

# **EXHIBIT A**

**AMENDED AND RESTATED  
FRANCHISE AGREEMENT**

**BETWEEN**

**COUNTY OF SAN MATEO**

**AND**

**RECOLOGY SAN MATEO COUNTY**

**FOR**

**RECYCLABLE MATERIALS,  
ORGANIC MATERIALS, AND SOLID WASTE  
COLLECTION SERVICES**

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

7 THIS AMENDED AND RESTATED AGREEMENT ("Agreement") is made as of this \_\_\_\_  
8 day of \_\_\_\_\_, 2019, by and between the **County of San Mateo**, a political subdivision of  
9 the State of California (hereafter, "Agency" or "County", and RECOLOGY SAN MATEO COUNTY,  
10 a California corporation ("Contractor").

11 **Exhibit and Attachments**

12 The following exhibits and attachments are part of this Agreement and incorporated into this  
13 Agreement by this reference:

- 14 Attachments: A-S - Compensation, Specifications, Requirements  
15 Attachment T - County Specific Requirements  
16

17 **RECITALS**

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18 This Agreement is entered into with reference to the following facts and circumstances:

19  
20 **WHEREAS**; the State of California has, through enactment of the California Integrated Waste  
21 Management Act of 1989 ("Act"), determined each of the following:

- 22 A. That management of solid waste is a shared responsibility of the State and local  
23 governments;
- 24 B. That it is in the public interest for local governments to be authorized and required to  
25 provide adequate solid waste handling services;
- 26 C. That the amount of solid waste generated in California, coupled with diminishing landfill  
27 space, potential adverse environmental impacts from landfilling solid waste, and the need  
28 to conserve natural resources have created an urgent need for State and local agencies  
29 to enact and implement an aggressive integrated waste management program; and,

30 **WHEREAS**; the State of California, through the Act, has directed the responsible State agency  
31 and all local agencies to maximize the use of feasible waste reduction, recycling, and composting  
32 options in order to reduce the amount of solid waste that must be disposed of in landfills; and, the  
33 State of California through AB 341, AB 1826, SB 1383, and other legislation have established  
34 additional requirements for increased diversion of recyclable materials and organic materials from  
35 landfill disposal; and,

36 **WHEREAS**, pursuant to Section 40059 of the California Public Resources Code, County may  
37 contract with independent contractors for the furnishing of such services to or for County; and

38 **WHEREAS**; the Agency is a member of the South Bayside Waste Management Authority  
39 ("Authority" or "SBWMA"), established pursuant to the California Joint Exercise of Powers Act. In  
40 November 2007, the SBWMA, acting on behalf of Agency and its other members, issued a  
41 Request for Proposals to provide collection of solid waste, recyclable materials, and organic  
42 materials and related services to Agency and other members of SBWMA; and,

43 **WHEREAS**; on March 11, 2008, Contractor submitted a proposal to provide these services, which  
44 was evaluated by the SBWMA; and, on the basis of that evaluation, the SBWMA recommended  
45 that Agency enter into an agreement with Contractor; and,

46 **WHEREAS**; in 2009, the Agency independently evaluated Contractor's proposal and determined  
47 that Contractor had proposed to provide solid waste handling services including collection of  
48 recyclable and organic materials in a manner and on terms which were in the best interests of  
49 Agency, its residents and businesses, taking into account the qualifications and experience of  
50 Contractor and the cost of providing such services; and,

51 **WHEREAS**; on April 28, 2016, the SBWMA's Board of Directors directed SBWMA staff to  
52 negotiate, acting on behalf of Agency and its other members, with Contractor an extension of the  
53 2009 Franchise Agreement, and to do so without a competitive bidding for the collection services;  
54 and,

55 **WHEREAS**; the SBWMA and Contractor negotiated a Model Amended and Restated Franchise  
56 Agreement that was intended to serve as a model agreement for each Member Agency to use as  
57 a basis for its negotiations with Contractor;

58 **WHEREAS**; the SBWMA presented the Model Amended and Restated Franchise Agreement to  
59 the SBWMA's Board of Directors on June 22, 2017; and, the Board took action recommending  
60 that each Member Agency negotiate an Amended and Restated Franchise Agreement using the  
61 Model Amended and Restated Franchise Agreement as the basis for such negotiations; and,

62 **WHEREAS**; the County negotiated this Amended and Restated Franchise Agreement with a term  
63 of fifteen (15) years from January 1, 2021 through December 31, 2035, and, on June 4, 2019,  
64 authorized the County Manager to execute this Agreement; and, **NOW, THEREFORE**, in  
65 consideration of the mutual promises contained in this Agreement, and for other good and  
66 valuable consideration, Agency and Contractor agree as follows:

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## **ARTICLE 1 DEFINITIONS**

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70 **1.01 DEFINITIONS**

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

73 **1.02 STATUTORY DEFINITIONS**

74 Unless a term is otherwise defined in this Agreement, terms used in this Agreement shall  
75 have the same meaning as the definitions of those terms contained in the Act. In the event  
76 of a conflict between the definition of a term in the Act and in this Agreement, the definition  
77 in the Agreement shall prevail.

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79 **ARTICLE 2**  
80 **REPRESENTATION AND WARRANTIES OF**  
81 **CONTRACTOR**

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82 Contractor represents and warrants, as of the date of its execution of this Agreement, the  
83 following:

84 **2.01 CORPORATE STATUS**

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

87 **2.02 CORPORATE AUTHORIZATION**

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

92 **2.03 AGREEMENT DULY EXECUTED**

93 The persons signing this Agreement on behalf of Contractor have been authorized to do  
94 so and the Secretary's Certificate in Attachment R confirms this. Upon the Effective Date,  
95 this Agreement will constitute a legal, valid and binding obligation of Contractor.

96 **2.04 NO CONFLICT WITH APPLICABLE LAW OR OTHER DOCUMENTS**

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

103 **2.05 NO LITIGATION**

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

111 **2.06 FINANCIAL CONDITION**

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

118 **2.07 ABILITY TO PERFORM**

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

121 **2.08 CONTRACTOR'S INVESTIGATION**

122 Contractor has made an independent investigation and analysis, the results of which are  
123 satisfactory to Contractor, of the conditions and circumstances surrounding the  
124 Agreement, its content and preparation, and the work to be performed by Contractor under  
125 the Agreement. The Agreement accurately and fairly represents the intentions of  
126 Contractor, and Contractor enters into this Agreement on the basis of that independent  
127 investigation and analysis.

128 **2.09 STATEMENTS AND INFORMATION IN PROPOSAL**

129 The Contractor's "Proposal to Amend and Restate the Franchise Agreement for  
130 Recyclables, Organics, and Solid Waste Collection Services", dated January 10, 2017,  
131 and supplementary information submitted thereafter by the Contractor to the SBWMA  
132 during the SBWMA's negotiation of a Model Amended and Restated Agreement do not  
133 contain any untrue statement of a material fact nor omit to state a material fact necessary  
134 in order to make the statements made, in light of the circumstances in which they were  
135 made, not misleading.

136 **2.10 IRAN CONTRACTING CERTIFICATION**

137 Contractor hereby certifies that Contractor is not identified on a list created by the  
138 California Department of General Services ("DGS") pursuant to California Public Contract  
139 Code Section 2203 of the Iran Contracting Act of 2010 (the "ICA") as a Person engaging  
140 in investment activities in Iran described in Section 2202.5(a) of the ICA, or as a person  
141 described in Section 2202.5(b) of the ICA, as applicable. Contractor hereby certifies that  
142 Contractor is not a financial institution that extends twenty million dollars (\$20,000,000) or  
143 more in credit to another Person, for forty-five (45) Days or more, if that Person will use  
144 the credit to provide goods or services in the energy sector in Iran and is identified on the  
145 DGS list made pursuant to Section 2203(b).

146 As used in this Section 2.10, "Person" shall mean a "Person" as defined in California Public  
147 Contract Code Section 2202(e).

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## ARTICLE 3 TERM OF AGREEMENT

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151 **3.01 EFFECTIVE DATE AND COMMENCEMENT DATE**

152 This Agreement shall become binding and enforceable as of the date (the "Effective Date")  
153 that two-thirds (2/3) of SBWMA's Member Agencies have approved and signed  
154 agreements with Contractor substantially similar to this one, as required by Section 3.04.B,  
155 and all other conditions set forth in Sections 3.04.A and 3.04.B have been satisfied or  
156 waived.

157 Contractor's obligation to Collect Solid Waste, Targeted Recyclable Materials, and  
158 Organic Materials under the terms and conditions of this Agreement shall begin on  
159 January 1, 2021 at 12:01 a.m. (the "Commencement Date") and shall continue for the  
160 remainder of the Term.

161 Between the Effective Date and Commencement Date, Contractor shall perform all  
162 activities necessary to prepare itself to start providing services required by this Agreement  
163 on the Commencement Date.

164 **3.02 TERM**

165 Notwithstanding any other provision of this Agreement to the contrary, the 2009 Franchise  
166 Agreement, this amendment and restatement thereof, and any other amendments  
167 mutually agreed by the Parties, shall together constitute a single agreement between the  
168 Parties with a single unbroken term (the "Term").

169 The original Term, set forth in the 2009 Franchise Agreement, began on January 1, 2011  
170 with an initial duration of ten (10) years, ending on December 31, 2020. This amendment  
171 and restatement extends the Term for an additional fifteen (15) years, for a total Term of  
172 twenty-five (25) years. Upon the Effective Date, the Term shall be extended until midnight  
173 on December 31, 2035, unless earlier terminated, or extended as provided in Section 3.03.

174 Except as provided below in this Section 3.02, the Parties intend for the 2009 Franchise  
175 Agreement to govern the rights and obligations of the Parties through December 31, 2020,  
176 and for this Agreement to govern the rights and obligations of the Parties from and after  
177 January 1, 2021. Thus, to the extent this Agreement amends the 2009 Franchise  
178 Agreement, the amendments shall not take effect until January 1, 2021, and shall not be  
179 retroactive.

180 As an exception to the foregoing, upon the Effective Date, (i) the 2009 Franchise  
181 Agreement shall be amended to extend the Term to 2035 as provided above, and (ii) the  
182 2009 Franchise Agreement shall be amended to the extent necessary to give effect to  
183 Section 11.02.F of this Agreement.

184 **3.03 EXTENSION OF TERM**

185 A. **Voluntary Extension.** At Agency's discretion, but subject to Contractor's consent,  
186 this Agreement may be extended without amendment for a period of no less than one  
187 (1) and no more than five (5) additional years for a total Term that does not exceed  
188 thirty (30) years or extend beyond December 31, 2040. If Agency desires to extend  
189 the Agreement, Agency shall provide the Contractor with written notice of its intention  
190 to extend the Agreement on or before December 31, 2032. Such notice by Agency  
191 shall specify the duration of the extension. Contractor shall provide written notice to

192 Agency and SBWMA on or before January 31, 2033 whether it consents to the  
193 extension.

194 B. **Mandated Extension.** If the Agency and Contractor do not mutually agree to extend  
195 the Term of the Agreement, the Agency shall have the sole discretion to extend the  
196 Term for a period of twelve (12) months or less by providing the Contractor written  
197 notice of its election on or before December 31, 2034, provided, however, that the  
198 Term shall only be so extended if eight (8) of the SBWMA's Member Agencies,  
199 collectively representing at two thirds (2/3) of the Member Agencies, make such an  
200 election for an identical extension period by December 31, 2034. Notwithstanding  
201 the foregoing, if Contractor demonstrates based on the audited financial statements  
202 for the Agency's operations that it experienced a net loss as shown on the Statement  
203 of Income and Stockholder's Investment reduced by the amount of general and  
204 administrative expenses greater than 9.5% of Total Operating Revenue (if general  
205 and administrative expenses are greater than 9.5% of Total Operating Revenue) for  
206 its fiscal year ending September 30, 2034, then Agency and Contractor shall meet  
207 and confer to discuss the extension and Contractor's Compensation during the period  
208 of such extension.

### 209 3.04 CONDITIONS TO EFFECTIVENESS OF AGREEMENT

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

213 1. **Accuracy of Representations.** The representations and warranties made by  
214 Contractor in Article 2 shall be true and correct on and as of the Effective Date.

215 2. **Absence of Litigation.** There shall be no litigation pending on the Effective Date  
216 in any court challenging the execution of this Agreement or seeking to restrain  
217 or enjoin its performance.

218 3. **Effectiveness of Agency's Approval.** The approval of this Agreement by Agency  
219 shall have become effective, pursuant to California law, on or before the Effective  
220 Date.

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

224 1. **Absence of Litigation.** There shall be no litigation pending on the Effective Date  
225 in any court challenging the execution of this Agreement, or seeking to enjoin its  
226 performance.

227 2. **Effectiveness of Agency's Approval.** The approval of this Agreement by Agency  
228 shall have become effective, pursuant to California law.

229 3. **Approvals by Other Member Agencies.** On or before June 30, 2018, a minimum  
230 of eight (8) of the governing bodies of the SBWMA's Member Agencies,  
231 collectively representing at least two thirds (2/3) of the Member Agencies, have  
232 approved and signed agreements with Contractor substantially similar to this  
233 one.

234 C. **Notice.** If either Party wishes to assert that a condition for its benefit has not been  
235 satisfied and has not been waived, it must deliver written notice to that effect to the

236 other party on or before the Effective Date. If no such notice is received, the  
237 Agreement will become effective on the Effective Date.

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

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## ARTICLE 4 SCOPE OF AGREEMENT

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244 **4.01 SCOPE OF AGREEMENT**

245 A. Through this Agreement, Agency grants to Contractor an exclusive franchise, except  
246 as provided in Section 4.01.B and in Section 4.02, to Collect the following materials  
247 in the Service Area:

- 248 1. Solid Waste generated at Residential Premises and Commercial Premises; and,  
249 2. Source Separated Targeted Recyclable Materials and Source Separated Organic  
250 Materials generated at Residential Premises.

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

- 253 1. Source Separated Targeted Recyclable Materials and Source Separated Organic  
254 Materials generated at Commercial Premises;  
255 2. Major Appliances and Specialty Recyclable or Reusable Materials generated at  
256 Residential Premises;  
257 3. Non-putrescible wastes placed in Drop Boxes; and  
258 4. Solid Waste generated at Agency Facilities.  
259

260 **4.02 LIMITATIONS ON SCOPE**

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

- 264 A. Solid Waste, Targeted Recyclable Materials, and Organic Materials which are  
265 transported personally by the Owner or Occupant of the Premises at which they are  
266 generated (or by his or her employees) to a processing or Disposal facility;
- 267 B. Targeted Recyclable Materials and Organic Materials which are Source Separated  
268 by the Generator and donated to youth, civic, or charitable organizations;
- 269 C. Recyclable beverage containers delivered for Recycling under the California  
270 Beverage Container Recycling Litter Reduction Act, Section 14500 *et seq.* California  
271 Public Resources Code;
- 272 D. Animal waste and remains from slaughterhouse or butcher shops, grease waste, and  
273 used cooking oil;
- 274 E. By-products of sewage treatment including sludge, sludge ash, grit, and screenings;
- 275 F. Hazardous Waste, Household Hazardous Waste, and Infectious Waste;
- 276 G. Source Separated E-Scrap and Source Separated Universal Waste;
- 277 H. Organic Materials composted at Residential and Commercial Premises;

- 278 I. Materials generated by State facilities (including public schools), provided that the  
279 Generator has arranged services with other Persons or has arranged services with  
280 the Contractor through a separate agreement;
- 281 J. The incidental removal of Solid Waste, Recyclable Materials, or Organic Materials  
282 when the primary service performed is either of the following:
- 283 1. Landscaping, gardening, weed or refuse abatement, yard clean-up, or grading  
284 of a lot; or,
- 285 2. Construction, remodeling, or demolition of a building or structure.
- 286 K. Solid Waste generated at Residential Premises collected by others on an infrequent,  
287 unscheduled, "on-call" basis (other than On-Call Bulky Item Collection Service  
288 scheduled by Customers per Section 5.05).

289 **4.03 GEOGRAPHIC LIMITS ON CONTRACTOR'S OPERATIONS**

290 Contractor was established specifically to perform services for some or all of the SBWMA  
291 Member Agencies. The methodology established in this Agreement, and in those  
292 agreements between Contractor and other Member Agencies, for adjusting Contractor's  
293 Compensation annually and allocating it among Member Agencies depends on accurate  
294 financial and accounting records. For that reason, Contractor will limit its operations to  
295 only SBWMA Member Agencies so that its annual financial reports will contain only costs  
296 and revenues associated with service to those Member Agencies.

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

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## ARTICLE 5 COLLECTION SERVICES

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304 **5.01 GENERAL**

- 305 A. The work to be performed and services to be provided by Contractor include the  
306 furnishing of all labor, supervision, equipment, materials, supplies, and all other items  
307 necessary to perform the work and provide the services described, at the times and  
308 in the manner required by this Agreement. The enumeration of, and specification of  
309 requirements for, particular items of labor, supervision, equipment, materials, or  
310 supplies shall not relieve Contractor of the duty to furnish all others, as may be  
311 required, whether enumerated elsewhere in the Agreement or not.
- 312 B. Contractor shall perform the work and provide the services pursuant to this  
313 Agreement in a thorough and professional manner so that the residents and  
314 businesses within the Agency are provided reliable, courteous, and high-quality  
315 service at all times. The enumeration of, and specification of requirements for,  
316 particular aspects of service quality shall not relieve Contractor of the duty of  
317 accomplishing all other aspects in the manner provided in this Article, whether such  
318 other aspects are enumerated elsewhere in the Agreement or not.
- 319 C. Contractor acknowledges that the Agency is committed to diverting materials from  
320 Disposal through the implementation of source reduction, donation, reuse, Recycling,  
321 and composting programs and that the Agency may, at some time in the future,  
322 implement, in accordance with Section 15.12, new programs that may impact the  
323 overall quantity or composition of Solid Waste, Targeted Recyclable Materials, and/or  
324 Organic Materials to be Collected by Contractor.

325 **5.02 SOLID WASTE COLLECTION**

- 326 A. **Single-Family Dwelling (SFD)**
- 327 1. General. Contractor shall Collect Solid Waste from SFD once per week from  
328 Contractor-provided Carts, and shall bill Customers for the service at Agency-set  
329 Rates or as specified in Agency ordinance code. Contractor shall provide extra  
330 Collection pick-ups of Containers within one (1) Business Day of Customer's  
331 request and shall bill Customer at Agency-approved Pricing. Compensation to  
332 Contractor for extra pick-ups shall be at the Charges specified in Attachment Q.
- 333 2. Collection Location. Contractor shall Collect Carts Curbside unless: (i) the  
334 Occupant is provided a Special Handling Service exemption; or, (ii) the Customer  
335 has requested Backyard Collection Service and has agreed to pay for Backyard  
336 Collection Service at the Agency-approved Pricing. Contractor shall bill  
337 Customers with Backyard Collection Service at Agency-approved Pricing.  
338 Compensation to Contractor for these services shall be at the Charges specified  
339 in Attachment Q. For Customers with Special Handling Service and Backyard  
340 Collection Service, Contractor shall Collect Carts from and return Carts to the  
341 alternative service location (such as the side yard or backyard) specified by the  
342 Customer. Contractor shall make reasonable accommodations with regard to  
343 provision and servicing of Containers (e.g., Container size and type, placement  
344 of Containers for Collection, etc.) at no additional cost to Customers who meet  
345 the Agency's Special Handling Service criteria.

346 3. Informing Customer of Collection Location Options. Contractor will notify all  
347 Residential Customers annually of the Special Handling Service and Backyard  
348 Collection Service options and submit, for approval, a draft notification to Agency  
349 thirty (30) Days prior to the anticipated date of distribution to Customers. New  
350 service recipients shall be notified upon signing up for Collection service of the  
351 Special Handling Service and Backyard Collection Service options.

352 4. Special Handling Service Eligibility. Customers desiring Special Handling  
353 Service will be required to submit an application, in a form approved by Agency.  
354 Contractor shall review applications to determine whether the Customer meets  
355 Agency's eligibility criteria and shall provide a written response within five (5)  
356 Business Days after receipt of the application. Unless otherwise directed by  
357 Agency, Customers are eligible if they provide (i) evidence of their "handicap  
358 status" by the California Department of Motor Vehicles, or (ii) evidence that no  
359 Occupant of the Residential Premises is physically able to place Carts Curbside  
360 for Collection. On an annual basis, Contractor may request reverification of  
361 Special Handling Service eligibility from Customer.

362 **B. Multi-Family Dwellings**

363 1. General. Contractor shall Collect Solid Waste from Multi-Family Dwellings as  
364 frequently as scheduled by Customer, but not less than once per week, and shall  
365 bill Customers at Agency-set Rates, or as specified in Agency ordinance code.  
366 Contractor shall provide extra Collection pick-ups of Containers within one (1)  
367 Business Day of Customer's request and shall bill Customers at Agency-  
368 approved Pricing. Compensation to Contractor for extra pick-ups shall be at the  
369 Charges specified in Attachment Q. Customers must subscribe to a minimum  
370 service level of three (3) times per week Collection in order to be eligible for  
371 Collection on Saturday and/or Sunday.

372 2. Containers. Contractor shall allow Multi-Family Dwelling Customers to use Carts  
373 or Bins for Solid Waste Collection that are shared by the Occupants of the  
374 Premises. Contractor shall provide one (1) or more Cart(s) or Bin(s) to such  
375 Customers as requested by Customer, provided that no less than ninety-six (96)  
376 gallons per week of Container capacity are provided for every five (5) dwelling  
377 units in the Multi-Family Residential Complex or as specified in County ordinance  
378 code, whichever is greater.

379 3. General Service Conditions. The standard Rates for Collection services assume  
380 that Containers are accessible by Contractor's vehicles and personnel.

381 If the Container is wheeled and is three (3) cubic yards or less in capacity and is  
382 not a Compactor, the standard Rate includes Collection from the Container  
383 located Curbside or in enclosures or on private or public property at a distance  
384 less than or equal to fifty (50) feet of access by Contractor's vehicle, provided  
385 that access to the Container is paved and the slope is less than seven percent  
386 (7%). The distance to the Container shall be measured in one of the following  
387 ways depending on the conditions of the Premises: (i) from the face of the curb  
388 to the nearest edge of the Container, (ii) if there is no curb, from the edge of the  
389 roadway nearest the nearest edge of the Container, or (iii) from the lifting  
390 mechanism on the Collection vehicle if the vehicle can be driven on the  
391 Premises.

392 If the Container does not have wheels, or is greater than three (3) cubic yards in  
393 capacity, or is a Compactor, the standard Rate includes Collection from a  
394 location accessible by Contractor's vehicle (regardless of the distance from the  
395 curb or roadway), provided that access to the Container is paved and the slope  
396 is less than seven percent (7%). A slope shall be deemed to be seven percent  
397 (7%) or more if the slope measures 7% or more using a slope measurement  
398 device.

399 For each Container that does not meet the above accessibility requirements,  
400 Contractor shall offer Long Distance Service or Container Relocation Service as  
401 described below for Containers that are eligible for such service. If the Container  
402 is not eligible for such service, or the Customer notifies Contractor that it does  
403 not want such service, then Contractor shall not be required to Collect the  
404 Container unless it meets the above accessibility requirements.

405 4. Long Distance Service. For wheeled Containers that are more than fifty (50) feet  
406 from the curb or edge of roadway (using the measurement method described  
407 above), Contractor shall provide Long Distance Service. Long Distance Service  
408 is an Additional Service Contractor shall provide that involves Contractor's route  
409 personnel manually pushing, pulling, or otherwise moving the Container more  
410 than fifty (50) feet to a serviceable location and returning the Container to its  
411 storage location after Collection. The Long Distance Service is a regularly  
412 scheduled service that is performed each day the Contractor provides Collection  
413 service for the Container. Contractor shall charge the Customer for Long  
414 Distance Service at Agency-approved Pricing and compensation to Contractor  
415 shall be at the Charges specified in Attachment Q.

416 5. Container Relocation Service. If a Container is located in an area that is not  
417 serviceable by a regular Collection vehicle, Contractor shall provide Container  
418 Relocation Services. Contractor shall charge the Customer for Container  
419 Relocation Service at Agency-approved Pricing. Compensation to Contractor for  
420 these services shall be at the Charges specified in Attachment Q. Conditions in  
421 which Container Relocation Services may be applicable include: sloped access  
422 with slope greater than or equal to seven percent (7%); subterranean areas that  
423 are inaccessible by a regular Collection vehicle; and gravel areas.

424 Container Relocation Service is an Additional Service provided by Contractor  
425 that involves the Contractor dispatching a secondary vehicle and route personnel  
426 to move the Container with the assistance of the vehicle from an inaccessible  
427 storage location to a serviceable location. In such case, the service also involves  
428 the return of the Container to its storage location, which may be performed  
429 manually by route personnel of the regular Collection vehicle or by using the  
430 secondary vehicle. The Container Relocation Service is a regularly scheduled  
431 service that is performed each day the Contractor provides Collection service for  
432 the Container. If Contractor provides Container Relocation Service for a  
433 Container, it is not entitled to charge for Long Distance Service.

434 6. Determination of Service Needs and Disputes. Whether the Customer receives  
435 Long Distance Service or Container Relocation Service shall be determined by  
436 Contractor in its reasonable discretion based on conditions at the Customer's  
437 site or the need to maintain safety or operational efficiency. In the event of a  
438 dispute between Contractor and a Customer regarding the Long Distance

439 Service, Container Relocation Service, and/or the distance or degree of slope,  
440 Contractor shall provide email notification to Agency and Customer, and Agency  
441 shall work with the Contractor and Customer to resolve the dispute. Agency may  
442 independently measure the slope and/or distance. Agency shall make the final  
443 determination of the service arrangements and whether any Agency-approved  
444 Pricing and related Charges apply.

445 7. Container Collection Location. Contractor shall give special consideration when  
446 determining the Collection location for Multi-Family Residential complexes to  
447 ensure that the flow of traffic is not impeded and that it does not result in aesthetic  
448 degradation of an area. The designated Collection location, if disputed by  
449 Customer or Contractor, shall be determined by the Agency. Additionally, if, in  
450 the Agency's opinion, the location of an existing Collection location is  
451 inappropriate, Agency may require the Customer or Contractor to relocate the  
452 Collection Containers.

453 **C. Commercial Premises**

454 1. General. Contractor shall Collect Solid Waste from Commercial Premises as  
455 frequently as scheduled by the Customer, but not less than once per week, and  
456 shall bill Customers for the service at Agency-set Rates. Contractor shall provide  
457 extra Collection pick-ups of Containers within one (1) Business Day of  
458 Customer's request and shall bill Customer at Agency-approved Pricing.  
459 Compensation to Contractor for these services shall be at the Charges specified  
460 in Attachment Q. Customers must subscribe to a minimum service level of three  
461 (3) times per week Collection in order to be eligible for Collection on Saturday  
462 and/or Sunday.

463 2. Container Service Requirements. Container service requirements described for  
464 Multi-Family Premises in Sections 5.02.B.3 through 5.02.B.7 are applicable for  
465 Commercial Premises.

466 3. Service Methods. Specifically, the Contractor shall offer the following Collection  
467 service methodologies to Commercial Customers:

468 a. Individual Cart or Bin Service. Contractor shall allow each Commercial  
469 Premises to use Carts, Bins, Compactors, or Drop Boxes for Solid  
470 Waste Collection.

471 b. Centralized Cart or Bin Service. Contractor shall allow each  
472 Commercial Premises to use Carts or Bins for Solid Waste Collection  
473 that are shared by the Occupants of two (2) or more adjacent  
474 Commercial Premises. In such case, Contractor shall provide one or  
475 more Carts or Bins as requested by the Customer(s) provided that no  
476 less than ninety-six (96) gallons of Container capacity is provided for  
477 every four (4) Commercial Premises, or as specified in County  
478 ordinance code.

479 c. Drop Boxes and Compactors. Contractor shall allow a Customer to  
480 use a Drop Box or Compactor for Solid Waste Collection to meet the  
481 Customer's Disposal needs. In such case, Contractor shall provide  
482 Customer with a choice of Container capacities ranging from three (3)  
483 to forty (40) cubic yards (or similar sizes). Contractor shall allow  
484 Customers to purchase or lease Compactors through an outside

485 vendor. Regular maintenance of Compactors shall be required by  
486 Customer (or outside vendor) as frequently as needed to keep the  
487 Compactors in good working order and functioning at high compaction  
488 levels.

489 **D. Agency Facilities**

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

494 2. Service Methods. Specifically, the Contractor shall offer the following Collection  
495 service methodologies to Agency Facilities:

496 a. Individual Cart or Bin Service. Contractor shall allow each Agency  
497 Facility to use Carts, Bins, Compactors, or Drop Boxes for Solid Waste  
498 Collection.

499 b. Centralized Cart or Bin Service. Contractor shall allow each Agency  
500 Facility to use Carts or Bins for Solid Waste Collection that are shared  
501 by the Occupants of two or more adjacent Agency Facilities. In such  
502 case, Contractor shall provide one or more Carts or Bins as requested  
503 by the Agency provided that no less than ninety-six (96) gallons of  
504 Container capacity is provided for every four (4) Agency Facilities.

505 c. Drop Boxes and Compactors. Contractor shall allow Agency to use a  
506 Drop Box or Compactor for Solid Waste Collection to meet the  
507 Agency's Disposal needs. In such case, Contractor shall provide  
508 Agency with a choice of Container capacities ranging from three (3) to  
509 forty (40) cubic yards (or similar sizes). Contractor shall allow Agency  
510 to purchase or lease Compactors through an outside vendor. Regular  
511 maintenance of Compactors shall be required by Agency (or outside  
512 vendor) as frequently as needed to keep the Compactors in good  
513 working order and functioning at high compaction levels.

514 3. Solid Waste from Public Street, Parks, and Parking Lot Litter Receptacles.  
515 Contractor shall Collect Solid Waste from public litter receptacles located on  
516 streets and in parking lots, and from public litter receptacles in parks that are  
517 accessible for Curbside Collection as stated in Attachment B. Contractor shall  
518 also Collect Solid Waste that is contained in bags or boxes and placed adjacent  
519 to public litter receptacles. These Collections will be made between one (1) and  
520 seven (7) Days per week, as determined by Agency. Contractor is responsible  
521 for notifying Agency if a public litter receptacle is inoperable within twenty-four  
522 (24) hours of observing or being notified of the defect. A list of public litter  
523 receptacles is included in Attachment B. Agency shall annually be allowed to  
524 increase the number of public litter receptacles provided Collection service by an  
525 additional five percent (5%) of the total number of receptacles in service as of  
526 January 1 of each Rate Year after Rate Year Eleven (2021) without being billed  
527 for such service. The maximum number of public litter receptacles that  
528 Contractor will service without billing Agency shall increase by five percent (5%)  
529 each Rate Year after Rate Year Eleven (2021), even if Agency does not actually  
530 increase the number of receptacles by five percent (5%) in that Rate Year.

- 531 4. Scope of Service Requirements. Contractor shall provide the Agency with the  
532 Collection services described above at the service locations, service levels, and  
533 frequencies identified in Attachment B. Contractor shall provide and maintain  
534 Collection Containers for the Agency's use, with the exception of public litter  
535 receptacles (or public Solid Waste receptacles) and public Targeted Recyclable  
536 Materials receptacles, which shall be provided and maintained by the Agency.  
537 Contractor shall offer the type and size of Collection Containers that Contractor  
538 provides Commercial Customers pursuant to Section 5.02.C.
- 539 5. Tonnage Allocation. Contractor may integrate Collection of Solid Waste,  
540 Targeted Recyclable Materials, and Organic Materials from Agency Facilities  
541 with other Collection services in the Service Area, provided that Contractor  
542 attributes estimated Tonnage Collected from Agency Facilities separately from  
543 other Customers upon the Agency's request.
- 544 6. No Billing for Service. Contractor shall not bill Agency for the services required  
545 by this Section 5.02.D, including Long Distance Service, Container Relocation  
546 Service, and lock/unlock service.

547 **5.03 TARGETED RECYCLABLE MATERIALS COLLECTION**

- 548 A. **General.** Contractor shall Collect Targeted Recyclable Materials from Customers  
549 that have Source Separated the Targeted Recyclable Materials from Solid Waste and  
550 placed these materials in the Customer's Recyclable Materials Collection Container  
551 for Collection by Contractor.

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

562 **B. Single-Family Dwellings**

- 563 1. General. Once per week, Contractor shall Collect Single-Stream Targeted  
564 Recyclable Materials from SFD. Contractor shall provide each SFD Customer  
565 with one (1) Cart for Single-Stream Targeted Recyclable Materials at no  
566 additional charge. Contractor shall provide each Customer with a sixty-four (64)  
567 gallon Cart specified in Attachment D, unless Customer requests an alternative  
568 Cart specified in Attachment D. Customers can request additional Targeted  
569 Recyclable Materials Carts from Contractor for regular weekly Collection  
570 service, and Contractor shall bill Customers at Agency-approved Pricing.  
571 Compensation to Contractor for additional Targeted Recyclable Materials Carts  
572 shall be at the Charges specified in Attachment Q.
- 573 2. Collection Location. For SFD Recyclable Materials Cart Collection, Contractor  
574 shall comply with the same Collection provisions specified for Solid Waste Cart  
575 Collection pursuant to Sections 5.02.A.2, 5.02.A.3, and 5.02.A.4.

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3. Used Motor Oil and Used Motor Oil Filters. Contractor shall Collect Used Motor Oil and Used Motor Oil Filters placed at the Collection location by Customer for Collection in Contractor-provided or Contractor-approved Containers. Contractor shall not be required to Collect more than five (5) gallons of Used Motor Oil per Customer per Collection. Contractor shall provide up to five (5) one-gallon translucent plastic Used Oil jugs with screw-on tops for Used Motor Oil Collection and up to five (5) six (6) mil plastic zip-close type bags for Used Motor Oil Filter Collection to SFD Customers, upon Customer's request, within five (5) Business Days of such request, at no additional cost to Customer. Information in English and Spanish, regarding the Used Motor Oil and Used Motor Oil Filter Collection program and instructions for the use and set out of these materials shall be provided with the Used Motor Oil jugs and Used Motor Oil Filter bags. Diversion of Used Motor Oil shall be calculated with a conversion factor of one (1) gallon of Used Motor Oil equaling seven (7) pounds.
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4. Household Batteries and Cell Phones. Contractor shall Collect from SFD Premises Household Batteries and Cell Phones placed on top of the Solid Waste Cart in Contractor-provided or Customer-provided clear zip-close or tie-close plastic bags clearly marked "Used Batteries and Cell Phones." Contractor shall empty the bag at the point of Collection and leave it to be reused by the Customer by placing it inside the Cart handle. Customers will be notified to place all Household Batteries in a clear zip-close plastic bag; tape the contacts of button cell batteries; and wrap Cell Phones in paper (for protection) prior to placing in the plastic bag. While Customers will be encouraged to follow the participation parameters, Contractor shall be required to Collect if Customers do not follow these instructions.
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5. Collection Day. Contractor shall Collect Targeted Recyclable Materials, Used Motor Oil, Used Motor Oil Filters, Household Batteries, and Cell Phones from SFD on the same day that Solid Waste Collection is provided.

604 **C. Multi-Family Residential Premises**

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1. General. Multi-Family Dwelling Customers that subscribe to Solid Waste Collection service shall be entitled to Single-Stream Targeted Recyclable Materials Collection at no additional charge, and Contractor shall provide the level of service required by Multi-Family Dwelling Customers requesting Recyclable Materials Collection services. Contractor shall provide each Multi-Family Dwelling Customer with Containers for Single-Stream Targeted Recyclable Materials Collection. At a minimum, Contractor shall provide thirty two (32) gallons per week of Container capacity for Single-Stream Targeted Recyclable Materials Collection for every Multi-Family Dwelling at the Premises or as specified in County ordinance code, whichever is greater. Contractor shall provide each Customer with Carts or Bins as specified in Attachment D, as requested by the Customer.

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Contractor shall Collect Single-Stream Targeted Recyclable Materials Generated at Multi-Family Residential Complexes at least once per week or more frequently, up to six (6) times per week, as scheduled by the Customer provided that the Generator has Source Separated the Targeted Recyclable Materials from Solid Waste and placed the materials in the appropriate Contractor-provided Container. Contractor shall Collect Single-Stream Targeted

623 Recyclable Materials at the designated location agreed upon by Contractor and  
624 Multi-Family Dwelling Customer. The designated Collection location, if disputed  
625 by Customer or Contractor, shall be determined by the Agency. Carts and Bins  
626 may be shared by the Occupants of the Multi-Family Residential Complexes.  
627 Contractor shall provide extra Carts for use in the mail, utility, multi-use rooms or  
628 similar room of Multi-Family Residential Complexes if requested by the  
629 Customer.

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

644 3. Household Battery and Cell Phone Collection. Contractor shall provide one (1)  
645 or more centrally located Containers for the accumulation of Household Batteries  
646 and Cell Phones. The number and location of the Containers and the frequency  
647 of Collection shall be mutually agreed to between the Contractor and the Owner  
648 or manager of the complex. In the event the Owner or property manager  
649 requests that the materials be Collected on an on-call basis, Contractor shall  
650 provide that service at no additional cost.

651 4. Container Service Requirements. Container service requirements described for  
652 Multi-Family Solid Waste Collection in Sections 5.02.B.3 through 5.02.B.7 are  
653 applicable for Collection of Targeted Recyclable Materials from Multi-Family  
654 Premises.

655 **D. Commercial Premises**

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

664 Contractor shall Collect Single-Stream Targeted Recyclable Materials or other  
665 Source Separated Recyclable Materials Generated at Commercial Premises at  
666 least once per week or more frequently, up to seven (7) times per week, as  
667 scheduled by the Customer provided that the Generator has Source Separated  
668 the Targeted Recyclable Materials from Solid Waste and placed the materials in  
669 the appropriate Contractor-provided Container. Contractor shall Collect Targeted



670 Recyclable Materials at the designated location agreed upon by Contractor and  
671 Customer. The designated Collection location, if disputed by Customer or  
672 Contractor, shall be determined by the Agency.

673 2. Service Methods. Contractor shall allow Commercial Customers to select a  
674 Collection service method that best suits the needs of its Premises. Specifically,  
675 the Contractor shall offer the following choices to Commercial Customers:

676 a. Cart service. Contractor shall allow Commercial Customers to use Carts for  
677 Targeted Recyclable Materials Collection.

678 b. Bin service. Contractor shall allow Commercial Customers to use Bins for  
679 Targeted Recyclable Materials Collection.

680 c. Shared Cart or Bin service. Contractor shall allow Commercial Customers  
681 to use Carts or Bins for Targeted Recyclable Materials Collection that are  
682 shared by the Occupants of two (2) or more Commercial Premises. In such  
683 case, Contractor shall provide one (1) or more Carts or Bins to such Premises  
684 as requested by Customer(s).

685 d. Drop Boxes and Compactors. Contractor shall allow Commercial Customers  
686 to use Drop Boxes or Compactors for Targeted Recyclable Materials.  
687 Contractor shall allow Customers to purchase or lease Compactors through  
688 an outside vendor. Regular maintenance of Compactors shall be required  
689 by Customer (or outside vendor) as frequently as needed to keep the  
690 Compactors in good working order and functioning at high compaction levels.

691 3. Container Service Requirements. Container service requirements described for  
692 Multi-Family Solid Waste Collection in Sections 5.02.B.3 through 5.02.B.7 are  
693 applicable for Collection of Targeted Recyclable Materials from Commercial  
694 Premises.

