

Attachment 12

2005 Operating Agreement

AMENDED AND RESTATED AGREEMENT FOR THE OPERATION
OF THE

SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY'S
TRANSFER STATION AND RECYCLERY
BETWEEN
THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY
AND
BFI WASTE SYSTEMS OF NORTH AMERICA, INC.

April 1, 2005

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1 **Whereas;** the State of California has, through legislation, including enactment
2 of the California Integrated Waste Management Act of 1989 (Act), directed the
3 responsible state agency, and all local agencies, to promote recycling and to
4 maximize the use of feasible source reduction recycling and composting options in
5 order to reduce the amount of solid waste that must be disposed of by land disposal;
6 and,

7 **Whereas;** the SBWMA concurs in the aforementioned findings and
8 declarations of the State of California, and in addition, desires to properly manage
9 natural resources and preserve landfill space; and,

10 **Whereas;** the recycling operations conducted at the Recyclery, which is
11 located adjacent to the Transfer Station, are an integral and important component of
12 the SBWMA's strategy for implementing the Act and are incorporated into each of
13 the SBWMA Member Agencies' Source Reduction and Recycling Elements which
14 have in turn been incorporated into the San Mateo County's Integrated Waste
15 Management Plan; and,

16 **Whereas;** acting on behalf of the Member Agencies, the SBWMA acquired the
17 Transfer Station and the Recyclery as well as related facilities and equipment
18 (Facilities) which were owned and operated by Contractor in accordance with a
19 Purchase Agreement between the SBWMA and Contractor; and,

20 **Whereas;** Contractor has experience with these Facilities and similar facilities
21 nationwide and Contractor has maintained a cooperative relationship with the
22 SBWMA, and Contractor entered into the Original Agreement to provide operation
23 of the Facilities in a manner and on terms which are in the best interest of the
24 SBWMA Member Agencies, the SBWMA entered into the Original Agreement on
25 March 1, 2000; and,

26 **Whereas;** the Original Agreement will expire December 31, 2006; and,

27 **Whereas;** the parties contemplated that the Original Agreement should be
28 extended from December 31, 2006 to December 31, 2009, conditioned on the
29 SBWMA's affirmative evaluation in the sixth year of the Original Agreement (i.e.,
30 2005) of the Contractor's performance in following certain areas:

31

32 A. Although Contractor has not achieved the diversion program
33 guarantees described in the Original Agreement, the Agency has
34 agreed to waive Contractor's failure to perform to the standard
35 established in the Original Agreement; and

1 B. Contractor has not been assessed in any single year by SBWMA
2 liquidated damages in excess of 0.5% of any year's revenue
3 requirement as established in accordance with Article 5.

4 C. Contractor has not been delinquent by more than 30 days in any
5 payment to SBWMA.

6 D. Contractor has not had officials, with supervisory, management,
7 or administrative responsibility for the performance of services
8 performed under this Agreement, found guilty of a felony or liable for
9 a civil penalty in excess of \$25,000 related to their duties under this
10 Agreement or any agreement with a municipal agency in the State of
11 California.

12 E. Contractor has been rated above 80% satisfaction by respondents
13 to a customer satisfaction survey conducted by the SBWMA and agreed
14 to as to form by Contractor.

15 F. Contractor's rates shall fall within the 75th percentile of all rates
16 in the San Francisco Bay Area for similar services (adjusted for
17 differences in landfill disposal rates, government fees, programs, etc.)
18 as determined through a survey of rates conducted by the SBWMA.

19 G. The SBWMA has therefore affirmatively evaluated the
20 Contractor's Performance and determined it to be satisfactory; and,

21
22 **Whereas;** the Original Agreement contemplated that the SBWMA may wish to
23 extend the term of the Agreement beyond the December 31, 2009 termination date of
24 the initial contract extension, for a period of one to seven years in increments of at
25 least 12 months; and,

26
27 **Whereas,** the SBWMA wishes to extend the Original Agreement for one
28 additional year to December 30, 2010; and,

29
30 **Whereas,** SBWMA has determined that the benefits offered by the Contractor
31 in exchange for granting its request are in the best interest of the SBWMA and it's
32 Member Agencies ; and,

33 **Whereas;** SBWMA and BFI wish to amend and restate their agreement dated
34 March 1, 2000;

35 **NOW, THEREFORE,** in consideration of the mutual promises, covenants, and
36 conditions contained in this Agreement and for other good and valuable
37 consideration, the parties agree as follows:

1 as much material to mixed waste sorting areas as feasible. Contractor may process
2 the materials for market on site, with the assistance of a third party (if previously
3 approved by the SBWMA in advance) or arrange for transfer of the materials to a
4 third party processor. All records of third party processing shall be supplied to the
5 SBWMA in Contractor's quarterly reports. All costs associated with this program
6 shall be an allowed expense.

7 **C. Floor Sorting.** Prior to the beginning of the Original Agreement
8 dated March 1, 2000, Contractor began a pilot program for sorting Recyclable
9 Materials from mixed waste delivered to the Transfer Station by self-haul users.
10 Contractor shall continue that program upon the start of this Agreement. At all times,
11 this program must comply with all applicable health and safety regulations for the
12 operation of the Transfer Station. It shall be the responsibility of Contractor to track
13 the progress of this program as described in the Meet and Confer Provisions of
14 Section 6.05E. A detailed description of the design and agreed upon costs of this
15 program shall be included in Exhibit B.

16 **D. Processing of Source Separated Recyclable Materials, Plant**
17 **Materials and Organic Materials.** All Source Separated Recyclable Materials, Plant
18 Materials and Organic Materials delivered by the Member Agencies or their
19 Designated Hauler shall be processed and marketed or donated, in accordance with
20 Section 3.12.

21 **E. Buyback/Drop-Off Center.** Contractor shall accept and
22 purchase at a Buyback/Drop-Off Center Recyclable Materials that are separated and
23 delivered to the Station by the public, process those Recyclable Materials and market
24 them on behalf of SBWMA.

25 **F. E-Waste Drop-Off Program.** Contractor shall provide an area
26 at the Facilities that will allow self-haul users to drop off E-Waste items. These items
27 shall be consolidated with E-Waste that has been collected by the Designated Hauler
28 from on-call residential pick-ups for transfer to an E-Waste recovery facility
29 approved by the SBWMA.

30 **G. C & D Program.** Contractor shall designate an area at the
31 Facilities that will allow haulers of C & D material to divert loads from landfill
32 disposal. The C & D material will then be transported to the Zanker Road facility for
33 further processing.

34 **H. Recovery of Recyclable Materials from Self-Haul and Debris**
35 **Box ("Bunker Program").** Contractor shall develop an area at the Facilities that will
36 allow self-haul and certain debris box loads to drop off Recyclable Materials for
37 Recycling and/or reuse prior to Disposal of the remainder of the load. Materials
38 targeted for diversion should include, but not be limited to: Plant Materials, wood,

1 roofing materials, concrete, asphalt, and scrap metal. Other more common
2 Recyclable Materials including corrugated, newspaper, office paper, mixed paper,
3 glass, plastic and metal containers and such other materials as directed by the
4 SBWMA shall be diverted through the Drop-Off/Buy Back program described in E.
5 above and E-Waste shall be diverted through the program described in F. above.
6 Contractor shall be responsible for providing adequate personnel to ensure the
7 quality of the dropped-off Recyclable Materials.

8
9 Contractor shall make all users of the Facilities aware of this
10 program for the diversion of Recyclable Materials from self haul loads and debris
11 boxes and its associated benefits. Contractor shall be responsible for checking the
12 incoming loads, ensuring the maximum diversion of Recyclable Materials and
13 approving the quality of the materials for drop-off. Contractor may collect and/or
14 process the materials for market on site with the assistance of a third party (if
15 approved by the SBWMA in advance) or arrange for transfer of the materials to a
16 third party processor. All records of third party processing should be supplied to
17 the SBWMA in Contractor's quarterly reports. A detailed description of the design
18 and agreed upon costs of this program shall be included in Exhibit B.

19
20 **I. Diversion of Plant Materials and Wood.** Contractor shall
21 accept and transfer Source Separated Plant Materials and Wood to a Plant Materials
22 Processing Facility designated by the SBWMA. The Plant Materials Processing
23 Facility designated by the SBWMA is the Newby Island Landfill owned and operated
24 by Contractor. Should the SBWMA change or supplement the designated Plant
25 Materials Processing Facility, it shall give Contractor thirty (30) days written notice of
26 the change.

27 **J. Diversion of Organic Material.** Contractor shall accept and
28 transfer Source Separated Organic Materials to an Organics Materials Processing
29 Facility designated by the SBWMA. The Organics Materials Processing Facility
30 designated by the SBWMA is the Newby Island Landfill owned and operated by
31 Contractor. Should the SBWMA change or supplement the designated Organic
32 Materials Processing Facility, it shall give Contractor thirty (30) days written notice of
33 the change.

34 **K. Residue.** Limiting the level of residue from source-separated
35 Recyclable Material Processing will be the responsibility of Contractor. If it is
36 demonstrated that residue is in excess of that commonly resulting from similar
37 processing operations by weight of the total amount of Recyclable Materials
38 processed at the Facilities, Contractor will be subject to the penalties described in
39 Section 9.03. Contractor shall weigh residue on a sample basis (at least SBWMA
40 containers per SBWMA) and the results used to convert, from volume measurements
41 to weight the unweighed containers of residue.

1 **L. Diversion Program Guarantees.** For the diversion programs
 2 (identified in Sections 3.02 C and F) operated at the Facilities, Contractor shall each
 3 year of this Agreement divert at least the amount of tons listed below from Solid
 4 Waste delivered to the Transfer Station for Landfill Disposal (the Diversion Program
 5 Guarantee):
 6

	Floor Sorting	Self Haul Debris Box Drop Off
2000	12,414	8,460
2001	12,414	8,460

7
 8 Failure to meet the total amount of the diversion requirements will result in the
 9 liquidated damages described in Section 9.03. However, if Contractor’s total
 10 diversion equals the sum of the diversion amount for each of the programs, even
 11 though the diversion amount of one or more of the programs is not met, then, no
 12 liquidated damages shall be imposed.

13
 14 Contractor and SBWMA shall meet to develop annual Diversion Program
 15 Guarantees for subsequent years. Should Contractor and SBWMA not reach
 16 agreement on the Diversion Program Guarantees for future years, the Diversion
 17 Program Guarantee for 2001 shall become the Diversion Program Guarantee for each
 18 of the remaining years of this Agreement.

19
 20 **3.03 Priority.** The basic and primary purpose of the Facilities is to process
 21 Solid Waste, Plant Materials, Organic Materials and Recyclable Materials generated
 22 within the jurisdictions of the Member Agencies and delivered by the Member
 23 Agencies or their Designated Haulers to the Facilities. A secondary purpose is to
 24 process publicly hauled waste and Recyclable Materials delivered by residents
 25 and/or businesses of the Member Agencies who shall have secondary priority in use
 26 of the Facilities. Solid Waste, Recyclable Materials, Organic Materials or Plant
 27 Materials generated outside the Member Agencies shall be assigned third priority
 28 and Contractor shall operate the Facilities in order to give effect to the above stated
 29 priorities. For example and not limitation, such operating practices may include not
 30 accepting materials from outside the Member Agencies’ jurisdictions during peak
 31 hours.
 32

33 **3.04 Days and Hours of Operation.** Contractor shall have the right to use
 34 the Facilities, (including the administrative, maintenance and repair building) every
 35 day of the year during the term of the Agreement. Contractor shall operate the
 36 Facilities every day of the year, except legal holidays, during the term of the
 37 Agreement.

1 The Facilities shall be open 9 hours per day between 8:00 a.m. and 5:00 p.m.
2 for the general public, and 12 hours per day between 4:00 a.m. and 4:00 p.m. for
3 Designated Haulers and transfer trucks. Contractor may operate the Facilities
4 beyond the hours set forth above, provided that it complies with the conditional use
5 permit issued by the City of San Carlos and the transfer station operations permit
6 issued by the State of California Integrated Waste Management Board.

7
8 **3.05 Permits.** Contractor shall be responsible to obtain the renewal and
9 amendment of existing permits and any new permits which may become necessary
10 during the Term. Permits shall be in the name of the SBWMA. Contractor shall
11 submit a draft of all applications for operating permits (including the renewal
12 and/or amendment of existing permits) to the SBWMA for its review and approval
13 prior to filing an application with the permitting agency. Contractor shall keep the
14 SBWMA fully informed at all times of the status of all permit applications.
15 Contractor shall not agree to permit terms and conditions without the prior written
16 consent of the SBWMA which consent shall not be unreasonably withheld. Copies of
17 all permits shall be delivered to the SBWMA within five (5) working days of their
18 receipt by Contractor.

19 Contractor shall keep all licenses, permits and approvals governing the
20 Facilities' operations in force and shall comply with their terms as they may be
21 amended or superseded (including any mitigation measures related to the operation
22 and maintenance of the Facilities which were adopted by the City of San Carlos when
23 the Facilities' environmental impact report was certified as well as the requirements
24 of the California Integrated Waste Management Board).

25 Contractor shall be solely responsible for paying any fines or penalties
26 imposed by governmental agencies for Contractor's noncompliance with permit
27 terms or Contractor's failure to obtain necessary permits.

28 **3.06 Hazardous Waste Exclusion Program.** Contractor shall maintain a
29 hazardous waste exclusion program, the minimum requirements of which are
30 described in Exhibit C. Should additional measures be incorporated into the

31 hazardous waste exclusion program to comply with regulatory change, Contractor
32 shall comply with such measures. Contractor shall arrange for the safe and lawful
33 temporary storage and disposal of such waste.

34 **3.07 Equipment.** All equipment used by or on behalf of Contractor shall
35 comply with all applicable laws and regulations. The SBWMA will provide the
36 equipment listed in Exhibit D. Contractor shall provide all other equipment required
37 to perform, in a safe and efficient manner, the services required by this Agreement.
38 The SBWMA shall have the right but not the obligation to purchase any or all of the

1 equipment owned by Contractor at the termination of this Agreement. The cost of
2 this equipment shall be the purchase price less the accumulated depreciation claimed
3 by Contractor on its financial statements and used in the determination of
4 Contractor's compensation. Contractor shall purchase the equipment it is to
5 furnish.

