facility and by the applicable Transportation Fee then in
7 effect. The Transportation Fees proposed by Contractor and expressed in 2008
8 dollars are \$_____ per Ton/Mile. Tons delivered to the Designated
9 Disposal Facility do not include MRF residue.

10 **7.04 ADJUSTMENT OF PROPOSED FEES TO RATE YEAR ONE (2011)**

11 The parties expect that the costs underlying the fees described in Section 7.03.A, B and
12 C will change between the year they were proposed (2008) and the year in which they
13 will first be paid (2011).

14 The Authority will adjust each of the three fees in October 2010, following the procedure
15 described in Attachment 12-A and illustrated in Attachment 12-B.

16 The fees, as so adjusted, will be paid during Rate Year One (2011), as earned.

17 **7.05 BASIC FEE ADJUSTMENT IN SUBSEQUENT RATE YEARS**

18 The Authority will adjust each of the three fees in October 2011 and in October of each
19 subsequent year during the Term, following the procedure described in Attachment 13-A
20 and illustrated in Attachment 13-B.

21 The fees, as so adjusted, will be paid during the immediately following Rate Year, as
22 earned.

23 **7.06 SUPPLEMENTAL MRF PROCESSING FEE**

24 If the Authority directs Contractor, pursuant to Attachment 3, Sections 5.0.D. and 5.0.E.,
25 to process loads of Recyclable Materials delivered to the MRF by the Collection
26 Company, which contain more than 20 percent contamination, Authority will pay
27 Contractor a supplemental fee to cover the additional cost of processing this material.
28 The amount of this supplemental fee will be \$25 per ton in Rate Year One. It will be
29 adjusted in subsequent years by the same percentage that the labor component of the
30 Recyclable Materials Processing Fee is adjusted.

31 **7.07 RECYCLING REVENUES; GUARANTEE AND SHARING.**

32 **A. General.** As an incentive to Contractor to maximize both the quantity and quality of
33 materials recovered and successfully marketed for recycling, Contractor will be
34 entitled to twenty five percent (25%) of the gross revenue from the sale of
35 Recyclable Materials delivered to or recovered at the Shoreway Center in excess of
36 the Revenue Guaranteed [_____ Dollars
37 (\$_____)] in Rate Year One. The Authority will be entitled to one hundred
38 percent (100%) of such revenues up to and including
39 _____ Dollars (\$_____)
40 Year and to seventy five percent (75%) of revenues in excess of
41 _____ Dollars (\$_____)
42 that Rate Year.

43 **B. Guarantee.** If gross revenues received from the sale of Recyclable Materials are
44 less than the Revenue Guarantee in any year, Contractor will pay Authority within

60 days after the end of that Rate Year, the difference between the Revenue Guarantee and revenues actually received.

C. Payment. Contractor will pay Authority one hundred percent (100%) of revenues received from the sale of Recyclable Materials monthly until it has received revenues equal to the Revenue Guarantee then in effect. Thereafter, for the balance of that Rate Year, revenues will be divided between the Authority and the Contractor as provided in Section 7.07.A.

7.08 DIVERSION INCENTIVE/DISINCENTIVE PAYMENTS.

A. Transfer Station Diversion Program. The Contractor’s Compensation will be adjusted (increased or decreased) based on its performance in diverting from the Disposal Facility material delivered to the Transfer Station by self-haul customers. The Contractor has guaranteed the diversion of a minimum of 30,000 Tons annually (the “Minimum Self-Haul Diversion Guarantee”). This amount (30,000 Tons per Rate Year) is also the initial “Incentive Payment Baseline.” In general, if Contractor diverts more self-haul material in a Rate Year than the Incentive Payment Baseline applicable to that year, the Authority will pay Contractor Seventy Dollars (\$70.00) per Ton (adjusted by the CPI) for each Ton diverted in excess of the Incentive Payment Baseline. Conversely, if Contractor fails to achieve the Minimum Self-Haul Diversion Guarantee in any Rate Year, the Contractor will pay the Authority (through the rate structure) Seventy Dollars (\$70.00) per Ton (adjusted by the CPI) for each Ton below 30,000 Tons.

The amount of the Incentive Payment Baseline may be increased to reflect Contractor’s performance. For example, if the Contractor exceeds the initial Incentive Payment Baseline in Rate Year One, the Incentive Payment Baseline for Rate Year Two will be the average of the initial Incentive Payment Baseline and the amount actually diverted in Rate Year One. If the Revised Incentive Payment Baseline is exceeded in a subsequent Rate Year, the Incentive Payment Baseline for the immediately following Rate Year will be calculated by averaging the previous Incentive Payment Baseline and the actual amount diverted in the subsequent Rate Year. The Incentive Payment Baseline may be increased, but will not be decreased, through this adjustment process, which is illustrated below:

	2011	2012	2013	2014	2015
Minimum Diversion Guarantee	30,000	30,000	30,000	30,000	30,000
Actual Annual Diversion	32,000	35,000	33,000	30,000	28,000
Incentive Payment Baseline	30,000	31,000	33,000	33,000	33,000
Tons Diverted above Incentive Payment Baseline	2,000	4,000	0	(3,000)	0
Tons Diverted Below Minimum Diversion Guarantee	--	--	--	--	2,000
Diversion Payment*	\$140,000	\$280,000	\$0	\$0	(\$140,000)

(Note: Diversion Payment in 2012 and later does not reflect annual CPI adjustment to Per Ton amount.)

1 The Minimum Self-Haul Diversion Guarantee is fixed at 30,000 Tons per Rate Year.
2 In Rate Year One, the Contractor is eligible to earn a \$70/Ton incentive payment if it
3 diverts more than 30,000 Tons. However, the disincentive payment element of the
4 program will not begin until July 1, 2011. The Contractor's Minimum Diversion
5 Guarantee for the last six (6) months of Rate Year One will be 15,000 Tons.

6 If the Contractor does not meet the Minimum Self-Haul Diversion Guarantee, the
7 Authority may require Contractor to prepare and submit a plan detailing the changes
8 in equipment, personnel and/or practices that Contractor will employ to achieve the
9 Minimum Self-Haul Diversion Guarantee.

10 **B. MRF Residual Guarantee Incentive.**

11 1. MRF Residual Guarantee Incentive. Contractor has agreed to divert and market
12 at least ninety percent (90%) by weight of the materials delivered to the MRF,
13 thereby maintaining the residual level (i.e., the percentage of incoming tonnage
14 that is sent to the Disposal Facility) at ten percent (10%) or less.

15 In any Rate Year during which Contractor (a) achieves its Recycling Revenue
16 Guarantee and (b) increases its recovery efficiency by limiting residue from the
17 MRF to less than ten percent (10%) of the tonnage delivered to the MRF, its
18 share of Recycling Revenue received in excess of the Revenue Guarantee will
19 be increased above the twenty five percent (25%) specified in Section 7.07. The
20 correlation between reduced residual levels and an increased share of Recycling
21 Revenues is shown in the following table.