#### 695 E. **Agency Facilities**

696 1. General. Agency Facilities shall be entitled to Collection of Targeted Recyclable  
697 Materials at no additional charge, and Contractor shall provide the level of service  
698 required by Agency Facilities requesting Targeted Recyclable Materials  
699 Collection services. The level of service Contractor shall provide includes: Single-  
700 Stream Targeted Recyclable Materials Collection or Source Separated Collection  
701 of cardboard, mixed paper, food and recyclable beverage containers, or other  
702 Targeted Recyclable Materials in a manner that best suits the needs of the  
703 Agency Facility.

704 Contractor shall Collect Single-Stream Targeted Recyclable Materials or other  
705 Source Separated Targeted Recyclable Materials Generated at Agency Premises  
706 at least once per week or more frequently, up to seven (7) times per week, as  
707 scheduled by the Agency provided that the Generator has Source Separated the  
708 Targeted Recyclable Materials from Solid Waste and placed the materials in the  
709 appropriate Contractor-provided Container. Contractor shall Collect Targeted  
710 Recyclable Materials at the designated location agreed upon by Contractor and  
711 Agency.

712 2. Service Methods. Contractor shall allow Agency Facilities to select a Collection  
713 service method that best suits the needs of its Premises. Specifically, the  
714 Contractor shall offer the following choices to Member Agency Facilities:

- 715 a. Cart service. Contractor shall allow Agency Facilities to use Carts for  
716 Targeted Recyclable Materials Collection. Contractor shall provide each  
717 Customer with a choice of one (1) or more Carts as specified in Attachment  
718 D.
- 719 b. Bin service. Contractor shall allow Agency Facilities to use Bins for Targeted  
720 Recyclable Materials Collection. Contractor shall provide each Agency with  
721 a choice of one (1) or more Bins for each Agency Facility.
- 722 c. Centralized Cart or Bin service. Contractor shall allow Agency Facilities to  
723 use Carts or Bins for Targeted Recyclable Materials Collection that are  
724 shared by the Occupants of two (2) or more adjacent Agency Facilities. In  
725 such case, Contractor shall provide one (1) or more Carts or Bins to such  
726 Premises as requested by Agency.
- 727 d. Drop Boxes and Compactors. Contractor shall allow Agency Facilities to use  
728 Drop Boxes or Compactors for the Collection of Targeted Recyclable  
729 Materials. Contractor shall allow Agency to purchase or lease Compactors  
730 through an outside vendor. Regular maintenance of Compactors shall be  
731 required by Agency (or outside vendor) as frequently as needed to keep the  
732 Compactors in good working order and functioning at high compaction levels.
- 733 3. Public Recycling Receptacles. Contractor shall Collect Recyclable Materials from  
734 public Recycling receptacles located on streets and parking lots, and from public  
735 Recycling receptacles in parks that are accessible for Curbside Collection.  
736 Contractor shall also Collect Recyclable Materials that are contained in bags or  
737 boxes and placed adjacent to public Recycling receptacles. These Collections will  
738 be made between one (1) and seven (7) Days per week, as determined by  
739 Agency. If Contractor concludes upon visual inspection that the Recyclables  
740 placed in (or adjacent to) the public Recyclables receptacles have a  
741 Contamination Level greater than that which is acceptable at the MRF, Contractor  
742 shall Collect the materials as Solid Waste. Contractor is responsible for notifying  
743 Agency if a public Recycling receptacle is inoperable within twenty-four (24) hours  
744 of observing or being notified of the defect. A list of public Recycling receptacles  
745 is included in Attachment B. If persistent contamination occurs in public Recycling  
746 receptacles then, at Contractor's request, appropriate Agency staff shall meet  
747 with Contractor to discuss ways to address the problem. Contractor shall not bill  
748 Agency for the services described in this paragraph.

749 **5.04 ORGANIC MATERIALS COLLECTION**

- 750 A. **Single-Family Dwelling.** Contractor shall Collect Source Separated Organic  
751 Materials from SFD once per week. Collection of Organic Materials, Targeted  
752 Recyclable Materials, and Solid Waste from the SFD shall occur on the same Day  
753 each week. Contractor shall provide each Customer with one (1) Cart to be used for  
754 storage and Collection of Organic Materials at no additional charge. Customers may  
755 request additional Organic Materials Carts from Contractor for regular weekly  
756 Collection service, and Contractor shall bill Customer at Agency-approved Pricing.  
757 Compensation to Contractor for additional Organic Materials Carts shall be at the  
758 Charges specified in Attachment Q. The Contractor shall provide Customers with a  
759 ninety-six (96) gallon Cart as specified in Attachment D, or County ordinance code,  
760 unless the Customer requests an alternative Cart size, in which case, the Contractor  
761 shall provide an alternative Cart as specified in Attachment D.

762 For SFD Organic Materials Cart Collection, Contractor shall comply with the same  
763 Collection provisions specified for Solid Waste Cart Collection pursuant to Sections  
764 5.02.A.2, 5.02.A.3, and 5.02.A.4.

765 During the Term, Contractor shall provide, within five (5) Business Days of request  
766 by Occupant, Kitchen Pails to new SFD Customers and to SFD Customers whose  
767 Kitchen Pail is lost, stolen, damaged, or destroyed (such replacement shall be limited  
768 to one (1) per year per Customer at no additional cost). Residents will be discouraged  
769 from placing Kitchen Pail Curbside for Collection and will be instructed to deposit the  
770 contents of the Kitchen Pail into the Organic Materials Cart.

771 B. **Multi-Family Premises.** Multi-Family Dwelling Customers shall have the option of  
772 voluntarily subscribing to Organic Materials or Plant Materials Collection services,  
773 Contractor shall bill Customers for such service at Agency-set Rates. Contractor shall  
774 Collect Source Separated Organic Materials or Plant Materials from Multi-Family  
775 Residential Complexes that have subscribed to Organic Materials or Plant Materials  
776 Collection service as frequently as scheduled by Customer, but not less than once  
777 per week. Contractor shall provide each Customer with a choice of Carts or Bins as  
778 specified in Attachment D. Contractor shall Collect Organic Materials and Plant  
779 Materials at the location agreed upon by Contractor and Customer. The designated  
780 Collection location, if disputed by Customer or Contractor, shall be determined by the  
781 Agency.

782 Container service requirements described for Multi-Family Solid Waste Collection in  
783 Sections 5.02.B.3 through 5.02.B.7 are applicable for Collection of Organic Materials  
784 or Plant Materials from Multi-Family Premises.

785 C. **Commercial Premises.** Commercial Customers shall have the option of voluntarily  
786 subscribing to Organic Materials or Plant Materials Collection services, and  
787 Contractor shall bill Customers for such service at Agency-set Rates. Contractor shall  
788 provide Organic Materials or Plant Materials Collection service to any and all  
789 Customers requesting service. Contractor shall Collect Organic Materials or Plant  
790 Materials from Commercial Premises that have subscribed to Organic Materials or  
791 Plant Materials Collection service as frequently as scheduled by Customer, but not  
792 less than once per week.

793 Contractor shall allow Commercial Customers to select a Collection service method  
794 that best suits the needs of its Premises. Specifically, the Contractor shall offer to  
795 Commercial Organic Materials or Plant Materials Customers the Containers and  
796 service choices that are offered for Commercial Solid Waste Collection pursuant to  
797 Section 5.02.C.

798 Container service requirements described for Multi-Family Solid Waste Collection in  
799 Sections 5.02.B.3 through 5.02.B.7 are applicable for Collection of Organic Materials  
800 or Plant Materials from Commercial Premises.

801 D. **Agency Facilities.** Agency Facilities shall have the option of voluntarily subscribing  
802 to Organic Materials or Plant Materials Collection services. Contractor shall not bill  
803 Agency for such services.

804 Contractor shall provide Organic Materials or Plant Materials Collection service to  
805 Agency Facilities requesting service. Contractor shall Collect Organic Materials or  
806 Plant Materials from Agency Facilities that have subscribed to Organic Materials or

807 Plant Materials Collection service as frequently as scheduled by Agency, but not less  
808 than once per week.

809 Contractor shall allow Agency to select a Collection service method that best suits  
810 the needs of its Facilities. Specifically, the Contractor shall offer to Agency Facilities  
811 the service choices that are offered for Solid Waste Collection from Agency Facilities  
812 pursuant to Section 5.02.D.

813 E. **Holiday Tree Collection.** Contractor shall annually Collect Holiday Trees from  
814 Residential Premises from January 2 through January 31. Contractor shall provide  
815 this service on the regularly scheduled Organic Materials Collection Day. Contractor  
816 will be required to Collect trees or pieces of trees, which are eight feet (8') or less in  
817 length, void of tinsel, lights, ornaments, other decorations, and metal or plastic stands  
818 (although flocked trees are acceptable), and are placed adjacent to an Organic  
819 Materials Cart. Contractor shall make accommodations and provide Collection  
820 service for Customers who are unable to cut trees into lengths of eight feet (8') or less  
821 at no additional cost to the Customer and shall not bill Agency for such services. After  
822 January 31, Contractor will be required to Collect trees placed inside an Organic  
823 Materials Cart. These Collection parameters apply to both Special Handling and  
824 Backyard Collection Service.

825 Contractor shall deliver a Bin or Drop Box for Holiday Tree Collection to Multi-Family  
826 Residential Complexes upon request of the Owner or property manager. Contractor  
827 shall provide this Collection service annually commencing January 2 and shall  
828 continue to provide this service as long as requests are submitted to Contractor, at  
829 no additional cost to Customer(s) and shall not bill Agency for such services. The  
830 location for delivery of the Bin or Drop Box shall be agreed upon by the Owner or  
831 property manager, and Contractor shall remove the Bin or Drop Box, or Collect the  
832 trees loose, on the date requested by the Owner or property manager. If the use of  
833 a Bin or Drop Box is not feasible, Contractor shall Collect the un-containerized Holiday  
834 Trees from one (1) or more designated consolidation locations (e.g., adjacent to a  
835 Solid Waste enclosure) at each Multi-Family Residential Complex as determined by  
836 the Owner or property manager. Contractor shall be required to Collect all trees or  
837 pieces of trees, which are eight feet (8') or less in length, void of tinsel, lights,  
838 ornaments, other decorations, and metal or plastic stands (although flocked trees are  
839 acceptable) and are placed in the Bin or Drop Box or at the agreed upon location.  
840 Contractor shall make accommodations and provide Collection service for Customers  
841 who are unable to cut trees into lengths of eight feet (8') or less at no additional cost  
842 to the Customer and shall not bill Agency for such services.

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

#### 849 **5.05 RESIDENTIAL ON-CALL BULKY ITEM COLLECTION SERVICE**

850 A. **SFD General.** Contractor shall provide two (2) separate On-Call Curbside Bulky Item  
851 Collection Service events to each Single-Family Dwelling Residential Premise  
852 annually upon Owner's or Occupant's request at no additional charge to the  
853 Customer. Customer may request additional Bulky Item Collection service events;

854 and, Contractor shall bill for the Additional Service at Agency-approved Pricing.  
855 Compensation to Contractor for Additional Service shall be at the Charges specified  
856 in Attachment Q. Contractor shall schedule the On-Call Bulky Item Collection Service  
857 events on the regularly scheduled Solid Waste Collection Day for Single-Family  
858 Dwellings, no more than ten (10) Business Days after the Owner's or Occupant's  
859 request subject to the conditions specified in Section 5.05.H.

860 B. **MFD General.** Contractor shall provide two (2) separate On-Call Curbside Bulky Item  
861 Collection Service events to each Multi-Family Residential Complex annually upon  
862 Owner's or property manager's request at no cost to the Owner or property manager.  
863 Owner or property manager may request additional Bulky Item Collection service  
864 events; and, Contractor shall bill for the Additional Service at Agency-approved  
865 Pricing. Compensation to Contractor for Additional Services shall be at the Charges  
866 specified in Attachment Q. Contractor shall schedule On-Call Curbside Bulky Item  
867 Collection Service events no more than ten (10) Business Days after the Multi-Family  
868 Residential Complex Owner's or property manager's request subject to the conditions  
869 specified in Section 5.05.H. Contractor will be required to accommodate the Multi-  
870 Family Residential Complex's on-site constraints to ensure convenient and safe  
871 collection events in an effort to maximize diversion and minimize environmental  
872 impacts.

873 Contractor shall assist Owners and property managers of Multi-Family Residential  
874 Complexes with scheduling events to effectively and efficiently provide the volume of  
875 Collection service to which the complex is entitled annually based on the number of  
876 Residential Premises at the complex. The provision of On-Call collection of Bulky  
877 Items is not intended to encourage or permit Multi-Family Residential Premises to  
878 reduce the level of regularly scheduled Solid Waste Collection service that has been  
879 previously provided to the complex. If Contractor, in its reasonable business  
880 judgment, concludes that an Owner or property manager of a Multi-Family Residential  
881 Complex is requesting On-Call Bulky Item Collection in order to reduce its historical  
882 level of regular Solid Waste Collection service, Contractor may present a factual  
883 report to Agency in support of an application to decline further requests for On-Call  
884 Bulky Item Collection events at that complex for the remainder of the calendar year.  
885 Within thirty (30) Days, Agency will review the application and report and determine  
886 whether Contractor may decline all subsequent requests from that complex for that  
887 calendar year or may limit the number of On-Call Bulky Item Collection events it must  
888 provide. Until Agency makes, and notifies Contractor of, its determination, Contractor  
889 is not required to provide additional On-Call Bulky Item Collection service events to  
890 the complex in question.

891 C. **Scheduling of Events.** Contractor shall allow the scheduling of On-Call Bulky Item  
892 Collection Service events from February 1 through December 31 of each Rate Year.  
893 Contractor may provide additional On-Call Bulky Item Collection Service events for a  
894 Customer beyond two (2) per Rate Year, and shall bill Customers for Additional  
895 Service at Agency-approved Pricing. Compensation to Contractor for Additional  
896 Service shall be at the Charges specified in Attachment Q. Contractor is required to  
897 notify Customer if they have already received the annually allocated two (2) Collection  
898 events within one (1) Business Day of Customer request. If Contractor fails to notify  
899 Customer that they have received the annually allocated two (2) Collection events,  
900 Contractor shall provide the service and is not entitled to additional Contractor's  
901 Compensation from Customer or Agency for a third or subsequent On-Call Bulky Item

902 Collection Service event. Contractor will instruct customers to place a sign provided  
903 by the County, for the items, visible from the street indicating it is designated for On-  
904 Call Bulky Item Collection.

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

907 1. Solid Waste, Targeted Recyclable Materials, Organic Materials – For each  
908 Single-Family Dwelling event, up to two (2) cubic yards of materials plus three  
909 large items. For each Multi-Family Residential Complex or Mixed-Use Building  
910 event, up to the volume of materials obtained by multiplying the number of  
911 individual Residential Premises in the complex or building by two (2) cubic yards  
912 plus three large items per Residential Premise. The materials must have been  
913 bagged, boxed, bundled, or containerized by the Customer.

914 2. The Customer may place up to three (3) large items from the categories below:

915 a. Major Appliances – One (1) large appliance per event (e.g., washing  
916 machine, clothes dryer, refrigerator, freezer).

917 b. Bulky Items – One (1) large Bulky Item per event (e.g., reusable furniture,  
918 mattresses, four tires).

919 c. E-Scrap – One (1) item per event (e.g., a computer, computer monitor, or  
920 television).

921 Contractor shall reject: liquids or sludge; dirt, rock, concrete or asphalt; materials  
922 which exceed five (5) feet in length; commercial-sized refrigerators or freezers;  
923 Construction and Demolition Debris; Hazardous Waste; or Infectious Waste.  
924 Contractor may reject any individual item that weighs more than two-hundred (200)  
925 pounds (excluding Major Appliances) unless Customer has paid, or has agreed in  
926 advance to pay, an additional fee for service at Agency-approved Pricing.  
927 Compensation to Contractor for additional fee for service shall be at the Charges  
928 specified in Attachment Q. Contractor may reject un-containerized Discarded  
929 Materials with the exception of Major Appliances, Bulky Items, E-Scrap, and large  
930 pieces of Organic Material such as tree limbs and dimensional lumber.

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

938 F. **Handling Major Appliances.** Major Appliances, Universal Waste, and E-Scrap shall  
939 be reused, Recycled, or Disposed by Contractor in accordance with requirements of  
940 Applicable Law, including County ordinances. Any changes to such regulations made  
941 after January 1, 2011 shall be addressed as though they are a Change in Law in  
942 accordance with Section 11.05.

943 G. **Collection and Processing Methods.** All materials that can be handled by the SFD  
944 Single-Stream Recycling, Organic Materials, or Solid Waste route Collection vehicle  
945 would be assigned to one of these vehicles for Collection, with the goal of maximizing  
946 diversion. All Collection of Bulky Items will be assigned for Collection by a Collection

947 vehicle, and the driver will segregate items Collected according to their suitability for:  
948 (1) reuse or Recycling, and (2) Disposal, prior to their transport to Shoreway  
949 Recycling and Disposal Center for processing. Any remaining items will be Collected  
950 by a dispatched Collection vehicle. Contractor shall utilize these procedures and  
951 vehicles in a manner that provides the maximum diversion of the material Collected  
952 from the On-Call Bulky Item Collection Service event.

953 H. **Maximum Number of Daily Events.** Contractor shall schedule up to a maximum of  
954 one hundred fifty (150) On-Call Curbside Bulky Item Collection Service events per  
955 service day for the SBWMA Service Area (“daily limit”). The maximum number of  
956 daily events includes On-Call Bulky Item Collection Service events provided to both  
957 Single-Family and Multi-Family Residential Complexes, and those events provided at  
958 no charge and events paid for by the Customer, Owner, or property manager.  
959 Contractor shall schedule On-Call Curbside Bulky Item Collection Service events no  
960 more than ten (10) Business Days after the Owner’s or Occupant’s request up to the  
961 maximum number of daily events. Upon reaching the maximum number of daily  
962 events, requested On-Call Curbside Bulky Item Collection Service event shall be  
963 scheduled on the next available regularly scheduled Solid Waste Collection Day.

964 SBWMA may adopt an allocation system for On-Call Bulky Item Collection Service  
965 events, in order to allocate the “daily limit” for such events among Member Agencies.  
966 If adopted, Contractor shall comply with the allocation system.

967 The Agency agrees not to assess Liquidated Damages if Contractor does not meet  
968 the ten (10) Business Day requirement if the delay has resulted from (i) the volume  
969 of On-Call Bulky Item Collection events being in excess of the “daily limit” for the  
970 SBWMA Service Area or Agency, or (ii) the Customer’s request to schedule the event  
971 on a date more than ten (10) Business Days in the future.

972 Contractor shall notify the SBWMA and Agency when the daily average number of  
973 events reaches one hundred and forty (140) events, where the daily average is  
974 calculated on a weekly basis. When this threshold occurs, Parties shall meet and  
975 confer to agree on a strategy for handling the volume of Bulky Item Collection Service  
976 events.

977 **5.06 AGENCY FACILITY ON-CALL BULKY ITEM COLLECTION SERVICE**

978 Contractor shall provide each Agency Facility with one time annual On-Call Bulky Item  
979 Collection service event and shall not bill Agency for such services. Agency may request  
980 additional Bulky Item Collection service events; and, Contractor shall bill for the Additional  
981 Service at Agency-approved Pricing. Compensation to Contractor for additional Bulky Item  
982 Collection shall be at the Charges specified in Attachment Q. The On-Call Bulky Item  
983 Collection Service provisions set forth in Section 5.05 shall apply to the On-Call Bulky Item  
984 Collection Service provided to Agency Facilities with the following exceptions for  
985 frequency and service level/acceptable materials.

986 A. **Frequency of Service**

987 Contractor shall provide this service to each Agency Facility annually.

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

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

- 991 1. Solid Waste – Contractor shall provide a six (6) cubic yard or smaller Bin upon  
992 request.
- 993 2. Recyclable Materials, Organic Materials – Up to two (2) cubic yards of materials  
994 per event, provided that such materials, except as set forth below have been  
995 bagged, boxed, bundled, or containerized by the Customer.
- 996 3. The Agency may place up to three (3) large items from the categories below:
- 997 a. Major Appliances – One (1) large appliance per event (e.g., washing  
998 machine, clothes dryer, refrigerator, freezer).
- 999 b. Bulky Items – One (1) large Bulky Item per event (e.g., reusable furniture,  
1000 mattresses, four tires).
- 1001 c. E-Scrap – One (1) item per event (e.g., a computer, computer monitor, or  
1002 television).

1003 Contractor shall reject: liquids or sludge; dirt, rock, concrete, or asphalt; materials  
1004 which exceed five (5) feet in length; commercial-sized refrigerators or freezers;  
1005 Construction and Demolition Debris; Hazardous Waste; or, Infectious Waste.  
1006 Contractor may reject any individual item that weighs more than two-hundred (200)  
1007 pounds (excluding Major Appliances) unless Customer has paid, or has agreed in  
1008 advance to pay an additional fee for service at Agency-approved Pricing.  
1009 Compensation to Contractor for Additional Service shall be at the Charges specified  
1010 in Attachment Q. Contractor may reject un-containerized Discarded Materials with the  
1011 exception of Major Appliances, Bulky Items, E-Scrap, and large pieces of Organic  
1012 Material such as tree limbs and dimensional lumber.

1013 **5.07 CONFIDENTIAL DOCUMENT DESTRUCTION SERVICE EVENT**

1014 The SBWMA will take the lead in scheduling one confidential document destruction  
1015 service event for each Member Agency annually at no additional cost to Agency or  
1016 Customers. The SBWMA will hire and pay for a third party document destruction service  
1017 provider to service the event. The document destruction service provider shall provide  
1018 adequate equipment and staffing necessary for the event and shall ensure full destruction  
1019 of confidential documents and other materials delivered by Customers to the site of the  
1020 event. Contractor shall reimburse the SBWMA for the cost of one confidential document  
1021 destruction event per Member Agency per year, up to maximum of one thousand two  
1022 hundred dollars (\$1,200.00) per event, but otherwise shall have no involvement with the  
1023 event. The cost reimbursement amount shall be adjusted annually commencing with Rate  
1024 Year Twelve (2022) by one hundred percent (100%) of the Annual Index Change in CPI-  
1025 U, as defined in Attachment K.

1026 **5.08 COLLECTION FOR LARGE VENUES AND COMMUNITY EVENTS**

1027 Contractor shall provide Collection services, upon request, to any Venue and Community  
1028 Event within Service Area. Specifically, Contractor shall provide, at a minimum, Solid  
1029 Waste and Targeted Recyclable Materials Collection services, and shall also provide  
1030 Organic Materials Collection services if one (1) cubic yard or more of Organic Material is  
1031 generated per day at the Venue or Community Event. Contractor shall provide Collection  
1032 as frequently as requested by the Agency or the Community Event organizer. Contractor  
1033 shall provide an adequate number and type of Collection Container(s) for the Venue or  
1034 Community Event and shall coordinate its Collection services with Agency or Community



1035 Event organizer. Containers shall be appropriately labeled to collect Solid Waste,  
1036 Recyclable Materials, or Organic Material, per the requirements specified by the SBWMA.  
1037 Upon request of the Agency or the Community Event organizer, Contractor shall provide  
1038 an adequate number of its employee(s) for each Community Event to ensure all Solid  
1039 Waste, Recyclable Materials, and Organic Materials Collection locations (i.e., Containers  
1040 that are placed on-site for use by event patrons) are kept clean and uncontaminated; to  
1041 empty or exchange Containers as the need arises; and to respond to overages or spills.

1042 Within ten (10) Business Days of Contractor receiving a request to supply an Community  
1043 Event with Solid Waste, Targeted Recyclable Materials, and Organic Materials Collection  
1044 services, the Contractor will either meet with or schedule a meeting with the Community  
1045 Event organizer to discuss the Community Event's parameters, including location, number  
1046 of people attending, type of Community Event, type of food being provided, and other  
1047 related issues. Once parameters of the Community Event are determined, proper  
1048 Containers will be provided by Contractor, with emphasis on Recycling and diversion of  
1049 the materials generated.

1050 Contractor shall also supply and staff an information booth at each Venue and Community  
1051 Event, upon request from Agency. In addition, Contractor shall prepare and distribute  
1052 information to the public at Venues and Community Events describing the Collection  
1053 options available at the Venue or Community Event and promoting Recycling programs in  
1054 the Agency, upon request from Agency. All information prepared for distribution to Venues  
1055 and Community Events shall be approved by Agency prior to distribution. The Contractor  
1056 shall report the Tonnage of material Collected at each Venue and Community Event to the  
1057 Agency and, upon Agency request, to the Community Event organizer.

1058 For Venues and Community Events, which are required to comply with the Large Venues  
1059 and Events Recycling Law, codified at Public Resources Code Section 42648 et seq.,  
1060 Contractor shall assist the Venue or Community Event organizer in preparing the County  
1061 Form for a Recycling plan and reporting all information required by those provisions of the  
1062 law. Contractor shall be required to provide, at a minimum, the following information for  
1063 each Venue or Community Event:

- 1064 1. List of qualifying large Venues and Community Events in Service Area.
- 1065 2. Physical and mailing address.
- 1066 3. Contact name, address, phone number, and email address.
- 1067 4. Type of Venue or Community Event (e.g., museum, concert, sporting event).
- 1068 5. Status of the Venue or Community Event written waste diversion/Recycling plan.
- 1069 6. A description of the extent in which the plan has been implemented.
- 1070 7. Service level provided (i.e., Solid Waste, Recyclable Materials, and Organic  
1071 Materials).
- 1072 8. Tons disposed and diverted, by material type.
- 1073 9. Description of the scope and types of diversion programs provided.
- 1074 10. Other information required by law.

1075 Contractor shall provide the Collection services required by this Section for the Agency-  
1076 sponsored Venues and Community Events listed on Attachment C, at no charge to the  
1077 Agency or the Community Event organizer. A preliminary list of Agency-sponsored

1078 Venues and Community Events is provided in Attachment C. Agency may add additional  
1079 events to those listed in Attachment C or modify this list if events change during the Term  
1080 and shall make such modifications as part of the Three-Year Public Education Plan (in  
1081 accordance with Section 7.03.B). If the number of events listed in Attachment C increases  
1082 during the Term above the number on the preliminary list on Attachment C, Contractor  
1083 shall be entitled to receive compensation for the number of additional events provided  
1084 service each Rate Year based on the Charges for additional events specified in  
1085 Attachment Q. For other Venues and Community Events, Contractor may bill the Venue  
1086 or Community Event organizer at the Agency-approved Pricing for comparable On-Call  
1087 Commercial Solid Waste and Organic Materials Collection Service. Recyclable Materials  
1088 Collection service shall be provided at no additional cost to Community Events that  
1089 subscribe to Solid Waste or Organic Materials Collection service.

1090 **5.09 ABANDONED WASTE CLEANUP COLLECTION SERVICE**

1091 A. **General.** Contractor shall provide abandoned waste cleanup Collection service to  
1092 Agency as provided herein. Contractor shall schedule up to a maximum of thirty (30)  
1093 abandoned waste Collection events per service day for the SBWMA Service Area.  
1094 Contractor shall make every effort to collect abandoned waste within one (1) Business  
1095 Day of being notified by Agency.

1096 Upon reaching the maximum thirty (30) events, Collection of abandoned waste event  
1097 shall be scheduled and performed by Contractor on the next available service day.  
1098 This service shall require Contractor to Collect abandoned or illegally dumped Solid  
1099 Waste, Recyclable Materials, and Organic Materials. This service does not include  
1100 Collection of litter or litter abatement activities.

1101 Contractor shall notify the SBWMA and Agency when the daily average number of  
1102 events reaches twenty-five (25) events, where the daily average is calculated on a  
1103 weekly basis. When this threshold occurs, Parties shall meet and confer to agree on  
1104 a strategy for handling the volume of abandoned waste Collection events.

1105 B. **Materials to be Collected.** Contractor shall only be required to Collect abandoned  
1106 waste materials of the types that Contractor is required to Collect under the On-Call  
1107 Bulky Item Collection program, as specified in Section 5.05.D. Abandoned waste  
1108 shall only be Collected by Contractor in public right of ways, and Contractor shall not  
1109 be responsible for any Collection of abandoned waste materials that are on private  
1110 properties or easements where ownership of properties are in question or shared.

1111 C. **Collection Protocols.** For abandoned Recyclable Materials, Organic Materials, and  
1112 Solid Waste, Contractor shall dispatch its regular route drivers to provide Collection  
1113 service. For Bulky Items, Contractor shall dispatch a Collection vehicle capable of  
1114 Collecting the Bulky Items to provide the Collection service. For other items including,  
1115 but not limited to, Hazardous Waste, Household Hazardous Waste, and Sharps,  
1116 Contractor shall promptly notify Agency.

1117 D. **Processing.** All abandoned or illegally dumped materials Collected by Contractor  
1118 shall be transported to Shoreway Recycling and Disposal Center for processing, with  
1119 the exception of scrap metal, and all related diversion statistics shall be included in  
1120 the appropriate reports to the Agency for all materials Collected. Contractor shall be  
1121 allowed to transport scrap metal directly to a licensed scrap metal recycler.  
1122 Contractor shall, to the greatest extent possible, deliver all reusable non-metal

1123 abandoned waste items to organizations such as Society of St. Vincent de Paul and  
1124 Goodwill Industries, or other organizations as directed by Agency.

1125 E. **Agency-Specific Reporting.** The Agency may request Contractor to interface with  
1126 an Agency-specific web-based application for reporting completion of abandoned  
1127 waste collections. In such case, Agency shall compensate Contractor on an annual  
1128 basis for this additional effort at a rate to be mutually agreed by Agency and  
1129 Contractor. In order for Contractor to be compensated the Contractor will be required  
1130 to provide annual reports for this effort.

#### 1131 **5.10 COATS FOR KIDS PROGRAM**

1132 If requested by Agency, Contractor shall implement a “Coats for Kids Program” annually  
1133 at no additional cost to Customers and shall not bill Agency for such services. The program  
1134 shall consist of Contractor’s drivers Collecting coats from Customers on their route over a  
1135 one (1) to two (2) week period during the fall, as well as from Collection Containers placed  
1136 by Contractor in various public locations specified by Agency, such as libraries, City Hall,  
1137 and businesses. The coats collected through this program will be sorted and laundered  
1138 by Contractor, and arrangements made by Contractor for distribution to a local non-profit  
1139 organization, such as the Family Services Agency. Prior to the implementation of the  
1140 program, Contractor shall present a detailed program plan to Agency for review and  
1141 approval. All related diversion statistics shall be included in the appropriate reports to the  
1142 Agency. Annually, no later than sixty (60) Days prior to the start of the program, Contractor  
1143 shall notice Agency regarding the program start and end date.

1144  
1145 The general scope of outreach that shall be conducted in order to properly promote the  
1146 program shall include, but not be limited to promotion on websites, and distribution of  
1147 media such as flyers and press releases.

#### 1148 **5.11 COMPOST GIVE-AWAY**

1149 Contractor shall coordinate with the Agency to host “Bring Your Own Bucket” (BYOB)  
1150 giveaway of compost to residents. Contractor shall take the lead in organizing the delivery  
1151 of compost by Operator to either Shoreway Environmental Center (if Contractor is  
1152 delivering compost in a Drop Box) or directly to the event (by Operator). The BYOB  
1153 compost giveaway shall provide residents with free compost to enrich their gardens while  
1154 also educating residents on the benefits of home composting. If included in the Three-  
1155 Year Public Education Plan as a requirement, Contractor representatives shall be on hand  
1156 to distribute Recycling guides and other educational material promoting waste reduction  
1157 and Recycling. Contractor is required to deliver to Agency thirty (30) cubic yards of  
1158 compost annually in one (1) or two (2) deliveries for the BYOB events and/or for use at  
1159 Agency facilities and shall not bill Agency for such services. Agency shall schedule events  
1160 as far in advance as possible. Contractor can only schedule up to four (4) events in any  
1161 weekend and lead-time is needed to ensure adequate promotion of the event. The  
1162 SBWMA will take the lead promoting the BYOB events. If Agency requests delivery of  
1163 more than thirty (30) cubic yards of compost annually, Contractor shall provide the delivery  
1164 and bill Agency the Charge specified in Attachment Q or Contractor shall be entitled to an  
1165 increase in Contractor’s Compensation for the Rate Year that the compost is delivered to  
1166 Agency based on the Charge specified in Attachment Q.

1167 **5.12 RESERVED**

1168 **5.13 COMMUNITY DROP-OFF EVENTS**

1169 Upon request by Agency, Contractor shall hold drop-off events at a location selected by  
1170 the Agency to allow Residential Customers to drop off acceptable materials. Acceptable  
1171 materials, which shall be determined by the Agency, may include one or more of the  
1172 following: E-Scrap, Universal Waste, Recyclable Materials, Organic Materials, and Solid  
1173 Waste.

1174 A. General Requirements. Contractor shall promote, manage, staff, and operate drop-  
1175 off event(s) for Residential Customers scheduled for one (1) weekend Day (i.e.,  
1176 Saturday or Sunday) or two (2) consecutive weekend Days upon request from  
1177 Agency.

1178 The Agency shall approve the date of the drop-off event and all advertisements or  
1179 public announcements related to such event. Contractor shall promote the event by  
1180 preparing Billing inserts to be included in each Customer's Bill and by advertising in  
1181 a minimum of two local area newspapers as approved by the Agency.

1182 Contractor shall manage, staff, and supervise the event. Contractor shall provide  
1183 traffic control and signage; inspect materials delivered to the event; separate  
1184 materials; document each material type and quantity; transport Collected materials  
1185 to reuse, processing, or Disposal locations; and clean up the location at the end of  
1186 the event.

1187 Contractor shall not charge Customers delivering materials to the event.

1188 B. Accepted Materials. Customers may deliver and Contractor shall accept Major  
1189 Appliances, Bulky Items, Source Separated Targeted Recyclable Materials, Source  
1190 Separated Organic Materials, tires (i.e., four (4) per Customer, removed from rims,  
1191 no commercial tires), clean unpainted wood, Construction and Demolition Debris,  
1192 Universal Waste, E-Scrap, and Solid Waste. Contractor shall be allowed to reject:  
1193 liquids or sludge; cement; dirt; asphalt; concrete; Hazardous Waste; or Infectious  
1194 Waste. Contractor shall not establish a limit on the volume or weight of materials that  
1195 a Customer may bring for Collection.

1196 C. Participants. Contractor shall verify Residents live in the Agency by reviewing a  
1197 driver's license or utility bill.

1198 D. Event Hours. Contractor shall accept materials from Residential Customers over one  
1199 (1) weekend Day (i.e., Saturday or Sunday) or two (2) consecutive weekend Days  
1200 from 8:00 a.m. to 5:00 p.m.

1201 E. Recycling and Reuse. Contractor shall Collect materials in a manner that maximizes  
1202 reuse, Recycling, composting, and diversion of materials from Disposal. Contractor  
1203 shall make reasonable efforts to ensure that diversion goals are met or exceeded.  
1204 Contractor shall separate Recyclable Materials and Organic Materials and transport  
1205 such materials to the Designated Transfer and Processing Facility or an alternative  
1206 processing site with advance authorization from Agency. Contractor shall coordinate  
1207 with re-use vendor(s) to have a representative present at the drop-off event to accept  
1208 donated clothes or other reusable items. Disposal of materials shall be the  
1209 Contractor's last option.

- 1210 F. Handling Major Appliances. Major Appliances shall be reused, Recycled, or  
 1211 Disposed by Contractor in accordance with requirements of Applicable Law. Any  
 1212 changes to such regulations made after January 1, 2011 shall be addressed as  
 1213 though they are a Change in Law in accordance with Section 11.05.
- 1214 G. Scheduling Community Drop-Off Events. Upon request from Agency, Contractor  
 1215 shall promote, manage, staff, and operate community drop-off events described in  
 1216 this Section. If Agency exercises such right, it shall provide written notice to  
 1217 Contractor at least three (3) months before the first day of the requested drop-off  
 1218 event. Agency shall compensate Contractor for such service based on Contractor's  
 1219 Charge specified in Attachment Q.
- 1220 H. Confidential Document Destruction Service. If requested by Agency, Contractor shall  
 1221 provide confidential document destruction service at the drop off event(s). Contractor  
 1222 shall provide adequate equipment and staffing necessary for the event and shall  
 1223 ensure full destruction of confidential documents and other materials delivered by  
 1224 Customers at the site of the event. This service shall be provided by Contractor at  
 1225 no additional cost to Customers and shall not bill Agency for such services.

1226 **5.14 MIXED USE BUILDINGS**

- 1227 A. **General.** Contractor shall provide Solid Waste, Targeted Recyclable Materials, and  
 1228 Organic Materials Collection services to Mixed Use Building Customers in  
 1229 accordance with the requirements for provision of these services to Commercial  
 1230 Customers pursuant to Sections 5.02.C, 5.03.D, and 5.04.C. Contractor shall work  
 1231 cooperatively with the Owner or property manager of the Mixed Use Building to agree  
 1232 on the type and size of Containers to be provided and whether or not the Commercial  
 1233 and Residential portions of the Mixed Use Building will share service or have  
 1234 designated Containers for Collection.
- 1235 B. **Service Capacity.** For the Residential Premises of the Mixed Use Buildings, the  
 1236 Contractor shall provide no less than ninety-six (96) gallons per week of Solid Waste  
 1237 Container capacity or as specified in County Ordinance Code per unit, per week, for  
 1238 every five (5) Residential dwelling units. At a minimum, Contractor shall provide thirty  
 1239 (32) gallons per week of Container capacity for Single-Stream Targeted Recyclable  
 1240 Materials Collection for every Residential dwelling at the Mixed Use Building.
- 1241 C. **Recycling Tote Bags.** Contractor shall provide the Residential Premises units of the  
 1242 Mixed Use Building with Recycling Tote Bags in accordance with the Multi-Family  
 1243 Recycling Tote Bags requirements pursuant to Section 5.03.C.2.
- 1244 D. **Household Battery and Cell Phone Collection.** Contractor shall provide the  
 1245 Residential Premises of the Mixed Use Building with Household Battery and Cell  
 1246 Phone Collection in accordance with the Multi-Family Household Battery and Cell  
 1247 Phone Collection service requirements pursuant to Section 5.03.C.3.
- 1248 E. **Bulky Item Collection.** Contractor shall provide the Residential Premises of the  
 1249 Mixed Use Building with two (2) annual On-Call Bulky Item Collection Service events  
 1250 per Mixed Use Building in accordance with the Multi-Family On-Call Bulky Item  
 1251 Collection service requirements pursuant to Section 5.05. Such service must be  
 1252 requested by the Owner or property manager.
- 1253 F. **Recycling Promotion.** Contractor shall provide the Residential Premises of the  
 1254 Mixed Use Building with the Recycling promotion services that are provided to Multi-

1255 Family Dwellings under Section 7.05, and shall provide the Commercial units of the  
1256 Mixed Use Building with the Recycling promotion services that are provided to  
1257 Commercial Premises under Section 7.04.

1258 G. **Holiday Tree Collection.** Contractor shall provide Holiday Tree Collection Service  
1259 to Residential Premises of the Mixed Use Building in accordance with the Multi-  
1260 Family Holiday Tree Collection Service requirements in Section 5.04.E.

1261 H. **Other**

1262 1. Conflict. The Parties acknowledge that Mixed Use Building is a new category  
1263 and that Mixed Use Buildings may be coded in Contractor's software system as  
1264 Multi-Family Residential Complexes, as Commercial Customers, or (in the event  
1265 of separate accounts for the Residential and Commercial parts of the Premises)  
1266 as both. In the event of any conflict between the provisions of this Agreement  
1267 relating to Mixed Use Buildings, and those relating to Multi-Family Residential  
1268 Complexes or Commercial Premises, the provisions relating to Mixed Use  
1269 Buildings shall govern.