6 **3.08 Personnel.** Contractor shall furnish qualified, competent personnel in
7 sufficient numbers to perform, in a safe and efficient manner, the services required
8 by this Agreement. The minimum number and composition of personnel required
9 by this Agreement shall be as shown on Exhibit E. Where there is a material change
10 in compensation, the number and composition of personnel may be changed by
11 Contractor only upon written approval of the SBWMA and if such approval is
12 granted, Contractor shall be entitled to an appropriate adjustment to their
13 compensation as described in Article 5 of this Agreement. The parties acknowledge
14 that the services provided by Contractor do not constitute a "public work" and are
15 not subject to any of the provisions of the Public Works Law, Labor §1720-1901, nor
16 the regulations promulgated thereunder.

17 **3.09 Weighing.** Contractor shall operate and maintain the scale system at
18 the Facilities. Weighing operations shall be conducted in accordance with standards
19 and procedures set forth in Exhibit F

20 **3.10 Collection of Fees.** Contractor shall collect Fees established by the
21 SBWMA from all Persons who use the Facilities. Contractor shall keep complete and
22 accurate records of all Fees collected, shall keep safe all monies and negotiables
23 collected, and shall make certain payments to the SBWMA as provided in Article 7.

24 **3.11 Turnaround Time of Solid Waste, Recyclable Materials, Plant
25 Materials and Organic Materials Collection Vehicles.** Contractor shall operate the
26 Facilities so that all Collection vehicles of Member Agencies and their Designated
27 Haulers are processed from the scale house weighing operation, unloaded and exited
28 from the facilities in no more than fifteen (15) minutes from leaving the scale house
29 (Maximum Turnaround Time). Should Contractor fail to meet the Maximum
30 Turnaround Time in any Fiscal Year, it shall pay the amounts stated in Section 9.03.

31 **3.12 Marketing of Recyclable Materials, Plant Materials and Organic
32 Materials.**

33 **A. Marketing Plan.** Contractor shall market and promote the sale
34 or donation of all Recyclable Materials, Plant Materials and Organic Materials
35 delivered to the Facilities in accordance with the Marketing Plan set forth in Exhibit
36 G. Within ninety (90) days of the execution of this Agreement, Contractor shall
37 submit a proposal describing facilities and related costs for the diversion of Plant

1 Materials from landfill disposal which could serve as an alternative to the use of
2 Plant Materials as alternative daily cover at the landfill.

3 **B. Marketing Duties.** Contractor shall perform all of the following:

4 **1)** Contractor shall suitably store all Recyclable Materials,
5 Plant Materials and Organic Materials to protect against theft, deterioration,
6 contamination, fire, and other damage.

7 **2)** Contractor shall be responsible for delivery of Recyclable
8 Materials, Plant Materials and Organic Materials to purchasers or recipients unless
9 the terms of material purchasing agreements require the purchaser to arrange for
10 delivery.

11 **3)** Contractor shall obtain a certification of end use from the
12 purchaser establishing that the materials sold or donated will be/have been recycled
13 or re-used.

14 **4)** Contractor shall be responsible for the disposition of
15 Recyclable Materials, Plant Materials and Organic Materials when they have no
16 market value or negative market value. For Recyclable Materials, Plant Materials
17 and Organic Materials which have no commercially reasonable market in the Bay
18 Area, Contractor shall propose a plan for the marketing of the materials including a
19 projection of related costs and revenues to the SBWMA. The SBWMA may accept,
20 reject or modify such plan and Contractor shall be entitled to such compensation for
21 implementing the plan as agreed to by the Parties.

22 **C. Marketing Efforts.** Contractor shall use its best efforts in
23 marketing and promoting the sale and reuse of all Recyclable Materials, Plant
24 Materials and Organic Materials.

25 **3.13 Relationship of Parties with Regard to Marketing of Recyclable**
26 **Materials, Plant Materials and Organic Materials.** The Parties intend and hereby
27 agree that their relationship shall be that of independent contractors with respect to
28 the marketing of Recyclable Materials. Nothing contained herein shall be construed
29 to create any employment, partnership, joint venture, co-ownership or agency
30 relationship between the Parties, and Contractor shall not by any action allow any
31 presumption to arise that a relationship of partnership or agency exists between the
32 Parties.

33 **3.14 Maintenance of Facilities.** Contractor shall perform all necessary
34 preventive and ongoing maintenance functions for the Facilities in order to keep
35 them in good working order, including but not limited to conforming with
36 warranties and guidelines for the use of equipment and shall comply with all
37 necessary and required inspections and reporting as required under applicable laws

1 and regulations. A list of minimum inspections and Facility reports is included in
2 Exhibit I.

3 **3.15 Modifications to Service.**

4 **3.15.1 General.** SBWMA may direct Contractor to perform
5 additional services (including new diversion programs) or modify the manner in
6 which it performs existing services (including the modifications to or elimination of
7 programs). Contractor's compensation shall be increased or decreased, as
8 appropriate, to give effect to these adjustments in accordance with Article 5.

9 **3.15.2 Proposal for Modification of Services.** Contractor shall pre-
10 sent, within 30 days of a request to do so by SBWMA, a proposal to modify existing
11 services. At a minimum, the proposal shall contain a completed description of the
12 following:

- 13 **A.** Methodology to be employed (changes to equipment,
14 manpower, etc.).
- 15 **B.** Equipment to be utilized (equipment number, types, capacity,
16 age, etc.).
- 17 **C.** Labor requirements (changes in number of employees by
18 classification).
- 19 **D.** Provision for program publicity/education/marketing (if
20 appropriate).
- 21 **E.** Estimate of the impact of the service modification (increased
22 diversion tonnage, reduced costs, increased public service, etc.).
- 23 **F.** Five-year projection of the financial results of the program's
24 operations in a balance sheet and operating statement format
25 including documentation of the key assumption underlying the
26 projections and the support for those assumptions, giving full
27 effect to the savings or costs to existing services.

28 **3.15.3 SBWMA's Right to Permit Others to Provide Services.** Contractor
29 acknowledges and agrees that SBWMA may permit other Persons besides Contractor
30 to provide additional Solid Waste Services not otherwise contemplated under this
31 Agreement. If pursuant to Section 3.15.2, Contractor and SBWMA cannot agree on
32 terms and conditions of such services in one hundred twenty (120) days from the
33 date when SBWMA first requests a proposal from Contractor to perform such
34 services, Contractor acknowledges and agrees that Agency may permit Persons other
35 than Contractor to provide such services.

1 **4.02 Transportation of Solid Waste.** Contractor shall transport and deliver
2 to the Disposal Facility all Solid Waste that is not recycled or reused. No Solid Waste
3 may be disposed of at any location other than the Disposal Facility.

4 **4.03 Transportation of Hazardous Substances.** Contractor shall arrange for
5 or provide transportation and delivery to an appropriately permitted disposal facility
6 of Hazardous Substances that are encountered at the Facilities and which cannot be
7 accepted at the Disposal Facility.

8 **4.04 Transportation of Recyclable Materials, Plant Materials and Organic**
9 **Materials.** Contractor shall arrange or provide transportation and delivery of all
10 Recyclable Materials, Plant Materials and Organic Materials to a purchaser, a
11 licensed recycling facility, or a person who will use the materials in a process or
12 product and will not dispose of them in a landfill without prior written approval of
13 the SBWMA. No Recyclable Materials, Plant Materials or Organic Materials that
14 have been delivered to the Facilities already separated, and no Recyclable Materials,
15 Plant Materials, or Organic Materials that have been separated from Solid Waste at
16 the Facilities may be disposed of (1) in a landfill, or (2) through Transformation,
17 without the prior written consent of the SBWMA.
18

19 Commencing March 1, 2002 and for the remaining term of this Agreement,
20 including any extensions, 100% of the Plant Material transported from the Facilities
21 shall be diverted from landfill disposal and not used as alternative daily cover at a
22 landfill but used instead as compost, mulch, for land application at other than a
23 landfill, or biomass fuel (biomass fuel up to 28% of the Plant Material transported
24 from the Facilities), unless another use is approved in writing by the Chair of the
25 SBWMA.
26

27 Should Contractor's Plant Material processing facility fail to be available for
28 use or cease operation; or should Contractor for any other reason be unable to
29 process the material at its processing facility; then Contractor will compost, land
30 apply, mulch, provide as biomass fuel, or process all Plant Material collected in the
31 member agencies' jurisdictions in a manner that ensures full diversion credit from
32 the California Integrated Waste Management Board. Contractor recognizes that this
33 obligation extends even to its processing this material at a third party's facility at
34 higher transportation and processing costs. Should Contractor be unable to achieve
35 such diversion credit, then it shall be in breach of the Agreement and, the SBWMA
36 may secure processing of the Plant Material that does qualify for the diversion credit
37 at Contractor's expense and Contractor shall only be compensated in accordance
38 with paragraph 7 of this subsection 4.04.
39

1 Such diversion shall include transporting Plant Material from the Facilities to
2 the Plant Material processing site, processing the material for compost, mulch,
3 biomass fuel or land application, and marketing the material.
4

5 Contractor shall provide reports in a form acceptable to the California
6 Integrated Waste Management Board or its successor satisfactorily documenting the
7 diversion of this Plant Material from landfill disposal including the use of such
8 material as biomass fuel and ensuring the maximum possible diversion credits
9 allowable by the Integrated Waste Management Board or its successor.
10

11 Contractor shall provide a letter to the SBWMA, quarterly, certifying the
12 volume of Plant Material processed and stating that the processed Plant Material was
13 used as either compost, mulch, land application at other than a landfill or for biomass
14 fuel (biomass fuel up to 28% of the Plant Material transported from the Facilities),
15 unless another use is approved in writing by the Chair of the SBWMA, and
16 identifying the end user (users) of the material.
17

18 At the request of a Member Agency or Member Agencies, Contractor shall
19 provide processed Plant Material (excluding compost) to the Member Agency or
20 Member Agencies for its own use or that of its residents and businesses at no cost
21 beyond that described below.
22

23 Contractor shall be compensated for all Plant Material transported from the
24 Facilities at the rate of \$26.00 (adjusted to \$27.19 as of December 31, 2003) per ton.
25

26 A. Such compensation (as shown as Attachment 5 to Exhibit H) shall
27 reflect full compensation to Contractor for the following costs: transportation from
28 the Facilities to the Plant Material processing site; processing (which shall include
29 any and all costs of any and every kind, including but not limited to such indirect
30 costs as corporate charges), and governmental fees (existing on the effective date of
31 this Agreement) incurred by Contractor).
32

33 B. Annually, effective January 1 of each year of the term of this
34 agreement, the \$27.19 per ton shall be adjusted by seventy percent (70%) of the
35 annual change, from November 1 of the previous year to October 31 of the following
36 year, in the Consumer Price Index for the San Francisco-Oakland-San Jose
37 Metropolitan Area (All Urban Consumers). Additionally, any new governmental
38 fees or adjustment to governmental fees existing on the effective date shall be added
39 to or reduced from the annual adjustment as a pass-through adjustment [i.e. the fee
40 shall be converted to a per ton fee, if necessary, and shall be added to or subtracted
41 from the rate without modification (e.g., no corporate charges or profit shall be
42 added to the amount of the fee)].
43

1 **4.05 Organic Material Processing Fee at Processing Facility.**
2

3 Calculation of the processing expenses, charged to the Contractor incurred hereunder shall
4 be the product of multiplying the number of commercial organic tons processed by
5 Contractor by the applicable Processing Fee (per ton) specified below (hereinafter referred to
6 as the "Processing Fee").
7

	Contamination Level	Processing Fee (per ton)
Tier 1	Less than 5%	\$ 30.00
Tier 2	5% to less than 10%	\$ 32.00
Tier 3	10% to less than 15%	\$ 36.00
Tier 4	15% to less than 20%	\$ 38.00
Tier 5	Greater than 20%	\$ 40.00

8
9 1. The applicable Processing Fee will be based on the quarterly assessment process
10 as described in the Contractor's proposal letter dated March 14, 2003, referred to in
11 paragraph 1 above. The SBWMA and/or Agency may monitor the Contractor's quarterly
12 assessment process to ensure that it reflects an accurate accounting of the contamination
13 level for purposes of establishing the applicable Processing Fee. The Tier 2 Processing Fee of
14 \$32.00 per ton will be applicable for the first quarter of the program.

15 2. The Tiered Processing Fee schedule will remain in effect without adjustment until
16 December 31, 2006. Any new governmental or regulatory agency fees that become effective
17 during the current term of the Agreement will be added to the Tiered Processing Fee
18 schedule.

19 3. Commencing January 1, 2007, and on every twelve month anniversary thereof
20 ("Adjustment Date") the Tiered Processing Fee schedule shall be adjusted to reflect the
21 change in the Consumer Price Index, All Urban Consumers, All Items Indexes, for the San
22 Francisco-Oakland-San Jose Metropolitan Area, (Series ID: CUURA422SAO) published by
23 the United States Department of Labor, Bureau of Labor Statistics ("Index"). The Index for
24 the month of April preceding the Adjustment Date shall be the Comparison Index; the Index
25 for the month of April twelve months prior thereto shall be the Base Index. On each
26 Adjustment Date, each Tiered Processing Fee shall be adjusted to an amount equal to the
27 product obtained by multiplying each TPF for the prior year by a factor equal to one (1) plus
28 the percentage change in the Index between the Base Index and the Comparison Index. Any
29 new governmental or regulatory agency fees that become effective after January 1, 2007, will
30 be added to the Tiered Processing Fee schedule.

31 4. As an additional part of the Program, Contractor shall provide Member Agencies
32 with finished compost measured by the inbound tonnage of organic material delivered to the

1 Newby Compost Facility from Member Agencies Service Areas. Member Agencies may elect
2 to receive finished compost in accordance with the following exchange factors: (a) one cubic
3 yard of *bulk* compost in exchange for each incoming ton of material delivered; (b) one, one
4 cubic foot *bag of* compost in exchange for each two tons of material delivered; or (c) any
5 combination of the foregoing. Contractor will provide additional bagged compost at \$1.00
6 per bag, subject to a CPI adjustment after the December 31, 2004. Compost requested by
7 Member Agencies within a calendar year shall be charged against inbound tonnage only in
8 the same calendar year.

9
10 **ARTICLE 5**
COMPENSATION TO CONTRACTOR

11 **5.01 General.** Contractor's Compensation provided for in this Article 5
12 shall be the full, entire, and complete compensation due to Contractor pursuant to
13 this Agreement for all labor, equipment, materials and supplies, taxes, insurance,
14 bonds, overhead, profit, and all other things necessary to perform all the services
15 required by this Agreement in the manner and times prescribed.