Annual MRF Residual Percentage	Increase in Contractor's Share of Recycling Revenue
10% or Greater	No increase
9.1% to 9.9%	0.5%
8.1% to 9.0%	1.0%
7.1% to 8.0%	2.0%
6.1% to 7.0%	3.0%
5.1% to 6.0%	4.0%
5% or below	5.0%

22
23 2. Cost of Landfill Disposal of MRF Residue. As a further incentive to Contractor to
24 increase recovery efficiency at the MRF, the Contractor will be responsible for
25 paying (a) the amount charged at the Designated Disposal Facility for accepting
26 and disposing of residue from the MRF (the current tip fee at Ox Mountain is
27 \$_____ per Ton), and (b) the per Ton/mile transportation fee attributable to
28 delivering MRF residue to the Disposal Facility.

29 **C. Time of Payment.** The amounts due Contractor and/or Authority pursuant to
30 Sections 7.08.A and 7.08.B.1 will be calculated annually on a Rate Year basis, and
31 paid, as provided in Section 8.08.

32 **7.09 REIMBURSEMENT OF PASS-THROUGH COSTS**

33 Contractor will pay the following costs and will be reimbursed by Authority for actual
34 costs incurred only, and with no allowance for overhead or profit:

- 35 • Interest paid on loans to acquire capital equipment (\$_____ per month until
36 _____).

- Permit and regulatory fees (which do not include penalties or fines).
- Recycling of E-Waste and U-Waste and HHW from the Drop-Off Center (including transportation), unless paid directly by the Authority.

7.10 RECONCILIATION OF SELF-HAUL GATE FEE COLLECTIONS

It is not feasible to weigh loads delivered to the Transfer Station by Self-Haul Customers. For that reason, the Authority charges such Customers on a volumetric (cubic yard) basis.

Studies conducted for the Authority have established that the ratio of volume to weight of Self-Haul material is 2.76 to 1 (i.e., 2.76 cubic yards will weigh one Ton), on average over the course of a year. Individual loads will vary and the ratio will also vary seasonally.

The Authority pays Contractor and the Disposal Facility operator on a per Ton basis and relies on the Gate Fees to contribute revenues to payments due Contractor. Therefore, it is important that Contractor accurately measure loads of Self-Haul Waste since under measurements will result in under collection of Gate Fees.

On an annual basis, the Authority will calculate the amount of Tons of Self-Haul Waste delivered to the Transfer Station through the mass balance formula shown on Attachment 14. That tonnage will be converted to cubic yards using the 2.76 to 1 ratio. The Authority will then compare the total Gate Fees collected and remitted by Contractor to the expected Gate Fee revenue, using the formula shown on Attachment 14. If that calculation shows that Contractor collected less Gate Fee revenue than indicated, it will pay the difference to the Authority, as provided in Section 8.08.

7.11 ADJUSTMENTS FOR SPECIAL CIRCUMSTANCES.

A. The Contractor may apply to the Authority for an adjustment to one or more of the fees provided for in Section 7.03, and the Authority may initiate such a review, if any of the following events occur, provided that the event will increase or decrease Contractor's costs of operation by an amount that is two percent (2%) or more of the total fees earned under Section 7.03 during the immediately preceding Rate Year and provided further that the costs will not be otherwise recovered through the per ton and per ton mile fees provided in Section 7.03:

(1) A flood, earthquake, other acts of nature or other similar catastrophic events outside the control of Contractor that physically damage the Shoreway Center.

(2) A change in law occurring after the Effective Date that requires a change in operations.

(3) A community emergency which requires Contractor to provide increased or different services.

B. A change in the scope of services directed by the Authority pursuant to Section 12.13 will be considered a basis for an adjustment in compensation whether or not it will increase or decrease Contractor's costs by two percent (2%) or more.

C. If the Contractor requests, or the Authority initiates, a special review of Contractor's compensation, the Authority shall have the right to review any or all financial and operating records of Contractor and Affiliated Entities.

D. Contractor shall bear the burden of justifying to the Authority by substantial

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evidence its entitlement to continuation of current, as well as any increases in, Contractor's compensation. If the Authority determines that the Contractor has not met its burden, it shall notify Contractor that it is prepared to deny Contractor's request for an increase in compensation, or to proceed with a reduction in compensation. The Contractor may request a hearing to produce additional evidence. Upon such request, the Authority shall provide a hearing before the Authority's Board of Directors. In the event the Authority's Board of Director's denies Contractor's request, Contractor shall have the right to present its claim in a court of competent jurisdiction.

1 **ARTICLE 8 PAYMENT PROCEDURES**

2 **8.01 BASIC COMPENSATION**

3 The Basic Compensation provided for in Section 7.03 will be paid monthly in arrears,
4 with the first payment earned as of January 31, 2011. The Authority will make each
5 payment within fifteen (15) days after it receives from Contractor a timely and complete
6 monthly statement required by Section 8.07.

7 **8.02 SUPPLEMENTAL MRF PROCESSING FEE**

8 Any fees earned by Contractor under Section 7.06 will be paid monthly in arrears,
9 concurrently with payment of the Basic Fee due under Section 8.01.

10 **8.03 PASS THROUGH COSTS REIMBURSEMENT**

11 The interest reimbursement provided for in Section 7.09 will be made monthly in
12 accordance with the debt service schedule provided by Contractor until the principal
13 amount of the loan(s) approved by the Authority is paid.

14 If Contractor incurs other costs which are reimbursable under Section 7.09, it shall
15 include these costs, together with information sufficient to substantiate the amount and
16 purpose of each expense, in the monthly statement required by Section 8.07 due the
17 month immediately following the month in which the cost was incurred. The Authority
18 will pay the cost reimbursements due concurrently with payment of the Basic Fee due
19 under Section 8.01.

20 **8.04 GATE FEES FOR PUBLICLY HAULED WASTE**

21 Contractor will pay to Authority (by wire transfer or otherwise as Authority may direct) the
22 amount of all Gate Fees collected from Persons delivering Self-Hauled Materials to the
23 Transfer Station. Such payments will be made no less often than bimonthly, but possibly
24 as frequently as daily. These payments will be reflected in the monthly statement from
25 Contractor required by Section 8.07.

26 **8.05 REVENUES RECEIVED FROM SALE OF RECYCLABLE MATERIALS**

27 Contractor will pay to the Authority (by wire transfer or otherwise as Authority may direct)
28 the amount of all revenues received from third parties for the sale of Recyclable
29 Materials delivered to or recovered at the Shoreway Center until the annual Revenue
30 Guarantee (\$_____) has been remitted. Thereafter, Contractor shall pay to Authority
31 seventy five percent (75%) of such revenue. Such payments will be made on or before
32 the fifteenth (15th) day of each month. These payments will be reflected in the monthly
33 statement from Contractor required by Section 8.07.