1270 2. Customer Database. Contractor shall use good faith efforts, within the  
1271 constraints of its existing software system and cost structure, to develop a  
1272 method for coding Mixed Use Buildings in the Contractor's customer service and  
1273 routing databases to allow for various reports to be generated for Mixed Use  
1274 Buildings. The approach to coding the Mixed Use Buildings, and implementation  
1275 thereof, shall be reviewed and approved by the SBWMA on or before the  
1276 Commencement Date.

1277 3. Collection Vehicles. At its option, Contractor may provide Collection service to  
1278 Mixed Use Buildings using its Single-Family or Commercial Collection vehicles.

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## ARTICLE 6 TRANSPORTATION

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1283 **6.01 TRANSPORTATION OF COLLECTED MATERIALS**

1284 Contractor shall transport and deliver all Solid Waste, Source Separated Targeted  
1285 Recyclable Materials, Used Motor Oil, Used Motor Oil Filters, Household Batteries, Cell  
1286 Phones, Bulky Items, Abandoned Waste, and Organic Materials Collected under this  
1287 Agreement to the Designated Transfer and Processing Facility. Once Collected materials  
1288 are deposited by Contractor at the Designated Transfer and Processing Facility, such  
1289 materials shall become the property of SBWMA or Operator. The Contractor is not  
1290 responsible for providing processing services except as provided in Section 6.04.

1291 **6.02 LIMITATIONS ON CONTAMINATION**

1292 A. **General.** The Agency is required by the Act and other State legislation/regulations  
1293 (such as, but not limited to, AB 341, AB 1594, AB 1826, SB 1061, and SB 1383) and  
1294 its implementing regulations to divert a substantial portion of Solid Waste generated  
1295 by residents, businesses, and institutions within its Service Area from Disposal at a  
1296 landfill. In order to accomplish this, the Agency, through the SBWMA, has made a  
1297 major investment in new recycling equipment and facilities at Shoreway Recycling  
1298 and Disposal Center. In order for that equipment to operate efficiently, the amount of  
1299 Contamination in loads of Recyclable Materials, Organic Materials, and Plant  
1300 Materials delivered to Shoreway Recycling and Disposal Center must be limited to  
1301 specific levels. Moreover, higher levels of Contamination can make processed  
1302 Recyclable Materials unmarketable or substantially reduce the price that purchasers  
1303 are willing to pay. The cost that the SBWMA must charge users of Shoreway  
1304 Recycling and Disposal Center (including Agency) is directly affected by the amount  
1305 of revenue generated by sales of Recyclable Materials processed by its Operator.  
1306 Therefore, for both environmental and financial reasons, it is important that Contractor  
1307 place a high priority on ensuring that Contamination in loads of Recyclable Materials,  
1308 Plant Materials, and Organic Materials delivered to Shoreway Recycling and Disposal  
1309 Center is minimized. Contractor shall work collaboratively with Agency and SBWMA  
1310 to accomplish this and will implement the specific measures described in this Section  
1311 and Section 6.03.

1312 B. **Contamination Levels.** The maximum Contamination Levels for each category of  
1313 Recyclable Materials, Plant Materials, and Organic Materials are specified in Table  
1314 1.

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

1315 If two (2) or more loads from the same route are brought to Shoreway Recycling and  
1316 Disposal Center in a given month with Contamination Levels greater than those  
1317 specified in Table 1, Contractor shall visually inspect materials at the point of  
1318 Collection on that route to identify the source of the Contamination. If the source can  
1319 be identified, Contractor shall follow up with the Customer(s) that need further  
1320 assistance to reduce Contamination and to resolve the Contamination issue. At any  
1321 time, the SBWMA may request for the sampling of a load of materials.

1322 C. **Inspecting for Excessive Contamination in Single Loads**

1323 The Operator will inspect loads of materials delivered to Shoreway Recycling and  
1324 Disposal Center. The Operator may set aside for sampling a load of material that  
1325 appears to exceed the Contamination Levels in Table 1.

1326 When setting aside a load for sampling, the Operator will document the truck number,  
1327 the date and time of delivery, and will take a photograph of the load. The methodology  
1328 for sampling of single loads is set forth in Attachment E.

1329 If an entire load is sorted to determine Contamination, as contemplated by  
1330 subsections D and E below, then Contractor or its representative shall have the right  
1331 to be present at, observe, and photograph and video all aspects of the sort.

1332 D. **Supplemental Processing Fee for Excessive Contamination in Salvageable**  
1333 **Single Loads**

1334 If a load of materials is determined based on (1) sorting of the entire load, or (2)  
1335 sample testing pursuant to Section 6.02.C to contain Contamination in excess of the  
1336 levels specified in Table 1, but is determined by the SBWMA to be salvageable,  
1337 Contractor shall be required to pay SBWMA a supplemental processing fee of \$25.00  
1338 per Ton for the load.

1339 The supplemental processing fees shall be adjusted annually by the Annual Index  
1340 Change in CPI-U in the same manner described in Attachment K.

1341 E. **Payment of Transfer, Transportation, and Disposal of Unsalvageable Single**  
1342 **Loads**

1343 If a load of materials is determined based on (1) sorting of the entire load, or (2)  
1344 sample testing pursuant to Section 6.02.C to contain Contamination in excess of  
1345 the levels specified in Table 1, and is determined by SBWMA to be unsalvageable,  
1346 Contractor shall reimburse SBWMA for the cost of transfer, transportation, and  
1347 Disposal of the load, which shall be calculated as the weight of the load multiplied  
1348 by the then-current per-Ton fee for transfer, transport, and Disposal pursuant to the  
1349 agreement between the SBWMA and Operator.

1350 **6.03 CONTRACTOR METHODS OF CONTROLLING CONTAMINATION**

1351 A. **General.** Contractor shall assist in controlling Contamination Levels by helping to  
1352 educate Customers on acceptable and non-acceptable materials, by monitoring the  
1353 contents of Collection Containers and by refusing to Collect Containers of Targeted  
1354 Recyclable Materials, Plant Materials, and Organic Materials that appear to exceed  
1355 the maximum Contamination Levels in Section 6.02 Table 1, all as and to the extent  
1356 set forth in this Section 6.03.

1357 Drivers that dismount from Collection vehicles in order to empty Containers shall lift  
1358 the Container lid and observe the contents. If Contamination appears to be present



1359 in excess of the applicable maximum Contamination Level, the driver will not empty  
1360 the Container, but will instead affix a “non-collection notice.” The non-collection  
1361 notice shall (i) inform the Customer of the reason(s) for non-collection, (ii) include the  
1362 date and time the notice was left, and (iii) describe the premium Charge to Customer  
1363 for Contractor to return and Collect the Container after Customer removes the  
1364 Contamination. The driver shall document the non-collection event and a customer  
1365 service representative shall update the Customer’s computerized account record to  
1366 note the event. Upon request from Customer, Contractor shall Collect Containers  
1367 that received non-collection notices within one (1) Business Day of Customer’s  
1368 request if the request is made at least two (2) Business Days prior to the regularly  
1369 scheduled Collection Day. Contractor shall bill Customer for the extra Collection  
1370 service event (“extra pick-up”) at Agency-approved Pricing. Compensation to  
1371 Contractor for these services shall be at the Charges specified in Attachment Q, only  
1372 if Contractor notifies Customer of the premium Charge for this service at the time the  
1373 request is made by Customer.

1374 Drivers providing automated Collection service shall observe, via the hopper video  
1375 camera and monitor system, the contents of the Containers as it is being emptied into  
1376 the vehicle. If the driver observes Contamination in excess of the applicable  
1377 maximum Contamination Level, the driver shall affix a “courtesy notice” to the emptied  
1378 Container. The courtesy notice shall (i) inform the Customer of the observed presence  
1379 of unacceptable levels of Contamination, (ii) include the date and time the notice was  
1380 left, (iii) describe the premium charge to Customer for Contractor to return and Collect  
1381 Contaminated Containers after Customer removes the Contamination. The next day  
1382 on which that Customer is to receive service, the driver shall dismount the Collection  
1383 vehicle, lift the lid of the Container, and visually inspect the contents. If the driver  
1384 determines that the Container again contains excess Contamination, the Container  
1385 shall not be Collected. Instead, the driver will record the non-collection event in the  
1386 on-board computer system and shall affix a non-collection notice to the Container.

1387 If a driver observes Hazardous Materials in an uncollected Container, the driver shall  
1388 record that observation in the on-board computer system and also inform the route  
1389 supervisor. The route supervisor shall investigate and initiate applicable action within  
1390 one (1) Business Day.

1391 Whenever a Container at a Commercial or a Multi-Family Dwelling Complex  
1392 Customer is not Collected, Contractor shall contact the Customer on the scheduled  
1393 Collection Day by telephone to explain why the Container was not Collected.  
1394 Whenever a Container is not Collected because of excess Contamination, a customer  
1395 service representative shall contact the Customer to discuss, and encourage the  
1396 Customer to adopt, proper materials-preparation and separation procedures.

1397 B. **Periodic Route Audits.** Contractor shall conduct a route audit of any route from  
1398 which two (2) or more loads are found to exceed the applicable maximum  
1399 Contamination Levels set forth in Section 6.02 Table 1 during any thirty (30) day  
1400 period, as well as any other route whose loads consistently exceed the maximum  
1401 Contamination Levels.

1402 When a route is identified as requiring a route audit, Contractor will provide a route  
1403 auditor to precede the Collection vehicle and physically examine the contents of each  
1404 Container or Cart prior to emptying. The route auditor shall affix non-collection

1405 notices to at least ninety percent (90%) of all Containers that contain Contamination  
1406 in excess of applicable maximum Contamination Levels.

1407 Contractor shall submit a monthly route audit report within five (5) Business Days  
1408 after the end of each route audit that has been conducted during the previous month.  
1409 The report shall describe in detail Contractor's conduct of the audit, as well as the  
1410 public education and outreach activities that it employed to encourage and facilitate  
1411 changes in Customer behavior that will reduce Customers discarding Contamination  
1412 in Containers designated for Recyclable Materials or Organic Materials.

1413 The audit of a route shall continue for a period of four (4) consecutive weeks after the  
1414 route has been identified as requiring an audit under the first paragraph of this Section  
1415 6.03.B.

1416 **6.04 PROCESSING OF OTHER MATERIALS**

1417 Upon request by Agency, and with the prior approval of SBWMA, the Contractor shall be  
1418 responsible for, or shall arrange for, processing, Recycling, and/or reuse of Bulky Items,  
1419 Major Appliances, and Specialty Recyclable or Reusable Materials (excluding  
1420 Construction and Demolition Debris) Collected pursuant to this Agreement. If Agency  
1421 determines a need for processing of other materials, changes can be made as described  
1422 in Section 15.12.

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## ARTICLE 7 OTHER SERVICES

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1425 **7.01 CUSTOMER BILLING**

1426 With the sole exception of Customers as defined in County ordinance code, who shall be  
1427 billed for a minimum level of service through the County property tax system, Contractor  
1428 will directly bill and collect payment for all services provided by Contractor.

1429 A. **Billing.** Contractor shall prepare and mail Bills for services provided to Customers  
1430 by Contractor and shall collect Customer payments.

1431 1. Frequency. Contractor shall Bill Single-Family Customers quarterly in amounts  
1432 equal to the Agency-set Rates and Charges for service for a three (3) month  
1433 period (i.e., using a quarterly format), unless the Agency requests a more  
1434 frequent Billing interval in which case the Contractor shall be entitled to a  
1435 reasonable adjustment in its compensation related to the additional costs for the  
1436 Agency-directed change in Billing frequency. Contractor shall issue Single-  
1437 Family Residential Bills three (3) months in advance in a manner such that one-  
1438 third (1/3) of SFD Customers are Billed each month. Contractor shall bill Multi-  
1439 Family Dwelling and Commercial Customers monthly in arrears in the amount  
1440 equal to Customers' subscribed Rates and Charges for service for a one (1)  
1441 month period. In service areas that are billed on the property tax roll, all  
1442 deductions for services paid for on property tax bill shall be noted on all customer  
1443 statements.

1444 2. Automated Billing and Payment. In an effort to reduce paper waste, Contractor  
1445 shall make available to all Customers an automated Billing and payment system.  
1446 This system should be website-based and allow Customers to view and pay Bills  
1447 through Contractor's website. Through the Contractor's website, Customers  
1448 may request to cease paper Billing and receive all Bills through e-mail and/or  
1449 Contractor's website. Contractor shall ensure that the electronic Billing and  
1450 payment website conforms to industry-standard practices for electronic  
1451 commerce security. However, Contractor shall ensure that these Customers are  
1452 compiled in a list to ensure that Billing inserts are mailed directly.

1453 3. Bill Format. Contractor shall Bill Customers using a Bill format (i.e., post-card  
1454 Billing format or conventional envelope/insert) approved by the Agency, if  
1455 Customer does not opt-out by requesting use of the automated Billing and  
1456 payment system. Contractor shall promote the website-based Billing and  
1457 payment system on all paper Bills sent to Customers. Agency shall have the  
1458 right to revise the Billing format (e.g., size, font, frequency, etc.) and to itemize  
1459 certain charges and to review the Billing procedures. Contractor shall be  
1460 compensated for any cost increases that result from the Agency-directed change  
1461 to the Billing format.

1462 4. Records. Contractor shall maintain, for inspection by the Agency, copies of  
1463 Customer Billings and receipts, in chronological order, for a period of five (5)  
1464 years after the date of service. Contractor shall maintain those records in  
1465 electronic format. SBWMA and Agency staff or representatives shall be given  
1466 access to such records upon one (1) Business Day notice.

1467 Agency shall be allowed to access and review Contractor's Billing systems on  
1468 an appointment basis and such access shall not be unreasonably withheld by  
1469 Contractor.

1470 5. Rates. Agency shall establish, by resolution or ordinance, Rates for the types of  
1471 service provided as described in Section 11.07 or elsewhere in this Agreement.  
1472 Contractor shall Bill and collect those Agency-set Rates.

1473 6. Service Stops. Contractor shall allow Customers to suspend service and Billings  
1474 when the Premises are unoccupied (except as specified in County Ordinance  
1475 Code). Single-Family Residential Customers may suspend service for a  
1476 minimum of one (1) Service Day on a maximum of three (3) occasions each Rate  
1477 Year. Commercial Customers may suspend service for a minimum of two (2)  
1478 Service Days on a maximum of six (6) occasions each Rate Year. Multi-Family  
1479 Customers may not suspend service without prior written approval from Agency.  
1480 The Billings for both Residential and Commercial Customers shall be prorated  
1481 by Contractor in accordance with Customer's requests to suspend service.

1482 B. **Delinquent Payment**. Residential Customers shall be considered delinquent sixty  
1483 (60) Days after start of the quarter in which the services are provided, and Multi-  
1484 Family Dwelling and Commercial Customers shall be considered delinquent thirty  
1485 (30) Days after payment is due. Contractor shall address the issue of delinquent  
1486 payment as specified in Attachment H.

1487 C. **Local Office**. Contractor shall maintain a local office in the Shoreway Environmental  
1488 Center, located at 225 Shoreway Road, San Carlos, California, for acceptance of in-  
1489 person payment of bills. If office space at Shoreway Environmental Center becomes  
1490 unavailable for the Contractor's use, Contractor shall establish a local office in the  
1491 SBWMA Service Area. Such a change shall be considered an Agency-directed  
1492 change in scope and handled in accordance with provisions in Section 15.12. At the  
1493 local office, Contractor shall accept as payment personal checks, money orders,  
1494 cashiers' checks, and credit cards. The local office shall be open for business from  
1495 8:00 a.m. until 5:00 p.m. Monday through Friday, exclusive of Holidays specified in  
1496 Attachment A for the local office.

1497 D. **Contractor Revenue Collection**. Contractor shall collect revenue for services  
1498 described herein on behalf of the Agency. Revenues collected on behalf of the  
1499 Agency or SBWMA shall be handled as described in Article 11 of this Agreement.

1500 E. **Review of Billings**. Contractor shall review its Billings to Customers, issued  
1501 pursuant to Section 7.01.A. The purpose of the review is to determine that the amount  
1502 which Contractor is Billing each Customer is correct in terms of the level of service  
1503 (i.e., frequency of Collection, size of Container, location of Container) being provided  
1504 to such Customer by Contractor. Contractor shall review Customer accounts not less  
1505 than once every three (3) calendar years for each Commercial, Multi-Family Dwelling,  
1506 and SFD Customer, unless Agency directs Contractor to do so more frequently.  
1507 Contractor shall submit to Agency a written report of the status of its review annually  
1508 no later than forty-five (45) Days after the end of each calendar year. The intent of  
1509 this Section is for Agency to receive reports on an annual basis for one-third (1/3) of  
1510 all Customer accounts, and for all Customer accounts to be reviewed every third year  
1511 of the Agreement. The scope of the review and the reviewer's work plan shall be  
1512 submitted to Agency for approval no later than six (6) months before the submission  
1513 of the first report.

1514 F. **Agency or SBWMA Billing Review.** Contractor acknowledges that Agency or  
1515 SBWMA may perform, or cause to be performed, Billing reviews periodically.  
1516 Contractor agrees to participate and cooperate with SBWMA and Agency and its  
1517 agents to accomplish these reviews and conduct any data collection and report  
1518 preparation that may be requested. The Contractor's full cooperation with these  
1519 reviews may include, but is not limited to: (i) allowing Agency or SBWMA staff or  
1520 consultants to ride along with drivers in Collection vehicles during daily Collection  
1521 operations; (ii) providing for interviews of personnel at all levels, with or without  
1522 management oversight; (iii) providing reporting related to franchised operations  
1523 available through Contractor's automated systems; and, (iv) adjusting routing, public  
1524 information, outreach, or program availability based upon the recommendations of  
1525 the audit, if approved by the SBWMA or Agency.

1526 G. **Privacy of Customer Information.** Contractor shall not distribute or sell Customer,  
1527 Owner, or Occupant information such as names, addresses, and telephone numbers to  
1528 other Persons with the exception of distribution to the Agency, SBWMA, or its  
1529 agents for reporting and contract compliance purposes and distribution to  
1530 Contractor's Billing agent (if Contractor uses a Related Party Entity or Subcontractor  
1531 for Billing purposes).

1532 **7.02 CUSTOMER SERVICE**

1533 Contractor is responsible for ensuring that all staff and Customer service representatives  
1534 (CSR) maintain a professional and courteous demeanor when in contact with Agency,  
1535 SBWMA, and the public. Contractor shall be responsible for all employee interactions with  
1536 Customers, SBWMA, and Agency staff. Contractor is required to ensure that its  
1537 Customers are consistently treated courteously and are presented with timely, responsive,  
1538 and thorough solutions to problems and requests for information. Contractor shall meet  
1539 monthly to discuss compliance with the Customer service standards described herein if  
1540 requested by Agency.

1541 A. **Local Office**

1542 Contractor shall operate a local office at the Shoreway Environmental Center, located  
1543 at 225 Shoreway Road, San Carlos. If office space at Shoreway Environmental  
1544 Center becomes unavailable for the Contractor's use, Contractor shall establish a  
1545 local office in the SBWMA Service Area. Such a change shall be considered an  
1546 Agency-directed change in scope and handled in accordance with provisions in  
1547 Section 15.12. Contractor's office hours shall be, at a minimum, from 8:00 a.m. to  
1548 5:00 p.m., Monday through Friday, exclusive of Holidays specified in Attachment A  
1549 for the local office. Contractor shall be responsible for ensuring that a qualified  
1550 representative is available at a local office within the SBWMA Service Area during  
1551 office hours to communicate with the public and accept Bill payments from  
1552 Customers. Contractor shall offer bi-lingual Customer service at the local office by  
1553 employing CSRs with English and Spanish language capabilities. The local office  
1554 and Customer service telephone number(s) shall either be a local or toll free call.

1555 Contractor's telephone system shall adequately handle the volume of calls typically  
1556 experienced on the busiest days. Contractor shall have a company representative,  
1557 an answering service, or voice-mail system available for calls received during non-  
1558 business hours and Holidays specified in Attachment A for the local office.

1559 Contractor shall employ sufficient Customer service staff and management practices  
1560 to ensure that the Average Speed of Answer is equal to or less than thirty (30)  
1561 seconds and the maximum Hold Time is ninety (90) seconds or less.

1562 Contractor shall be required to track all informational requests so that appropriate  
1563 public outreach materials can be designed to target commonly asked questions.  
1564 Contractor shall be responsible for promoting use of the Contractor's website for  
1565 scheduling of On-Call Collection Service events and obtaining answers related to  
1566 common informational requests through: (i) public education and promotion  
1567 materials; and, (ii) a recorded message Customers will hear while on-hold with the  
1568 Customer service department.

1569 Contractor shall maintain and publicize an e-mail address whereby Customers can  
1570 communicate with the Contractor's Customer service staff. Contractor shall monitor  
1571 the email at least once per Business Day, and ensure that a twenty-four (24) hour  
1572 response time is maintained.

1573 **B. Customer Service Call Center and Staffing**

1574 Contractor is required to operate a Customer service call center that will serve as the  
1575 primary telephone point of contact and information for all services. The Customer  
1576 service call center hotline is required to be staffed live during regular business hours  
1577 (i.e., Monday through Friday 8:00 a.m. to 5:00 p.m.) by sixteen (16) Customer service  
1578 representatives (includes one (1) receptionist who performs Customer service  
1579 activities). In addition, the Customer service call center shall offer multi-lingual  
1580 Customer service by employing a minimum of two (2) bilingual Customer service  
1581 representatives with English and Spanish language capabilities, and contracting with  
1582 a service to provide bilingual capacity for other languages including Cantonese,  
1583 Mandarin, and Vietnamese. Contractor shall provide immediate access to interpreters  
1584 for over one-hundred and seventy-five (175) languages through the use of Language  
1585 Line service, or a similar service.

1586 **C. Website**

1587 Contractor shall maintain and publicize an up-to-date website whereby Customers  
1588 can conduct business with Contractor in both English and Spanish. Contractor is  
1589 required to update the website monthly, and more frequently if necessary. At a  
1590 minimum, the website shall:

- 1591 1. Allow Customers to view and pay Bills issued by Contractor, as required in  
1592 Section 7.01;
- 1593 2. Allow Customers to schedule services Including On-Call Service events, On-Call  
1594 Bulky Item Collections, extra Collections, service changes, temporary Drop Box  
1595 service, service terminations, and service stops.
- 1596 3. Provide answers to frequently asked questions Including: proper Container set-  
1597 out instructions; list of acceptable Recyclable and Organic Materials; Collection  
1598 Days (in response to Customer input of service address); Billing issues,  
1599 Customer service telephone and e-mail contact information; and the Designated  
1600 Transfer and Processing Site hours, directions, and acceptable materials;
- 1601 4. Provide complete list of Agency-set Rates and Charges for all Customers;

- 1602 5. Allow Customers to file Complaints and receive from Contractor e-mail  
 1603 responses to Complaints;
- 1604 6. Provide a link to enable Customers to email Contractor.
- 1605 7. Provide a link to the County's website for Customers to download a sign to place  
 1606 on items for On Call Bulky Item Collection.
- 1607 8. Maintain and produce visitor logs and reporting including website and individual  
 1608 page visitation, number of web-based Bill payments per month, number of  
 1609 website-submitted Complaints per month, and individual and summary  
 1610 Customer Complaint and resolution reporting.

1611 **D. Customer Information System Requirements**

1612 Contractor is required to use a Customer information system with software  
 1613 applications capable of documenting all correspondence and conversations,  
 1614 pertaining to the services specified herein, between Contractor, Customers,  
 1615 Occupants, Agency, and SBWMA. The system shall include, at a minimum, the  
 1616 following data fields:

- 1617 1. Date and time of Customer correspondence or contact with Contractor (e.g.,  
 1618 phone call, email)
- 1619 2. Date and time response was provided
- 1620 3. Date and time resolution was provided
- 1621 4. Customer's name and contact information (multiple phone numbers and email  
 1622 addresses)
- 1623 5. Account address
- 1624 6. Service address,
- 1625 7. Occupant address
- 1626 8. Service location information including:
- 1627 a. Number of units
- 1628 b. Number, size, and type of Solid Waste, Organic Materials, and Targeted  
 1629 Recyclable Materials Containers
- 1630 c. Collection Service Day
- 1631 d. Route number
- 1632 e. Backyard service status
- 1633 f. Special Handling Service status
- 1634 g. Bulky Item Collection history (e.g., number of annual services performed,  
 1635 date requested, date provided)
- 1636 9. Service issue, Complaint, or Inquiry
- 1637 10. Time frame stipulated for Contractor to resolve issue.
- 1638 11. Description of Contractor's resolution of service issue or Complaint, or response  
 1639 to Inquiry
- 1640 12. Date and time that Contractor's resolution took place
- 1641 13. CSR or Contractor's employee identification code of employee inputting the  
 1642 Complaint or Inquiry

- 1643 14. CSR or Contractor's employee identification code of employee inputting the  
1644 resolution
- 1645 15. Parcel number(s)
- 1646 The system shall be capable of:
- 1647 1. Providing real-time access to complete Customer contact history from the  
1648 commencement of service in 2011;
- 1649 2. Providing Agency and SBWMA the capacity to submit work orders (e.g.,  
1650 specifying the Inquiry, Complaint, or request for service) electronically directly to  
1651 Contractor using Contractor's web-based software;
- 1652 3. Documenting non-Collection events including problem description and  
1653 resolution;
- 1654 4. Tracking non-Collection events necessary to fulfill the requirements in Section  
1655 8.02(F); and,
- 1656 5. Fulfilling Customer service reporting requirements as specified in Article 9.
- 1657 E. **Monthly Meetings with Agency.** If requested, Contractor shall meet monthly with  
1658 Agency to discuss compliance with the Customer service standards specified in this  
1659 Section 7.02, Attachment I (Performance Incentives and Disincentives), and  
1660 Attachment J (Liquidated Damages).
- 1661 F. **Quality Assurance Program.** Each month Contractor's Customer service  
1662 representatives shall contact by telephone a minimum of two hundred (200)  
1663 Customers within the SBWMA Service Area to inquire about the quality of their  
1664 Customer service experience when interacting with the Contractor's Customer  
1665 service center. The Customers contacted shall be (i) representative of different  
1666 Service Sectors, (ii) distributed among Member Agencies, and (iii) selected from  
1667 among Customers that have recently contacted the Contractor via phone and spoke  
1668 live with a Customer service representative. The Customers contacted each day shall  
1669 be randomly selected from the pool of Customers that contacted the Contractor the  
1670 prior Business Day and such calls shall be evenly distributed (e.g., approximately 12  
1671 to 13 calls per Business Day) throughout the month with some exceptions as follows:  
1672 calls will be made during non-peak call volume days (i.e., 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> weeks after  
1673 billing); and no calls will be made immediately after a holiday. When placing the calls,  
1674 the Contractor will use a standardized survey that will be completed during the phone  
1675 interview of the Customer. If a message is left with the Customer, the message left  
1676 by the Contractor shall direct the Customer to complete an online survey. Both survey  
1677 instruments (for phone interviews and online survey) shall have similar questions and  
1678 be subject to approval by the SBWMA. Contractor employees placing the calls shall  
1679 not be the same employee that spoke to the Customer the prior Business Day;  
1680 Contractor employees shall be calling Customers that another employee spoke to the  
1681 prior Business Day. Customer service representatives shall ask about (i) Customers'  
1682 satisfaction with Solid Waste, Recyclable Materials, Organic Materials, and Bulky  
1683 Item Collection services, (ii) Customers' satisfaction of the Customer service  
1684 experience when interacting with the Contractor's Customer service department,  
1685 and, (iii) Customer's suggestions for opportunities to improve service. The quality  
1686 assurance program reporting requirements are specified in subsection 9.05.G.



1687 G. **Preprogrammed Call Transfer.** Contractor shall maintain the ability to provide  
1688 preprogrammed call transfer service to Agency. With this communications feature in  
1689 place, when a Customer calls Contractor about an issue or concern that pertains to  
1690 Agency but is not related to Collection services provided by Contractor, Contractor  
1691 shall immediately transfer the phone call to the offices of Agency through a dedicated  
1692 telephone line designated by Agency. The call transfer shall be seamless, and appear  
1693 to the Customer as if Contractor were transferring the call internally.

1694 H. **Customer Service Operations Plan.** Contractor shall annually submit its Customer  
1695 service operations plan. The Customer service operations plan shall describe how  
1696 Contractor uses its customer relationship management system, linked to on-board  
1697 GPS tracking system, to share real-time information between Customers, drivers,  
1698 customer service representatives, managers, and SBWMA and Agency staff. The  
1699 plan will provide details on how Contractor automatically detects and records  
1700 information on each Customer pickup, real-time transmission of service extras,  
1701 blocked cars, safety notes, and exceptions to service.

1702 **7.03 PUBLIC EDUCATION AND PROMOTION**

1703 Contractor and Agency agree that all public education activities will be a collaborative  
1704 effort among the SBWMA, Agency, and Contractor. Contractor shall be responsible for  
1705 ensuring that its Customers consistently receive a high level of service and  
1706 responsiveness.

1707 A. **General.** Contractor acknowledges and agrees that education and public awareness  
1708 are critical and essential elements of any effort to achieve diversion. Contractor shall  
1709 educate Residential and Commercial Customers on the following: (i) the benefits of  
1710 source reduction, reuse, Recycling, and Composting and related program  
1711 opportunities; (ii) proper handling of Hazardous Waste; (iii) specific services offered  
1712 by the Contractor; and (iv) Rates for Collection services. The public education  
1713 program shall include distribution of public education materials when Collection  
1714 services are changed during the Term; and when new Collection services are  
1715 implemented during the Term. In addition, the public education program shall include  
1716 on-going education activities throughout the Term. Educational materials that  
1717 SBWMA will pay for, produce and jointly distribute, shall include, but not be limited to,  
1718 those listed in Section 7.03(D).

1719 B. **Three-Year Public Education and Recycling Technical Assistance Plan.** The  
1720 SBWMA, Member Agencies, and Contractor shall cooperate to prepare a joint Public  
1721 Education and Recycling Technical Assistance Plan every three (3) years (Three-  
1722 Year Plan). The Three-Year Plan will be an SBWMA-wide plan; therefore, separate  
1723 plans will not be prepared for each Member Agency. Generally, the Three-Year Plan  
1724 will focus on coordinating public education and recycling technical assistance efforts  
1725 and making efficient use of each Party's available resources in those areas. In the  
1726 case of Contractor, the process may and potentially result in modifying Contractor's  
1727 activities through a reallocation of Waste Zero Specialists' staff time and public  
1728 education and outreach resources, to the extent they can be reallocated without  
1729 causing the Contractor to default in performance of its expressed obligations under  
1730 this Agreement.

1731 The Parties shall cooperate to finalize the Three-Year Plan on or before January 1 of  
1732 Rate Years Eleven (2021), Fourteen (2024), Seventeen (2027), Twenty (2030),

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Twenty-three (2033) and, if the Term is so extended, Twenty-six (2036) and Twenty-nine (2039). SBWMA and Contractor shall jointly develop a schedule for preparation of the Plan, which shall involve the following elements:

1. Public Education Plan. Working collaboratively with the Contractor, SBWMA will develop, and the Contractor shall review, the first section of the Three-Year Plan, which shall include a detailed list of public education activities to be undertaken by SBWMA and Contractor for the coming three (3) Rate Years. The plan shall list each public education piece or activity (e.g., newsletters, Bill inserts, flyers, newspaper advertisements, website enhancements, etc.) to be prepared or conducted in the coming three (3) Rate Years, the purpose of the piece, the key subject(s) to be covered, the anticipated date of issuance/completion, performance standards, and quarterly reporting requirements. In addition, the plan shall list all Community Events for each Member Agency that the Contractor plans to attend and the public education it intends to provide at each such event (e.g., exhibit at Earth Day Event, Chamber of Commerce meetings, etc.) in the three (3) coming Rate Years.
2. Recycling Technical Assistance Plan. Working collaboratively with the SBWMA, Contractor shall develop a draft of the second section of the Three-Year Plan, which shall include a detailed list of Commercial, Mixed Use, and Multi-Family Recycling technical assistance activities to be undertaken by Waste Zero Specialists for the coming three Rate Years, the objectives of such activities, specific performance standards for the activities, the anticipated time frames for completion, the distribution of such activities across Member Agencies, quarterly reporting requirements, and any specific actions to be undertaken to meet the specific needs of one or more Member Agencies. Pursuant to Sections 7.04 and 7.13, SBWMA may request an adjustment in the staffing level for the Waste Zero Specialists.
3. Plan Review. SBWMA shall coordinate with the Member Agencies to seek input on the Three-Year Plan. After Member Agencies have provided their input, the Contractor shall provide the SBWMA with its final comments for both sections of the Three-Year Plan two (2) weeks after receiving the revised draft of the plan.
4. Completion of Plan Activities. During each Rate Year, the SBWMA, Agency, and Contractor shall each complete all elements and tasks specified in the Three-Year Plan that it has agreed to perform, in accordance with the schedule and budget presented in the Three-Year Plan. The Agency or SBWMA may, by providing written approval to Contractor, waive or postpone completion of any requirement of Contractor stated in the Three-Year Plan (it being understood that such right of Agency shall only apply to activities within Agency's Service Area). Waste Zero Specialists shall be dedicated to performing services for the SBWMA and Member Agencies and Customers within the SBWMA Service Area. Their main focus shall be on performing the tasks identified in the Public Education and Recycling Technical Assistance Plan. In addition to the tasks defined in the Public Education and Recycling Technical Assistance Plan, Agency recognizes that Waste Zero Specialists will participate in Contractor's employee programs such as company training programs, occasional staff meetings, and other activities, provided that such participation is commensurate with their position.

1779 C. **Content and Production Requirements.** The SBWMA will prepare all public  
1780 education materials and request that they be reviewed by Contractor prior to  
1781 production. Contractor shall review and comment on the materials within two (2)  
1782 weeks of request from the SBWMA or Agency. Bill inserts shall be designed and  
1783 produced by the SBWMA with review and comment by Contractor, and approval from  
1784 the Agency.

1785 The public education materials shall emphasize use of visual/graphic images as much  
1786 as practical. Furthermore, the materials shall include a clear listing of program  
1787 participation parameters and targeted materials.

1788 All public education materials shall be printed on paper containing the highest levels  
1789 of recycled-content material reasonably practical.

1790 The SBWMA shall develop a multi-lingual approach to preparing all public education  
1791 materials, and all public education materials shall be provided in both English and  
1792 Spanish.

1793 **D. SBWMA and Agency Responsibilities**

1794 SBWMA shall take primary responsibility for implementation of the public education  
1795 and outreach campaign that will be used to announce changes in Collection services.  
1796 Development of the public education and promotion strategy and implementation  
1797 schedule will be a collaborative process among Contractor, SBWMA, and Agency.

1798 The SBWMA and Agency's responsibilities with regard to public education and  
1799 promotion activities shall include, but not be limited to, the following:

- 1800 1. Provision of public education to SFD, MFD, Commercial, and Agency Facility  
1801 Customers with a broad focus on waste prevention, reuse, and Recycling.
- 1802 2. Preparation and distribution of newsletters for all SFD and MFD Occupants, at  
1803 frequency determined by SBWMA or Agency.
- 1804 3. Preparation and distribution of Multi-Family Dwelling toolkits for MFD complex  
1805 Owners and managers.
- 1806 4. Purchase of desk-side and other interior Targeted Recyclable Materials and  
1807 Organic Materials receptacles for Commercial Customers.
- 1808 5. Purchase of Recycling Tote-Bags for distribution to MFD complexes.
- 1809 6. Preparation and distribution of an electronic newsletter for the Commercial sector  
1810 and MFD complex managers.
- 1811 7. Preparation and provision of outreach materials to schools.
- 1812 8. Development and maintenance of SBWMA website.
- 1813 9. Production of decals for Used Motor Oil jugs.
- 1814 10. Production of Household Battery and Cell Phone Recycling bags.
- 1815 11. Each Rate Year, SBWMA shall develop and produce the following Bill inserts (for  
1816 distribution by Contractor):
  - 1817 a. Annual On-Call Collection Services Collection notice (one (1) SFD Solid  
1818 Waste Bill insert).
  - 1819 b. Annual Holiday Tree Recycling notice (separate for SFD and MFD - two  
1820 (2) Solid Waste Bill inserts).

- 1821 c. Annual "Reduce Holiday Packaging" notice (one (1) SFD and MFD Solid  
1822 Waste Bill insert).
- 1823 d. Twice annual compost giveaway notice (two (2) SFD and MFD Solid  
1824 Waste Bill inserts).
- 1825 e. Twice annual Commercial Recycling notice (two (2) Commercial Solid  
1826 Waste Bill inserts).
- 1827 f. Annual Commercial Recycling awards notice (one (1) Commercial Solid  
1828 Waste Bill insert).
- 1829 12. If Agency or SBWMA requests distribution of additional Bill inserts, SBWMA or  
1830 Agency shall develop and produce the Bill inserts.
- 1831 13. Prepare and manage press releases.
- 1832 E. **Contractor Responsibilities.** Contractor will be required to provide the following  
1833 services:
- 1834
- 1835 1. Actively collaborate with Agency and SBWMA on the public education strategy  
1836 and development of materials.
- 1837 2. Distribute public education and promotion materials to new Customers during  
1838 the Term.
- 1839 3. Provide public education door hangers, posters, and other promotional materials  
1840 to Multi-Family Dwelling Customers during the Term.
- 1841 4. Deliver Recycling Tote-Bags to MFD complexes.
- 1842 5. Deliver desk-side and other interior Targeted Recyclable Materials and Organic  
1843 Materials receptacles for Commercial Customers and Agency Facilities.
- 1844 6. Produce and deliver non-collection notices, in both English and Spanish. The  
1845 format and content of the non-collection notices must be approved in advance  
1846 by Agency and SBWMA.
- 1847 7. Affix Used Motor Oil Recycling decals to jugs for inclusion in Used Motor Oil  
1848 Recycling kits.
- 1849 8. Assemble and deliver Used Motor Oil Recycling kits upon request from SFD  
1850 Customers. Kits must be provided to Customer within five (5) Business Days of  
1851 Customer request.
- 1852 9. If approved by Agency, deliver Household Battery and Cell Phone Recycling  
1853 bags or containers upon request from Customers. Bags and containers must be  
1854 provided to Customer within five (5) Business Days of Customer request.
- 1855 10. Staff a booth at local public events and distribute promotional and educational  
1856 materials.
- 1857 11. Coordinate with SBWMA regarding SBWMA student tours at Shoreway  
1858 Environmental Center; make classroom presentations upon request; provide  
1859 school activities for students about the 4Rs.
- 1860 12. Conduct presentations at community meetings, service clubs, senior centers,  
1861 and neighborhood associations.
- 1862 13. Promote recycling and organics Collection programs on the sides of Collection  
1863 and route supervisors' vehicles. These advertising campaigns must be approved  
1864 in advance by Agency and SBWMA.