16 **5.02 Initial Contractor Compensation.** Contractor's Compensation for the
17 initial twelve (12) months of this Agreement (Rate Year One) (i.e., from January 1,
18 2005 to December 31, 2005) is expected to be Thirty-Six Million Five Hundred Fifty-
19 Five Thousand Dollars (\$36,555,000), based on the estimated costs plus profit, as
20 presented in Exhibit H.

21 **5.03 Balancing Account.**

22 By December 31, 2005 and annually thereafter, the SBWMA shall determine
23 the amount due to/due from BFI for the completed fiscal year two years prior (e.g.,
24 by December 31, 2005 the SBWMA will determine the amount due to/due from BFI
25 for the year ending December 31, 2003). Should the amount due to/due from be less
26 than \$250,000, then the amount due shall be paid by the owing party within 30 days.
27 Should the amount due to/due from be more than \$250,000, then the amount due
28 with interest shall be incorporated (either added to or subtracted from) in the
29 determination of BFI's compensation for the following rate year. Subsequent to the
30 last year of the agreement, any amount due to/due from BFI shall be paid by the
31 owing party within one year.
32
33

34 **5.04 Contractor's Compensation for Each Subsequent Rate Year.**

35 A. Interim Compensation. For purposes of compensating
36 Contractor during the year commencing January 1, 2005 and for the remaining term
37 of the Agreement:
38

1 1) Contractor shall transfer all revenues to the SBWMA twice
2 monthly

3
4 2) SBWMA shall compensate Contractor at a rate/ton equal to
5 the amount of Contractor's projected revenue requirement divided by the projected
6 annual tonnage multiplied by the tons "out" of the transfer station and delivered to
7 all diversion, processing and disposal facilities reported by Contractor for the period,
8 twice monthly. (This rate will be calculated during, and as part of, the rate review as
9 described in C below.)

10
11 3) Quarterly, there shall be a reconciliation between: 1) the
12 transfer station revenues received from Contractor; and, 2) the amount that should
13 have been received based on the tons processed out and the rate/ton equal to the
14 amount of the total revenue requirement (including, in addition to Contractor's
15 revenue requirement, debt service on the SBWMA's revenue bonds, SBWMA
16 expenses, etc.) divided by the projected annual tonnage multiplied by the actual tons
17 out during the quarter.

18
19 4) If the revenues received are less than what should have been
20 received, then Contractor's compensation during the next quarter shall be reduced an
21 equal amount (based on an amount per ton).

22
23 5) If the revenues received are in excess of the amount that
24 should have been received, then the SBWMA shall retain this amount.

25
26 6) If Contractor can demonstrate to the reasonable satisfaction of
27 the SBWMA that the rates established for non-weighed loads are insufficient
28 (through sampling of a judgmental sampling of loads), then the SBMWA shall adjust
29 the rates charged.

30
31 B. In addition to any adjustments to CONTRACTOR's
32 compensation as described in A above and to compensate the SBWMA for unbilled
33 revenue during 2002, CONTRACTOR shall reduce its compensation by \$1,140,000.
34 The reduction to Contractor's compensation shall be calculated by reducing the
35 Contractor's revenue requirement on a rate per ton as follows:

36
37 1) \$0.90 per tonnage "out" of the transfer station and delivered
38 to all diversion, processing and disposal facilities, reported by CONTRACTOR for
39 the period April 1, 2004 to December 31, 2004.

40
41 2) Effective January 1, 2005, the \$0.90 per ton shall be increased
42 by 1 plus ninety (90) percent of the percentage change in the San Francisco-Oakland-
43 San Jose Metropolitan Area Consumer Price Index (Urban Wage Earners; 1982-

1 84=100)” and the average of the bi-monthly published annual index changes for the
2 proceeding 12 months.

3
4 3) Effective January 1, 2006, the per ton rate effective January 1,
5 2005 shall be increased by 1 plus ninety (90) percent of the percentage change in the
6 San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index (Urban
7 Wage Earners; 1982-84=100)” and the average of the bi-monthly published annual
8 index changes for the proceeding 12 months.

9
10 4) Once the reduction to compensation achieves a total of
11 \$1,140,000, then the deduction to the Contractor’s revenue requirement shall cease;
12 should the reduction to compensation based on the deduction to the Contractor’s
13 compensation not achieve the \$1,140,000 by December 31, 2006, then Contractor shall
14 pay the difference to the SBWMA in one lump sum payment within 30 day (i.e.,
15 January 30, 2007).

16 C. Contractor's Application. By August 1 of each Rate Year, Contractor
17 shall submit a Request for Adjustment to Compensation. This request shall be in
18 conformance with the procedures contained in Exhibit H. Contractor will provide all
19 information requested by the SBWMA as part of its review of Contractor's
20 application, including, but not limited to, all information from related parties
21 requested by the SBWMA regarding any transactions between Contractor and any
22 Related Party Entity.

23 D. Determination of Contractor's Compensation. The SBWMA, or
24 its representative, will review Contractor's application for compliance with this
25 Agreement, accuracy, and reasonableness.

26 E. Review Methodology. The methodology for reviewing
27 Contractor’s application is described in Exhibit H.

28
29 **5.05 Lease or Purchase of Equipment and Facilities and Hiring of**
30 **Additional Employees.** In order to protect against unforeseen rate increases related
31 to unanticipated increases in Contractor expenses, Contractor agrees not to enter into
32 leases or purchase significant quantities or type of new vehicles, equipment or
33 facilities or hire additional employees that materially affect the calculation of
34 Contractor Compensation without the advance, written approval of the SBWMA.

35 **5.06 Cost Savings Incentives.** Pursuant to the procedure herein described,
36 Contractor is encouraged to achieve cost savings in its operations which will provide
37 extraordinary rate reductions to SBWMA’s ratepayers. Contractor may, concurrently
38 with its submittal of reports for the Contractor Compensation modification process
39 submit, in writing, a proposal for any extraordinary Operating Cost savings (a “Cost

1 Savings Program” or “Program”). SBWMA shall either approve or disapprove the
 2 proposed Program. Contractor shall, in cooperation with SBWMA, establish
 3 procedures for the proper accounting of any such Program; provided that if such
 4 procedures are not agreed upon, a Program shall not be recommended for approval
 5 by SBWMA. It shall be the function of the accounting procedures to determine actual
 6 Operating Cost Savings resulting from implementation of any such Program.

7 In the event actual cost savings in an Operating Year resulting from
 8 implementation of a Cost Savings Program equals or exceeds 5/10ths of one percent
 9 (0.5%) of the Billings for such year, Contractor shall be entitled to receive a share of
 10 the actual Operating Cost Savings over the first five years of the Program in addition
 11 to Contractor’s profits based upon the operating ratio of 91% described in Exhibit H.
 12 In the fifth year (if applicable) and thereafter, ratepayers shall receive 100% of the
 13 benefit of such savings. The distribution of benefits between Contractor and
 14 ratepayers from any such Program shall be as follows:

15
16

	<u>Years</u>				
<u>Party Benefited</u>	1	2	3	4	5 and above
% to Contractor	80%	60%	40%	20%	0
% to Rate Payer	20%	40%	60%	80%	100%

23
24 The foregoing distribution of benefits shall be applicable for the
 25 corresponding year in which a Program is in effect, notwithstanding that the number
 26 of Operating Years remaining following the institution of such Program may be less
 27 than the full amount specified above.

28
29 Following the implementation of an approved Cost Savings Program,
 30 SBWMA shall determine the actual operating cost savings which occurred during
 31 each Operating Year as a result of the Program. If the actual savings equal or exceed
 32 5/10th of one percent (0.5%) of the billings for each such Operating Year, the savings
 33 shall be allocated in accordance with the above table in pursuance of the rate
 34 modification process described hereinabove. The allocations shall be made in each
 35 succeeding year by identifying the difference between Contractor’s actual Operating
 36 Cost and the Operating Costs which would have resulted without the Program.

37
38 It is understood that some proposals made by Contractor may require
 39 significant capital investments by Contractor, and that the allocation of the Operating
 40 Cost savings there from to Contractor in accordance with the above table may be
 41 insufficient to justify the investment. In such instances, Contractor and SBWMA,
 42 upon the recommendation of the SBWMA, may agree upon a reasonable return to

1 Contractor for its investment in lieu of distributing the benefits in accordance with
2 the above table. Should Contractor and SBWMA fail to agree on such Program,
3 Contractor shall not be required to initiate the Program, nor incur further significant
4 additional capital investment beyond that required for normal operations.
5

6 **5.07 Performance Incentives.** In addition to the operating ratio allowed
7 Contractor as described in Exhibit H and the Cost Savings Incentive described in 5.06
8 above, Contractor shall be entitled to the following performance incentives which are
9 also described in Exhibit H-1:

10
11 **A.** If Contractor diverts from 16,699 to 20,874 tons (80% - 100% of
12 the Diversion Program Guarantee shown in Section 3.02 I) of material from the
13 programs identified in Sections 3.02 C and F, Contractor shall receive \$2,500 for each
14 1,000 tons diverted from 16,699 through 20,874. No credit shall be given for fractions
15 of this 1,000 ton unit.)
16

17 **B.** If Contractor diverts from 20,875 tons to 41,748 tons (100% -
18 200% of the Diversion Program Guarantee shown in Section 3.02 I) of material from
19 the programs identified in Sections 3.02 C and F, Contractor shall receive \$5,000 for
20 each 1,000 tons diverted above 20,875 tons. (No credit shall be given for fractions of
21 this 1,000 ton unit and no payment shall be made for tons diverted above 41,720.)
22

23 **C.** Each year of the Agreement, the amount shown in the Diversion
24 Program Guarantee shall be increased (for purposes of this Section 5.07 only), if the
25 actual amount of diversion achieved from the programs identified in Sections 3.02 C
26 and F is greater than shown in 3.02 I, to the actual amount of diversion and the
27 diversion tonnage shown in 5.07 A and B above shall be increased as indicated (i.e.,
28 80% to 100% and 101% to 200% of the actual tonnage diverted).
29

30 **5.08 Revenue Sharing.** In the event that actual annual gross Recyclable
31 Material sales revenue related to Recyclable Materials, Plant Materials and Organic
32 Materials exceeds \$4,500,000 for any Rate Year of this Agreement as the direct result
33 of exceeding the minimum diversion tons described in this Agreement (as contrasted
34 to changes in the value received from the sale of Recyclable Materials from those
35 shown on Exhibit H2), this incremental amount shall be divided 50 percent (50%) to
36 the SBWMA and 50 percent (50%) to Contractor. These revenues are in addition to
37 any performance incentives earned by Contractor in Section 5.07.
38

39 **5.09 Interim Compensation Adjustment.** In the event the SBWMA directs
40 Contractor to change its operations, or in the event of an extraordinary or
41 unanticipated event including a change in law, or an adjustment to the Disposal Rate,
42 and such adjustment materially affects Contractor's cost of operations, then

1 Contractor or the SBWMA may submit a request for an interim compensation
2 adjustment. In such case, Contractor shall prepare a complete request for adjustment
3 to compensation application, in accordance with Exhibit H.

4 **5.10 Initial Rates.** The rates and charges which the Contractor is authorized
5 to apply to Customers for the Rate Year ending December 31, 2005, are those
6 established by the SBWMA Resolution on_____, unless amended in accordance with
7 this Agreement. Unless and until the rates set forth on Exhibit J, are adjusted by the
8 SBWMA, Contractor will provide the service required by this Agreement, charging
9 no more and no less than the rates authorized by Exhibit J unless authorized to do so
10 by the SBWMA. The revenue from all such rates and charges shall be included in the
11 determination of rates and charges established in accordance with this Article 5.

12 **5.11 Subsequent Rates.** From time to time and based on changes to
13 Contractor's compensation, as described above, and other considerations, the
14 SBWMA shall revise the rates by resolution.

15 **5.12 Limits on Contractor's Profit.** In no event shall the Contractor's Profit,
16 calculated in accordance with Exhibit H of this Agreement be more than an amount
17 equal to the Maximum Profit nor less than an amount equal to eighty percent (80%)
18 of the Maximum Profit, taking in to account the incentives described in Section 5.06,
19 5.07 and 5.08 of this Agreement and the Liquidated damages described in Section
20 9.03 of this Agreement. The Maximum Profit in 2005 (on an annualized basis) shall
21 be \$1,737,159. The Maximum Profit in each subsequent year shall be equal to the
22 Maximum Profit for the prior year multiplied by one (1) plus the twelve (12) month
23 percentage change in the San Francisco-Oakland-San Jose Consumer Price Index (All
24 Urban Wage Earners) as published by the United States Department of Labor,
25 Bureau of Labor Statistics (or a comparable statistic).

26 **ARTICLE 6**
27 **CONTRACTOR RECORDS/REPORTING**

28 **6.01 Solid Waste and Recyclable Materials, Plant Materials, and Organic**
29 **Materials Records.** In addition to the financial records required under Section 6.06,
30 at a minimum, Contractor shall maintain records whose format and content have
31 been approved by the SBWMA relating to:

32 **A.** Character, weight and volume of Solid Waste, Recyclable
33 Materials (by type) , Plant Materials, and Organic Material by Member Agency
34 either through a direct or allocated method approved by the SBWMA.

35 **B.** Facilities, equipment and personnel used;

- 1 C. Facilities and equipment operations, maintenance and repair;
- 2 D. Processing and Disposal of Solid Waste, Processing and
3 Marketing of Recyclable Materials; Processing and Marketing of
4 Plant Materials; and Processing and Marketing of Organic
5 Material.
- 6 E. Incidence of accidents involving either employees or patrons of
7 the facilities;
- 8 F. Documentation of hazardous spills and removals; and,
- 9 G. Location to which all Solid Waste, Recyclable Materials, Plant
10 Materials and Organic Materials received by the Facilities was
11 delivered for Transfer, Processing, sale, ultimate use or Disposal,
- 12 H. Recyclable Materials, Plant Materials and Organic Materials
13 sales value.

14
15 Contractor shall maintain records of all Solid Waste, Recyclable
16 Materials, Plant Materials and Organic Materials for the period of this Agreement
17 and all extensions to this Agreement or successor Agreements. In the event the
18 SBWMA requests certain records or Contractor discontinues providing services to
19 the SBWMA, Contractor shall provide all records of all Solid Waste services
20 requested to the SBWMA within thirty (30) days of discontinuing service. Records
21 shall be in a chronological and organized form, and readily and easily interpreted.