34 **8.06 DISPOSAL AND TRANSPORTATION COST OF MRF RESIDUE**

35 The amount, in Tons of materials delivered to the MRF that are transported to the
36 Disposal Facility and which, under Section 7.08.B.2 are the responsibility of Contractor,
37 will be separately reported in the monthly statement required by Section 8.07. The
38 Authority will adjust (reduce) the amount of the Basic Compensation due Contractor
39 each month by the amount calculated as provided in Section 7.08.B.2.

1 **8.07 MONTHLY CONTRACTOR'S STATEMENT.**

2 A On or before the fifteenth (15th) day of each month, Contractor shall submit to
3 Authority a statement showing amounts due to Contractor, and Authority under
4 Sections 8.01 through 8.06. The statement shall include at least the following
5 information:

- 6 1. the amount (in Tons) of Recyclable Materials delivered to the MRF during each
7 day of the preceding month by each of the Member Agencies and/or their
8 Collection Contractor(s);
- 9 2. the amount (in Tons or cubic yards, whichever is applicable) of Recyclable
10 Materials delivered to the Buyback/Dropoff Center during each day of the
11 preceding month;
- 12 3. the amount (in Tons) of Recyclable Materials recovered by Contractor from all
13 materials delivered to the Transfer Station;
- 14 4. the amount (in Tons) of Recyclable Materials sold by type and grade, and the
15 total sales price, transportation costs and commodity revenues net of
16 transportation costs;
- 17 5. a daily accounting showing the following information for each sales transaction:
 - 18 • date of sale;
 - 19 • type of material sold and grade, if applicable;
 - 20 • quantity of material sold;
 - 21 • unit price;
 - 22 • total revenue due from sale;
 - 23 • name and address of purchaser; and
 - 24 • a copy of the sales invoice, sales contract or other document evidencing
25 transfer of title.
- 26 6. weight and volume of Solid Waste, Plant Materials, Organic Materials, Inerts, and
27 Construction and Demolition Debris entering the Shoreway Center by the hauler
28 type (Collection Contractor(s) by Member Agency), commercial haulers, self
29 haul, public, and other)(by type of vehicle);
- 30 7. weight and volume of all Solid Waste, Plant Materials, Organics Materials, Inerts,
31 and Construction and Demolition Debris leaving the Shoreway Center;
- 32 8. weight and volume of all materials moving between the buildings and operations
33 on the Shoreway Center site (e.g. between the MRF building, Transfer Station
34 building and Buyback center) (by material type);
- 35 9. mass balance accounting of all materials that enter and leave the Shoreway
36 Center so that all inbound tons equal outbound / shipped materials less inventory
37 (by material type);
- 38 10. location to which all Solid Waste, Plant Materials, Organics Materials, and
39 Construction and Demolition Debris received by the Facilities were delivered for
40 transfer, processing, ultimate use or disposal;

41 Contractor shall utilize the appropriate reporting forms in Attachment 15.

- 1 B. Undisputed sums will be paid by Contractor and Authority within _fifteen (15) days
2 from the date the Authority receives the statement.
- 3 C. Authority may request additional information regarding a report within thirty (30)
4 days from receipt. Such request shall be in writing and shall describe the
5 information requested with reasonable specificity. Contractor shall furnish the
6 requested information to Authority within thirty (30) days from the date of the
7 request. Authority shall notify Contractor within thirty (30) days after receipt of the
8 initial report and payment, or within thirty (30) days after receipt of the additional
9 information if such information is requested, of any dispute as to the accuracy of the
10 report and the amount of the payment.
- 11 D. For the first twelve (12) months of MRF operation, the monthly statement will also
12 include the amortization of MRF equipment installation costs as provided in Section
13 9.02.

14 **8.08 ANNUAL CALCULATION AND PAYMENT OF INCENTIVE/DISINCENTIVE AMOUNTS**
15 **AND SELF-HAUL GATE FEE RECONCILIATION**

16 The adjustment to Contractor's Compensation related to the Minimum Self-Haul
17 Diversion Guarantee under Section 7.08.A, the adjustment to Contractor's share of
18 Recycling Revenues related to MRF residual levels under Section 7.08.B.1, and the
19 reconciliation payment, if any, due for under collection of Gate Fees on Self-Haul
20 materials provided in Section 7.10 shall be calculated by Contractor and included in a
21 report to be submitted to the Authority on or before January 31 of each year,
22 commencing January 2012. The report will include detailed calculations of each amount
23 and be accompanied by complete operating records substantiating the calculations.

24 Undisputed sums will be paid by the Contractor or Authority within thirty (30) days from
25 the date the Authority receives a timely and complete report from Contractor.

26 **8.09 LIQUIDATED DAMAGES**

27 Liquidated damages will be paid by Contractor as provided in Section 11.07.

1 **ARTICLE 9 CONTRACTOR RECORDS/REPORTING**

2 **9.01 TONNAGE RECORDS**

3 In addition to the financial records required under Article 8, at a minimum, Contractor
4 shall compile monthly tonnage summary records whose format and content have been
5 approved by the Authority. Reports shall be submitted to the Authority by the fifteenth
6 (15th) day of the immediately following month. The Authority may require more frequent
7 reporting of Tonnage.

8 Contractor shall maintain records of all materials received and shipped for the period of
9 this Agreement and all extensions to this Agreement.

10 **9.02 CERCLA DEFENSE RECORDS**

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

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

24 **9.03 PROVISION OF RECORDS TO THE AUTHORITY**

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

29 **9.04 REPORTS AND SCHEDULES**

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

- 33 A. determine and set rates and evaluate the financial efficiency of operations;
- 34 B. evaluate past and expected progress towards achieving AB 939 and Authority
35 goals and objectives;
- 36 C. determine needs for program adjustments; and,
- 37 D. evaluate customer service and complaints.

38 Either the Authority or Contractor may propose report formats that are responsive to the
39 objectives of and audiences for each report. The format of each report shall be
40 approved by the Authority. Contractor agrees to submit all reports on computer discs or
41 in electronic format compatible with the Authority's software and computers at no

1 additional charge, if requested by the Authority. Contractor will provide a certification
2 statement, under penalty of perjury, by the responsible Contractor official, that the report
3 being submitted is true and correct to the best knowledge of such official.

4 Reports containing all required information shall be submitted to the Authority on a
5 quarterly basis (Quarterly Report) and shall be submitted within thirty (30) calendar days
6 after the end of the calendar quarter. Annual reports shall be submitted within thirty (30)
7 calendar days after the end of the calendar year. Failure to submit reports in the
8 prescribed timeframe will result in the assessment of liquidated damages amounts
9 stated in Attachment 10.