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14. Each Rate Year insert with its Bills, up to twelve (12) Solid Waste Bill inserts produced by SBWMA or Agency. A total of nine (9) Bill inserts are specified in subsection D above.
  15. If Agency has specified a post card Bill format, the notices described as "Bill inserts" shall be separately mailed by Contractor. In addition, if Bills (in whatever format) are mailed at intervals that do not accommodate the timely distribution of the specified notices, notices shall be separately mailed as necessary by Contractor. Agency shall reimburse Contractor for any postage fees paid by Contractor to conduct such separate mailings.
  16. Contractor's outreach and education material shall place a strong emphasis on Recycling and reuse, encouraging Customers to take advantage of donation opportunities offered by local non-profit organizations such as the Society of St. Vincent de Paul, Goodwill Industries, and the Salvation Army. In addition, Contractor shall promote other resources for reuse, such as the Freecycle Network™, an online resource for the free and local exchange of goods, the Resource Area for Teachers (RAFT), local schools, and other community organizations that are in need of reusable goods.
  17. Upon request by Agency, Contractor shall promote its services to Customers using Agency's email distribution list or an email distribution list authorized by Agency.
  18. As appropriate, Contractor shall request SBWMA or Agency to issue press releases related to programs, and, upon request, provide draft content for such press releases.

1888 **F. Reserved**

1889 **G. Meeting Requirements**

1890 Upon request from Agency or SBWMA, the general manager or his/her designee is  
1891 required to meet quarterly, and more frequently if necessary, with Agency and/or  
1892 SBWMA staff to review public education and promotion activities. In addition, the  
1893 general manager or his/her designee shall be required to represent Contractor at all  
1894 monthly SBWMA Board of Director meetings.

1895 **H. Agency Rights**

1896 Contractor acknowledges that the public education and promotion activities listed are  
1897 critical to the success of Agency's diversion performance relative to the Act and other  
1898 State legislation/regulations (such as, but not limited to, AB 341, AB 1594, AB 1826,  
1899 SB 1061, and SB 1383). As such, Contractor acknowledges Agency's rights to the  
1900 following:

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1. Contractor shall make available to Agency and SBWMA all public educational materials used by Contractor, which Agency and SBWMA shall approve prior to their use;
  2. Agency and SBWMA shall retain the right to modify, expand, or reduce the minimum public education requirements;
  3. Agency may require Contractor to work with a public education consultant selected by Agency or the SBWMA;
  4. Agency may perform, or request that the SBWMA perform on its behalf, the public education efforts assigned to the Contractor; and,

1910 5. Agency or SBWMA may provide additional, supplemental public education  
1911 materials as it deems appropriate.

1912 I. **Reporting Requirements**

1913 Contractor shall prepare and submit reports related to its public education activities  
1914 as provided in Article 9.

1915 J. **Service Notice**

1916 Contractor shall periodically prepare and distribute to each Customer a notice listing  
1917 Agency-set Rates for standard Collection services, Agency-approved Pricing for other  
1918 services, annual Holiday Collection Schedule, and a general summary of services  
1919 required under this Agreement to be provided Customers and optional services which  
1920 may be furnished by Contractor. Such notice shall be approved by the Agency prior  
1921 to distribution.

1922 **7.04 COMMERCIAL RECYCLING PROMOTION PROGRAM**

1923 A. **Commercial Recycling Promotion Program Staff.** Contractor shall maintain a  
1924 Commercial Recycling promotion program staff that will be primarily responsible for  
1925 supporting Commercial, Mixed Use Building, and Multi-Family Dwelling Accounts and  
1926 Agency Facilities Recycling-related and Organics-related Collection services. The  
1927 Commercial Recycling promotion staff for the SBWMA Service Area shall consist of  
1928 Waste Zero Specialists (recycling coordinators), as specified in Attachment O.

1929 Contractor shall notify Agency and SBWMA within ten (10) Business Days if any of  
1930 the Waste Zero Specialists resigns or is terminated from employment, and shall use  
1931 reasonable good faith efforts to initiate recruitment of the position within thirty (30)  
1932 days.

1933 If Contractor has one or more Waste Zero Specialist positions unfilled, as approved  
1934 in the Three-Year Recycling Technical Assistance Plan, for more than ninety (90)  
1935 Days, Contractor and SBWMA shall meet and confer regarding the reasons for the  
1936 difficulty in filling the position(s) and ways to remedy the employment gap. In addition,  
1937 Contractor shall reimburse Agency for the cost of each such unfilled position for the  
1938 period exceeding ninety (90) Days. The Contractor shall calculate the cost  
1939 reimbursement for the unfilled position(s) including the avoided cost of wages,  
1940 benefits, payroll taxes, and workers compensation insurance, for such position and  
1941 shall provide supporting documentation justifying its cost reimbursement calculations.  
1942 Such reimbursement shall be made as a deduction to Contractor's Compensation  
1943 through the annual Contractor's Compensation adjustment process described in  
1944 Article 11 and Attachment K.

1945 SBWMA reserves the right to request an increase or decreases in the number of  
1946 Waste Zero Specialists. Such a change shall be considered an Agency-directed  
1947 change in service and handled in accordance with provisions in Section 15.12.

1948 B. **Signs and Placards.** Contractor shall be responsible for preparing, distributing, and  
1949 posting signs at Commercial Collection Premises that promote Targeted Recyclable  
1950 Materials and Organic Materials Collection services, describe the program  
1951 requirements, and identify allowable and prohibited types of materials for Collection.  
1952 At a minimum, the signs or placards shall be durable and weather resistant, and  
1953 affixed in the Container areas. Upon request from Customer, Contractor shall provide  
1954 signs and Container labeling in a second language such as, but not limited to,

- 1955 Spanish. Within ten (10) Business Days of a Customer's request, Contractor shall  
 1956 provide extra signs for use in areas such as employee training areas, break rooms,  
 1957 kitchens, and janitorial areas at Commercial Premises. The design of all signs and  
 1958 placards shall be approved by Agency and/or SBWMA prior to distribution by  
 1959 Contractor.
- 1960 C. **Community Events.** At the direction of the Agency or SBMWA, Contractor shall  
 1961 participate in and promote diversion techniques at Community Events and local  
 1962 activities. Participation includes providing educational and public outreach  
 1963 information and promotional giveaways in an effort to promote the Agency's waste  
 1964 reduction and recycling program goals. Each year the Community Events that  
 1965 Contractor agrees to participate in shall be outlined in the Three-Year Public  
 1966 Education Plan described in Section 7.03.B. Attachment C presents a preliminary list  
 1967 of the Community Events, which may be modified annually through the development  
 1968 of the Three-Year Public Education Plan, as described in Section 5.08.
- 1969 D. **Notification to Commercial Customers.** Immediately upon request from a new or  
 1970 current Customer for new or changes in service, Contractor shall notify Customer by  
 1971 phone or email of the Targeted Recyclable Materials and Organic Materials Collection  
 1972 services offered by Contractor. Such notification shall be made available in English  
 1973 and Spanish.
- 1974 E. **Targeted Commercial Recycling Promotion.** To assist Customers in maximizing  
 1975 participation in Recyclable Materials and Organic Materials Collection programs,  
 1976 Contractor shall provide Commercial Customers with on-site waste assessments  
 1977 based on visual assessment of Collection Containers and technical assistance in  
 1978 selecting appropriate service levels. In providing such assistance, Contractor shall  
 1979 follow the Three-Year Recycling Technical Assistance Plan described in Section  
 1980 7.03.B, which will include details on the type of Commercial Recycling technical  
 1981 assistance promotion and the number of waste assessments for Customers to be  
 1982 provided in Agency's Service Area. For all other Commercial Customers not specified  
 1983 in the Three-Year Plan, Contractor shall provide technical assistance as needed or  
 1984 requested and visual on-site Collection Container assessments. Contractor shall  
 1985 document the names of the Customers receiving the waste assessments, the date of  
 1986 the assessment, the Solid Waste, Source Separated or Targeted Recyclable  
 1987 Materials, or Organic Materials service levels at the time of the assessment, and  
 1988 recommended changes to service level(s). Upon request, Contractor shall provide  
 1989 details of waste assessments to Agency or SBWMA.
- 1990 F. **Enclosure Specifications.** Contractor shall work with the Agency to develop  
 1991 standard specifications for Collection Container enclosures at Multi-Family  
 1992 Residential Complexes, Mixed Use Buildings, and Commercial Premises to ensure  
 1993 that Container enclosures have adequate space and suitable configuration to allow  
 1994 the Contractor to safely and efficiently service the Containers. The enclosure  
 1995 specifications shall require provision of adequate space for Solid Waste, Targeted  
 1996 Recyclable Materials, and Organic Materials Collection Containers. Contractor  
 1997 provided the enclosure specifications to the Agency on or before the effective date of  
 1998 the 2009 Franchise Agreement and shall be required to update these specifications  
 1999 as frequently as needed or as requested by Agency.
- 2000 G. **Plan Review.** Contractor shall review plans for land use or property developments,  
 2001 upon request of the Agency, to assess the adequacy of Container enclosure space

2002 allowances for Solid Waste, Recyclable Materials, and Organic Materials Collection  
2003 Containers and the accessibility of Containers by Collection vehicles. The  
2004 Contractor's review shall be completed by the Contractor within ten (10) Business  
2005 Days of request by Agency and receipt of the project design drawings. If site  
2006 conditions warrant, the Contractor shall conduct a site visit of the proposed property  
2007 to complete its evaluation. The Contractor's review shall be summarized in a letter  
2008 report that states acceptability of the proposed enclosure arrangements or notes  
2009 specific changes that are required to comply with the enclosure specification. The  
2010 letter report shall be signed by the Person that conducted the review, or designee, on  
2011 behalf of the Contractor. This review shall include, but not be limited to:

- 2012 1. Adequacy of the Container enclosure space to store Containers for the  
2013 anticipated volume of Solid Waste, Targeted Recyclable Materials, and Organic  
2014 Materials generated by a development of the size and purpose contemplated;
- 2015 2. Adequacy of Container enclosure space to store Containers for Solid Waste,  
2016 Targeted Recyclable Materials, and Organic Materials in a fashion that allows for  
2017 the greatest possible diversion of materials; and,
- 2018 3. Adequacy and accessibility of the Container enclosure space for Contractor to  
2019 safely and efficiently service all Containers in the contemplated service locations  
2020 taking into account the dimensions of the enclosure space, the access road  
2021 dimensions, parking arrangements, pedestrian traffic, change in elevation, other  
2022 site considerations, and Collection vehicle capabilities.

2023 H. **Reporting.** Contractor shall prepare and submit reports related to the Commercial  
2024 Recycling promotion program as provided in Article 9.

2025 I. **Mandatory Commercial Recycling Assistance to Agency.** Contractor shall assist  
2026 Agency and SBWMA with implementing, monitoring, and reporting on Commercial,  
2027 Mixed Use, and MFD Customers' compliance with requirements for Recyclable  
2028 Materials and Organic Materials diversion under AB 341, AB 1826, or other similar  
2029 Applicable Law. Upon Agency's reasonable request and in accordance with Section  
2030 9.09.E, Contractor shall provide Agency with periodic reports on Commercial, Mixed  
2031 Use, and MFD Customers that do not appear to be complying with State or local  
2032 diversion regulations, policies, or requirements of, based on the observations of  
2033 Contractor's employees and/or subscription data.

2034 **7.05 MULTI-FAMILY RECYCLING PROMOTION PROGRAM**

2035 A. **Multi-Family Dwelling Promotion.** Contractor shall provide Waste Zero Specialists  
2036 to work directly with Owners or property managers of Multi-Family Residential  
2037 Complexes to implement the Single-Stream Targeted Recyclable Materials and  
2038 Organic Materials Collection services, and to assess Customer service for all Multi-  
2039 Family Residential Complexes. The Multi-Family complexes that Contractor shall  
2040 visit each year and the outreach activities that shall be performed shall be outlined in  
2041 the Three-Year Recycling Technical Assistance Plan described in Section 7.03.B and  
2042 approved by the Agency and SBWMA. The Contractor's implementation activities  
2043 may include, but shall not be limited to, the following types of tasks for Multi-Family  
2044 Residential Complexes that subscribe to Single-Stream Targeted Recyclable  
2045 Materials and/or Organics Materials Collection services:

- 2046 1. Site Assessments. Contractor shall contact or meet in person with Owner or  
2047 property manager to explain the Single-Stream Targeted Recyclable Materials



2048 and/or Organics Materials Collection program of Multi-Family Residential  
2049 Complexes containing five (5) or more Residential units to determine the  
2050 appropriate number and type of Solid Waste and Recyclable Materials  
2051 Containers and the frequency of Collection. As part of its standard Collection  
2052 Services, Contractor shall provide Containers for Organics Material such as  
2053 Food Scraps, compostable paper, and Plant Materials, and Single-Stream  
2054 Targeted Recyclable Materials or Source Separated Targeted Recyclable  
2055 Materials such as newspaper, cardboard, mixed paper, glass, aluminum, etc.  
2056 depending on the needs of the Multi-Family Residential Complex. If practical,  
2057 Contractor shall locate the Solid Waste, Recyclable Materials, and Organic  
2058 Materials Containers in the same area so tenants carry materials to one location.  
2059 Contractor shall also offer Recyclable Materials Carts for use in the mail area of  
2060 the Premises. A site assessment shall be conducted by Contractor when  
2061 Targeted Organics Materials or Recyclable Materials Collection services are  
2062 initially provided at a Multi-Family Residential Complex, and as requested by  
2063 Customer or deemed necessary by Contractor throughout the Term of this  
2064 Agreement.

2065 2. Service Level Adjustments. Within five (5) Business Days of completing the site  
2066 assessment or receiving a request from a Customer, Contractor shall adjust the  
2067 Customer's service level by providing any Solid Waste, Recyclable Materials,  
2068 and/or Organic Materials Containers needed for change in service, removing  
2069 unneeded Containers, and revising the Customer's service level in the Billing  
2070 system to reflect the monthly Rate for the new service level. At the time new  
2071 Containers are delivered or existing Containers are removed, the Contractor  
2072 shall confirm that all Containers are properly labeled and shall provide public  
2073 education signage for the Container areas and extra signs for public and  
2074 common areas such as mail and laundry rooms, etc.

2075 3. Distribution of Public Education Materials. Contractor shall provide Owner or  
2076 property manager with education materials developed by Agency, SBWMA or  
2077 Contractor, which describe the requirements of the Recyclable Materials and/or  
2078 Organic Materials Collection program (as applicable), including flyers, door  
2079 hangers and Recycling Tote-Bags for distribution to tenants, signage for  
2080 common areas such as mail rooms and laundry rooms, Kitchen Pails, and move-  
2081 in kits for new tenants.

2082 B. **Notification to Multi-Family Dwelling Customers.** Upon request from a new or  
2083 current Customer for new or changes in service, Contractor shall notify the Customer  
2084 by mail or email of the Targeted Recyclable Materials and Organic Materials  
2085 Collection services offered by Contractor. Such notification shall be made available  
2086 in English and Spanish.

2087 C. **Signs and Placards.** Contractor shall be responsible for preparing, distributing, and  
2088 posting signs and placards at Multi-Family Dwelling Premises that promote Targeted  
2089 Recyclable Materials and Organic Materials Collection services, describe the  
2090 program requirements, and identify allowable and prohibited types of materials for  
2091 Collection. At a minimum, these signs shall be durable, weather resistant and posted  
2092 in the Container areas. Upon request of the Customer, Contractor shall provide  
2093 signage and Container labeling in a second language such as, but not limited to,  
2094 Spanish. Within ten (10) Business Days of a Customer's request, Contractor shall  
2095 provide extra signage for use in areas such as laundry and mail rooms at Multi-Family

2096 Residential Complexes. The design of all signs and placards shall be approved by  
2097 Agency and/or SBWMA prior to distribution by Contractor.

2098 **7.06 WASTE GENERATION/CHARACTERIZATION STUDIES**

2099 Contractor acknowledges that Agency may perform Solid Waste, Recyclable Materials,  
2100 and/or Organic Materials generation and characterization studies periodically to determine  
2101 the composition and Contamination Levels of Collected materials. Contractor agrees to  
2102 participate and cooperate with SBWMA and Agency and its agents and to accomplish  
2103 studies and data collection and prepare reports, as needed, to determine weights and  
2104 volumes of Solid Waste, Targeted Recyclable Materials, Plant Materials, and Organic  
2105 Materials and characterize materials generated, Disposed, transformed, diverted, or  
2106 otherwise handled/processed to satisfy requirements of the Act and other State  
2107 legislation/regulations (such as, but not limited to, AB 341, AB 1594, AB 1826, SB 1061,  
2108 and SB 1383). Contractor shall also facilitate visual audits of Multi-Family Dwelling,  
2109 Commercial, and Agency Cart and Bin service accounts. The visual audits will entail  
2110 tipping the contents of Customers' Containers on the tipping floor at the Designated  
2111 Transfer and Processing Facility and visually observing and documenting the contents  
2112 (without pursuing a detailed weight-based characterization study). The materials will then  
2113 be processed at the Designated Transfer and Processing Facility. Contractor shall be  
2114 required to facilitate said visual audits at the request of Agency; however, the annual total  
2115 quantity of requests for visual audits for each Service Sector shall be limited to ten percent  
2116 (10%) of the total number of accounts for each Service Sector.

2117 The SBWMA will use the Contamination Measurement Procedures set forth in Attachment  
2118 E, to determine the Contamination Levels of single loads of materials delivered to the  
2119 Designated Transfer and Processing Facility.

2120 **7.07 PROGRAM EVALUATION**

2121 The Agency may require the Contractor to periodically conduct audits of the Residential  
2122 and Commercial Solid Waste, Targeted Recyclable Materials, and Organic Materials  
2123 Collection programs to assess one (1) or more of the following performance indicators:  
2124 average volume of Targeted Recyclable Materials per set-out per Customer, average  
2125 volume of Organic Materials per set-out per Customer, participation level (i.e., number of  
2126 Customers setting out Containers per week), Contamination Levels, etc. Contractor shall  
2127 perform up to five (5) Days of route auditing, at no additional cost to Customers and shall  
2128 not bill Agency for such services, once per calendar year. Prior to the program evaluation  
2129 audit, Agency and Contractor shall meet and discuss the purpose of the audit and agree  
2130 on the method, scope, and data to be provided by the Contractor. If Agency requires more  
2131 than five (5) Days of auditing for the purposes of program evaluation, the activity shall be  
2132 considered an Agency-directed change in scope and handled in accordance with  
2133 provisions in Section 15.12.

2134 If the Contractor does not Collect Multi-Family Dwelling Solid Waste, Targeted Recyclable  
2135 Materials, and Organic Materials using dedicated Collection vehicles, thereby precluding  
2136 regular and accurate reporting of the Tonnage of Solid Waste, Targeted Recyclable  
2137 Materials, and Organic Materials Collected from Multi-Family Residential Complexes, the  
2138 Agency may require the Contractor to conduct a semi-annual or annual Tonnage  
2139 assessment that involves separately Collecting, weighing, and reporting Multi-Family  
2140 Dwelling Solid Waste, Targeted Recyclable Materials, and Organic Materials to quantify  
2141 Tonnage Collected during a given week. This assessment shall be performed by  
2142 Contractor at no additional cost to Customers and shall not bill Agency for such services.

2143 If the Agency wants to collect program data, perform field work, conduct route audits to  
2144 investigate Customer participation levels and set-out volumes, and/or evaluate and  
2145 monitor program results related to Solid Waste, Targeted Recyclable Materials, Organic  
2146 Materials, Bulky Items, and abandoned waste Collected in the Agency by the Contractor,  
2147 the Contractor shall cooperate with the Agency and its agent(s), which may include the  
2148 SBWMA and its consultants.

2149 **7.08 PROVISION OF EMERGENCY SERVICES**

2150 Contractor shall provide emergency services at the Agency's request in the event of major  
2151 accidents, disruptions, or natural calamities. Emergency services may include, but are  
2152 not limited to: assistance handling, salvaging, processing, composting, or Recycling  
2153 materials; or Disposing of Solid Waste following a major accident, disruption, or natural  
2154 calamity. Contractor shall be capable of providing emergency services within twenty-four  
2155 (24) hours of notification by the Agency or as soon thereafter as is reasonably practical in  
2156 light of the circumstances. Emergency services which exceed the Contractor's obligations  
2157 as stated in Article 5, shall be compensated in accordance with Article 11. If Contractor  
2158 cannot provide the requested emergency services, the Agency shall have the right to  
2159 temporarily take possession of the Contractor's equipment for the purposes of providing  
2160 emergency services in accordance with Article 12.

2161 **7.09 MFD AND COMMERCIAL RECYCLING BLITZ**

2162 Upon Agency's request, Contractor shall provide a Recycling Blitz outreach program that  
2163 will target Multi-Family Dwelling, Mixed Use, and Commercial Customers as needed. Such  
2164 a change shall be considered an Agency-directed change in scope and handled in  
2165 accordance with Section 15.12. As part of the Recycling Blitz, Contractor may be required  
2166 to offer to provide Single-Stream Targeted Materials Recycling and Organic Materials  
2167 Collection Service to Multi-Family Dwelling and Commercial Customers that are currently  
2168 receiving limited or no Recycling or Organic Materials Collection service. The promotional  
2169 materials, messages, and communications used by Contractor to support Recycling Blitz  
2170 activities shall be developed collaboratively with the SBWMA and Agency and production  
2171 of materials shall be paid for by Contractor and shall not bill Agency for such services or  
2172 SBWMA. All promotional materials used by Contractor shall be authorized by the SBWMA  
2173 and Agency.

2174 If Contractor is required to conduct a Recycling Blitz, Contractor shall form a Recycling  
2175 Blitz team, utilizing the Waste Zero Specialists, to assist in this promotion campaign. The  
2176 focus of the Recycling Blitz program shall be on Customers that are either not currently  
2177 Recycling or diverting Organic Materials, or have only limited service. The Recycling Blitz  
2178 team shall work with Customers to expand Collection of Targeted Recyclable and Organic  
2179 Materials and make recommendations for reduced Solid Waste Container sizes and/or  
2180 frequency of Solid Waste Collection service. Contractor shall work collaboratively with the  
2181 SBWMA and Agency.

2182 **7.10 CARBON FOOTPRINT MEASURING**

2183 Contractor shall annually file its emissions data with the California Climate Action  
2184 Registry (CCAR). Upon request of Agency or SBWMA, Contractor shall provide  
2185 emissions data filed with CCAR; a description of Contractor's carbon footprint; and, a  
2186 description of Contractor's activities both planned and implemented to reduce its  
2187 carbon footprint for the previous calendar years.

2188 **7.11 ENVIRONMENTAL MANAGEMENT PROGRAM**

2189 Contractor shall implement and maintain an environmental management program  
2190 combining several elements to minimize the environmental impacts of its operations in the  
2191 Service Area. Contractor shall provide upon request from Agency a description of topics  
2192 discussed at its bi-monthly environmental team roundtable and training program  
2193 meeting(s) and the semiannual corporate environmental compliance staff meetings.  
2194 Contractor shall provide Agency access to its environmental and safety tracking system  
2195 (NEST) upon request. Contractor shall provide Agency copies of its internal environmental  
2196 compliance audits, third-party audits, and disposition of corrective actions, within thirty  
2197 (30) Days upon request from Agency.

2198 **7.12 ANNUAL ROUTE ASSESSMENT**

2199 Contractor shall conduct a route assessment of the Service Area each Rate Year. This  
2200 comprehensive route assessment shall require Contractor to assess all of its Solid Waste,  
2201 Targeted Recyclable Materials, and Organic Materials Collection Customers over a one  
2202 (1) week period during the same month each year for the Term. The assessment is  
2203 intended to annually confirm and update Contractor's data related to Customer accounts,  
2204 service levels and operations, including, but not limited to: (i) number of Accounts; (ii)  
2205 Customer address; (iii) number and type of Containers at each Account; and (iv) Collection  
2206 frequency of each Container at each Account; (v) Bin and Cart lifts; (vi) Drop Box pulls;  
2207 (vii) service stops; (viii) route hours per year; and (ix) Tonnage Collected. All service level  
2208 information related to lifts and pulls shall be derived in part from Contractor's database  
2209 management system. All route labor hours shall be based on total route hours for routes  
2210 exclusive to each Agency and Tonnage information shall be based on actual Tons  
2211 Collected. For routes that service more than one Agency, the Tonnage Collected on these  
2212 routes and total route hours shall be allocated to the respective Agencies based on the  
2213 type and number of accounts and service levels attributable to each Agency.

2214 **7.13 RIGHT OF AGENCY OR SBWMA TO MAKE CHANGES TO OTHER SERVICES**

2215 A. **Quarterly Review.** Beginning on the Commencement Date, and on a quarterly basis  
2216 thereafter, Contractor shall meet with Agency and SBWMA to discuss the services  
2217 performed by the Contractor pursuant to Sections 7.03 through 7.07 ("Other  
2218 Services"). The purpose of the meetings will be to review the performance and results  
2219 of the Other Services compared to the milestones, goals, and performance standards  
2220 stated in the then-current Three-Year Public Education and Recycling Technical  
2221 Assistance Plan. Contractor's quarterly reports provided in accordance with the  
2222 reporting requirements of Article 9 shall be used to review performance, and  
2223 Contractor shall provide other information requested by Agency or SBWMA  
2224 necessary to evaluate the performance of each Other Service.

2225 B. **Change in Services.** Agency or SBWMA may, without amending this Agreement,  
2226 direct Contractor to increase or decrease the performance or scope of one or more  
2227 of the Other Services. Contractor shall promptly and cooperatively comply with such  
2228 direction. If such changes cause an increase or decrease in the cost of performing  
2229 the Other Services, an equitable adjustment in the Contractor's Compensation shall  
2230 be made in accordance with change in service provisions in Section 15.12. Contractor  
2231 shall continue to perform the new or changed service while the appropriate  
2232 adjustment in Contractor's Compensation is being determined.

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- C. **Additional Services.** Agency or SBWMA may direct the Contractor to perform additional services pertaining to Sections 7.03 through 7.07, but not described herein, and Contractor shall provide a cost proposal in accordance with change in service provisions in Section 15.12. If the Contractor and SBWMA cannot agree on terms and conditions for such additional services within one-hundred twenty (120) Days from the date which the SBWMA first requests a proposal from Contractor to perform such services, Agency or SBWMA may perform these services itself or permit a third-party or parties other than Contractor to provide such Other Services. Contractor shall provide such third-party or parties access to and use of Facilities and Contractor information as necessary for such third-party or parties to perform all such Other Services.

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**ARTICLE 8**  
**REQUIREMENTS FOR OPERATIONS,**  
**EQUIPMENT, AND PERSONNEL**

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2248 **8.01 COLLECTION HOURS AND SCHEDULES**

2249 **A. Hours of Collection**

2250 1. Residential. Residential Solid Waste, Targeted Recyclable Materials, and  
2251 Organic Materials (including all such services provided to SFD and Multi-Family  
2252 Dwelling Premises) shall be Collected on weekdays (i.e., Monday through  
2253 Friday) between 6:00 a.m. and 6:00 p.m. exclusive of Holidays defined in  
2254 Attachment A for Collection service.

2255 2. Commercial, Mixed Use, and Agency Facilities. Commercial, Mixed Use, and  
2256 Agency Facilities Solid Waste, Targeted Recyclable Materials, and Organic  
2257 Materials shall be Collected on weekdays (i.e., Monday through Friday) between  
2258 3:00 a.m. and 6:00 p.m. and weekends (i.e., Saturday and Sunday) between  
2259 6:00 a.m. and 5:00 p.m., exclusive of Holidays specified in Attachment A for  
2260 Collection service. The Agency may restrict or require modifications to hours for  
2261 Collection from Commercial Premises, Mixed Use Buildings, and Agency  
2262 Facilities to resolve noise Complaints, and, in such case, the Agency Manager  
2263 may restrict the allowable operating hours.

2264 3. Commercial, Mixed Use, and Agency Facilities Exception. Collection from  
2265 Commercial Premises, Mixed Use Buildings, and Agency Facilities that are two-  
2266 hundred (200) feet or less from Residential Premises shall only occur between  
2267 the hours of 6:00 a.m. and 6:00 p.m., Monday through Saturday and all such  
2268 operations shall be in accordance with permissions provided to Contractor by  
2269 Agency. The Agency may restrict or require modifications to hours for Collection  
2270 from Commercial Premises, Mixed Use Buildings, and Agency Facilities to  
2271 resolve noise Complaints, and, in such case, the Agency Manager may restrict  
2272 the allowable operating hours.

2273 4. Exception. In the event of an unforeseen circumstance, the Contractor may  
2274 Collect materials from Residential Premises, Commercial Premises, Mixed Use  
2275 Buildings, or Agency Facilities that are two-hundred (200) feet or less from  
2276 Residential Premises between the hours of 3:00 a.m. and 6:00 p.m., Monday  
2277 through Saturday, upon prior written approval from the Agency Manager.

2278 5. Local Noise Ordinance. If the San Mateo County Ordinance regulating noise  
2279 limits the hours of Collection more restrictively than the preceding subsections,  
2280 the terms of the ordinance shall govern.

2281 6. Modification. The Collection hours and distances set forth in Sections 8.01.A.3  
2282 and 8.01.A.4 may be adjusted by mutual agreement of Agency (acting through  
2283 the Agency Manager or designee) and Contractor (acting through its General  
2284 Manager), provided that the Collection hours and distances are at all times  
2285 consistent with Agency ordinances.

2286 **B. Route Schedules.** Routes over which Contractor's vehicles travel to affect the  
2287 Collection and transport of Solid Waste, Targeted Recyclable Materials, and Organic

2288 Materials shall be selected to minimize damage to Agency and private streets, and  
2289 minimize inconvenience and disturbance to the public. The route schedules and  
2290 routing maps shall be subject to the approval of Agency prior to Commencement of  
2291 services. Contractor shall use due care to obey all traffic laws and prevent materials  
2292 being transported from being spilled or scattered during transport.

2293 Contractor shall be prepared to review its operations plan outlining the Collection  
2294 routes, intervals of Collection and Collection times for all materials Collected under  
2295 this Agreement with the Agency or its representatives at least annually. More  
2296 frequent reviews may be required if operations are not satisfactory based on  
2297 documented observations or reports or Complaints. If the plan is determined to  
2298 inadequately address the unsatisfactory performance as documented by  
2299 observations and Complaints, the Agency may direct Contractor to revise the plan  
2300 incorporating any changes into a revised plan and review said revised plan with the  
2301 Agency within thirty (30) Days of the initial meeting with the Agency.

2302 C. **Contingency Plan.** Contractor shall submit to Agency ninety (90) Days prior to  
2303 Commencement Date, a written contingency plan demonstrating Contractor's  
2304 arrangements to provide vehicles and personnel and to maintain uninterrupted  
2305 service during breakdowns, and in case of natural disaster or other emergency,  
2306 including the events described in Section 14.09.

## 2307 **8.02 COLLECTION STANDARDS**

2308 A. **Reserved**

2309 B. **Servicing Containers and Missed Pick-Ups**

2310 1. General. Contractor shall Collect the contents and return each Container to the  
2311 location where the Occupant properly placed the Container for Collection.  
2312 Contractor shall place the Containers upright with lids properly closed and  
2313 secured.

2314 Contractor shall use due care when handling Containers. Contractor shall not  
2315 throw, roughly handle, damage, or break Containers.

2316 Upon Customer request, Contractor shall provide special services including:  
2317 unlocking and locking Containers; accessing locked Container enclosures (e.g.,  
2318 with a key or combination lock); providing Container Relocation Service; and,  
2319 providing Long Distance Service. Contractor shall provide these services upon  
2320 request from Customer and Contractor shall bill Customer at Agency-approved  
2321 Pricing. Compensation to Contractor for providing these special services will be  
2322 at the Charges specified in Attachment Q. Section 5.02 provides additional  
2323 information on general Container service requirements, Long Distance Service,  
2324 and Container Relocation Service.

2325 2. Missed Pick-Ups. When notified of a missed pick-up, Contractor shall Collect the  
2326 Solid Waste, Targeted Recyclable Materials, or Organic Materials on the day the  
2327 notice is received, if possible, and in all cases shall Collect the missed pick-up  
2328 by 6:00 p.m. of the next Business Day following receipt of the missed pick-up  
2329 notification.

2330 C. **New Customers and Change in Service Levels.** Contractor shall deliver  
2331 Containers and initiate Collection services for a new Customer within five (5)  
2332 Business Days of the Customer's request for service. If an existing Customer

2333 requests a change in the number or size of their Solid Waste, Recyclable Materials,  
2334 or Organic Materials Containers and/or frequency of Collection, the Contractor shall  
2335 deliver additional Containers and/or remove Containers and shall initiate changes in  
2336 the Collection services within five (5) Business Days of the Customer's request for a  
2337 change in service.

2338 D. **Separate Collection of Materials and Allocation of Agency Materials.** Contractor  
2339 shall separately Collect and segregate Solid Waste, Targeted Recyclable Materials,  
2340 and Organic Materials from each other and shall not Commingle these materials at  
2341 any time during the transportation or delivery of those materials to the Designated  
2342 Transfer and Processing Facility. Solid Waste, Targeted Recyclable Materials, and  
2343 Organic Materials Collected in the Agency, which are combined with materials  
2344 Collected from other SBWMA Member Agencies, shall be allocated by Contractor to  
2345 the Agency's Collection program based on volume or Tonnage using a method  
2346 approved by the Agency and SBWMA. Contractor shall not Collect materials from  
2347 within Agency in the same Collection vehicles used to provide Collection service to  
2348 non-SBWMA Member Agencies, unless provided written approval by Agency.

2349 E. **Setout Instructions to Customer.** Contractor shall instruct Customers as to any  
2350 preparation of Solid Waste, Targeted Recyclable Materials, or Organic Materials and  
2351 the proper placement of Containers. If Customers are not adhering to Contractor's  
2352 instructions, Contractor shall notify such Customers in writing. In cases of extreme  
2353 or repeated failure to comply with the instructions, Contractor may decline to pick-up  
2354 the Targeted Recyclable Materials or Organic Materials provided that Contractor  
2355 leaves an adequate number of non-Collection notices on the Container, as  
2356 determined by the Agency, indicating the reason for refusing to Collect the material.  
2357 Such notices shall also identify the steps Generator must take to recommence  
2358 Collection service.

2359 F. **Non-Collection Notices.** Contractor may choose not to Collect materials for the  
2360 following reasons: (i) Source Separated or Targeted Recyclable Materials or Organic  
2361 Materials do not comply with the allowable Contamination thresholds; (ii) materials  
2362 contain Hazardous Waste; or (iii) the loaded weight of a Container exceeds the  
2363 maximum load limit specified by the Cart manufacturer and specified in Attachment  
2364 D. In such case, Contractor shall issue non-Collection notices stating the reason(s)  
2365 the materials were not Collected. The non-Collection notice shall be affixed  
2366 prominently onto the Cart to ensure that it is not inadvertently removed from Cart due  
2367 to weather conditions. The non-Collection notices must be protected from rain, if  
2368 precipitation is present or forecasted, by placing the notice in a clear plastic bag prior  
2369 to affixing to Cart.

2370 Contractor shall document the use of non-Collection notices by recording the date  
2371 and time of issuance, address of service recipient, reason(s) for issuance, name of  
2372 employee who issued the notice, and truck and route numbers. The notice shall  
2373 conform to the requirements specified in Section 6.03.A, be at least two inches by six  
2374 inches (2" x 6") in size and shall be approved by the SBWMA. The non-Collection  
2375 notices must identify the steps the Generator must take to recommence Collection  
2376 service. In the event a Container is not Collected due to excessive Contamination and  
2377 Customer does not take the necessary steps to recommence Collection service,  
2378 Contractor shall bill the Customer for Collection of the excessive Contamination at  
2379 Agency-approved Pricing. Compensation to Contractor for Collection of the excessive  
2380 Contamination shall be at the Charges specified in Attachment Q. The Agency-



2381 approved Charge includes: (i) a return trip Charge, and, (ii) an extra Solid Waste  
2382 Collection Charge.

2383 Contractor shall report monthly to Agency any non-Collection notices issued.  
2384 Contractor shall take direction from the Agency with regard to termination or  
2385 reinstatement of service to a service recipient due to numerous non-Collection notices  
2386 issued to the same Customer.

2387 **G. Collection of Excess Materials (Overages).** Contractor shall direct its employees  
2388 to Collect an Overage on two (2) occasions each Rate Year at no additional cost to  
2389 Customer. Contractor must provide a notice to Customer documenting the Overage  
2390 in order to count the Overage Collection towards the allocated two (2) per Rate Year  
2391 for each Customer. Customers that place an Overage for Collection for a third and  
2392 subsequent events, may be assessed an Overage fee by Contractor if Contractor has  
2393 directly contacted the Customer via a phone call or voice message notifying them of  
2394 the Overage Collected. Contractor shall bill Customer for a third and subsequent  
2395 Overage events at Agency-approved Pricing. Compensation to Contractor for the  
2396 third and subsequent Overage events shall be at the Charges specified in Attachment  
2397 Q. Contractor shall provide Customers the opportunity to request an Overage  
2398 Collection service in advance. In such case, Contractor shall bill the Customer at the  
2399 Agency-approved Charge. Compensation to Contractor for these services shall be at  
2400 the Charges specified in Attachment Q.

2401 Contractor shall provide Customers the opportunity to subscribe to Overage  
2402 Collection service, in advance, or purchase Overage bag(s) from the Contractor.  
2403 Contractor shall provide Customers the opportunity to purchase Overage bags  
2404 through its Customer service department or electronically via Contractor's website.  
2405 The Overage bag(s) shall have markings identifying it as the Contractor's Overage  
2406 bag. Contractor shall mail or deliver Overage bags to Customers within three (3)  
2407 Business days of Customer's request. The Charge for Overage bags shall be at  
2408 Agency-approved Pricing. Compensation to Contractor for these services shall be at  
2409 the Charges specified in Attachment Q and includes all aspects of purchasing the  
2410 bags, printing, and distribution (i.e., mailing or direct delivery by Contractor).  
2411 Customers shall also be provided the opportunity to purchase Overage bags at  
2412 Contractor's local office. The quantity of Overage bags per request from Customer  
2413 shall be limited to five (5) per request.

2414 If the Agency and/or Contractor receive numerous Complaints (as determined by the  
2415 Agency) from Customers regarding Customer dissatisfaction with the requirement to  
2416 purchase Overage bags, the Agency reserves the right to require the Contractor to  
2417 modify its Overage program to better serve its Customers and/or require the  
2418 Customer to subscribe to additional Collection service.

2419 **H. Care of Private Property.** Contractor shall not damage private property. Contractor  
2420 shall ensure that its employees: (i) close all gates opened in making Collections,  
2421 unless otherwise directed by the Customer, (ii) do not cross landscaped areas, and  
2422 (iii) do not climb or jump over hedges and fences.

2423 Agency shall refer Complaints about damage to private property to Contractor.  
2424 Contractor shall repair, to its previous condition, all damage to private or public  
2425 property caused by its employees.

2426 Contractor shall endeavor to resolve all claims regarding damage to private property  
2427 as soon as reasonably practicable following receipt thereof, made by Owners or  
2428 Occupants of property served by Contractor, for damages to property including, but  
2429 not limited to, Containers. In the event such damage shall have been caused by the  
2430 negligence or intentional acts of Contractor, its officers, agents, or employees,  
2431 Contractor shall promptly repair or replace such damaged property. The provisions  
2432 of this Section 8.02.H shall not be deemed a limitation upon any other provisions of  
2433 this Agreement, or any rights or remedies which may accrue to Agency by reason of  
2434 Contractor's acts or omissions to act hereunder. Contractor is required to repair  
2435 damage and/or resolve claims regarding damage to property within thirty (30) Days  
2436 of receipt of the Complaint.

2437 This Section 8.02.H shall not apply to damage to public or private roads or driveways  
2438 caused by the weight of Contractor's vehicles. If a Customer requests Contractor to  
2439 provide on-premises (i.e., non-Curbside) service, and in doing so would require  
2440 Contractor to drive its Collection vehicle on a private road or driveway, then, as a  
2441 condition to providing that service, Contractor shall require the Customer, property  
2442 owner, or other responsible party to sign a reasonable waiver releasing Contractor  
2443 from liability for such damage.