22 **6.02 CERCLA Defense Records.** The SBWMA views the ability to defend
23 against CERCLA and related litigation as a matter of great importance. For this
24 reason, the SBWMA regards the ability to prove where Solid Waste Collected in the
25 SBWMA Service Area was taken for Transfer or Disposal, as well as where it was not
26 taken, to be matters of significant importance. Therefore, Contractor shall maintain
27 data retention and preservation systems that can establish where Solid Waste was
28 transferred and disposed of (and therefore establish where it was not landfilled).
29 This provision shall survive the expiration of the period during which services are to
30 be provided under this Agreement for ten (10) years; such records shall be provided
31 in an organized and indexed manner and then turned over to the SBWMA after the
32 ten (10) year period.

33 All records required under this Agreement shall be maintained for each
34 year of the Term and for three years beyond the expiration or termination of the
35 Agreement. At the end of that period, SBWMA reserves the right to take physical
36 possession of these records.

1 **6.03 Provision of Records to the SBWMA.** In the event Contractor
2 discontinues providing Solid Waste services to the SBWMA, Contractor shall provide
3 to the SBWMA all records required by this Agreement within thirty (30) days of
4 discontinuing service. Records shall be in chronological order, in an organized form,
5 and readily and easily interpreted.

6 **6.04 Reports and Schedules.** Records shall be maintained in forms and by
7 methods that facilitate flexible use of data contained in them to structure reports, as
8 needed. Reports are intended to compile recorded data into useful forms of
9 information that can be used to, among other things:

- 10 **A.** Determine and set rates and evaluate the financial efficiency of
11 operations;
- 12 **B.** Evaluate past and expected progress towards achieving AB 939
13 and Agency goals and objectives;
- 14 **C.** Determine needs for program adjustments; and,
- 15 **D.** Evaluate customer service and complaints.

16 Either the SBWMA or Contractor may propose report formats that are
17 responsive to the objectives of and audiences for each report. The format of each
18 report shall be approved by the SBWMA. Contractor agrees to submit all reports on
19 computer discs or by modem in a format compatible with the SBWMA's software
20 and computers at no additional charge, if requested by the SBWMA. Contractor will
21 provide a certification statement, under penalty or perjury, by the responsible
22 Contractor official, that the report being submitted is true and correct to the best
23 knowledge of such official.

24 Quarterly reports shall be submitted within forty-five (45) calendar
25 days after the end of the calendar quarter. Annual reports shall be submitted within
26 forty-five (45) calendar days after the end of the calendar year.

27 All reports shall be submitted to:

28 If to the SBWMA: SBWMA Chair
29 City of San Carlos
30 600 Elm Street
31 San Carlos, CA 94070

32 If to Contractor: District Manager
33 Browning-Ferris Industries, San Mateo
34 District
35 225 Shoreway Road

6.05 Quarterly Report Requirements. The information listed shall be the minimum reported for each service. The actual reports will be developed jointly by Contractor and SBWMA, and:

A. Solid Waste Services

1) Solid Waste, in tons by Designated Hauler (by type of vehicle), non-designated commercial hauler, and public.

2) A summary or copy of the Hazardous Waste records.

3) Other information or reports that the SBWMA may reasonably request or require.

B. Recyclable Materials, Plant Materials and Organic Materials Services

1) Same as Solid Waste Service, but also, including the percentage diverted by material type and category (Residential, Commercial, Industrial, Institutional) and residual.

2) Sales or donation statement showing quantity of material, by type and type of end-use.

3) Recyclable Material sales revenue, by material type.

C. Other 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.

D. Summary Assessment. Contractor shall provide a summary assessment of the overall Solid Waste handling system from Contractor's perspective relative to financial and physical status of the Facilities. 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 and the Act. Contractor shall provide recommendations and plans to improve operations and shall highlight significant accomplishments and problems.

E. Meet and Confer with SBWMA. Beginning on the effective date of the Agreement, and then on a quarterly basis thereafter, Contractor shall meet with the SBWMA to describe 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

1 diverted materials and the cost per ton for transporting and processing each type of
2 material and other such information requested by the SBWMA necessary to evaluate
3 the performance of each program.

4
5 At each quarterly meeting, the SBWMA and Contractor shall
6 have the opportunity to revise the program based on mutually agreed upon terms.
7 The SBWMA shall have the right to terminate a program if in its sole discretion,
8 Contractor is not cost effectively achieving the program's goals and objectives. Prior
9 to such termination, the SBWMA shall meet and confer with Contractor for a period
10 of up to 90 days to resolve the SBWMA's concerns. Thereafter, the SBWMA may
11 utilize a third party to perform these services if the SBWMA reasonably believes the
12 third party can improve on Contractor's performance and/or cost. Notwithstanding
13 these changes, Contractor should continue the program during the meet and confer
14 period and, thereafter, until the third party takes over the program.
15

16 **6.06 Annual Report Requirements.** The Annual Report shall be in the form
17 of the quarterly reports and shall provide the same type of information as required
18 pursuant to Section 6.04 and 6.05 of this Agreement, summarized for the preceding
19 four quarters. In addition, Contractor's and Related Party Entities' annual financial
20 reports/statements shall be included. The annual report shall also include a
21 complete inventory of equipment used to provide all services, and a list of
22 Contractor's officers and members of its board of directors.

23 **A. General.** In order to effectuate the periodic rate review
24 contemplated by Article 5, it is necessary for Contractor to maintain accurate,
25 detailed financial information in a consistent format and to make such information
26 available to the SBWMA in a timely fashion. It is also necessary, in order to assure
27 the public of the accuracy of the review process, for Contractor's financial records to
28 be confirmed by an audit conducted by an independent Certified Public Accountant
29 (CPA) whose report thereon is forwarded to the SBWMA on a regular basis. This
30 Section 6.06 is intended to effectuate these requirements.

31 **B. Contractor's Accounting Records.** Contractor shall maintain
32 accurate and complete accounting records containing the underlying financial and
33 operating data relating to and showing the basis for computation of all costs
34 associated with providing services under this Agreement. The accounting records
35 shall be prepared in accordance with Generally Accepted Accounting Principles
36 (GAAP) consistently applied.

37 **C. Financial Information.** Within 120 days after the close of each
38 fiscal year, Contractor shall deliver to the SBWMA four (4) copies of the audited
39 consolidated financial statements and profit and loss statements for services
40 operations under this Agreement of Contractor for the preceding fiscal year. If the

1 financial statements are consolidated with operations not under this Agreement then
2 they shall include a supplemental combining schedule showing Contractor's results
3 of operations, including the specific revenues and expenses in connection with the
4 operations provided for in this Agreement and others included in such financial
5 statements. The financial statements and footnotes shall be prepared in accordance
6 with Generally Accepted Accounting Principles (GAAP) consistently applied and
7 fairly reflecting the results of operation and Contractor's financial condition. Annual
8 financial statements shall be audited, in accordance with Generally Accepted
9 Auditing Standards (GAAS) by a Certified Public Accountant (CPA) licensed (in
10 good standing) to practice public accounting in the State of California as determined
11 by the State of California Department of Consumer Affairs Board of Accountancy,
12 and that the CPA opinion on Contractor's annual financial statements shall be
13 unqualified or with an exception for a quantified exception to GAAP, and that the
14 supplemental schedule be prepared on a compiled basis.

15 **D. Related Party Entities.** As part of the annual requirement,
16 Contractor shall provide the SBWMA with a copy of each Related Party Entity's
17 (whose cost of services are not pre-determined by a governmental agency) audited
18 annual financial statements and management letter for that Fiscal Year, or within
19 ninety (90) days of each Related Party Entity's Fiscal Year-end, if timing does not
20 coincide with the annual report date. Financial statements shall be prepared in
21 accordance with GAAP and audited, in accordance with GAAS, by a CPA licensed in
22 the State, and that the CPA's opinion on each Related Party Entity's annual financial
23 statements shall be unqualified, and that the CPA make available to the SBWMA (or
24 the SBWMA's designated representative) such CPA's working papers related to the
25 audit.

26 Contractor agrees that all financial transactions with all Related Party
27 Entities shall be approved in advance in writing and disclosed annually (coinciding
28 with Contractor's annual audited financial statements referred to in this Section 6.06)
29 to the SBWMA in a separate disclosure letter to the SBWMA. This letter shall
30 include, but not be limited to, the following information:

31 A general description of the nature of each transaction, or type of (or
32 many similar) transaction, as applicable. Such description shall include for each (or
33 similar) transaction, amounts, specific Related Party Entity, basis of amount (how
34 amount was determined), and description of the allocation methodology used to
35 allocate any common costs. Amounts shall be reconciled to the Related Party Entity
36 disclosures made in Contractor's annual audited financial statements referred to in
37 this Section.

38 At the SBWMA's request, Contractor shall provide the SBWMA with
39 copies of working papers or other documentation deemed relevant by the SBWMA
40 relating to information shown in the annual disclosure letter. The annual disclosure

1 letter shall be provided to the SBWMA within ninety (90) days of Contractor's Fiscal
2 Year end.

3 **E. Inspection of Records.** The SBWMA, and its agents selected by
4 the SBWMA, shall have the right, during regular business hours, to conduct
5 unannounced on-site inspections of the records and accounting systems of
6 Contractor and to make copies of any documents relevant to this Agreement.

7 **F. Retention of Records.** Contractor shall retain all records and
8 data required to be maintained by this Agreement at least until the ensuing rate
9 review under Article 5, has been completed.

10 Records and data required to be maintained that are specifically
11 directed to be retained shall be retrieved by Contractor and made available to the
12 SBWMA.

13 Records and data required to be maintained that are not
14 specifically directed to be retained that are, in the sole opinion of the SBWMA,
15 material to the rate review or to a determination of Contractor's performance under
16 this Agreement, shall be retrieved by Contractor and made available to the SBWMA.

17 Records and data required to be maintained that are not
18 specifically directed to be retained and that are not material to a rate review and/or
19 not required for the determination of Contractor's performance do not need to be
20 retrieved by Contractor. In such a case, however, the SBWMA may make reasonable
21 assumptions regarding what information is contained in such records and data, and
22 such assumption shall be conclusive in whatever action the SBWMA takes.

23

24 **6.07 Adverse Information.**

25 **A. Reporting Adverse Information.** Contractor shall provide the
26 SBWMA two copies (one to the SBWMA Chairperson, one to the SBWMA Attorney)
27 of all reports, pleadings, applications, notifications, Notices of Violation,
28 communications or other material relating specifically to Contractor's performance of
29 services pursuant to this Agreement, submitted by Contractor to, or received by
30 Contractor from, the United States or California Environmental Protection Agency,
31 the California Integrated Waste Management Board, the Securities and Exchange
32 Commission or any other federal, state or local agency, including any federal or state
33 court. Contractor shall also notify the SBWMA of any criminal charges for violation
34 of any federal or state environmental law or antitrust law or for fraud or similar
35 matters initiated hereafter against any management employee of Contractor or its
36 affiliates that have direct or indirect responsibility for administration of Contractor's
37 performance of services under this agreement. Copies shall be submitted to the

1 SBWMA simultaneously with Contractor's filing or submission of such matters with
2 said agencies. Contractor's routine correspondence to said agencies need not be
3 routinely submitted to the SBWMA, but shall be made available to the
4 SBWMA promptly upon the SBWMA's written request.

5 **B. Failure to Report.** The refusal or failure of Contractor to file any
6 required reports, or to provide required information to the SBWMA, or the inclusion
7 of any materially false or misleading statement or representation by Contractor in
8 such report shall be deemed a material breach of this Agreement, and shall subject
9 Contractor to all remedies available to the SBWMA, after sixty (60) days and
10 notification to Contractor by the SBWMA of the selected remedy, under this
11 Agreement or otherwise.

12 **ARTICLE 7**
13 **PAYMENTS TO THE SBWMA AND TO THE CITY OF SAN CARLOS**

14 **7.01 General.** It is the intent of this Article 7 to compensate the SBWMA for
15 all labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, debt
16 service payments, contributions to prudent and necessary reserves, and all other
17 things necessary to perform its contractual and fiduciary responsibilities required by
18 this Agreement. Also, it is the intent of this Article to ensure that the City of San
19 Carlos continues to receive compensation due it including but not limited to its
20 current share of property tax revenue in spite of the transfer of ownership of the
21 Facilities from Contractor to the SBWMA.

22 **7.02 Calculation of Payment Due to the SBWMA.**

23 **A. Debt Service Payments and Contributions to Reserves.** The
24 SBWMA shall annually determine the amount of the debt service payment and
25 contributions to reserves required by the covenants of the bonds issued to finance the
26 purchase of the Facilities. This amount shall be added to the amount of the Revenue
27 Requirement determined in accordance with Exhibit H.

28 **B. Management Costs.** The SBWMA shall annually determine
29 the amount of its costs to perform its obligations under this Agreement and other
30 agreements to which it is party. This amount shall be added to the amount of the
31 Revenue Requirement determined in accordance with Exhibit H when setting rates.

1 SBWMA, its officers, Directors, employees, volunteers, and agents, and Member
2 Agencies and their officers, Directors, employees, volunteers, and agents,
3 (collectively, indemnitees) from and against all claims, damages (including but not
4 limited to special, consequential, natural resources and punitive damages), injuries,
5 costs, (including without limit any and all response, remediation and removal costs),
6 losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative
7 proceedings, interest, fines, charges, penalties, and expenses (including without limit
8 attorneys' expert witness fees and costs incurred in connection with defending against
9 any of the foregoing or in enforcing this indemnity), (Collectively, "Damages") of any
10 kind whatsoever paid, incurred or suffered by, or asserted against, indemnitees
11 arising from or attributable to the acts or omissions of Contractor, its officers,
12 directors, employees, companies or agents, whether or not negligent or otherwise
13 culpable, in connection with or related to the performance of this Agreement,
14 including without limit damages arising from or attributable to any operations, repair,
15 clean-up or detoxification, or preparation and implementation of any removal,
16 remedial, response, closure, post-closure or other plan (regardless of whether
17 undertaken due to governmental action) concerning any Hazardous Substance,
18 Hazardous Waste, and/or construction and street debris, or other waste Collected
19 under this Agreement. This indemnity afforded indemnitees, shall only be limited to
20 exclude coverage for intentional wrongful acts and negligence of indemnitees,
21 delivery of Solid Waste by one or more indemnitees which does not conform to the
22 descriptions of materials to be provided to Contractor under this Agreement (unless
23 such non-conforming waste is received in an intentional or negligent manner) and as
24 provided below. The forgoing indemnity is intended to operate as an agreement
25 recognizing the provisions of §107(e) of the Comprehensive Environmental Response,
26 Compensation and Liability Act, CERCLA, 42 USC. §9607(e) and California Health
27 and Safety Code provisions, and establishing Contractor's contractual obligations to
28 defend, protect, hold harmless, and indemnify SBWMA from claims, damages and
29 losses. This provision is in addition to all other provisions in this Agreement and is
30 intended to survive the end of the Term of this Agreement. Nothing in this paragraph
31 shall prevent Contractor from seeking indemnification or contribution from persons
32 or entities other than indemnities, for any liabilities incurred by Contractor, or the
33 indemnitees. As appropriate, Contractor's parent company guarantee shall extend to
34 the indemnification obligation hereunder.