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

14 All reports shall be submitted to:

15 SBWMA

16
17 610 Elm Street, Suite 202

18 San Carlos, CA 94070

19 Attention: Executive Director

20 **9.05 QUARTERLY REPORT REQUIREMENTS**

21 The information listed below and in Attachment 15 shall be the minimum reported for
22 each service. The report format will be developed jointly by Contractor and Authority
23 and include the following:

24 A. weight and volume of all materials (by material type) entering the Shoreway
25 Center from Member Agencies;

26 B. weight and volume of Solid Waste, Organic Materials, and Recyclable
27 Materials (by material type) entering the Shoreway Center by the hauler type
28 (Collection Contractor(s), commercial haulers, self haul, public, and other)(by
29 type of vehicle);

30 C. weight and volume of all Solid Waste, Organics Materials, Recyclable
31 Materials (by material type) leaving the Shoreway Center;

32 D. weight and volume of all materials moving between the buildings and
33 operations on the Shoreway Center site (e.g. between the MRF building,
34 Transfer Station building and Buyback center) (by material type);

35 E. mass balance accounting of all materials that enter and leave the Shoreway
36 Center so that all inbound tons equal outbound / shipped materials less
37 inventory (by material type);

38 1. The percentage of materials diverted by material type, category (Residential,
39 Commercial, Self haul) and operation (MRF, Transfer Station, Bunker Program,
40 Buyback/drop off center and other), and residual from MRF operations.

41 2. location to which all Solid Waste, Organics Materials, and Recyclable Materials,
42 received by the Facilities was delivered for transfer, processing, sale, ultimate
43 use or disposal;

3. recyclable Materials commodity sales value (by material type);
4. changes to facilities, equipment and personnel used;
5. changes to facilities and equipment operations, maintenance and repair;
6. reporting incidence of accidents involving either employees or customers of the facilities;
7. documentation of hazardous spills and removals shipment, and ship manifesting;
8. other information or reports that the Authority may reasonably request or require.

F. Programs. For each program, provide activity-related and narrative reports on goals, milestones, and accomplishments. Contractor shall describe problems encountered, actions taken and any recommendations to facilitate progress.

G. Summary Assessment. Contractor shall provide a summary assessment of the overall materials handling systems from Contractor's perspective relative to financial and physical status of the Shoreway Center. Contractor shall assess how well the program is operating in terms of efficiency, economy and effectiveness relative to meeting all the goals and objectives of this Agreement. Contractor shall provide recommendations and plans to improve operations, which highlight significant accomplishments and problems. Contractor should document changes on a monthly basis and include monthly documentation in the quarterly reporting.

H. Meet and Confer with Authority. Beginning on the Effective Date, and then on a quarterly basis thereafter, Contractor shall meet with the Authority to describe the services performed at the Shoreway Center and the progress of each active Diversion Program. Contractor should document the results of the programs on a monthly basis, including the tonnage diverted by material type, the end use or processor of the diverted materials and the cost per ton for transporting and processing each type of material and other such information requested by the Authority necessary to evaluate the performance of each program.

I. Addition and Changes to Programs. The Authority shall have the right to terminate a program if in its sole discretion the Contractor is not cost effectively achieving the program's goals and objectives. Prior to such termination, the Authority shall meet and confer with Contractor for a period of up to 90 days to resolve the Authority's concerns. Thereafter, the Authority may utilize a third party to perform these services if the Authority reasonably believes the third party can improve on Contractor's performance and/or cost. Notwithstanding these changes, Contractor should continue the program during the meet and confer period and, thereafter, until the third party takes over the program.

9.06 ANNUAL REPORT REQUIREMENTS

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

9.07 INSPECTION OF RECORDS

The Authority, and its agents selected by the Authority, shall have the right, during regular business hours, to conduct unannounced on-site inspections of the records and

1 accounting systems of Contractor and to make copies of any documents relevant to this
2 Agreement.

3 **9.08 RETENTION OF RECORDS**

4 Records and data required to be maintained that are specifically directed to be retained
5 shall be retrieved by Contractor and made available to the Authority.

6 Records and data required to be maintained that are not specifically directed to be
7 retained that are, in the sole opinion of the Authority, material to the rate setting or to a
8 determination of Contractor's performance under this Agreement, shall be retrieved by
9 Contractor and made available to the Authority.

10 Records and data required to be maintained that are not specifically directed to be
11 retained and that are not material to a rate setting and/or not required for the
12 determination of Contractor's performance do not need to be retrieved by Contractor. In
13 such a case, however, the Authority may make reasonable assumptions regarding what
14 information is contained in such records and data, and such assumption shall be
15 conclusive in whatever action the Authority takes.

16 **9.09 ADVERSE INFORMATION.**

17 A. Reporting Adverse Information. Contractor shall provide the Authority two
18 copies (one to the Authority Executive Director, one to the Authority Legal
19 Counsel) of all reports, pleadings, applications, notifications, Notices of
20 Violation, communications or other material relating specifically to
21 Contractor's performance of services pursuant to this Agreement, submitted
22 by Contractor to, or received by Contractor from, the United States or
23 California Environmental Protection Agency, the California Integrated Waste
24 Management Board, the Securities and Exchange Commission or any other
25 federal, state or local agencies, including any federal or state court.
26 Contractor shall also notify the Authority of any criminal charges for violation
27 of any federal or state environmental law or antitrust law or for fraud or
28 similar matters initiated hereafter against any management employee of
29 Contractor or its affiliates that have direct or indirect responsibility for
30 administration of Contractor's performance of services under this Agreement.
31 Copies shall be submitted to the Authority simultaneously with Contractor's
32 filing or submission of such matters with said agencies. Contractor's routine
33 correspondence to said agencies need not be routinely submitted to the
34 Authority, but shall be made available to the Authority promptly upon the
35 Authority's written request.

36 B. Failure to Report. The refusal or failure of Contractor to file any required
37 reports, or to provide required information to the Authority, or the inclusion of
38 any materially false or misleading statement or representation by Contractor
39 in such report shall be deemed a material breach of this Agreement, and
40 shall subject Contractor to all remedies available to the Authority, including
41 liquidated damages shown on Attachment 10

1 **ARTICLE 10 INDEMNITY, INSURANCE, PERFORMANCE BOND, GUARANTY**

2 **10.01 INDEMNIFICATION**

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

19 **10.02 INSURANCE.**

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

24 1. Workers' Compensation and Employer's Liability. Contractor shall maintain
25 workers' compensation insurance covering its employees in statutory amounts
26 and otherwise in compliance with the laws of the State of California. Contractor
27 shall maintain employer's liability insurance in an amount not less than One
28 Million Dollars (\$1,000,000) per accident or disease. Contractor shall not be
29 obligated to carry workers compensation insurance if (i) it qualifies under
30 California law and continuously complies with all statutory obligations to self-
31 insure against such risks; (ii) furnishes a certificate of Permission to Self Insure
32 issued by the Department of Industrial Relations; and (iii) furnishes updated
33 certificates of Permission to Self Insure periodically to evidence continuous self
34 insurance, at least ten (10) days before the expiration of the previous certificate.

35 2. Comprehensive General Liability (and Automobile Liability). Contractor shall
36 maintain comprehensive general liability insurance with a combined single limit of
37 not less than Ten Million Dollars (\$10,000,000) per occurrence and ___ Million
38 Dollars (\$___,000,000) annual aggregate covering all claims and all legal liability
39 for personal injury, bodily injury, death, and property damage, including the loss
40 of use thereof, arising out of, or occasioned in any way by, directly or indirectly,
41 Contractor's performance of, or its failure to perform, services under this
42 Agreement.

43 The insurance required by this subsection shall include:

- 44 • Premises Operations (including use of owned and non-owned equipment);
- 45 • Products and Completed Operations (including protection against liability
46 resulting from use of Recyclable Materials by another person);

- 1 • Personal Injury Liability with employment exclusion deleted;
- 2 • Broad Form Blanket Contractual with no exclusions for bodily injury, personal
- 3 injury or property damage (including coverage for the indemnity obligations
- 4 contained herein);
- 5 • Owned, Non-Owned, and Hired Motor Vehicles;
- 6 • Broad Form Property Damage.

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

16 3. Pollution Liability. Contractor shall maintain pollution liability insurance with
17 limits in an amount of not less than Ten Million Dollars (\$10,000,000) per
18 occurrence and annual aggregate covering claims for on-site, under-site, or
19 off-site bodily injury and property damage as a result of pollution conditions
20 arising out of its operations under this Agreement.

21 4. Hazardous Materials Storage and Transport. Contractor shall maintain
22 insurance coverage of not less than Ten Million Dollars (\$10,000,000) for
23 personal injury, bodily injury and property damage arising out of the sudden
24 and accidental release of any hazardous materials or wastes during storage
25 at facilities operated by Contractor or transport of such materials by
26 vehicles owned, operated or controlled by Contractor in the performance of
27 the services required under this Agreement.

28 5. Physical Damage. Contractor shall maintain comprehensive (fire, theft and
29 collision) physical damage insurance covering the vehicles and equipment
30 used in providing service to Authority under this Agreement, with a
31 deductible or self-insured retention not greater than ___ Hundred Thousand
32 Dollars (\$_____). Notwithstanding the foregoing, Contractor shall be
33 allowed to self-insure for physical damage to its vehicles provided
34 Contractor provides adequate audited financial information to Authority and
35 Authority is reasonably satisfied that Contractor has the financial net worth
36 to cover any losses.

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

42 C. Required Endorsements. Without limiting the generality of Sections 10.02.A and B,
43 the policies shall contain endorsements in substantially the following form:

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

2 "Thirty (30) days prior written notice shall be given to the
3 South Bayside Waste Management Authority (SBWMA) in
4 the event of cancellation or non-renewal of this policy.
5 Such notice shall be sent to:

6 SBWMA
7 610 Elm Street, Suite 202
8 San Carlos, CA 94070
9 Attention: Executive Director

10 "Insurer waives all right of subrogation against SBWMA
11 and its officers and employees for injuries or illnesses
12 arising from work performed for SBWMA."

13 2. Comprehensive General Liability Policy; Environmental Liability Policy;
14 Hazardous Materials Policy.

- 15 • "Thirty (30) days' prior written notice shall be given to the South
16 Bayside Waste Management Authority (SBWMA) in the event of
17 cancellation, reduction of coverage, or non-renewal of this policy.
18 Such notice shall be sent to:

19 SBWMA
20 610 Elm Street, Suite 202
21 San Carlos, CA 94070
22 Attention: Executive Director

- 23 • "South Bayside Waste Management Authority (SBWMA), its officers,
24 employees, and agents, are additional insureds on this policy."
25 • "This policy shall be considered primary insurance as respects any
26 other valid and collectible insurance maintained by the South Bayside
27 Waste Management Authority, including any self-insured retention or
28 program of self-insurance, and any other such insurance shall be
29 considered excess insurance only."
30 • "Inclusion of the South Bayside Waste Management Authority as an
31 insured shall not affect the SBWMA's rights as respects any claim,
32 demand, suit or judgment brought or recovered against the Contractor.
33 This policy shall protect Contractor and the SBWMA in the same
34 manner as though a separate policy had been issued to each, but this
35 shall not operate to increase the company's liability as set forth in the
36 policy beyond the amount shown or to which the company would have
37 been liable if only one party had been named as an insured."

38 3. Physical Damage Policy.

- 39 • Notice of cancellation, reduction in coverage or non-renewal, as
40 provided in Subsection C.2(a).
41 • Cross liability endorsement, as provided in Subsection C.2(d).
42 • Waiver of subrogation against Authority.

1 D. **Delivery of Proof of Coverage.** No later than ninety (90) days before the
2 commencement of operations (i.e., on or before October 1, 2010), Contractor shall
3 furnish Authority one or more certificates of insurance on a standard ACORD form
4 substantiating that each of the coverages required hereunder are in force, in form
5 and substance satisfactory to Authority. Such certificates shall show the type and
6 amount of coverage, effective dates and dates of expiration of policies and shall be
7 accompanied by all required endorsements. If Authority requests, copies of each
8 policy, together with all endorsements, shall also be promptly delivered to Authority.

9 Contractor shall furnish renewal certificates to Authority to demonstrate maintenance
10 of the required coverages throughout the Term.

11 E. **Other Insurance Requirements**

- 12 1. In the event performance of any services is delegated to a subcontractor,
13 Contractor shall require such subcontractor to provide statutory workers'
14 compensation insurance and employer's liability insurance for all of the
15 subcontractor's employees engaged in the work. The liability insurance required
16 by Subsection 10.02.A.2 shall cover all subcontractors or the subcontractor must
17 furnish evidence of insurance provided by it meeting all of the requirements of
18 this Section 10.02.
- 19 2. Contractor shall comply with all requirements of the insurers issuing policies.
20 The carrying of insurance shall not relieve Contractor from any obligation under
21 this Agreement, including those imposed by Section 10.01. If any claim is made
22 by any third person against Contractor or any subcontractor on account of any
23 occurrence related to this Agreement, Contractor shall promptly report the facts
24 in writing to the insurance carrier and to the Authority.
- 25 3. If Contractor fails to procure and maintain any insurance required by this
26 Agreement, Authority may take out and maintain, at Contractor's expense, such
27 insurance as it may deem proper and deduct the cost thereof from any monies
28 due Contractor. Alternatively, the Authority may treat the failure as a Contractor
29 Default.
- 30 4. Authority is not responsible for payment of premiums for or deductibles (which
31 must be approved in writing and in advance by Authority) under any required
32 insurance coverages.