2444 **I. Litter Abatement**

2445 1. Minimization of Spills. If any Solid Waste, Targeted Recyclable Materials, or  
2446 Organic Materials are spilled or scattered during Collection or transportation  
2447 operations, the Contractor shall promptly clean up all spilled and scattered  
2448 materials. Contractor shall use due care to prevent vehicle oil, vehicle fuel, or  
2449 other liquids from being spilled during Collection or transportation operations  
2450 including maintenance of the Collection vehicles to minimize and correct any  
2451 leaks. Contractor shall ensure that all liquid spills or leaked liquids or fluids are  
2452 cleaned up promptly on the same day that they occur.

2453 Contractor shall not transfer loads from one vehicle to another on any public  
2454 street, unless it is necessary to do so because of mechanical failure, emergency  
2455 (e.g., combustion of material in the vehicle), accidental damage to a vehicle, or  
2456 unless approved by the Agency.

2457 2. Clean-Up. During Collection operations, the Contractor shall clean-up litter in  
2458 the immediate vicinity of any Container storage area (including the areas where  
2459 Containers are delivered for Collection) if Contractor's actions are the cause of  
2460 the litter. Each Collection vehicle shall be equipped with protective gloves, a  
2461 broom, and shovel at all times for cleaning up litter. Absorbent material shall be  
2462 carried on each Collection vehicle at all times and used by Contractor for  
2463 cleaning up liquid spills. The Contractor shall document and discuss instances  
2464 of repeated spillage not caused by it with the Customer where spillage occurs,  
2465 and Contractor shall report such instances to Agency. If the Contractor has  
2466 attempted to have a Customer stop creating spillage but is unsuccessful, the  
2467 Agency will attempt to rectify such situation with the Customer. Contractor shall  
2468 coordinate with Agency regarding Agency street cleaning activities to minimize  
2469 litter.

2470 3. Covering of Loads. Contractor shall cover all open Drop Boxes with an Agency-  
2471 approved cover, at the Collection location before transporting materials to the  
2472 Designated Transfer and Processing Facility.

- 2473 J. **Noise.** All Collection operations shall be conducted as quietly as possible and shall  
 2474 conform to applicable federal, State, County, and Agency noise level regulations.  
 2475 Contractor shall promptly resolve any Complaints of noise to the satisfaction of the  
 2476 Agency.
- 2477 K. **Route Books and Route Maps.** For each Collection route, Contractor shall maintain  
 2478 a route book and route map that documents each Customer on the route, their service  
 2479 address, service level, and the order in which Customers shall be serviced (e.g., the  
 2480 order in which routes shall be driven). Contractor shall distribute new route books  
 2481 and route maps to its Collection vehicle drivers as frequently as necessary; and each  
 2482 driver shall note differences in the service levels shown in the route book, adding and  
 2483 subtracting Customers and service levels, as necessary. Route supervisors shall  
 2484 periodically check the routes to ensure that drivers are providing service in  
 2485 accordance with their route books. Contractor shall provide Agency with route books  
 2486 and maps including assessor parcel data when available within ten (10) Business  
 2487 Days of request.
- 2488 L. **Change in Collection Schedule.** Contractor shall notify Agency a minimum of sixty  
 2489 (60) Business Days prior to a change in the Residential Collection schedule or two  
 2490 (2) weeks for minor adjustments (defined as less than the average size of a single  
 2491 route per the Collection service metrics delineated in the prior year's Compensation  
 2492 Application), and shall request approval of Contractor's notice to Residential  
 2493 Customers thirty (30) Business Days prior to a change in Service Day, unless this  
 2494 requirement is waived in writing by Agency. Contractor shall notify Owners and  
 2495 Occupants of Residential Premises not later than ten (10) Business Days prior to any  
 2496 change in Residential Collection operations which results in a change in the day on  
 2497 which Solid Waste, Targeted Recyclable Materials, and Organic Materials Collection  
 2498 occurs. Contractor shall not permit any Customer to go more than five (5) Business  
 2499 Days without service in connection with a Collection schedule change.

2500 **8.03 UNLOADING MATERIALS AT THE DESIGNATED TRANSFER AND PROCESSING**  
 2501 **FACILITY**

2502 Contractor shall be required to unload at the Designated Transfer and Processing Facility  
 2503 all materials from its Collection vehicles by its own personnel. Contractor shall be required  
 2504 to ensure that unloaded materials are properly placed in the designated areas and  
 2505 containers as directed by Operator and SBWMA. For example, Contractor shall be  
 2506 required to deposit at the Designated Transfer and Processing Facility Batteries and Cell  
 2507 Phones, Used Motor Oil, and Used Motor Oil Filters in the containers provided by Operator  
 2508 and designated for storage of these materials. Contractor shall cooperate with Operator  
 2509 to ensure its Collection vehicles unload Solid Waste, Targeted Recyclable Materials,  
 2510 Organic Materials, and other materials (e.g., Batteries, Cell Phones, Used Motor Oil, and  
 2511 Used Motor Oil Filters) Collected by Contractor in the locations designated by Operator  
 2512 and SBWMA.

2513 **8.04 VEHICLES**

2514 A. **General.** Contractor shall provide a fleet of Collection vehicles sufficient in number  
 2515 and capacity to efficiently perform the work required by the Agreement in strict  
 2516 accordance with its terms. Contractor shall have available sufficient back-up vehicles  
 2517 for each type of Collection vehicle used (e.g., side loader, front loader, and roll-off  
 2518 vehicles) to respond to mechanical breakdowns, Complaints, and emergencies.  
 2519 Contractor shall maintain a spare ratio of ten percent (10%) for all Collection vehicles

2520 used in the SBWMA Service Area. It is contemplated that, as of the Commencement  
2521 Date, all Collection vehicles will be vehicles that Contractor purchased during the term  
2522 of the 2009 Franchise Agreement and will be nearing the end of their useful life.

2523 Contractor shall purchase and place into service after the Commencement Date all  
2524 new vehicles to replace its Collection vehicles and other vehicles used by Contractor  
2525 in the SBWMA Service Area in accordance with the Contractor-prepared equipment  
2526 replacement schedule in Attachment N. The new vehicles shall replace all vehicles in  
2527 service on the Commencement Date. The vehicles shall be purchased and placed in  
2528 service in accordance with the timeline shown in Attachment N unless an alternative  
2529 timeline is agreed upon by the SBWMA provided that all new vehicles shall be in  
2530 service on or before June 15, 2026. The estimated depreciation and interest  
2531 expenses for the acquisition of new vehicles shall be included in Contractor's  
2532 Compensation for 2021 and adjustments during the Term shall be made in  
2533 accordance with Attachment K. Agency has no responsibility to pay Contractor for  
2534 remaining net book value of any Vehicles, Containers, or other equipment that is not  
2535 fully depreciated at end of Term, unless Agency elects to purchase Containers  
2536 pursuant to Section 8.05.F of the Agreement.

2537 At no time after the Commencement Date shall any vehicle used to perform the  
2538 services required under this Agreement exceed fifteen (15) years of age from the first  
2539 date the vehicle was registered unless agreed upon by the SBWMA. Collection  
2540 vehicles and other vehicles whose acquisition costs are included in the calculation of  
2541 Contractor's Compensation may be used only in the SBWMA Service Area.

2542 **B. General Vehicle Specifications**

- 2543 1. All vehicles used by Contractor in providing Solid Waste, Targeted Recyclable  
2544 Material, and Organic Material Collection services shall be registered with the  
2545 California Department of Motor Vehicles.
- 2546 2. All Collection vehicles shall have leak-proof bodies designed to prevent leakage,  
2547 spillage, and/or overflow and shall be designed so that Collected materials are  
2548 not visible.
- 2549 3. All vehicles shall comply with California Environmental Protection Agency (EPA)  
2550 noise emission regulations and California Air Resources Board air quality  
2551 regulations and other applicable pollution control regulations.
- 2552 4. All Collection vehicles shall have cameras to monitor driving and loading  
2553 activities including, at a minimum: (i) back-up cameras mounted at the rear and  
2554 side of the vehicle; and, (ii) a hopper camera clearly displaying the contents of  
2555 the hopper prior to compaction.
- 2556 5. Contractor shall be required to operate an adequate number of Collection  
2557 vehicles that shall be capable of servicing hard-to-service areas and accessing  
2558 long driveways in the Service Area.
- 2559 6. All Collection vehicles shall be capable of unloading materials in the Designated  
2560 Transfer and Processing Facility buildings taking clearance heights, especially  
2561 in the MRF, into consideration.
- 2562 7. All Collection vehicles shall be equipped with and shall utilize on-board  
2563 computers and GPS tracking devices with real-time transmission to all levels of  
2564 Contractor's operations. The on-board computer system shall: (i) capture all

- 2565 operations data needed to complete the Contractor's reporting requirements for  
2566 this Agreement; (ii) capture all operating data needed to prepare the Contractor's  
2567 Application; and (iii) allow Customer service staff direct real-time access to driver  
2568 data including vehicle location, Container set-out and service data, and notes  
2569 regarding service issues.
- 2570 8. All Collection vehicles shall be equipped with a broom, shovel, absorbent  
2571 materials, and other approved cleanup devices and materials for emergencies,  
2572 or any spillage or leaks that may occur.
- 2573 9. Route supervisors and management personnel shall use one-half (0.5) Ton  
2574 hybrid pickup trucks while performing services.
- 2575 10. Contractor developed preliminary specifications for vehicles that will be  
2576 purchased and placed into service after the Commencement Date. These  
2577 specifications, which were the basis for Contractor's vehicle depreciation and  
2578 interest costs (presented in Attachment N), are presented in Attachment P. At  
2579 least eighteen (18) months prior to Contractor's initial acquisition of new  
2580 Collection vehicles to be placed into service after January 1, 2021, Contractor  
2581 shall meet and confer with the SBWMA to discuss the type of vehicles to be  
2582 purchased and fuel options. The Agency and SBWMA may be interested in  
2583 considering different fuel options with the goal of minimizing the air emission  
2584 impact of the Collection vehicles. At the request of the Agency or SBWMA,  
2585 Contractor shall provide vehicle information, specifications, and fuel options and  
2586 a cost impact analysis of various fueling options. Contractor shall obtain the  
2587 SBWMA's approval in the fuel selection prior to ordering new Collection vehicles.  
2588 SBWMA recognizes that Contractor's vehicle purchase plan anticipates  
2589 purchases over multiple years. This meet and confer obligation is intended to  
2590 occur prior to Contractor's initial purchase of new Collection vehicles to discuss  
2591 a strategy for all vehicles purchased after January 1, 2021 unless Parties agree  
2592 otherwise.
- 2593 C. **Vehicle Identification.** Contractor's name, local telephone number, and a unique  
2594 vehicle identification number designated by Contractor for each vehicle shall be  
2595 prominently displayed on all four (4) sides of the vehicles, in letters and numbers with  
2596 a maximum five (5) digit sequence, that are no less than two and one-half (2.5) inches  
2597 in height. Contractor shall not place any other information or logo on Contractor  
2598 vehicles, unless approved in writing by SBWMA. Vehicles shall be clearly labeled to  
2599 indicate the materials Collected by that vehicle, specifically; "Solid Waste,"  
2600 "Recyclables," or "Organic Materials," as directed by SBWMA.
- 2601 D. **Inventory.** Contractor shall furnish the Agency and SBWMA a written inventory of  
2602 all vehicles used in providing service, and shall update the inventory annually. The  
2603 inventory shall list all vehicles by manufacturer, identification number, date of  
2604 acquisition, type, capacity, decibel rating, average weight of load, and average loaded  
2605 axle weights.
- 2606 E. **Cleaning and Maintenance**
- 2607 1. General. Contractor shall maintain all of its properties, vehicles, facilities, and  
2608 equipment used in providing service under this Agreement in a good, safe, neat,  
2609 clean, and operable condition at all times.

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2. Cleaning. Vehicles used in the Collection of Solid Waste, Targeted Recyclable Materials, and Organic Materials shall be thoroughly washed, and thoroughly steam cleaned weekly so as to present a clean appearance. Agency may inspect vehicles at any time to determine compliance with this Agreement. Contractor shall also make vehicles available to the San Mateo County Health Department for inspection, at any frequency it requests.
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3. Repainting or Refurbishing. Contractor shall repaint or refurbish to the satisfaction of the Agency all vehicles used in the Collection of Solid Waste, Targeted Recyclable Materials, and Organic Materials within thirty (30) Business Days' notice from Agency, if Agency determines that their appearance warrants painting. The cost for Agency-directed repainting shall be incurred by Contractor.
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4. Maintenance. Contractor shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles which are not operating properly shall be removed from service until repaired and operating properly. Contractor shall perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule or in accordance with California Highway Patrol standards, whichever are more stringent. Contractor shall keep accurate records of all vehicle maintenance, recorded according to date and mileage and shall make such records available to Agency upon request. Hydraulic oil, engine oil, and other spills from Collection vehicles in the Service Area are a concern to the Agency. Contractor shall include as part of maintenance activities a process for tracking the number and nature of automotive spills (type of fluid, amount lost, failure point) and diagnosing the cause of those spills. Based on the results of the process, Contractor shall implement appropriate corrective actions to address issues that are contributing factors to vehicle spills (e.g., revise specifications for specific part failures, revise preventative maintenance schedule to address timing of failures), so that each occurrence is controlled and minimized.
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5. Repair. Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown, hydraulic oil or engine oil leaks, or any other cause so as to maintain all equipment in a safe and operable condition. If an item of repair is covered by a warranty, Contractor shall obtain warranty performance. Contractor shall maintain accurate records of repair, which shall include the date and mileage, nature of repair and the verification by signature of a maintenance supervisor that the repair has been properly performed.
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6. Storage. Contractor shall arrange to store all vehicles and other equipment in safe and secure location(s) in accordance with all applicable zoning regulations.
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- F. **Operation.** Vehicles shall be operated in compliance with Federal, State, and local laws and regulations including, but not limited to, the California Vehicle Code, the regulations of the California Air Resources Board (CARB) Waste Collection Vehicle Regulations as established in the California Code of Regulations Title 13 Section 2700 et seq.; and all applicable safety and local ordinances. Annually, Contractor shall provide the SBWMA and Agency with documentation of such compliance for each vehicle. For example, with regard to CARB regulations, such documentation shall demonstrate, at a minimum, the vehicle number, make, model, year, control technology used or planned, and the year that the control technology was applied or

2657 is planned to be applied. Contractor shall not load vehicles in excess of the  
2658 manufacturer's recommendations or limitations imposed by Federal, State, or local  
2659 weight restrictions on vehicles or roads.

2660 Contractor equipment used for Collection services shall be registered with the  
2661 California Department of Motor Vehicles. Equipment shall comply with US EPA noise  
2662 emission regulations, currently codified at 40 CFR Part 205, and other applicable  
2663 noise control regulations, and shall incorporate noise control features throughout the  
2664 entire vehicle.

2665 Annually, Contractor shall have each Collection vehicle weighed at the Designated  
2666 Transfer and Processing Facility to determine the unloaded weight ("tare weight") of  
2667 the vehicle, and the total loaded weight of each load delivered to the Designated  
2668 Transfer and Processing Facility. Upon a major repair that could affect the Collection  
2669 vehicle tare weight, Contractor shall have the Collection vehicle re-weighed to  
2670 establish a new tare weight. Contractor shall track and make adjustments to routes  
2671 to eliminate ongoing over-weights associated with individual routes.

2672 **8.05 CONTAINERS**

2673 A. **General.** Contractor shall provide all Containers, Bins, Kitchen Pails, and Drop  
2674 Boxes, as appropriate, to all Customers as part of its obligations under this  
2675 Agreement. Contractor shall ensure that Agency encroachment or other required  
2676 permits are obtained by Customer prior to delivering Containers. As of the  
2677 Commencement Date, all Containers may be used. Contractor-provided Containers  
2678 shall be designed and constructed to be watertight and prevent the leakage of liquids.  
2679 All Carts shall be manufactured by injection or rotational molding methods; contain  
2680 post-consumer content; and meet the Container design and performance  
2681 requirements provided in Attachment D – Container Specifications. Containers  
2682 provided to Customers shall have a useful life of ten (10) years as evidenced by a  
2683 manufacturer's warranty or other documentation acceptable to the Agency.

2684 All Containers with a capacity of one (1) cubic yard or more shall meet applicable  
2685 federal, State, and local regulations for Bin safety; shall be covered with attached lids;  
2686 and shall have the capability to be locked if required or requested by Customer or  
2687 Agency.

2688 All Containers shall be maintained in a safe, serviceable, and functional condition.

2689 **B. Container Specifications**

2690 1. Sizes. The Container sizes to be provided to Single-Family, Multi-Family,  
2691 Commercial, and Agency Facility Customers are specified in Attachment D.  
2692 Contractor shall provide Customers with a choice of Container capacities  
2693 specified in Attachment D, and Customers may select their preferred Container  
2694 size(s).

2695 2. Color. The colors of the Containers provided to Single-Family, Multi-Family,  
2696 Commercial, and Agency Facility Customers are specified in Attachment D.

2697 3. Loading. Minimum allowable loading requirements for the Bin and Drop Box  
2698 contents shall be approved by the Agency prior to purchase based on the  
2699 minimum manufacturer's load limits, as specified in Attachment D.

2700 C. **Container Labeling.** Contractor shall label each Container with white, hot-stamped  
2701 lettering, and in-mold or heavy duty vinyl adhesive labels with graphics, illustrations,  
2702 or artwork that clearly conveys the type of materials (e.g., Solid Waste, Recyclable  
2703 Materials, cardboard, mixed paper, Organic Materials, wood waste, metal, etc.) to be  
2704 placed in the Container for Collection. The labeling shall be positioned on each  
2705 Container so it is visible to the Customer and Collection vehicle drivers on the front  
2706 side, and top. The labeling shall be durable and weather resistant to outdoor  
2707 conditions and have a minimum ten (10) year lifetime.

2708 All Containers shall prominently display information and graphics agreed upon by  
2709 Agency, SBWMA, and Contractor pursuant to Article 7.

2710 Final Container labeling layout, graphics, and text shall be approved by the Agency  
2711 and SBWMA prior to distribution to Customers.

2712 D. **Cleaning and Painting.** Contractor shall be responsible for steam cleaning and  
2713 repainting all Containers, except Carts, to present an aesthetically pleasing clean  
2714 appearance and to ensure this equipment is safely maintained and operationally  
2715 sound. Contractor shall repaint all used Containers on an as needed basis. Upon  
2716 Customer's request, Contractor shall steam clean all Solid Waste and Recyclable  
2717 Materials Containers (or exchange existing Containers with clean Containers) twice  
2718 annually, except Carts provided to Residential Premises, which Contractor is not  
2719 obligated to clean or exchange. Contractor shall clean all Organic Materials  
2720 Containers (or exchange existing Containers with clean Containers) quarterly, except  
2721 Carts provided to Residential Premises, which Contractor is not obligated to clean or  
2722 exchange. Contractor shall offer additional cleaning (or clean Container exchange)  
2723 to Customers requesting such service and shall bill Customers for such cleaning (or  
2724 Container exchange) at Agency-approved Pricing. Compensation to Contractor for  
2725 additional cleaning (or clean Container exchange) shall be at the Charges specified  
2726 in Attachment Q.

2727 Contractor shall be responsible for cleaning Containers at no additional charge to  
2728 Customer to ensure that nuisance or public health concerns associated with vectors  
2729 are addressed within two (2) Business Days after receipt of notification of said  
2730 condition.

2731 If any Container is impacted by graffiti, Contractor shall remedy the situation within  
2732 forty-eight (48) hours of being notified.

2733 E. **Repair and Replacement.** Contractor shall repair or replace all Containers damaged  
2734 by Collection operations (e.g., vehicle apparatus interface) or otherwise inoperable  
2735 (e.g., due to regular wear and tear) within three (3) Business Days of being notified  
2736 by Customer or observing the damaged Container. If the repair or replacement  
2737 cannot be completed within three (3) Business Days, the Contractor shall notify  
2738 Customer and provide a Container of the same size or larger until the original  
2739 Container can be replaced.

2740 At no additional cost, Contractor shall replace Customer Carts that have been stolen,  
2741 lost, damaged, or destroyed within five (5) Business Days. Contractor shall allow  
2742 Customer to exchange Containers for a Container of a different size at no additional  
2743 cost and shall replace Containers within five (5) Business Days of Customer request.

2744 The Contractor recognizes that the majority of Containers in service on the  
2745 Commencement Date have nearly reached the end of their useful life or will reach the



2746 end of the useful life during the Term of the Agreement. Contractor has planned to  
2747 replace Containers that have reached the end of their useful life on a rolling basis  
2748 over the Term of the Agreement. Contractor's estimated depreciation and interest  
2749 expense for Container replacement over the Term and these expenses are included  
2750 in Contractor's Compensation in the amount specified in Attachment K. Contractor  
2751 shall not be entitled to an adjustment to Contractor's Compensation or Rates for  
2752 Container replacements purchased during the Term of the Agreement.

2753 F. **Agency's Rights to Containers.** All Carts, Bins, and Drop Boxes purchased or  
2754 leased by Contractor and put into service at Customers' Premises before the first  
2755 anniversary of the Commencement Date shall become property of the Agency upon  
2756 expiration or early termination of this Agreement. All Carts, Bins, and Drop Boxes  
2757 purchased or leased and put into service at Customers' Premises on or after the first  
2758 anniversary of the Commencement Date that have not been fully depreciated shall  
2759 be available to the Agency, at the Agency's option, at their net book value, upon  
2760 expiration or early termination of this Agreement.

2761 At its sole discretion, the Agency may elect not to exercise its rights under this  
2762 subsection. In such case, the Containers shall remain the property of the Contractor  
2763 upon the expiration or earlier termination of this Agreement. In such case, Contractor  
2764 shall be responsible for removing all Containers in service from Premises. Contractor  
2765 shall do so within ten (10) Business Days after such expiration or earlier termination  
2766 or in accordance with an alternative Container removal schedule agreed upon by the  
2767 Parties, provided that Agency has notified Contractor at least ninety (90) Days before  
2768 such expiration or earlier termination whether or not it intends to acquire the  
2769 Containers.

2770 G. **Lock Service (Key Service).** In order to promote security, respond to Customer  
2771 needs, and minimize the impact or occurrence of illegal dumping and theft of  
2772 Recyclable Materials, Contractor will provide to Customers, at the Agency-approved  
2773 Pricing, locks for enclosures used to store Containers or locks for Containers and  
2774 ensure the enclosures or Containers are locked after providing Collection Service.  
2775 Compensation to Contractor for these services shall be at the Charges specified in  
2776 Attachment Q.

2777 Only Contractor, Agency, and the participating Customers will be provided with a key  
2778 to the enclosures and access to the Containers. The Contractor shall prominently  
2779 display the service schedule on the enclosure and any changes in service shall be  
2780 displayed on the enclosure by Contractor within one (1) Business Day of making the  
2781 change. If the Carts or Bins are left "outside" in a designated area, each Container  
2782 will be locked (keyed alike), and only Contractor staff, Agency staff, and the  
2783 participating Customers will be provided with a key to access the Containers. At least  
2784 once each calendar year, Contractor's route supervisor shall visit each of the  
2785 participating Customers with shared Containers, respond to any questions or  
2786 concerns, check the areas for contamination, litter, or damage and change the lock  
2787 and distribute new "keyed alike" keys to Agency staff and Customers.

## 2788 **8.06 PERSONNEL**

2789 A. **General.** Contractor shall furnish such qualified drivers, mechanical, supervisory,  
2790 customer service, clerical, and other personnel as may be necessary to provide the  
2791 services required by this Agreement in a safe, thorough, professional, and efficient  
2792 manner and shall provide, at a minimum, the number and type of personnel listed in

2793 Attachment O in total for the SBWMA Service Area. All personnel furnished by  
2794 Contractor shall be subject to the “relationship of parties” provisions of Section 15.01.

2795 B. **Reserved.**

2796 C. **Collective Bargaining Agreements.** If Contractor negotiates a new collective  
2797 bargaining agreement with a union representing its employees, or an amendment to  
2798 a collective bargaining agreement currently in force, either of which increases wages  
2799 or benefits greater than wage and benefit costs included in Contractor’s  
2800 Compensation (through adjustments described in Article 11 and Attachment K), the  
2801 Agency is not required to include costs attributable to the increased wages or benefits  
2802 in Contractor’s Compensation during the Term of the Agreement.

2803 D. **Approval of Management.** Contractor recognizes the importance of establishing a  
2804 successful relationship between its management and Agency and SBWMA staff.  
2805 Before extending an offer of employment for the position of general manager, both  
2806 initially and throughout the Term, Contractor shall provide the SBWMA with the  
2807 description of the proposed position; an opportunity to review and comment upon the  
2808 position description, the background, experience, and qualifications of each  
2809 candidate being considered for the position, and an opportunity to meet with each  
2810 candidate. Contractor shall give thoughtful consideration to the SBWMA’s comments  
2811 on the descriptions of the proposed position and each candidate, but shall have the  
2812 ultimate right to make employment decisions in its best business judgment.

2813 If the Agency is dissatisfied with the performance of the management personnel, the  
2814 Agency shall contact the general manager to discuss the employee’s performance.  
2815 If the Agency is dissatisfied with the general manager, the Agency shall contact the  
2816 group manager to discuss the general manager’s performance.

2817 Contractor shall advise the affected management employee of any complaints made  
2818 by the Agency regarding the employee’s performance. The Parties shall meet and  
2819 confer in good faith to address the Agency’s concerns, and shall agree on a corrective  
2820 course of action to be implemented immediately. Contractor agrees to consider in  
2821 good faith, but shall not be bound by, any requests by the Agency to transfer or re-  
2822 assign a management employee should the Agency maintain in good faith that it can  
2823 no longer work constructively with said employee.

2824 E. **Provision of Field Supervision.** Contractor shall designate qualified employees as  
2825 supervisors of field operations. The field supervisor shall devote their time in the field  
2826 supervising, managing, and monitoring Collection operations for reliability, quality,  
2827 efficiency, safety, and for responding to Complaints. The number of field supervisors  
2828 is specified in Attachment O in total for the SBWMA Service Area.

2829 F. **Driver Qualifications.** All drivers shall be trained and qualified in the operation of  
2830 Collection vehicles, and must have in effect a valid license, of the appropriate class,  
2831 issued by the California Department of Motor Vehicles. Contractor shall use the Class  
2832 II California Department of Motor Vehicles employer “Pull Notice Program” to monitor  
2833 its drivers for safety.

2834 G. **Customer Service Representative Training.** Customer service representatives  
2835 shall be trained on specific Agency service requirements, a minimum of once per  
2836 quarter. An Agency information sheet shall be provided to each Customer service  
2837 representative for easy reference of Agency requirements and general Customer

2838 needs. Contractor shall provide the information sheet, training agenda, and  
2839 associated documentation within five (5) Business Days of request from Agency.

2840 H. **Safety Training.** Contractor shall provide suitable operational and safety training for  
2841 all of its employees who operate Collection vehicles or equipment or who are  
2842 otherwise directly involved in such Collection. Contractor shall train its employees  
2843 involved in Collection to identify, and not to Collect, Hazardous Waste, or Infectious  
2844 Waste. Upon the Agency's request, Contractor shall provide a copy of its safety policy  
2845 and safety training program, the name of its safety officer, and the frequency of its  
2846 trainings.

2847 I. **No Gratuities.** Contractor shall not permit its employees to demand or solicit, directly  
2848 or indirectly, any additional compensation or gratuity from members of the public for  
2849 Collection services or accept gratuities or compensation in exchange for additional  
2850 Collection services.

2851 J. **Employee Conduct and Courtesy.** Contractor shall employ only competent and  
2852 qualified personnel who serve the public in a courteous, helpful, and impartial  
2853 manner. Contractor shall use its best efforts to assure that all employees present a  
2854 neat appearance and conduct themselves in a courteous manner. Contractor shall  
2855 regularly train its employees in Customer courtesy, shall prohibit the use of loud or  
2856 profane language, and shall instruct Collection employees to perform the work as  
2857 quietly as possible. If any employee is found not to be courteous or not to be  
2858 performing services in the manner required by this Agreement, Contractor shall take  
2859 all appropriate corrective measures. The Agency may require Contractor to reassign  
2860 an employee, if the employee has conducted himself or herself inconsistently with the  
2861 terms of this Agreement.

2862 Contractor shall adopt policies and procedures consistent with State and federal law  
2863 that ensure a sober and drug-free workplace. This includes strictly prohibiting  
2864 unlawful manufacture, distribution, possession, or use of any controlled substance in  
2865 the workplace, regardless of whether the employee is on duty at the time. Further,  
2866 the policies and procedures shall prohibit an employee from operating either Agency  
2867 or Contractor equipment and vehicles (whether on or off duty) while under the  
2868 influence of alcohol or drugs. The purpose of these policies and procedures is to  
2869 ensure workplace safety, productivity, efficiency, and the quality of Contractor's  
2870 service to Customers.

2871 K. **Uniforms.** While performing services under this Agreement, all Contractor's  
2872 employees performing field service shall be dressed in clean uniforms and shall wear  
2873 visible identification that include the employee's name and/or employee number, and  
2874 Contractor's name. Uniform type, style, colors, and any modifications may be subject  
2875 to approval by the Agency.

## 2876 **8.07 HAZARDOUS WASTE INSPECTION AND HANDLING**

2877 A. **Inspection Program and Training.** Contractor is required to inspect Solid Waste,  
2878 Targeted Recyclable Materials, Organic Materials, and other materials put out for  
2879 Collection and may reject Solid Waste, Targeted Recyclable Materials, Organic  
2880 Materials, and other materials observed to be contaminated with Hazardous Waste  
2881 and not Collect Hazardous Waste put out with Solid Waste, Targeted Recyclable  
2882 Materials, and Organic Materials. Contractor shall develop a load inspection program  
2883 that includes the following components: (i) personnel and training; (ii) load checking

2884 activities; (iii) management of wastes; and (iv) record keeping and emergency  
2885 procedures.

2886 Contractor's load checking personnel, including its Collection vehicle drivers, shall be  
2887 trained in: (i) the effects of Hazardous Substances on human health and the  
2888 environment; (ii) identification of prohibited materials; and (iii) emergency notification  
2889 and response procedures. Collection vehicle drivers shall inspect Containers before  
2890 Collection when practical.

2891 **B. Response to Hazardous Waste Identified During Collection.** Under no  
2892 circumstances shall Contractor's employees knowingly Collect Hazardous Waste or  
2893 remove unsafe or poorly containerized Hazardous Waste from a Collection Container.  
2894 If Contractor determines that material placed in any Container for Collection is  
2895 Hazardous Waste or other material that may not legally be accepted or safely  
2896 processed at the Designated Transfer and Processing Facility or presents a hazard  
2897 to Contractor's employees, or those at the Designated Transfer and Processing  
2898 Facility, the Contractor shall have the right to refuse to accept such material. The  
2899 Generator shall be contacted by the Contractor and requested to arrange proper  
2900 Disposal. If the Generator cannot be reached immediately, the Contractor shall,  
2901 before leaving the Premises, leave a non-collection notice, which indicates the reason  
2902 for refusing to Collect the material and lists the phone number for the San Mateo  
2903 County Household Hazardous Waste Facility, or other resources as directed by  
2904 Agency. Contractor's environmental technician shall be notified to handle the issue  
2905 with the Generator. The Contractor's environmental technician shall be required to  
2906 guide the Generator to safely containerizing the Hazardous Waste and shall explain  
2907 the Generator's options for proper disposition of such material.

2908 If Hazardous Waste is found in a Collection Container or Collection area that could  
2909 possibly result in imminent danger to people or property, the Contractor shall  
2910 immediately notify the Agency's Fire Department using the nine-one-one (911)  
2911 emergency telephone number. The Contractor shall notify the Agency of any  
2912 Hazardous Waste identified in Containers or left at any Premises within twenty-four  
2913 (24) hours of identification of such material.

2914 **C. Response to Hazardous Waste Identified at Designated Transfer and**  
2915 **Processing Facility.** Contractor shall not knowingly deliver Unpermitted Material to  
2916 the Designated Transfer and Processing Facility. The Operator shall use reasonable  
2917 business efforts and standard industry practices to detect and discover Unpermitted  
2918 Material at the facility and shall not knowingly accept Unpermitted Material. In the  
2919 event that Unpermitted Material is delivered to the Designated Transfer and  
2920 Processing Facility, the Operator shall be entitled to pursue whatever remedies, if  
2921 any, it may have against the Generator or Person(s) bringing such Unpermitted  
2922 Material to the Designated Transfer and Processing Facility provided that in no case  
2923 shall the Agency be considered the Person bringing such Unpermitted Material to the  
2924 Designated Transfer and Processing Facility.

2925 Contractor acknowledges that in the event the operator identifies Unpermitted  
2926 Materials in the materials delivered by Contractor before the materials are unloaded  
2927 at the facility, the Operator has the right to reject the load and direct the Contractor to  
2928 cause removal and Disposal of the Unpermitted Material in a safe and lawful manner,  
2929 at the sole expense of the Contractor. If the Unpermitted Materials are delivered to  
2930 the Designated Transfer and Processing Facility by Contractor and unloaded at the

2931 facility before their presence is detected, and the Generator cannot be identified or  
2932 fails to remove the material after being requested to do so, the Contractor shall  
2933 arrange for and/or pay for its proper Disposal. Contractor shall make reasonable  
2934 efforts to identify and notify the Generator. The Contractor shall make a good faith  
2935 effort to recover the cost of any transportation and Disposal from the Generator, and  
2936 the cost of this effort, as well as the cost of Disposal shall be chargeable to the  
2937 Generator, if appropriate documentation, as deemed necessary by the Agency, is  
2938 provided to the Agency within five (5) Business Days of the occurrence.

2939 In the event Contractor delivers Unpermitted Materials on a frequent or continuous  
2940 basis to the Designated Transfer and Processing Facility and the Contractor refuses  
2941 to provide for the proper handling and disposition of such Unpermitted Material, the  
2942 Operator may provide written notice to Agency of such refusal by Contractor.

2943 **D. Reporting, Regulations, and Record Keeping.** Contractor shall comply with  
2944 emergency notification procedures required by Applicable Laws and regulatory  
2945 requirements. Contractor shall notify all appropriate agencies, including the California  
2946 Department of Toxic Substances Control and Local Emergency Response Providers  
2947 and the National Response Center of reportable quantities of Hazardous Waste found  
2948 or observed in Solid Waste, Targeted Recyclable Materials, Organic Materials,  
2949 Electronic Waste, Universal Waste, and Construction and Demolition Debris  
2950 anywhere within Service Area. In addition to other required notifications, if Contractor  
2951 observes any substances which it or its employees reasonably believe or suspect to  
2952 contain Hazardous Wastes unlawfully Disposed of or released on any Agency  
2953 property, including storm drains, streets or other public rights of way, Contractor will  
2954 immediately notify the Agency and SBWMA.

2955 All records required by regulations shall be maintained at the Contractor's Facility.  
2956 These records shall include: waste manifests, waste inventories, waste  
2957 characterization records, inspection records, incident reports, and training records.  
2958 Contractor shall maintain records showing the types and quantities, if any, of  
2959 Hazardous Waste found in Solid Waste, Targeted Recyclable Materials, and Organic  
2960 Materials, which was inadvertently Collected from Customers within the Service Area,  
2961 but diverted from landfilling.

## 2962 **8.08 COMMUNICATION AND COOPERATION WITH AGENCY AND SBWMA**

2963 **A. Communications.** The Contractor's general manager shall have e-mail capabilities  
2964 to enable the Agency, SBWMA, and the Contractor's general manager to  
2965 communicate via e-mail. Contractor's general manager shall respond to Agency and  
2966 SBWMA email correspondence within twenty-four (24) hours.

2967 **B. Monthly Meetings.** Upon request from Agency, beginning on the Commencement  
2968 Date, and then on a monthly basis thereafter, Contractor shall meet with the Agency  
2969 and SBWMA to discuss progress of each active diversion program, quality, and  
2970 reliability of Collection services, and compliance with the terms of the Agreement.  
2971 SBWMA may attend and participate in these meetings. At each monthly meeting, the  
2972 Agency, Contractor, and SBWMA, if attending, shall have the opportunity to present  
2973 and discuss proposed changes in service such as changing program requirements or  
2974 modifying Collection methods.

2975 **C. Inspection by Agency.** Agency shall have the right, but not the obligation, to  
2976 observe and inspect all of the Contractor's operations under this Agreement. In

2977 connection therewith, Agency and SBWMA shall have the right to enter facilities used  
2978 by Contractor during operating hours, speak to any of Contractor's employees, and  
2979 receive cooperation from such employees in response to inquiries. In addition, upon  
2980 reasonable notice and without interference with Contractor's operations, Agency and  
2981 SBWMA may review and copy any of Contractor's operational and business records  
2982 related to this Agreement. If Agency or SBWMA so requests, Contractor shall make  
2983 specified personnel available to accompany Agency and SBWMA employees on  
2984 inspections and shall provide electronic copies of records stored in electronic media.

2985 **8.09 COOPERATION WITH DESIGNATED TRANSFER AND PROCESSING FACILITY**  
2986 **OPERATOR**

2987 A. **Communications.** If requested by SBWMA, the Contractor shall meet with the  
2988 SBWMA and Operator at least once each month to discuss issues related to the  
2989 interaction of operations between Contractor and Operator including, but not limited  
2990 to:

- 2991 1. Traffic flow;
- 2992 2. Vehicle weighing procedures;
- 2993 3. Targeted Recyclable Materials and Organic Materials Contamination;
- 2994 4. Hazardous Waste screening and safety policies;
- 2995 5. Receiving hours;
- 2996 6. Billing and payment of gate fees for delivery of materials;
- 2997 7. Vehicle parking;
- 2998 8. Employee facilities; and,
- 2999 9. Maintenance facilities.

3000 The Contractor's general manager shall have e-mail capabilities to enable the  
3001 Operator and the Contractor's general manager to communicate via e-mail.  
3002 Contractor's general manager shall respond to the Operator's email correspondence  
3003 within twenty-four (24) hours.

3004 B. **Coordination of Hours.** Contractor shall plan its Collection routes to be compatible  
3005 with the Designated Transfer and Processing Facility receiving hours, which shall be,  
3006 at a minimum, Monday through Friday from 3:00 a.m. to 6:00 p.m. and Saturday and  
3007 Sunday from 6:00 a.m. to 5:00 p.m. Contractor shall deliver Collected materials to  
3008 the Designated Transfer and Processing Facility during the receiving hours of the  
3009 Designated Transfer and Processing Facility.

3010 C. **Compliance with Facility Rules.** Contractor shall cooperate with Operator and  
3011 comply with Operator's requirements Including: (i) how and where to unload  
3012 Collection vehicles; (ii) respecting operations and construction of new facilities; and,  
3013 (iii) the Operator's Hazardous Waste exclusion program. Contractor shall also  
3014 cooperate with the Contamination assessment procedures specified in Attachment E-  
3015 1. All costs charged by the SBWMA for acceptance of Contractor's materials shall  
3016 be paid by Contractor. Contractor shall receive compensation for transfer and  
3017 processing costs in accordance with Article 11.

3018 **8.10 BUY-RECYCLED POLICY**

3019 The Contractor shall comply with the purchasing requirements described in this Section,  
3020 and shall document its on-going compliance with these requirements upon Agency  
3021 request.

3022 A. **Recycled Paper.** The Contractor shall use recycled paper for invoices, Bills, reports,  
3023 and public education materials. The recycled paper shall have at least thirty percent  
3024 (30%) post-consumer recycled content for uncoated paper and ten percent (10%)  
3025 post-consumer recycled content for coated paper based on federal standards.  
3026 Contractor shall state on all materials prepared with post-consumer recycled content  
3027 the following: "Printed on Recycled Paper."

3028 B. **Re-Refined Motor Oil.** Contractor shall be encouraged but not required to use re-  
3029 refined motor oil for its Collection vehicles.

3030 C. **Recycled Plastic.** Contractor shall purchase Carts and Kitchen Pails that contain  
3031 the minimum post-consumer content as specified in Attachment D. All Carts and  
3032 Kitchen Pails shall be one hundred percent (100%) recyclable.

3033 **8.11 ANNUAL PERFORMANCE HEARING**

3034 A. **Objectives.** Agency or SBWMA may hold a public performance hearing in April or  
3035 May of each Rate Year, at which time Contractor shall be present and shall participate  
3036 by making a presentation and responding to questions. Agency or SBWMA shall  
3037 convene the hearing to address the positive and negative aspects of Contractor's  
3038 overall performance. The purpose of the hearing may also involve discussion and  
3039 review of technological, economic, and regulatory changes in Collection, waste  
3040 reduction, Recycling, processing, and Disposal practices that can improve quality of  
3041 service; increase waste reduction and diversion; and ensure services are being  
3042 provided effectively and economically. Topics for discussion and review at the  
3043 performance hearing shall include, but not be limited to: Contractor's  
3044 accomplishments and compliance with various provisions of the Agreement, services  
3045 provided, feasibility of providing new services, application of new technologies,  
3046 Customer Complaints, possible amendments to this Agreement, developments in the  
3047 Applicable Laws and regulations, new initiatives for meeting or exceeding waste  
3048 reduction and Recycling goals, regulatory constraints, and Contractor performance.  
3049 Agency or SBWMA and Contractor may each select additional topics for discussion  
3050 at the performance hearing. As used in this Section 8.11, "Agency or SBWMA" means  
3051 Agency if Agency is the one convening the hearing, and SBWMA if SBWMA is the  
3052 one convening the hearing.

3053 B. **Process.** Within sixty (60) Days of notification provided by Agency or SBWMA to  
3054 Contractor of its intent to conduct a performance hearing, Agency or SBWMA will  
3055 submit questions to Contractor pertaining to Contractor's performance and Contractor  
3056 shall submit its written response within thirty (30) Days. Agency or SBWMA and  
3057 Contractor shall meet to discuss the questions and Contractor's response prior to  
3058 submittal by Contractor. Agency or SBWMA and Contractor may request from one  
3059 another information or documents related to the scheduled public hearing and Agency  
3060 or SBWMA and Contractor shall provide such information promptly.

3061 In addition to Contractor's responses to the questions submitted by Agency or  
3062 SBWMA, Contractor may be required to submit a self-assessment report of  
3063 Contractor's performance and information pertaining to the following:

3064 1. Recommended Changes or New Services. Changes and/or new services  
3065 recommended to improve Agency's or SBWMA's ability to meet and/or exceed  
3066 the Agency's and SBWMA's waste reduction and recycling goals and those of  
3067 the Act and other State legislation/regulations (such as, but not limited to, AB  
3068 341, AB 901, AB 1594, AB 1826, SB 1061, and SB 1383).

3069 2. Complaint Records. The reports required by this Agreement regarding  
3070 Complaints shall be used as one basis for review. Contractor may submit other  
3071 relevant performance information and reports for consideration. Agency or  
3072 SBWMA may request Contractor to submit specific information for the hearing.  
3073 In addition, any Person may submit comments or Complaints during or before  
3074 the hearing, either orally or in writing, and these shall be considered.

3075 3. Action Plan. Contractor shall prepare and submit an action plan for improving  
3076 and/or modifying its Collection services and other services if requested.

3077 Not less than ten (10) Business Days prior to the scheduled hearing date, Agency or  
3078 SBWMA and Contractor shall exchange any written reports and other documents that  
3079 will be provided or presented at the hearing. Not less than five (5) Business Days  
3080 before the scheduled hearing date, Agency or SBWMA and Contractor shall ensure  
3081 their availability to discuss the content and underlying support for such reports.

3082 Agency or SBWMA and Contractor shall attend and participate in the performance  
3083 hearing. Contractor may be required to present an oral report on its performance at  
3084 the performance hearing. Contractor's failure to attend and participate in the  
3085 performance hearing and provide an oral presentation upon request; provide a written  
3086 response to the questions or request for a self-assessment report submitted by  
3087 Agency or SBWMA; or submit an action plan if requested by Agency or SBWMA may  
3088 result in Liquidated Damages pursuant to Attachment J.

3089 Within sixty (60) Days after the conclusion of each performance hearing, Agency or  
3090 SBWMA may issue a report. As a result of the review, Agency or SBWMA may  
3091 require Contractor to provide expanded or new services within a reasonable time  
3092 frame and for reasonable compensation; and Agency or SBWMA may direct  
3093 Contractor to take corrective actions for any performance inadequacies.



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## **ARTICLE 9**

### **RECORD KEEPING AND REPORTING**

#### **9.01 GENERAL**

Contractor shall compile and maintain records related to its performance as necessary to develop the reports required by this Agreement. Contractor agrees to conduct data collection, record keeping, and reporting activities necessary to meet the reasonable reporting and Solid Waste, Recyclable Materials, and Organic Materials program management needs of the Agency, and to comply with Contractor's obligations under the Act and other State legislation/regulations (such as, but not limited to, AB 341, AB 1826, and SB 1383), other Applicable Laws, and the requirements of this Agreement.

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

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

#### **9.02 GENERAL RECORD KEEPING PROVISIONS**

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

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

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

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

3138 necessary to evaluate reports, compensation applications, Contractor's performance,  
3139 or other matters related to this Agreement.

3140 C. **Retention of Records.** Unless otherwise herein required, Contractor shall retain all  
3141 records and data required to be maintained by this Agreement for the Term plus at  
3142 least five (5) years after expiration or early termination of the Agreement. Records,  
3143 and data shall be in a chronological and organized form and readily and easily  
3144 interpreted. At the Agency's request, records and data required to be retained shall  
3145 be retrieved in a timely manner (which shall not exceed more than ten (10) Business  
3146 Days unless Contractor obtains prior written approval from the Agency) by Contractor  
3147 and made available to the Agency.

3148 Contractor shall maintain copies of all Billings and Billing Collections (e.g., Customer  
3149 payments) records or copies of Billing summary reports (that document all Billings  
3150 and Billing Collections for each Customer) for five (5) years, following the date of  
3151 Billings, for inspection and verification by Agency.

3152 Records and data required to be maintained that are not specifically directed to be  
3153 retained that are, in the sole opinion of the Agency, material to the determination of  
3154 Contractor's Compensation or Rates or to determination of Contractor's performance,  
3155 shall be retrieved by Contractor and made available to the Agency in a timely manner  
3156 (which shall not exceed ten (10) Business Days unless Contractor obtains prior  
3157 written approval from the Agency). When records and data are not retained or  
3158 provided by the Contractor, the Agency may make reasonable assumptions regarding  
3159 what information is contained in such records and data, and such assumption(s) shall  
3160 be conclusive in whatever action the Agency takes.

3161 D. **Record Security.** Contractor shall maintain adequate record security to preserve  
3162 records from events that can be reasonably anticipated such as a fire, theft, and an  
3163 earthquake. Electronically-maintained data and/or records shall be protected,  
3164 backed up, and stored at a separate site from the original data.

3165 **9.03 RECORD KEEPING REQUIREMENTS**

3166 A. **Maintenance of Financial and Operational Records**

3167 1. General. In order to effectuate Contractor's Compensation pursuant to Article  
3168 11, it is necessary for Contractor to maintain accurate, detailed financial and  
3169 operational information in a consistent format and to make such information  
3170 available to the Agency and the SBWMA in a timely fashion.

3171 2. Contractor's Accounting Records. Contractor shall maintain accurate and  
3172 complete accounting records containing the underlying financial and operating  
3173 data relating to, and showing the basis for computation of, all costs associated  
3174 with providing services under this Agreement. The accounting records shall be  
3175 prepared in accordance with Generally Accepted Accounting Principles (GAAP)  
3176 consistently applied.

3177 B. **Collection Service Records**

3178 Records shall be maintained and retained by Contractor for Agency relating to:

3179 1. Customer and Billing information including, but not limited to, the following for  
3180 each Customer.

- 3181 a. Names, addresses, and phone numbers of Customer, Billing contact  
3182 Person, and, if appropriate, for property manager or on-site contact Person.
- 3183 b. Solid Waste service level, Targeted Recyclable Materials service level, and  
3184 Organic Materials service level (where service level includes the number of  
3185 Containers, size of each Container, and the Collection frequency of each  
3186 Container).
- 3187 c. Number of tenant or living units at Multi-Family Residential Complexes.
- 3188 d. Service exemptions for SFD Premises (if applicable).
- 3189 e. Special services (e.g., Backyard and Special Handling Collection for SFD  
3190 Premises, push/pull service, lock/unlock service, Container Relocation  
3191 Service, Long Distance Service, etc.).
- 3192 2. Contractor's Customer and Billing system shall allow for information to be  
3193 compiled easily and separately for each Service Sector.
- 3194 3. Weight and volume of material Collected by type (e.g., Solid Waste, Targeted  
3195 Recyclable Materials, Organic Materials). Where possible, information shall be  
3196 provided separately for each Service Sector.
- 3197 4. Route sheets and route maps identifying the accounts serviced by each  
3198 Collection vehicle on a daily basis (e.g., detailed GPS reports).
- 3199 5. Facilities, equipment, and personnel used.
- 3200 6. Facilities and equipment operations, maintenance, and repair.
- 3201 7. Tonnage of Solid Waste, Targeted Recyclable Materials, Universal Waste, and  
3202 Organic Materials listed separately by materials type and Service Sector and the  
3203 facility where materials were delivered (e.g., Designated Transfer and  
3204 Processing Facility).
- 3205 8. Monthly Overall Diversion Level, monthly SFD Diversion Level, and the monthly  
3206 Commercial Diversion Level (each stated as a percentage) and calculated in  
3207 accordance with Attachment I.
- 3208 9. Targeted Recyclable Materials, Used Motor Oil and Used Motor Oil Filters,  
3209 Household Batteries, Cell Phones, and Organic Materials Collection participation  
3210 and set-out rates.
- 3211 10. Tonnage of materials Collected from On-Call Bulky Item Collection services  
3212 described in Sections 5.05, 5.06 and 5.12, community collection events as  
3213 described in Sections 5.13 and 5.14, and abandoned waste clean-up events  
3214 described in Section 5.09, reported separately by material type Collected and  
3215 listing destination where materials were delivered (e.g., Goodwill Industries,  
3216 Designated Transfer and Processing Facility, etc.).
- 3217 11. Tonnage of Solid Waste, Recyclable Materials, and Organic Materials Collected  
3218 from Venues and Community Events as described in Section 5.08 reported  
3219 separately by material type Collected and reported separately for each Venue  
3220 and Community Event as the total Tonnage of each material type for each Venue  
3221 or Community Event monthly.

- 3222 12. Volume of Used Motor Oil and number of Used Motor Oil Filters Collected by  
3223 Contractor reported separately for each facility where materials were delivered.
- 3224 **C. Other Programs Records**
- 3225 Records for other programs shall be tailored to specific needs. In general, Contractor  
3226 shall maintain and retain the following records:
- 3227 1. Plans, tasks, and milestones; and,
- 3228 2. Accomplishments including activities conducted, dates, quantities of products  
3229 used, produced or distributed, and numbers of participants and responses.
- 3230 **D. Customer Service Records.** Daily logs of all Complaints and Inquiries shall be  
3231 retained for a minimum of thirty-six (36) months. Contractor shall maintain and retain  
3232 customer service center records which include, but are not limited to, the following  
3233 statistics:
- 3234 1. Number of calls received on a daily and monthly basis;
- 3235 2. Number of calls answered on a daily and monthly basis;
- 3236 3. Number of abandoned (dropped) calls on a daily and monthly basis;
- 3237 4. Average abandoned time (i.e., Hold Time before abandoning call);
- 3238 5. Number of delayed calls (i.e., calls where caller is placed on hold before speaking  
3239 with a customer service agent) on a daily and monthly basis;
- 3240 6. Average Hold Time for incoming calls on a daily and monthly basis;
- 3241 7. Percentage of calls answered by a Person within thirty (30) seconds on a daily  
3242 and monthly basis;
- 3243 8. Percentage of calls answered within three (3) minutes on a daily and monthly  
3244 basis;
- 3245 9. Number of e-mail responses sent from the customer service department to  
3246 Customers on a monthly basis;
- 3247 10. Number and percentage of Complaint and Inquiry e-mails or submissions  
3248 through Contractor website that received responses before close of business on  
3249 the Day received on a monthly basis;
- 3250 11. Number and percentage of Complaint and Inquiry e-mails that received  
3251 responses by the close of business on the Day following the receipt of the  
3252 Complaint or Inquiry;
- 3253 12. Number of Complaints and Inquiries received through Contractor's website on a  
3254 daily and monthly basis;
- 3255 13. Names of all Customer service representatives employed; and,
- 3256 14. Minimum, average, and maximum number of customer service representatives  
3257 employed during each month.
- 3258 **E. CERCLA Defense Records.** Agency views the ability to defend against CERCLA  
3259 and related litigation as a matter of great importance. For this reason, the Agency  
3260 regards the ability to prove where Solid Waste Collected in the Agency area was  
3261 taken for transfer or Disposal, to be matters of concern. Contractor shall maintain

3262 data retention and preservation systems which can establish where Solid Waste  
3263 Collected in the Service Area was delivered for transfer or Disposal. This provision  
3264 shall survive the expiration of this Agreement.

3265 F. **Compilation of Information for State Law Purposes.** Contractor shall compile  
3266 information on amounts of Solid Waste delivered to the Designated Transfer and  
3267 Processing Facility and to other locations, as well as other information which the  
3268 Agency may reasonably request.

3269 Contractor shall maintain these records for a minimum of ten (10) years after  
3270 expiration or earlier termination of the Agreement. Contractor shall provide these  
3271 records to Agency (upon request or at the end of the record retention period) in an  
3272 organized and indexed manner rather than destroying or Disposing of them.

3273 **9.04 GENERAL REPORTING REQUIREMENTS**

3274 A. **Purpose.** Records shall be maintained and retained in forms, on media, and by  
3275 methods that facilitate flexible use of data contained in them to structure reports, as  
3276 needed. Reports are intended to compile recorded data into useful forms of  
3277 information that can be used to, among other things:

- 3278 1. Evaluate Diversion performance
- 3279 2. Evaluate Contractor's performance
- 3280 3. Monitor Customer participation in Targeted Recyclable Materials and Organic  
3281 Materials Collection programs and in other programs using several different  
3282 performance measures
- 3283 4. Monitor changes in the number of Customers and Customers' service levels
- 3284 5. Determine needs for adjustment to programs and cost for such changes
- 3285 6. Evaluate customer service and Complaints
- 3286 7. Determine and set Contractor's Compensation and Rates

3287 B. **Report Format.** Contractor may propose report formats that are responsive to the  
3288 objectives and audiences for each report. The format of each report shall be  
3289 approved by Agency. The Agency may review and request changes to Contractor's  
3290 report formats and content and Contractor shall not unreasonably deny such  
3291 requests. Contractor agrees to submit all reports by e-mail in a format compatible  
3292 with the Agency's software and computers so the Agency can sort and analyze data.  
3293 Contractor shall provide a certification statement, under penalty of perjury by the  
3294 responsible Contractor official, that the report being submitted is true and correct to  
3295 the best knowledge of such official after their reasonable inquiry.

3296 C. **Submittal Schedule and Instructions.** Contractor shall submit monthly reports  
3297 within fifteen (15) Days after the end of the reporting month, quarterly reports within  
3298 thirty (30) Days after the end of the reporting quarter, and annual reports within forty-  
3299 five (45) Days after the end of the reporting year. Contractor shall submit (via e-mail)  
3300 all reports to the person(s) designated by SBWMA and Agency. Each quarterly report  
3301 shall be in lieu of the monthly report for the third month of the quarter; thus, Contractor  
3302 shall submit a total of thirteen (13) periodic reports per year: eight (8) monthly reports,  
3303 four (4) quarterly reports, and one (1) annual report.

3304 D. **Failure to Report.** The refusal or failure of Contractor to file any required reports, or  
3305 to provide required information to Agency, or the inclusion of any materially false or

3306 misleading statement or representation by Contractor in such report shall be deemed  
3307 a Contractor default as described in Section 14.01 subject to the notice and cure  
3308 provisions of that section and shall subject Contractor to all remedies which are  
3309 available to the Agency under the Agreement or otherwise.

3310 E. **Accuracy of Reports.** The failure of Contractor to file accurate and timely reports,  
3311 proposal(s), information, or correspondence to Agency or SBWMA, or the inclusion  
3312 of any inaccurate or misleading data, statement or representation by Contractor in  
3313 such report(s), proposal(s), information, or correspondence to Agency or SBWMA,  
3314 shall be subject to Liquidated Damages as set forth in Attachment J. In addition, the  
3315 inclusion of any materially false or misleading statement or representation by  
3316 Contractor in such report shall be deemed a Contractor default as described in  
3317 Section 14.01 subject to the notice and cure provisions of that Section and shall  
3318 subject Contractor to all remedies which are available to the Agency under the  
3319 Agreement or otherwise.

3320 F. **Source Files.** Contractor shall provide the SBWMA the following information: (i) with  
3321 each monthly or quarterly report, a spreadsheet provided by Operator showing all  
3322 Tonnages Collected by Contractor and delivered to the Shoreway Recycling and  
3323 Disposal Center from Member Agencies during the reporting month, listed separately  
3324 by Member Agency, material type, and Service Sector; (ii) with each monthly or  
3325 quarterly report, a spreadsheet containing the information required by Sections  
3326 9.06.B, 9.06.D, and 9.06.E; and, (iii) with each annual report, a spreadsheet  
3327 containing the information required by Section 9.07.B. Such information need not be  
3328 included in the published reports provided to Agency.

3329 **9.05 MONTHLY REPORTS**

3330 Monthly reports shall present the information described in this Section in a format agreed  
3331 upon by the Agency.

3332 A. **Tonnage Information.** Contractor shall provide the Tonnage information requested  
3333 below by Service Sector on a monthly and year-to-date basis, with a comparison to  
3334 the prior year. However, the Agency reserves the right to request the monthly  
3335 Tonnage data by route.

3336 1. Solid Waste. Total Solid Waste Tonnage Collected and Disposed by Service  
3337 Sector.

3338 2. Targeted Recyclable Materials Services. Total Targeted Recyclable Materials  
3339 Tonnage Collected and delivered for processing by Service Sector listed  
3340 separately by material type Collected (e.g., Single-Stream Recyclable Materials,  
3341 Source Separated cardboard, Source Separated paper, Used Motor Oil, Used  
3342 Motor Oil Filters, etc.).

3343 3. Organic Materials Services. Total Organic Materials Tonnage Collected and  
3344 delivered for processing by Service Sector listed separately by material type  
3345 (e.g., Plant Materials, Food Scraps, or Organic Materials).

3346 B. **Diversions Level.** Contractor shall provide the monthly and year-to-date Calculated  
3347 Overall Diversion Level, the monthly and year-to-date Residential Diversion Level,  
3348 and the monthly and year-to-date Commercial Diversion Level (each stated as a  
3349 percentage) calculated in accordance with Attachment I, with a comparison to the

- 3350 prior year. In addition, Contractor shall present the calculations used to determine  
3351 the diversion levels.
- 3352 C. **Complaint, Inquiry and Service Requests Data.** Contractor shall provide  
3353 information on the number of Complaints, Inquiries service requests received from  
3354 Customers, Generators, or other Person by category (e.g., missed pickups, noise  
3355 Complaints, scheduled On-Call Bulky Item Collection events, Overage events, Billing  
3356 concerns, property damage claims, requests for information, delivery of Recycling  
3357 Tote-Bags, inventory of Recycling Tote-Bags, etc.). Complaint summary, for each  
3358 month, summarized by nature of Complaint, Inquiry, and service request on a  
3359 compatible computer disc or other memory device approved by Agency. The  
3360 categorization of Complaints, Inquiries, and service requests shall be agreed upon by  
3361 the Agency, SBWMA, and Contractor prior to the Commencement Date, and shall be  
3362 adjusted during the Term upon agreement between Agency, SBWMA and Contractor.
- 3363 D. **Call Center Data.** Number of calls received, number of calls answered, number of  
3364 dropped calls, percentage of dropped calls, Average Hold Time, percentage of calls  
3365 answered in thirty (30) seconds.
- 3366 E. **Monthly Gross Revenues and Fee Reports.** Pursuant to Article 10, a statement  
3367 itemizing each fee paid by Contractor to Agency in the month; detailing calculation of  
3368 each monthly fee amount; and stating monthly Gross Revenue Billed, by Service  
3369 Sector, for all operations conducted or permitted by this Agreement.
- 3370 F. **Abandoned Waste Collection.** Contractor shall provide a list of all abandoned waste  
3371 Collection events performed identifying the address of each Collection location.
- 3372 G. **Multi-Family Tote Bag Distribution.** Contractor shall provide a report on Multi-  
3373 Family Tote Bag Distribution as required by Article 5, Collection Service, Section  
3374 5.03.C.2.
- 3375 H. **Other Information.** Other information or reports that Agency may reasonably  
3376 request or require be added to reporting. These requests may include, but shall not  
3377 be limited to, information regarding on-call Bulky Item Collection programs,  
3378 abandoned waste Collection, Used Motor Oil and Used Motor Oil Filter Collection,  
3379 and Community Events and Venues Collection.

## 3380 9.06 QUARTERLY REPORTS

- 3381 Quarterly reports shall present the information described in this Section, in addition to the  
3382 monthly information required under Section 9.05.
- 3383 A. **On-Site Customer Assessments and Visual Audits.** Contractor shall report the  
3384 number of site assessments and visual audits conducted for Multi-Family Dwelling,  
3385 Commercial, and Agency Customers, which are required by Sections 7.04 and 7.05.  
3386 SBWMA may request additional statistics as necessary.
- 3387 B. **Public Education Activities.** Contractor shall report the following public education  
3388 activity information.
- 3389 1. Public education materials produced and total number of each distributed.
  - 3390 2. Dates, times, and names of meetings or events attended.
  - 3391 3. Dates, times, and names of school(s) where presentations were performed.

- 3392 4. Completion of other activities specified in the then-current Three-Year Public  
3393 Education Plan.
- 3394 5. Other educational activities as may be requested by Agency.
- 3395 **C. Determination and Payment of Liquidated Damages.** In accordance with the  
3396 requirements of Section 14.07, Contractor shall provide a report that identifies any  
3397 non-compliance with performance measures listed in Attachment J and include  
3398 calculation of the Liquidated Damages due. Contractor may include with its report a  
3399 written request to meet with Agency's Manager or his or her designee to discuss  
3400 Contractor's evidence refuting the basis for assessing Liquidated Damages  
3401 pertaining to unacceptable employee behavior. In such cases, Contractor shall  
3402 include with its report evidence in writing and written testimony of its employees and  
3403 others relevant to the incident(s)/non-performance. Agency's Manager or his or her  
3404 designee will provide Contractor with a written explanation of his or her determination  
3405 on each incident(s)/non-performance. The decision of Agency's Manager or his or  
3406 her designee shall be final.
- 3407 **D. Account Summary.** Provide the following account summary information in table  
3408 format:
- 3409 1. Number of Customers in each Rate and Charge category.
- 3410 2. Total number of Residential, Commercial, and Drop Box Customers subscribing  
3411 to Solid Waste, Targeted Recyclable Materials, and Organic Materials Collection  
3412 service listed separately by Service Sector and material type.
- 3413 3. Percentage of Customers subscribing to Targeted Recyclable Materials  
3414 Collection service (listed separately for Multi-Family, Commercial, and Drop Box  
3415 Customers), which shall be equal to the total number of Targeted Recyclable  
3416 Materials Customers divided by the total number of Solid Waste Customers.
- 3417 4. Percentage of Customers subscribing to Organic Materials Collection service  
3418 (listed separately for Multi-Family, Commercial, and Drop Box Customers), which  
3419 shall be equal to the total number of Organic Materials Customers divided by the  
3420 total number of Solid Waste Customers.
- 3421 5. Weekly gallons or cubic yards of service provided to Residential, Commercial,  
3422 and Drop Box Customers subscribing to Solid Waste, Targeted Recyclable  
3423 Materials, and Organic Materials Collection service listed separately by Service  
3424 Sector and material type for one week.
- 3425 **E. Operational Data.** Contractor shall submit the following:
- 3426 1. A summary of Collection route operational data including: average number of  
3427 Customers and Containers serviced per route per Day for each Collection route;  
3428 average number of actual both on-route and off-route hours per Day by route  
3429 (distinguishing between Standard Collection Vehicle Routes and Special  
3430 Collection Vehicle Routes, if appropriate);
- 3431 2. List of the one hundred (100) largest generators based on weekly Solid Waste  
3432 volumes (listed in descending order) within Agency for both Commercial and  
3433 Multi-Family Customers. This reporting shall include, at a minimum: the name  
3434 of the Customer; the name of the business; the address of the business; the  
3435 type(s) of service received (e.g. Collection of Solid Waste, Single-Stream



3436 Targeted Recyclable Materials, Plant Materials, Food Scraps, Organic Materials,  
3437 Source Separated cardboard, Source Separated paper, etc.); the volume of  
3438 service received weekly measured in cubic yards; the frequency of service  
3439 received measured in number of Collections per week; the diversion volume  
3440 measured as total service level volume divided by Targeted Recyclables  
3441 Materials and/or Organic Materials Collection volume; and, the change in service  
3442 level from the prior quarter.

3443 F. **Recycling Technical Assistance Plan Status Report.** Contractor must prepare and  
3444 submit to Agency and SBWMA, a Recycling Technical Assistance Plan Status Report  
3445 providing required reporting information identified in the then-current Three-Year Plan  
3446 (prepared in accordance with Section 7.03.B).

3447 G. **Determination and Payment of Performance Incentives and Disincentives.** In  
3448 accordance with the requirements of Section 11.07, Contractor shall provide on a  
3449 quarterly basis a report that identifies compliance with the performance standards  
3450 listed in Attachment I and includes calculation of the performance incentive payments  
3451 and disincentive assessments due. Performance incentives (in the form of increased  
3452 compensation to Contractor) will be awarded by Agency for excellent performance on  
3453 aspects of diversion and Customer service as specified in Attachment I.

3454 All performance incentives and disincentives payments are to be included in  
3455 Contractor's annual Rate Application and Contractor's Compensation for the next  
3456 Rate Year will be increased or decreased by the net amount of performance incentive  
3457 payments and disincentive assessments calculated in the Application. Performance  
3458 incentives and disincentives for Diversion and Average Speed of Answer and  
3459 performance disincentives for Ninety (90) Second Maximum Hold Time shall be  
3460 calculated in aggregate for the SBWMA Service Area and Agency's share shall be  
3461 proportional based on the Tons of Solid Waste Collected by Contractor for the  
3462 previous Rate Year.

3463 H. **Quality Assurance Program.** Contractor shall report quarterly on quality of the  
3464 Customer service experience when Customer was interacting with Contractor,  
3465 described in Section 7.02.F, during the prior month. The report shall include (i) name  
3466 and Service Sector of each Customer contacted, (ii) date and time, (iii) name of  
3467 Customer service representative placing call, (iv) summary of Customer's responses  
3468 to questions and other information provided, and (v) follow-up actions taken, if any,  
3469 in response to calls. The actual surveys shall be kept by the Contractor compliant  
3470 with the record keeping requirements of the Agreement and such surveys shall be  
3471 made available to the Agency or SBWMA upon request.

3472 **9.07 ANNUAL REPORTS**

3473 Annual reports shall present the information described in this Section, in addition to the  
3474 monthly and quarterly report information required under Sections 9.05 and 9.06. The  
3475 monthly and quarterly report information shall be presented as well as the annual totals  
3476 for the Rate Year, when applicable (e.g., for Tonnage data, Diversion Level, Complaint  
3477 and Inquiry data, Gross Revenue Billed, and Franchise Fees, etc.)

3478 **A. Operational Information**

3479 1. Routes by Service Sector

3480 a. Number of routes per Day

- 3481 b. Types of vehicles
- 3482 c. Crew size per route
- 3483 e. Number of full-time equivalent routes
- 3484 f. Number of accounts per route
- 3485 g. Total hours per Service Sector per Day and per year
- 3486 h. Average cost per route
- 3487 i. Route sheets and maps
- 3488 2. Personnel
  - 3489 a. Organizational chart
  - 3490 b. Job classifications and number of full-time equivalent positions for each (e.g.
  - 3491 administrative, customer service representatives, drivers, supervisors,
  - 3492 educational staff, etc.)
  - 3493 c. Annual wages by job classification including benefits
- 3494 3. Productivity Statistics
  - 3495 a. Number of accounts per Service Sector
  - 3496 b. Number of set-outs per Service Sector
  - 3497 c. Tons per route per Day by Service Sector
- 3498 4. Operational Changes
  - 3499 a. Number of routes
  - 3500 b. Staffing
  - 3501 c. Supervision
  - 3502 d. Collection services
- 3503 5. Equipment - An inventory of equipment in accordance with Section 8.04.D.
- 3504 6. Billing - Billing review report in accordance with Section 7.01.F.
- 3505 B. **Customer Account Information.** As part of the annual reporting requirement,
- 3506 Contractor shall make available to Agency detailed Customer account information in
- 3507 tabular format and in electronic format (in computer software format that is compatible
- 3508 with the Agency's) Including the following information for each Customer: account
- 3509 number; service address; assessor parcel number for Accounts agreed to by
- 3510 Contractor and Agency; Customer's name, address, and phone number; Billing
- 3511 contact name, Billing address, and phone number; Solid Waste, Targeted Recyclable
- 3512 Materials, and Organic Materials Collection service level (i.e., number of Containers,
- 3513 size of Containers, frequency of Collection, and Day(s) of Collection), and Rate or
- 3514 Charge billed. For Multi-Family Customers, the Customer account information shall
- 3515 also include the number of dwelling units at each Multi-Family Residential Complex.
- 3516 C. **Customer Service Operations.** Contractor shall annually prepare and submit, to
- 3517 Agency and SBWMA, a Customer Service Operations Plan that shall include, at a
- 3518 minimum, the following sections:
  - 3519 1. Customer Service Call Center
    - 3520 a. Provide the number CSR supervisory staff and describe their
    - 3521 responsibilities.

- 3522 b. Contractor must describe its training strategy for CSR and CSR supervisory  
3523 staff.
- 3524 c. Contractor must describe its strategy and overall approach to attracting and  
3525 retaining a high quality CSR staff.
- 3526 2. Website
- 3527 a. Number of on-line payments made
- 3528 b. Number of On-Call Collection Services scheduled
- 3529 c. Number of On-Call Bulky Goods Collections scheduled
- 3530 d. Number of extra Solid Waste pick-ups scheduled
- 3531 e. Number of service changes requested
- 3532 f. Number of Complaints documented and resolved
- 3533 3. Customer Information System
- 3534 a. Status of any changes or upgrades made to system software
- 3535 b. Description of proposed changes to system software
- 3536 c. Explanation and schedule of training activities
- 3537 4. Staffing
- 3538 5. Commercial customer service
- 3539 D. **Related Party Entities.** Contractor agrees that all financial transactions with all  
3540 Related Party Entities shall be approved in advance in writing and disclosed annually  
3541 (coinciding with Contractor's annual audited financial statements referred to in this  
3542 Section 9.07) to the Agency in a separate disclosure letter to the Agency. This letter  
3543 shall include the following information: a general description of the nature of each  
3544 transaction, or type of (for many similar) transaction, as applicable. Such description  
3545 shall include for each (or similar) transaction, amounts, specific Related Party Entity,  
3546 basis of amount (how amount was determined), and description of the allocation  
3547 methodology used to allocate any common costs. Amounts shall be reconciled to the  
3548 Related Party Entity disclosures made in Contractor's annual audited financial  
3549 statements referred to in this Section.
- 3550 At the Agency's request, Contractor shall provide the Agency with copies of working  
3551 papers or other documentation deemed relevant by the Agency relating to information  
3552 shown in the annual disclosure letter. The annual disclosure letter shall be provided  
3553 to the Agency within sixty (60) Business Days of Contractor's Fiscal Year end.
- 3554 E. **Contractor's Review of Billings.** Pursuant to the requirements described in Section  
3555 7.01.F, Contractor shall submit a report on its review of Billings.
- 3556 F. **Determination and Payment of Liquidated Damages.** In accordance with the  
3557 requirements of Sections 14.07 and 11.07.D, Contractor shall provide with its annual  
3558 report, a report that identifies any non-compliance with the performance standards  
3559 listed in Attachment J and includes calculation of the Liquidated Damages due. This  
3560 report shall be accompanied by supporting documentation identifying Contractor's  
3561 compliance or non-compliance with the specified performance standards. The report  
3562 submittal shall be accompanied by a check from Contractor in the amount of the  
3563 Liquidated Damages due (per Contractor's calculation and self-reporting) for the  
3564 reporting period.

3565 G. **Determination and Payment of Performance Incentives and Disincentives.** In  
3566 accordance with the requirements of Section 11.07, Contractor shall provide with its  
3567 annual report, a report that identifies any non-compliance with the performance  
3568 standards listed in Attachment I and includes calculation of the performance incentive  
3569 payments and disincentive assessments due. Performance Incentives (in the form of  
3570 increased compensation to Contractor) will be awarded by Agency for excellent  
3571 performance on aspects of Solid Waste diversion, Collection service delivery and  
3572 customer service as specified in Attachment I. Performance disincentives will be  
3573 assessed by Agency for substandard performance on aspects of Solid Waste  
3574 diversion, Collection service delivery and customer service specified in Attachment I.

3575 Payment related to performance incentives and disincentives are to be included in  
3576 Contractor's annual Rate Application and Contractor's Compensation for the next  
3577 Rate Year will be increased or decreased by the net amount of performance incentive  
3578 payments and disincentive assessments calculated. performance incentives and  
3579 disincentives shall be calculated as specified in Attachment I.

3580 **9.08 REQUIRED SPECIFIC REPORTING**

3581 Event-specific reports shall be submitted following the occurrence of the event as  
3582 described in this Section.

3583 A. **Report of Accumulated Solid Waste; Unauthorized Dumping.** As required by  
3584 Section 7.07, Contractor shall report: (i) the addresses of any Premises at which the  
3585 driver observes that Solid Waste, Targeted Recyclable Materials, and/or Organic  
3586 Materials is accumulating; and (ii) the address, or other location description, at which  
3587 Solid Waste, Targeted Recyclable Materials, and/or Organic Materials has been  
3588 dumped in an apparently unauthorized manner. The report shall be delivered to the  
3589 Agency within one (1) Business Day of such observation or the Contractor can report  
3590 utilizing the Agency web based software for internal reporting.

3591 B. **Hazardous Waste.** As required by Section 8.07, the Contractor shall notify the  
3592 Agency of any Hazardous Waste identified in Containers or left at any Premises within  
3593 twenty-four (24) hours of identification of such material.

3594 C. **Reporting Adverse Information.** Contractor shall provide Agency two (2) copies  
3595 (one (1) to the Agency Manager, one (1) to the Agency Attorney) of all reports,  
3596 pleadings, applications, notifications, Notices of Violation, communications or other  
3597 material relating specifically to Contractor's performance of services pursuant to this  
3598 Agreement, submitted by Contractor to, or received by Contractor from, the United  
3599 States or California Environmental Protection Agency, the California Department of  
3600 Resources Recycling and Recovery (CalRecycle), the Securities and Exchange  
3601 Commission or any other federal, State, County, or local agency, including any  
3602 federal or State court. Copies shall be submitted to Agency simultaneously with  
3603 Contractor's filing or submission of such matters with said agencies. Contractor's  
3604 routine correspondence to said agencies need not be submitted to Agency, but shall  
3605 be made available to Agency promptly upon Agency's written request.

3606 **9.09 UPON-REQUEST REPORTING**

3607 A. **Holiday Tree Services.** Within ten (10) Business Days of Agency's request,  
3608 Contractor shall report the Tonnage of Holiday Trees Collected at the Drop Box sites  
3609 or at drop-off sites (if drop-off sites were established).

- 3610 B. **Summary Assessment.** Within thirty (30) Days of Agency’s request, highlight  
3611 significant accomplishments and problems. Identify recommendations and/or plans  
3612 to improve services.
- 3613 C. **Hazardous Waste Records.** A summary or copy of the Hazardous Waste records  
3614 required under Section 8.07.D.
- 3615 D. **GPS Route Reports.** Contractor shall provide GPS reports as reasonably requested  
3616 by Agency or SBWMA.
- 3617 E. **Other.** The Agency reserves the right to request additional reports from the  
3618 Contractor, and the Contractor shall deliver such reports within twenty-five (25)  
3619 Business Days of such request provided that such information is similar in nature to  
3620 the required elements of the monthly, quarterly, or annual reporting requirements  
3621 described in Sections 9.05, 9.06, and 9.07. If the information requested by the  
3622 Agency is not typically part of the Contractor’s reporting requirements described in  
3623 Sections 9.05, 9.06, and 9.07, Contractor shall provide such information if the  
3624 Contractor is required to maintain the information under the record-keeping  
3625 requirements described in Sections 9.01, 9.02, and 9.03.
- 3626 Contractor acknowledges that the Agency has to submit information to State and local  
3627 agencies related to the Act, AB 341, AB 1826, and SB 1383 and may require  
3628 additional reporting from the Contractor. If Agency needs additional information to  
3629 complete its reports, Contractor shall provide additional information to the extent  
3630 Contractor has maintained records on the information requested. The Parties  
3631 acknowledge that Contractor shall provide reports to the Agency, and shall not submit  
3632 reports to State or local agencies on the behalf of the Agency.
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## **ARTICLE 10**

### **FRANCHISE FEE AND OTHER FEES**

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3636 **10.01 GENERAL**

3637 The fees described in this Article shall be treated as Other Pass-Through Costs for the  
3638 purposes of determining the Revenue Requirement and shall be recoverable through the  
3639 Agency-set Rates and Charges that Contractor bills Customers. Contractor shall  
3640 separately identify any of the fees established under this Article on Customer bills if  
3641 directed to do so by Agency.

3642 **10.02 FRANCHISE FEE**

3643 In consideration of the exclusive franchise granted to Contractor by this Agreement, and  
3644 to reimburse Agency for costs incurred in administering this Agreement, Contractor shall  
3645 pay to Agency a Franchise Fee specified in Attachment M, as may be amended.

3646 **10.03 OTHER FEES**

3647 Agency has adopted or may adopt other fees, which are intended to recover the costs of  
3648 services related to Solid Waste management, Recycling, and cleanliness of public streets  
3649 and/or public litter and Recycling containers through inclusion in Rates. The other fees  
3650 currently in effect, or which are expected to be in effect as of January 1, 2021 are listed in  
3651 Attachment M, as may be amended.

3652 **10.04 TIME AND METHOD OF PAYMENT**

3653 On or before the twentieth (20<sup>th</sup>) Day of each month, Contractor shall pay to Agency (i) the  
3654 amount of the Franchise Fees due on Gross Revenues Billed during the immediate  
3655 previous month, and (ii) one-twelfth of any other fee established by Agency unless Agency  
3656 directs a different payment schedule for such other fees.

3657 Contractor shall provide, concurrently with the payment of fees, a statement showing the  
3658 calculation of each fee, including the Gross Revenues Billed from Customers in each  
3659 Service Sector for that month. The statement shall be in a format, and contain the level  
3660 of detail, specified by Agency. Payments from Contractor to Agency shall be made by  
3661 wire transfer or other method authorized by Agency.

3662 If a fee is not paid on time, Contractor shall pay a late payment charge to the Agency equal  
3663 to two percent (2%) of the fees due for that month. In addition, Contractor shall pay an  
3664 additional two percent (2%) on any unpaid balance for each thirty (30) Day period a portion  
3665 of the fee due remains unpaid. Late payment charges are not included in Contractor's  
3666 Compensation and may not be recovered through Rates or Charges. Changes to  
3667 Contractor's Compensation to reflect increases or decreases in fees, or the addition of  
3668 new fees, are not subject to the Special Compensation Review provisions in Section  
3669 11.05.

3670 **10.05 ADJUSTMENTS TO FEES; ADDITIONAL FEES**

3671 Agency may from time to time adjust the amount of the fees described in this Article and  
3672 may establish other fees which shall be set forth in Attachment M as amended. Changes  
3673 in the total amount of fees to be collected by Contractor and remitted to Agency shall be  
3674 reflected in an adjustment to Contractor's Compensation and Rates.

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## ARTICLE 11 CONTRACTOR'S COMPENSATION AND RATES

### 3678 11.01 OVERVIEW

- 3679 A. Contractor's Compensation includes three components:
- 3680 1. Annual Cost of Operations. These include the cost of labor, equipment, materials  
3681 and supplies, fuel, insurance, bonds, taxes, overhead and all other costs  
3682 necessary to perform all the services required, in the manner required, by this  
3683 Agreement, with the exception of costs identified in subsection A.3.
- 3684 2. Profit. Contractor's profit is determined by applying the Operating Ratio of ninety  
3685 and one-half percent (90.5%) to annual costs of operation described in subsection  
3686 A.1.
- 3687 3. Contractor Pass-Through Costs. These consist of costs that Contractor is  
3688 obligated to pay but on which Contractor does not earn a profit and consist of: (i)  
3689 interest expense, and (ii) adjustments to compensation to reflect Agency-specific  
3690 Agreement changes (labeled in Attachment N as "Contract Changes to Specific  
3691 Agencies").
- 3692 B. Attachment N includes baseline financial and operational information that shall be  
3693 used to calculate Contractor's Compensation for 2021. The projected 2021 Annual  
3694 Costs of Operation, Profit, and Contractor Pass-Through Costs shown on Attachment  
3695 N: (i) were prepared by Contractor; (ii) were allocated among Member Agencies  
3696 based on the allocations used for Contractor's Application for Rate Year 2017; and,  
3697 (ii) have been adjusted to reflect refinements in the scope of services and decisions  
3698 by individual Member Agencies as to specific programs, levels of service, or other  
3699 unique factors affecting only their jurisdiction.
- 3700 C. Contractor's Compensation for Rate Year Eleven (2021) shall be determined as  
3701 provided in Section 11.02.A. Annually thereafter, Contractor's Compensation shall  
3702 be adjusted as provided in Section 11.02.D.
- 3703 D. After the conclusion of each Rate Year, SBWMA will conduct a revenue reconciliation  
3704 process as provided in Section 11.03. The purpose of this procedure is to reconcile  
3705 Net Revenues Billed by Contractor for a Rate Year with the approved Contractor's  
3706 Compensation for that Rate Year. Adjustments to Contractor's Compensation will be  
3707 made in a subsequent Rate Year to recover any excess revenue from Contractor or  
3708 to compensate Contractor for a revenue shortfall.
- 3709 E. However, no adjustments to Contractor's Compensation will be made for differences  
3710 between total costs of operation or Contractor Pass-Through Costs as calculated for  
3711 the Rate Year and as actually incurred, with the exception of cost differences due to  
3712 changes in scope of services (Section 15.12) or as authorized by a special  
3713 compensation review (Section 11.05) or an adjustment under Section 3.03.B. If  
3714 Contractor's actual annual cost of operations, actual profits and actual Contractor's  
3715 Pass-Through Costs are more or less than the amounts included in the annual  
3716 calculation of Contractor's Compensation, Contractor is neither entitled to an increase  
3717 in compensation, nor subject to a reduction in compensation, in future Rate Years.

3718 **11.02 DETERMINATION OF CONTRACTOR’S COMPENSATION**

3719 A. **Contractor’s Compensation for Rate Year Eleven (2021).** Contractor’s  
3720 Compensation for 2021 shall be determined in 2020 by adjusting Contractor’s  
3721 estimated projected 2021 Contractor’s Compensation shown on Attachment N to  
3722 reflect the following factors:

- 3723 • Change in Customer account and service levels as provided in Attachment K;  
3724 • Change in fuel prices as provided in Attachment K.

3725 B. **Different Compensation Methods for Other Member Agency.** If Contractor enters  
3726 into a franchise agreement with any other Member Agency which uses a substantially  
3727 different methodology for calculating Contractor's Compensation than that set forth in  
3728 Article 11 and Attachments K and N of this Agreement, then (i) for purposes of  
3729 calculating Contractor's Compensation under this Agreement, Contractor's costs of  
3730 providing service to such other Member Agency shall continue to be calculated using  
3731 the methodology set forth in Attachments K and N, and, (ii) Contractor's  
3732 Compensation for providing service to such other Member Agency shall be as set  
3733 forth in the franchise agreement between it and Contractor. Any such franchise  
3734 agreement shall (i) implement the performance incentives and disincentives provided  
3735 for in this Agreement, and, (ii) require Contractor to pay sums due to SBWMA for  
3736 delivery of materials from such Member Agency to Shoreway Recycling and Disposal  
3737 Center.

3738 C. **Reserved**

3739 D. **Contractor’s Compensation for Subsequent Rate Years.** Contractor’s  
3740 Compensation shall be adjusted annually, commencing with the determination of  
3741 Contractor’s Compensation for Rate Year Twelve (2022) and continuing through the  
3742 remaining Term including any extension periods to reflect inflation (or deflation),  
3743 changes in service levels, and the difference between Contractor’s Compensation  
3744 approved for the prior Rate Year (e.g., 2021) and Net Revenues Billed (e.g., 2021)  
3745 and similarly for subsequent Rate Years.

3746 E. **No Changes for Actuals.** During the Term, no changes to Contractor’s  
3747 Compensation will be made to reflect actual costs, actual profit, or actual Contractor  
3748 Pass-Through Costs, except for adjustments related to vehicle acquisition costs, as  
3749 provided in Attachment K.

3750 F. **Change in Contractor’s Compensation for Rate Years Eight, Nine, and Ten**  
3751 **(2018, 2019, 2020).** The Contractor’s Compensation for Rate Years Eight, Nine, and  
3752 Ten (2018, 2019, 2020) shall be determined in accordance with the procedures  
3753 specified in Attachment K of the 2009 Franchise Agreement with the following  
3754 exceptions:

- 3755 1. In Rate Years Eight, Nine, and Ten (2018, 2019, 2020), an adjustment shall be  
3756 made to allocated indirect costs to account for a reduction in the staffing of  
3757 Contractor’s Waste Zero Specialists (from 8 full-time positions to 6 full-time  
3758 positions). The adjustment shall be made by adding a new line item to the  
3759 Contractor’s Compensation adjustment calculations (after the General and  
3760 Administrative line item), which shall be titled “Adjustment for Waste Zero  
3761 Specialists” and include a negative amount of \$200,000 for Rate Year Eight (2018).  
3762 The annual reduction amount shall be adjusted annually for Rate Year Nine (2019)



3763 and Ten (2020) using the same adjustment method used to adjust the General and  
3764 Administrative costs.

3765 2. In Rate Year Ten (2020), the vehicle depreciation shall be \$4,092,539.

3766 **11.03 ANNUAL REVENUE RECONCILIATION PROCESS**

3767 After completion of each Rate Year, a revenue reconciliation process will be implemented  
3768 as provided in this Section and further described in Attachment K, Section 10.

3769 The purpose of this process is to determine, for each Member Agency, the difference  
3770 between the actual Net Revenue Billed by Contractor for such Member Agency for the  
3771 preceding Rate Year and the calculated Contractor's Compensation approved for such  
3772 Member Agency for that Rate Year.

3773 The Contractor shall submit a report to Agency and SBWMA on or before March 31 of  
3774 each Rate Year, commencing March 31, 2021.

3775 The report shall include the following information (items) for the preceding Rate Year:

3776 A. **Gross Revenue Billed.** Gross Revenue Billed is the total amount billed by Contractor  
3777 or Agency to Customers for all services attributable to the Rate Year in question as  
3778 further defined in Attachment A. The report shall identify the amount of Gross  
3779 Revenue Billed attributable to each Member Agency. (In the case of Member  
3780 Agencies that bill Customers directly for some or all of the services provided by  
3781 Contractor, Gross Revenue Billed shall include all amounts paid to Contractor by  
3782 those Member Agencies.)

3783 B. **Payments to SBWMA.** Payments to SBWMA are the amounts charged by SBWMA  
3784 for delivery of materials to the Designated Transfer and Disposal Facility. They do  
3785 not include payments to SBWMA pursuant to Section 6.02 for excess Contamination.  
3786 The report shall identify the amount of these payments attributable to each Member  
3787 Agency, using the methodology described in Attachment K, Section 8.

3788 C. **Payments to Agencies for Franchise Fees and Other Fees Described in Article**  
3789 **10.** The report shall identify the amount of these payments attributable to the Rate  
3790 Year in question made to each Member Agency.

3791 D. **Revenues Attributable to Additional Service.** In addition to regularly scheduled  
3792 Collection service, Contractor may provide Additional Services to Customers or  
3793 Agency on regular basis or "on-call" basis. A list of these Additional Services and  
3794 Charges is included as Attachment Q. Contractor shall bill Customer for these  
3795 services, or Agency when services are provided to Agency, at Agency-approved  
3796 Pricing. Compensation to Contractor for these services shall be at the Charges  
3797 specified in Attachment Q. The report shall identify the amount of billings for each  
3798 Member Agency for Additional Services listed on Attachment Q.

3799 Because the amount of such Additional Services may vary from year to year and is  
3800 unpredictable, the costs and revenues associated with them are not included in  
3801 SBWMA's prospective calculation of Contractor's Compensation or in the revenue  
3802 reconciliation process described in Attachment K, with the exception that the revenue  
3803 reconciliation process shall include as Gross Revenue Billed the total annual Billings  
3804 at Agency-approved Pricing for SFD Customers that subscribe to Backyard Collection  
3805 Services, up to the first twenty percent (20%) of SFD Customers that subscribe to  
3806 such service. If more than twenty percent (20%) of the SFD Customers subscribe to

3807 Backyard Collection Services, Contractor shall retain Charges for SFD Customers in  
3808 excess of the first twenty percent (20%) of SFD Customers that subscribe to Backyard  
3809 Collection Services. For example, if 10,000 SFD Customer subscribe to Collection  
3810 services, the Gross Revenue Billed from up to 2,000 SFD Customers subscribing to  
3811 Backyard Collection Services shall be included in the revenue reconciliation process.  
3812 To continue this example, Charges from any additional SFD Customers (above the  
3813 first 2,000 Customers) subscribing to Backyard Collection Services shall not be  
3814 included in the revenue reconciliation of Net Revenue Billed and shall be retained by  
3815 the Contractor. The report provided by Contractor shall include the Backyard  
3816 Collection Service revenues and calculation of the portion of such revenues to be  
3817 included in the revenue reconciliation.

3818 E. **Net Revenue Billed.** Net Revenue Billed equals the result obtained by subtracting  
3819 the sum of items B, C, and D above from item A above [i.e., Net Revenue Billed = A  
3820 – (B+C+D)]. In this calculation, item D shall equal the total Charges due to Contractor  
3821 for Additional Services, less Billings for SFD Backyard Collection Service as  
3822 described in item D above.

3823 F. **Liquidated Damages; Performance Incentives and Disincentives.** Liquidated  
3824 Damages assessed by Member Agencies pursuant to Section 14.07 are not included  
3825 in the revenue reconciliation process. Similarly, performance incentive payments and  
3826 performance disincentive assessments provided for in Section 11.07 are not included  
3827 in the revenue reconciliation process.

3828 G. **Comparison to Contractor's Compensation.** The report shall identify the approved  
3829 Contractor's Compensation for each Member Agency and shall compare it to Net  
3830 Revenue Billed for such Member Agency to determine the revenue shortfall or  
3831 revenue surplus.

3832 H. **SBWMA Review.** The SBWMA will review the report and underlying financial data  
3833 for accuracy, will confer with Member Agencies to confirm data as to each Agency,  
3834 and will meet with Contractor to resolve any errors or inconsistencies.

3835 The SBWMA will incorporate its conclusions as to revenue shortfalls or revenue  
3836 surpluses experienced by Contractor as to each Member Agency into its calculation  
3837 of Contractor's Compensation for the following Rate Year distributed to all Member  
3838 Agencies in the fall of each year.

3839 I. **Final Rate Year.** The revenue reconciliation process will be conducted for the last  
3840 Rate Year of the Agreement.

#### 3841 **11.04 APPLICATION PROCESS FOR CONTRACTOR'S COMPENSATION**

3842 A. **Application Date and Content.** Contractor shall prepare and submit to Agency and  
3843 SBWMA by June 15 of each year, beginning on June 15, 2020 for Rate Year Eleven  
3844 (2021) Contractor's Compensation, an Application for determination of Contractor's  
3845 Compensation for the next Rate Year. This Application shall cover all Member  
3846 Agencies and shall present the calculation of Contractor's Compensation for each  
3847 Member Agency using the methodology prescribed in Attachment K and illustrated in  
3848 Attachment N. Contractor shall provide any additional information requested by the  
3849 Agency or by SBWMA during its review of the Application.

3850 B. **Review of Application.** The Application shall be reviewed by SBWMA for accuracy  
3851 and consistency with the procedures for determining Contractor's Compensation

3852 specified in this Agreement as described in Attachment K. SBWMA shall share with  
3853 Contractor any factual or calculation errors identified in the Application and Contractor  
3854 shall have the opportunity to revise its Application.

3855 C. **SBWMA Report on Application.** As provided in Attachment K, SBWMA staff shall  
3856 distribute, on or before September 1 of each year, a report in draft form which (i)  
3857 identifies the amount of Contractor's Compensation and Pass-Through Costs  
3858 calculated for each Agency for the following Rate Year, and (ii) provides an overall  
3859 percentage increase or decrease in Agency's Rates which SBWMA calculates will  
3860 generate Customer revenues sufficient to cover Contractor's Compensation and  
3861 Pass-Through Costs.

3862 SBWMA will take into account comments received from Agency and other Member  
3863 Agencies within ten (10) Days after distribution of the report in draft form. A final  
3864 report will be presented to and considered by the SBWMA Board of Directors and  
3865 approved for distribution to all Member Agencies on or before October 1 of each year.  
3866 The determination of Contractor's Compensation and the estimation of Pass-Through  
3867 Costs for each Member Agency contained in the final Report shall be binding on  
3868 Contractor and Agency.

3869 **11.05 SPECIAL COMPENSATION REVIEW**

3870 A. **Eligible Items.** The Contractor may apply to the Agency for consideration of a special  
3871 review of Contractor's Compensation, and the Agency may initiate such a review, if  
3872 one or more of the following events occur and cause an increase in or decrease to  
3873 Contractor's Compensation by two percent (2%) or more for the then-current Rate  
3874 Year. If one or more of the following events occur and cause an increase in or  
3875 decrease to Contractor's Compensation by less than two percent (2%) for the then-  
3876 current Rate Year, such cost impact shall be considered at the time the annual  
3877 Contractor's Compensation adjustment process is performed in accordance with  
3878 Section 11.02, and Contractor may be compensated retroactively for such cost  
3879 subject to Agency approval.

- 3880 1. Provision of emergency services pursuant to Section 7.08.  
3881 2. Flood, earthquake, or other similar catastrophic event affecting the Agency which  
3882 is beyond the control of and not the fault of the Contractor.  
3883 3. Change in Law occurring after January 1, 2011.  
3884 4. Changes in the Rates charged for Backyard Collection Service and/or Curbside  
3885 Collection Service that alter the price differential between the two, causing  
3886 Customers to migrate from one to the other, with the result of increasing or  
3887 decreasing Contractor's annual cost of operation by two percent (2%) or more.

3888 A special compensation review must be requested by Contractor, or initiated by  
3889 Agency, within twelve (12) months after one of the above-described events has  
3890 occurred unless otherwise agreed to by the Agency.

3891 B. **Ineligible Items.** A special review of Contractor's Compensation may not be initiated  
3892 for any of the following reasons:

- 3893 1. Increases or decreases in Contractor's cost of operations in excess of the  
3894 adjustments provided through the annual adjustment mechanism described in  
3895 Attachment K.

- 3896 2. Growth or decline in the number of Customers or their service levels, with the  
3897 exception of adjustments described in Attachment K.
- 3898 3. Changes in the mix of Container sizes or frequency of Collection, with the  
3899 exception of adjustments described in Attachment K.
- 3900 C. **Review of Costs.** Agency shall have the right to review any and all financial and  
3901 operating records of Contractor. Agency will take into account the net overall impact  
3902 of the event on Contractor's Compensation, including reductions in cost resulting from  
3903 curtailments in service levels or other factors.
- 3904 D. **Submittal of Request.** Contractor must submit its request for a special review in a  
3905 form and manner specified by the Agency, together with required cost and operational  
3906 data. Agency will review the request and determine the amount owed, if any, to  
3907 Contractor and the time period to be covered by special compensation  
3908 circumstances.
- 3909 E. **Burden of Justification.** In a special compensation review under this Section,  
3910 Contractor shall bear the burden of justifying to the Agency by substantial evidence  
3911 its entitlement to continuation of current, as well as any increases in, Contractor's  
3912 Compensation. If the Agency determines that the Contractor has not met its burden,  
3913 it shall notify Contractor that it is prepared to deny Contractor's request for an increase  
3914 in compensation, or to proceed with a reduction in compensation. Within ten (10)  
3915 Days after such notice, Contractor may request a hearing before the Agency's  
3916 governing body to produce additional evidence. Upon such request, the Agency shall  
3917 provide a hearing before the Agency governing body.
- 3918 F. **Hearing.** Based on evidence presented to it, including, that submitted by Contractor,  
3919 the Agency governing body may grant some, all, or none of the requested increase  
3920 in, or may reduce, Contractor's Compensation. In the event Agency denies  
3921 Contractor's requested increase in whole or in part, Contractor shall have the right to  
3922 present its claim to a court of competent jurisdiction.
- 3923 G. **Cost of Review.** Contractor shall bear all reasonable costs incurred by Agency  
3924 (including assistance provided to it by SBWMA) of a special review which it has  
3925 requested up to a maximum of sixty thousand dollars (\$60,000). Costs of a review  
3926 requested by Contractor may not be included in Contractor's Compensation, charged  
3927 to Agency or Customers, nor included in the calculation used as rationale to initiate a  
3928 special compensation review.
- 3929 H. References in this Agreement to compliance with the County ordinance code or other  
3930 Applicable Laws shall not be deemed to limit this Section 11.05.

3931 **11.06 COMPENSATION ADJUSTMENTS FOR CHANGES IN SCOPE OF SERVICES OR**  
3932 **SERVICE LEVELS**

3933 In the event the Agency directs a change in accordance with Section 15.12, an equitable  
3934 adjustment in Contractor's Compensation will be made, effective with the commencement  
3935 of the change, to reflect increases or decreases, if any, in Contractor's Compensation.  
3936 The adjustment in compensation will also reflect the corresponding change in profit. The  
3937 change in Contractor's Compensation will therefore consist of the sum of (i) the  
3938 incremental change to costs, and (ii) profit adjustment at the allowed operating ratio of  
3939 ninety and one-half percent (90.5%).

3940 Within forty-five (45) Days of a request by Agency to initiate a change in service,  
3941 Contractor shall present a proposal to Agency containing a complete description of the  
3942 following, if and to the extent applicable:

- 3943 1. Collection methodology to be employed.
- 3944 2. Equipment to be utilized (number of vehicles, types, capacity, age, etc.).
- 3945 3. Labor requirements (number of employees by classification).
- 3946 4. Type of Containers to be used.
- 3947 5. Description of program publicity/education/marketing materials to be developed.
- 3948 6. Estimated Tonnage to be diverted and the methodology for determining that diverted  
3949 Tonnage.
- 3950 7. Anticipated impacts of the change, if any, on performance incentive and disincentive  
3951 measures included in Attachment I.
- 3952 8. Description of end uses of Collected material.
- 3953 9. Three (3) year projection of the financial impact of the program's operations in a  
3954 balance sheet and operating statement format including documentation of the key  
3955 assumptions underlying the projections and the support for those assumptions, giving  
3956 full effect to the savings or costs to existing services and the Rate impact to affected  
3957 Customers.
- 3958 10. Monitoring tools and quantitative measures including: cost per Ton; annual diversion;  
3959 and pre-implementation as well as expected post-implementation route information  
3960 including cost per route and accounts or lifts per route per Day.

3961 **11.07 RATE-SETTING PROCESS**

- 3962 A. **General.** The Agency shall be solely responsible for setting Rates as described in  
3963 this Article.
- 3964 B. **Annual Review Process.** The Rates shall be reviewed annually by Agency,  
3965 commencing with Rate Year Eleven (2021) and continuing through the remaining  
3966 Term including any extension periods. The Agency shall adjust Rates as necessary  
3967 to generate annual Gross Revenues Billed equal to Contractor's Compensation  
3968 approved for the Rate Year and other approved Pass-Through Costs (such as  
3969 Disposal and processing costs and Agency fees). Agency will provide Contractor with  
3970 a copy of the signed County resolution or ordinance approving Rates for the  
3971 upcoming Rate Year no later than the fifteen (15) days before the new Rates will be  
3972 entered into the Contractor's billing system.

3973 If Agency elects to set Rates that are below those recommended in the SBWMA  
3974 report (or delays acting to revise Rates such that the recommended rates do not go  
3975 into effect until after January 1 (or July 1 for Rates paid through the County property  
3976 tax roll)), and the Revenue Reconciliation process conducted by SBWMA for that  
3977 Rate Year demonstrates that Net Revenues Billed were less than the approved  
3978 Contractor's Compensation contained in the SBWMA report, interest shall accrue on  
3979 the difference. Interest shall apply (i) to fifty percent (50%) of the difference during  
3980 the Rate Year in which the shortfall in revenue occurred, and (ii) one-hundred percent  
3981 (100%) of the difference during the immediately following Rate Year. The interest  
3982 rate applied to both years shall be the prime rate in effect when SBWMA issued the

3983 report for that Rate Year plus one percent (1%). Interest payment arrangements shall  
3984 be governed by the July 8, 2015 Memorandum of Understanding between Contractor  
3985 and SBWMA, which is provided in Attachment S.

3986 C. **Rate Structure.** The Agency shall have the sole and exclusive right to change the  
3987 relationship of individual Rates in comparison with other Rates and to allocate total  
3988 Contractor's Compensation among Service Sectors and Lines of Business. The  
3989 Agency shall also have the sole and exclusive right to set Agency-approved Pricing  
3990 for the Additional Services specified in Attachment Q. If a change in the Agency-  
3991 approved Pricing charged for Backyard Collection service or Curbside Collection  
3992 service causes a Customer migration from one to the other which in turn increases or  
3993 decreases Contractor's annual cost of operation, either Party may initiate a special  
3994 compensation review subject to conditions specified in Section 11.05.

3995 If at any time Contractor believes that a Rate not included in the Agency-approved  
3996 Rate schedule would be necessary or useful, Contractor shall notify the Agency and  
3997 recommend establishment of such Rate. For example, if a Customer requests  
3998 Collection of a fifteen (15) cubic yard Compactor five (5) times per week and the  
3999 Agency-approved Rate schedule does not include this level of service, the Contractor  
4000 shall recommend that the Agency establish a Rate for this level of service.

4001 D. **Liquidated Damages.** Contractor shall pay Agency the amounts, if any, due for  
4002 Liquidated Damages under Section 14.07 and Attachment J with submittal of its  
4003 annual report to Agency pursuant to Section 9.07.

4004 E. **Performance Incentives and Disincentives.** Contractor shall submit an annual  
4005 report on the Performance Incentives and Disincentives detailed in Attachment I with  
4006 submittal of its quarterly and annual reports to Agency and SBWMA pursuant to  
4007 Section 9.06 and Section 9.07. Contractor shall pay Agency or Agency shall pay  
4008 Contractor the net amount, if any, due for Performance Incentives and Disincentives  
4009 calculated pursuant to Section 11.07, Attachment I, and Attachment N.

4010 Payment related to Performance Incentives and Disincentives are to be included in  
4011 Contractor's Application and Contractor's Compensation for the next Rate Year will  
4012 be increased or decreased by the net amount of Performance Incentive payments  
4013 and Disincentive assessments calculated.

#### 4014 **11.08 NOTICE OF RATE ADJUSTMENTS**

4015 If requested by Agency, Contractor shall provide Agency with a complete and current list  
4016 of its Customer addresses within ten (10) Days of the request. In addition, if requested by  
4017 Agency, Contractor shall arrange for notices (prepared by Agency) to be mailed.

#### 4018 **11.09 POTENTIAL RATE CONSTRAINTS**

4019 A. The parties recognize that, as of the date this Agreement is entered into, there is no  
4020 authoritative judicial determination of whether Articles 13.C and 13.D of the California  
4021 Constitution apply to rates and charges imposed by private enterprises for Solid  
4022 Waste handling and Recycling services when those rates and charges are regulated  
4023 by a local government.

4024 B. The Agency will not be in default of this Agreement if (i) a majority protest prevents a  
4025 proposed Rate increase from being adopted, (ii) a court rules that Rates adopted by  
4026 the Agency are not consistent with Article 13.D, or (iii) an initiative reduces Rates from  
4027 those in effect. After any such event, the Parties shall promptly meet and confer in

4028 good faith to consider mutually agreeable modifications to service levels  
4029 commensurate with the Rates that the Contractor may legally charge. Such  
4030 modifications must be incorporated by amendment to this agreement.

4031 C. The County of San Mateo shall not, under any circumstances, be required to pay  
4032 County funds to compensate Contractor for revenue shortfalls that may result of any  
4033 of the events described in Section 11.09.B.

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## ARTICLE 12 AGENCY RIGHT TO USE EQUIPMENT AND FACILITIES

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4038 **12.01 PURPOSE**

4039 The Parties recognize (i) that frequent and continuous collection of Solid Waste, Targeted  
4040 Recyclable Materials, and Organic Materials is an essential public service and an  
4041 important element of public health in developed communities such as Agency, and (ii) that  
4042 even a temporary interruption in the Collection and transport services entrusted to  
4043 Contractor may threaten the public health and safety, as well as causing serious financial  
4044 harm to business operations in the Agency.

4045 The purpose of this Article is to provide the Agency the ability to respond to such threats  
4046 to the public health, safety, and welfare by making use of Contractor's Facilities and  
4047 equipment. This Article applies to any interruption of services, regardless of whether or  
4048 not Contractor's failure to perform is excused under Section 14.09.

4049 **12.02 CONDITIONS AUTHORIZING AGENCY'S RIGHT TO USE OF FACILITIES AND**  
4050 **EQUIPMENT**

4051 If Contractor, for any reason, fails, refuses or is unable to Collect Solid Waste, Targeted  
4052 Recyclable Materials, and Organic Materials at the times and in the manner required by  
4053 this Agreement, and transport them to the Designated Transfer and Processing Facility,  
4054 for more than two (2) Business Days, Agency may invoke this Article. Agency shall  
4055 provide Contractor written notice that it intends to consider invoking this Article at a public  
4056 meeting of its governing body, to be held two (2) or more Business Days from the date of  
4057 the notice.

4058 At the meeting, the governing body may invoke its rights under this Article if it determines  
4059 that there has been an interruption in Collection service and that such interruption may  
4060 continue, thereby threatening the public health, safety and welfare. If the governing body  
4061 makes that determination, it may also determine to exercise the Agency's right to (i)  
4062 perform Collection and transport services with its own personnel and/or those of other  
4063 Member Agencies which have invoked this right under their Franchise Agreements with  
4064 Contractor or authorize a third party to do so, and (ii) take possession of any of  
4065 Contractor's property, including vehicles and other equipment used or useful in providing  
4066 such services or in the Billing and collection of Rates billed for such services (collectively  
4067 "Properties").

4068 **12.03 NOTICE TO CONTRACTOR**

4069 Agency shall deliver written notice to Contractor of its determination to exercise its right to  
4070 provide Collection services and to make use of Contractor's Properties to do so. Upon  
4071 receipt of the notice, Contractor shall immediately take all steps necessary to make  
4072 available to Agency any of its vehicles and equipment that are requested by Agency.  
4073 Contractor shall also cooperate in any other way requested by Agency to assist Agency  
4074 in providing Collection services on a temporary basis.



4075 **12.04 RIGHTS AND RESPONSIBILITIES OF PARTIES**

4076 Agency will be responsible for the proper use and operation of Contractor's Properties,  
4077 including maintenance and repair of vehicles and equipment. Agency will defend,  
4078 indemnify and hold Contractor harmless from claims by third parties that are due solely to  
4079 Agency's negligence in operating Contractor's vehicles or equipment, and not due in whole  
4080 or in part to defects in the design or manufacture of the vehicles or equipment or to  
4081 Contractor's failure to maintain them in good and safe operating condition.

4082 If the interruption in service is excused under Section 14.09, Agency will pay Contractor  
4083 one hundred dollars (\$100) per Business Day per vehicle, which will constitute full  
4084 compensation for use of all Properties. If the interruption in service constitutes a breach  
4085 of contract or default, no payment is required.

4086 Revenue received from Customers that is attributable to the period of time during which  
4087 Agency provides temporary Collection service shall accrue to Agency rather than  
4088 Contractor.

4089 Agency may delegate the use and operation of any or all of Contractor's Properties to a  
4090 third party.

4091 If the interruption of Collection service is caused by a breach of contract or default by  
4092 Contractor, Liquidated Damages and performance disincentives will continue to accrue  
4093 until Contractor resumes the provision of Collection services in full compliance with the  
4094 Agreement.

4095 **12.05 DURATION OF AGENCY'S RIGHT TO POSSESSION AND USE OF**  
4096 **VEHICLES/EQUIPMENT**

4097 Agency may retain possession of Contractor's Properties and provide Collection services  
4098 until the Contractor demonstrates to Agency's satisfaction that it is ready, willing, and able  
4099 to resume providing such services, or one hundred eighty (180) Days from the notice given  
4100 under Section 12.03, whichever occurs first.

4101 Agency has no obligation to exercise its rights under this Article or, having done so, to  
4102 continue to provide Collection services. It may at any time, in its sole discretion, relinquish  
4103 possession of Contractor's Properties to Contractor.

4104 Contractor's Properties shall be returned to Contractor in a condition substantially the  
4105 same as that which existed at the time the Agency took possession of them, ordinary wear  
4106 and tear excepted.

4107 **12.06 GENERAL**

4108 The Agency's exercise of its rights under this Article, (i) does not constitute taking or  
4109 damaging of property for which compensation (other than as provided in this Article) must  
4110 be paid, and (ii) does not exempt Contractor from its indemnity obligations under Article  
4111 13, which are meant to extend to circumstances arising under this Article, provided that  
4112 Contractor is not required to indemnify Agency against claims arising from the sole  
4113 negligence of Agency's employees or agents in the operation and use of Contractor's  
4114 Properties during the time the Agency has sole possession of them.

4115 The Agency's exercise of its rights under this Article does not limit its ability to seek any  
4116 of the remedies available to it under Article 14.

4117 The Agency's rights under this Article do not preclude its permanent acquisition of  
4118 Contractor's vehicles and equipment used in providing service to Agency through the  
4119 exercise of eminent domain.

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## ARTICLE 13 INDEMNITY, INSURANCE, BOND, GUARANTY

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4122 **13.01 INDEMNIFICATION**

4123 Contractor shall indemnify, defend, and hold harmless Agency, its officers, employees and  
4124 agents (collectively, the "Indemnitees"), from and against (i) any and all liability, penalty,  
4125 claim, demand, action, proceeding, or suit, of any and every kind and description, whether  
4126 judicial, quasi-judicial, or administrative in nature, (ii) any and all loss including, but not  
4127 limited to, injury to and death of any person and damage to property, and (iii) contribution  
4128 or indemnity demanded by third parties (collectively, the "Claims"), arising out of or  
4129 occasioned in any way by, directly or indirectly, Contractor's performance of, or its failure  
4130 to perform, its obligations under this Agreement. The foregoing indemnity shall not apply  
4131 to the extent that a Claim is caused solely by the active negligence or intentional  
4132 misconduct of the Indemnitees, but shall apply if the Claim is caused by the joint  
4133 negligence of Contractor and other Persons, including an Indemnitee. Upon the  
4134 occurrence of any Claim, Contractor shall defend (with attorneys reasonably acceptable  
4135 to Agency) the Indemnitees. Contractor's duty to defend and indemnify shall survive the  
4136 expiration or earlier termination of this Agreement.

4137 **13.02 INSURANCE**

4138 A. **Types and Amounts of Coverage.** Contractor shall procure from an insurance  
4139 company or companies admitted or authorized to do business in the State of  
4140 California, and shall maintain in force at all times during the Term, the following types  
4141 and amounts of insurance:

4142 1. **Workers' Compensation and Employer's Liability.** Contractor shall maintain  
4143 workers' compensation insurance covering its employees in statutory amounts and  
4144 otherwise in compliance with the laws of the State of California. Contractor shall  
4145 maintain employer's liability insurance in an amount not less than one million  
4146 dollars (\$1,000,000) per accident or disease. Contractor shall not be obligated to  
4147 carry workers compensation insurance if (i) it qualifies under California law and  
4148 continuously complies with all statutory obligations to self-insure against such  
4149 risks; (ii) furnishes a certificate of Permission to Self-Insure issued by the  
4150 Department of Industrial Relations; and (iii) furnishes updated certificates of  
4151 Permission to Self-Insure periodically to evidence continuous self-insurance.

4152 2. **Comprehensive General Liability.** Contractor shall maintain comprehensive  
4153 general liability insurance with a combined single limit of not less than ten million  
4154 dollars (\$10,000,000) per occurrence covering all claims and all legal liability for  
4155 personal injury, bodily injury, death, and property damage, including the loss of  
4156 use thereof, arising out of, or occasioned in any way by, directly or indirectly,  
4157 Contractor's performance of, or its failure to perform, services under this  
4158 Agreement.

4159 The insurance required by this subsection shall include:

4160 (i) Premises Operations (including use of owned and non-owned  
4161 equipment);

4162 (ii) Personal Injury Liability with employment exclusion deleted;

4163 (iii) Broad Form Blanket Contractual with no exclusions for bodily injury,  
4164 personal injury or property damage (including coverage for the indemnity  
4165 obligations contained herein);

4166 (iv) Owned, Non-Owned, and Hired Motor Vehicles;

4167 (v) Broad Form Property Damage.

4168 The comprehensive general liability insurance shall be written on an "occurrence"  
4169 basis (rather than a "claims made" basis) in a form at least as broad as the most  
4170 current version of the Insurance Service Office commercial general liability  
4171 occurrence policy form (CG0001). If occurrence coverage is not obtainable,  
4172 Contractor must arrange for "tail coverage" on a claims made policy to protect  
4173 Agency from claims filed within four (4) years after the expiration or earlier  
4174 termination of this Agreement relating to incidents that occurred prior to such  
4175 expiration or termination.

4176 3. Automobile Liability. Contractor shall maintain automobile liability insurance  
4177 covering all vehicles used in performing service under this Agreement with a  
4178 combined single limit of not less than ten million dollars (\$10,000,000) per  
4179 occurrence for bodily injury and property damage.

4180 4. Pollution (Environmental Impairment) Liability. Contractor shall maintain pollution  
4181 liability insurance coverage of not less than ten million dollars (\$10,000,000) per  
4182 occurrence covering claims for on-site, under-site, or off-site bodily injury and  
4183 property damage as a result of pollution conditions arising out of its operations  
4184 under this Agreement.

4185 B. Acceptability of Insureds. The insurance policies required by this section shall be  
4186 issued by an insurance company or companies admitted or authorized to do business  
4187 in the State of California, subject to the jurisdiction of the California Insurance  
4188 Commissioner, and with a rating in the most recent edition of Best's Insurance  
4189 Reports of size category XV or larger and a rating classification of A+ or better.

4190 C. Required Endorsements. Without limiting the generality of Sections 13.02.A and  
4191 13.02.B, the policies shall contain endorsements in substantially the following form:

4192 1. Workers' Compensation and Employers' Liability Policy.

4193 (a) "Thirty (30) Days prior written notice shall be given to the County of San  
4194 Mateo in the event of cancellation or non-renewal of this policy." Such notice  
4195 shall be sent to:

4196 Director of the Office of Sustainability  
4197 455 County Center 4<sup>th</sup> Floor CMO-102  
4198 Redwood City, CA 94063

4199 (b) "Insurer waives all right of subrogation against the County of San Mateo and  
4200 its officers and employees for injuries or illnesses arising from work  
4201 performed for the County of San Mateo."

4202 2. Comprehensive General Liability Policy; Automobile Liability Policy; Pollution  
4203 Liability Policy; and Hazardous Materials Policy.

- 4204 (a) "Thirty (30) Days prior written notice shall be given to the County of San Mateo  
4205 in the event of cancellation, reduction of coverage, or non-renewal of this  
4206 policy." Such notice shall be sent to:
- 4207 Director of the Office of Sustainability  
4208 455 County Center 4<sup>th</sup> Floor CMO-102  
4209 Redwood City, CA 94063
- 4210 (b) "The County of San Mateo, its officers, employees, and agents are additional  
4211 insureds on this policy."
- 4212 (c) "This policy shall be considered primary insurance as respects any other valid  
4213 and collectible insurance maintained by the County of San Mateo, including  
4214 any self-insured retention or program of self-insurance, and any other such  
4215 insurance shall be considered excess insurance only."
- 4216 (d) "Inclusion of the County of San Mateo as an insured shall not affect the County  
4217 of San Mateo rights as respects any claim, demand, suit or judgment brought  
4218 or recovered against the Contractor. This policy shall protect Contractor and  
4219 the County of San Mateo in the same manner as though a separate policy had  
4220 been issued to each, but this shall not operate to increase the company's  
4221 liability as set forth in the policy beyond the amount shown or to which the  
4222 company would have been liable if only one party had been named as an  
4223 insured."
- 4224 D. **Deductibles and Self-Insured Retentions.** The liability policies described in  
4225 Sections 13.02.A(2) and 13.02.A(3) may contain a deductible or self-insured retention  
4226 not to exceed \$500,000 per occurrence. This amount may not be increased without  
4227 Agency's prior written consent.
- 4228 Contractor remains responsible for the payment of all losses and investigation, claim  
4229 administration and defense expenses, including those of the Agency.
- 4230 E. **Delivery of Proof of Coverage.** No later than ninety (90) Days before the  
4231 commencement of operations, Contractor shall furnish Agency one or more  
4232 certificates of insurance on a standard ACORD form substantiating that each of the  
4233 coverages required hereunder is in force, in form and substance satisfactory to  
4234 Agency. Such certificates shall show the type and amount of coverage, effective  
4235 dates and dates of expiration of policies and shall be accompanied by all required  
4236 endorsements. If Agency requests, copies of each policy, together with all  
4237 endorsements, shall also be promptly delivered to Agency. Contractor shall furnish  
4238 renewal certificates to Agency to demonstrate maintenance of the required coverages  
4239 throughout the Term.
- 4240 F. **Other Insurance Requirements**
- 4241 1. In the event performance of any services is delegated to a Subcontractor,  
4242 Contractor shall require such subcontractor to provide statutory workers'  
4243 compensation insurance and employer's liability insurance for all of the  
4244 Subcontractor's employees engaged in the work. The liability insurance required  
4245 by Section 13.02.A(2) and the automobile liability policy required by Section  
4246 13.02.A(3) shall cover all Subcontractors or the Subcontractor must furnish  
4247 evidence of insurance provided by it meeting all of the requirements of this  
4248 Section 13.02.