35 Should the SBWMA or its Member Agencies contract for or direct the Disposal
36 of Solid Waste to a Transfer Station or landfill not owned or operated solely by
37 Contractor or an Affiliate, then in that event, Contractor's Hazardous Substances
38 indemnification and other indemnities shall not apply to claims, damages, legal
39 proceedings or other liabilities arising from or relating to such non-Contractor owned
40 or operated Transfer Station or Disposal Facility.

41 **8.02 Insurance.**

1 **B. Acceptability of Insurers.** The insurance policies required by
2 this Section 8.02 shall be issued by an insurance company or companies admitted to
3 do business in the State of California subject to the authority of the California
4 Insurance Commission and with a rating in the most recent edition of Best's
5 Insurance Reports of size category VII or larger and a rating classification of A or
6 better.

7 **C. Other Insurance Provisions.** The policies are to contain, or be
8 endorsed to contain, the following provisions:

9 **1) Workers' Compensation and Employer's Liability Coverage.** The insurer
10 shall agree to waive all rights of subrogation against the SBWMA, its Member
11 Agencies, its officials, employees and volunteers for losses arising from work
12 performed by Contractor for the SBWMA.

13
14 **2) Comprehensive General Liability (including Automobile Liability)**
15 **Coverage.**

16 **a)** The SBWMA Members, its, officers, Directors, employees,
17 volunteers, and agents, and Member Agencies, Agencies and their officers, Directors,
18 employees, volunteers, and agents are to be covered as additional insureds as
19 respects: liability arising out of activities performed by or on behalf of Contractor;
20 completed operations of Contractor; premises leased or used by Contractor; and
21 automobiles owned, leased, hired, or borrowed by Contractor. The coverage shall
22 contain no special limitations on the scope of protection afforded to the SBWMA, its
23 officials, employees, or agents.

24 **b)** Contractor's insurance coverage shall be primary
25 insurance as respects; the SBWMA, its Member Agencies, officials, employees, and
26 agents. Any insurance or self-insurance maintained by the SBWMA, it's Member
27 Agencies, officials, employees or volunteers shall be excess of Contractor's insurance
28 and shall not contribute with it.

29 **c)** Any failure to comply with the reporting provisions of the
30 policies shall not affect coverage provided to the SBWMA, its Member Agencies,
31 officials, employees and agents.

32 **d)** Coverage shall state that Contractor's insurance shall
33 apply separately to each insured against whom claim is made or suit is brought
34 except with respect to the limits of the insurer's liability.

35 **D. Required Endorsements.** The policies shall contain
36 endorsements in substantially the following form:

37 **1) Workers' Compensation and Employer's Liability:**

1 a) “Thirty (30) days written notice shall be given by certified
2 mail, return receipt request, to the SBWMA in the event of cancellation, reduction in
3 coverage, or non-renewal of this policy.”

4 b) “Insurer waives all right of subrogation against the
5 SBWMA, its Member Agencies, officials, employees, and agents for losses arising
6 from work performed by Contractor for the SBWMA.

7 **2) Comprehensive General Liability (Including**
8 **Automobile Liability) and Environmental.**

9 a) “Thirty (30) days written notice shall be given by certified
10 mail, return receipt requested, to the SBWMA in the event of cancellation, reduction
11 in coverage, or non-renewal of this policy.”

12 b) “The SBWMA, its Member Agencies, officers,
13 employees, volunteers and agents are additional insureds on this policy.”

14 c) “This policy shall be considered primary insurance
15 as respects any other valid and collective insurance maintained by the SBWMA,
16 including any self-insured retention or program of self-insurance, and any other such
17 insurance shall be considered excess insurance only.”

18 d) “Inclusion of the SBWMA as an additional insured
19 shall not affect the SBWMA’s rights as respects any claim, demand, suit or judgment
20 brought or recovered against Contractor. This policy shall protect Contractor and the
21 SBWMA in the same manner as though a separate policy had been issued to each,
22 but this policy shall not operate to increase the insurance company’s liability as set
23 forth in the policy beyond the amount shown or to which the insurance company
24 would have been liable if only one party had been name as an insured.”

25 **E. Delivery of Proof of Coverage.** On or before the Effective Date,
26 Contractor shall furnish the SBWMA with certificates of each policy of insurance
27 required hereunder. Such certificates shall show the type and amount of coverage,
28 effective dates, and dates of expiration of polices, and shall be accompanied by copies
29 of all required endorsements. The certificates and endorsements for each policy are
30 to be signed by a person authorized by the insurer to bind coverage on its behalf. If
31 at any time the SBWMA so requests, complete, certified copies of each policy,
32 together with all endorsements, shall also be promptly delivered to the SBWMA.
33 Contractor shall periodically furnish renewal certificates to the SBWMA to
34 demonstrate maintenance of the required coverage throughout the Term.

35 **F. Other Insurance Requirements.**

1 **9.01 Events of Default.** All provisions of the Franchise and this Agreement
2 to be performed by Contractor are considered material. Each of the following shall
3 constitute an event of default.

4 **A. Fraud or Deceit.** If Contractor practices, or attempts to practice,
5 any fraud or deceit upon the SBWMA.

6 **B. Insolvency or Bankruptcy.** If Contractor becomes insolvent,
7 unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of
8 Contractor in a bankruptcy proceeding.

9 **C. Failure to Maintain Coverage.** If Contractor fails to provide or
10 maintain in full force and effect the Workers' Compensation, liability, or
11 indemnification coverage as required by this Agreement.

12 **D. Violations of Regulation.** If Contractor violates any orders or
13 filings of any regulatory body having authority over Contractor relative to this
14 Agreement, provided that Contractor may contest any such orders or filings by
15 appropriate proceedings conducted in good faith, in which case no breach of the
16 Agreement shall be deemed to have occurred.

17 **E. Failure to Perform.** If Contractor ceases to provide transfer,
18 processing or Recyclable Materials services as required under this Agreement for a
19 period of two (2) consecutive days or more, for any reason within the control of
20 Contractor, including labor disputes.

21 **F. Failure to Pay.** If Contractor fails to make any payments
22 required under this Agreement and/or refuses to provide the SBWMA with required
23 information, reports, and/or records in a timely manner as provided for in the
24 Agreement.

25 **G. Acts or Omissions.** Any other act or omission by Contractor
26 which violates the terms, conditions, or requirements of this Agreement, the Act, as it
27 may be amended from time to time, or any law, statute, ordinance, order, directive,
28 rule, or regulation issued thereunder and which is not corrected or remedied within
29 the time set in the written notice of the violation or, if Contractor cannot reasonably
30 correct or remedy the breach within the time set forth in such notice, if Contractor
31 should fail to commence to correct or remedy such violation within the time set forth
32 in such notice and diligently effect such correction or remedy thereafter.

33 **H. False or Misleading Statements.** Any representation or
34 disclosure made to the SBWMA by Contractor in connection with or as an
35 inducement to entering into this Agreement, or any future amendment to this
36 Agreement, which proves to be false or misleading in any material respect as of the

1 time such representation or disclosure is made, whether or not any such
2 representation or disclosure appears as part of this Agreement.

3 **I. Attachment.** There is a seizure of, attachment of, or levy on, the
4 operating equipment of Contractor, including without limits its equipment,
5 maintenance or office facilities, or any part thereof.

6 **J. Suspension or Termination of Service.** There is any
7 termination or suspension of the services to be provided by Contractor under this
8 agreement, including without limit, due to labor unrest including strike, work
9 stoppage or slowdown, sick-out, picketing, or other concerted job action lasting more
10 than two (2) consecutive service days.

11 **K. Failure to Provide Assurance of Performance.** If Contractor
12 fails to provide reasonable assurances of performance as required under Section
13 10.14.

14 Contractor shall be given forty-eight (48) hours from notification by the
15 SBWMA to cure any default arising under subsections C, E, F, I and J provided,
16 however, that the SBWMA shall not be obligated to provide Contractor with a notice
17 and cure opportunity if Contractor has committed the same or similar breach within
18 a twenty-four (24) month period.

19 **9.02 Right to Terminate Upon Default.** In the event that Contractor should
20 default and subject to the right of Contractor to cure as described above, the SBWMA
21 has the unilateral right to terminate this Agreement and will determine within ten
22 (10) days' notice if the public health or safety is threatened, or otherwise thirty (30)
23 days, from written notice of default to Contractor, if a termination hearing must be
24 held. In the event the SBWMA decides to terminate this contract, the SBWMA shall
25 serve twenty (20) days' written notice of its intention to terminate upon Contractor.
26 In the event the SBWMA exercises its right to terminate this Agreement, the SBWMA
27 may, at its option, either directly undertake performance of the services or arrange
28 with other persons to perform the services with or without a written agreement. This
29 right of termination is in addition to any other rights of the SBWMA upon a failure of
30 Contractor to perform its obligations under this Agreement.

31 The SBWMA's right to terminate this Agreement and to take possession
32 of the Facility is not exclusive, and the SBWMA's termination of this Agreement shall
33 not constitute an election of remedies. Instead, they shall be in addition to any and all
34 other legal and equitable rights and remedies which the SBWMA may have.

35 By virtue of the nature of this Agreement, the urgency of timely
36 continuous and high-quality service, the time required to effect alternative service,
37 and the rights granted by the SBWMA to Contractor, the remedy of damages for a

1 breach hereof by Contractor may be inadequate, and the SBWMA may seek
2 injunctive relief.

3 **9.03 Liquidated Damages.**

4 **9.03.1 General.** The SBWMA finds, and Contractor agrees, that as
5 of the time of the execution of this Agreement, it is impractical, if not impossible, to
6 reasonably ascertain the extent of damages which shall be incurred by the
7 SBWMA as a result of a breach by Contractor of its obligations under this
8 Agreement. The factors relating to the impracticability of ascertaining damages
9 include, but are not limited to, the fact that: (i) substantial damage results to
10 members of the public who are denied services or denied quality or reliable service;
11 (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the
12 benefits of the Agreement to individual members of the general public for whose
13 benefit this Agreement exists, in subjective ways and in varying degrees of intensity
14 which are incapable of measurement in precise monetary terms; (iii) that similar
15 services might be available at substantially lower costs than alternative services and
16 the monetary loss resulting from denial of services or denial of quality or reliable
17 services is impossible to calculate in precise monetary terms; and (iv) the termination
18 of this Agreement for such breaches, and other remedies are, at best, a means of
19 future correction and not remedies which make the public whole for past breaches.

20 **9.03.2 Service Performance Standards; Liquidated Damages for**
21 **Failure to Meet Standards.** The Parties further acknowledge that consistent, reliable
22 transfer and processing service is of utmost importance to the SBWMA and that the
23 SBWMA has considered and relied on Contractor's representations as to its quality of
24 service commitment in awarding this Agreement to Contractor. The Parties further
25 recognize that some quantified standards of performance are necessary and
26 appropriate to ensure consistent and reliable service and performance. The Parties
27 further recognize that if Contractor fails to achieve the performance standards, or
28 fails to submit required documents in a timely manner, the SBWMA and its residents
29 will suffer damages and that it is and will be impractical and extremely difficult to
30 ascertain and determine the exact amount of damages which the SBWMA will suffer.
31 Therefore, without prejudice to the SBWMA's right to treat such non-performance as
32 an event of default under this Article9, the Parties agree that the following liquidated
33 damage amounts represent a reasonable estimate of the amount of such damages
34 considering all of the circumstances existing on the date of this Agreement, including
35 the relationship of the sums to the range of harm to the SBWMA that reasonably
36 could be anticipated and the anticipation that proof of actual damages would be
37 costly or impractical. In placing their initials at the places provided, each party
38 specifically confirms the accuracy of the statements made above and the fact that
39 each party has had ample opportunity to consult with legal counsel and obtain an
40 explanation of the liquidated damage provisions at the time that the Agreement was
41 made.

1 Contractor The SBWMA
2 Initial Here_____ Initial Here_____

3 Contractor agrees to pay (as liquidated damages and not as a penalty) the amounts
4 set forth below:

5 **A. Transfer Reliability.** For each Collection vehicle of
6 Member Agencies or its Franchisee, which is unable to depart from the Transfer
7 Station within the 15 (fifteen) minute maximum turnaround time due to queuing
8 within the Transfer Station: \$100.00

9 **B. Processing Quality.** For each month that residual waste
10 from the Recyclery exceeds levels at comparable facilities: \$1,000.00

11 **C. Marketing Ability.** For each month that overall per ton
12 revenues for recyclable materials are less than averages achieved by other similar
13 facilities in the nine (9) counties of the Bay Area: \$1,000.00

14 **D. Timeliness of Submissions to the SBWMA.** Any report
15 shall be considered late until such time as a correct and complete report is received
16 by the SBWMA. For each calendar day a report is late, after the seventh late day, the
17 daily liquidated damage amount shall be:

- 18 1) Quarterly Reports: \$100 per day
- 19 2) Annual Reports: \$500 per day
- 20 3) Other Reports not specifically addressed in this
21 Section 9.03: \$100 per day

22 **E. Additional Liquidated Damages.**

23
24 1) For each year that Contractor fails to meet a
25 program's annual diversion requirements as described in Section 3.02I for material
26 recovery of self-haul and debris box loads through manual floor sorting and/or self-
27 haul/debris box drop-off at the Transfer Station: \$25,000.