33 **10.03 FAITHFUL PERFORMANCE BOND**

34 Not later than ten (10) days before the Effective Date (i.e., on or before _____,
35 2009), Contractor shall deliver to Authority a bond securing the Contractor's faithful
36 performance of its obligations under this Agreement. The principal sum of the bond shall
37 be Two Million Dollars (\$2,000,000). The form of the bond shall be as set out in
38 Attachment 16. The bond shall be executed as surety by a corporation admitted to issue
39 surety bonds in the State of California, regulated by the California Insurance
40 Commissioner and with a financial condition and record of service satisfactory to
41 Authority.

42 The term of the bond shall be not less than twenty-four (24) months, or until
43 _____, 2011, whichever occurs first. The bond shall be extended, or
44 replaced by a new bond in the same principal sum (adjusted by the percentage change
45 in the Consumer Price Index between July 2009 and July 2011), for the same term (i.e.,
46 twenty-four (24) months) and in the same form, bi-annually thereafter. Not less than

1 ninety (90) days before the expiration of the initial bond, the Contractor shall furnish
2 either a replacement bond or a continuation certificate substantially in the form attached
3 as Attachment 16, executed by the surety.

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

6 **10.04 ALTERNATIVE SECURITY**

7 Authority may, in its sole discretion, allow Contractor to provide alternative security in the
8 amount set forth in Section 10.03, in the form of (a) a prepaid irrevocable standby letter
9 of credit in form and substance satisfactory to Authority and approved as to form by the
10 Authority's Legal Counsel and issued by a financial institution acceptable to Authority, or
11 (b) a certificate of deposit in the name of the Authority with a term satisfactory to
12 Authority, with a financial institution acceptable to Authority, and approved as to form by
13 Authority's Legal Counsel.

14 **10.05 HAZARDOUS WASTE INDEMNIFICATION**

15 Contractor shall indemnify, defend with Counsel approved by the Authority, protect and
16 hold harmless the Indemnitees against all claims, of any kind whatsoever paid, incurred
17 or suffered by, or asserted against Indemnitees arising from or attributable to any repair,
18 cleanup or detoxification, or preparation and implementation of any removal, remedial,
19 response, closure or other plan (regardless of whether undertaken due to governmental
20 action) concerning any Hazardous Wastes at any place where Contractor stores or
21 disposes of Hazardous Wastes pursuant to this Agreement. The foregoing indemnity is
22 intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive
23 Environmental Response, Compensation and Liability Act, ("CERCLA"), 42 U.S.C.
24 Section 9607(e), and California Health and Safety Code Section 25364, to defend,
25 protect, hold harmless and indemnify Indemnitees from liability.

26 **10.06 INTEGRATED WASTE MANAGEMENT ACT INDEMNIFICATION**

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

35 **10.07 GUARANTY**

36 Not later than ten (10) days before the Effective Date (i.e., on or before _____,
37 2009), Contractor shall deliver to Authority a Guaranty in the form attached as
38 Attachment 17, properly executed by the Guarantor.

1 **ARTICLE 11 DEFAULT AND REMEDIES**

2 **11.01 EVENTS OF DEFAULT.**

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

- 4 A. Contractor fails to perform any of its obligations under Article 4, 5 or 6 of this
5 Agreement and its failure to perform is not cured within ten (10) days after written
6 notice from Authority, provided that neither notice nor opportunity to cure applies to
7 events described in subsections C through H.
- 8 B. Contractor fails to perform any of its obligations under any other Article of this
9 Agreement and its failure to perform is not cured within fifteen (15) days after written
10 notice from Authority, provided that if the nature of the breach is such that it will
11 reasonably require more than fifteen (15) days to cure, Contractor shall not be in
12 default so long as it promptly commences the cure and diligently proceeds to
13 completion of the cure, and provided further that neither notice nor opportunity to
14 cure applies to events described in subsections C through H.
- 15 C. Contractor ceases to provide Shoreway Center operations or Solid
16 Waste/Recyclable Materials transportation services for a period of two (2)
17 consecutive business days for any reason within the Contractor's control, including
18 labor unrest such as strike, work stoppage or slowdown, sickout, picketing, or other
19 concerted job action by Contractor's employees.
- 20 D. Contractor files a voluntary petition for relief under any bankruptcy, insolvency or
21 similar law.
- 22 E. An involuntary petition is brought against Contractor under any bankruptcy,
23 insolvency or similar law which remains undismitted or unstayed for ninety (90)
24 days.
- 25 F. Contractor fails to furnish a replacement bond or a continuation certificate of the
26 existing bond not less than ninety (90) days before expiration of the performance
27 bond, as required by Section 10.03 or fails to maintain all required insurance
28 coverages in force.
- 29 G. Contractor fails to provide reasonable assurance of performance when requested by
30 Authority under the Agreement.
- 31 H. A representation or warranty contained in Article 3 proves to be false or misleading in
32 a material respect as of the date such representation or warranty was made.

33 **11.02 RIGHT TO SUSPEND OR TERMINATE UPON DEFAULT.**

- 34 A. Upon any Contractor Default, Authority may terminate this Agreement or suspend it,
35 in whole or in part. Such suspension or termination shall be effective thirty (30)
36 days after Authority has given notice of suspension or termination to Contractor,
37 except that such notice may be effective in a shorter period of time, or immediately,
38 if the Contractor Default is one which endangers the health, welfare or safety of the
39 public, such as the failure to process Solid Waste or Recyclable Materials and
40 arrange for their prompt disposal or recovery. Notice may be given orally in person
41 or by telephone to the representative of Contractor designated in or under Section
42 12.10 (or, if he/she is unavailable, to a responsible employee of Contractor) and
43 shall be effective immediately. Written confirmation of such oral notice of

1 suspension or termination shall be sent by personal delivery, facsimile, or other
2 expedited means of delivery to Contractor within twenty-four (24) hours of the oral
3 notification at the address shown in Section 12.09. Contractor shall continue to
4 perform the portions of the Agreement, if any, not suspended, in full conformity with
5 its terms.

6 B. Authority may also suspend or terminate this Agreement, upon the same notice
7 provisions, if Contractor's ability to perform is prevented or materially interfered with
8 by a cause which excuses nonperformance under Section 11.09, despite the fact
9 that nonperformance in such a case is neither a breach nor a Contractor Default.

10 **11.03 SPECIFIC PERFORMANCE**

11 By virtue of the nature of this Agreement, the urgency of timely, continuous and high-
12 quality service and the lead time required to effect alternative service, the remedy of
13 damages for a breach hereof by Contractor is inadequate and Authority shall be entitled
14 to injunctive relief.

15 **11.04 RIGHT TO PERFORM; USE OF CONTRACTOR PROPERTY**

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

25 **11.05 DAMAGES**

26 Contractor shall be liable to Authority for all direct, indirect, special and consequential
27 damages arising out of Contractor's Default. This section is intended to be declarative of
28 existing California law.

29 **11.06 AUTHORITY'S REMEDIES CUMULATIVE**

30 Authority's rights to suspend or terminate the Agreement under Section 11.02, to obtain
31 specific performance under Section 11.03 and to perform under Section 11.04 are not
32 exclusive, and Authority's exercise of one such right shall not constitute an election of
33 remedies. Instead, they shall be in addition to any and all other legal and equitable
34 rights and remedies that Authority may have, including a legal action for damages under
35 Section 11.05 or imposition of liquidated damages under Section 11.07.

36 **11.07 LIQUIDATED DAMAGES**

37 The Parties acknowledge that efficient, consistent, and courteous and efficient
38 operations of the Shoreway Center is of utmost importance and Authority has
39 considered and relied on Contractor's representations as to its quality of service
40 commitment in entering into this Agreement. The Parties further recognize that
41 quantified standards of performance are necessary and appropriate to ensure consistent
42 and reliable service. The Parties further recognize that if Contractor fails to achieve the
43 performance standards, Authority will suffer damages and that it is and will be
44 impracticable and extremely difficult to ascertain and determine the exact amount of
45 damages that Authority will suffer. Therefore, the Parties agree that the liquidated
46 damage amounts listed on Attachment 10 represent a reasonable estimate of the

1 amount of such damages considering all of the circumstances existing on the date of this
2 Agreement, including the relationship of the sums to the range of harm to Authority that
3 reasonably could be anticipated and anticipation that proof of actual damages would be
4 costly or inconvenient. In placing their initials at the places provided, each party
5 specifically confirms the accuracy of the statements made above and the fact that each
6 party had ample opportunity to consult with legal counsel and obtain an explanation of
7 this liquidated damage provision at the time that this Agreement was made.

8 Contractor Initial Here: _____ Authority Initial Here: _____

9 Contractor agrees to pay (as liquidated damages and not as a penalty) the amount set
10 forth on Attachment 10.

11 Authority may determine the occurrence of events giving rise to liquidated damages
12 through the observation of its own employees, agents or representatives or through
13 investigation of reports by third parties.

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

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

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

30 Authority's right to recover liquidated damages for Contractor's failure to meet the
31 service performance standards shall not preclude Authority from obtaining equitable
32 relief for persistent failures to meet such standards nor from terminating the Agreement
33 for such persistent failures.

34 **11.09 AUTHORITY DEFAULT**

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

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

1 **11.10 EXCUSE FROM PERFORMANCE.**

- 2 A. **Force Majeure.** Neither party shall be in default of its obligations under this
3 Agreement in the event, and for so long as, it is impossible or extremely
4 impracticable for it to perform its obligations due to an “act of God” (including, but
5 not limited to, flood, earthquake or other catastrophic events), war, insurrection, riot,
6 labor unrest of other than the party’s employees (including strike, work stoppage,
7 slowdown, sick out, picketing, or other concerted job action), or other similar cause
8 not the fault of, and beyond the reasonable control of, the party claiming excuse. A
9 party claiming excuse under this Section must (1) have taken reasonable
10 precautions, if possible, to avoid being affected by the cause, and (2) notify the
11 other party in writing as provided in Subsection C.
- 12 B. **Obligation to Restore Ability to Perform.** Any suspension of performance by a
13 party pursuant to this Section shall be only to the extent, and for a period of no
14 longer duration than, required by the nature of the event, and the party claiming
15 excuse shall use its best efforts to remedy its inability to perform as quickly as
16 possible and to mitigate damages that may occur as result of the event.
- 17 C. **Notice.** The party claiming excuse shall deliver to the other party a written notice of
18 intent to claim excuse from performance under this Agreement by reason of an
19 event of Force Majeure. Notice required by this Section shall be given promptly in
20 light of the circumstances, but in any event not later than five (5) days after the
21 occurrence of the event of Force Majeure. Such notice shall describe in detail the
22 event of Force Majeure claimed, the services impacted by the claimed event of
23 Force Majeure, the expected length of time that the party expects to be prevented
24 from performing, the steps which the party intends to take to restore its ability to
25 perform, and such other information as the other party reasonably requests.
- 26 D. **Authority's Rights in the Event of Force Majeure.** The partial or complete
27 interruption or discontinuance of Contractor’s services caused by an event of Force
28 Majeure shall not constitute a Contractor Default. Notwithstanding the foregoing: (i)
29 Authority shall have the right to make use of Contractor’s facilities and equipment in
30 the event of non-performance excused by Force Majeure; (ii) if Contractor’s failure
31 to perform by reason of Force Majeure continues for a period of thirty (30) days or
32 more, Authority shall have the right to immediately terminate this Agreement; (iii) if
33 Contractor is unable to process and dispose of Solid Waste or arrange for recovery
34 of Recyclable Materials as required by this Agreement for a period of two (2) or
35 more consecutive days or for any three (3) days in a seven (7)-day period as a
36 result of Force Majeure, Authority shall have the right to make use of Contractor’s
37 property, and (iv) if Contractor’s inability to process and dispose of Solid Waste or
38 arrange for recovery of Recyclable Materials continues for ten (10) days or more
39 from the date by which Contractor gave or should have given notice under
40 Subsection C, Authority may terminate this Agreement.

41 **11.11 ASSURANCE OF PERFORMANCE**

42 If Contractor (1) persistently suffers the imposition of liquidated damages under Section
43 11.07; (2) is the subject of any labor unrest including work stoppage or slowdown,
44 sickout, picketing or other concerted job action; (3) appears in the reasonable judgment
45 of Authority to be unable to regularly pay its bills as they become due; (4) is the subject
46 of a civil or criminal proceeding brought by a federal, state, regional or local agency for
47 violation of laws, regulations or permits in the performance of this Agreement, or (5)
48 performs in a manner that causes Authority to be uncertain about Contractor's ability and

1 intention to comply with this Agreement, Authority may, at its option and in addition to all
2 other remedies it may have, demand from Contractor reasonable assurances of timely
3 and proper performance of this Agreement, in such form and substance as Authority
4 may require.

1 **ARTICLE 12 OTHER AGREEMENTS OF THE PARTIES**

2 **12.01 RELATIONSHIP OF PARTIES**

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

14 **12.02 COMPLIANCE WITH LAW**

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

20 **12.03 ASSIGNMENT**

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

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

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

1 an execution being levied against this Agreement, appointment of a receiver
2 taking possession of Contractor's property, or transfer occurring in the event
3 of a probate proceeding; and (v) any combination of the foregoing (whether or
4 not in related or contemporaneous transactions) which has the effect of any
5 such transfer or change of ownership, or change of control of Contractor.
6 [MODIFY AS NECESSARY TO REFLECT CONTRACTOR'S LEGAL
7 STATUS AS CORPORATION, LLC., ETC.]

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

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

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

38 **12.04 SUBCONTRACTING**

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

1 **12.05 AFFILIATED ENTITY**

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

5 If Contractor enters into any financial transactions with an Affiliate for the provision of
6 labor, equipment, supplies, services, or capital related to the furnishing of service under
7 this Agreement, or for the purchase of Recyclable Materials, that relationship shall be
8 disclosed to Authority, and in the financial reports submitted to Authority. In such event,
9 Authority's rights to inspect records and obtain financial data shall extend to such
10 Affiliate.

11 **12.06 CONTRACTOR'S INVESTIGATION.**

12 Contractor has made an independent investigation, satisfactory to it, of the conditions
13 and circumstances surrounding the Agreement and the work to be performed by it.
14 Contractor has carefully reviewed the information in the Request for Proposals, and
15 Addenda if any. Contractor has had the opportunity to inspect the Shoreway Center to
16 review the permits governing its operation and the Authority's plans for its expansion and
17 reconstruction. Contractor has had the opportunity to inspect the Designated Disposal
18 Facility, as well as the Processing Facilities which currently process materials from the
19 Shoreway Center, and the contracts between the Authority and the owners/operators of
20 each. Contractor has also had the opportunity to review audited financial statements of
21 the current operator of the Shoreway Center. Contractor has taken such matters into
22 consideration in agreeing to provide the services required by, for the compensation to be
23 provided under, this Agreement.

24 **12.07 NO WARRANTY BY AUTHORITY.**

25 While Authority believes that the information contained in the Request for Proposals is
26 substantially correct, Authority makes no warranties in connection with this Agreement,
27 including but not limited to the accuracy or completeness of the information contained in
28 the Request for Proposals. The Authority expressly disclaims any warranties, express or
29 implied, as to the merchantability or fitness for any particular purpose of Recyclable
30 Materials delivered to the Shoreway Center.

31 **12.08 CONDEMNATION**

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

34 **12.09 NOTICE**

35 All notices, demands, requests, proposals, approvals, consents and other
36 communications which this Agreement requires, authorizes or contemplates shall,
37 except as provided in Section 11.02, be in writing and shall either be personally
38 delivered to a representative of the parties at the address below or be deposited in the
39 United States mail, first class postage prepaid, addressed as follows:

40 If to Authority: SBWMA
41 610 Elm Street, Suite 202
42 San Carlos, CA 94070
43 Attention: Executive Director

1 If to Contractor: _____

2 _____
3 _____
4 Attention: _____

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

7 Routine, day-to-day communications between the parties may be exchanged in a
8 manner and between subordinate employees as the designated representatives of each
9 party identified in Section 12.10 may agree.

10 **12.10 REPRESENTATIVES OF THE PARTIES.**

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

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

26 **12.11 DUTY OF CONTRACTOR NOT TO DISCRIMINATE**

27 In the performance of this Agreement Contractor shall not discriminate, nor permit any
28 subcontractor to discriminate, against any employee, applicant for employment, or user
29 of the Shoreway Center on account of race, color, national origin, ancestry, religion, sex,
30 age, physical disability, medical condition, sexual orientation, marital status, or other
31 characteristic, in violation of any applicable federal or state law.

32 **12.12 RIGHT TO INSPECT CONTRACTOR OPERATIONS**

33 Authority shall have the right, but not the obligation, to observe and inspect all of the
34 Contractor’s operations under this Agreement. In connection therewith, Authority shall
35 have the right to enter facilities used by Contractor during operating hours (and to enter
36 the Shoreway Center at any time), speak to any of Contractor’s employees and receive
37 cooperation from such employees in response to inquiries. In addition, upon reasonable
38 notice and without interference with Contractor’s operations, Authority may review and
39 copy any of Contractor’s operational and business records related to this Agreement. If
40 Authority so requests, Contractor shall make specified personnel available to
41 accompany Authority employees on inspections and shall provide electronic copies of
42 records stored in electronic media.

1 **12.13 RIGHT OF AUTHORITY TO MAKE CHANGES.**

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

8 If such changes cause an increase or decrease in the cost of performing the services, an
9 equitable adjustment in the Contractor's compensation shall be made pursuant to
10 Section 7.11. Contractor will continue to perform the new or changed service while the
11 appropriate adjustment in compensation is being determined.

12 **12.14 TRANSITION TO NEXT SERVICE PROVIDER**

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

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

25 **12.15 REPORTS AS PUBLIC RECORDS**

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

31 Contractor will not object to Authority making available to the public any information
32 submitted by the Contractor, or required to be submitted in connection with the
33 Contractor's compensation, including but not limited to records described in Article 9.

1 **ARTICLE 13 MISCELLANEOUS AGREEMENTS**

2 **13.01 GOVERNING LAW.**

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

5 **13.02 JURISDICTION**

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

10 **13.03 BINDING ON SUCCESSORS.**

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

13 **13.04 PARTIES IN INTEREST**

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

16 **13.05 WAIVER.**

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

20 **13.06 ATTACHMENTS.**

21 Each of the Attachments, identified as Attachments "1" through "17," is attached hereto
22 and incorporated herein and made a part hereof by this reference.

23 **13.07 ENTIRE AGREEMENT.**

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

27 **13.08 SECTION HEADINGS.**

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

31 **13.09 INTERPRETATION**

32 Each party has participated in the preparation of this Agreement with the assistance of
33 legal counsel to the extent desired. Accordingly, this Agreement shall be interpreted and
34 construed reasonably and neither for nor against either party

35 **13.10 AMENDMENT**

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

1 **13.11 SEVERABILITY**

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

6 **13.12 COSTS AND ATTORNEYS' FEES**

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

11 **13.13 INDEMNITY AGAINST CHALLENGES TO AGREEMENT**

12 Contractor shall indemnify, defend and hold harmless Authority, and its officers,
13 employees and agents (collectively, the "Indemnitees") from and against any and all
14 liability, claim, demand, action, proceeding or suit of any and every kind and description
15 brought by a third person challenging the process by which Proposals were solicited and
16 evaluated, or this Agreement was negotiated or awarded.

17 **13.14 NO DAMAGES FOR INVALIDATION OF AGREEMENT**

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

22 **13.15 REFERENCES TO LAWS**

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

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

("Contractor")

SOUTH BAYSIDE WASTE
MANAGEMENT AUTHORITY

By: _____
Name: _____
Title: President

By: _____
Chair, Board of Directors

ATTEST:

By: _____
Name: _____
Title: Secretary

Secretary

APPROVED:

Executive Director

APPROVED AS TO FORM

Legal Counsel