- 4249 2. Contractor shall comply with all requirements of the insurers issuing policies.  
 4250 The carrying of insurance shall not relieve Contractor from any obligation under  
 4251 this Agreement, including those imposed by Section 13.01. If any claim is made  
 4252 by any third Person against Contractor or any Subcontractor on account of any  
 4253 occurrence related to this Agreement, other than claims by employees for work-  
 4254 related incidents, Contractor shall promptly report the facts in writing to the  
 4255 insurance carrier and to the Agency.
- 4256 3. If Contractor fails to procure and maintain any insurance required by this  
 4257 Agreement, Agency may take out and maintain such insurance as it may deem  
 4258 proper and may require Contractor to reimburse it for the cost incurred within  
 4259 thirty (30) Days and/or deduct the cost from any monies due Contractor. Agency  
 4260 may also treat the failure as a Contractor default.
- 4261 4. Agency is not responsible for payment of premiums for or deductibles under any  
 4262 required insurance coverages.
- 4263 5. Any excess or umbrella policies shall be written on a “following form” basis.

4264 **13.03 FAITHFUL PERFORMANCE BOND**

4265 Pursuant to the 2009 Franchise Agreement, Contractor shall have a faithful performance  
 4266 bond in effect until December 31, 2020. On or before the Commencement Date,  
 4267 Contractor shall file with Agency a bond securing the Contractor’s faithful performance of  
 4268 its obligations under this Agreement. The principal sum of the bond shall be no less than  
 4269 ten percent (10%) of the amount of the Rate Year Ten (2020) annual Revenue  
 4270 Requirement for Agency shown on Attachment N. The form of the bond shall be as set  
 4271 out in Attachment F. The bond shall be executed as surety by a corporation admitted to  
 4272 issue surety bonds in the State of California, regulated by the California Insurance  
 4273 Commissioner, and with a financial condition and record of service satisfactory to Agency.

4274 The term of the bond shall be twenty-four (24) months. The bond shall be extended, or  
 4275 replaced by a new bond in the same principal sum (adjusted by the Annual Index Change  
 4276 in the CPI-U, which are defined in Attachment K), for the same term (i.e., twenty-four (24)  
 4277 months) and in the same form, bi-annually thereafter. Not less than ninety (90) Days  
 4278 before the expiration of the initial, or any subsequent, bond, Contractor shall furnish either  
 4279 a replacement bond or a continuation certificate substantially in the form attached as  
 4280 Attachment F, executed by the surety.

4281 It is the intention of this Section that there be in full force and effect at all times a bond  
 4282 securing the Contractor’s faithful performance of the Agreement, throughout its Term.

4283 For the purposes of this Section, the Consumer Price Index shall be “CPI-U” means the  
 4284 All Urban Consumers Index (CPI-U) compiled and published by the U.S. Department of  
 4285 Labor, Bureau of Labor Statistics or its successor agency, using the following parameters.

- 4286 CPI-U Parameters:  
 4287 Area – San Francisco-Oakland-San Jose Metropolitan Area  
 4288 Item – All Items  
 4289 Base Period – Current 1982-84=100  
 4290 Not seasonally adjusted  
 4291 Periodicity – Bi-monthly  
 4292 Series ID – cuura422sa0

4293 **13.04 ALTERNATIVE SECURITY**

4294 Agency may, in its sole discretion, allow Contractor to provide alternative security in the  
4295 amount set forth in Section 13.03, in the form of (a) a prepaid irrevocable standby letter of  
4296 credit in form and substance satisfactory to Agency, approved by the Agency's Attorney  
4297 and issued by a financial institution acceptable to Agency, or (b) a certificate of deposit in  
4298 the name of the Agency and in a form and with a term satisfactory to Agency, accompanied  
4299 by an agreement giving Agency the right to draw on the funds deposited satisfactory to  
4300 Agency and with a financial institution acceptable to Agency. Interest on the certificate of  
4301 deposit will be payable to Contractor.

4302 **13.05 HAZARDOUS WASTE INDEMNIFICATION**

4303 Contractor shall indemnify, defend, and hold harmless the Indemnitees against all claims,  
4304 of any kind whatsoever paid, incurred, or suffered by, or asserted against Indemnitees  
4305 arising from or attributable to any repair, cleanup or detoxification, or preparation and  
4306 implementation of any removal, remedial, response, closure. or other plan (regardless of  
4307 whether undertaken due to governmental action) concerning any Hazardous Wastes  
4308 released, spilled. or disposed of by Contractor pursuant to this Agreement. The foregoing  
4309 indemnity is intended to operate as an agreement pursuant to Section 107(e) of the  
4310 Comprehensive Environmental Response, Compensation and Liability Act, ("CERCLA"),  
4311 42 U.S.C. Section 9607(e), and California Health and Safety Code Section 25364, to  
4312 defend, protect, hold harmless. and indemnify Indemnitees from liability and shall survive  
4313 the expiration or earlier termination of this Agreement. Notwithstanding the foregoing,  
4314 Contractor is not required to indemnify the Indemnitees against claims arising from  
4315 Contractor's delivery of Solid Waste, Recyclable Materials, and Organic Materials to the  
4316 Designated Transfer and Processing Facility, or their subsequent delivery to other  
4317 processing locations or the ultimate Disposal Site, unless such claims are due to  
4318 Contractor's negligence or willful misconduct.

4319 **13.06 INDEMNIFICATION RELATED TO VARIOUS STATE REQUIREMENTS**

4320 Contractor agrees to indemnify and hold harmless the Indemnitees against all fines and/or  
4321 penalties imposed by the California Department of Resources Recycling and Recovery  
4322 (CalRecycle) or the Local Enforcement Agency (LEA) based on Contractor's failure to  
4323 comply with laws, regulations. or permits issued or enforced by CalRecycle or the LEA or  
4324 caused or contributed to by the Contractor's failure to perform obligations under this  
4325 Agreement. This indemnity obligation is subject to the limitations and conditions in Public  
4326 Resource Code Section 40059.1 but is enforceable to the maximum extent allowable by  
4327 that Section. This indemnity shall survive the termination or earlier expiration of this  
4328 Agreement. The indemnity shall pertain to the Act, AB 341, AB 901, AB 1826, AB 1594,  
4329 SB 1016, SB 1383, and other laws, regulations. or permits issued or enforced by the  
4330 CalRecycle or the LEA.

4331 **13.07 GUARANTY**

4332 Concurrently with execution of the 2009 Franchise Agreement, Contractor furnished a  
4333 Guaranty of its performance thereunder, in the form of Attachment G, properly executed  
4334 by Recology Inc., a California corporation. Said Guaranty by its terms applies to any  
4335 amendment to the 2009 Franchise Agreement, including this Agreement. Recology Inc.  
4336 then owned and as of the date hereof continues to own all of the issued and outstanding  
4337 common stock of Contractor.

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## ARTICLE 14 DEFAULT AND REMEDIES

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4341 **14.1 EVENTS OF DEFAULT**

4342 Each of the following shall constitute an event of default ("Contractor default"):

- 4343 A. Contractor fails to perform its obligations under Article 5, 6, or 7 of this Agreement  
4344 and its failure to perform is not cured within ten (10) Business Days after written notice  
4345 from Agency.
- 4346 B. Contractor fails to perform its obligations under any other Article of this Agreement  
4347 and its failure to perform is not cured within ten (10) Days after written notice from  
4348 Agency, provided that if the nature of the failure is such that it will reasonably require  
4349 more than ten (10) Days to cure, Contractor shall not be in default so long as it  
4350 promptly commences the cure and diligently proceeds to completion of the cure, and  
4351 provided further that neither notice nor opportunity to cure applies to events described  
4352 in subsections C through H.
- 4353 C. Contractor ceases to provide Collection and transportation services for a period of  
4354 two (2) Business Days for any reason within the Contractor's control, including labor  
4355 unrest such as strike, work stoppage or slowdown, sickout, picketing, or other  
4356 concerted job action by Contractor's employees.
- 4357 D. Contractor files a voluntary petition for relief under any bankruptcy, insolvency, or  
4358 similar law.
- 4359 E. An involuntary petition is brought against Contractor under any bankruptcy,  
4360 insolvency, or similar law which remains un-dismissed or un-stayed for ninety (90)  
4361 Days.
- 4362 F. Contractor fails to furnish a replacement bond or a continuation certificate of the  
4363 existing bond not less than ten (10) Days before expiration of the performance bond,  
4364 as required by Section 13.03 or fails to maintain all required insurance coverage in  
4365 force.
- 4366 G. Contractor fails to provide reasonable assurance of performance when required  
4367 under Section 14.10.
- 4368 H. A representation or warranty contained in Article 2 proves to be false or misleading  
4369 in a material respect as of the date such representation or warranty was made.

4370 **14.02 RIGHT TO SUSPEND OR TERMINATE UPON DEFAULT**

- 4371 A. Upon any Contractor default, Agency may terminate this Agreement or suspend it, in  
4372 whole or in part. Such suspension or termination shall be effective thirty (30) Days  
4373 after Agency has given notice of suspension or termination to Contractor, except that  
4374 such notice may be effective in a shorter period of time, or immediately, if the  
4375 Contractor default is one which endangers the health, welfare, or safety of the public,  
4376 such as the failure to Collect Solid Waste, Recyclable Materials, or Organic Materials  
4377 for the period of time specified in Section 14.01.C. Notice may be given orally in  
4378 person or by telephone to the representative of Contractor designated in or under  
4379 Section 15.10 (or, if he/she is unavailable, to a responsible employee of Contractor)  
4380 and shall be effective immediately. Written confirmation of such oral notice of



4381 suspension or termination shall be sent by personal delivery, facsimile, or other  
4382 expedited means of delivery to Contractor within twenty-four (24) hours of the oral  
4383 notification at the address shown in Section 15.09. Contractor shall continue to perform  
4384 the portions of the Agreement, if any, not suspended, in full conformity with its terms.

4385 B. Agency may also suspend or terminate this Agreement, upon the same notice  
4386 provisions, if Contractor's ability to perform is prevented or materially interfered with  
4387 by a cause which excuses nonperformance under Section 14.09, despite the fact that  
4388 nonperformance in such a case is neither a breach nor a Contractor default.

4389

4390 **14.03 SPECIFIC PERFORMANCE**

4391 By virtue of the nature of this Agreement, the urgency of timely, continuous, and high-  
4392 quality service, the lead time required to effect alternative service, and the rights granted  
4393 by Agency to Contractor, the remedy of damages for a breach hereof by Contractor is  
4394 inadequate and Agency shall be entitled to injunctive relief.

4395 **14.04 RIGHT TO PERFORM; USE OF CONTRACTOR PROPERTY**

4396 If this Agreement is suspended and/or terminated due to a Contractor default, Agency  
4397 shall have the right to perform, by contract, in conjunction with other Member Agencies,  
4398 or otherwise, the work herein or such part thereof as it may deem necessary. In the event  
4399 of Contractor's default, Agency shall have the right to use any of Contractor's equipment,  
4400 Facilities, and other property reasonably necessary for the provision of services hereunder  
4401 and for the Billing and collection of Rates and Charges billed for those services, upon the  
4402 terms provided in Article 12. Agency shall have the right to continue use of such property  
4403 until other suitable arrangements can be made for the provision of such services, which  
4404 may include the award of a contract to another service provider.

4405 **14.05 DAMAGES**

4406 Contractor shall be liable to Agency for all direct, indirect, special, and consequential  
4407 damages arising out of Contractor's default. This Section is intended to be declarative of  
4408 existing California law.

4409 **14.06 AGENCY'S REMEDIES CUMULATIVE**

4410 Agency's rights to suspend or terminate the Agreement under Section 14.02, to obtain  
4411 specific performance under Section 14.03, and to perform under Section 14.04 are not  
4412 exclusive, and Agency's exercise of one such right shall not constitute an election of  
4413 remedies. Instead, they shall be in addition to any and all other legal and equitable rights  
4414 and remedies that Agency may have, including a legal action for damages under Section  
4415 14.05 or imposition of Liquidated Damages under Section 14.07.

4416 **14.07 LIQUIDATED DAMAGES**

4417 The Parties acknowledge that consistent, courteous, and efficient Collection of Solid  
4418 Waste, Targeted Recyclable Materials, and Organic Materials is of utmost importance and  
4419 Agency has considered and relied on Contractor's representations as to its quality of  
4420 service commitment in entering into this Agreement. The Parties further recognize that  
4421 quantified standards of performance are necessary and appropriate to ensure consistent  
4422 and reliable service. The Parties further recognize that if Contractor fails to achieve the  
4423 performance standards, Agency and its residents will suffer damages and that it is and will  
4424 be impracticable and extremely difficult to ascertain and determine the exact amount of

4425 damages that Agency will suffer. Therefore, the Parties agree that the Liquidated Damage  
4426 amounts listed in AttachmentJ and the Performance Disincentive amounts listed in  
4427 Attachment I represent a reasonable estimate of the amount of such damages considering  
4428 all of the circumstances existing on the date of this Agreement, including the relationship  
4429 of the sums to the range of harm to Agency that reasonably could be anticipated and  
4430 recognition that proof of actual damages would be costly or inconvenient. By initialing the  
4431 places provided, each Party specifically confirms the accuracy of the statements made  
4432 above and the fact that each Party had ample opportunity to consult with legal counsel  
4433 and obtain an explanation of this liquidated damage provision at the time that this  
4434 Agreement was made.

4435 Contractor Initial Here: \_\_\_\_\_ Agency Initial Here: \_\_\_\_\_

4436 Contractor agrees to pay (as liquidated damages and not as a penalty) the amount set  
4437 forth in Attachments J and I.

4438 In addition to considering the reports submitted by Contractor pursuant to Article 9, Agency  
4439 may determine the occurrence of events giving rise to Liquidated Damages or  
4440 Performance Disincentives through the observation of its own employees or agents,  
4441 through discussions with Customers, and through investigation of Customer Complaints  
4442 made directly to Agency. Prior to assessing Liquidated Damages or Performance  
4443 Disincentives based on such observations or investigations, Agency shall give Contractor  
4444 notice of its intention to do so. The notice will include a brief description of the  
4445 incident(s)/non-performance. Contractor may review (and make copies at its own  
4446 expense) all non-confidential information in the possession of Agency relating to  
4447 incident(s)/non-performance. Contractor may, within ten (10) Days after receiving the  
4448 notice, request a meeting with Agency's Manager or his or her designee. Contractor may  
4449 present evidence in writing and through testimony of its employees and others relevant to  
4450 the incident(s)/non-performance. Agency's Manager or his or her designee will provide  
4451 Contractor with a written explanation of his or her determination on each incident(s)/non-  
4452 performance prior to authorizing the assessment of Liquidated Damages or Performance  
4453 Disincentives. The decision of Agency's Manager or his or her designee shall be final.

4454 Agency's right to recover Liquidated Damages for Contractor's failure to meet the service  
4455 performance standards shall not preclude Agency from obtaining equitable relief for  
4456 persistent failures to meet such standards nor from terminating the Agreement for such  
4457 persistent failures.

4458 **14.08 AGENCY DEFAULT**

4459 Agency shall be in default under this Agreement ("Agency default") in the event Agency  
4460 commits a material breach of the Agreement and fails to cure such breach within thirty  
4461 (30) Days after receiving notice from the Contractor specifying the breach, provided that  
4462 if the nature of the breach is such that it will reasonably require more than thirty (30) Days  
4463 to cure, Agency shall not be in default so long as Agency promptly commences the cure  
4464 and diligently proceeds to completion of the cure.

4465 In the event of an asserted Agency default, Contractor shall continue to perform all of its  
4466 obligations hereunder until a court of competent jurisdiction has issued a final judgment  
4467 declaring that Agency is in default.

4468 **14.09 EXCUSE FROM PERFORMANCE**

4469 A. **Force Majeure.** Neither Party shall be in default of its obligations under this  
4470 Agreement in the event, and for so long as, it is impossible or extremely impracticable  
4471 for it to perform its obligations due to an “act of God” (including, but not limited to,  
4472 flood, earthquake, or other catastrophic events), war, insurrection, riot, labor unrest  
4473 of other than the Party’s employees (including strike, work stoppage, slowdown, sick  
4474 out, picketing, or other concerted job action), or other similar cause not the fault of,  
4475 and beyond the reasonable control of, the Party claiming excuse. A Party claiming  
4476 excuse under this Section must (i) have taken reasonable precautions, if possible, to  
4477 avoid being affected by the cause, and (ii) notify the other Party in writing as provided  
4478 in Subsection C.

4479 B. **Obligation to Restore Ability to Perform.** Any suspension of performance by a  
4480 Party pursuant to this Section shall be only to the extent, and for a period of no longer  
4481 duration than, required by the nature of the event, and the Party claiming excuse shall  
4482 use its best efforts to remedy its inability to perform as quickly as possible and to  
4483 mitigate damages that may occur as result of the event.

4484 C. **Notice.** The Party claiming excuse shall deliver to the other Party a written notice of  
4485 intent to claim excuse from performance under this Agreement by reason of an event  
4486 of Force Majeure. Notice required by this Section shall be given promptly in light of  
4487 the circumstances, but in any event not later than five (5) Days after the occurrence  
4488 of the event of Force Majeure. Such notice shall describe in detail the event of Force  
4489 Majeure claimed, the services impacted by the claimed event of Force Majeure, the  
4490 expected length of time that the Party expects to be prevented from performing, the  
4491 steps which the Party intends to take to restore its ability to perform, and such other  
4492 information as the other Party reasonably requests.

4493 D. **Agency’s Rights in the Event of Force Majeure.** The partial or complete  
4494 interruption or discontinuance of Contractor’s services caused by an event of Force  
4495 Majeure shall not constitute a Contractor default. Notwithstanding the foregoing: (i)  
4496 Agency shall have the right to make use of Contractor’s Facilities and equipment in  
4497 accordance with Article 12 in the event of non-performance excused by Force  
4498 Majeure; (ii) if Contractor’s failure to perform by reason of Force Majeure continues  
4499 for a period of thirty (30) Days or more, Agency shall have the right to immediately  
4500 terminate this Agreement; (iii) if Contractor is unable to Collect and transport Solid  
4501 Waste as required by this Agreement for a period of two (2) or more consecutive  
4502 Business Days or for any three (3) Business Days in a seven (7) Day period as a  
4503 result of Force Majeure, Agency shall have the right to make use of Contractor’s  
4504 Facilities and equipment in accordance with Article 12, and (iv) if Contractor’s inability  
4505 to Collect and transport Solid Waste continues for two (2) Days or more from the date  
4506 by which Contractor gave or should have given notice under Subsection C, Agency  
4507 may terminate this Agreement.

4508 **14.10 ASSURANCE OF PERFORMANCE**

4509 If Contractor (i) persistently suffers the imposition of Liquidated Damages under Section  
4510 14.07; (ii) is the subject of any labor unrest including work stoppage or slowdown, sickout,  
4511 picketing, or other concerted job action; (iii) appears in the reasonable judgment of Agency  
4512 to be unable to regularly pay its bills as they become due; (iv) is the subject of a civil or

4513 criminal proceeding brought by a federal, State, regional, or local agency for violation of  
4514 an Environmental Law in the performance of this Agreement, or (v) performs in a manner  
4515 that causes Agency to be uncertain about Contractor's ability and intention to comply with  
4516 this Agreement, Agency may, at its option and in addition to all other remedies it may  
4517 have, demand from Contractor reasonable assurances of timely and proper performance  
4518 of this Agreement, in such form and substance as Agency may require.

4519

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4521

## ARTICLE 15 OTHER AGREEMENTS OF THE PARTIES

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4522 **15.01 RELATIONSHIP OF PARTIES**

4523 The Parties intend that Contractor shall perform the services required by this Agreement  
4524 as an independent contractor engaged by San Mateo County and not as an officer or  
4525 employee of San Mateo County nor as a partner of or joint venturer with Agency. No  
4526 employee or agent of Contractor shall be deemed to be an employee or agent of San  
4527 Mateo County. Except as expressly provided herein, Contractor shall have the exclusive  
4528 control over the manner and means of conducting the services performed under this  
4529 Agreement, and over all Persons performing such services. Contractor shall be solely  
4530 responsible for the acts and omissions of its officers, employees, Subcontractors, and  
4531 agents. Neither Contractor nor its officers, employees, Subcontractors, and agents shall  
4532 obtain any rights to retirement benefits, workers' compensation benefits, or any other  
4533 benefits which accrue to Agency employees by virtue of their employment with Agency.

4534 **15.02 COMPLIANCE WITH LAW**

4535 In providing the services required under this Agreement, Contractor shall at all times  
4536 comply with all Applicable Laws of the United States, the State and Agency, with all  
4537 applicable ordinances, regulations promulgated by federal, state, regional, or local  
4538 administrative and regulatory agencies, and by Agency, now in force and as they may be  
4539 enacted, issued, or amended during the Term, and with all permits affecting the services  
4540 to be provided.

4541 **15.03 ASSIGNMENT**

4542 Contractor acknowledges that this Agreement involves rendering a vital service to  
4543 Agency's residents and businesses, and that Agency has selected Contractor to perform  
4544 the services specified herein based on (i) Contractor's experience, skill, and reputation for  
4545 conducting its operations in a safe, effective, and responsible fashion, and (ii) Contractor's  
4546 and the Guarantor's financial resources to maintain the required equipment and to support  
4547 its indemnity obligations to Agency under this Agreement. Agency has relied on each of  
4548 these factors, among others, in choosing Contractor to perform the services to be  
4549 rendered by Contractor under this Agreement.

4550 A. **Agency Consent Required.** Contractor shall not assign its rights or delegate or  
4551 otherwise transfer its obligations under this Agreement to any other Person without  
4552 the prior written consent of Agency. Any such assignment made without the consent  
4553 of Agency shall be void and the attempted assignment shall constitute a Contractor  
4554 default.

4555 B. **Assignment Defined.** For the purpose of this Section, "assignment" shall include,  
4556 but not be limited to, (i) a sale, exchange, or other transfer to a third party of  
4557 substantially all of Contractor's assets dedicated to service under this Agreement; (ii)  
4558 a sale, exchange, or other transfer of outstanding common stock of Contractor to a  
4559 Person who is not a shareholder as of the Effective Date which results in a change in  
4560 control of Contractor; (iii) any dissolution, reorganization, consolidation, merger, re-  
4561 capitalization, stock issuance or reissuance, voting trust, pooling agreement, escrow  
4562 arrangement, liquidation, or other transaction which results in a change of ownership  
4563 or control of Contractor; (iv) any assignment by operation of law, including insolvency

4564 or bankruptcy, an assignment for the benefit of creditors, a writ of attachment for an  
4565 execution being levied against this Agreement, appointment of a receiver taking  
4566 possession of Contractor's property, or transfer occurring in the event of a probate  
4567 proceeding; and (v) any combination of the foregoing (whether or not in related or  
4568 contemporaneous transactions) which has the effect of any such transfer or change  
4569 of ownership, or change of control of Contractor.

4570 C. **Consent Requirements.** If Contractor requests Agency's consideration of and  
4571 consent to an assignment, Agency may deny or approve such request in its complete  
4572 discretion. No request by Contractor for consent to an assignment need be  
4573 considered by Agency unless and until Contractor has met the following  
4574 requirements:

4575 1. Contractor shall pay Agency its reasonable expenses for attorneys' fees and  
4576 investigation costs necessary to investigate the suitability of any proposed  
4577 assignee, and to review and finalize any documentation required as a condition for  
4578 approving any such assignment;

4579 2. Contractor shall furnish Agency with audited financial statements of the proposed  
4580 assignee's operations for the immediately preceding three (3) operating years;

4581 3. Contractor shall furnish Agency with satisfactory proof: (i) that the proposed  
4582 assignee has at least ten (10) years of Solid Waste/Recycling management  
4583 experience on a scale equal to or exceeding the scale of operations conducted by  
4584 Contractor under this Agreement; (ii) that in the last five (5) years, the proposed  
4585 assignee has not been the subject of any administrative or judicial proceedings  
4586 initiated by a federal, State, or local agency having jurisdiction over its operations  
4587 due to an alleged failure to comply with federal, State, or local laws or that the  
4588 proposed assignee has provided Agency with a complete list of such proceedings  
4589 and their status; (iii) that the proposed assignee conducts its operations in a safe  
4590 and environmentally conscientious manner, in accordance with sound Solid Waste  
4591 management practices in full compliance with all federal, State, and local laws  
4592 regulating the Collection and Disposal of Solid Waste and all Environmental Laws;  
4593 and (iv) of any other information required by Agency to ensure the proposed  
4594 assignee can fulfill the terms of this Agreement in a timely, safe, and effective  
4595 manner.

4596 D. **No Obligation to Consider.** Agency will not be obligated to consider a proposed  
4597 assignment if Contractor is in default.

4598 **15.04 AFFILIATED ENTITY**

4599 Contractor will not form or use any Affiliate to perform any of the services or activities  
4600 which Contractor is required or allowed to perform under this Agreement, other than as a  
4601 Subcontractor approved by Agency under Section 15.04.

4602 If Contractor enters into any financial transactions with an Affiliate for the provision of labor,  
4603 equipment, supplies, services, or capital related to the furnishing of service under this  
4604 Agreement, that relationship shall be disclosed to Agency, and in the financial reports  
4605 submitted to Agency. In such event, Agency's rights to inspect records and obtain financial  
4606 data shall extend to records and data of such Affiliate that are relevant to those specific  
4607 financial transactions.

4608 **15.05 CONTRACTOR'S INVESTIGATION**

4609 Contractor has made an independent investigation, satisfactory to it, of the conditions and  
4610 circumstances surrounding the Agreement and the work to be performed by it. Contractor  
4611 has had the opportunity to inspect the Designated Transfer and Processing Facility and to  
4612 review the permits governing its operation, as well as the Source Reduction and Recycling  
4613 Element adopted by Agency as required by the Act. Contractor has taken such matters  
4614 into consideration in agreeing to provide the services required by, for the compensation to  
4615 be provided under, this Agreement.

4616 **15.06 RESERVED**

4617 **15.07 CONDEMNATION**

4618 Agency reserves the rights to acquire the Contractor's property utilized in the performance  
4619 of this Agreement through the exercise of eminent domain.

4620 **15.08 NOTICE**

4621 All notices, demands, requests, proposals, approvals, consents, and other  
4622 communications which this Agreement requires, authorizes or contemplates shall, except  
4623 as provided in Article 14, be in writing and shall either be personally delivered to a  
4624 representative of the Parties at the address below or be deposited in the United States  
4625 mail, first class postage prepaid, addressed as follows:

4626 If to Agency:

4627 Director, Office of Sustainability  
4628 455 County Center 4<sup>th</sup> Floor, OS-102  
4629 Redwood City, CA 94063

4630  
4631 If to Contractor:

4632 General Manager  
4633 Recology San Mateo County  
4634 225 Shoreway Rd.  
4635 San Carlos, CA 94070

4636

4637 The address to which communications may be delivered may be changed from time to  
4638 time by a notice given in accordance with this Section.

4639 Contact information for Contractor's General Manager is as follows:

4640 General Manager  
4641 Recology San Mateo County  
4642 225 Shoreway Rd.  
4643 San Carlos, CA 94070

4644 Contact information for Contractor's Environmental Technician is as follows:

4645 Environmental Technician  
4646 Recology San Mateo County  
4647 225 Shoreway Rd.  
4648 San Carlos, CA 94070

4649 Contractor shall promptly provide Agency the name and contact information for the above  
4650 employees if there is a change during the Term.

4651 **15.09 REPRESENTATIVES OF THE PARTIES**

4652 A. **Representatives of Agency.** References in this Agreement to “Agency” shall mean  
4653 the County of San Mateo and all actions to be taken by Agency shall be taken by the  
4654 Board of Supervisors except as provided below. The County of San Mateo Board of  
4655 Supervisors may delegate authority to the County Manager, and/or to other Agency  
4656 officials and may permit such officials, in turn, to delegate in writing some or all of  
4657 such authority to subordinate officers. Contractor may rely upon actions taken by  
4658 such delegates if they are within the scope of the authority properly delegated to them.

4659 B. **Representative of Contractor.** Contractor shall, by the Commencement Date,  
4660 designate in writing a responsible officer who shall serve as the representative of  
4661 Contractor in all matters related to the Agreement and shall inform Agency in writing  
4662 of such designation and of any limitations upon his or her authority to bind Contractor.  
4663 Agency may rely upon action taken by such designated representative as actions of  
4664 Contractor unless they are outside the scope of the authority delegated to him/her by  
4665 Contractor as communicated to Agency.

4666 **15.10 DUTY OF CONTRACTOR NOT TO DISCRIMINATE**

4667 In the performance of this Agreement Contractor shall not discriminate, nor permit any  
4668 subcontractor to discriminate, against any employee, applicant for employment, or  
4669 Customer on account of race, color, national origin, ancestry, religion, sex, age, physical  
4670 disability, medical condition, sexual orientation, marital status, or other characteristic, in  
4671 violation of any Applicable Law.

4672 **15.11 RESERVED**

4673 **15.12 RIGHT OF AGENCY TO MAKE CHANGES IN SERVICES AND SERVICE LEVELS**

4674 A. Agency may, without amending this Agreement, direct Contractor to cease  
4675 performing one or more types of service described in Articles 5 or 6, or may direct  
4676 Contractor to modify the scope of one or more such services, may direct Contractor  
4677 to perform additional Solid Waste, Targeted Recyclable Materials, Organic  
4678 Materials, Used Motor Oil, Used Motor Oil Filters, Household Batteries and Cell  
4679 Phones or Plant Materials handling services, or may otherwise direct Contractor to  
4680 modify its performance under any other Section of this Agreement. In addition,  
4681 SBWMA may, without amendment of this Agreement, direct a change in the number  
4682 of Waste Zero Specialists as provided in Section 7.04.A, or a change in Other  
4683 Services as provided in Section 7.13. Contractor shall promptly and cooperatively  
4684 comply with such direction.

4685 B. If such changes cause an increase or decrease in the cost of performing the  
4686 services, an equitable adjustment in the Contractor’s Compensation shall be made  
4687 pursuant to Section 11.06. Contractor will continue to perform the new or changed  
4688 service while the appropriate adjustment in Contractor’s Compensation is being  
4689 determined.

4690 C. The Agency shall have the right to terminate a program if, in its discretion, the  
4691 Contractor is not cost-effectively achieving the program’s goals and objectives.  
4692 Thereafter, the Agency may utilize a third party to perform these services if the



4693 Agency reasonably believes the third party can improve on Contractor's  
4694 performance and cost effectiveness. Notwithstanding these changes, Contractor  
4695 shall continue the program during the meet and confer period and, thereafter, until  
4696 the third party takes over the program. This subsection C applies to programs  
4697 initiated at Agency's direction after the Commencement Date that are beyond the  
4698 basic scope of services described in Section 4.01.A.

4699 **15.13 TRANSITION TO NEXT SERVICE PROVIDER**

4700 At the expiration of the Term or the earlier termination of the Agreement, or upon Agency's  
4701 approval of a proposed assignment, Contractor shall cooperate fully with Agency to ensure  
4702 an orderly transition to any and all new service providers. Contractor shall provide, within  
4703 ten (10) Days of a written request by Agency, then-current route lists, which identify each  
4704 Customer on the route, its service level (number of Containers, Container sizes, frequency  
4705 of Collection, scheduled Collection day), any special Collection notes, and detailed then-  
4706 current Customer account and Billing information. Contractor may, but is not required to,  
4707 sell Collection vehicles and Containers to the next service provider.

4708 Contractor shall upon Agency request, at least one-hundred-eighty (180) Days prior to the  
4709 transition of services, attend meetings with the next service provider and with Agency and  
4710 SBWMA staff and consultants to plan the recovery of Contractor's Containers and  
4711 placement of the new Containers. Contractor shall perform in accordance with such plan  
4712 and direct route supervisors to provide "ride-alongs" so that the new service provider's  
4713 employees may ride with drivers in Collection vehicles during Collection operations.  
4714 Contractor shall direct its drivers and other employees to provide accurate information to  
4715 the new provider about routing and Customers.

4716 **15.14 REPORTS AS PUBLIC RECORDS**

4717 The reports, records, and other information submitted or required to be submitted by  
4718 Contractor to Agency (and documents copied pursuant to Section 9.02) are public records  
4719 within the meaning of that term in the California Public Records Act, Government Code  
4720 Section 6250 *et seq.* Unless a particular record is exempted from disclosure by the  
4721 California Public Records Act, it must be disclosed to the public by Agency upon request.

4722 Contractor will not object to Agency making available to the public any information  
4723 submitted by the Contractor, or required to be submitted in connection with the  
4724 Contractor's Compensation, including but not limited to records described in Article 11.

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## ARTICLE 16 MISCELLANEOUS PROVISIONS

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4728 **16.01 GOVERNING LAW**

4729 This Agreement shall be governed by, and construed and enforced in accordance with,  
4730 the laws of the State of California.

4731 **16.02 JURISDICTION**

4732 Any lawsuits between the Parties arising out of this Agreement shall be brought and  
4733 concluded in the courts of the State of California, which shall have exclusive jurisdiction  
4734 over such lawsuits. With respect to venue, the Parties agree that this Agreement is made  
4735 in and will be performed in San Mateo County.

4736 **16.03 BINDING ON SUCCESSORS**

4737 The provisions of this Agreement shall inure to the benefit of and be binding on the  
4738 successors and permitted assigns of the Parties.

4739 **16.04 PARTIES IN INTEREST**

4740 Nothing in this Agreement is intended to confer any rights on any Persons other than the  
4741 Parties to it and their permitted successors and assigns.

4742 **16.05 WAIVER**

4743 The waiver by either Party of any breach or violation of any provisions of this Agreement  
4744 shall not be deemed to be a waiver of any breach or violation of any other provision nor of  
4745 any subsequent breach or violation of the same or any other provision.

4746 **16.06 ATTACHMENTS**

4747 Each of the attachments, identified as Attachments "A" through "T," is attached hereto and  
4748 incorporated herein and made a part hereof by this reference.

4749 **16.07 ENTIRE AGREEMENT**

4750 This Agreement, including the attachments, represents the full and entire agreement  
4751 between the Parties with respect to the matters covered herein and supersedes all prior  
4752 negotiations and agreements, either written or oral.

4753 **16.08 SECTION HEADINGS**

4754 The article headings and section headings in this Agreement are for convenience of  
4755 reference only and are not intended to be used in the construction of this Agreement nor  
4756 to alter or affect any of its provisions.

4757 **16.09 INTERPRETATION**

4758 This Agreement shall be interpreted and construed reasonably and neither for nor against  
4759 either Party, regardless of the degree to which either Party participated in its drafting.

4760 **16.10 AMENDMENT**

4761 This Agreement may not be modified or amended in any respect except by a writing signed  
4762 by the Parties.

4763 **16.11 SEVERABILITY**

4764 If a court of competent jurisdiction holds any non-material provision of this Agreement to  
4765 be invalid and unenforceable, the invalidity or unenforceability of such provision shall not  
4766 affect any of the remaining provisions of this Agreement which shall be enforced as if such  
4767 invalid or unenforceable provision had not been contained herein.

4768 **16.12 COSTS AND ATTORNEYS' FEES**

4769 The prevailing Party in any action brought to enforce the terms of this Agreement or arising  
4770 out of this Agreement may recover its reasonable costs expended in connection with such  
4771 an action from the other Party.

4772 **16.13 NO DAMAGES FOR INVALIDATION OF AGREEMENT**

4773 If a final judgment of a court of competent jurisdiction determines that this Agreement is  
4774 illegal or was unlawfully entered into by Agency, neither Party shall have any claim against  
4775 the other for damages of any kind (including but not limited to loss of profits) on any theory.

4776 **16.14 REFERENCES TO LAWS**

4777 All references in this Agreement to laws and regulations shall be understood to include  
4778 such laws and regulations as they may be subsequently amended or recodified, unless  
4779 otherwise specifically provided. In addition, references to specific governmental agencies  
4780 shall be understood to include agencies that succeed to or assume the functions they are  
4781 currently performing.

4782 **16.15 INDEMNITY AGAINST CHALLENGES TO AGREEMENT**

4783 Contractor shall indemnify, defend, and hold harmless SBWMA, San Mateo County , and  
4784 its and their officers, employees, and agents (collectively, the "Indemnitees") from and  
4785 against any and all liability, claim, demand, action, proceeding, or suit of any and every  
4786 kind and description brought by a third party challenging the process by which proposals  
4787 were solicited and evaluated, or this Agreement was negotiated or awarded to the extent  
4788 that such liability, claim, demand, action, proceeding, or suit was caused by Contractor's  
4789 failure to comply with Applicable Law or the instructions of any indemnitee with respect to  
4790 such process.

4791 **16.16 DISPUTE RESOLUTION**

4792 Should any dispute between the Parties arise out of this Agreement and should the Parties  
4793 be unable to resolve the issue, the Parties shall, at the written request of either Party, meet  
4794 in mediation and attempt to reach a resolution with the assistance of a mutually acceptable  
4795 mediator. Neither Party shall be permitted to file legal action without first meeting in  
4796 mediation and making a good faith attempt to reach a mediated resolution, provided that  
4797 this limitation shall not apply to a Party if the other Party fails to comply with this section.  
4798 The costs of the mediator, if any, shall be paid equally by the Parties. If a mediated  
4799 settlement is reached, neither Party shall be deemed the prevailing Party for purposes of  
4800 the settlement and each Party shall bear its own legal costs. The mediation shall be  
4801 completed within sixty (60) days of the written request of a Party for mediation unless both  
4802 Parties agree to extend this timeframe. If litigation is filed regarding any dispute arising  
4803 under this Agreement, the action shall be filed in San Mateo County Superior Court and  
4804 the court shall award reasonable attorney's fees and costs to the prevailing Party. To the  
4805 maximum extent permitted by law, all offers, promises, conduct and statements, whether  
4806 oral or written, made in the course of the mediation by any of the Parties, their agents,

4807 employees, experts or attorneys, or by the mediator or any employees of the mediation  
4808 service, are confidential, privileged and inadmissible for any purpose, including  
4809 impeachment, in any arbitration or other proceeding involving the Parties, provided that  
4810 evidence that is otherwise admissible or discoverable shall not be rendered inadmissible  
4811 or non-discoverable as a result of its use in the mediation. All applicable statutes of  
4812 limitation and defenses based upon the passage of time shall be tolled until the end of the  
4813 sixty (60) day period referred to above. The Parties will take such action, if any, required  
4814 to effectuate such tolling.

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**LAST PAGE OF AGREEMENT**

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**IN WITNESS WHEREOF, Agency and Contractor have executed this Contract as of  
4819 the day and year first above written.**

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4822

COUNTY OF SAN MATEO

RECOLOGY SAN MATEO COUNTY

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4826

By: \_\_\_\_\_

By: \_\_\_\_\_

4827

Michael Callagy

Michael J. Sangiacomo

4828

County Manager/Clerk of Said Board

President and CEO

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