28
29 2) For each month that Contractor is in violation of
30 standard maintenance requirements of the facilities and equipment as required by
31 Exhibit I: \$5,000.

32

1 **9.03.3 Contractor Opportunity to Rectify.** Liquidated damages will
2 only be assessed after Contractor has been given the opportunity but failed to rectify
3 the damages as described in this Agreement.

4 **9.03.4 SBWMA Determination of Events.** The SBWMA may
5 determine the occurrence of events giving rise to liquidated damages through the
6 observation of its own employees or representative or investigation of customer
7 complaints.

8 **9.03.5 Notice of Intention.** Prior to assessing liquidated damages, the
9 SBWMA shall give Contractor notice of its intention to do so. The notice will include
10 a brief description of the incident(s)/non-performance. Contractor may review (and
11 make copies at its own expense) all information in the possession of the SBWMA
12 relating to incident(s)/non-performance. Contractor may, within ten (10) days after
13 receiving the notice, request a meeting with the SBWMA. Contractor may present
14 evidence in writing and through testimony of its employees and others relevant to
15 the incident(s)/non-performance. The SBWMA will provide Contractor with a
16 written explanation of his or her determination on each incident(s)/non-performance
17 prior to authorizing the assessment of liquidated damages. The decision of the
18 SBWMA shall be final.

19 **9.03.6 Amount.** The SBWMA may assess liquidated damages for each
20 calendar day or event, as appropriate, that Contractor is determined to be liable in
21 accordance with this Agreement.

22 **9.03.7 Timing of Payment.** Contractor shall pay any liquidated
23 damages assessed by the SBWMA within ten (10) days after they are assessed. If
24 they are not paid within the ten (10) day period, the SBWMA may proceed against
25 the performance bond required by this Agreement, or order the termination of this
26 Agreement, or both.

27
28 **9.04 Excuse from Performance.** The parties shall be excused from
29 performing their respective obligations hereunder in the event they are prevented
30 from so performing by reason of floods, earthquakes, other natural disasters, war,
31 civil insurrection, riots, acts of any government (including judicial action), and other
32 similar catastrophic events which are beyond the control of and not the fault of the
33 party claiming excuse from performance hereunder. Labor unrest, including, but not
34 limited to, strike, work stoppage or slowdown, sick-out, picketing, or other concerted
35 job action conducted by Contractor's employees or directed at Contractor is not an
36 excuse from performance and Contractor shall be obligated to continue to provide
37 service notwithstanding the occurrence of any or all of such events.

1 The party claiming excuse from performance shall, within two (2) days
2 after such party has notice of such cause, give the other party notice of the facts con-
3 stituting such cause and asserting its claim to excuse under this Section 9.04.

4 The interruption or discontinuance of Contractor's services caused by
5 one or more of the events excused shall not constitute a default by Contractor under
6 this Agreement. Notwithstanding the foregoing, however, if Contractor is excused
7 from performing its obligations to transfer, dispose and recycle Solid Waste under
8 this Agreement hereunder for any of the causes listed in this Section 9.04 for a period
9 of ten (10) or more, the SBWMA shall nevertheless have the right, in its sole
10 discretion, to terminate this Agreement by giving ten (10) days notice, in which case
11 the provisions relative to taking possession of the land, equipment and other
12 property and engaging Contractor's personnel in Section 9.05 will apply.

13 **9.05 Right to Perform.** If this Agreement is suspended and/or terminated
14 due to a Contractor default, the SBWMA shall have the right to perform and
15 complete, by contract or otherwise, the services herein or such part thereof as it may
16 deem necessary to procure labor, equipment, and materials and incur all other
17 expenses necessary for completion of the services, including, but not limited to,
18 transfer of Solid Waste and/or processing of Recyclable Materials and Plant
19 Materials at alternate facilities. If such expenses (including, but not limited to, the
20 costs of transportation to alternative facilities and the actual fees charged for transfer
21 and processing) exceed the amounts which would have been payable to Contractor
22 under this Agreement, if it had been fully performed by Contractor, then Contractor
23 shall pay the amount of such excess to the SBWMA within thirty (30) days of
24 Contractor's receipt of a claim for reimbursement, and evidence of costs incurred,
25 from the SBWMA.

26 **9.06 The SBWMA's Remedies Cumulative; Specific Performance.** The
27 SBWMA's rights to suspend or terminate this Agreement under Section 9.02 or to
28 perform under Section 9.05 are not mutually exclusive, and the SBWMA's exercise of
29 one such right shall not constitute a selection of remedies. Instead, they shall be in
30 addition to any and all other legal and equitable rights and remedies which the
31 SBWMA may have.

32 **ARTICLE 10**
33 **OTHER AGREEMENTS OF THE PARTIES**

34 **10.01 Relationship of Parties.** The Parties intend that Contractor shall
35 perform the services required by this Agreement as an independent Contractor
36 engaged by the SBWMA and not as an agent of the SBWMA or any Member Agency,
37 an officer or employee of the SBWMA or any Member Agency or as a partner of or

1 joint venturer with the SBWMA or any Member Agency. No employee or agent of
2 Contractor shall be or shall be deemed to be an employee or agent of the SBWMA.
3 Except as expressly provided herein, Contractor shall have the exclusive control over
4 the manner and means of conducting the Solid Waste transfer and Recyclable
5 Materials, Plant Materials and Organic Materials processing and marketing services
6 performed under this Agreement, and all persons performing such services.
7 Contractor shall be solely responsible for the acts and omissions of its officers,
8 employees, subcontractors, and agents. Neither Contractor nor its officers,
9 employees, subcontractors, or agents shall obtain any rights to retirement benefits,
10 survivors compensation benefits, or any other benefits which accrue to the SBWMA
11 employees by virtue of their employment with the SBWMA.

12 **10.02 Compliance with Law.** In providing the services required under this
13 Agreement, Contractor shall at all times comply with all applicable laws (including
14 but not limited to the "Environmental Laws") of the United States, the State of
15 California, the County of San Mateo and with all applicable regulations promulgated
16 by federal, state, regional, or local administrative and regulatory agencies, now in
17 force and as they may be enacted, issued, or amended during the Term, collectively,
18 the "Laws"). In the event of any conflict between this Agreement and Laws, the
19 requirements of the Laws shall govern, and Contractor shall not be in breach of this
20 Agreement if Contractor complies with the Laws in contravention of this Agreement,
21 provided that nothing in this Section 10.02 is intended to limit or enlarge Contractor's
22 obligations or diminish its right to satisfy its obligation to transfer Solid Waste and
23 process and market Recyclable Materials by arranging for it to be accepted and
24 disposed of at other facilities.

25 **10.03 Governing Law.** This Agreement shall be governed by, and construed
26 and enforced in accordance with, the laws of the State of California.

27 **10.04 Jurisdiction.** Any lawsuits between the parties arising out of this
28 Agreement shall be brought and concluded in the courts of the State of California, in
29 the County of San Mateo or the Federal District court for northern California, which
30 shall have exclusive jurisdiction over such lawsuits. With respect to venue, the
31 parties agree that this Agreement is made in and will be performed in the County of
32 San Mateo, California.

33 **10.05 Assignment by Contractor.**

34 **10.05.1. Permitted Assignments.** Contractor shall have the right
35 to assign this Agreement to any other company which is owned and controlled by
36 Browning-Ferris Industries, LLC., provided that, (i) such company is qualified to do
37 business in California, and assumes in writing all of Contractor's obligations under

1 this Agreement prior to or concurrently with such assignment, (ii) such company
2 provides the performance bond required under Section 8.03; and (iii) the corporate
3 guaranty described in Section 10.16 remains in full force and effect. Contractor shall
4 not otherwise assign its rights nor delegate or otherwise transfer its obligations under
5 this Agreement to any other Person.

6 **10.05.2 Assignment Defined.** For the purpose of this Section
7 when used in reference to Contractor, "assignment" shall include, but not be limited
8 to (1) a sale, exchange or other transfer of substantially all of Contractor's assets
9 dedicated to service under this Agreement to a third party; (ii) a sale, exchange or
10 other transfer of outstanding common stock of Contractor to a third party provided
11 said sale, exchange or transfer may result in a change of control of contractor; (iii)
12 any dissolution, organization, consolidation, merger, re-capitalization,, stock
13 issuance or re-issuance, voting trust, pooling agreement, escrow arrangement,
14 liquidation or other transaction to which results in a change of Ownership or control
15 of Contractor; (iv) any assignment by operation of law, including insolvency or
16 bankruptcy, making assignment for the benefit of creditors, writ of attachment for an
17 execution being levied against this Agreement, appointment of a receiver taking
18 possession of Contractor's property, or transfer occurring in the event of a probate
19 proceeding; and (v) any combination of the foregoing (whether or not in related or
20 contemporaneous transactions) which has the effect of any such transfer or change of
21 Ownership, or change of control of Contractor.

22
23 Contractor acknowledges that this Agreement involves rendering a
24 vital service to the SBWMA's residents and business, and that the SBWMA has
25 selected Contractor to perform the services specified herein based on (1)
26 Contractor's experience, skill and reputation for conducting its operations in a safe,
27 effective and responsible fashion, at all times in keeping with applicable
28 Environmental Laws, regulations, and best management practices, and (2)
29 Contractor's obligations to the SBWMA under this Agreement. The SBWMA has
30 relied on each of these factors, among others, in choosing Contractor to perform the
31 services to be rendered by Contractor under this Agreement.

32
33 **10.05.3 Contractor Request for Assignment.** If Contractor
34 requests the SBWMA's consideration of and consent to an assignment, the SBWMA
35 may reasonably deny or approve such request. No request by Contractor for consent
36 to any assignment need be considered by SBWMA unless and until Contractor has
37 met the following requirements:

38
39 **A.** Contractor shall undertake to pay SBWMA its reasonably
40 expenses for attorney's fees and investigation costs necessary to investigate the
41 suitability of any proposed assignee, and to review and finalize any documentation
42 required as a condition for approving any such assignment;

1
2 **B.** Contractor shall furnish SBWMA with audited financial
3 statements of the proposed assignee's operations for the immediately preceding three
4 (3) operating years;

5
6 **C.** Contractor shall furnish SBWMA with satisfactory proof: (i) that
7 the proposed assignee has at least ten (10) years of Solid Waste management
8 experience on a scale equal to or exceeding the sale of operations conducted by
9 Contractor under this Agreement; (ii) that in the last five (5) years, the proposed
10 assignee has not suffered any significant citations or other censure from any federal,
11 state or local agency having jurisdiction over its Solid Waste management operations
12 due to any significant failure to comply with state, federal or local Environmental
13 Laws and that the assignee has provided SBWMA with a complete list of such
14 citations and censures; (iii) that the proposed assignee has at all times conducted its
15 operations in an environmentally safe and conscientious fashion; (iv) that the
16 proposed assignee conducts its Solid Waste management practices in accordance
17 with sound Solid Waste management practices in full compliance with all federal,
18 state and local laws regulating the collection and Disposal of Solid Waste including
19 Hazardous Substances; and, (v) of any other information required by SBWMA to
20 ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe
21 and effective manner.

22
23 Under no circumstances shall SBWMA be obligated to consider any proposed
24 Assignment by SBWMA if Contractor is in default at any time during the period of
25 consideration.

26
27 **10.06 Binding on Successors.** The provisions of this Agreement shall inure
28 to the benefit of and be binding on the successors and permitted assigns of the
29 parties.

30
31 **10.07 Parties in Interest.** Nothing in this Agreement, whether expressed or
32 implied, is intended to confer any rights on any Persons other than the Parties to it
33 and their representatives, successors and permitted assigns.

34 **10.08 Waiver.** The waiver by either Party of any breach or violation of any
35 provisions of this Agreement shall not be deemed to be a waiver of any breach or
36 violation of any other provision nor of any subsequent breach or violation of the
37 same or any other provision. The subsequent acceptance by either Party of any
38 monies which become due hereunder shall not be deemed to be a waiver of any pre-
39 existing, concurrent or subsequent breach or violation by the other Party of any
40 provision of this Agreement.

1 **10.09 Notices.** All notices, demands, requests, proposals, approvals,
2 consents, and other communications which this Agreement requires, authorizes or
3 contemplates shall, except where specifically provided otherwise, be in writing and
4 shall either be personally delivered to a representative of the parties at the address
5 below or be deposited in the United States mail, first class postage prepaid, (certified
6 or registered mail, return receipt requested) addressed as follows:

7 If to the SBWMA: SBWMA Chair
8 c/o City Manager
9 City of San Carlos
10 600 Elm Street
11 San Carlos, CA 94070

12 If to Contractor: District Manager
13 BFI Waste Systems of North America, Inc., San
14 Mateo District
15 225 Shoreway Road
16 San Carlos, CA 94070
17

18 The address to which communications may be delivered may be
19 changed from time to time by a notice given in accordance with this Section 10.09.
20 Notices shall be deemed delivered only upon receipt.

21 **10.10 Representatives of the Parties.**

22 **A. Representative of the SBWMA.** On or before the effective date,
23 the SBWMA Board of Directors shall delegate, in writing, authority to an SBWMA
24 official, and may permit such official, in turn, to delegate in writing some or all of
25 such authority to subordinate officers. Contractor may rely upon actions taken by
26 such delegates with respect to the SBWMA's respective rights and obligations under
27 this Agreement.

28 **B. Representatives of Contractor.** Contractor shall, on or before
29 the Effective Date, designate in writing a responsible officer who shall serve as the
30 representative of Contractor in all matters related to this Agreement and shall inform
31 the SBWMA in writing of such designation and of any limitations upon his or her
32 authority to bind Contractor. The SBWMA may rely upon action taken by such
33 designated representative as actions of Contractor unless they are outside the scope
34 of the authority delegated to him/her by Contractor as communicated to the
35 SBWMA.

36 **10.11 Duty of Contractor Not to Discriminate.** Consistent with the SBWMA
37 policy that harassment and discrimination are unacceptable employer-employee
38 conduct, Contractor agrees that harassment or discrimination directed toward a job

1 applicant or employee of Contractor, an SBWMA employee, or a citizen by
2 Contractor or Contractor's employee on the basis of race, religious creed, color,
3 national origin, ancestry, handicap, mental or physical disability, Acquired Immune
4 Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC), cancer-related medical
5 condition, refusal of family care leave, marital status, denial of pregnancy disability
6 leave, veteran status, age, sex, sexual orientation, or sexual preference will not be
7 tolerated. Contractor agrees that any and all violations of this provision shall
8 constitute a material breach of this Agreement.

9 **10.12 Right to Inspect Facilities and Operational Records.** The SBWMA
10 shall have the right, but not the obligation, to observe and inspect all of Contractor's
11 operations under this Agreement. In connection therewith, the SBWMA shall have
12 the right to enter the Facilities unannounced during operating hours, speak to any of
13 Contractor's employees and receive cooperation from such employees in response to
14 inquiries. In addition, upon reasonable notice and without interference with
15 Contractor's operations, the SBWMA may review and copy, at the SBWMA's
16 expense, any of Contractor's operational records related to this Agreement. If the
17 SBWMA so requests, Contractor shall make specified personnel available to
18 accompany the SBWMA representatives on inspections.

19 **10.13 Compilation of Information for State Law Purposes.** Contractor shall
20 compile information on amounts of Solid Waste and Recyclable Materials delivered
21 to the Facilities and other information, which the SBWMA may reasonably request.

22 **10.14 Right to Demand Assurances of Performance.** If Contractor (1) is the
23 subject of any labor unrest including service stoppage or slowdown, sick-out,
24 picketing or other concerted job action; (2) appears in the reasonable judgment of the
25 SBWMA to be unable to regularly pay its bills as they become due; or (3) is the
26 subject of a civil or criminal proceeding brought by a federal, state, regional, or local
27 agency for violation of an Environmental Law at the Facilities which the SBWMA
28 reasonably believes has placed Contractor's ability to perform under this Agreement
29 in substantial jeopardy, the SBWMA may, at its option and in addition to all other
30 remedies it may have, demand from Contractor written assurances of timely and
31 proper performance of this Agreement within three (3) days after receiving demand
32 by certified mail. "Assurances" for purposes of this Section 10.14 do not include an
33 increase in financial guarantees beyond the bond provided for under Section 8.03.

34 **10.15 Guaranty of Contractor's Performance.** Pursuant to a guaranty in
35 substantially the form attached as Exhibit L, Browning-Ferris Industries, LLC., a
36 Delaware company which owns all of the issued and outstanding common stock of
37 BFI Waste Systems of North America, Inc., has agreed to guaranty Contractor's
38 performance of this Agreement including Contractor's indemnification obligation
39 hereunder. The Guaranty is being provided concurrently with Contractor's
40 execution of this Agreement.

1 **10.16 Dispute Resolution.** Disputes arising under this Agreement shall be
2 resolved by means of mediation, and if that fails by arbitration. If the parties cannot
3 agree on a mediator, the Superior Court of San Mateo County shall appoint a
4 mediator.

5 **10.17 Affiliated Companies.** Contractor shall maintain accounting records
6 and financial statements on a basis showing the results of Contractor's operations
7 under this Agreement separately from operations in other locations, as if Contractor
8 were an independent entity providing service only to the SBWMA. For purposes of
9 the Agreement, the costs and revenues associated with providing service to the
10 SBWMA shall not be combined, consolidated or in any other way incorporated with
11 those of other operations conducted by Contractor in other locations, or with those of
12 an Affiliate.

13 **10.18 Subcontracting.** Contractor shall not engage any subcontractors for
14 transfer, processing or Disposal of Solid Waste without the prior written consent of
15 the SBWMA.

16 **10.19 Transition to Next Contractor.** If the transition of services to another
17 contractor occurs through expiration of Term, default and termination, or otherwise,
18 Contractor will cooperate with the SBWMA and subsequent contractor(s) to assist in
19 an orderly transition. Depending on Contractor's circumstances at the point of
20 transition, Contractor at its option may enter into negotiations with the next
21 contractor to sell (in part or all) vehicles and equipment, as appropriate.

22 **10.20 Contractor's Investigation.** Contractor has made an independent
23 investigation of the conditions and circumstances surrounding the Agreement and
24 the work to be performed by it. Contractor's execution of this Agreement constitutes
25 Contractor's acceptance of the results of such investigation as satisfactory.

26 **10.21 The SBWMA Free to Negotiate with Third Parties.** The SBWMA may
27 investigate all options for the transfer and processing of Solid Waste after the
28 expiration of the Term. Without limiting the generality of the foregoing, the SBWMA
29 may solicit proposals from Contractor and from third parties for the provision of
30 services, and any combination thereof, and may negotiate and execute agreements
31 for such services which will take effect upon the expiration or earlier termination
32 under Section 9.02.

33 **10.22 Compliance with the SBWMA Member Agencies Codes.** Contractor
34 shall comply with those provisions of the ordinances and municipal codes of the
35 SBWMA Member Agencies which are applicable, and with any and all amendments
36 to such applicable provisions during the Term of this Agreement provided, however,
37 that if a change in any such municipal code materially affects Contractor's annual
38 cost of operations, Contractor shall be entitled to an interim compensation

1 adjustment. Moreover, no such change may override Contractor's designations of an
2 MRF, Transfer Station and Disposal Site pursuant to this Agreement.

3 **10.23 Privacy.** Contractor shall strictly observe and protect the rights of
4 privacy of customers. Information identifying individual customers or the
5 composition or contents of a customer's waste stream shall not be revealed to any
6 Person, governmental unit, private agency, or Contractor, unless upon the authority
7 of a court of law, by statute, or upon valid authorization of the customer. This
8 provision shall not be construed to preclude Contractor from preparing, participating
9 in, or assisting in the preparation of waste characterization studies or waste stream
10 analyses which may be required by the Act.

11 **10.24 Integrated Contract.** This Agreement represents the full and complete
12 understanding of every kind or nature whatsoever between the Parties hereto, and
13 all preliminary negotiations and agreements of whatsoever kind or nature are
14 merged herein. No verbal agreement or implied covenant shall be held to vary the
15 provisions hereof. Any modification of this Agreement will be effective only by
16 written execution signed by both the SBWMA and Contractor.

17 **10.25 Inserted Provisions.** Each provision and clause required by law to be
18 inserted into this Agreement shall be deemed to be enacted herein, and the
19 Agreement shall be read and enforced as though each were included herein. If
20 through mistake or otherwise, any such provision is not inserted or is not correctly
21 inserted, the Agreement shall be amended to make such insertion on application by
22 either party.

23 **ARTICLE 11**
24 **MISCELLANEOUS PROVISIONS**

25 **11.01 Exhibits.** Each of the Exhibits, identified as Exhibits "A" through "M",
26 is attached hereto and incorporated herein and made a part hereof by this reference.

27 **11.02 Section Headings.** The article headings and section headings in this
28 Agreement are for convenience of reference only and are not intended to be used in
29 the construction of this Agreement nor to alter or affect any of its provisions.

30 **11.03 Interpretation.** This Agreement, including the exhibits attached hereto,
31 shall be interpreted and construed reasonably and neither for nor against either
32 Party, regardless of the degree to which either Party participated in its drafting. Any
33 conflict between the body of the Agreement and the Exhibits shall be resolved in
34 favor of the Agreement.

1 **12.03 Agreement Will Not Cause Breach.** To the best of Contractor's and
2 SBWMA's knowledge, after reasonable investigation, neither the execution or
3 delivery of this Agreement nor the performance of this Agreement: (i) conflicts with,
4 violates, or results in a breach of any applicable law; or (ii) conflicts with, violates or
5 results in a breach of any term or condition of any judgment, order or decree of any
6 court, administrative agency or other governmental authority, or any agreement or
7 instrument to which Contractor or SBWMA is a party or by which Contractor or
8 SBWMA or any of its properties or assets are bound, or constitutes a default
9 thereunder.

10 **12.04 No Litigation.** To the best of Contractor's knowledge, after reasonable
11 investigation, there is no action, suit, proceeding or investigation, at law or in equity,
12 before or by any court or governmental authority, commission, board, agency or
13 instrumentality decided, pending or threatened against Contractor wherein an
14 unfavorable decision, ruling or finding, in any single case or in the aggregate, would
15 materially adversely affect the performance by Contractor of its obligations
16 hereunder or which, in any way, would adversely affect the validity or enforceability
17 of this Agreement or which would have a material adverse effect on the financial
18 condition of Contractor or any surety guaranteeing Contractor's performance under
19 this Agreement, which has not been waived by the SBWMA in writing.

20 **12.05 Ability to Perform.** Contractor possesses the business, professional,
21 and technical expertise to manage, handle, treat, store and dispose of the Solid Waste,
22 and possesses the equipment, plant, and employee resources required to perform this
23 Agreement.

24 **12.06 SBWMA Authorization.** The SBWMA has the authority to enter into
25 and perform its obligations under this Agreement. SBWMA has taken all actions
26 required by law or otherwise to authorize the execution of this Agreement. The
27 persons signing this Agreement on behalf of the SBWMA have the authority to do so.
28 Any Member Agency subsequently withdrawing from SBWMA after the execution
29 of this Agreement or withdrawing its delegation to SBWMA to provide Solid Waste
30 services, shall nevertheless be bound by this Agreement in exercising withdrawing
31 Member Agency's authority for the term of this Agreement, including extensions
32 entered into prior to the date of withdrawal.

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

35
36
37 _____
38 By:_____

1 Name: _____

2 Title: Chair

3 Contractor BFI WASTE SYSTEMS OF NORTH AMERICA, INC.

4 By: _____

5 Name: _____

6 Title:

7 ATTEST:

8 By: _____

9 Name: _____

Name: _____

10 Title:

Title: Secretary

11 APPROVED AS TO FORM:

(Corporate Seal)

12 _____

13 Authority Counsel

14 (Seal)

Exhibit A

Definitions

DEFINITIONS

This Agreement will be construed in accordance with the following definitions:

Act

"Act" means the California Integrated Waste Management Act of 1989 (AB939), as it may be amended from time to time.

Affiliate

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

Agency

"Agency" means a municipal corporation or political subdivision (as the case may be) of the State of California which is an active member of the SBWMA.

Agreement

"Agreement" means this Amended and Restated Agreement between the SBWMA and Contractor for transfer, processing and recycling of Solid Waste and other services related to meeting the goals and requirements of the Act, including all exhibits and attachments, and any amendments thereto.

Buyback/Drop-Off Center

"Buyback/Drop-Off Center" means an area located at the Facility where Contractor provides generators the opportunity to divert Recyclable Materials prior to Disposal

for free or for a price paid by Contractor when market prices exist for the Recyclable Materials.

California Integrated Waste Management Act (AB939)

"California Integrated Waste Management Act" means Public Resources Code, §40000 et seq.

Claim

"Claim" means any claim by third parties against Contractor, including but not limited to, injury, death of any person or damage to private property arising out of or occasioned in any way by, directly or indirectly, Contractor's performance of, or its failure to perform its obligations under this Agreement, including Contractor's failure to comply with all applicable laws or Contractor's breach of its representation and warranties under this Agreement.

Collect/Collection

"Collect" or "Collection" means to take physical possession, transport, and remove Solid Waste within and from the Service Area.

Contractor

"Contractor" means Browning-Ferris Industries Waste Systems of North America, Inc. (a wholly-owned subsidiary of Browning-Ferris Industries, LLC.), a corporation organized and operating under the laws of the State of Delaware and its officers, directors, employees, agents, companies and subcontractors.

Contractor Compensation

"Contractor Compensation" means the calculated rate/ ton equal to the amount of Contractor's projected revenue requirement divided by the projected annual tonnage received by Contractor from - the SBWMA, in return for providing services in accordance with this Agreement and any amendments to this Agreement.

County

"County" means the County of San Mateo, California.

Designated Hauler(s)

"Designated Hauler" means that Collection company or those companies operating in accordance with a Franchise Agreement with SBWMA Member Agency/ Agencies.

Disposal

"Disposal" means the ultimate disposition of Solid Waste received by Contractor at a landfill in full regulatory compliance.

Disposal Agreement

“Disposal Agreement” means the Agreement between the SBWMA and Contractor (dated _____).

Disposal Facility

“Disposal Facility” means the Solid Waste handling facility or facilities utilized for the Disposal of Solid Waste received by Contractor. The Ox Mountain Landfill owned by Contractor, shall be the designated Disposal Facility of Contractor as of the effective date of this Agreement.

Disposal Rate

“Disposal Rate” means the fee charges per ton for disposal at a Disposal Facility.

Diversion

“Diversion” means the separation of materials from the overall Solid Waste stream and whose disposition is for reuse or Recycling and not landfill Disposal.

Effective Date

“Effective Date” means the date specified in Section 2.01.

Environmental Laws

"Environmental Laws" means all federal and state statutes, county, local and Agency ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6902 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Toxic Substances Control Act, 15 USC §1601 et seq.; the Occupational Safety and Health Act, 29 USC §651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100 et seq.; the California Toxic Substances Control Act, California Health and Safety Code §25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5 et seq.; the California Integrated Waste Management Act, California Public Resources Code §40000 et seq., as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

E-Waste

“E-Waste” means discarded electronic equipment such as, but not limited to, television sets, computer monitors, central processing units (CPUs), laptop computers, external computer hard drives, computer keyboards, computer mice, computer printers, DVDs, and VCRs.

Facility

"Facility" means any plant or site, owned or leased and maintained, operated or used by Contractor or the SBWMA for purposes of performing under this Agreement. The designated facilities for the purposes of this Agreement shall be the San Carlos Transfer Station and San Carlos Recyclery located at 225 Shoreway Road and 333 Shoreway Road respectively, in the City of San Carlos.

Fiscal Year

"Fiscal Year" means the period commencing January 1 and concluding December 31 of the same year.

Full Regulatory Compliance

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

Guarantor

"Guarantor" means Browning Ferris Industries, .LLC, a limited liability company duly organized and existing in good standing under the laws of the State of Delaware.

Guaranty Agreement

"Guaranty Agreement" is the agreement in substantially the form attached as Exhibit L executed by the Guarantor.

Hazardous Substance

"Hazardous Substance" shall mean any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.(CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, state or local environmental laws

currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyls ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

Hazardous Waste

"Hazardous Waste" means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the U.S. Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

Maximum Turnaround Time

"Maximum Turnaround Time" shall be fifteen (15) minutes from the scale house, to unload and deposit Solid Waste and exit the Facility.

Member Agency/Agencies

"Member Agencies" means any one and/or all of the public entities listed in Exhibit A of the Joint Exercise of Powers Agreement South Bayside Waste Management Authority.

Organic Materials

"Organic Materials" means those discarded Commercial Materials that will decompose and/or putrefy and that the Member Agencies' Municipal Codes permit, direct, and/or require Generators to separate from Solid Waste and Recyclable Materials for Collection in specially designated Containers for Organic materials Collection. Organic materials include Yard Trimmings, Food Scrap, and Post-Consumer Food Scraps such as, but are not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small wood pieces, other types of organic yard waste, vegetable waste, fruit waste, grain waste, dairy waste, meat waste, fish waste, paper contaminated with Food Scrap, pieces of unpainted and untreated wood, and pieces of unpainted and untreated wallboard. No discarded Material shall be considered to be Organic Materials, however, unless such material is separated from Solid Waste and Recyclable Material.

Original Agreement

"Original Agreement" means the agreement dated September 9, 1999 and effective March 1, 2000.

Parties

"Parties" means Contractor and SBWMA.

Pass-Through Cost

"Pass-Through Cost" means a cost to which no element of overhead, administrative expense, profit, or other cost is added nor with respect to which any other amount is credited, such that the specific amount of such cost is included without modification in the calculations or reports to which such costs pertain as described in Exhibit H. (e.g., waste characterization studies, payments for diverting negative value recyclable materials, disposal expense, franchise fees and SBWMA contract costs).

Person

"Person" means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of San Mateo, towns, cities, and special purpose districts.

Plant Materials

"Plant Materials" means a subset of Recyclable Materials consisting of grass cuttings, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees (not more than six [6] inches in diameter), and similar organic materials generated at residential commercial, industrial and institutional properties within the Service Area, separated and set out for Collection, processing, and Recycling. Plant Materials does not include materials not normally produced from gardens or landscapes, such as, but not limited to, palm fronds, brick, rock, gravel, large quantities of dirt, concrete, sod, non-organic wastes and oil. Diseased plants and trees are also excluded from Plant Materials.

Plant Materials Processing Facility

"Plant Materials Processing Facility" means a permitted Facility where Plant Materials are sorted, ground, mulched or separated for the purposes of land application, alternate daily cover, reuse, or composting, so long as that purpose complies with the Act.

Premises

"Premises" means any land, or building in the Service Area where Solid Waste is generated or accumulated.

Purchase Agreement

Agreement between the SBWMA and Contractor for the purchase of the San Carlos Transfer Station and San Mateo Recyclery.

Rate Year

"Rate Year" means the twelve-month period, commencing January 1 and concluding December 31 of the same year, for which Contractor compensation is calculated.

Recyclable Materials

"Recyclable Materials" means discarded materials that are separated from Solid Waste for the purpose of processing, re-manufacture or reuse.

Recyclery

"Recyclery" means the Material Recovery Facility operated by Contractor pursuant to this Agreement for the purposes of processing Solid Waste for Recyclable Materials.

Recycling

"Recycling" means the process of separating for Collection, Collecting, treating and/or reconstituting Recyclable Materials which would otherwise be discarded and returning them to the economy in the form of raw materials for new, reused, or reconstituted products or reuse. The Collection, transportation or Disposal of Solid Waste not intended for, or capable of, reuse is not Recycling.

Refuse

"Refuse" means putrescible and non-putrescible Solid Waste or debris, except sewage, whether combustible or non-combustible which does not include uncontaminated Recyclable Materials or Plant Materials.

Related Party Entity

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

Revenue Requirement

"Revenue Requirement" means the amount of revenue required to cover the annual costs of operating and managing the Facilities and includes: compensation to the Contractor for operating the Facilities; the franchise fee due the City of San Carlos; compensation to the SBWMA for management of the facilities and agreements; and compensation to the SBWMA to cover the amounts in the order set forth in the Indenture of Trust to the South Bayside Waste Management Authority Solid Waste System Revenue Bonds, Series 2000.

Service Area

"Service Area" means that territory within, and, if applicable, outside the SBWMA's Member Agency's boundaries with respect to which the SBWMA Member Agency exercises Franchising authority for the collection of Solid Waste.

SBWMA Service Area

“SBWMA Service Area” means all of the geographic area within the boundaries of the Member Agencies as they are currently drawn or as they may be amended in the future due to annexations or the addition of new Member Agencies.

Solid Waste

“Solid Waste” means and includes all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, rubbish, ashes, industrial wastes, demolition and construction wastes, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes, as defined in California Public Resources Code §40191, as that section may be amended from time to time. For the purposes of this Agreement, “Solid Waste” does not include abandoned vehicles and parts thereof, Hazardous Waste or low-level radioactive waste, medical waste, Recyclable Materials, or Plant Materials.

The SBTSA

“The SBTSA” means the public entity formed pursuant to that certain agreement entered into in 1981 and entitled “Joint Exercise of Powers Agreement - South Bayside Transfer Station” by and between the County of San Mateo, the West Bay Sanitary District (formerly known as the Menlo Park Sanitary District), and the Cities of Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, and San Mateo, California.

Source Separation

“Source Separation” means the segregation into separate containers by the Waste Generator of individual components of material which otherwise would become Solid Waste, , such as Recyclable Materials ,Plant Materials or Organic Materials for the sole purpose of reuse, Recyclable Materials, or composting.

Term

“Term” means the period of time specified in Section 2.02.

Transfer Station

“Transfer Station” means a Facility used for primarily the purpose of transferring Solid Waste from collection vehicles to transfer vehicles to more efficiently transport said Solid Waste to its ultimate Disposal Site and at which Recyclable Materials may be recovered from the Solid Waste Stream and diverted from landfill disposal. For the purposes of this Agreement, the San Carlos Transfer Station, located at 225 Shoreway Road, owned by SBWMA and operated by BFI, shall be the designated Transfer Station.

Exhibit B

Description of Material Processing Operations

Exhibit C

Hazardous Waste Exclusion Program Description

Exhibit D

List of SBWMA Provided Equipment

Exhibit E

Minimum Number and Composition of
Personnel Required by the Agreement

Exhibit F

Weighing Standards and Procedures

Exhibit G

Recyclable Materials Marketing Plan

Exhibit H

Contractor Compensation

Exhibit H-1

Diversion Program Performance Incentive

Exhibit H-2
1999 Recyclable Material Prices

Exhibit I
Maintenance Requirements

The frequency of facility inspections and routine maintenance for the Transfer Station, Recyclery and Maintenance facility shall be performed in accordance with the attached list that details the frequency with which certain service are performed. Repairs, as identified during the monthly facility inspections, shall be corrected as immediately as possible by either facility staff or by a qualified subcontractor.

Copies of the monthly facility inspection forms are also attached. These forms shall be used by the facility managers to document the completion of the monthly facility inspections.

Prior to performing service of any type, all subcontractors are required to provide a certificate of insurance that meets or exceeds _____ 's required liability insurance coverage.

The facility managers shall continually view, aside from the monthly inspections, the entire facility in order to identify deficiencies and maintain a professional looking work site.

Exhibit J

Initial Rates

Exhibit K

Form of Faithful Performance Bond

CONTRACTOR'S FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____, a California _____, as PRINCIPAL, and _____, a Corporation organized and doing business by virtue of the laws of the State of California, and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as SURETY, are held and firmly bound to the Agency, hereinafter called OBLIGEE, in the penal sum of Two Million and No/100 Dollars (\$2,000,000) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above bounden PRINCIPAL has entered into a contract, entitled "OPERATION OF THE _____ TRANSFER STATION AND RECYCLERY" with the Agency, to do and perform the following work, to wit: Collect Recyclable materials generated within the Agency, in accordance with the contract.

NOW, THEREFORE, if the above bounden PRINCIPAL shall well and truly perform, or cause to be performed each and all of the requirements and obligations of said contract to be performed by said PRINCIPAL, as in said contract set forth, then this BOND shall be null and void; otherwise it will remain in full force and effect.

And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

PROVIDED FURTHER, the original term of this bond is _____ to _____. Renewal of this bond for any additional periods shall be at the sole option of the Surety. Non-renewal of the bond by the Surety shall not constitute any right or claim against the bond by the Obligee.

The bond in all terms, conditions and limitations is acknowledged and accepted

by: _____

By: _____

Name/Title: _____

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this _____ DAY OF _____, _____.

a California Corporation

By: _____

(PRINCIPAL)

(SEAL)

SURETY

By: _____

(ATTORNEY IN FACT)

(SEAL)

Exhibit L

Performance Guarantee

PERFORMANCE GUARANTY

Guaranty

THIS GUARANTY (the "Guaranty") is given as of the ____ day of ____, 2000.

THIS GUARANTY is made with reference to the following facts and circumstances:

A. _____, hereinafter ("Contractor") is a corporation organized under the laws of the State of California, all of the issued and outstanding stock of which is owned by _____, which is owned by _____ (Guarantor). Guarantor owns all of the issued and outstanding stock of _____.

B. Contractor and the _____ have negotiated an Agreement for Collection, Processing, and Disposal of Solid Waste dated as of _____, (hereinafter "Agreement"). A copy of this Agreement is attached hereto.

C. It is a requirement of the Agreement, and a condition to the _____ entering into the Agreement, that Guarantor guaranty Contractor's performance of the Agreement.

D. Guarantor is providing this Guaranty to induce the _____ to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. Guaranty of the Agreement. Guarantor hereby irrevocably and unconditionally guarantees to the _____ the complete and timely performance, satisfaction and observation by Contractor of each and every term and condition of the Agreement which Contractor is required to perform, satisfy or observe. In the event that Contractor fails to perform, satisfy or observe any of the terms and conditions of the Agreement, Guarantor will promptly and fully perform, satisfy or observe them in the place of Contractor or cause them to be performed, satisfied or observed. Guarantor hereby guarantees payment to the _____ of any damages, costs or expenses which might become recoverable by the _____ from Contractor due to its breach of the Agreement.

2. Guarantor's Obligations Absolute. The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited, and with respect to any payment obligation of Contractor under the Agreement, shall constitute a guarantee of payment and not of collection, and are not conditional upon

the genuineness, validity, regularity or enforceability of the Agreement. In any action brought against the Guarantor to enforce, or for damages for breach of, its obligations hereunder, the Guarantor shall be entitled to all defenses, if any, that would be available to Contractor in an action to enforce, or for damages for breach of, the Agreement (other than discharge of, or stay of proceedings to enforce, obligations under the Agreement under bankruptcy law).

3. Waivers. Except as provided herein the Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under it for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of Contractor; (2) the actual or purported rejection by a trustee in bankruptcy of the Agreement, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (3) any waiver with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of the _____'s rights or remedies against Contractor; or (4) any merger or consolidation of Contractor with any other corporation, or any sale, lease or transfer of any or all the assets of Contractor. Without limiting the generality of the foregoing, Guarantor hereby waives the rights and benefits under California Civil Code §2819.

The Guarantor hereby waives any and all benefits and defenses under California Civil Code §2846, 2849, and 2850, including without limitation, the right to require the _____ to (a) proceed against Contractor, (b) proceed against or exhaust any security or collateral the _____ may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agrees that the _____ may proceed against Guarantor for the obligations guaranteed herein without taking any action against Contractor or any other guarantor or pledgor and without proceeding against or exhausting any security or collateral the _____ may hold now or hereafter hold. _____ may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against Contractor or any other guarantor or pledgor without impairing the _____'s rights and remedies in enforcing this Guaranty.

The Guarantor hereby waives and agrees to waive at any future time at the request of the _____ to the extent now or then permitted by applicable law, any and all rights which the Guarantor may have or which at any time hereafter may be conferred upon it, by statute, regulation or otherwise, to avoid any of its obligations under, or to terminate, cancel, quit or surrender this Guaranty. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not affect the liability of the Guarantor hereunder: (a) at any time or from time to time, without notice the Guarantor, performance or compliance herewith is waived; (b) any other of any provision of its Agreement indemnification with respect to Contractor's obligations under the Agreement or any security therefore is released or exchanged in whole or in part or otherwise dealt with; or (c)

any assignment of the Agreement is effected which does not require the _ 's approval.

The Guarantor hereby expressly waives, diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the _____ as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor or Contractor prior to such avoidance or recovery, and (b) payment in full of any obligations then outstanding.

4. Term. This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed or otherwise discharged and Guarantor shall remain fully responsible under this Guaranty without regard to the acceptance by the _____ of any performance bond or other collateral to assure the performance of Contractor's obligations under the Agreement. Guarantor shall not be released of its obligations hereunder so long as there is any claim by the _____ against Contractor arising out of the Agreement based on Contractor's failure to perform which has not been settled or discharged.

5. No Waivers. No delay on the part of the _____ in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of the _____ to take other or further action without notice or demand. No modification or waiver of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by the _____ and by Guarantor, nor shall any waiver be effective except in the specific instance or matter for which it is given.

6. Attorney's Fees. In addition to the amounts guaranteed under this Guaranty, Guarantor agrees in the event of Guaranty's breach of its obligations including to pay reasonable attorney's fees and all other reasonable costs and expenses incurred by the _____ in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder.

7. Governing Law: _____. This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of California and shall be governed and construed in accordance with the laws of California without regard

to its conflicts of laws, rules for all purposes including, but not limited to, matters of construction, validity and performance. Guarantor agrees that any action brought by the _____ to enforce this Guaranty may be brought in any court of the State of California and Guarantor consents to personal _____ over it by such courts. Guarantor appoints the following person as its agents for service of process in California:

With a copy by certified mail to:

8. Severability. If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will have not effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.

9. Binding On Successors. This Guaranty shall inure to the benefit of the and it's successors and shall be binding upon Guarantor and its successors, including transferee(s) of substantially all of its assets and its shareholder(s) in the event of its dissolution or insolvency.

10. Authority. Guarantor represents and warrants that it has the corporate power and the authority to give this Guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Article of Incorporation and By-Laws, and that the person signing this Guaranty on its behalf has the authority to do so.

11. Notices. Notice shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

To the: Chair
City of San Carlos
600 Elm Street
San Carlos, CA

with a copy to the Counsel at the same address.

To the Guarantor:

By: _____
(title)

Exhibit M

Notary Certification

NOTARY CERTIFICATION

STATE OF CALIFORNIA)

COUNTY OF _____) ss:

On _____, _____, before me, the undersigned, a Notary Public in and for the State of California, personally appeared _____, known to me to be the _____ of the Contractor that executed the within instrument on behalf of the Contractor therein named, and acknowledged to me that such Contractor executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of _____ this _____ day of _____, _____.

Notary Public

My Commission Expires:
