



## Item No. 12 Town of Atherton

### **CITY COUNCIL STAFF REPORT – REGULAR AGENDA**

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM: GEORGE RODERICKS, CITY MANAGER**

**DATE: DECEMBER 19, 2018**

**SUBJECT: DISCUSSION AND DIRECTION REGARDING THE AMENDED AND RESTATED FRANCHISE AGREEMENT BETWEEN THE TOWN OF ATHERTON AND RECOLOGY SAN MATEO COUNTY FOR RECYCLABLE MATERIALS , ORGANIC MATERIALS, AND SOLID WASTE COLLECTION SERVICES**

#### **RECOMMENDATION**

Review report and provide direction for next steps with respect to the Amended and Restated Franchise Agreement between the Town of Atherton and Recology San Mateo County for Recyclable Materials, Organic Materials, and Solid Waste Collection Services.

#### **BACKGROUND**

The Town is a member of the South Bay Waste Management Authority (SBWMA). The SBWMA (also known as “RethinkWaste”) is a Joint Powers Authority (JPA) that was formed in 1982 with the goal of providing cost effective programs for its member agencies to meet the state mandate waste diversion target.

The 12-member agencies consist of Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, the County of San Mateo and the West Bay Sanitary District. Through the JPA, these member agencies own and manage the Shoreway Environmental Center which receives all of the recyclables, organics, and garbage collected in its service area.

The SBWMA also provides oversight, support and management of service providers that collect, process, recycle and dispose of materials for the member agencies. As a separate legal entity, the SBWMA operates with a Board of Directors comprised of elected officials from its member agencies and agency staff consisting of an Executive Director, and full-time staff to administer the Agencies various programs and services. In addition to contract management of Recology, South Bay Recycling, and associated contracts (disposal and reuse), the SBWMA administers training programs, educational programs, and outreach. As the JPA

## **FINDINGS/ANALYSIS**

As a member of the SBWMA, the Town is part of a 10-year contract between the SBWMA, member agencies, and Recology. This contract expires on December 31, 2020. Within the contract, there is a requirement to “meet and confer” on the possibility for extension during 2017. The 2017 decision timeline was established to allow sufficient time, if needed, to conduct a full competitive procurement process if no extension was granted.

In March 2016, the Council discussed the process for negotiation of amendments to the Town's Franchise Agreement consistent with a Model Franchise Agreement that would be developed by the SBWMA. Once the Model Franchise Agreement was drafted and accepted by the SBWMA, staff and the Town's City Council Refuse Subcommittee met with Recology to negotiate Atherton-specific provisions that would be incorporated into the Amended Franchise Agreement.

### Legal/Agreement Issues

Attached is the Amended and Restated Agreement between the Town and Recology. The proposed term of the Amended and Restated Agreement is 15 years – from 2021 through 2035. As an “Amended and Restated Agreement” the formal bidding requirements that would ordinarily be applicable to such a relationship are not at issue. The City Attorney's Office has been active in facilitating the negotiation process and has worked closely with legal counsel for Recology to craft amendments to the Agreement that were consistent with the negotiations between the Town and Recology as well as consistent with the Model Franchise Agreement provisions promulgated through the SBWMA. The Amended and Restated Agreement does not raise any issues of increased legal liability or concern. Most of the issues raised have been largely policy-related issues – discussed below and with specific emphasis on costs to residents.

All Atherton-specific provisions from the original agreement were retained in the Amended and Restated Agreement. During negotiation, there was discussion about provisions that are not currently applicable to the Town due to its demographics or land use. These include provisions related to commercial or multi-family housing. These provisions were left in the body of the agreement for consistency with other jurisdictions and to accommodate future development. However, for ease of review, these provisions have been “grayed” within the Agreement.

Force majeure was also discussed. Force majeure sets the terms should Recology be unable to provide service for reasons beyond their control. As it stands, the Town retains the ability to ensure service should Recology be unable to perform and has the ability to look to Recology to cover any additional expenses incurred as a result.

Other areas discussed during negotiations include: hours of collection, billing, payment of performance incentives, special events, records, reporting, quality assurance and compensation. All legal and contractual issues were largely resolved to the satisfaction of the Subcommittee.

### Policy Issues

Policy issues that should be considered by the Council include:

- Membership fit within the SBWMA
- Benefit of Membership in the SBWMA
- Cost-Benefit of Leaving the SBWMA
- Term of the Franchise Agreement with Recology
- Foreign Market Impacts on Recyclables
- Remain with SBWMA but rebid for an alternative vendor

#### *Membership "Fit" within the SBWMA and Benefit of Membership with the SBWMA*

As noted above, the Town is part of the larger JPA which includes a diverse set of cities and towns in San Mateo County. Many of their programs and services relate to areas that do not directly apply in Atherton. These include multi-family dwellings and commercial services, education, and outreach. In addition, because of the Town's unique demographics (i.e. non-commercial, non-multi-family, limited to no growth in land-use or expansion), some of the potential programmatic changes and enhancements in the future could have limited to no impact and potentially negative impact on services for the Town. These include the use of smaller, split-body collection trucks, consideration of every-other-week refuse collection (black bin), and outreach programs targeting commercial and multi-family collection areas.

Some proposed programs and services will provide the Town benefit. These include the possibility of GHG credits for waste-to-energy processes at some point in the future but not presently, fleet conversion to compressed natural gas vehicles, LED lighting conversions, battery programs, glass contamination removal programs and single-stream processing.

All of these programs and services represent costs that are passed on to the Town in proportional share via either the direct Recology franchise agreement or the overhead included in the SBWMA agreement. The Subcommittee has limited the potential cost impact within the Franchise Agreement via opt out provisions for distinct programs provided by Recology. However, where programs are implemented via the SBWMA, the Town does not have the ability to opt out and would be responsible for its share of any programmatic costs.

The SBWMA has a cost-share model that limits the Town's exposure based on the specific percentage of waste stream, for example, the Town's costs for commercial programs is limited to the Town's overall share of the commercial waste stream adjusted by annual audits. That said, the Town's share is a part of an ever-growing percentage of the total cost. However, where the SBWMA seeks to expand its services, facilities or programs in areas that impact all waste streams, the Town's costs would include its percentage related to residential thereby exposing the Town to potential future costs for facility or program expansion.

The Town is required to provide various Reports, meet specified Diversion Requirements, and provide specific programs, services, and education under Assembly Bill 939. If the Town were to

contract directly with an independent hauler, the Town would be required to provide these services under a contract with the hauler, a separate independent contract, or provide them internally. This could represent additional cost to the Town and residents. These services are presently provided by the SBWMA.

#### *Cost/Benefit of Leaving the SBWMA*

As a member of the SBWMA, the Town has incurred shared costs related to the development of facilities and programs. These costs are largely related to the Town's share of a bond obligation estimated at 3.4% or approximately \$1.6 million. The total bond obligation is approximately \$48 million, unless extended or expanded for facility improvements. Leaving the SBWMA would require the Town to repay its share of the bond obligation, unless negotiated otherwise. While the Town could use its Rate Stabilization Fund to repay its portion, doing so would deplete the fund and subject residents to increased rate fluctuations during transition to a new hauler.

#### *Term of the Franchise Agreement*

The prior franchise agreement was for a 10-year term. The new Amended and Restated Franchise Agreement extends the current agreement, as amended, for a period of 15 years. In today's dollars, Recology's Annual Cost of Contract is approximately \$1.6 million. In addition, the Town also pays as a member of the SBWMA another \$1.6 million for processing, disposal, special contracts, debt service and the JPA itself (effective 2019). These costs are expected to escalate year over year; however, even if constant, that represents a total cost of a 15-year contract of nearly \$50 million. Escalation could be as much as 3% to 5% per year, plus pass-through costs. The Council should consider this as part of the policy discussion.

#### *Foreign Market of Recyclables*

In addition to potential costs related directly to the expansion of services, facilities or programs of the SBWMA, the Town would also be subject to the impact of foreign markets on value and collection of recyclables. This is something beyond the Town's control and the Town would be subject to this issue whether we were a part of the JPA or not.

*Note: A further contract amendment is in the works for bulk-item pick-up, abandoned waste, and clean water litter abatement.*

#### Summary

Tonight's meeting is discussion and direction only. The issues are not service-related as the Town and its residents receive high-quality services from Recology. The legal issues related to the Amended and Restated Franchise Agreement have been discussed and addressed. The remaining issues are largely policy related.

The Council should discuss the benefits of staying with the current service provider within the SBWMA or exiting the SBWMA and pursuing an independent franchise agreement. While the

SBMWA has made significant strides to limit the Town's future cost exposure, it still exists to some degree. The Town is not an exact fit to the bulk of the membership of the SBWMA and the programs, services, facilities, and potential expansion of such are driven largely by the needs of the other member agencies.

### **POLICY FOCUS**

The Town could move forward with the current negotiated Amended and Restated Franchise Agreement and remain in the SBWMA continuing to focus on limiting any future Town cost exposure. If the Council desired to move forward with the Amended and Restated Franchise Agreement, staff would return the item for Council approval at the January 16 City Council meeting.

Alternatively, the Town could opt to use funds within the Rate Stabilization Fund to engage a consultant to assist the Town with pursuit of an independent bidding process for a refuse service vendor. Timing of such a process would require that we engage with a consultant in early 2019 in order to facilitate a transition, if required, in 2020. If the Town opted to go forward with an independent vendor, the Town would exit the SBWMA and would be required to address the bond obligation upon exit. The options under this alternative would include remaining in the SBWMA but selecting an alternative service provider; moving forward with an alternative service provider and exiting the SBWMA.

The Town could opt to wait or table the issue until the amended agreement is completed which could be 3-4 months further out to allow finality of the issues noted above. This option is not recommended.

The current bid from Recology will remain valid until December 31, 2020. In essence, the Town could go through a bid exercise and remain in the SBWMA with Recology under the current proposed Amended and Restated Franchise Agreement.

### **FINANCIAL IMPACTS**

None.

### **PUBLIC NOTICE**

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town's electronic News Flash and Atherton Online. There are approximately 1,200 subscribers to the Town's electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service providers (water, power, and sewer), and regional elected officials.

Discussion and Direction Regarding the Town's Refuse Contract  
December 19, 2018  
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**ATTACHMENTS**

Attachment 1 – Amended and Restated Franchise Agreement

**AMENDED AND RESTATED  
FRANCHISE AGREEMENT  
BETWEEN  
THE TOWN OF ATHERTON  
AND  
RECOLOGY SAN MATEO COUNTY  
FOR  
RECYCLABLE MATERIALS,  
ORGANIC MATERIALS, AND SOLID WASTE  
COLLECTION SERVICES**

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S	Interest Payment Arrangement Memorandum of Understanding

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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 \_\_\_\_\_, 2018, by and between the Town of Atherton, a Municipal  
9 Corporation ("Agency"), and RECOLOGY SAN MATEO COUNTY, a California corporation  
10 ("Contractor").

11

**RECITALS**

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12 This Agreement is entered into with reference to the following facts and circumstances:  
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14 **WHEREAS;** the State of California has, through enactment of the California Integrated Waste  
15 Management Act of 1989 ("Act"), determined each of the following:

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

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

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

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

39 **WHEREAS;** in 2009, Agency independently evaluated Contractor's proposal and determined  
40 that Contractor had proposed to provide solid waste handling services including collection of

41 recyclable and organic materials in a manner and on terms which were in the best interests of  
42 Agency, its residents and businesses, taking into account the qualifications and experience of  
43 Contractor and the cost of providing such services; and,

44 **WHEREAS**; on October 21, 2009, the City Council approved Resolution No. 09-39, which  
45 awarded an exclusive franchise agreement to Recology San Mateo County for Recyclable  
46 Materials, Organic Materials, and Solid Waste Collection Services dated October 21, 2009, with  
47 a term from January 1, 2011 through December 31, 2020 (“2009 Franchise Agreement”); and,

48 **WHEREAS**; on June 19, 2013, the City Council approved an amendment of the 2009 Franchise  
49 Agreement; and,

50 **WHEREAS**; in 2016, the SBWMA’s Board of Directors directed SBWMA staff to negotiate,  
51 acting on behalf of Agency and its other members, with Contractor an extension of the 2009  
52 Franchise Agreement; and,

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

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

60 **WHEREAS**; the City Council authorized Town staff to negotiate this Amended and Restated  
61 Franchise Agreement with a term of fifteen (15) years from January 1, 2021 through December  
62 31, 2035, and, on [REDACTED], 2018, authorized the City Manager to execute this Agreement;  
63 and,

64 **WHEREAS**, this Agreement has been developed by and is satisfactory to the Parties.

65 **NOW, THEREFORE**, in consideration of the mutual promises contained in this Agreement, and  
66 for other good and valuable consideration, Agency and Contractor agree as follows:

67

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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  
72 have 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  
76 event of a conflict between the definition of a term in the Act and in this Agreement, the  
77 definition in the Agreement shall prevail.

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**ARTICLE 2**  
**REPRESENTATION AND WARRANTIES OF**  
**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  
87 California.

88 **2.02 CORPORATE AUTHORIZATION**

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

93 **2.03 AGREEMENT DULY EXECUTED**

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

97 **2.04 NO CONFLICT WITH APPLICABLE LAW OR OTHER DOCUMENTS**

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

104 **2.05 NO LITIGATION**

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

112 **2.06 FINANCIAL CONDITION**

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

119 **2.07 ABILITY TO PERFORM**

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

122 **2.08 CONTRACTOR'S INVESTIGATION**

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

129 **2.09 STATEMENTS AND INFORMATION IN PROPOSAL**

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

137 **2.10 IRAN CONTRACTING CERTIFICATION**

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

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

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## ARTICLE 3 TERM OF AGREEMENT

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152 **3.01 EFFECTIVE DATE AND COMMENCEMENT DATE**

153 After signature by the Parties, this Agreement shall become binding and enforceable as  
154 of the date (the "Effective Date") that two-thirds (2/3) of SBWMA's Member Agencies  
155 have approved and signed agreements with Contractor substantially similar to this one,  
156 as required by Section 3.04.B, and all other conditions set forth in Sections 3.04.A and  
157 3.04.B have been satisfied or waived.

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

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

165 **3.02 TERM**

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

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

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

182 As an exception to the foregoing, upon the Effective Date, (i) the 2009 Franchise  
183 Agreement shall be amended to extend the Term to 2035 as provided above, and (ii) the  
184 2009 Franchise Agreement shall be amended to the extent necessary to give effect to  
185 Section 11.02.F of this Agreement.

186 **3.03 EXTENSION OF TERM**

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

192 intention to extend the Agreement on or before December 31, 2032. Such notice by  
193 Agency shall specify the duration of the extension. Contractor shall provide written  
194 notice to Agency and SBWMA on or before January 31, 2033 whether it consents to  
195 the extension.

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

### 211 3.04 CONDITIONS TO EFFECTIVENESS OF AGREEMENT

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

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

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

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

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

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

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

234 3. **Approvals by Other Member Agencies.** On or before June  
235 30, 2018, a minimum of eight (8) of the governing bodies of the SBWMA's  
236 Member Agencies, collectively representing at least two thirds (2/3) of the

237 Member Agencies, have approved and signed agreements with Contractor  
238 substantially similar to this one.

239 C. **Notice.** If either Party wishes to assert that a condition for its  
240 benefit has not been satisfied and has not been waived, it must deliver written  
241 notice to that effect to the other party on or before the Effective Date. If no such  
242 notice is received, the Agreement will become effective on the Effective Date.

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

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## ARTICLE 4 SCOPE OF AGREEMENT

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249 **4.01 SCOPE OF AGREEMENT**

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

253 1. Solid Waste generated at Residential Premises, Commercial Premises and  
254 Agency Facilities; and,

255 2. Source Separated Targeted Recyclable Materials and Source Separated Organic  
256 Materials generated at Residential Premises.

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

259 1. Source Separated Targeted Recyclable Materials and Source Separated Organic  
260 Materials generated at Commercial Premises;

261 2. Major Appliances and Specialty Recyclable or Reusable Materials generated at  
262 Residential Premises; and,

263 3. Non-putrescible wastes placed in Drop Boxes.

264 **4.02 LIMITATIONS ON SCOPE**

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

268 A. Solid Waste, Targeted Recyclable Materials, and Organic Materials which are  
269 transported personally by the Owner or Occupant of the Premises at which they are  
270 generated (or by his or her employees) to a processing or Disposal facility;

271 B. Targeted Recyclable Materials and Organic Materials which are Source Separated  
272 by the Generator and donated to youth, civic, or charitable organizations;

273 C. Recyclable beverage containers delivered for Recycling under the California  
274 Beverage Container Recycling Litter Reduction Act, Section 14500 *et seq.*  
275 California Public Resources Code;

276 D. Animal waste and remains from slaughterhouse or butcher shops, grease waste,  
277 and used cooking oil;

278 E. By-products of sewage treatment including sludge, sludge ash, grit, and screenings;

279 F. Hazardous Waste, Household Hazardous Waste, and Infectious Waste;

280 G. Source Separated E-Scrap and Source Separated Universal Waste;

281 H. Organic Materials composted at Residential and Commercial Premises;

282 I. Materials generated by State facilities (including public schools), provided that the  
283 Generator has arranged services with other Persons or has arranged services with  
284 the Contractor through a separate agreement;

- 285 J. The incidental removal of Solid Waste, Recyclable Materials, or Organic Materials  
286 when the primary service performed is either of the following:
- 287 1. Landscaping, gardening, weed or refuse abatement, yard clean-up, grading  
288 of a lot, or tree removal/pruning; or,
  - 289 2. Construction, remodeling, or demolition of a building or structure.
- 290 K. Solid Waste generated at Residential Premises collected by others on an  
291 infrequent, unscheduled, "on-call" basis (other than On-Call Bulky Item Collection  
292 Service scheduled by Customers per Section 5.05).

293 **4.03 GEOGRAPHIC LIMITS ON CONTRACTOR'S OPERATIONS**

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

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

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## ARTICLE 5 COLLECTION SERVICES

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308 **5.01 GENERAL**

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

329 **5.02 SOLID WASTE COLLECTION**

330 **A. Single-Family Dwelling (SFD)**

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

- 349 3. Informing Customer of Collection Location Options. Contractor will notify all  
350 Residential Customers annually of the Special Handling Service and Backyard  
351 Collection Service options and submit, for approval, a draft notification to  
352 Agency thirty (30) Days prior to the anticipated date of distribution to  
353 Customers. New service recipients shall be notified upon signing up for  
354 Collection service of the Special Handling Service and Backyard Collection  
355 Service options.
- 356 4. Special Handling Service Eligibility. Customers desiring Special Handling  
357 Service will be required to submit an application, in a form approved by  
358 Agency. Contractor shall review applications to determine whether the  
359 Customer meets Agency's eligibility criteria and shall provide a written  
360 response within five (5) Business Days after receipt of the application. Unless  
361 otherwise directed by Agency, Customers are eligible if they provide (i)  
362 evidence of their "handicap status" by the California Department of Motor  
363 Vehicles, or (ii) evidence that no Occupant of the Residential Premises is  
364 physically able to place Carts Curbside for Collection. On an annual basis,  
365 Contractor may request reverification of Special Handling Service eligibility  
366 from Customer.

367 **B. Multi-Family Dwellings**

- 368 1. General. Contractor shall Collect Solid Waste from Multi-Family Dwellings as  
369 frequently as scheduled by Customer, but not less than once per week, and  
370 shall bill Customers at Agency-approved Rates. Contractor shall provide extra  
371 Collection pick-ups of Containers within one (1) Business Day of Customer's  
372 request and shall bill Customers at Agency-approved Charges specified in  
373 Attachment Q. Customers must subscribe to a minimum service level of three  
374 (3) times per week Collection in order to be eligible for Collection on Saturday  
375 and/or Sunday.
- 376 2. Containers. Contractor shall allow Multi-Family Dwelling Customers to use  
377 Carts or Bins for Solid Waste Collection that are shared by the Occupants of  
378 the Premises. Contractor shall provide one (1) or more Cart(s) or Bin(s) to  
379 such Customers as requested by Customer, provided that no less than ninety-  
380 six (96) gallons per week of Container capacity are provided for every five (5)  
381 dwelling units in the Multi-Family Residential Complex.
- 382 3. General Service Conditions. The standard Rates for Collection services  
383 assume that Containers are accessible by Contractor's vehicles and personnel.
- 384 If the Container is wheeled and is three (3) cubic yards or less in capacity and  
385 is not a Compactor, the standard Rate includes Collection from the Container  
386 located Curbside or in enclosures or on private or public property at a distance  
387 less than or equal to fifty (50) feet of access by Contractor's vehicle, provided  
388 that access to the Container is paved and the slope is less than seven percent  
389 (7%). The distance to the Container shall be measured in one of the following  
390 ways depending on the conditions of the Premises: (i) from the face of the curb  
391 to the nearest edge of the Container, (ii) if there is no curb, from the edge of the  
392 roadway nearest the nearest edge of the Container, or (iii) from the lifting  
393 mechanism on the Collection vehicle if the vehicle can be driven on the  
394 Premises.

395 If the Container does not have wheels, or is greater than three (3) cubic yards  
396 in capacity, or is a Compactor, the standard Rate includes Collection from a  
397 location accessible by Contractor's vehicle (regardless of the distance from the  
398 curb or roadway), provided that access to the Container is paved and the slope  
399 is less than seven percent (7%). A slope shall be deemed to be seven percent  
400 (7%) or more if the slope measures 7% or more using a slope measurement  
401 device.

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

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

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

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

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

442 dispute between Contractor and a Customer regarding the Long Distance  
443 Service, Container Relocation Service, and/or the distance or degree of slope,  
444 Contractor shall provide email notification to Agency and Customer, and  
445 Agency shall work with the Contractor and Customer to resolve the dispute.  
446 Agency may independently measure the slope and/or distance. Agency shall  
447 make the final determination of the service arrangements and whether any  
448 Attachment Q Charges apply.

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

457 **C. Commercial Premises**

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

466 2. Container Service Requirements. Container service requirements described  
467 for Multi-Family Premises in Sections 5.02.B.3 through 5.02.B.7 are applicable  
468 for Commercial Premises.

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

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

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

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

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Customer (or outside vendor) as frequently as needed to keep the Compactors in good working order and functioning at high compaction levels.

**D. Agency Facilities**

1. General. Contractor shall Collect Solid Waste from Agency Facilities as frequently as scheduled by the Agency, but not less than once per week. Agency must subscribe to a minimum service level of three (3) times per week Collection in order to be eligible for Collection on Saturday and/or Sunday.
2. Service Methods. Specifically, the Contractor shall offer the following Collection service methodologies to Agency Facilities:
  - a. Individual Cart or Bin Service. Contractor shall allow each Agency Facility to use Carts, Bins, Compactors, or Drop Boxes for Solid Waste Collection.
  - b. Centralized Cart or Bin Service. Contractor shall allow each Agency Facility to use Carts or Bins for Solid Waste Collection that are shared by the Occupants of two or more adjacent Agency Facilities. In such case, Contractor shall provide one or more Carts or Bins as requested by the Agency provided that no less than ninety-six (96) gallons of Container capacity is provided for every four (4) Agency Facilities.
  - c. Drop Boxes and Compactors. Contractor shall allow Agency to use a Drop Box or Compactor for Solid Waste Collection to meet the Agency's Disposal needs. In such case, Contractor shall provide Agency with a choice of Container capacities ranging from three (3) to forty (40) cubic yards (or similar sizes). Contractor shall allow Agency to purchase or lease Compactors through an outside vendor. Regular maintenance of Compactors shall be required by Agency (or outside vendor) as frequently as needed to keep the Compactors in good working order and functioning at high compaction levels.
3. Solid Waste from Public Street, Parks, and Parking Lot Litter Receptacles. Contractor shall Collect Solid Waste, Recyclables and Organic Waste from public litter receptacles located on streets and in parking lots, and from public litter receptacles in parks that are accessible for Curbside Collection. Contractor shall also Collect Solid Waste that is contained in bags or boxes and placed adjacent to public litter receptacles. These Collections will be made between one (1) and seven (7) Days per week, as determined by Agency. Contractor is responsible for notifying Agency if a public litter receptacle is inoperable within twenty-four (24) hours of observing or being notified of the defect. A list of public litter receptacles is included in Attachment B. Agency shall annually be allowed to increase the number of public litter receptacles provided Collection service by an additional five percent (5%) of the total number of receptacles in service as of January 1 of each Rate Year after Rate Year Eleven (2021) without being billed for such service. The maximum number of public litter receptacles that Contractor will service without billing Agency shall increase by five percent (5%) each Rate Year after Rate Year Eleven (2021), even if Agency does not actually increase the number of

534 receptacles by five percent (5%) in that Rate Year.

535 4. Scope of Service Requirements. Contractor shall provide the Agency with the  
536 Collection services described above at the service locations, service levels, and  
537 frequencies identified in Attachment B. Contractor shall provide and maintain  
538 Collection Containers for the Agency's use, with the exception of public litter  
539 receptacles (or public Solid Waste receptacles) and public Targeted Recyclable  
540 Materials receptacles, which shall be provided and maintained by the Agency.  
541 Contractor shall offer the type and size of Collection Containers that Contractor  
542 provides Commercial Customers pursuant to Section 5.02.C.

543 5. Tonnage Allocation. Contractor may integrate Collection of Solid Waste,  
544 Targeted Recyclable Materials, and Organic Materials from Agency Facilities  
545 with other Collection services in the Service Area, provided that Contractor  
546 attributes estimated Tonnage Collected from Agency Facilities separately from  
547 other Customers upon the Agency's request.

548 6. No Billing for Service. Contractor shall not bill Agency for the services required  
549 by this Section 5.02.D, including Long Distance Service, Container Relocation  
550 Service, and lock/unlock service.

551 **5.03 TARGETED RECYCLABLE MATERIALS COLLECTION**

552 A. **General.** Contractor shall Collect Targeted Recyclable Materials from Customers  
553 that have Source Separated the Targeted Recyclable Materials from Solid Waste  
554 and placed these materials in the Customer's Recyclable Materials Collection  
555 Container for Collection by Contractor.

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

566 B. **Single-Family Dwellings**

567 1. General. Once per week, Contractor shall Collect Single-Stream Targeted  
568 Recyclable Materials from SFD. Contractor shall provide each SFD Customer  
569 with one (1) Cart for Single-Stream Targeted Recyclable Materials. Contractor  
570 shall provide each Customer with a sixty-four (64) gallon Cart specified in  
571 Attachment D, unless Customer requests an alternative Cart specified in  
572 Attachment D. Customers can request additional Targeted Recyclable  
573 Materials Carts from Contractor for regular weekly Collection service, and  
574 Contractor shall bill Customers at Agency-approved Charges specified in  
575 Attachment Q.

576 2. Collection Location. For SFD Recyclable Materials Cart Collection, Contractor  
577 shall comply with the same Collection provisions specified for Solid Waste Cart  
578 Collection pursuant to Sections 5.02.A.2, 5.02.A.3, and 5.02.A.4.

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

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

- 609 1. General. Multi-Family Dwelling Customers that subscribe to Solid Waste  
610 Collection service shall be entitled to Single-Stream Targeted Recyclable  
611 Materials Collection at no additional charge, and Contractor shall provide the  
612 level of service required by Multi-Family Dwelling Customers requesting  
613 Recyclable Materials Collection services. Contractor shall provide each Multi-  
614 Family Dwelling Customer with Containers for Single-Stream Targeted  
615 Recyclable Materials Collection. At a minimum, Contractor shall provide twenty  
616 (20) gallons per week of Container capacity for Single-Stream Targeted  
617 Recyclable Materials Collection for every Multi-Family Dwelling at the  
618 Premises. Contractor shall provide each Customer with Carts or Bins as  
619 specified in Attachment D, as requested by the Customer.

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

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

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

647 3. Household Battery and Cell Phone Collection

648 a. Multi-Family Residential Complexes with individual Recycling Carts  
649 for each dwelling unit. Contractor shall Collect Household Batteries  
650 and Cell Phones placed on top of the Recyclable Materials Cart in  
651 Contractor-provided or Customer-provided clear zip-close or tie-close  
652 plastic bags clearly marked "Used Batteries and Cell Phones."  
653 Customers will be notified to place all Household Batteries in a clear  
654 zip-close plastic bag; tape the contacts of button cell batteries; and  
655 wrap cell phones in paper (for protection) prior to placing in the  
656 plastic bag. While Customers will be encouraged to follow the  
657 participation parameters, Contractor shall be required to Collect the  
658 Household Batteries and Cell Phones if Customers do not follow  
659 these instructions.

660 b. Multi-Family Residential Complexes with Individual, Shared, or  
661 Centrally-stored Recycling Carts or Bins. Contractor shall provide  
662 one (1) or more centrally located Containers for the accumulation of  
663 Household Batteries and Cell Phones. The number and location of  
664 the Containers and the frequency of Collection shall be mutually  
665 agreed to between the Contractor and the Owner or manager of the  
666 complex. In the event the Owner or property manager requests that  
667 the materials be Collected on an on-call basis, Contractor shall  
668 provide that service at no additional cost.

669 4. Container Service Requirements. Container service requirements described  
670 for Multi-Family Solid Waste Collection in Sections 5.02.B.3 through 5.02.B.7  
671 are applicable for Collection of Targeted Recyclable Materials from Multi-  
672 Family Premises.

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**D. Commercial Premises**

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

Contractor shall Collect Single-Stream Targeted Recyclable Materials or other Source Separated Recyclable Materials Generated at Commercial Premises at least once per week or more frequently, up to seven (7) 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 Targeted Recyclable Materials at the designated location agreed upon by Contractor and Customer. The designated Collection location, if disputed by Customer or Contractor, shall be determined by the Agency.

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

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

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

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

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

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

**E. Agency Facilities**

1. General. Agency Facilities that subscribe to Solid Waste Collection service shall be entitled to Collection of Targeted Recyclable Materials, and Contractor shall

718 provide the level of service required by Agency Facilities requesting Targeted  
719 Recyclable Materials Collection services and shall not bill Agency for such  
720 services. The level of service Contractor shall provide includes: Single-Stream  
721 Targeted Recyclable Materials Collection or Source Separated Collection of  
722 cardboard, mixed paper, food and recyclable beverage containers, or other  
723 Targeted Recyclable Materials in a manner that best suits the needs of the  
724 Agency Facility.

725 Contractor shall Collect Single-Stream Targeted Recyclable Materials or other  
726 Source Separated Targeted Recyclable Materials Generated at Agency  
727 Premises at least once per week or more frequently, up to seven (7) times per  
728 week, as scheduled by the Agency provided that the Generator has Source  
729 Separated the Targeted Recyclable Materials from Solid Waste and placed the  
730 materials in the appropriate Contractor-provided Container. Contractor shall  
731 Collect Targeted Recyclable Materials at the designated location agreed upon  
732 by Contractor and Agency.

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

736 a. Cart service. Contractor shall allow Agency Facilities to use Carts for  
737 Targeted Recyclable Materials Collection. Contractor shall provide each  
738 Customer with a choice of one (1) or more Carts as specified in Attachment  
739 D.

740 b. Bin service. Contractor shall allow Agency Facilities to use Bins for  
741 Targeted Recyclable Materials Collection. Contractor shall provide each  
742 Agency with a choice of one (1) or more Bins for each Agency Facility.

743 c. Centralized Cart or Bin service. Contractor shall allow Agency Facilities to  
744 use Carts or Bins for Targeted Recyclable Materials Collection that are  
745 shared by the Occupants of two (2) or more adjacent Agency Facilities. In  
746 such case, Contractor shall provide one (1) or more Carts or Bins to such  
747 Premises as requested by Agency.

748 d. Drop Boxes and Compactors. Contractor shall allow Agency Facilities to  
749 use Drop Boxes or Compactors for the Collection of Targeted Recyclable  
750 Materials. Contractor shall allow Agency to purchase or lease Compactors  
751 through an outside vendor. Regular maintenance of Compactors shall be  
752 required by Agency (or outside vendor) as frequently as needed to keep the  
753 Compactors in good working order and functioning at high compaction  
754 levels.

755 3. Public Recycling Receptacles. Contractor shall Collect Recyclable Materials  
756 from public Recycling receptacles located on streets and parking lots, and from  
757 public Recycling receptacles in parks that are accessible for Curbside  
758 Collection. Contractor shall also Collect Recyclable Materials that are contained  
759 in bags or boxes and placed adjacent to public Recycling receptacles. These  
760 Collections will be made between one (1) and five (5) Days per week, as  
761 determined by Agency. If Contractor concludes upon visual inspection that the  
762 Recyclables placed in (or adjacent to) the public Recyclables receptacles have a  
763 Contamination Level greater than that which is acceptable at the MRF,

764 Contractor shall Collect the materials as Solid Waste. Contractor is responsible  
765 for notifying Agency if a public Recycling receptacle is inoperable within twenty-  
766 four (24) hours of observing or being notified of the defect. A list of public  
767 Recycling receptacles is included in Attachment B. If persistent contamination  
768 occurs in public Recycling receptacles then, at Contractor's request, appropriate  
769 Agency staff shall meet with Contractor to discuss ways to address the problem.  
770 Contractor shall not bill Agency for the services described in this paragraph.

771 **5.04 ORGANIC MATERIALS COLLECTION**

772 A. **Single-Family Dwelling.** Contractor shall Collect Source Separated Organic  
773 Materials from SFD once per week. Collection of Organic Materials, Targeted  
774 Recyclable Materials, and Solid Waste from the SFD shall occur on the same Day  
775 each week. Contractor shall provide each Customer with two (2) Carts to be used  
776 for storage and Collection of Organic Materials. Customers may request additional  
777 Organic Materials Carts from Contractor for regular weekly Collection service, and  
778 Contractor shall bill Customer at Agency-approved Charges specified in Attachment  
779 Q. The Contractor shall provide Customers with two (2) ninety-six (96) gallon Carts  
780 as specified in Attachment D, unless the Customer requests an alternative Cart  
781 size, in which case, the Contractor shall provide an alternative Cart as specified in  
782 Attachment D.

783 SFD Customers may use their own Carts for Collection of Organic Materials,  
784 provided that they are in serviceable condition, and were purchased either from  
785 Contractor or from the previous contractor (Allied Waste) under its agreement with  
786 Agency. Billing for a given month will be based on the maximum number of Carts  
787 subscribed for in that month, and will be without regard to whether the Carts are  
788 Contractor-owned or Customer-owned.

789 For SFD Organic Materials Cart Collection, Contractor shall comply with the same  
790 Collection provisions specified for Solid Waste Cart Collection pursuant to Sections  
791 5.02.A.2, 5.02.A.3, and 5.02.A.4.

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

798 B. **Multi-Family Premises.** Multi-Family Dwelling Customers shall have the option of  
799 voluntarily subscribing to Organic Materials or Plant Materials Collection services,  
800 Contractor shall bill Customers for such service at Agency-approved Rates.  
801 Contractor shall Collect Source Separated Organic Materials or Plant Materials from  
802 Multi-Family Residential Complexes that have subscribed to Organic Materials or  
803 Plant Materials Collection service as frequently as scheduled by Customer, but not  
804 less than once per week. Contractor shall provide each Customer with a choice of  
805 Carts or Bins as specified in Attachment D. Contractor shall Collect Organic  
806 Materials and Plant Materials at the location agreed upon by Contractor and  
807 Customer. The designated Collection location, if disputed by Customer or  
808 Contractor, shall be determined by the Agency.

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

812 **C. Commercial Premises.** Commercial Customers shall have the option of voluntarily  
813 subscribing to Organic Materials or Plant Materials Collection services, and  
814 Contractor shall bill Customers for such service at Agency-approved Rates.  
815 Contractor shall provide Organic Materials or Plant Materials Collection service to  
816 any and all Customers requesting service. Contractor shall Collect Organic  
817 Materials or Plant Materials from Commercial Premises that have subscribed to  
818 Organic Materials or Plant Materials Collection service as frequently as scheduled  
819 by Customer, but not less than once per week.

820 Contractor shall allow Commercial Customers to select a Collection service method  
821 that best suits the needs of its Premises. Specifically, the Contractor shall offer to  
822 Commercial Organic Materials or Plant Materials Customers the Containers and  
823 service choices that are offered for Commercial Solid Waste Collection pursuant to  
824 Section 5.02.C.

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

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

831 Contractor shall provide Organic Materials or Plant Materials Collection service to  
832 Agency Facilities requesting service. Contractor shall Collect Organic Materials or  
833 Plant Materials from Agency Facilities that have subscribed to Organic Materials or  
834 Plant Materials Collection service as frequently as scheduled by Agency, but not  
835 less than once per week.

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

840 **E. Holiday Tree Collection.** Contractor shall annually Collect Holiday Trees from  
841 Residential Premises from January 2 through January 31. Contractor shall provide  
842 this service on the regularly scheduled Organic Materials Collection Day.  
843 Contractor will be required to Collect trees or pieces of trees, which are eight feet  
844 (8') or less in length, void of tinsel, lights, ornaments, other decorations, and metal  
845 or plastic stands (although flocked trees are acceptable), and are placed adjacent to  
846 an Organic Materials Cart. Contractor shall make accommodations and provide  
847 Collection service for Customers who are unable to cut trees into lengths of eight  
848 feet (8') or less at no additional cost to the Customer and shall not bill Agency for  
849 such services. After January 31, Contractor will be required to Collect trees placed  
850 inside an Organic Materials Cart. These Collection parameters apply to both Special  
851 Handling and Backyard Collection Service.

852 Contractor shall deliver a Bin or Drop Box for Holiday Tree Collection to Multi-  
853 Family Residential Complexes upon request of the Owner or property manager.  
854 Contractor shall provide this Collection service annually commencing January 2 and

855 shall continue to provide this service as long as requests are submitted to  
856 Contractor, at no additional cost to Customer(s) and shall not bill Agency for such  
857 services. The location for delivery of the Bin or Drop Box shall be agreed upon by  
858 the Owner or property manager, and Contractor shall remove the Bin or Drop Box,  
859 or Collect the trees loose, on the date requested by the Owner or property manager.  
860 If the use of a Bin or Drop Box is not feasible, Contractor shall Collect the  
861 uncontainerized Holiday Trees from one (1) or more designated consolidation  
862 locations (e.g., adjacent to a Solid Waste enclosure) at each Multi-Family  
863 Residential Complex as determined by the Owner or property manager. Contractor  
864 shall be required to Collect all trees or pieces of trees, which are eight feet (8') or  
865 less in length, void of tinsel, lights, ornaments, other decorations, and metal or  
866 plastic stands (although flocked trees are acceptable) and are placed in the Bin or  
867 Drop Box or at the agreed upon location. Contractor shall make accommodations  
868 and provide Collection service for Customers who are unable to cut trees into  
869 lengths of eight feet (8') or less at no additional cost to the Customer and shall not  
870 bill Agency for such services.

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

877 **5.05 RESIDENTIAL ON-CALL BULKY ITEM COLLECTION SERVICE**

878 A. **SFD General.** Contractor shall provide two (2) separate On-Call Curbside Bulky  
879 Item Collection Service events to each Single-Family Dwelling Residential Premise  
880 annually upon Owner's or Occupant's request at no cost to the Customer. Customer  
881 may request additional Bulky Item Collection service events; and, Contractor shall  
882 bill for the additional service at Agency-approved Charges in Attachment Q.  
883 Contractor shall schedule the On-Call Bulky Item Collection Service events on the  
884 regularly scheduled Solid Waste Collection Day for Single-Family Dwellings, no  
885 more than ten (10) Business Days after the Owner's or Occupant's request subject  
886 to the conditions specified in Section 5.05.H.

887 B. **MFD General.** Contractor shall provide two (2) separate On-Call Curbside Bulky  
888 Item Collection Service events to each Multi-Family Residential Complex annually  
889 upon Owner's or property manager's request at no cost to the Owner or property  
890 manager. Owner or property manager may request additional Bulky Item Collection  
891 service events; and, Contractor shall bill for the additional service at Agency-  
892 approved Charges specified in Attachment Q. Contractor shall schedule On-Call  
893 Curbside Bulky Item Collection Service events no more than ten (10) Business  
894 Days after the Multi-Family Residential Complex Owner's or property manager's  
895 request subject to the conditions specified in Section 5.05.H. Contractor will be  
896 required to accommodate the Multi-Family Residential Complex's on-site  
897 constraints to ensure convenient and safe collection events in an effort to maximize  
898 diversion and minimize environmental impacts.

899 Contractor shall assist Owners and property managers of Multi-Family Residential  
900 Complexes with scheduling events to effectively and efficiently provide the volume  
901 of Collection service to which the complex is entitled annually based on the number

902 of Residential Premises at the complex. The provision of On-Call Collection of Bulky  
903 Items is not intended to encourage or permit Multi-Family Residential Premises to  
904 reduce the level of regularly scheduled Solid Waste Collection service that has been  
905 previously provided to the complex. If Contractor, in its reasonable business  
906 judgment, concludes that an Owner or property manager of a Multi-Family  
907 Residential Complex is requesting On-Call Bulky Item Collection in order to reduce  
908 its historical level of regular Solid Waste Collection service, Contractor may present  
909 a factual report to Agency in support of an application to decline further requests for  
910 On-Call Bulky Item Collection events at that complex for the remainder of the  
911 calendar year. Within thirty (30) Days, Agency will review the application and report  
912 and determine whether Contractor may decline all subsequent requests from that  
913 complex for that calendar year or may limit the number of On-Call Bulky Item  
914 Collection events it must provide. Until Agency makes, and notifies Contractor of,  
915 its determination, Contractor is not required to provide additional On-Call Bulky Item  
916 Collection service events to the complex in question.

917 C. **Scheduling of Events.** Contractor shall allow the scheduling of On-Call Bulky Item  
918 Collection Service events from February 1 through December 31 of each Rate Year.  
919 Contractor may provide additional On-Call Bulky Item Collection Service events for  
920 a Customer beyond two (2) per Rate Year, and shall bill Customers for additional  
921 service at Agency-approved Charges specified in Attachment Q. Contractor is  
922 required to notify Customer if they have already received the annually allocated two  
923 (2) Collection events within one (1) Business Day of Customer request. If Contractor  
924 fails to notify Customer that they have received the annually allocated two (2)  
925 Collection events, Contractor shall provide the service and is not entitled to  
926 additional Contractor's Compensation from Customer or Agency for a third or  
927 subsequent On-Call Bulky Item Collection Service event.

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

- 930 1. Solid Waste, Targeted Recyclable Materials, Organic Materials – Up to two (2)  
931 cubic yards of materials per event, provided that such materials, except as set  
932 forth below have been bagged, boxed, bundled, or containerized by the  
933 Customer.
- 934 2. The Customer may place up to a total of three (3) large items per event from  
935 the categories below:
  - 936 a. Major Appliances – (e.g., washing machine, clothes dryer, refrigerator,  
937 freezer).
  - 938 b. Bulky Items – (e.g., reusable furniture, mattresses, four tires).
  - 939 c. E-Scrap – (e.g., a computer, computer monitor, or television).

940 Contractor shall reject: liquids or sludge; dirt, rock, concrete or asphalt; materials  
941 which exceed five (5) feet in length; commercial-sized refrigerators or freezers;  
942 Construction and Demolition Debris; Hazardous Waste; or Infectious Waste.  
943 Contractor may reject any individual item that weighs more than two-hundred (200)  
944 pounds (excluding Major Appliances) unless Customer has paid, or has agreed in  
945 advance to pay, an additional fee for service at Agency-approved Charges specified  
946 in Attachment Q. Contractor may reject un-containerized Discarded Materials with

947 the exception of Major Appliances, Bulky Items, E-Scrap, and large pieces of  
948 Organic Material such as tree limbs and dimensional lumber.

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

956 F. **Handling Major Appliances.** Major Appliances, Universal Waste, and E-Scrap  
957 shall be reused, Recycled, or Disposed by Contractor in accordance with  
958 requirements of Applicable Law. Any changes to such regulations made after  
959 January 1, 2011 shall be addressed as though they are a Change in Law in  
960 accordance with Section 11.05.

961 G. **Collection and Processing Methods.** All materials that can be handled by the  
962 SFD Single-Stream Recycling, Organic Materials, or Solid Waste route Collection  
963 vehicle would be assigned to one of these vehicles for Collection, with the goal of  
964 maximizing diversion. All Collection of Bulky Items will be assigned for Collection by  
965 a Collection vehicle, and the driver will segregate items Collected according to their  
966 suitability for: (1) reuse or Recycling, and (2) Disposal, prior to their transport to  
967 Shoreway Recycling and Disposal Center for processing. Any remaining items will  
968 be Collected by a dispatched Collection vehicle. Contractor shall utilize these  
969 procedures and vehicles in a manner that provides the maximum diversion of the  
970 material Collected from the On-Call Bulky Item Collection Service event.

971 H. **Maximum Number of Daily Events.** Contractor shall schedule up to a maximum  
972 of one hundred fifty (150) On-Call Curbside Bulky Item Collection Service events  
973 per service day for the SBWMA Service Area ("daily limit"). The maximum number  
974 of daily events includes On-Call Bulky Item Collection Service events provided to  
975 both Single-Family and Multi-Family Residential Complexes, and those events  
976 provided at no charge and events paid for by the Customer, Owner, or property  
977 manager. Contractor shall schedule On-Call Curbside Bulky Item Collection Service  
978 events no more than ten (10) Business Days after the Owner's or Occupant's  
979 request up to the maximum number of daily events. Upon reaching the maximum  
980 number of daily events, requested On-Call Curbside Bulky Item Collection Service  
981 event shall be scheduled on the next available regularly scheduled Solid Waste  
982 Collection Day.

983 SBWMA may adopt an allocation system for On-Call Bulky Item Collection Service  
984 events, in order to allocate the "daily limit" for such events among Member  
985 Agencies. If adopted, Contractor shall comply with the allocation system.

986 The Agency agrees not to assess Liquidated Damages if Contractor does not meet  
987 the ten (10) Business Day requirement if the delay has resulted from (i) the volume  
988 of On-Call Bulky Item Collection events being in excess of the "daily limit" for the  
989 SBWMA Service Area or Agency, or (ii) the Customer's request to schedule the  
990 event on a date more than ten (10) Business Days in the future.

991 Contractor shall notify the SBWMA and Agency when the daily average number of  
992 events reaches one hundred and forty (140) events, where the daily average is

993 calculated on a weekly basis. When this threshold occurs, Parties shall meet and  
994 confer to agree on a strategy for handling the volume of Bulky Item Collection  
995 Service events.

996 **5.06 AGENCY FACILITY ON-CALL BULKY ITEM COLLECTION SERVICE**

997 Contractor shall provide each Agency Facility with one annual On-Call Bulky Item  
998 Collection service event and shall not bill Agency for such services. Agency may request  
999 additional Bulky Item Collection service events; and, Contractor shall bill for the  
1000 additional service at Agency-approved Charges specified in Attachment Q. The On-Call  
1001 Bulky Item Collection Service provisions set forth in Section 5.05 shall apply to the On-  
1002 Call Bulky Item Collection Service provided to Agency Facilities with the following  
1003 exceptions for frequency and service level/acceptable materials.

1004 **A. Frequency of Service**

1005 Contractor shall provide this service to each Agency Facility annually.

1006 **B. Service Level/Accepted Materials**

1007 Agency Facilities may place for Collection, Solid Waste, Recyclable Materials,  
1008 and/or Organic Materials with the following allowances:

- 1009 1. Solid Waste – Contractor shall provide a six (6) cubic yard or smaller Bin upon  
1010 request.
- 1011 2. Recyclable Materials, Organic Materials – Up to two (2) cubic yards of  
1012 materials per event, provided that such materials, except as set forth below  
1013 have been bagged, boxed, bundled, or containerized by the Customer.
- 1014 3. The Agency may place up to a total of three (3) large items per event from the  
1015 categories below:
- 1016 a. Major Appliances – (e.g., washing machine, clothes dryer, refrigerator,  
1017 freezer).
- 1018 b. Bulky Items – (e.g., reusable furniture, mattresses, four tires).
- 1019 c. E-Scrap – (e.g., a computer, computer monitor, or television).

1020 Contractor shall reject: liquids or sludge; dirt, rock, concrete, or asphalt; materials  
1021 which exceed five (5) feet in length; commercial-sized refrigerators or freezers;  
1022 Construction and Demolition Debris; Hazardous Waste; or, Infectious Waste.  
1023 Contractor may reject any individual item that weighs more than two-hundred (200)  
1024 pounds (excluding Major Appliances) unless Customer has paid, or has agreed in  
1025 advance to pay an additional fee for service at Agency-approved Charges specified  
1026 in Attachment Q, and Contractor may reject un-containerized Discarded Materials  
1027 with the exception of Major Appliances, Bulky Items, E-Scrap, and large pieces of  
1028 Organic Material such as tree limbs and dimensional lumber.

1029 **5.07 CONFIDENTIAL DOCUMENT DESTRUCTION SERVICE EVENT**

1030 The Agency is permitted, at no cost, one (1) confidential document destruction service  
1031 event per year. The SBWMA will take the lead in scheduling it. The SBWMA will hire  
1032 and pay for a third party document destruction service provider to service the event. The  
1033 document destruction service provider shall provide adequate equipment and staffing  
1034 necessary for the event and shall ensure full destruction of confidential documents and

1035 other materials delivered by Customers to the site of the event. Contractor shall  
1036 reimburse the SBWMA for the cost of one confidential document destruction event per  
1037 Member Agency per year, up to maximum of one thousand two hundred dollars  
1038 (\$1,200.00) per event, but otherwise shall have no involvement with the event. The cost  
1039 reimbursement amount shall be adjusted annually commencing with Rate Year Twelve  
1040 (2022) by one hundred percent (100%) of the Annual Index Change in CPI-U, as defined  
1041 in Attachment K. The Agency has the option to request the Contractor to schedule  
1042 additional confidential document destruction events, at the charge set forth in  
1043 Attachment Q. If Town elects not to schedule a confidential destruction even in a given  
1044 year, the then-applicable annual reimbursement amount will be refunded to Town.

1045 **5.08 COLLECTION FOR LARGE VENUES AND COMMUNITY EVENTS**

1046 Contractor shall provide Collection services, upon request, to any Venue and  
1047 Community Event within Service Area. Specifically, Contractor shall provide, at a  
1048 minimum, Solid Waste and Targeted Recyclable Materials Collection services, and shall  
1049 also provide Organic Materials Collection services if one (1) cubic yard or more of  
1050 Organic Material is generated per day at the Venue or Community Event. Contractor  
1051 shall provide Collection as frequently as requested by the Agency or the Community  
1052 Event organizer. Contractor shall provide an adequate number and type of Collection  
1053 Container(s) for the Venue or Community Event and shall coordinate its Collection  
1054 services with Agency or Community Event organizer. Containers shall be appropriately  
1055 labeled to collect Solid Waste, Recyclable Materials, or Organic Material, per the  
1056 requirements specified by the SBWMA. Upon request of the Agency or the Community  
1057 Event organizer, Contractor shall provide an adequate number of its employee(s) for  
1058 each Community Event to ensure all Solid Waste, Recyclable Materials, and Organic  
1059 Materials Collection locations (i.e., Containers that are placed on-site for use by event  
1060 patrons) are kept clean and uncontaminated; to empty or exchange Containers as the  
1061 need arises; and to respond to overages or spills.

1062 Within ten (10) Business Days of Contractor receiving a request to supply a Community  
1063 Event with Solid Waste, Targeted Recyclable Materials, and Organic Materials  
1064 Collection services, the Contractor will either meet with or schedule a meeting with the  
1065 Community Event organizer to discuss the Community Event's parameters, including  
1066 location, number of people attending, type of Community Event, type of food being  
1067 provided, and other related issues. Once parameters of the Community Event are  
1068 determined, proper Containers will be provided by Contractor, with emphasis on  
1069 Recycling and diversion of the materials generated.

1070 Contractor shall also supply and staff an information booth at each Venue and  
1071 Community Event, upon request from Agency. In addition, Contractor shall prepare and  
1072 distribute information to the public at Venues and Community Events describing the  
1073 Collection options available at the Venue or Community Event and promoting Recycling  
1074 programs in the Agency, upon request from Agency. All information prepared for  
1075 distribution to Venues and Community Events shall be approved by Agency prior to  
1076 distribution. The Contractor shall report the Tonnage of material Collected at each  
1077 Venue and Community Event to the Agency and, upon Agency request, to the  
1078 Community Event organizer.

1079 For Venues and Community Events, which are required to comply with the Large  
1080 Venues and Events Recycling Law, codified at Public Resources Code Section 42648 et

1081 seq., Contractor shall assist the Venue or Community Event organizer in preparing a  
1082 Recycling plan and reporting all information required by those provisions of the law.  
1083 Contractor shall be required to provide, at a minimum, the following information for each  
1084 Venue or Community Event:

- 1085 1. List of qualifying large Venues and Community Events in Service Area.
- 1086 2. Physical and mailing address.
- 1087 3. Contact name, address, phone number, and email address.
- 1088 4. Type of Venue or Community Event (e.g., museum, concert, sporting event).
- 1089 5. Status of the Venue or Community Event written waste diversion/Recycling plan.
- 1090 6. A description of the extent in which the plan has been implemented.
- 1091 7. Service level provided (i.e., Solid Waste, Recyclable Materials, and Organic  
1092 Materials).
- 1093 8. Tons disposed and diverted, by material type.
- 1094 9. Description of the scope and types of diversion programs provided.
- 1095 10. Other information required by law.

1096 Contractor shall provide the Collection services required by this Section for the Agency-  
1097 sponsored Venues and Community Events listed on Attachment C, at no charge to the  
1098 Agency or the Community Event organizer. A preliminary list of Agency-sponsored  
1099 Venues and Community Events is provided in Attachment C. Agency may add additional  
1100 events to those listed in Attachment C or modify this list if events change during the  
1101 Term and shall make such modifications as part of the Three-Year Public Education  
1102 Plan (in accordance with Section 7.03.B). If the number of events listed in Attachment C  
1103 increases during the Term above the number on the preliminary list on Attachment C,  
1104 Contractor shall be entitled to receive compensation for the number of additional events  
1105 provided service each Rate Year based on the Charges for additional events specified in  
1106 Attachment Q. For other Venues and Community Events, Contractor may bill the Venue  
1107 or Community Event organizer at the Agency-approved Charges for comparable On-Call  
1108 Commercial Solid Waste and Organic Materials Collection Service. Recyclable  
1109 Materials Collection service shall be provided at no additional cost to Community Events  
1110 that subscribe to Solid Waste or Organic Materials Collection service.

#### 1111 **5.09 ABANDONED WASTE CLEANUP COLLECTION SERVICE**

1112 A. **General.** Contractor shall provide abandoned waste cleanup Collection service to  
1113 Agency as provided herein. Contractor shall schedule up to a maximum of thirty  
1114 (30) abandoned waste Collection events per service day for the SBWMA Service  
1115 Area. Contractor shall make every effort to collect abandoned waste within one (1)  
1116 Business Day of being notified by Agency, SBWMA, Customer, or Contractor's  
1117 vehicle drivers and route supervisors of the occurrence of abandoned waste or  
1118 illegal dumping. Upon reaching the maximum thirty (30) events, Collection of  
1119 abandoned waste event shall be scheduled and performed by Contractor on the  
1120 next available service day, and Contractor shall inform Agency that the thirty (30)  
1121 events per day maximum has been met. This service shall require Contractor to  
1122 Collect abandoned or illegally dumped Solid Waste, Recyclable Materials, and

1123 Organic Materials. This service does not include Collection of litter or litter  
1124 abatement activities.

1125 B. **Materials to be Collected.** Contractor shall only be required to Collect abandoned  
1126 waste materials of the types that Contractor is required to Collect under the On-Call  
1127 Bulky Item Collection program, as specified in Section 5.05.D. Abandoned waste  
1128 shall only be Collected by Contractor in public right of ways, and Contractor shall  
1129 not be responsible for any Collection of abandoned waste materials that are on  
1130 private properties or easements where ownership of properties are in question or  
1131 shared.

1132 C. **Collection Protocols.** For abandoned Recyclable Materials, Organic Materials,  
1133 and Solid Waste, Contractor shall dispatch its regular route drivers to provide  
1134 Collection service. For Bulky Items, Contractor shall dispatch a Collection vehicle  
1135 capable of Collecting the Bulky Items to provide the Collection service. For other  
1136 items including, but not limited to, Hazardous Waste, Household Hazardous Waste,  
1137 and Sharps, Contractor shall promptly notify Agency.

1138 D. **Processing.** All abandoned or illegally dumped materials Collected by Contractor  
1139 shall be transported to Shoreway Recycling and Disposal Center for processing,  
1140 with the exception of scrap metal, and all related diversion statistics shall be  
1141 included in the appropriate reports to the Agency for all materials Collected.  
1142 Contractor shall be allowed to transport scrap metal directly to a licensed scrap  
1143 metal recycler. Contractor shall, to the greatest extent possible, deliver all reusable  
1144 non-metal abandoned waste items to organizations such as Society of St. Vincent  
1145 de Paul and Goodwill Industries, or other organizations as directed by Agency.

1146 E. **Agency-Specific Reporting.** The Agency may request Contractor to interface with  
1147 an Agency-specific web-based application for reporting completion of abandoned  
1148 waste collections. In such case, Agency shall compensate Contractor on an annual  
1149 basis for this additional effort at a rate to be mutually agreed by Agency and  
1150 Contractor.

#### 1151 **5.10 COATS FOR KIDS PROGRAM**

1152 If requested by Agency, Contractor shall implement a “Coats for Kids Program” annually  
1153 at no additional cost to Customers and shall not bill Agency for such services. The  
1154 program shall consist of Contractor’s drivers Collecting coats from Customers on their  
1155 route over a one (1) to two (2) week period during the fall, as well as from Collection  
1156 Containers placed by Contractor in various public locations specified by Agency, such as  
1157 libraries, City Hall, and businesses. The coats collected through this program will be  
1158 sorted and laundered by Contractor, and arrangements made by Contractor for  
1159 distribution to a local non-profit organization, such as the Family Services Agency. Prior  
1160 to the implementation of the program, Contractor shall present a detailed program plan  
1161 to Agency for review and approval. All related diversion statistics shall be included in the  
1162 appropriate reports to the Agency. Annually, no later than sixty (60) Days prior to the  
1163 start of the program, Contractor shall notice Agency regarding the program start and end  
1164 date.

1166 The general scope of outreach that shall be conducted in order to properly promote the  
1167 program shall include, but not be limited to promotion on websites, and distribution of  
1168 media such as flyers and press releases.

1169 **5.11 COMPOST GIVE-AWAY**

1170 Contractor shall coordinate with the Agency to host “Bring Your Own Bucket” (BYOB)  
1171 giveaway of compost to residents. Contractor shall take the lead in organizing the  
1172 delivery of compost by Operator to either Shoreway Environmental Center (if Contractor  
1173 is delivering compost in a Drop Box) or directly to the event (by Operator). The BYOB  
1174 compost giveaway shall provide residents with free compost to enrich their gardens  
1175 while also educating residents on the benefits of home composting. If included in the  
1176 Three-Year Public Education Plan as a requirement, Contractor representatives shall be  
1177 on hand to distribute Recycling guides and other educational material promoting waste  
1178 reduction and Recycling. Contractor is required to deliver to Agency thirty (30) cubic  
1179 yards of compost annually in one (1) or two (2) deliveries for the BYOB events and/or for  
1180 use at Agency facilities and shall not bill Agency for such services. Agency shall  
1181 schedule events as far in advance as possible. Contractor can only schedule up to four  
1182 (4) events in any weekend and lead-time is needed to ensure adequate promotion of the  
1183 event. The Agency will take the lead promoting the BYOB events. If Agency requests  
1184 delivery of more than thirty (30) cubic yards of compost annually, Contractor shall  
1185 provide the delivery and bill Agency the Charge specified in Attachment Q or Contractor  
1186 shall be entitled to an increase in Contractor’s Compensation for the Rate Year that the  
1187 compost is delivered to Agency based on the Charge specified in Attachment Q.

1188 **5.12 RESERVED**

1189 **5.13 COMMUNITY DROP-OFF EVENTS**

1190 Upon request by Agency, Contractor shall hold drop-off events at a location selected by  
1191 the Agency to allow Residential Customers to drop off acceptable materials. Acceptable  
1192 materials, which shall be determined by the Agency, may include one or more of the  
1193 following: E-Scrap, Universal Waste, Recyclable Materials, Organic Materials, and  
1194 Solid Waste.

1195 A. General Requirements. Contractor shall promote, manage, staff, and operate  
1196 drop-off event(s) for Residential Customers scheduled for one (1) weekend Day  
1197 (i.e., Saturday or Sunday) or two (2) consecutive weekend Days upon request from  
1198 Agency.

1199 The Agency shall approve the date of the drop-off event and all advertisements or  
1200 public announcements related to such event. Contractor shall promote the event by  
1201 preparing Billing inserts to be included in each Customer’s Bill and by advertising in  
1202 a minimum of two local area newspapers as approved by the Agency.

1203 Contractor shall manage, staff, and supervise the event. Contractor shall provide  
1204 traffic control and signage; inspect materials delivered to the event; separate  
1205 materials; document each material type and quantity; transport Collected materials  
1206 to reuse, processing, or Disposal locations; and clean up the location at the end of  
1207 the event.

1208 Contractor shall not charge Customers delivering materials to the event.

1209 B. Accepted Materials. Customers may deliver and Contractor shall accept Major  
1210 Appliances, Bulky Items, Source Separated Targeted Recyclable Materials, Source  
1211 Separated Organic Materials, tires (i.e., four (4) per Customer, removed from rims,  
1212 no commercial tires), clean unpainted wood, Construction and Demolition Debris,  
1213 Universal Waste, E-Scrap, and Solid Waste. Contractor shall be allowed to reject:

- 1214 liquids or sludge; cement; dirt; asphalt; concrete; Hazardous Waste; or Infectious  
1215 Waste. Contractor shall not establish a limit on the volume or weight of materials  
1216 that a Customer may bring for Collection.
- 1217 C. Participants. Contractor shall verify Residents live in the Agency by reviewing a  
1218 driver's license or utility bill.
- 1219 D. Event Hours. Contractor shall accept materials from Residential Customers over  
1220 one (1) weekend Day (i.e., Saturday or Sunday) or two (2) consecutive weekend  
1221 Days from 8:00 a.m. to 5:00 p.m.
- 1222 E. Recycling and Reuse. Contractor shall Collect materials in a manner that  
1223 maximizes reuse, Recycling, composting, and diversion of materials from Disposal.  
1224 Contractor shall make reasonable efforts to ensure that diversion goals are met or  
1225 exceeded. Contractor shall separate Recyclable Materials and Organic Materials  
1226 and transport such materials to the Designated Transfer and Processing Facility or  
1227 an alternative processing site with advance authorization from Agency. Contractor  
1228 shall coordinate with re-use vendor(s) to have a representative present at the drop-  
1229 off event to accept donated clothes or other reusable items. Disposal of materials  
1230 shall be the Contractor's last option.
- 1231 F. Handling Major Appliances. Major Appliances shall be reused, Recycled, or  
1232 Disposed by Contractor in accordance with requirements of Applicable Law. Any  
1233 changes to such regulations made after January 1, 2011 shall be addressed as  
1234 though they are a Change in Law in accordance with Section 11.05.
- 1235 G. Scheduling Community Drop-Off Events. Upon request from Agency, Contractor  
1236 shall promote, manage, staff, and operate community drop-off events described in  
1237 this Section. If Agency exercises such right, it shall provide written notice to  
1238 Contractor at least three (3) months before the first day of the requested drop-off  
1239 event. Agency shall compensate Contractor for such service based on Contractor's  
1240 Charge specified in Attachment Q.
- 1241 H. Confidential Document Destruction Service. If requested by Agency, Contractor  
1242 shall provide confidential document destruction service at the drop off event(s).  
1243 Contractor shall provide adequate equipment and staffing necessary for the event  
1244 and shall ensure full destruction of confidential documents and other materials  
1245 delivered by Customers at the site of the event. This service shall be provided by  
1246 Contractor at no additional cost to Customers and shall not bill Agency for such  
1247 services.

1248 **5.14 MIXED USE BUILDINGS**

1249 The parties acknowledge that, as of the date this Agreement is entered into, there are no  
1250 Mixed Use Buildings within Agency. In the event there are Mixed Use Buildings within  
1251 Agency, the provisions relating to Mixed Use Buildings set forth in Attachment T and  
1252 elsewhere in this Agreement shall apply.

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## ARTICLE 6 TRANSPORTATION

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1257   **6.01   TRANSPORTATION OF COLLECTED MATERIALS**

1258           Contractor shall transport and deliver all Solid Waste, Source Separated Targeted  
1259           Recyclable Materials, Used Motor Oil, Used Motor Oil Filters, Household Batteries, Cell  
1260           Phones, Bulky Items, Abandoned Waste, and Organic Materials Collected under this  
1261           Agreement to the Designated Transfer and Processing Facility. Once Collected  
1262           materials are deposited by Contractor at the Designated Transfer and Processing  
1263           Facility, such materials shall become the property of SBWMA or Operator. The  
1264           Contractor is not responsible for providing processing services except as provided in  
1265           Section 6.04.

1266   **6.02   LIMITATIONS ON CONTAMINATION**

1267           A.   **General.** The Agency is required by the Act and other State legislation/regulations  
1268           (such as, but not limited to, AB 341, AB 1594, AB 1826, SB 1061, and SB 1383)  
1269           and its implementing regulations to divert a substantial portion of Solid Waste  
1270           generated by residents, businesses, and institutions within its Service Area from  
1271           Disposal at a landfill. In order to accomplish this, the Agency, through the SBWMA,  
1272           has made a major investment in recycling equipment and facilities at Shoreway  
1273           Recycling and Disposal Center. In order for that equipment to operate efficiently,  
1274           the amount of Contamination in loads of Recyclable Materials, Organic Materials,  
1275           and Plant Materials delivered to Shoreway Recycling and Disposal Center must be  
1276           limited to specific levels. Moreover, higher levels of Contamination can make  
1277           processed Recyclable Materials unmarketable or substantially reduce the price that  
1278           purchasers are willing to pay. The cost for sorting and processing at the Shoreway  
1279           Recycling and Disposal Center for the Agency is directly affected by the amount of  
1280           revenue generated by sales of Recyclable Materials processed by its Operator.  
1281           Therefore, for both environmental and financial reasons, it is important that  
1282           Contractor place a high priority on ensuring that Contamination in loads of  
1283           Recyclable Materials, Plant Materials, and Organic Materials delivered to Shoreway  
1284           Recycling and Disposal Center is minimized. Contractor shall work collaboratively  
1285           with Agency and SBWMA to accomplish this and will implement the specific  
1286           measures described in this Section and Section 6.03.  
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1288           B.   **Contamination Levels.** The maximum Contamination Levels for each category of  
1289           Recyclable Materials, Plant Materials, and Organic Materials are specified in Table  
1290           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%

1291 If two (2) or more loads from the same route are brought to Shoreway Recycling  
 1292 and Disposal Center in a given month with Contamination Levels greater than those  
 1293 specified in Table 1, Contractor shall visually inspect materials at the point of  
 1294 Collection on that route to identify the source of the Contamination. If the source  
 1295 can be identified, Contractor shall follow up with the Customer(s) that need further  
 1296 assistance to reduce Contamination and to resolve the Contamination issue.

1297 **C. Inspecting for Excessive Contamination in Single Loads**

1298 The Operator will inspect loads of materials delivered to Shoreway Recycling and  
 1299 Disposal Center. The Operator may set aside for sampling a load of material that  
 1300 appears to exceed the Contamination Levels in Table 1.

1301 When setting aside a load for sampling, the Operator will document the truck  
 1302 number, the date and time of delivery, and will take a photograph of the load. The  
 1303 methodology for sampling of single loads is set forth in Attachment E.

1304 If an entire load is sorted to determine Contamination, as contemplated by  
 1305 subsections D and E below, then Contractor or its representative shall have the  
 1306 right to be present at, observe, and photograph and video all aspects of the sort.

1307 **D. Supplemental Processing Fee for Excessive Contamination in Salvageable**  
 1308 **Single Loads**

1309 If a load of materials is determined based on (1) sorting of the entire load, or (2)  
 1310 sample testing pursuant to Section 6.02.C to contain Contamination in excess of the  
 1311 levels specified in Table 1, but is determined by the SBWMA to be salvageable,  
 1312 Contractor shall be required to pay SBWMA a supplemental processing fee of  
 1313 \$25.00 per Ton for the load.

1314 The supplemental processing fees shall be adjusted annually by the Annual Index  
 1315 Change in CPI-U in the same manner described in Attachment K.

1316 **E. Payment of Transfer, Transportation, and Disposal of Unsalvageable Single**  
 1317 **Loads**

1318 If a load of materials is determined based on (1) sorting of the entire load, or (2)  
 1319 sample testing pursuant to Section 6.02.C to contain Contamination in excess of  
 1320 the levels specified in Table 1, and is determined by SBWMA to be  
 1321 unsalvageable, Contractor shall reimburse SBWMA for the cost of transfer,  
 1322 transportation, and Disposal of the load, which shall be calculated as the weight  
 1323 of the load multiplied by the then-current per-Ton fee for transfer, transport, and  
 1324 Disposal pursuant to the agreement between the SBWMA and Operator.

1325 **6.03 CONTRACTOR METHODS OF CONTROLLING CONTAMINATION**

1326 A. **General.** Contractor shall assist in controlling Contamination Levels by helping to  
1327 educate Customers on acceptable and non-acceptable materials, by monitoring the  
1328 contents of Collection Containers and by refusing to Collect Containers of Targeted  
1329 Recyclable Materials, Plant Materials, and Organic Materials that appear to exceed  
1330 the maximum Contamination Levels in Section 6.02 Table 1, all as and to the extent  
1331 set forth in this Section 6.03.

1332 Drivers that dismount from Collection vehicles in order to empty Containers shall lift  
1333 the Container lid and observe the contents. If Contamination appears to be present  
1334 in excess of the applicable maximum Contamination Level, the driver will not empty  
1335 the Container, but will instead affix a “non-collection notice.” The non-collection  
1336 notice shall (i) inform the Customer of the reason(s) for non-collection, (ii) include  
1337 the date and time the notice was left, and (iii) describe the premium Charge to  
1338 Customer for Contractor to return and Collect the Container after Customer  
1339 removes the Contamination, if secondary pick up is requested. The driver shall  
1340 document the non-collection event and a customer service representative shall  
1341 update the Customer’s computerized account record to note the event. Upon  
1342 request from Customer, Contractor shall Collect Containers that received non-  
1343 collection notices within one (1) Business Day of Customer’s request if the request  
1344 is made at least two (2) Business Days prior to the regularly scheduled Collection  
1345 Day. Contractor shall bill Customer for the extra Collection service event (“extra  
1346 pick-up”) at Agency-approved Charges specified in Attachment Q only if Contractor  
1347 notifies Customer of the premium Charge for this service at the time the request is  
1348 made by Customer.

1349 Drivers providing automated Collection service shall observe, via the hopper video  
1350 camera and monitor system, the contents of the Containers as it is being emptied  
1351 into the vehicle. If the driver observes Contamination in excess of the applicable  
1352 maximum Contamination Level, the driver shall affix a “courtesy notice” to the  
1353 emptied Container. The courtesy notice shall (i) inform the Customer of the  
1354 observed presence of unacceptable levels of Contamination, (ii) include the date  
1355 and time the notice was left, (iii) describe the premium charge to Customer for  
1356 Contractor to return and Collect Contaminated Containers after Customer removes  
1357 the Contamination. The next day on which that Customer is to receive service, the  
1358 driver shall dismount the Collection vehicle, lift the lid of the Container, and visually  
1359 inspect the contents. If the driver determines that the Container again contains  
1360 excess Contamination, the Container shall not be Collected. Instead, the driver will  
1361 record the non-collection event in the on-board computer system and shall affix a  
1362 non-collection notice to the Container.

1363 If a driver observes Hazardous Materials in an uncollected Container, the driver  
1364 shall record that observation in the on-board computer system and also inform the  
1365 route supervisor. The route supervisor shall investigate and initiate applicable  
1366 action within one (1) Business Day.

1367 Whenever a Container at a Commercial or a Multi-Family Dwelling Complex  
1368 Customer is not Collected, Contractor shall contact the Customer on the scheduled  
1369 Collection Day by telephone to explain why the Container was not Collected.  
1370 Whenever a Container is not Collected because of excess Contamination, a  
1371 customer service representative shall contact the Customer to discuss, and

1372 encourage the Customer to adopt, proper materials-preparation and separation  
1373 procedures.

1374 B. **Periodic Route Audits.** Contractor shall conduct a route audit of any route from  
1375 which two (2) or more loads are found to exceed the applicable maximum  
1376 Contamination Levels set forth in Section 6.02 Table 1 during any thirty (30) day  
1377 period, as well as any other route whose loads consistently exceed the maximum  
1378 Contamination Levels.

1379 When a route is identified as requiring a route audit, Contractor will provide a route  
1380 auditor to precede the Collection vehicle and physically examine the contents of  
1381 each Container or Cart prior to emptying. The route auditor shall affix non-collection  
1382 notices to at least ninety percent (90%) of all Containers that contain Contamination  
1383 in excess of applicable maximum Contamination Levels.

1384 Contractor shall submit a monthly route audit report within five (5) Business Days  
1385 after the end of each route audit that has been conducted during the previous  
1386 month. The report shall describe in detail Contractor's conduct of the audit, as well  
1387 as the public education and outreach activities that it employed to encourage and  
1388 facilitate changes in Customer behavior that will reduce Customers discarding  
1389 Contamination in Containers designated for Recyclable Materials or Organic  
1390 Materials.

1391 The audit of a route shall continue for a period of four (4) consecutive weeks after  
1392 the route has been identified as requiring an audit under the first paragraph of this  
1393 Section 6.03.B.

#### 1394 **6.04 PROCESSING OF OTHER MATERIALS**

1395 Upon request by Agency, and with the prior approval of SBWMA, the Contractor shall be  
1396 responsible for, or shall arrange for, processing, Recycling, and/or reuse of Bulky Items,  
1397 Major Appliances, and Specialty Recyclable or Reusable Materials (excluding  
1398 Construction and Demolition Debris) Collected pursuant to this Agreement. If Agency  
1399 determines a need for processing of other materials, changes can be made as described  
1400 in Section 15.12.

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**ARTICLE 7  
OTHER SERVICES**

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1404 **7.01 CUSTOMER BILLING**

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

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1. Frequency. Contractor shall Bill Single-Family Customers quarterly in amounts equal to the Agency-approved Rates and Charges for service for a three (3) month period (i.e., using a quarterly format), unless the Agency requests a more frequent Billing interval in which case the Contractor shall be entitled to a reasonable adjustment in its compensation related to the additional costs for the Agency-directed change in Billing frequency. Contractor shall issue Single-Family Residential Bills three (3) months in advance in a manner such that one-third (1/3) of SFD Customers are Billed each month. Contractor shall bill Multi-Family Dwelling and Commercial Customers monthly in arrears in the amount equal to Customers' subscribed Rates and Charges for service for a one (1) month period.

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

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

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

- 1442 Agency shall be allowed to access and review Contractor's Billing systems on  
1443 an appointment basis and such access shall not be unreasonably withheld by  
1444 Contractor.
- 1445 5. Rates. Agency shall establish, by resolution or ordinance, Rates for the types  
1446 of service provided as described in Section 11.07 or elsewhere in this  
1447 Agreement. Contractor shall Bill and collect at those Agency-approved Rates.
- 1448 6. Service Stops. Contractor shall allow Customers to suspend service when the  
1449 Premises are unoccupied due to vacancy, travel, or construction work. Single-  
1450 Family Residential Customers may suspend service for a minimum of one (1)  
1451 Service Day on a maximum of three (3) occasions each Rate Year.  
1452 Commercial Customers may suspend service for a minimum of two (2) Service  
1453 Days on a maximum of six (6) occasions each Rate Year. Multi-Family  
1454 Customers may not suspend service without prior written approval from  
1455 Agency. When service is suspended, no collections will be provided for any  
1456 type of material. The Billings for both Residential and Commercial Customers  
1457 shall be prorated by Contractor in accordance with Customer's requests to  
1458 suspend service. Notwithstanding the foregoing provisions of this paragraph, at  
1459 any time that the Agency has in effect an ordinance establishing a minimum  
1460 service level and/or monthly charge for service, service shall not be reduced  
1461 below such level and Billings shall not be reduced below such charge.
- 1462 B. **Delinquent Payment**. Residential Customers shall be considered delinquent sixty  
1463 (60) Days after start of the quarter in which the services are provided, and Multi-  
1464 Family Dwelling and Commercial Customers shall be considered delinquent thirty  
1465 (30) Days after payment is due. Contractor shall address the issue of delinquent  
1466 payment as specified in Attachment H.
- 1467 C. **Local Office**. Contractor shall maintain a local office in the Shoreway  
1468 Environmental Center, located at 225 Shoreway Road, San Carlos, California, for  
1469 acceptance of in-person payment of bills. If office space at Shoreway Environmental  
1470 Center becomes unavailable for the Contractor's use, Contractor shall establish a  
1471 local office in the SBWMA Service Area. Such a change shall be considered an  
1472 Agency-directed change in scope and handled in accordance with provisions in  
1473 Section 15.12. At the local office, Contractor shall accept as payment personal  
1474 checks, money orders, cashiers' checks, and credit cards. The local office shall be  
1475 open for business from 8:00 a.m. until 5:00 p.m. Monday through Friday, exclusive  
1476 of Holidays specified in Attachment A for the local office.
- 1477 D. **Contractor Revenue Collection**. Contractor shall collect revenue for services  
1478 described herein on behalf of the Agency. Revenues collected on behalf of the  
1479 Agency or SBWMA shall be handled as described in Article 11 of this Agreement.
- 1480 E. **Review of Billings**. Contractor shall review its Billings to Customers, issued  
1481 pursuant to Section 7.01.A. The purpose of the review is to determine that the  
1482 amount which Contractor is Billing each Customer is correct in terms of the level of  
1483 service (i.e., frequency of Collection, size of Container, location of Container) being  
1484 provided to such Customer by Contractor. Contractor shall review Customer  
1485 accounts not less than once every three (3) calendar years for each Commercial,  
1486 Multi-Family Dwelling, and SFD Customer, unless Agency directs Contractor to do  
1487 so more frequently. Contractor shall submit to Agency a written report of the status  
1488 of its review annually no later than forty-five (45) Days after the end of each

1489 calendar year. The intent of this Section is for Agency to receive reports on an  
1490 annual basis for one-third (1/3) of all Customer accounts, and for all Customer  
1491 accounts to be reviewed every third year of the Agreement. The scope of the  
1492 review and the reviewer's work plan shall be submitted to Agency for approval no  
1493 later than six (6) months before the submission of the first report.

1494 F. **Agency or SBWMA Billing Review.** Contractor acknowledges that Agency or  
1495 SBWMA may perform, or cause to be performed, Billing reviews periodically.  
1496 Contractor agrees to participate and cooperate with SBWMA and Agency and its  
1497 agents to accomplish these reviews and conduct any data collection and report  
1498 preparation that may be requested. The Contractor's full cooperation with these  
1499 reviews may include, but is not limited to: (i) allowing Agency or SBWMA staff or  
1500 consultants to ride along with drivers in Collection vehicles during daily Collection  
1501 operations; (ii) providing for interviews of personnel at all levels, with or without  
1502 management oversight; (iii) providing reporting related to franchised operations  
1503 available through Contractor's automated systems; and, (iv) adjusting routing, public  
1504 information, outreach, or program availability based upon the recommendations of  
1505 the audit, if approved by the SBWMA or Agency.

1506 G. **Privacy of Customer Information.** Contractor shall not distribute or sell Customer,  
1507 Owner, or Occupant information such as names, addresses, and telephone  
1508 numbers to other Persons with the exception of distribution to the Agency, SBWMA,  
1509 or its agents for reporting and contract compliance purposes and distribution to  
1510 Contractor's Billing agent (if Contractor uses a Related Party Entity or Subcontractor  
1511 for Billing purposes).

## 1512 **7.02 CUSTOMER SERVICE**

1513 Contractor is responsible for ensuring that all staff and Customer service representatives  
1514 (CSR) maintain a professional and courteous demeanor when in contact with Agency,  
1515 SBWMA, and the public. Contractor shall be responsible for all employee interactions  
1516 with Customers, SBWMA, and Agency staff. Contractor is required to ensure that its  
1517 Customers are consistently treated courteously and are presented with timely,  
1518 responsive, and thorough solutions to problems and requests for information. Contractor  
1519 shall meet monthly to discuss compliance with the Customer service standards  
1520 described herein if requested by Agency.

### 1521 **A. Local Office**

1522 Contractor shall operate a local office at the Shoreway Environmental Center,  
1523 located at 225 Shoreway Road, San Carlos. If office space at Shoreway  
1524 Environmental Center becomes unavailable for the Contractor's use, Contractor  
1525 shall establish a local office in the SBWMA Service Area. Such a change shall be  
1526 considered an Agency-directed change in scope and handled in accordance with  
1527 provisions in Section 15.12. Contractor's office hours shall be, at a minimum, from  
1528 8:00 a.m. to 5:00 p.m., Monday through Friday, exclusive of Holidays specified in  
1529 Attachment A for the local office. Contractor shall be responsible for ensuring that a  
1530 qualified representative is available at a local office within the SBWMA Service Area  
1531 during office hours to communicate with the public and accept Bill payments from  
1532 Customers. Contractor shall offer bi-lingual Customer service at the local office by  
1533 employing CSRs with English and Spanish language capabilities. The local office  
1534 and Customer service telephone number(s) shall either be a local or toll free call.

1535 Contractor's telephone system shall adequately handle the volume of calls typically  
1536 experienced on the busiest days. Contractor shall have a company representative,  
1537 an answering service, or voice-mail system available for calls received during non-  
1538 business hours and Holidays specified in Attachment A for the local office.

1539 Contractor shall employ sufficient Customer service staff and management  
1540 practices to ensure that the Average Speed of Answer is equal to or less than thirty  
1541 (30) seconds and the maximum Hold Time is ninety (90) seconds or less.

1542 Contractor shall be required to track all informational requests so that appropriate  
1543 public outreach materials can be designed to target commonly asked questions.  
1544 Contractor shall be responsible for promoting use of the Contractor's website for  
1545 scheduling of On-Call Collection Service events and obtaining answers related to  
1546 common informational requests through: (i) public education and promotion  
1547 materials; and, (ii) a recorded message Customers will hear while on-hold with the  
1548 Customer service department.

1549 Contractor shall maintain and publicize an e-mail address whereby Customers can  
1550 communicate with the Contractor's Customer service staff. Contractor shall monitor  
1551 the email at least once per Business Day, and ensure that a twenty-four (24) hour  
1552 response time is maintained.

1553 **B. Customer Service Call Center and Staffing**

1554 Contractor is required to operate a Customer service call center that will serve as  
1555 the primary telephone point of contact and information for all services. The  
1556 Customer service call center hotline is required to be staffed live during regular  
1557 business hours (i.e., Monday through Friday 8:00 a.m. to 5:00 p.m.) by sixteen (16)  
1558 Customer service representatives (includes one (1) receptionist who performs  
1559 Customer service activities). In addition, the Customer service call center shall offer  
1560 multi-lingual Customer service by employing a minimum of two (2) bilingual  
1561 Customer service representatives with English and Spanish language capabilities,  
1562 and contracting with a service to provide bilingual capacity for other languages  
1563 including Cantonese, Mandarin, and Vietnamese. Contractor shall provide  
1564 immediate access to interpreters for over one-hundred and seventy-five (175)  
1565 languages through the use of Language Line service, or a similar service.

1566 **C. Website**

1567 Contractor shall maintain and publicize an up-to-date website whereby Customers  
1568 can conduct business with Contractor in both English and Spanish. Contractor is  
1569 required to update the website monthly, and more frequently if necessary. At a  
1570 minimum, the website shall:

- 1571 1. Allow Customers to view and pay Bills issued by Contractor, as required in  
1572 Section 7.01;
- 1573 2. Allow Customers to schedule services Including On-Call Service events, On-  
1574 Call Bulky Item Collections, extra Collections, service changes, temporary Drop  
1575 Box service, service terminations, and service stops;
- 1576 3. Provide answers to frequently asked questions Including: proper Container set-  
1577 out instructions; list of acceptable Recyclable and Organic Materials; Collection  
1578 Days (in response to Customer input of service address); Billing issues,  
1579 Customer service telephone and e-mail contact information; and the

- 1580 Designated Transfer and Processing Site hours, directions, and acceptable  
1581 materials;
- 1582 4. Provide complete list of Agency-approved Rates and Charges for all  
1583 Customers;
- 1584 5. Allow Customers to file Complaints and receive from Contractor e-mail  
1585 responses to Complaints;
- 1586 6. Provide a link to enable Customers to email Contractor; and,
- 1587 7. Maintain and produce visitor logs and reporting including website and individual  
1588 page visitation, number of web-based Bill payments per month, number of  
1589 website-submitted Complaints per month, and individual and summary  
1590 Customer Complaint and resolution reporting.

1591 **D. Customer Information System Requirements**

1592 Contractor is required to use a Customer information system with software  
1593 applications capable of documenting all correspondence and conversations,  
1594 pertaining to the services specified herein, between Contractor, Customers,  
1595 Occupants, Agency, and SBWMA. The system shall include, at a minimum, the  
1596 following data fields:

- 1597 1. Date and time of Customer correspondence or contact with Contractor (e.g.,  
1598 phone call, email)
- 1599 2. Date and time response was provided
- 1600 3. Date and time resolution was provided
- 1601 4. Customer's name and contact information (multiple phone numbers and  
1602 email addresses)
- 1603 5. Account address
- 1604 6. Service address
- 1605 7. Occupant address
- 1606 8. Service location information including:
- 1607 a. Number of units
- 1608 b. Number, size, and type of Solid Waste, Organic Materials, and Targeted  
1609 Recyclable Materials Containers
- 1610 c. Collection Service Day
- 1611 d. Route number
- 1612 e. Backyard service status
- 1613 f. Special Handling Service status
- 1614 g. Bulky Item Collection history (e.g., number of annual services performed,  
1615 date requested, date provided)
- 1616 9. Service issue, Complaint, or Inquiry
- 1617 10. Time frame stipulated for Contractor to resolve issue
- 1618 11. Description of Contractor's resolution of service issue or Complaint, or  
1619 response to Inquiry
- 1620 12. Date and time that Contractor's resolution took place

- 1621 13. CSR or Contractor's employee identification code of employee inputting the  
1622 Complaint or Inquiry
- 1623 14. CSR or Contractor's employee identification code of employee inputting the  
1624 resolution
- 1625 The system shall be capable of:
- 1626
- 1627 1. Providing real-time access to complete Customer contact history from the  
1628 commencement of service in 2011;
- 1629 2. Providing Agency and SBWMA the capacity to submit work orders (e.g.,  
1630 specifying the Inquiry, Complaint, or request for service) electronically directly  
1631 to Contractor using Contractor's web-based software;
- 1632 3. Documenting non-Collection events including problem description and  
1633 resolution;
- 1634 4. Tracking non-Collection events necessary to fulfill the requirements in Section  
1635 8.02(F); and,
- 1636 5. Fulfilling Customer service reporting requirements as specified in Article 9.
- 1637 E. **Monthly Meetings with Agency.** If requested, Contractor shall meet monthly with  
1638 Agency to discuss compliance with the Customer service standards specified in this  
1639 Section 7.02, Attachment I (Performance Incentives and Disincentives), and  
1640 Attachment J (Liquidated Damages).
- 1641 F. **Quality Assurance Program.** Each month Contractor's Customer service  
1642 representatives shall contact by telephone a minimum of two hundred (200)  
1643 Customers within the SBWMA Service Area to inquire about the quality of their  
1644 Customer service experience when interacting with the Contractor's Customer  
1645 service center. The Customers contacted shall be (i) representative of different  
1646 Service Sectors, (ii) distributed among Member Agencies, and (iii) selected from  
1647 among Customers that have recently contacted the Contractor via phone and spoke  
1648 live with a Customer service representative. The Customers contacted each day  
1649 shall be randomly selected from the pool of Customers that contacted the  
1650 Contractor the prior Business Day and such calls shall be evenly distributed (e.g.,  
1651 approximately 12 to 13 calls per Business Day) throughout the month with some  
1652 exceptions as follows: calls will be made during non-peak call volume days (i.e., 2<sup>nd</sup>,  
1653 3<sup>rd</sup>, and 4<sup>th</sup> weeks after billing); and no calls will be made immediately after a  
1654 holiday. When placing the calls, the Contractor will use a standardized survey that  
1655 will be completed during the phone interview of the Customer. If a message is left  
1656 with the Customer, the message left by the Contractor shall direct the Customer to  
1657 complete an online survey. Both survey instruments (for phone interviews and  
1658 online survey) shall have similar questions and be subject to approval by the  
1659 SBWMA or Agency. Contractor employees placing the calls shall not be the same  
1660 employee that spoke to the Customer the prior Business Day; Contractor  
1661 employees shall be calling Customers that another employee spoke to the prior  
1662 Business Day. Customer service representatives shall ask about (i) Customers'  
1663 satisfaction with Solid Waste, Recyclable Materials, Organic Materials, and Bulky  
1664 Item Collection services, (ii) Customers' satisfaction of the Customer service  
1665 experience when interacting with the Contractor's Customer service department,

1666 and, (iii) Customer's suggestions for opportunities to improve service. The quality  
1667 assurance program reporting requirements are specified in subsection 9.05.G.

1668 G. **Preprogrammed Call Transfer.** Contractor shall maintain the ability to provide  
1669 preprogrammed call transfer service to Agency. With this communications feature  
1670 in place, when a Customer calls Contractor about an issue or concern that pertains  
1671 to Agency but is not related to Collection services provided by Contractor,  
1672 Contractor shall immediately transfer the phone call to the offices of Agency through  
1673 a dedicated telephone line designated by Agency. The call transfer shall be  
1674 seamless, and appear to the Customer as if Contractor were transferring the call  
1675 internally.

1676 H. **Customer Service Operations Plan.** Contractor shall annually submit its  
1677 Customer service operations plan. The Customer service operations plan shall  
1678 describe how Contractor uses its customer relationship management system, linked  
1679 to on-board GPS tracking system, to share real-time information between  
1680 Customers, drivers, customer service representatives, managers, and SBWMA and  
1681 Agency staff. The plan will provide details on how Contractor automatically detects  
1682 and records information on each Customer pickup, real-time transmission of service  
1683 extras, blocked cars, safety notes, and exceptions to service.

### 1684 7.03 PUBLIC EDUCATION AND PROMOTION

1685 Contractor and Agency agree that all public education activities will be a collaborative  
1686 effort among the SBWMA, Agency, and Contractor. Contractor shall be responsible for  
1687 ensuring that its Customers consistently receive a high level of service and  
1688 responsiveness.

1689 A. **General.** Contractor acknowledges and agrees that education and public  
1690 awareness are critical and essential elements of any effort to achieve diversion.  
1691 Contractor shall educate Residential and Commercial Customers on the following:  
1692 (i) the benefits of source reduction, reuse, Recycling, and Composting and related  
1693 program opportunities; (ii) proper handling of Hazardous Waste; (iii) specific  
1694 services offered by the Contractor; and (iv) Rates for Collection services. The  
1695 public education program shall include distribution of public education materials  
1696 when Collection services are changed during the Term; and when new Collection  
1697 services are implemented during the Term. In addition, the public education  
1698 program shall include on-going education activities throughout the Term.  
1699 Educational materials that SBWMA will pay for, produce and jointly distribute, shall  
1700 include, but not be limited to, those listed in Section 7.03(D).

1701 B. **Three-Year Public Education and Recycling Technical Assistance Plan.** The  
1702 SBWMA, Member Agencies, and Contractor shall cooperate to prepare a joint  
1703 Public Education and Recycling Technical Assistance Plan every three (3) years  
1704 (Three-Year Plan). The Three-Year Plan will be an SBWMA-wide plan; therefore,  
1705 separate plans will not be prepared for each Member Agency. Generally, the Three-  
1706 Year Plan will focus on coordinating public education and recycling technical  
1707 assistance efforts and making efficient use of each Party's available resources in  
1708 those areas. In the case of Contractor, the process may and potentially result in  
1709 modifying Contractor's activities through a reallocation of Waste Zero Specialists'  
1710 staff time and public education and outreach resources, to the extent they can be

1711 reallocated without causing the Contractor to default in performance of its  
1712 expressed obligations under this Agreement.

1713 The Parties shall cooperate to finalize the Three-Year Plan on or before January 1  
1714 of Rate Years Eleven (2021), Fourteen (2024), Seventeen (2027), Twenty (2030),  
1715 Twenty-three (2033) and, if the Term is so extended, Twenty-six (2036) and  
1716 Twenty-nine (2039). SBWMA and Contractor shall jointly develop a schedule for  
1717 preparation of the Plan, which shall involve the following elements:

1718 1. Public Education Plan. Working collaboratively with the Contractor, SBWMA  
1719 will develop, and the Contractor shall review, the first section of the Three-Year  
1720 Plan, which shall include a detailed list of public education activities to be  
1721 undertaken by SBWMA and Contractor for the coming three (3) Rate Years.  
1722 The plan shall list each public education piece or activity (e.g., newsletters, Bill  
1723 inserts, flyers, newspaper advertisements, website enhancements, etc.) to be  
1724 prepared or conducted in the coming three (3) Rate Years, the purpose of the  
1725 piece, the key subject(s) to be covered, the anticipated date of  
1726 issuance/completion, performance standards, and quarterly reporting  
1727 requirements. In addition, the plan shall list all Community Events for each  
1728 Member Agency that the Contractor plans to attend and the public education it  
1729 intends to provide at each such event (e.g., exhibit at Earth Day Event,  
1730 Chamber of Commerce meetings, etc.) in the three (3) coming Rate Years.

1731 2. Recycling Technical Assistance Plan. Working collaboratively with the SBWMA,  
1732 Contractor shall develop a draft of the second section of the Three-Year Plan,  
1733 which shall include a detailed list of Commercial, Mixed Use, and Multi-Family  
1734 Recycling technical assistance activities to be undertaken by Waste Zero  
1735 Specialists for the coming three Rate Years, the objectives of such activities,  
1736 specific performance standards for the activities, the anticipated time frames for  
1737 completion, the distribution of such activities across Member Agencies,  
1738 quarterly reporting requirements, and any specific actions to be undertaken to  
1739 meet the specific needs of one or more Member Agencies. Pursuant to  
1740 Sections 7.04 and 7.13, SBWMA may request an adjustment in the staffing  
1741 level for the Waste Zero Specialists.

1742 3. Plan Review. SBWMA shall coordinate with the Member Agencies to seek  
1743 input on the Three-Year Plan. After Member Agencies have provided their  
1744 input, the Contractor shall provide the SBWMA with its final comments for both  
1745 sections of the Three-Year Plan two (2) weeks after receiving the revised draft  
1746 of the plan.

1747 4. Completion of Plan Activities. During each Rate Year, the SBWMA, Agency,  
1748 and Contractor shall each complete all elements and tasks specified in the  
1749 Three-Year Plan that it has agreed to perform, in accordance with the schedule  
1750 and budget presented in the Three-Year Plan. The Agency or SBWMA may, by  
1751 providing written approval to Contractor, waive or postpone completion of any  
1752 requirement of Contractor stated in the Three-Year Plan (it being understood  
1753 that such right of Agency shall only apply to activities within Agency's Service  
1754 Area). Waste Zero Specialists shall be dedicated to performing services for the  
1755 SBWMA and Member Agencies and Customers within the SBWMA Service  
1756 Area. Their main focus shall be on performing the tasks identified in the Public  
1757 Education and Recycling Technical Assistance Plan. In addition to the tasks

1758 defined in the Public Education and Recycling Technical Assistance Plan,  
1759 Agency recognizes that Waste Zero Specialists will participate in Contractor's  
1760 employee programs such as company training programs, occasional staff  
1761 meetings, and other activities, provided that such participation is  
1762 commensurate with their position.

1763 **C. Content and Production Requirements.** The SBWMA will prepare all public  
1764 education materials and request that they be reviewed by Contractor prior to  
1765 production. Contractor shall review and comment on the materials within two (2)  
1766 weeks of request from the SBWMA or Agency. Bill inserts shall be designed and  
1767 produced by the SBWMA with review and comment by Contractor, and approval  
1768 from the Agency.

1769 The public education materials shall emphasize use of visual/graphic images as  
1770 much as practical. Furthermore, the materials shall include a clear listing of  
1771 program participation parameters and targeted materials.

1772 All public education materials shall be printed on paper containing the highest levels  
1773 of recycled-content material reasonably practical.

1774 The SBWMA shall develop a multi-lingual approach to preparing all public education  
1775 materials, and all public education materials shall be provided in both English and  
1776 Spanish.

1777 **D. SBWMA and Agency Responsibilities**

1778 SBWMA shall take primary responsibility for implementation of the public education  
1779 and outreach campaign that will be used to announce changes in Collection  
1780 services. Development of the public education and promotion strategy and  
1781 implementation schedule will be a collaborative process among Contractor,  
1782 SBWMA, and Agency. Agency may ask that any public education be tailored for its  
1783 accounts to ensure all Agency goals are met and programs have adequate  
1784 cost/benefit correlation.

1785 The SBWMA and Agency's responsibilities with regard to public education and  
1786 promotion activities shall include, but not be limited to, the following:

- 1787 1. Provision of public education to SFD, MFD, Commercial, and Agency Facility  
1788 Customers with a broad focus on waste prevention, reuse, and Recycling.
- 1789 2. Preparation and distribution of newsletters for all SFD and MFD Occupants, at  
1790 frequency determined by SBWMA or Agency.
- 1791 3. Preparation and distribution of Multi-Family Dwelling toolkits for MFD complex  
1792 Owners and managers.
- 1793 4. Purchase of desk-side and other interior Targeted Recyclable Materials and  
1794 Organic Materials receptacles for Commercial Customers.
- 1795 5. Purchase of Recycling Tote-Bags for distribution to MFD complexes.
- 1796 6. Preparation and distribution of an electronic newsletter for the Commercial  
1797 sector and MFD complex managers.
- 1798 7. Preparation and provision of outreach materials to schools.
- 1799 8. Development and maintenance of SBWMA website.
- 1800 9. Production of decals for Used Motor Oil jugs.
- 1801 10. Production of Household Battery and Cell Phone Recycling bags.

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11. Each Rate Year, SBWMA shall develop and produce the following Bill inserts (for distribution by Contractor):
    - a. Annual On-Call Collection Services Collection notice (one (1) SFD Solid Waste Bill insert).
    - b. Annual Holiday Tree Recycling notice (separate for SFD and MFD - two (2) Solid Waste Bill inserts).
    - c. Annual "Reduce Holiday Packaging" notice (one (1) SFD and MFD Solid Waste Bill insert).
    - d. Twice annual compost giveaway notice (two (2) SFD and MFD Solid Waste Bill inserts).
    - e. Twice annual Commercial Recycling notice (two (2) Commercial Solid Waste Bill inserts).
    - f. Annual Commercial Recycling awards notice (one (1) Commercial Solid Waste Bill insert).
  12. If Agency or SBWMA requests distribution of additional Bill inserts, SBWMA or Agency shall develop and produce the Bill inserts. Contractor will contact Agency on a quarterly basis to determine if Agency would like any key messages inserted onto Bills.
  13. Prepare and manage press releases.
- E. **Contractor Responsibilities.** Contractor will be required to provide the following services:
1. Actively collaborate with Agency and SBWMA on the public education strategy and development of materials.
  2. Distribute public education and promotion materials to new Customers during the Term.
  3. Provide public education door hangers, posters, and other promotional materials to Multi-Family Dwelling Customers during the Term.
  4. Deliver Recycling Tote-Bags to MFD complexes.
  5. Deliver desk-side and other interior Targeted Recyclable Materials and Organic Materials receptacles for Commercial Customers and Agency Facilities.
  6. Produce and deliver non-collection notices, in both English and Spanish. The format and content of the non-collection notices must be approved in advance by Agency and SBWMA.
  7. Affix Used Motor Oil Recycling decals to jugs for inclusion in Used Motor Oil Recycling kits.
  8. Assemble and deliver Used Motor Oil Recycling kits upon request from SFD Customers. Kits must be provided to Customer within five (5) Business Days of Customer request.
  9. If approved by Agency, deliver Household Battery and Cell Phone Recycling bags upon request from Customers. Bags must be provided to Customer within five (5) Business Days of Customer request.
  10. Staff a booth at local public events and distribute promotional and educational materials.

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11. Coordinate with SBWMA regarding SBWMA student tours at Shoreway Environmental Center; make classroom presentations upon request; provide school activities for students about the 4Rs.
  12. Conduct presentations at community meetings, service clubs, senior centers, and neighborhood associations.
  13. Promote recycling and organics Collection programs on the sides of Collection and route supervisors' vehicles. These advertising campaigns must be approved in advance by Agency and SBWMA.
  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.

1877 **F. Reserved**

1878 **G. Meeting Requirements**

1879 Upon request from Agency or SBWMA, the general manager or his/her designee is  
1880 required to meet quarterly, and more frequently if necessary, with Agency and/or  
1881 SBWMA staff to review public education and promotion activities. In addition, the  
1882 general manager or his/her designee shall be required to represent Contractor at all  
1883 monthly SBWMA Board of Director meetings.

1884 **H. Agency Rights**

1885 Contractor acknowledges that the public education and promotion activities listed  
1886 are critical to the success of Agency's diversion performance relative to the Act and  
1887 other State legislation/regulations (such as, but not limited to, AB 341, AB 1594, AB  
1888 1826, SB 1061, and SB 1383). As such, Contractor acknowledges Agency's rights  
1889 to the 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,
  5. Agency or SBWMA may provide additional, supplemental public education materials as it deems appropriate.

1901 I. **Reporting Requirements**

1902 Contractor shall prepare and submit reports related to its public education activities  
1903 as provided in Article 9.

1904 J. **Service Notice**

1905 Contractor shall periodically prepare and distribute to each Customer a notice listing  
1906 Agency-approved Rates for standard Collection services, Agency-approved  
1907 Charges for other services, annual Holiday Collection Schedule, and a general  
1908 summary of services required under this Agreement to be provided Customers and  
1909 optional services which may be furnished by Contractor. Such notice shall be  
1910 approved by the Agency prior to distribution.

1911 **7.04 COMMERCIAL RECYCLING PROMOTION PROGRAM**

1912 A. **Commercial Recycling Promotion Program Staff.** Contractor shall maintain a  
1913 Commercial Recycling promotion program staff that will be primarily responsible for  
1914 supporting Commercial and Multi-Family Dwelling Accounts, Mixed Use Buildings,  
1915 and Agency Facilities Recycling-related and Organics-related Collection services.  
1916 The Commercial Recycling promotion staff for the SBWMA Service Area shall  
1917 consist of Waste Zero Specialists (recycling coordinators), as specified in  
1918 Attachment O.

1919 Contractor shall notify Agency and SBWMA within ten (10) Business Days if any of  
1920 the Waste Zero Specialists resigns or is terminated from employment, and shall use  
1921 reasonable good faith efforts to initiate recruitment of the position within thirty (30)  
1922 days.

1923 If Contractor has one or more Waste Zero Specialist positions unfilled, as approved  
1924 in the Three-Year Recycling Technical Assistance Plan, for more than ninety (90)  
1925 Days, Contractor and SBWMA shall meet and confer regarding the reasons for the  
1926 difficulty in filling the position(s) and ways to remedy the employment gap. In  
1927 addition, Contractor shall reimburse Agency for the cost of each such unfilled  
1928 position for the period exceeding ninety (90) Days. The Contractor shall calculate  
1929 the cost reimbursement for the unfilled position(s) including the avoided cost of  
1930 wages, benefits, payroll taxes, and workers compensation insurance, for such  
1931 position and shall provide supporting documentation justifying its cost  
1932 reimbursement calculations. Such reimbursement shall be made as a deduction to

1933 Contractor's Compensation through the annual Contractor's Compensation  
1934 adjustment process described in Article 11 and Attachment K.

1935 SBWMA reserves the right to request an increase or decreases in the number of  
1936 Waste Zero Specialists. Such a change shall be considered an Agency-directed  
1937 change in service and handled in accordance with provisions in Section 15.12.

1938 B. **Signs and Placards.** Contractor shall be responsible for preparing, distributing,  
1939 and posting signs at Commercial Collection Premises that promote Targeted  
1940 Recyclable Materials and Organic Materials Collection services, describe the  
1941 program requirements, and identify allowable and prohibited types of materials for  
1942 Collection. At a minimum, the signs or placards shall be durable and weather  
1943 resistant, and affixed in the Container areas. Upon request from Customer,  
1944 Contractor shall provide signs and Container labeling in a second language such  
1945 as, but not limited to, Spanish. Within ten (10) Business Days of a Customer's  
1946 request, Contractor shall provide extra signs for use in areas such as employee  
1947 training areas, break rooms, kitchens, and janitorial areas at Commercial Premises.  
1948 The design of all signs and placards shall be approved by Agency or SBWMA prior  
1949 to distribution by Contractor.

1950 C. **Community Events.** At the direction of the Agency, Contractor shall participate in  
1951 and promote diversion techniques at Community Events and local activities.  
1952 Participation includes providing educational and public outreach information and  
1953 promotional giveaways in an effort to promote the Agency's waste reduction and  
1954 recycling program goals. Each year the Community Events that Contractor agrees  
1955 to participate in shall be outlined in the Three-Year Public Education Plan described  
1956 in Section 7.03.B. Attachment C presents a preliminary list of the Community  
1957 Events, which may be modified annually through the development of the Three-  
1958 Year Public Education Plan, as described in Section 5.08.

1959 D. **Notification to Commercial Customers.** Immediately upon request from a new or  
1960 current Customer for new or changes in service, Contractor shall notify Customer by  
1961 phone or email of the Targeted Recyclable Materials and Organic Materials  
1962 Collection services offered by Contractor. Such notification shall be made available  
1963 in English and Spanish.

1964 E. **Targeted Commercial Recycling Promotion.** To assist Customers in maximizing  
1965 participation in Recyclable Materials and Organic Materials Collection programs,  
1966 Contractor shall provide Commercial Customers with on-site waste assessments  
1967 based on visual assessment of Collection Containers and technical assistance in  
1968 selecting appropriate service levels. In providing such assistance, Contractor shall  
1969 follow the Three-Year Recycling Technical Assistance Plan described in Section  
1970 7.03.B, which will include details on the type of Commercial Recycling technical  
1971 assistance promotion and the number of waste assessments for Customers to be  
1972 provided in Agency's Service Area. For all other Commercial Customers not  
1973 specified in the Three-Year Plan, Contractor shall provide technical assistance as  
1974 needed or requested and visual on-site Collection Container assessments.  
1975 Contractor shall document the names of the Customers receiving the waste  
1976 assessments, the date of the assessment, the Solid Waste, Source Separated or  
1977 Targeted Recyclable Materials, or Organic Materials service levels at the time of the  
1978 assessment, and recommended changes to service level(s). Upon request,  
1979 Contractor shall provide details of waste assessments to Agency or SBWMA.

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F. **Enclosure Specifications.** Contractor shall work with the Agency to develop standard specifications for Collection Container enclosures at Multi-Family Residential Complexes, Mixed Use Buildings, and Commercial Premises to ensure that Container enclosures have adequate space and suitable configuration to allow the Contractor to safely and efficiently service the Containers. The enclosure specifications shall require provision of adequate space for Solid Waste, Targeted Recyclable Materials, and Organic Materials Collection Containers. Contractor provided the enclosure specifications to the Agency on or before the effective date of the 2009 Franchise Agreement and shall be required to update these specifications as frequently as needed or as requested by Agency.

G. **Plan Review.** Contractor shall review plans for land use or property developments, upon request of the Agency, to assess the adequacy of Container enclosure space allowances for Solid Waste, Recyclable Materials, and Organic Materials Collection Containers and the accessibility of Containers by Collection vehicles. The Contractor's review shall be completed by the Contractor within ten (10) Business Days of request by Agency and receipt of the project design drawings. If site conditions warrant, the Contractor shall conduct a site visit of the proposed property to complete its evaluation. The Contractor's review shall be summarized in a letter report that states acceptability of the proposed enclosure arrangements or notes specific changes that are required to comply with the enclosure specification. The letter report shall be signed by the Person that conducted the review, or designee, on behalf of the Contractor. This review shall include, but not be limited to:

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

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

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

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**7.05 MULTI-FAMILY RECYCLING PROMOTION PROGRAM**

The parties acknowledge that, as of the date this Agreement is entered into, there are no Multi-Family Dwellings within Agency. In the event there are Multi-Family Dwellings within Agency, the provisions relating to Multi-Family Dwellings set forth in Attachment T and elsewhere in this Agreement shall apply.

**7.06 WASTE GENERATION/CHARACTERIZATION STUDIES**

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

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

**7.07 PROGRAM EVALUATION**

The Agency may require the Contractor to periodically conduct audits of the Residential and Commercial Solid Waste, Targeted Recyclable Materials, and Organic Materials Collection programs to assess one (1) or more of the following performance indicators: average volume of Targeted Recyclable Materials per set-out per Customer, average volume of Organic Materials per set-out per Customer, participation level (i.e., number of Customers setting out Containers per week), Contamination Levels, etc. Contractor shall perform up to five (5) Days of route auditing, at no additional cost to Customers and shall not bill Agency for such services, once per calendar year. Prior to the program evaluation audit, Agency and Contractor shall meet and discuss the purpose of the audit and agree on the method, scope, and data to be provided by the Contractor. If Agency requires more than five (5) Days of auditing for the purposes of program evaluation, the activity shall be considered an Agency-directed change in scope and handled in accordance with provisions in Section 15.12. Contractor shall not conduct more than five (5) Days of auditing without Agency's prior written consent.

If the Contractor does not Collect Multi-Family Dwelling Solid Waste, Targeted Recyclable Materials, and Organic Materials using dedicated Collection vehicles, thereby precluding regular and accurate reporting of the Tonnage of Solid Waste,

2070 Targeted Recyclable Materials, and Organic Materials Collected from Multi-Family  
2071 Residential Complexes, the Agency may require the Contractor to conduct a semi-  
2072 annual or annual Tonnage assessment that involves separately Collecting, weighing,  
2073 and reporting Multi-Family Dwelling Solid Waste, Targeted Recyclable Materials, and  
2074 Organic Materials to quantify Tonnage Collected during a given week. This assessment  
2075 shall be performed by Contractor at no additional cost to Customers and shall not bill  
2076 Agency for such services.

2077 If the Agency wants to collect program data, perform field work, conduct route audits to  
2078 investigate Customer participation levels and set-out volumes, and/or evaluate and  
2079 monitor program results related to Solid Waste, Targeted Recyclable Materials, Organic  
2080 Materials, Bulky Items, and abandoned waste Collected in the Agency by the Contractor,  
2081 the Contractor shall cooperate with the Agency and its agent(s), which may include the  
2082 SBWMA and its consultants.

### 2083 **7.08 PROVISION OF EMERGENCY SERVICES**

2084 Contractor shall provide emergency services at the Agency's request in the event of  
2085 major accidents, disruptions, or natural calamities. Emergency services may include,  
2086 but are not limited to: assistance handling, salvaging, processing, composting, or  
2087 Recycling materials; or Disposing of Solid Waste following a major accident, disruption,  
2088 or natural calamity. Contractor shall be capable of providing emergency services within  
2089 twenty-four (24) hours of notification by the Agency or as soon thereafter as is  
2090 reasonably practical in light of the circumstances. Emergency services which exceed  
2091 the Contractor's obligations shall be compensated in accordance with Article 11. If  
2092 Contractor cannot provide the requested emergency services, the Agency shall have the  
2093 right to temporarily take possession of the Contractor's equipment for the purposes of  
2094 providing emergency services in accordance with Article 12.

### 2095 **7.09 MFD AND COMMERCIAL RECYCLING BLITZ**

2096 The parties acknowledge that, given the makeup of Agency's customer base, Agency  
2097 does not for the foreseeable future intend to ask Contractor to conduct a Recycling Blitz.  
2098 In the event the Agency wishes to request a Recycling Blitz, the provisions relating to  
2099 Recycling Blitzes set forth in Attachment T and elsewhere in this Agreement shall apply.

### 2100 **7.10 CARBON FOOTPRINT MEASURING**

2101 Contractor shall annually file its emissions data with the California Climate Action  
2102 Registry (CCAR). Upon request of Agency or SBWMA, Contractor shall provide the  
2103 requesting party with emissions data (and any accompanying report) filed with  
2104 CCAR; a description of Contractor's carbon footprint; and, a description of  
2105 Contractor's activities both planned and implemented to reduce its carbon footprint  
2106 for the previous calendar years.

### 2107 **7.11 ENVIRONMENTAL MANAGEMENT PROGRAM**

2108 Contractor shall implement and maintain an environmental management program  
2109 combining several elements to minimize the environmental impacts of its operations in  
2110 the Service Area. Contractor shall provide upon request from Agency a description of  
2111 topics discussed at its bi-monthly environmental team roundtable and training program  
2112 meeting(s) and the semiannual corporate environmental compliance staff meetings.  
2113 Contractor shall provide Agency access to its environmental and safety tracking system  
2114 (NEST) upon request. Contractor shall provide Agency copies of its internal

2115 environmental compliance audits, third-party audits, and disposition of corrective actions,  
2116 within thirty (30) Days upon request from Agency.

2117 **7.12 ANNUAL ROUTE ASSESSMENT**

2118 Contractor shall conduct a route assessment of the Service Area each Rate Year. This  
2119 comprehensive route assessment shall require Contractor to assess all of its Solid  
2120 Waste, Targeted Recyclable Materials, and Organic Materials Collection Customers over  
2121 a one (1) week period during the same month each year for the Term. The assessment  
2122 is intended to annually confirm and update Contractor's data related to Customer  
2123 accounts, service levels and operations, including, but not limited to: (i) number of  
2124 Accounts (consisting of both Accounts receiving full Collection service, and Accounts  
2125 being charged and/or receiving minimum Collection service pursuant to Agency  
2126 ordinance); (ii) Customer address; (iii) number and type of Containers at each Account;  
2127 and (iv) Collection frequency of each Container at each Account; (v) Bin and Cart lifts;  
2128 (vi) Drop Box pulls; (vii) service stops; (viii) route hours per year; and (ix) Tonnage  
2129 Collected. All service level information related to lifts and pulls shall be derived in part  
2130 from Contractor's database management system. All route labor hours shall be based  
2131 on total route hours for routes exclusive to each Agency and Tonnage information shall  
2132 be based on actual Tons Collected. For routes that service more than one Agency, the  
2133 Tonnage Collected on these routes and total route hours shall be allocated to the  
2134 respective Agencies based on the type and number of accounts and service levels  
2135 attributable to each Agency.

2136 **7.13 RIGHT OF AGENCY OR SBWMA TO MAKE CHANGES TO OTHER SERVICES.**

2137 A. **Quarterly Review.** Beginning on the Commencement Date, and on a quarterly  
2138 basis thereafter, Contractor shall meet with Agency and SBWMA to discuss the  
2139 services performed by the Contractor pursuant to Sections 7.03 through 7.07  
2140 ("Other Services"). The purpose of the meetings will be to review the performance  
2141 and results of the Other Services compared to the milestones, goals, and  
2142 performance standards stated in the then-current Three-Year Public Education and  
2143 Recycling Technical Assistance Plan. Contractor's quarterly reports provided in  
2144 accordance with the reporting requirements of Article 9 shall be used to review  
2145 performance, and Contractor shall provide other information requested by Agency  
2146 or SBWMA necessary to evaluate the performance of each Other Service.

2147 B. **Change in Services.** Agency or SBWMA may, without amending this Agreement,  
2148 direct Contractor to increase or decrease the performance or scope of one or more  
2149 of the Other Services. Contractor shall promptly and cooperatively comply with such  
2150 direction. If such changes cause an increase or decrease in the cost of performing  
2151 the Other Services, an equitable adjustment in the Contractor's Compensation shall  
2152 be made in accordance with change in service provisions in Section 15.12.  
2153 Contractor shall continue to perform the new or changed service while the  
2154 appropriate adjustment in Contractor's Compensation is being determined.

2155 C. **Additional Services.** Agency or SBWMA may direct the Contractor to perform  
2156 additional services pertaining to Sections 7.03 through 7.07, but not described  
2157 herein, and Contractor shall provide a cost proposal in accordance with change in  
2158 service provisions in Section 15.12. If the Contractor and Agency or SBWMA cannot  
2159 agree on terms and conditions for such additional services within one-hundred  
2160 twenty (120) Days from the date which the Agency or SBWMA first requests a  
2161 proposal from Contractor to perform such services, Agency or SBWMA may

2162 perform these services itself or permit a third-party or parties other than Contractor  
2163 to provide such Other Services. Contractor shall provide such third-party or parties  
2164 access to and use of Facilities and Contractor information as necessary for such  
2165 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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2170 **8.01 COLLECTION HOURS AND SCHEDULES**

2171 **A. Hours of Collection**

- 2172 1. Residential. Residential Solid Waste, Targeted Recyclable Materials, and  
2173 Organic Materials (including all such services provided to SFD and Multi-Family  
2174 Dwelling Premises) shall be Collected on weekdays (i.e., Monday through  
2175 Friday) between 6:00 a.m. and 6:00 p.m. exclusive of Holidays defined in  
2176 Attachment A for Collection service.
- 2177 2. Commercial, Mixed Use, and Agency Facilities. Commercial, Mixed Use, and  
2178 Agency Facilities Solid Waste, Targeted Recyclable Materials, and Organic  
2179 Materials shall be Collected on weekdays (i.e., Monday through Friday)  
2180 between 3:00 a.m. and 6:00 p.m. and weekends (i.e., Saturday and Sunday)  
2181 between 6:00 a.m. and 5:00 p.m., exclusive of Holidays specified in Attachment  
2182 A for Collection service. The Agency may restrict or require modifications to  
2183 hours for Collection from Commercial Premises, Mixed Use Buildings, and  
2184 Agency Facilities to resolve noise Complaints, and, in such case, the Agency  
2185 Manager may restrict the allowable operating hours.
- 2186 3. Commercial, Mixed Use, and Agency Facilities Exception. Collection from  
2187 Commercial Premises, Mixed Use Buildings, and Agency Facilities that are  
2188 two-hundred (200) feet or less from Residential Premises shall only occur  
2189 between the hours of 6:00 a.m. and 6:00 p.m., Monday through Saturday and  
2190 all such operations shall be in accordance with permissions provided to  
2191 Contractor by Agency. The Agency may restrict or require modifications to  
2192 hours for Collection from Commercial Premises, Mixed Use Buildings, and  
2193 Agency Facilities to resolve noise Complaints, and, in such case, the Agency  
2194 Manager may restrict the allowable operating hours.
- 2195 4. Exception. In the event of an unforeseen circumstance, the Contractor may  
2196 Collect materials from Residential Premises, Commercial Premises, Mixed Use  
2197 Buildings, or Agency Facilities that are two-hundred (200) feet or less from  
2198 Residential Premises between the hours of 3:00 a.m. and 6:00 p.m., Monday  
2199 through Saturday, upon prior written approval from the Agency Manager.
- 2200 5. Local Noise Ordinance. Where the Agency ordinance regulating noise limits the  
2201 hours of Collection more restrictively than the preceding subsections, the terms  
2202 of the ordinance shall govern.
- 2203 6. Modification. The Collection hours set forth in Sections 8.01.A.1 and 8.01.A.2  
2204 will be periodically reviewed by Agency and Contractor and may be adjusted by  
2205 mutual agreement of Agency (acting through the Agency Manager) and  
2206 Contractor (acting through its General Manager). The Collection hours and  
2207 distances set forth in Sections 8.01.A.3 and 8.01.A.4 may be adjusted by  
2208 mutual agreement of Agency (acting through the Agency Manager) and

2209 Contractor (acting through its General Manager), provided that the Collection  
2210 hours and distances are at all times consistent with Agency ordinances.

2211 B. **Route Schedules.** Routes over which Contractor's vehicles travel to affect the  
2212 Collection and transport of Solid Waste, Targeted Recyclable Materials, and  
2213 Organic Materials shall be selected to minimize damage to Agency and private  
2214 streets, and minimize inconvenience and disturbance to the public. The route  
2215 schedules and routing maps shall be subject to the approval of Agency prior to  
2216 Commencement of services. Contractor shall use due care to obey all traffic laws  
2217 and prevent materials being transported from being spilled or scattered during  
2218 transport.

2219 Contractor shall be prepared to review its operations plan outlining the Collection  
2220 routes, intervals of Collection and Collection times for all materials Collected under  
2221 this Agreement with the Agency or its representatives at least annually. More  
2222 frequent reviews may be required if operations are not satisfactory based on  
2223 documented observations or reports or Complaints. If the plan is determined to  
2224 inadequately address the unsatisfactory performance as documented by  
2225 observations and Complaints, the Agency may direct Contractor to revise the plan  
2226 incorporating any changes into a revised plan and review said revised plan with the  
2227 Agency within thirty (30) Days of the initial meeting with the Agency.

2228 C. **Contingency Plan.** Contractor shall submit to Agency ninety (90) Days prior to  
2229 Commencement Date, a written contingency plan demonstrating Contractor's  
2230 arrangements to provide vehicles and personnel and to maintain uninterrupted  
2231 service during breakdowns, and in case of natural disaster or other emergency,  
2232 including the events described in Section 14.09.

## 2233 8.02 COLLECTION STANDARDS

2234 A. **Reserved**

2235 B. **Servicing Containers and Missed Pick-Ups**

2236 1. General. Contractor shall Collect the contents and return each Container to the  
2237 location where the Occupant properly placed the Container for Collection.  
2238 Contractor shall place the Containers upright with lids properly closed and  
2239 secured.

2240 If Town observes two (2) or more Customer's Carts, on the same block and  
2241 Collection Day, that do not appear to have been placed upright with lids  
2242 properly closed by Contractor's driver after Collection, then, upon Town's  
2243 request, Contractor will monitor the driver's behavior on the next two (2) times  
2244 that the driver drives that route (i.e. the next two (2) weeks, for weekly routes)  
2245 to determine if driver behavior is causing the problem, or if the problem is due  
2246 to other factors. Contractor shall notify Town of the results of any such  
2247 monitoring.

2248 Contractor shall use due care when handling Containers. Contractor shall not  
2249 throw, roughly handle, damage, or break Containers.

2250 Upon Customer request, Contractor shall provide special services including:  
2251 unlocking and locking Containers; accessing locked Container enclosures (e.g.,  
2252 with a key or combination lock); providing Container Relocation Service; and,  
2253 providing Long Distance Service. Contractor shall provide these services upon

2254 request from Customer and Contractor shall bill Customer at Agency-approved  
2255 Charges specified in Attachment Q. Section 5.02 provides additional  
2256 information on general Container service requirements, Long Distance Service,  
2257 and Container Relocation Service.

2258 2. Missed Pick-Ups. When notified of a missed pick-up, Contractor shall Collect  
2259 the Solid Waste, Targeted Recyclable Materials, or Organic Materials on the  
2260 day the notice is received, if possible, and in all cases shall Collect the missed  
2261 pick-up by 6:00 p.m. of the next Business Day following receipt of the missed  
2262 pick-up notification.

2263 C. **New Customers and Change in Service Levels**. Contractor shall deliver  
2264 Containers and initiate Collection services for a new Customer within five (5)  
2265 Business Days of the Customer's request for service. If an existing Customer  
2266 requests a change in the number or size of their Solid Waste, Recyclable Materials,  
2267 or Organic Materials Containers and/or frequency of Collection, the Contractor shall  
2268 deliver additional Containers and/or remove Containers and shall initiate changes in  
2269 the Collection services within five (5) Business Days of the Customer's request for a  
2270 change in service. Billing for changes of service shall be prorated for the month of  
2271 implementation.

2272 D. **Separate Collection of Materials and Allocation of Agency Materials**.  
2273 Contractor shall separately Collect and segregate Solid Waste, Targeted  
2274 Recyclable Materials, and Organic Materials from each other and shall not  
2275 Comingle these materials at any time during the transportation or delivery of those  
2276 materials to the Designated Transfer and Processing Facility. Solid Waste,  
2277 Targeted Recyclable Materials, and Organic Materials Collected in the Agency,  
2278 which are combined with materials Collected from other SBWMA Member  
2279 Agencies, shall be allocated by Contractor to the Agency's Collection program  
2280 based on volume or Tonnage using a method approved by the Agency and  
2281 SBWMA. Contractor shall not Collect materials from within Agency in the same  
2282 Collection vehicles used to provide Collection service to non-SBWMA Member  
2283 Agencies, unless provided written approval by Agency.

2284 E. **Setout Instructions to Customer**. Contractor shall instruct Customers as to any  
2285 preparation of Solid Waste, Targeted Recyclable Materials, or Organic Materials  
2286 and the proper placement of Containers. If Customers are not adhering to  
2287 Contractor's instructions, Contractor shall notify such Customers in writing. In  
2288 cases of extreme or repeated failure to comply with the instructions, Contractor may  
2289 decline to pick-up the Targeted Recyclable Materials or Organic Materials provided  
2290 that Contractor leaves an adequate number of non-Collection notices on the  
2291 Container, as determined by the Agency, indicating the reason for refusing to  
2292 Collect the material. Such notices shall also identify the steps Generator must take  
2293 to recommence Collection service.

2294 F. **Non-Collection Notices**. Contractor may choose not to Collect materials for the  
2295 following reasons: (i) Source Separated or Targeted Recyclable Materials or  
2296 Organic Materials do not comply with the allowable Contamination thresholds; (ii)  
2297 materials contain Hazardous Waste; or (iii) the loaded weight of a Container  
2298 exceeds the maximum load limit specified by the Cart manufacturer and specified in  
2299 Attachment D. In such case, Contractor shall issue non-Collection notices stating  
2300 the reason(s) the materials were not Collected. The non-Collection notice shall be

2301 affixed prominently onto the Cart to ensure that it is not inadvertently removed from  
2302 Cart due to weather conditions. The non-Collection notices must be protected from  
2303 rain, if precipitation is present or forecasted, by placing the notice in a clear plastic  
2304 bag prior to affixing to Cart.

2305 Contractor shall document the use of non-Collection notices by recording the date  
2306 and time of issuance, address of service recipient, reason(s) for issuance, name of  
2307 employee who issued the notice, and truck and route numbers. The notice shall  
2308 conform to the requirements specified in Section 6.03.A, be at least two inches by  
2309 six inches (2" x 6") in size and shall be approved by the SBWMA. The non-  
2310 Collection notices must identify the steps the Generator must take to recommence  
2311 Collection service. In the event a Container is not Collected due to excessive  
2312 Contamination and Customer does not take the necessary steps to recommence  
2313 Collection service, Contractor shall bill the Customer for Collection of the excessive  
2314 Contamination at Agency-approved Charges specified in Attachment Q. The  
2315 Agency-approved Charges includes: (i) a return trip Charge (for special return trips  
2316 requested by the Customer), and, (ii) an extra Solid Waste Collection Charge.

2317 Contractor shall report monthly to Agency any non-Collection notices issued.  
2318 Contractor shall take direction from the Agency with regard to termination or  
2319 reinstatement of service to a service recipient due to numerous non-Collection  
2320 notices issued to the same Customer.

2321 **G. Collection of Excess Materials (Overages).** Contractor shall direct its employees  
2322 to Collect an Overage from a Solid Waste or Organic Materials Container on two (2)  
2323 occasions each Rate Year at no additional cost to Customer. (That is, the two "free"  
2324 Overages per Rate Year may consist of (a) two Solid Waste Overages, or (b) one  
2325 Solid Waste Overage and one Organic Materials Overage, or (c) two Organic  
2326 Materials Overages.) Contractor must provide a notice to Customer documenting  
2327 the Overage in order to count the Overage Collection towards the allocated two (2)  
2328 per Rate Year for each Customer. Customers that place an Overage for Collection  
2329 for a third and subsequent events, may be assessed an Overage fee by Contractor  
2330 if Contractor has directly contacted the Customer via a phone call or voice message  
2331 notifying them of the Overage Collected. Contractor shall bill Customer for a third  
2332 and subsequent Overage events at Agency-approved Charges specified in  
2333 Attachment Q. Contractor shall provide Customers the opportunity to request an  
2334 Overage Collection service in advance. In such case, Contractor shall bill the  
2335 Customer at the Agency-approved Charge specified in Attachment Q.

2336 Contractor shall provide Customers the opportunity to subscribe to Overage  
2337 Collection service, in advance, or purchase Overage bag tag(s) from the Contractor.  
2338 Contractor shall provide Customers the opportunity to purchase Overage bag tags  
2339 through its Customer service department or electronically via Contractor's website.  
2340 The Overage bag tags shall have markings identifying them as the Contractor's  
2341 Overage bag tags. Contractor shall mail or deliver Overage bag tags to Customers  
2342 within three (3) Business days of Customer's request. The Charge for Overage bag  
2343 tags is specified in Attachment Q and includes all aspects of purchasing the bag  
2344 tags, printing, and distribution (i.e., mailing or direct delivery by Contractor).  
2345 Customers shall also be provided the opportunity to purchase Overage bag tags at  
2346 Contractor's local office. The quantity of Overage bag tags per request from  
2347 Customer shall be limited to five (5) per request.

2348 If the Agency and/or Contractor receive numerous Complaints (as determined by  
2349 the Agency) from Customers regarding Customer dissatisfaction with the  
2350 requirement to purchase Overage bag tags, the Agency reserves the right to require  
2351 the Contractor to modify its Overage program to better serve its Customers and/or  
2352 require the Customer to subscribe to additional Collection service.

2353 H. **Care of Private Property.** Contractor shall not damage private property.  
2354 Contractor shall ensure that its employees: (i) close all gates opened in making  
2355 Collections, unless otherwise directed by the Customer, (ii) do not cross landscaped  
2356 areas, and (iii) do not climb or jump over hedges and fences.

2357 Agency shall refer Complaints about damage to private property to Contractor.  
2358 Contractor shall repair, to its previous condition, all damage to private or public  
2359 property caused by its employees.

2360 Contractor shall endeavor to resolve all claims regarding damage to private property  
2361 as soon as reasonably practicable following receipt thereof, made by Owners or  
2362 Occupants of property served by Contractor, for damages to property including, but  
2363 not limited to, Containers. In the event such damage shall have been caused by the  
2364 negligence or intentional acts of Contractor, its officers, agents, or employees,  
2365 Contractor shall promptly repair or replace such damaged property. The provisions  
2366 of this Section 8.02.H shall not be deemed a limitation upon any other provisions of  
2367 this Agreement, or any rights or remedies which may accrue to Agency by reason of  
2368 Contractor's acts or omissions to act hereunder. Contractor is required to repair  
2369 damage and/or resolve claims regarding damage to property within thirty (30) Days  
2370 of receipt of the Complaint.

2371 This Section 8.02.H shall not apply to damage to public or private roads or  
2372 driveways caused by the weight of Contractor's vehicles. If a Customer requests  
2373 Contractor to provide on-premises (i.e., non-Curbside) service, and in doing so  
2374 would require Contractor to drive its Collection vehicle on a private road or  
2375 driveway, then, as a condition to providing that service, Contractor shall require the  
2376 Customer, property owner, or other responsible party to sign a reasonable waiver  
2377 releasing Contractor from liability for such damage.

2378 I. **Litter Abatement**

2379 1. Minimization of Spills. If any Solid Waste, Targeted Recyclable Materials, or  
2380 Organic Materials are spilled or scattered during Collection or transportation  
2381 operations, the Contractor shall promptly clean up all spilled and scattered  
2382 materials. Contractor shall use due care to prevent vehicle oil, vehicle fuel, or  
2383 other liquids from being spilled during Collection or transportation operations  
2384 including maintenance of the Collection vehicles to minimize and correct any  
2385 leaks. Contractor shall ensure that all liquid spills or leaked liquids or fluids are  
2386 cleaned up promptly on the same day that they occur.

2387 Contractor shall not transfer loads from one vehicle to another on any public  
2388 street, unless it is necessary to do so because of mechanical failure,  
2389 emergency (e.g., combustion of material in the vehicle), accidental damage to  
2390 a vehicle, or unless approved by the Agency.

2391 2. Clean-Up. During Collection operations, the Contractor shall clean-up litter in  
2392 the immediate vicinity of any Container storage area (including the areas where  
2393 Containers are delivered for Collection) if Contractor's actions are the cause of

2394 the litter. Each Collection vehicle shall be equipped with protective gloves, a  
2395 broom, and shovel at all times for cleaning up litter. Absorbent material shall  
2396 be carried on each Collection vehicle at all times and used by Contractor for  
2397 cleaning up liquid spills. The Contractor shall document and discuss instances  
2398 of repeated spillage not caused by it with the Customer where spillage occurs,  
2399 and Contractor shall report such instances to Agency. If the Contractor has  
2400 attempted to have a Customer stop creating spillage but is unsuccessful, the  
2401 Agency will attempt to rectify such situation with the Customer. Contractor  
2402 shall coordinate with Agency regarding Agency street cleaning activities to  
2403 minimize litter.

2404 3. Covering of Loads. Contractor shall cover all open Drop Boxes with an  
2405 Agency-approved cover, at the Collection location before transporting materials  
2406 to the Designated Transfer and Processing Facility.

2407 J. **Noise**. All Collection operations shall be conducted as quietly as possible and shall  
2408 conform to applicable federal, State, County, and Agency noise level regulations.  
2409 Contractor shall promptly resolve any Complaints of noise to the satisfaction of the  
2410 Agency.

2411 K. **Route Books and Route Maps**. For each Collection route, Contractor shall  
2412 maintain a route book and route map that documents each Customer on the route,  
2413 their service address, service level, and the order in which Customers shall be  
2414 serviced (e.g., the order in which routes shall be driven). Contractor shall distribute  
2415 new route books and route maps to its Collection vehicle drivers as frequently as  
2416 necessary; and each driver shall note differences in the service levels shown in the  
2417 route book, adding and subtracting Customers and service levels, as necessary.  
2418 Route supervisors shall periodically check the routes to ensure that drivers are  
2419 providing service in accordance with their route books. Contractor shall provide  
2420 Agency with route books and maps including assessor parcel data when available  
2421 within ten (10) Business Days of request.

2422 L. **Change in Collection Schedule**. Contractor shall notify Agency a minimum of  
2423 sixty (60) Business Days prior to a change in the Residential Collection schedule or  
2424 two (2) weeks for minor adjustments (defined as less than the average size of a  
2425 single route per the Collection service metrics delineated in the prior year's  
2426 Compensation Application), and shall request approval of Contractor's notice to  
2427 Residential Customers thirty (30) Business Days prior to a change in Service Day,  
2428 unless this requirement is waived in writing by Agency. Contractor shall notify  
2429 Owners and Occupants of Residential Premises not later than ten (10) Business  
2430 Days prior to any change in Residential Collection operations which results in a  
2431 change in the day on which Solid Waste, Targeted Recyclable Materials, and  
2432 Organic Materials Collection occurs. Contractor shall not permit any Customer to  
2433 go more than five (5) Business Days without service in connection with a Collection  
2434 schedule change.

2435 **8.03 UNLOADING MATERIALS AT THE DESIGNATED TRANSFER AND PROCESSING**  
2436 **FACILITY**

2437 Contractor shall be required to unload at the Designated Transfer and Processing  
2438 Facility all materials from its Collection vehicles by its own personnel. Contractor shall be  
2439 required to ensure that unloaded materials are properly placed in the designated areas  
2440 and containers as directed by Operator and SBWMA. For example, Contractor shall be

2441 required to deposit at the Designated Transfer and Processing Facility Batteries and Cell  
2442 Phones, Used Motor Oil, and Used Motor Oil Filters in the containers provided by  
2443 Operator and designated for storage of these materials. Contractor shall cooperate with  
2444 Operator to ensure its Collection vehicles unload Solid Waste, Targeted Recyclable  
2445 Materials, Organic Materials, and other materials (e.g., Batteries, Cell Phones, Used  
2446 Motor Oil, and Used Motor Oil Filters) Collected by Contractor in the locations  
2447 designated by Operator and SBWMA.

2448 **8.04 VEHICLES**

2449 A. **General.** Contractor shall provide a fleet of Collection vehicles sufficient in number  
2450 and capacity to efficiently perform the work required by the Agreement in strict  
2451 accordance with its terms. Contractor shall have available sufficient back-up  
2452 vehicles for each type of Collection vehicle used (e.g., side loader, front loader, and  
2453 roll-off vehicles) to respond to mechanical breakdowns, Complaints, and  
2454 emergencies. Contractor shall maintain a spare ratio of ten percent (10%) for all  
2455 Collection vehicles used in the SBWMA Service Area. It is contemplated that, as of  
2456 the Commencement Date, all Collection vehicles will be vehicles that Contractor  
2457 purchased during the term of the 2009 Franchise Agreement and will be nearing the  
2458 end of their useful life.

2459 Contractor shall purchase and place into service after the Commencement Date all  
2460 new vehicles to replace its Collection vehicles and other vehicles used by  
2461 Contractor in the SBWMA Service Area in accordance with the Contractor-prepared  
2462 equipment replacement schedule in Attachment N. The new vehicles shall replace  
2463 all vehicles in service on the Commencement Date. The vehicles shall be  
2464 purchased and placed in service in accordance with the timeline shown in  
2465 Attachment N unless an alternative timeline is agreed upon by the SBWMA  
2466 provided that all new vehicles shall be in service on or before June 15, 2026. The  
2467 estimated depreciation and interest expenses for the acquisition of new vehicles  
2468 shall be included in Contractor's Compensation for 2021 and adjustments during the  
2469 Term shall be made in accordance with Attachment K. Agency has no responsibility  
2470 to pay Contractor for remaining net book value of any Vehicles, Containers, or other  
2471 equipment that is not fully depreciated at end of Term, unless Agency elects to  
2472 purchase Containers pursuant to Section 8.05.F of the Agreement.

2473 At no time after the Commencement Date shall any vehicle used to perform the  
2474 services required under this Agreement exceed fifteen (15) years of age from the  
2475 first date the vehicle was registered unless agreed upon by the SBWMA. Collection  
2476 vehicles and other vehicles whose acquisition costs are included in the calculation  
2477 of Contractor's Compensation may be used only in the SBWMA Service Area.

2478 **B. General Vehicle Specifications**

- 2479 1. All vehicles used by Contractor in providing Solid Waste, Targeted Recyclable  
2480 Material, and Organic Material Collection services shall be registered with the  
2481 California Department of Motor Vehicles.
- 2482 2. All Collection vehicles shall have leak-proof bodies designed to prevent  
2483 leakage, spillage, and/or overflow and shall be designed so that Collected  
2484 materials are not visible.

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3. All vehicles shall comply with California Environmental Protection Agency (EPA) noise emission regulations and California Air Resources Board air quality regulations and other applicable pollution control regulations.
  4. All Collection vehicles shall have cameras to monitor driving and loading activities including, at a minimum: (i) back-up cameras mounted at the rear and side of the vehicle; and, (ii) a hopper camera clearly displaying the contents of the hopper prior to compaction.
  5. Contractor shall be required to operate an adequate number of Collection vehicles that shall be capable of servicing hard-to-service areas and accessing long driveways in the Service Area.
  6. All Collection vehicles shall be capable of unloading materials in the Designated Transfer and Processing Facility buildings taking clearance heights, especially in the MRF, into consideration.
  7. All Collection vehicles shall be equipped with and shall utilize on-board computers and GPS tracking devices with real-time transmission to all levels of Contractor's operations. The on-board computer system shall: (i) capture all operations data needed to complete the Contractor's reporting requirements for this Agreement; (ii) capture all operating data needed to prepare the Contractor's Application; and (iii) allow Customer service staff direct real-time access to driver data including vehicle location, Container set-out and service data, and notes regarding service issues.
  8. All Collection vehicles shall be equipped with a broom, shovel, absorbent materials, and other approved cleanup devices and materials for emergencies, or any spillage or leaks that may occur.
  9. Route supervisors and management personnel shall use one-half (0.5) Ton hybrid pickup trucks while performing services.
  10. Contractor developed preliminary specifications for vehicles that will be purchased and placed into service after the Commencement Date. These specifications, which were the basis for Contractor's vehicle depreciation and interest costs (presented in Attachment N), are presented in Attachment P. At least eighteen (18) months prior to Contractor's initial acquisition of new Collection vehicles to be placed into service after January 1, 2021, Contractor shall meet and confer with the SBWMA to discuss the type of vehicles to be purchased and fuel options. The Agency and SBWMA may be interested in considering different fuel options with the goal of minimizing the air emission impact of the Collection vehicles. At the request of the Agency or SBWMA, Contractor shall provide vehicle information, specifications, and fuel options and a cost impact analysis of various fueling options. Contractor shall obtain the SBWMA's approval in the fuel selection prior to ordering new Collection vehicles. SBWMA recognizes that Contractor's vehicle purchase plan anticipates purchases over multiple years. This meet and confer obligation is intended to occur prior to Contractor's initial purchase of new Collection vehicles to discuss a strategy for all vehicles purchased after January 1, 2021 unless Parties agree otherwise.
- C. **Vehicle Identification.** Contractor's name, local telephone number, and a unique vehicle identification number designated by Contractor for each vehicle shall be

2531 prominently displayed on all four (4) sides of the vehicles, in letters and numbers  
2532 with a maximum five (5) digit sequence, that are no less than two and one-half (2.5)  
2533 inches in height. Contractor shall not place any other information or logo on  
2534 Contractor vehicles, unless approved in writing by SBWMA. Vehicles shall be  
2535 clearly labeled to indicate the materials Collected by that vehicle, specifically; "Solid  
2536 Waste," "Recyclables," or "Organic Materials," as directed by SBWMA.

2537 D. **Inventory.** Contractor shall furnish the Agency and SBWMA a written inventory of  
2538 all vehicles used in providing service, and shall update the inventory annually. The  
2539 inventory shall list all vehicles by manufacturer, identification number, date of  
2540 acquisition, type, capacity, decibel rating, average weight of load, and average  
2541 loaded axle weights.

2542 E. **Cleaning and Maintenance**

2543 1. General. Contractor shall maintain all of its properties, vehicles, facilities, and  
2544 equipment used in providing service under this Agreement in a good, safe,  
2545 neat, clean, and operable condition at all times.

2546 2. Cleaning. Vehicles used in the Collection of Solid Waste, Targeted Recyclable  
2547 Materials, and Organic Materials shall be thoroughly washed, and thoroughly  
2548 steam cleaned weekly so as to present a clean appearance. Agency may  
2549 inspect vehicles at any time to determine compliance with this Agreement.  
2550 Contractor shall also make vehicles available to the San Mateo County Health  
2551 Department for inspection, at any frequency it requests.

2552 3. Repainting or Refurbishing. Contractor shall repaint or refurbish to the  
2553 satisfaction of the Agency all vehicles used in the Collection of Solid Waste,  
2554 Targeted Recyclable Materials, and Organic Materials within thirty (30)  
2555 Business Days' notice from Agency, if Agency determines that their  
2556 appearance warrants painting. The cost for Agency-directed repainting shall be  
2557 incurred by Contractor.

2558 4. Maintenance. Contractor shall inspect each vehicle daily to ensure that all  
2559 equipment is operating properly. Vehicles which are not operating properly  
2560 shall be removed from service until repaired and operating properly.  
2561 Contractor shall perform all scheduled maintenance functions in accordance  
2562 with the manufacturer's specifications and schedule or in accordance with  
2563 California Highway Patrol standards, whichever are more stringent. Contractor  
2564 shall keep accurate records of all vehicle maintenance, recorded according to  
2565 date and mileage and shall make such records available to Agency upon  
2566 request. Hydraulic oil, engine oil, and other spills from Collection vehicles in  
2567 the Service Area are a concern to the Agency. Contractor shall include as part  
2568 of maintenance activities a process for tracking the number and nature of  
2569 automotive spills (type of fluid, amount lost, failure point) and diagnosing the  
2570 cause of those spills. Based on the results of the process, Contractor shall  
2571 implement appropriate corrective actions to address issues that are  
2572 contributing factors to vehicle spills (e.g., revise specifications for specific part  
2573 failures, revise preventative maintenance schedule to address timing of  
2574 failures), so that each occurrence is controlled and minimized.

2575 5. Repair. Contractor shall repair, or arrange for the repair of, all of its vehicles  
2576 and equipment for which repairs are needed because of accident, breakdown,

2577 hydraulic oil or engine oil leaks, or any other cause so as to maintain all  
2578 equipment in a safe and operable condition. If an item of repair is covered by a  
2579 warranty, Contractor shall obtain warranty performance. Contractor shall  
2580 maintain accurate records of repair, which shall include the date and mileage,  
2581 nature of repair and the verification by signature of a maintenance supervisor  
2582 that the repair has been properly performed.

2583 6. Storage. Contractor shall arrange to store all vehicles and other equipment in  
2584 safe and secure location(s) in accordance with all applicable zoning  
2585 regulations.

2586 F. **Operation**. Vehicles shall be operated in compliance with federal, State, and local  
2587 laws and regulations including, but not limited to, the California Vehicle Code, the  
2588 regulations of the California Air Resources Board (CARB) Waste Collection Vehicle  
2589 Regulations as established in the California Code of Regulations Title 13 Section  
2590 2700 et seq.; and all applicable safety and local ordinances. Annually, Contractor  
2591 shall provide the SBWMA and Agency with documentation of such compliance for  
2592 each vehicle. For example, with regard to CARB regulations, such documentation  
2593 shall demonstrate, at a minimum, the vehicle number, make, model, year, control  
2594 technology used or planned, and the year that the control technology was applied or  
2595 is planned to be applied. Contractor shall not load vehicles in excess of the  
2596 manufacturer's recommendations or limitations imposed by federal, State, or local  
2597 weight restrictions on vehicles or roads.

2598 Contractor equipment used for Collection services shall be registered with the  
2599 California Department of Motor Vehicles. Equipment shall comply with US EPA  
2600 noise emission regulations, currently codified at 40 CFR Part 205, and other  
2601 applicable noise control regulations, and shall incorporate noise control features  
2602 throughout the entire vehicle.

2603 Annually, Contractor shall have each Collection vehicle weighed at the Designated  
2604 Transfer and Processing Facility to determine the unloaded weight (“tare weight”) of  
2605 the vehicle, and the total loaded weight of each load delivered to the Designated  
2606 Transfer and Processing Facility. Upon a major repair that could affect the  
2607 Collection vehicle tare weight, Contractor shall have the Collection vehicle re-  
2608 weighed to establish a new tare weight. Contractor shall track and make  
2609 adjustments to routes to eliminate ongoing over-weights associated with individual  
2610 routes.

## 2611 8.05 CONTAINERS

2612 A. **General**. Contractor shall provide all Containers, Bins, Kitchen Pails, and Drop  
2613 Boxes, as appropriate, to all Customers as part of its obligations under this  
2614 Agreement. Contractor shall ensure that Agency encroachment or other required  
2615 permits are obtained by Customer prior to delivering Containers. As of the  
2616 Commencement Date, all Containers may be used. Contractor-provided Containers  
2617 shall be designed and constructed to be watertight and prevent the leakage of  
2618 liquids. All Carts shall be manufactured by injection or rotational molding methods;  
2619 contain post-consumer content; and meet the Container design and performance  
2620 requirements provided in Attachment D – Container Specifications. Containers  
2621 provided to Customers shall have a useful life of ten (10) years as evidenced by a  
2622 manufacturer’s warranty or other documentation acceptable to the Agency.

2623 All Containers with a capacity of one (1) cubic yard or more shall meet applicable  
2624 federal, State, and local regulations for Bin safety; shall be covered with attached  
2625 lids; and shall have the capability to be locked if required or requested by Customer  
2626 or Agency.

2627 All Containers shall be maintained in a safe, serviceable, and functional condition.

2628 **B. Container Specifications**

2629 1. Sizes. The Container sizes to be provided to Single-Family, Multi-Family,  
2630 Commercial, and Agency Facility Customers are specified in Attachment D.  
2631 Contractor shall provide Customers with a choice of Container capacities  
2632 specified in Attachment D, and Customers may select their preferred Container  
2633 size(s).

2634 2. Color. The colors of the Containers provided to Single-Family, Multi-Family,  
2635 Commercial, and Agency Facility Customers are specified in Attachment D.

2636 3. Loading. Minimum allowable loading requirements for the Bin and Drop Box  
2637 contents shall be approved by the Agency prior to purchase based on the  
2638 minimum manufacturer's load limits, as specified in Attachment D.

2639 **C. Container Labeling**. Contractor shall label each Container with white, hot-stamped  
2640 lettering, and in-mold or heavy duty vinyl adhesive labels with graphics, illustrations,  
2641 or artwork that clearly conveys the type of materials (e.g., Solid Waste, Recyclable  
2642 Materials, cardboard, mixed paper, Organic Materials, wood waste, metal, etc.) to  
2643 be placed in the Container for Collection. The labeling shall be positioned on each  
2644 Container so it is visible to the Customer and Collection vehicle drivers on the front  
2645 side, and top. The labeling shall be durable and weather resistant to outdoor  
2646 conditions and have a minimum ten (10) year lifetime.

2647 All Containers shall prominently display information and graphics agreed upon by  
2648 Agency, SBWMA, and Contractor pursuant to Article 7.

2649 Final Container labeling layout, graphics, and text shall be approved by the Agency  
2650 and SBWMA prior to distribution to Customers.

2651 **D. Cleaning and Painting**. Contractor shall be responsible for steam cleaning and  
2652 repainting all Containers, except Carts, to present an aesthetically pleasing clean  
2653 appearance and to ensure this equipment is safely maintained and operationally  
2654 sound. Contractor shall repaint all used Containers on an as needed basis. Upon  
2655 Customer's request, Contractor shall steam clean all Solid Waste and Recyclable  
2656 Materials Containers (or exchange existing Containers with clean Containers) twice  
2657 annually, except Carts provided to Residential Premises, which Contractor is not  
2658 obligated to clean or exchange. Contractor shall clean all Organic Materials  
2659 Containers (or exchange existing Containers with clean Containers) quarterly,  
2660 except Carts provided to Residential Premises, which Contractor is not obligated to  
2661 clean or exchange. Contractor shall offer additional cleaning (or clean Container  
2662 exchange) to Customers requesting such service and shall bill Customers for such  
2663 cleaning (or Container exchange) at Agency-approved Charges specified in  
2664 Attachment Q.

2665 Contractor shall be responsible for cleaning Containers at no additional charge to  
2666 Customer to ensure that nuisance or public health concerns associated with vectors

2667 are addressed within two (2) Business Days after receipt of notification of said  
2668 condition.

2669 If any Container is impacted by graffiti, Contractor shall remedy the situation within  
2670 forty-eight (48) hours of being notified.

2671 E. **Repair and Replacement.** Contractor shall repair or replace all Containers  
2672 damaged by Collection operations (e.g., vehicle apparatus interface) or otherwise  
2673 inoperable (e.g., due to regular wear and tear) within three (3) Business Days of  
2674 being notified by Customer or observing the damaged Container. If the repair or  
2675 replacement cannot be completed within three (3) Business Days, the Contractor  
2676 shall notify Customer and provide a Container of the same size or larger until the  
2677 original Container can be replaced.

2678 At no additional cost, Contractor shall replace Customer Carts that have been  
2679 stolen, lost, damaged, or destroyed within five (5) Business Days. Contractor shall  
2680 allow Customer to exchange Containers for a Container of a different size at no  
2681 additional cost and shall replace Containers within five (5) Business Days of  
2682 Customer request.

2683 The Contractor recognizes that the majority of Containers in service on the  
2684 Commencement Date have nearly reached the end of their useful life or will reach  
2685 the end of the useful life during the Term of the Agreement. Contractor has planned  
2686 to replace Containers that have reached the end of their useful life on a rolling basis  
2687 over the Term of the Agreement. Contractor's estimated depreciation and interest  
2688 expense for Container replacement over the Term and these expenses are included  
2689 in Contractor's Compensation in the amount specified in Attachment K. Contractor  
2690 shall not be entitled to an adjustment to Contractor's Compensation or Rates for  
2691 Container replacements purchased during the Term of the Agreement.

2692 F. **Agency's Rights to Containers.** All Carts, Bins, and Drop Boxes purchased or  
2693 leased by Contractor and put into service at Customers' Premises before the first  
2694 anniversary of the Commencement Date shall become property of the Agency upon  
2695 expiration or early termination of this Agreement. All Carts, Bins, and Drop Boxes  
2696 purchased or leased and put into service at Customers' Premises on or after the  
2697 first anniversary of the Commencement Date that have not been fully depreciated  
2698 shall be available to the Agency, at the Agency's option, at their net book value,  
2699 upon expiration or early termination of this Agreement.

2700 At its sole discretion, the Agency may elect not to exercise its rights under this  
2701 subsection. In such case, the Containers shall remain the property of the Contractor  
2702 upon the expiration or earlier termination of this Agreement. In such case,  
2703 Contractor shall be responsible for removing all Containers in service from  
2704 Premises. Contractor shall do so within ten (10) Business Days after such  
2705 expiration or earlier termination or in accordance with an alternative Container  
2706 removal schedule agreed upon by the Parties, provided that Agency has notified  
2707 Contractor at least ninety (90) Days before such expiration or earlier termination  
2708 whether or not it intends to acquire the Containers.

2709 G. **Lock Service (Key Service).** In order to promote security, respond to Customer  
2710 needs, and minimize the impact or occurrence of illegal dumping and theft of  
2711 Recyclable Materials, Contractor will provide to Customers, at the Agency-approved  
2712 Charges specified in Attachment Q, locks for enclosures used to store Containers or

2713 locks for Containers and ensure the enclosures or Containers are locked after  
2714 providing Collection Service.

2715 Only Contractor, Agency, and the participating Customers will be provided with a  
2716 key to the enclosures and access to the Containers. The Contractor shall  
2717 prominently display the service schedule on the enclosure and any changes in  
2718 service shall be displayed on the enclosure by Contractor within one (1) Business  
2719 Day of making the change. If the Carts or Bins are left "outside" in a designated  
2720 area, each Container will be locked (keyed alike), and only Contractor staff, Agency  
2721 staff, and the participating Customers will be provided with a key to access the  
2722 Containers. At least once each calendar year, Contractor's route supervisor shall  
2723 visit each of the participating Customers with shared Containers, respond to any  
2724 questions or concerns, check the areas for contamination, litter, or damage and  
2725 change the lock and distribute new "keyed alike" keys to Agency staff and  
2726 Customers.

2727 **8.06 PERSONNEL**

2728 A. **General.** Contractor shall furnish such qualified drivers, mechanical, supervisory,  
2729 customer service, clerical, and other personnel as may be necessary to provide the  
2730 services required by this Agreement in a safe, thorough, professional, and efficient  
2731 manner and shall provide, at a minimum, the number and type of personnel listed in  
2732 Attachment O in total for the SBWMA Service Area. All personnel furnished by  
2733 Contractor shall be subject to the "relationship of parties" provisions of Section  
2734 15.01.

2735 B. **Reserved.**

2736 C. **Collective Bargaining Agreements.** If Contractor negotiates a new collective  
2737 bargaining agreement with a union representing its employees, or an amendment to  
2738 a collective bargaining agreement currently in force, either of which increases  
2739 wages or benefits greater than wage and benefit costs included in Contractor's  
2740 Compensation (through adjustments described in Article 11 and Attachment K), the  
2741 Agency is not required to include costs attributable to the increased wages or  
2742 benefits in Contractor's Compensation during the Term of the Agreement.

2743 D. **Approval of Management.** Contractor recognizes the importance of establishing a  
2744 successful relationship between its management and Agency and SBWMA staff.  
2745 Before extending an offer of employment for the position of general manager, both  
2746 initially and throughout the Term, Contractor shall provide the SBWMA with the  
2747 description of the proposed position; an opportunity to review and comment upon  
2748 the position description, the background, experience, and qualifications of each  
2749 candidate being considered for the position, and an opportunity to meet with each  
2750 candidate. Contractor shall give thoughtful consideration to the SBWMA's  
2751 comments on the descriptions of the proposed position and each candidate, but  
2752 shall have the ultimate right to make employment decisions in its best business  
2753 judgment.

2754 If the Agency is dissatisfied with the performance of the management personnel, the  
2755 Agency shall contact the general manager to discuss the employee's performance.  
2756 If the Agency is dissatisfied with the general manager, the Agency shall contact the  
2757 group manager to discuss the general manager's performance.

2758 Contractor shall advise the affected management employee of any complaints  
2759 made by the Agency regarding the employee's performance. The Parties shall  
2760 meet and confer in good faith to address the Agency's concerns, and shall agree on  
2761 a corrective course of action to be implemented immediately. Contractor agrees to  
2762 consider in good faith, but shall not be bound by, any requests by the Agency to  
2763 transfer or re-assign a management employee should the Agency maintain in good  
2764 faith that it can no longer work constructively with said employee.

2765 E. **Provision of Field Supervision.** Contractor shall designate qualified employees  
2766 as supervisors of field operations. The field supervisor shall devote their time in the  
2767 field supervising, managing, and monitoring Collection operations for reliability,  
2768 quality, efficiency, safety, and for responding to Complaints. The number of field  
2769 supervisors is specified in Attachment O in total for the SBWMA Service Area.

2770 F. **Driver Qualifications.** All drivers shall be trained and qualified in the operation of  
2771 Collection vehicles, and must have in effect a valid license, of the appropriate class,  
2772 issued by the California Department of Motor Vehicles. Contractor shall use the  
2773 Class II California Department of Motor Vehicles employer "Pull Notice Program" to  
2774 monitor its drivers for safety.

2775 G. **Customer Service Representative Training.** Customer service representatives  
2776 shall be trained on specific Agency service requirements, a minimum of once per  
2777 quarter. An Agency information sheet shall be provided to each Customer service  
2778 representative for easy reference of Agency requirements and general Customer  
2779 needs. Contractor shall provide the information sheet, training agenda, and  
2780 associated documentation within five (5) Business Days of request from Agency.

2781 H. **Safety Training.** Contractor shall provide suitable operational and safety training  
2782 for all of its employees who operate Collection vehicles or equipment or who are  
2783 otherwise directly involved in such Collection. Contractor shall train its employees  
2784 involved in Collection to identify, and not to Collect, Hazardous Waste, or Infectious  
2785 Waste. Upon the Agency's request, Contractor shall provide a copy of its safety  
2786 policy and safety training program, the name of its safety officer, and the frequency  
2787 of its trainings.

2788 I. **No Gratuities.** Contractor shall not permit its employees to demand or solicit,  
2789 directly or indirectly, any additional compensation or gratuity from members of the  
2790 public for Collection services or accept gratuities or compensation in exchange for  
2791 additional Collection services.

2792 J. **Employee Conduct and Courtesy.** Contractor shall employ only competent and  
2793 qualified personnel who serve the public in a courteous, helpful, and impartial  
2794 manner. Contractor shall use its best efforts to assure that all employees present a  
2795 neat appearance and conduct themselves in a courteous manner. Contractor shall  
2796 regularly train its employees in Customer courtesy, shall prohibit the use of loud or  
2797 profane language, and shall instruct Collection employees to perform the work as  
2798 quietly as possible. If any employee is found not to be courteous or not to be  
2799 performing services in the manner required by this Agreement, Contractor shall take  
2800 all appropriate corrective measures. The Agency may require Contractor to  
2801 reassign an employee, if the employee has conducted himself or herself  
2802 inconsistently with the terms of this Agreement.

2803 Contractor shall adopt policies and procedures consistent with State and federal law  
2804 that ensure a sober and drug-free workplace. This includes strictly prohibiting  
2805 unlawful manufacture, distribution, possession, or use of any controlled substance  
2806 in the workplace, regardless of whether the employee is on duty at the time.  
2807 Further, the policies and procedures shall prohibit an employee from operating  
2808 either Agency or Contractor equipment and vehicles (whether on or off duty) while  
2809 under the influence of alcohol or drugs. The purpose of these policies and  
2810 procedures is to ensure workplace safety, productivity, efficiency, and the quality of  
2811 Contractor's service to Customers.

2812 K. **Uniforms.** While performing services under this Agreement, all Contractor's  
2813 employees performing field service shall be dressed in clean uniforms and shall  
2814 wear visible identification that include the employee's name and/or employee  
2815 number, and Contractor's name. Uniform type, style, colors, and any modifications  
2816 may be subject to approval by the Agency.

## 2817 **8.07 HAZARDOUS WASTE INSPECTION AND HANDLING**

2818 A. **Inspection Program and Training.** Contractor is required to inspect Solid Waste,  
2819 Targeted Recyclable Materials, Organic Materials, and other materials put out for  
2820 Collection and may reject Solid Waste, Targeted Recyclable Materials, Organic  
2821 Materials, and other materials observed to be contaminated with Hazardous Waste  
2822 and not Collect Hazardous Waste put out with Solid Waste, Targeted Recyclable  
2823 Materials, and Organic Materials. Contractor shall develop a load inspection  
2824 program that includes the following components: (i) personnel and training; (ii) load  
2825 checking activities; (iii) management of wastes; and (iv) record keeping and  
2826 emergency procedures.

2827 Contractor's load checking personnel, including its Collection vehicle drivers, shall  
2828 be trained in: (i) the effects of Hazardous Substances on human health and the  
2829 environment; (ii) identification of prohibited materials; and (iii) emergency  
2830 notification and response procedures. Collection vehicle drivers shall inspect  
2831 Containers before Collection when practical.

2832 B. **Response to Hazardous Waste Identified During Collection.** Under no  
2833 circumstances shall Contractor's employees knowingly Collect Hazardous Waste or  
2834 remove unsafe or poorly containerized Hazardous Waste from a Collection  
2835 Container. If Contractor determines that material placed in any Container for  
2836 Collection is Hazardous Waste or other material that may not legally be accepted or  
2837 safely processed at the Designated Transfer and Processing Facility or presents a  
2838 hazard to Contractor's employees, or those at the Designated Transfer and  
2839 Processing Facility, the Contractor shall have the right to refuse to accept such  
2840 material. The Generator shall be contacted by the Contractor and requested to  
2841 arrange proper Disposal. If the Generator cannot be reached immediately, the  
2842 Contractor shall, before leaving the Premises, leave a non-collection notice, which  
2843 indicates the reason for refusing to Collect the material and lists the phone number  
2844 for the San Mateo County Household Hazardous Waste Facility, or other resources  
2845 as directed by Agency. Contractor's environmental technician shall be notified to  
2846 handle the issue with the Generator. The Contractor's environmental technician  
2847 shall be required to guide the Generator to safely containerizing the Hazardous  
2848 Waste and shall explain the Generator's options for proper disposition of such  
2849 material.

2850 If Hazardous Waste is found in a Collection Container or Collection area that could  
2851 possibly result in imminent danger to people or property, the Contractor shall  
2852 immediately notify the Agency's Fire Department using the nine-one-one (911)  
2853 emergency telephone number. The Contractor shall notify the Agency of any  
2854 Hazardous Waste identified in Containers or left at any Premises within twenty-four  
2855 (24) hours of identification of such material.

2856 **C. Response to Hazardous Waste Identified at Designated Transfer and**  
2857 **Processing Facility.** Contractor shall not knowingly deliver Unpermitted Material to  
2858 the Designated Transfer and Processing Facility. The Operator shall use  
2859 reasonable business efforts and standard industry practices to detect and discover  
2860 Unpermitted Material at the facility and shall not knowingly accept Unpermitted  
2861 Material. In the event that Unpermitted Material is delivered to the Designated  
2862 Transfer and Processing Facility, the Operator shall be entitled to pursue whatever  
2863 remedies, if any, it may have against the Generator or Person(s) bringing such  
2864 Unpermitted Material to the Designated Transfer and Processing Facility provided  
2865 that in no case shall the Agency be considered the Person bringing such  
2866 Unpermitted Material to the Designated Transfer and Processing Facility.

2867 Contractor acknowledges that in the event the operator identifies Unpermitted  
2868 Materials in the materials delivered by Contractor before the materials are unloaded  
2869 at the facility, the Operator has the right to reject the load and direct the Contractor  
2870 to cause removal and Disposal of the Unpermitted Material in a safe and lawful  
2871 manner, at the sole expense of the Contractor. If the Unpermitted Materials are  
2872 delivered to the Designated Transfer and Processing Facility by Contractor and  
2873 unloaded at the facility before their presence is detected, and the Generator cannot  
2874 be identified or fails to remove the material after being requested to do so, the  
2875 Contractor shall arrange for and/or pay for its proper Disposal. Contractor shall  
2876 make reasonable efforts to identify and notify the Generator. The Contractor shall  
2877 make a good faith effort to recover the cost of any transportation and Disposal from  
2878 the Generator, and the cost of this effort, as well as the cost of Disposal shall be  
2879 chargeable to the Generator, if appropriate documentation, as deemed necessary  
2880 by the Agency, is provided to the Agency within five (5) Business Days of the  
2881 occurrence.

2882 In the event Contractor delivers Unpermitted Materials on a frequent or continuous  
2883 basis to the Designated Transfer and Processing Facility and the Contractor refuses  
2884 to provide for the proper handling and disposition of such Unpermitted Material, the  
2885 Operator may provide written notice to Agency of such refusal by Contractor.

2886 **D. Reporting, Regulations, and Record Keeping.** Contractor shall comply with  
2887 emergency notification procedures required by Applicable Laws and regulatory  
2888 requirements. Contractor shall notify all appropriate agencies, including the  
2889 California Department of Toxic Substances Control and Local Emergency  
2890 Response Providers and the National Response Center of reportable quantities of  
2891 Hazardous Waste found or observed in Solid Waste, Targeted Recyclable  
2892 Materials, Organic Materials, Electronic Waste, Universal Waste, and Construction  
2893 and Demolition Debris anywhere within Service Area. In addition to other required  
2894 notifications, if Contractor observes any substances which it or its employees  
2895 reasonably believe or suspect to contain Hazardous Wastes unlawfully Disposed of  
2896 or released on any Agency property, including storm drains, streets or other public  
2897 rights of way, Contractor will immediately notify the Agency and SBWMA.

2898 All records required by regulations shall be maintained at the Contractor's Facility.  
2899 These records shall include: waste manifests, waste inventories, waste  
2900 characterization records, inspection records, incident reports, and training records.  
2901 Contractor shall maintain records showing the types and quantities, if any, of  
2902 Hazardous Waste found in Solid Waste, Targeted Recyclable Materials, and  
2903 Organic Materials, which was inadvertently Collected from Customers within the  
2904 Service Area, but diverted from landfilling.

2905 **8.08 COMMUNICATION AND COOPERATION WITH AGENCY AND SBWMA**

2906 A. **Communications.** The Contractor's general manager, local finance executive, and  
2907 local customer service executive shall all have e-mail capabilities to enable the  
2908 Agency, SBWMA, and such personnel to communicate via e-mail. Contractor's  
2909 general manager shall respond to Agency and SBWMA email correspondence  
2910 within twenty-four (24) hours. Additionally, such personnel's names, roles and  
2911 contact details shall be made available to Agency upon signature of this extension.

2912 B. **Monthly Meetings.** Upon request from Agency, beginning on the Commencement  
2913 Date, and then on a monthly basis thereafter, Contractor shall meet with the Agency  
2914 and SBWMA to discuss progress of each active diversion program, quality, and  
2915 reliability of Collection services, and compliance with the terms of the Agreement.  
2916 SBWMA may attend and participate in these meetings. At each monthly meeting,  
2917 the Agency, Contractor, and SBWMA, if attending, shall have the opportunity to  
2918 present and discuss proposed changes in service such as changing program  
2919 requirements or modifying Collection methods.

2920 C. **Inspection by Agency.** Agency shall have the right, but not the obligation, to  
2921 observe and inspect all of the Contractor's operations under this Agreement. In  
2922 connection therewith, Agency and SBWMA shall have the right to enter facilities  
2923 used by Contractor during operating hours, speak to any of Contractor's employees,  
2924 and receive cooperation from such employees in response to inquiries. In addition,  
2925 upon reasonable notice and without interference with Contractor's operations,  
2926 Agency and SBWMA may review and copy any of Contractor's operational and  
2927 business records related to this Agreement. If Agency or SBWMA so requests,  
2928 Contractor shall make specified personnel available to accompany Agency and  
2929 SBWMA employees on inspections and shall provide electronic copies of records  
2930 stored in electronic media.

2931 **8.09 COOPERATION WITH DESIGNATED TRANSFER AND PROCESSING FACILITY**  
2932 **OPERATOR**

2933 A. **Communications.** If requested by SBWMA, the Contractor shall meet with the  
2934 SBWMA and Operator at least once each month to discuss issues related to the  
2935 interaction of operations between Contractor and Operator including, but not limited  
2936 to:

- 2937 1. Traffic flow;
- 2938 2. Vehicle weighing procedures;
- 2939 3. Targeted Recyclable Materials and Organic Materials Contamination;
- 2940 4. Hazardous Waste screening and safety policies;
- 2941 5. Receiving hours;

- 2942 6. Billing and payment of gate fees for delivery of materials;  
2943 7. Vehicle parking;  
2944 8. Employee facilities; and,  
2945 9. Maintenance facilities.

2946 The Contractor's general manager shall have e-mail capabilities to enable the  
2947 Operator and the Contractor's general manager to communicate via e-mail.  
2948 Contractor's general manager shall respond to the Operator's email  
2949 correspondence within twenty-four (24) hours.

2950 B. **Coordination of Hours.** Contractor shall plan its Collection routes to be  
2951 compatible with the Designated Transfer and Processing Facility receiving hours,  
2952 which shall be, at a minimum, Monday through Friday from 3:00 a.m. to 6:00 p.m.  
2953 and Saturday and Sunday from 6:00 a.m. to 5:00 p.m. Contractor shall deliver  
2954 Collected materials to the Designated Transfer and Processing Facility during the  
2955 receiving hours of the Designated Transfer and Processing Facility.

2956 C. **Compliance with Facility Rules.** Contractor shall cooperate with Operator and  
2957 comply with Operator's requirements Including: (i) how and where to unload  
2958 Collection vehicles; (ii) respecting operations and construction of new facilities; and,  
2959 (iii) the Operator's Hazardous Waste exclusion program. Contractor shall also  
2960 cooperate with the Contamination assessment procedures specified in Attachment  
2961 E-1. All costs charged by the SBWMA for acceptance of Contractor's materials  
2962 shall be paid by Contractor. Contractor shall receive compensation for transfer and  
2963 processing costs in accordance with Article 11.

#### 2964 **8.10 BUY-RECYCLED POLICY**

2965 The Contractor shall comply with the purchasing requirements described in this Section,  
2966 and shall document its on-going compliance with these requirements upon Agency  
2967 request.

2968 A. **Recycled Paper.** The Contractor shall use recycled paper for invoices, Bills,  
2969 reports, and public education materials. The recycled paper shall have at least  
2970 thirty percent (30%) post-consumer recycled content for uncoated paper and ten  
2971 percent (10%) post-consumer recycled content for coated paper based on federal  
2972 standards. Contractor shall state on all materials prepared with post-consumer  
2973 recycled content the following: "Printed on Recycled Paper."

2974 B. **Re-Refined Motor Oil.** Contractor shall be encouraged but not required to use re-  
2975 refined motor oil for its Collection vehicles.

2976 C. **Recycled Plastic.** Contractor shall purchase Carts and Kitchen Pails that contain  
2977 the minimum post-consumer content as specified in Attachment D. All Carts and  
2978 Kitchen Pails shall be one hundred percent (100%) recyclable.

#### 2979 **8.11 ANNUAL PERFORMANCE HEARING**

2980 A. **Objectives.** Agency and/or SBWMA may hold a public performance hearing in  
2981 April or May of each Rate Year, at which time Contractor shall be present and shall  
2982 participate by making a presentation and responding to questions. Agency or  
2983 SBWMA shall convene the hearing to address the positive and negative aspects of  
2984 Contractor's overall performance. The purpose of the hearing may also involve

2985 discussion and review of technological, economic, and regulatory changes in  
2986 Collection, waste reduction, Recycling, processing, and Disposal practices that can  
2987 improve quality of service; increase waste reduction and diversion; and ensure  
2988 services are being provided effectively and economically. Topics for discussion and  
2989 review at the performance hearing shall include, but not be limited to: Contractor's  
2990 accomplishments and compliance with various provisions of the Agreement,  
2991 services provided, feasibility of providing new services, application of new  
2992 technologies, Customer Complaints, possible amendments to this Agreement,  
2993 developments in the Applicable Laws and regulations, new initiatives for meeting or  
2994 exceeding waste reduction and Recycling goals, regulatory constraints, and  
2995 Contractor performance. Agency or SBWMA and Contractor may each select  
2996 additional topics for discussion at the performance hearing. As used in this Section  
2997 8.11, "Agency or SBWMA" means Agency if Agency is the one convening the  
2998 hearing, and SBWMA if SBWMA is the one convening the hearing.

2999 B. **Process.** Within sixty (60) Days of notification provided by Agency or SBWMA to  
3000 Contractor of its intent to conduct a performance hearing, Agency or SBWMA will  
3001 submit questions to Contractor pertaining to Contractor's performance and  
3002 Contractor shall submit its written response within thirty (30) Days. Agency or  
3003 SBWMA and Contractor shall meet to discuss the questions and Contractor's  
3004 response prior to submittal by Contractor. Agency or SBWMA and Contractor may  
3005 request from one another information or documents related to the scheduled public  
3006 hearing and Agency or SBWMA and Contractor shall provide such information  
3007 promptly.

3008 In addition to Contractor's responses to the questions submitted by Agency or  
3009 SBWMA, Contractor may be required to submit a self-assessment report of  
3010 Contractor's performance and information pertaining to the following:

- 3011 1. Recommended Changes or New Services. Changes and/or new services  
3012 recommended to improve Agency's or SBWMA's ability to meet and/or exceed  
3013 the Agency's or SBWMA's waste reduction and recycling goals and those of  
3014 the Act and other State legislation/regulations (such as, but not limited to, AB  
3015 341, AB 901, AB 1594, AB 1826, SB 1061, and SB 1383).
- 3016 2. Complaint Records. The reports required by this Agreement regarding  
3017 Complaints shall be used as one basis for review. Contractor may submit other  
3018 relevant performance information and reports for consideration. Agency or  
3019 SBWMA may request Contractor to submit specific information for the hearing.  
3020 In addition, any Person may submit comments or Complaints during or before  
3021 the hearing, either orally or in writing, and these shall be considered.
- 3022 3. Action Plan. Contractor shall prepare and submit an action plan for improving  
3023 and/or modifying its Collection services and other services if requested.

3024 Not less than ten (10) Business Days prior to the scheduled hearing date, Agency  
3025 or SBWMA and Contractor shall exchange any written reports and other documents  
3026 that will be provided or presented at the hearing. Not less than five (5) Business  
3027 Days before the scheduled hearing date, Agency or SBWMA and Contractor shall  
3028 ensure their availability to discuss the content and underlying support for such  
3029 reports.

3030 Agency or SBWMA and Contractor shall attend and participate in the performance  
3031 hearing. Contractor may be required to present an oral report on its performance at  
3032 the performance hearing. Contractor's failure to attend and participate in the  
3033 performance hearing and provide an oral presentation upon request; provide a  
3034 written response to the questions or request for a self-assessment report submitted  
3035 by Agency or SBWMA; or submit an action plan if requested by Agency or SBWMA  
3036 may result in Liquidated Damages pursuant to Attachment J.

3037 Within sixty (60) Days after the conclusion of each performance hearing, Agency or  
3038 SBWMA may issue a report. As a result of the review, Agency or SBWMA may  
3039 require Contractor to provide expanded or new services within a reasonable time  
3040 frame and for reasonable compensation; and Agency or SBWMA may direct  
3041 Contractor to take corrective actions for any performance inadequacies.

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## ARTICLE 9 RECORD KEEPING AND REPORTING

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3045 **9.01 GENERAL**

3046 Contractor shall compile and maintain records related to its performance as necessary to  
3047 develop the reports required by this Agreement. Contractor agrees to conduct data  
3048 collection, record keeping, and reporting activities necessary to meet the reasonable  
3049 reporting and Solid Waste, Recyclable Materials, and Organic Materials program  
3050 management needs of the Agency, and to comply with Contractor's obligations under  
3051 the Act and other State legislation/regulations (such as, but not limited to, AB 341, AB  
3052 1826, and SB 1383), other Applicable Laws, and the requirements of this Agreement.

3053 Record keeping and reporting requirements specified in this Agreement shall not be  
3054 considered a comprehensive list of reporting requirements. In particular, Article 9 is  
3055 intended to highlight the general nature of records and reports and their minimum  
3056 content and is not meant to comprehensively define the scope and content of the  
3057 records and reports. Upon written direction or approval of Agency, the records and  
3058 reports required by Contractor in accordance with this and other Articles of the  
3059 Agreement shall be adjusted in number, format, or frequency.

3060 Contractor shall maintain all records necessary to allow the Agency to determine  
3061 Contractor's compliance with the terms of the Agreement and compliance with the  
3062 Performance Standards and Performance Incentives/Disincentives presented in this  
3063 Agreement including, but not limited to, those related to the quality of Collection services  
3064 and customer service and those identified in Attachments I and J. The records shall be  
3065 maintained in a manner that allows for easy verification of Contractor's performance.

3066 **9.02 GENERAL RECORD KEEPING PROVISIONS**

3067 A. **General.** Contractor shall maintain records required to conduct its operations, to  
3068 support requests it may make to Agency, and to respond to requests from Agency.  
3069 All records shall be maintained for five (5) years after the expiration or early  
3070 termination of this Agreement.

3071 In order to set Contractor's Compensation pursuant to Article 11, it is necessary for  
3072 Contractor to maintain accurate, detailed financial and operational information in a  
3073 consistent format and to make such information available to the Agency in a timely  
3074 fashion, and in accordance with reporting requirements specified in this Article.

3075 B. **Inspection of Records.** Agency shall have the right to inspect or review the payroll  
3076 tax reports, specific documents or records required expressly or by inference  
3077 pursuant to this Agreement, or any other similar records or reports of Contractor  
3078 that Agency shall deem, in its sole discretion, reasonably necessary to evaluate  
3079 reports, compensation applications provided for in this Agreement, and Contractor's  
3080 performance or other matters related to this Agreement.

3081 The Agency, its auditors, and other agents selected by the Agency, shall have the  
3082 right, during regular business hours, to conduct unannounced on-site inspections  
3083 and review of the records and accounting systems of Contractor and to make  
3084 copies of any of Contractor's documents relevant to this Agreement. Upon request,  
3085 Contractor shall arrange for records of Related Party Entities to be made available

3086 to Agency and its official representatives for review, to the extent such records are  
3087 reasonably necessary to evaluate reports, compensation applications, Contractor's  
3088 performance, or other matters related to this Agreement.

3089 C. **Retention of Records.** Unless otherwise herein required, Contractor shall retain all  
3090 records and data required to be maintained by this Agreement for the Term plus at  
3091 least five (5) years after expiration or early termination of the Agreement. Records,  
3092 and data shall be in a chronological and organized form and readily and easily  
3093 interpreted. At the Agency's request, records and data required to be retained shall  
3094 be retrieved in a timely manner (which shall not exceed more than ten (10)  
3095 Business Days unless Contractor obtains prior written approval from the Agency) by  
3096 Contractor and made available to the Agency.

3097 Contractor shall maintain copies of all Billings and Billing Collections (e.g.,  
3098 Customer payments) records or copies of Billing summary reports (that document  
3099 all Billings and Billing Collections for each Customer) for five (5) years, following the  
3100 date of Billings, for inspection and verification by Agency.

3101 Records and data required to be maintained that are not specifically directed to be  
3102 retained that are, in the sole opinion of the Agency, material to the determination of  
3103 Contractor's Compensation or Rates or to determination of Contractor's  
3104 performance, shall be retrieved by Contractor and made available to the Agency in  
3105 a timely manner (which shall not exceed ten (10) Business Days unless Contractor  
3106 obtains prior written approval from the Agency). When records and data are not  
3107 retained or provided by the Contractor, the Agency may make reasonable  
3108 assumptions regarding what information is contained in such records and data, and  
3109 such assumption(s) shall be conclusive in whatever action the Agency takes.

3110 D. **Record Security.** Contractor shall maintain adequate record security to preserve  
3111 records from events that can be reasonably anticipated such as a fire, theft, and an  
3112 earthquake. Electronically-maintained data and/or records shall be protected,  
3113 backed up, and stored at a separate site from the original data.

3114 **9.03 RECORD KEEPING REQUIREMENTS**

3115 A. **Maintenance of Financial and Operational Records**

3116 1. General. In order to effectuate Contractor's Compensation pursuant to Article  
3117 11, it is necessary for Contractor to maintain accurate, detailed financial and  
3118 operational information in a consistent format and to make such information  
3119 available to the Agency and the SBWMA in a timely fashion.

3120 2. Contractor's Accounting Records. Contractor shall maintain accurate and  
3121 complete accounting records containing the underlying financial and operating  
3122 data relating to, and showing the basis for computation of, all costs associated  
3123 with providing services under this Agreement. The accounting records shall be  
3124 prepared in accordance with Generally Accepted Accounting Principles (GAAP)  
3125 consistently applied.

3126 B. **Collection Service Records**

3127 Records shall be maintained and retained by Contractor for Agency relating to:

3128 1. Customer and Billing information including, but not limited to, the following for  
3129 each Customer.

- 3130 a. Names, addresses, and phone numbers of Customer, Billing contact  
3131 Person, and, if appropriate, for property manager or on-site contact  
3132 Person.
- 3133 b. Solid Waste service level, Targeted Recyclable Materials service level,  
3134 and Organic Materials service level (where service level includes the  
3135 number of Containers, size of each Container, and the Collection  
3136 frequency of each Container).
- 3137 c. Number of tenant or living units at Multi-Family Residential Complexes.
- 3138 d. Service exemptions for SFD Premises (if applicable).
- 3139 e. Special services (e.g., Backyard and Special Handling Collection for SFD  
3140 Premises, push/pull service, lock/unlock service, Container Relocation  
3141 Service, Long Distance Service, etc.).
- 3142 2. Contractor's Customer and Billing system shall allow for information to be  
3143 compiled easily and separately for each Service Sector.
- 3144 3. Weight and volume of material Collected by type (e.g., Solid Waste, Targeted  
3145 Recyclable Materials, Organic Materials). Where possible, information shall be  
3146 provided separately for each Service Sector.
- 3147 4. Route sheets and route maps identifying the accounts serviced by each  
3148 Collection vehicle on a daily basis (e.g., detailed GPS reports).
- 3149 5. Facilities, equipment, and personnel used by route and date.
- 3150 6. Facilities and equipment operations, maintenance, and repair.
- 3151 7. Tonnage of Solid Waste, Targeted Recyclable Materials, Universal Waste, and  
3152 Organic Materials listed separately by materials type and Service Sector and  
3153 the facility where materials were delivered (e.g., Designated Transfer and  
3154 Processing Facility).
- 3155 8. Monthly Overall Diversion Level, monthly SFD Diversion Level, and the monthly  
3156 Commercial Diversion Level (each stated as a percentage) and calculated in  
3157 accordance with Attachment I.
- 3158 9. Targeted Recyclable Materials, Used Motor Oil and Used Motor Oil Filters,  
3159 Household Batteries, Cell Phones, and Organic Materials Collection  
3160 participation and set-out rates.
- 3161 10. Tonnage of materials Collected from On-Call Bulky Item Collection services  
3162 described in Sections 5.05, 5.06 and 5.12, community collection events as  
3163 described in Sections 5.13 and 5.14, and abandoned waste clean-up events  
3164 described in Section 5.09, reported separately by material type Collected and  
3165 listing destination where materials were delivered (e.g., Goodwill Industries,  
3166 Designated Transfer and Processing Facility, etc.).
- 3167 11. Tonnage of Solid Waste, Recyclable Materials, and Organic Materials  
3168 Collected from Venues and Community Events as described in Section 5.08  
3169 reported separately by material type Collected and reported separately for each  
3170 Venue and Community Event as the total Tonnage of each material type for  
3171 each Venue or Community Event monthly.

3172 12. Volume of Used Motor Oil and number of Used Motor Oil Filters Collected by  
3173 Contractor reported separately for each facility where materials were delivered.

3174 **C. Other Programs Records**

3175 Records for other programs shall be tailored to specific needs. In general,  
3176 Contractor shall maintain and retain the following records:

- 3177 1. Plans, tasks, and milestones; and,  
3178 2. Accomplishments including activities conducted, dates, quantities of products  
3179 used, produced or distributed, and numbers of participants and responses.

3180 **D. Customer Service Records.** Daily logs of all Complaints and Inquiries shall be  
3181 retained for a minimum of thirty-six (36) months. Contractor shall maintain and  
3182 retain customer service center records which include, but are not limited to, the  
3183 following statistics:

- 3184 1. Number of calls received on a daily and monthly basis;  
3185 2. Number of calls answered on a daily and monthly basis;  
3186 3. Number of abandoned (dropped) calls on a daily and monthly basis;  
3187 4. Average abandoned time (i.e., Hold Time before abandoning call);  
3188 5. Number of delayed calls (i.e., calls where caller is placed on hold before  
3189 speaking with a customer service agent) on a daily and monthly basis;  
3190 6. Average Hold Time for incoming calls on a daily and monthly basis;  
3191 7. Percentage of calls answered by a Person within thirty (30) seconds on a daily  
3192 and monthly basis;  
3193 8. Percentage of calls answered within three (3) minutes on a daily and monthly  
3194 basis;  
3195 9. Number of e-mail responses sent from the customer service department to  
3196 Customers on a monthly basis;  
3197 10. Number and percentage of Complaint and Inquiry e-mails or submissions  
3198 through Contractor website that received responses before close of business  
3199 on the Day received on a monthly basis;  
3200 11. Number and percentage of Complaint and Inquiry e-mails that received  
3201 responses by the close of business on the Day following the receipt of the  
3202 Complaint or Inquiry;  
3203 12. Number of Complaints and Inquiries received through Contractor's website on  
3204 a daily and monthly basis;  
3205 13. Names of all Customer service representatives employed; and,  
3206 14. Minimum, average, and maximum number of customer service representatives  
3207 employed during each month.

3208 **E. CERCLA Defense Records.** Agency views the ability to defend against CERCLA  
3209 and related litigation as a matter of great importance. For this reason, the Agency  
3210 regards the ability to prove where Solid Waste Collected in the Agency area was  
3211 taken for transfer or Disposal, to be matters of concern. Contractor shall maintain

3212 data retention and preservation systems which can establish where Solid Waste  
3213 Collected in the Service Area was delivered for transfer or Disposal. This provision  
3214 shall survive the expiration of this Agreement.

3215 F. **Compilation of Information for State Law Purposes.** Contractor shall compile  
3216 information on amounts of Solid Waste delivered to the Designated Transfer and  
3217 Processing Facility and to other locations, as well as other information which the  
3218 Agency may reasonably request.

3219 Contractor shall maintain these records for a minimum of ten (10) years after  
3220 expiration or earlier termination of the Agreement. Contractor shall provide these  
3221 records to Agency (upon request or at the end of the record retention period) in an  
3222 organized and indexed manner rather than destroying or Disposing of them.

#### 3223 9.04 GENERAL REPORTING REQUIREMENTS

3224 A. **Purpose.** Records shall be maintained and retained in forms, on media, and by  
3225 methods that facilitate flexible use of data contained in them to structure reports, as  
3226 needed. Reports are intended to compile recorded data into useful forms of  
3227 information that can be used to, among other things:

- 3228 1. Evaluate Diversion performance
- 3229 2. Evaluate Contractor's performance
- 3230 3. Monitor Customer participation in Targeted Recyclable Materials and Organic  
3231 Materials Collection programs and in other programs using several different  
3232 performance measures
- 3233 4. Monitor changes in the number of Customers and Customers' service levels
- 3234 5. Determine needs for adjustment to programs and cost for such changes
- 3235 6. Evaluate customer service and Complaints
- 3236 7. Determine and set Contractor's Compensation and Rates

3237 B. **Report Format.** Contractor may propose report formats that are responsive to the  
3238 objectives and audiences for each report. The format of each report shall be  
3239 approved by Agency. The Agency may review and request changes to Contractor's  
3240 report formats and content and Contractor shall not unreasonably deny such  
3241 requests. Contractor agrees to submit all reports by e-mail in a format compatible  
3242 with the Agency's software and computers so the Agency can sort and analyze  
3243 data. Contractor shall provide a certification statement, under penalty of perjury by  
3244 the responsible Contractor official, that the report being submitted is true and  
3245 correct to the best knowledge of such official after their reasonable inquiry.

3246 C. **Submittal Schedule and Instructions.** Contractor shall submit monthly reports  
3247 within fifteen (15) Days after the end of the reporting month, quarterly reports within  
3248 thirty (30) Days after the end of the reporting quarter, and annual reports within  
3249 forty-five (45) Days after the end of the reporting year. Contractor shall submit (via  
3250 e-mail) all reports to the person(s) designated by SBWMA and Agency. Each  
3251 quarterly report shall be in lieu of the monthly report for the third month of the  
3252 quarter; thus, Contractor shall submit a total of thirteen (13) periodic reports per  
3253 year: eight (8) monthly reports, four (4) quarterly reports, and one (1) annual report.

3254 D. **Failure to Report.** The refusal or failure of Contractor to file any required reports,  
3255 or to provide required information to Agency, or the inclusion of any materially false

3256 or misleading statement or representation by Contractor in such report shall be  
3257 deemed a Contractor default as described in Section 14.01 subject to the notice and  
3258 cure provisions of that section and shall subject Contractor to all remedies which  
3259 are available to the Agency under the Agreement or otherwise.

3260 E. **Accuracy of Reports.** The failure of Contractor to file accurate and timely reports,  
3261 proposal(s), information, or correspondence to Agency or SBWMA, or the inclusion  
3262 of any inaccurate or misleading data, statement or representation by Contractor in  
3263 such report(s), proposal(s), information, or correspondence to Agency or SBWMA,  
3264 shall be subject to Liquidated Damages as set forth in Attachment J. In addition, the  
3265 inclusion of any materially false or misleading statement or representation by  
3266 Contractor in such report shall be deemed a Contractor default as described in  
3267 Section 14.01 subject to the notice and cure provisions of that Section and shall  
3268 subject Contractor to all remedies which are available to the Agency under the  
3269 Agreement or otherwise.

3270 F. **Source Files.** Contractor shall provide the SBWMA the following information: (i)  
3271 with each monthly or quarterly report, a spreadsheet provided by Operator showing  
3272 all Tonnages Collected by Contractor and delivered to the Shoreway Recycling and  
3273 Disposal Center from Member Agencies during the reporting month, listed  
3274 separately by Member Agency, material type, and Service Sector; (ii) with each  
3275 monthly or quarterly report, a spreadsheet containing the information required by  
3276 Sections 9.06.B, 9.06.D, and 9.06.E; and, (iii) with each annual report, a  
3277 spreadsheet containing the information required by Section 9.07.B. Such  
3278 information need not be included in the published reports provided to Agency. Upon  
3279 Agency's request, and at no charge to Agency, Contractor shall provide Agency the  
3280 most recent spreadsheets provided to SBWMA pursuant to this section, as well as  
3281 Contractor's most recent rate application submitted to the SBWMA.

3282 G. **Agency-Specific Reporting.** In addition to the reports required by this Agreement,  
3283 Contractor shall provide Agency with such additional reports as Agency may  
3284 reasonably request, and Agency shall compensate Contractor for the cost of  
3285 preparing such reports. The scope and format of such reports, and the  
3286 compensation to be paid to Contractor, shall be mutually agreed by Agency and  
3287 Contractor in advance. Contractor's standard rate for ordinary report preparation is  
3288 \$75.00/hour as of the date of execution of this Agreement. Such rate shall be  
3289 adjusted annually by the CPI-W-Wages index set forth in Attachment K.

## 3290 9.05 MONTHLY REPORTS

3291 Monthly reports shall present the information described in this Section in a format agreed  
3292 upon by the Agency.

3293 A. **Tonnage Information.** Contractor shall provide the Tonnage information requested  
3294 below by Service Sector on a monthly and year-to-date basis, with a comparison to  
3295 the prior year. However, the Agency reserves the right to request the monthly  
3296 Tonnage data by route.

3297 1. Solid Waste. Total Solid Waste Tonnage Collected and Disposed by Service  
3298 Sector.

3299 2. Targeted Recyclable Materials Services. Total Targeted Recyclable Materials  
3300 Tonnage Collected and delivered for processing by Service Sector listed  
3301 separately by material type Collected (e.g., Single-Stream Recyclable

3302 Materials, Source Separated cardboard, Source Separated paper, Used Motor  
3303 Oil, Used Motor Oil Filters, etc.).

3304 3. Organic Materials Services. Total Organic Materials Tonnage Collected and  
3305 delivered for processing by Service Sector listed separately by material type  
3306 (e.g., Plant Materials, Food Scraps, or Organic Materials).

3307 B. **Diversions Level**. Contractor shall provide the monthly and year-to-date Calculated  
3308 Overall Diversion Level, the monthly and year-to-date Residential Diversion Level,  
3309 and the monthly and year-to-date Commercial Diversion Level (each stated as a  
3310 percentage) calculated in accordance with Attachment I, with a comparison to the  
3311 prior year. In addition, Contractor shall present the calculations used to determine  
3312 the diversion levels.

3313 C. **Complaint, Inquiry and Service Requests Data**. Contractor shall provide  
3314 information on the number of Complaints, Inquiries service requests received from  
3315 Customers, Generators, or other Person by category (e.g., missed pickups, spills,  
3316 noise Complaints, scheduled On-Call Bulky Item Collection events, Overage events,  
3317 Billing concerns, property damage claims, requests for information, delivery of  
3318 Recycling Tote-Bags, inventory of Recycling Tote-Bags, etc.). Complaint summary,  
3319 for each month, summarized by nature of Complaint, Inquiry, and service request  
3320 on a compatible computer disc or other memory device approved by Agency. The  
3321 categorization of Complaints, Inquiries, and service requests shall be agreed upon  
3322 by the Agency, SBWMA, and Contractor prior to the Commencement Date, and  
3323 shall be adjusted during the Term upon agreement between Agency, SBWMA and  
3324 Contractor.

3325 D. **Call Center Data**. Number of calls received, number of calls answered, number of  
3326 dropped calls, percentage of dropped calls, Average Hold Time, percentage of calls  
3327 answered in thirty (30) seconds.

3328 E. **Monthly Gross Revenues and Fee Reports**. Pursuant to Article 10, a statement  
3329 itemizing each fee paid by Contractor to Agency in the month; detailing calculation  
3330 of each monthly fee amount; and stating monthly Gross Revenue Billed, by Service  
3331 Sector, for all operations conducted or permitted by this Agreement.

3332 F. **Abandoned Waste Collection**. Contractor shall provide a list of all abandoned  
3333 waste Collection events performed identifying the address of each Collection  
3334 location.

3335 G. **Multi-Family Tote Bag Distribution**. Contractor shall provide a report on Multi-  
3336 Family Tote Bag Distribution as required by Article 5, Collection Service, Section  
3337 5.03.C.2.

3338 H. **Other Information**. Other information or reports that Agency may reasonably  
3339 request or require be added to reporting. These requests may include, but shall not  
3340 be limited to, information regarding on-call Bulky Item Collection programs,  
3341 abandoned waste Collection, Used Motor Oil and Used Motor Oil Filter Collection,  
3342 and Community Events and Venues Collection.

3343 **9.06 QUARTERLY REPORTS**

3344 Quarterly reports shall present the information described in this Section, in addition to  
3345 the monthly information required under Section 9.05.

- 3346 A. **On-Site Customer Assessments and Visual Audits.** Contractor shall report the  
 3347 number of site assessments and visual audits conducted for Multi-Family Dwelling,  
 3348 Commercial, and Agency Customers, which are required by Sections 7.04 and 7.05.  
 3349 SBWMA may request additional statistics as necessary.
- 3350 B. **Public Education Activities.** Contractor shall report the following public education  
 3351 activity information in our community.
- 3352 1. Public education materials produced and total number of each distributed.
  - 3353 2. Dates, times, and names of meetings or events attended.
  - 3354 3. Dates, times, and names of school(s) where presentations were performed.
  - 3355 4. Completion of other activities specified in the then-current Three-Year Public  
 3356 Education Plan.
  - 3357 5. Other educational activities as may be requested by Agency.
- 3358 C. **Determination and Payment of Liquidated Damages.** In accordance with the  
 3359 requirements of Section 14.07, Contractor shall provide a report that identifies any  
 3360 non-compliance with performance measures listed in Attachment J and include  
 3361 calculation of the Liquidated Damages due. Contractor may include with its report a  
 3362 written request to meet with Agency's Manager or his or her designee to discuss  
 3363 Contractor's evidence refuting the basis for assessing Liquidated Damages  
 3364 pertaining to unacceptable employee behavior. In such cases, Contractor shall  
 3365 include with its report evidence in writing and written testimony of its employees and  
 3366 others relevant to the incident(s)/non-performance. Agency's Manager or his or her  
 3367 designee will provide Contractor with a written explanation of his or her  
 3368 determination on each incident(s)/non-performance. The decision of Agency's  
 3369 Manager or his or her designee shall be final.
- 3370 D. **Account Summary.** Provide the following account summary information in table  
 3371 format:
- 3372 1. Number of Customers in each Rate and Charge category, including number of  
 3373 Customers receiving Organic Materials service with Carts.
  - 3374 2. Total number of Residential, Commercial, and Drop Box Customers  
 3375 subscribing to Solid Waste, Targeted Recyclable Materials, and Organic  
 3376 Materials Collection service listed separately by Service Sector and material  
 3377 type.
  - 3378 3. Percentage of Customers subscribing to Targeted Recyclable Materials  
 3379 Collection service (listed separately for Multi-Family, Commercial, and Drop  
 3380 Box Customers), which shall be equal to the total number of Targeted  
 3381 Recyclable Materials Customers divided by the total number of Solid Waste  
 3382 Customers.
  - 3383 4. Percentage of Customers subscribing to Organic Materials Collection service  
 3384 (listed separately for Multi-Family, Commercial, and Drop Box Customers),  
 3385 which shall be equal to the total number of Organic Materials Customers  
 3386 divided by the total number of Solid Waste Customers.
  - 3387 5. Weekly gallons or cubic yards of service provided to Residential, Commercial,  
 3388 and Drop Box Customers subscribing to Solid Waste, Targeted Recyclable

3389 Materials, and Organic Materials Collection service listed separately by Service  
3390 Sector and material type for one week.

3391 **E. Operational Data.** Contractor shall submit the following:

3392 1. A summary of Collection route operational data including: average number of  
3393 Customers and Containers serviced per route per Day for each Collection  
3394 route; average number of actual both on-route and off-route hours per Day by  
3395 route (distinguishing between Standard Collection Vehicle Routes and Special  
3396 Collection Vehicle Routes, if appropriate);

3397 2. List of the one hundred (100) largest generators based on weekly Solid Waste  
3398 and Organic volumes (listed in descending order) within Agency for both  
3399 Commercial and Multi-Family Customers. This reporting shall include, at a  
3400 minimum: the name of the Customer; the name of the business; the address of  
3401 the business; the type(s) of service received (e.g. Collection of Solid Waste,  
3402 Single-Stream Targeted Recyclable Materials, Plant Materials, Food Scraps,  
3403 Organic Materials, Source Separated cardboard, Source Separated paper,  
3404 etc.); the volume of service received weekly measured in cubic yards; the  
3405 frequency of service received measured in number of Collections per week; the  
3406 diversion volume measured as total service level volume divided by Targeted  
3407 Recyclables Materials and/or Organic Materials Collection volume; and, the  
3408 change in service level from the prior quarter.

3409 **F. Recycling Technical Assistance Plan Status Report.** Contractor must prepare  
3410 and submit to Agency and SBWMA, a Recycling Technical Assistance Plan Status  
3411 Report providing required reporting information identified in the then-current Three-  
3412 Year Plan (prepared in accordance with Section 7.03.B).

3413 **G. Determination and Payment of Performance Incentives and Disincentives.** In  
3414 accordance with the requirements of Section 11.07, Contractor shall provide on a  
3415 quarterly basis a report that identifies compliance with the performance standards  
3416 listed in Attachment I and includes calculation of the performance incentive  
3417 payments and disincentive assessments due. Performance incentives (in the form  
3418 of increased compensation to Contractor) will be awarded by Agency for excellent  
3419 performance on aspects of diversion and Customer service as specified in  
3420 Attachment I.

3421 All performance incentives and disincentives payments are to be included in  
3422 Contractor's annual Rate Application and Contractor's Compensation for the next  
3423 Rate Year will be increased or decreased by the net amount of performance  
3424 incentive payments and disincentive assessments calculated in the Application.  
3425 Performance incentives and disincentives for Diversion and Average Speed of  
3426 Answer and performance disincentives for Ninety (90) Second Maximum Hold Time  
3427 shall be calculated in aggregate for the SBWMA Service Area and Agency's share  
3428 shall be proportional based on the Tons of Solid Waste Collected by Contractor for  
3429 the previous Rate Year.

3430 **H. Quality Assurance Program.** Contractor shall report quarterly on quality of the  
3431 Customer service experience when Customer was interacting with Contractor,  
3432 described in Section 7.02.F, during the prior month. The report shall include (i)  
3433 name and Service Sector of each Customer contacted, (ii) date and time, (iii) name  
3434 of Customer service representative placing call, (iv) summary of Customer's

3435 responses to questions and other information provided, and (v) follow-up actions  
3436 taken, if any, in response to calls. The actual surveys shall be kept by the  
3437 Contractor compliant with the record keeping requirements of the Agreement and  
3438 such surveys shall be made available to the Agency or SBWMA upon request.

3439 **9.07 ANNUAL REPORTS**

3440 Annual reports shall present the information described in this Section, in addition to the  
3441 monthly and quarterly report information required under Sections 9.05 and 9.06. The  
3442 monthly and quarterly report information shall be presented as well as the annual totals  
3443 for the Rate Year, when applicable (e.g., for Tonnage data, Diversion Level, Complaint  
3444 and Inquiry data, Gross Revenue Billed, and Franchise Fees, etc.)

3445 **A. Operational Information**

3446 1. Routes by Service Sector

3447 a. Number of routes per Day

3448 b. Types of vehicles

3449 c. Crew size per route

3450 e. Number of full-time equivalent routes

3451 f. Number of accounts per route

3452 g. Total hours per Service Sector per Day and per year

3453 h. Average cost per route

3454 i. Route sheets and maps

3455 2. Personnel

3456 a. Organizational chart

3457 b. Job classifications and number of full-time equivalent positions for each  
3458 (e.g. administrative, customer service representatives, drivers,  
3459 supervisors, educational staff, etc.)

3460 c. Annual wages by job classification including benefits

3461 3. Productivity Statistics

3462 a. Number of accounts per Service Sector

3463 b. Number of set-outs per Service Sector

3464 c. Tons per route per Day by Service Sector

3465 4. Operational Changes

3466 a. Number of routes

3467 b. Staffing

3468 c. Supervision

3469 d. Collection services

3470 5. Equipment - An inventory of equipment in accordance with Section 8.04.D.

3471 6. Billing - Billing review report in accordance with Section 7.01.F.

3472 **B. Customer Account Information.** As part of the annual reporting requirement,  
3473 Contractor shall make available to Agency detailed Customer account information in  
3474 tabular format and in electronic format (in computer software format that is

3475 compatible with the Agency's) Including the following information for each  
3476 Customer: account number; service address; assessor parcel number for Accounts  
3477 agreed to by Contractor and Agency; Customer's name, address, and phone  
3478 number; Billing contact name, Billing address, and phone number; Solid Waste,  
3479 Targeted Recyclable Materials, and Organic Materials Collection service level (i.e.,  
3480 number of Containers, size of Containers, frequency of Collection, and Day(s) of  
3481 Collection), and Rate or Charge billed. For Multi-Family Customers, the Customer  
3482 account information shall also include the number of dwelling units at each Multi-  
3483 Family Residential Complex.

3484 C. **Customer Service Operations.** Contractor shall annually prepare and submit, to  
3485 Agency and SBWMA, a Customer Service Operations Plan that shall include, at a  
3486 minimum, the following sections:

- 3487 1. Customer Service Call Center
- 3488 a. Provide the number CSR supervisory staff and describe their
  - 3489 responsibilities.
  - 3490 b. Contractor must describe its training strategy for CSR and CSR
  - 3491 supervisory staff.
  - 3492 c. Contractor must describe its strategy and overall approach to attracting
  - 3493 and retaining a high quality CSR staff.

- 3494 2. Website
- 3495 a. Number of on-line payments made
  - 3496 b. Number of On-Call Collection Services scheduled
  - 3497 c. Number of On-Call Bulky Goods Collections scheduled
  - 3498 d. Number of extra Solid Waste pick-ups scheduled
  - 3499 e. Number of service changes requested
  - 3500 f. Number of Complaints documented and resolved

- 3501 3. Customer Information System
- 3502 a. Status of any changes or upgrades made to system software
  - 3503 b. Description of proposed changes to system software
  - 3504 c. Explanation and schedule of training activities

3505 4. Staffing

3506 5. Commercial customer service

3507 D. **Related Party Entities.** Contractor agrees that all financial transactions with all  
3508 Related Party Entities shall be approved in advance in writing and disclosed  
3509 annually (coinciding with Contractor's annual audited financial statements referred  
3510 to in this Section 9.07) to the Agency in a separate disclosure letter to the Agency.  
3511 This letter shall include the following information: a general description of the nature  
3512 of each transaction, or type of (for many similar) transaction, as applicable. Such  
3513 description shall include for each (or similar) transaction, amounts, specific Related  
3514 Party Entity, basis of amount (how amount was determined), and description of the  
3515 allocation methodology used to allocate any common costs. Amounts shall be  
3516 reconciled to the Related Party Entity disclosures made in Contractor's annual  
3517 audited financial statements referred to in this Section.

3518 At the Agency's request, Contractor shall provide the Agency with copies of working  
3519 papers or other documentation deemed relevant by the Agency relating to  
3520 information shown in the annual disclosure letter. The annual disclosure letter shall  
3521 be provided to the Agency within sixty (60) Business Days of Contractor's Fiscal  
3522 Year end.

3523 E. **Contractor's Review of Billings.** Pursuant to the requirements described in  
3524 Section 7.01.F, Contractor shall submit a report on its review of Billings.

3525 F. **Determination and Payment of Liquidated Damages.** In accordance with the  
3526 requirements of Sections 14.07 and 11.07.D, Contractor shall provide with its  
3527 annual report, a report that identifies any non-compliance with the performance  
3528 standards listed in Attachment J and includes calculation of the Liquidated  
3529 Damages due. This report shall be accompanied by supporting documentation  
3530 identifying Contractor's compliance or non-compliance with the specified  
3531 performance standards. The report submittal shall be accompanied by a check  
3532 from Contractor in the amount of the Liquidated Damages due (per Contractor's  
3533 calculation and self-reporting) for the reporting period.

3534 G. **Determination and Payment of Performance Incentives and Disincentives.** In  
3535 accordance with the requirements of Section 11.07, Contractor shall provide with its  
3536 annual report, a report that identifies any non-compliance with the performance  
3537 standards listed in Attachment I and includes calculation of the performance  
3538 incentive payments and disincentive assessments due. Performance Incentives (in  
3539 the form of increased compensation to Contractor) will be awarded by Agency for  
3540 excellent performance on aspects of Solid Waste diversion, Collection service  
3541 delivery and customer service as specified in Attachment I. Performance  
3542 disincentives will be assessed by Agency for substandard performance on aspects  
3543 of Solid Waste diversion, Collection service delivery and customer service specified  
3544 in Attachment I.

3545 Payment related to performance incentives and disincentives are to be included in  
3546 Contractor's annual Rate Application and Contractor's Compensation for the next  
3547 Rate Year will be increased or decreased by the net amount of performance  
3548 incentive payments and disincentive assessments calculated. Performance  
3549 incentives and disincentives shall be calculated as specified in Attachment I.

3550 **9.08 REQUIRED SPECIFIC REPORTING**

3551 Event-specific reports shall be submitted following the occurrence of the event as  
3552 described in this Section.

3553 A. **Report of Accumulated Solid Waste; Unauthorized Dumping.** As required by  
3554 Section 7.07, Contractor shall report: (i) the addresses of any Premises at which the  
3555 driver observes that Solid Waste, Targeted Recyclable Materials, and/or Organic  
3556 Materials is accumulating; and (ii) the address, or other location description, at  
3557 which Solid Waste, Targeted Recyclable Materials, and/or Organic Materials has  
3558 been dumped in an apparently unauthorized manner. The report shall be delivered  
3559 to the Agency within one (1) Business Day of such observation.

3560 B. **Hazardous Waste.** As required by Section 8.07, the Contractor shall notify the  
3561 Agency of any Hazardous Waste identified in Containers or left at any Premises  
3562 within twenty-four (24) hours of identification of such material.

3563 C. **Reporting Adverse Information.** Contractor shall provide Agency two (2) copies  
3564 (one (1) to the Agency Manager, one (1) to the Agency Attorney) of all reports,  
3565 pleadings, applications, notifications, Notices of Violation, communications or other  
3566 material relating specifically to Contractor's performance of services pursuant to this  
3567 Agreement, submitted by Contractor to, or received by Contractor from, the United  
3568 States or California Environmental Protection Agency, the California Department of  
3569 Resources Recycling and Recovery (CalRecycle), the Securities and Exchange  
3570 Commission or any other federal, State, County, or local agency, including any  
3571 federal or State court. Copies shall be submitted to Agency simultaneously with  
3572 Contractor's filing or submission of such matters with said agencies. Contractor's  
3573 routine correspondence to said agencies need not be submitted to Agency, but shall  
3574 be made available to Agency promptly upon Agency's written request.

3575 **9.09 UPON-REQUEST REPORTING**

3576 A. **Holiday Tree Services.** Within ten (10) Business Days of Agency's request,  
3577 Contractor shall report the Tonnage of Holiday Trees Collected at the Drop Box  
3578 sites or at drop-off sites (if drop-off sites were established).

3579 B. **Summary Assessment.** Within thirty (30) Days of Agency's request, highlight  
3580 significant accomplishments and problems. Identify recommendations and/or plans  
3581 to improve services.

3582 C. **Hazardous Waste Records.** A summary or copy of the Hazardous Waste records  
3583 required under Section 8.07.D.

3584 D. **GPS Route Reports.** Contractor shall provide GPS reports as reasonably  
3585 requested by Agency or SBWMA.

3586 E. **Other.** The Agency reserves the right to request additional reports from the  
3587 Contractor, and the Contractor shall deliver such reports within twenty-five (25)  
3588 Business Days of such request provided that such information is similar in nature to  
3589 the required elements of the monthly, quarterly, or annual reporting requirements  
3590 described in Sections 9.05, 9.06, and 9.07. If the information requested by the  
3591 Agency is not typically part of the Contractor's reporting requirements described in  
3592 Sections 9.05, 9.06, and 9.07, Contractor shall provide such information if the  
3593 Contractor is required to maintain the information under the record-keeping  
3594 requirements described in Sections 9.01, 9.02, and 9.03.

3595 Contractor acknowledges that the Agency has to submit information to State and  
3596 local agencies related to the Act, AB 341, AB 1826, and SB 1383 and may require  
3597 additional reporting from the Contractor. If Agency needs additional information to  
3598 complete its reports, Contractor shall provide additional information to the extent  
3599 Contractor has maintained records on the information requested. The Parties  
3600 acknowledge that Contractor shall provide reports to the Agency, and shall not  
3601 submit 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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3605 **10.01 GENERAL**

3606 The fees described in this Article shall be treated as Other Pass-Through Costs for the  
3607 purposes of determining the Revenue Requirement and shall be recoverable through the  
3608 Agency-approved Rates and Charges that Contractor bills Customers. Contractor shall  
3609 separately identify any of the fees established under this Article on Customer bills if  
3610 directed to do so by Agency.

3611 **10.02 FRANCHISE FEE**

3612 In consideration of the exclusive franchise granted to Contractor by this Agreement, and  
3613 to reimburse Agency for costs incurred in administering this Agreement, Contractor shall  
3614 pay to Agency a Franchise Fee specified in Attachment M.

3615 **10.03 OTHER FEES**

3616 Agency has adopted other fees, which are intended to recover the costs of services  
3617 related to Solid Waste management, Recycling, and cleanliness of public streets and/or  
3618 public litter and Recycling containers through inclusion in Rates. The other fees  
3619 currently in effect, or which are expected to be in effect as of January 1, 2021 are listed  
3620 in Attachment M.

3621 **10.04 TIME AND METHOD OF PAYMENT**

3622 On or before the twentieth (20<sup>th</sup>) Day of each month, Contractor shall pay to Agency (i)  
3623 the amount of the Franchise Fees due on Gross Revenues Billed during the immediate  
3624 previous month, and (ii) one-twelfth of any other fee established by Agency unless  
3625 Agency directs a different payment schedule for such other fees.

3626 Contractor shall provide, concurrently with the payment of fees, a statement showing the  
3627 calculation of each fee, including the Gross Revenues Billed from Customers in each  
3628 Service Sector for that month. The statement shall be in a format, and contain the level  
3629 of detail, specified by Agency. Payments from Contractor to Agency shall be made by  
3630 wire transfer or other method authorized by Agency.

3631 If a fee is not paid on time, Contractor shall pay a late payment charge to the Agency  
3632 equal to two percent (2%) of the fees due for that month. In addition, Contractor shall  
3633 pay an additional two percent (2%) on any unpaid balance for each thirty (30) Day period  
3634 a portion of the fee due remains unpaid. Late payment charges are not included in  
3635 Contractor's Compensation and may not be recovered through Rates or Charges.  
3636 Changes to Contractor's Compensation to reflect increases or decreases in fees, or the  
3637 addition of new fees, are not subject to the Special Compensation Review provisions in  
3638 Section 11.05.

3639 **10.05 ADJUSTMENTS TO FEES; ADDITIONAL FEES**

3640 Agency may from time to time adjust the amount of the fees described in this Article and  
3641 may establish other fees. Changes in the total amount of fees to be collected by  
3642 Contractor and remitted to Agency shall be reflected in an adjustment to Contractor's  
3643 Compensation and Rates.

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## ARTICLE 11 CONTRACTOR'S COMPENSATION AND RATES

3647 **11.01 OVERVIEW**

- 3648 A. Contractor's Compensation includes three components:
- 3649 1. Annual Cost of Operations. These include the cost of labor, equipment,  
3650 materials and supplies, fuel, insurance, bonds, taxes, overhead and all other  
3651 costs necessary to perform all the services required, in the manner required, by  
3652 this Agreement, with the exception of costs identified in subsection A.3.
- 3653 2. Profit. Contractor's profit is determined by applying the Operating Ratio of ninety  
3654 and one-half percent (90.5%) to annual costs of operation described in  
3655 subsection A.1.
- 3656 3. Contractor Pass-Through Costs. These consist of costs that Contractor is  
3657 obligated to pay but on which Contractor does not earn a profit and consist of: (i)  
3658 interest expense, and (ii) adjustments to compensation to reflect Agency-specific  
3659 Agreement changes (labeled in Attachment N as "Contract Changes to Specific  
3660 Agencies").
- 3661 B. Attachment N includes baseline financial and operational information that shall be  
3662 used to calculate Contractor's Compensation for 2021. The projected 2021 Annual  
3663 Costs of Operation, Profit, and Contractor Pass-Through Costs shown on  
3664 Attachment N: (i) were prepared by Contractor; (ii) were allocated among Member  
3665 Agencies based on the allocations used for Contractor's Application for Rate Year  
3666 2017; and, (ii) have been adjusted to reflect refinements in the scope of services  
3667 and decisions by individual Member Agencies as to specific programs, levels of  
3668 service, or other unique factors affecting only their jurisdiction.
- 3669 C. Contractor's Compensation for Rate Year Eleven (2021) shall be determined as  
3670 provided in Section 11.02.A. Annually thereafter, Contractor's Compensation shall  
3671 be adjusted as provided in Section 11.02.D.
- 3672 D. After the conclusion of each Rate Year, SBWMA will conduct a revenue  
3673 reconciliation process as provided in Section 11.03. The purpose of this procedure  
3674 is to reconcile Net Revenues Billed by Contractor for a Rate Year with the approved  
3675 Contractor's Compensation for that Rate Year. Adjustments to Contractor's  
3676 Compensation will be made in a subsequent Rate Year to recover any excess  
3677 revenue from Contractor or to compensate Contractor for a revenue shortfall.
- 3678 E. However, no adjustments to Contractor's Compensation will be made for  
3679 differences between total costs of operation or Contractor Pass-Through Costs as  
3680 calculated for the Rate Year and as actually incurred, with the exception of cost  
3681 differences due to changes in scope of services (Section 15.12) or as authorized by  
3682 a special compensation review (Section 11.05) or an adjustment under Section  
3683 3.03.B. If Contractor's actual annual cost of operations, actual profits and actual  
3684 Contractor's Pass-Through Costs are more or less than the amounts included in the  
3685 annual calculation of Contractor's Compensation, Contractor is neither entitled to an  
3686 increase in compensation, nor subject to a reduction in compensation, in future  
3687 Rate Years.

3688 **11.02 DETERMINATION OF CONTRACTOR'S COMPENSATION**

3689 A. **Contractor's Compensation for Rate Year Eleven (2021).** Contractor's  
3690 Compensation for 2021 shall be determined in 2020 by adjusting Contractor's  
3691 projected 2021 Contractor's Compensation shown on Attachment N to reflect the  
3692 following factors:

- 3693 • Change in Customer account and service levels as provided in Attachment K;  
3694 and,
- 3695 • Change in fuel prices as provided in Attachment K.

3696 B. **Different Compensation Methods for Other Member Agency.** If Contractor  
3697 enters into a franchise agreement with any other Member Agency which uses a  
3698 substantially different methodology for calculating Contractor's Compensation than  
3699 that set forth in Article 11 and Attachments K and N of this Agreement, then (i) for  
3700 purposes of calculating Contractor's Compensation under this Agreement,  
3701 Contractor's costs of providing service to such other Member Agency shall continue  
3702 to be calculated using the methodology set forth in Attachments K and N, and, (ii)  
3703 Contractor's Compensation for providing service to such other Member Agency  
3704 shall be as set forth in the franchise agreement between it and Contractor. Any such  
3705 franchise agreement shall (i) implement the performance incentives and  
3706 disincentives provided for in this Agreement, and, (ii) require Contractor to pay  
3707 sums due to SBWMA for delivery of materials from such Member Agency to  
3708 Shoreway Recycling and Disposal Center.

3709 C. **Reserved**

3710 D. **Contractor's Compensation for Subsequent Rate Years.** Contractor's  
3711 Compensation shall be adjusted annually, commencing with the determination of  
3712 Contractor's Compensation for Rate Year Twelve (2022) and continuing through the  
3713 remaining Term including any extension periods to reflect inflation (or deflation),  
3714 changes in service levels, and the difference between Contractor's Compensation  
3715 approved for the prior Rate Year (e.g., 2021) and Net Revenues Billed (e.g., 2021)  
3716 and similarly for subsequent Rate Years.

3717 E. **No Changes for Actuals.** During the Term, no changes to Contractor's  
3718 Compensation will be made to reflect actual costs, actual profit, or actual Contractor  
3719 Pass-Through Costs, except for adjustments related to vehicle acquisition costs, as  
3720 provided in Attachment K.

3721 F. **Change in Contractor's Compensation for Rate Years Eight, Nine, and Ten**  
3722 **(2018, 2019, 2020).** The Contractor's Compensation for Rate Years Eight, Nine,  
3723 and Ten (2018, 2019, 2020) shall be determined in accordance with the procedures  
3724 specified in Attachment K of the 2009 Franchise Agreement with the following  
3725 exceptions:

- 3726 1. In Rate Years Eight, Nine, and Ten (2018, 2019, 2020), an adjustment shall be  
3727 made to allocated indirect costs to account for a reduction in the staffing of  
3728 Contractor's Waste Zero Specialists (from 8 full-time positions to 6 full-time  
3729 positions). The adjustment shall be made by adding a new line item to the  
3730 Contractor's Compensation adjustment calculations (after the General and  
3731 Administrative line item), which shall be titled "Adjustment for Waste Zero  
3732 Specialists" and include a negative amount of \$200,000 for Rate Year Eight

3733 (2018). The annual reduction amount shall be adjusted annually for Rate Year  
3734 Nine (2019) and Ten (2020) using the same adjustment method used to adjust  
3735 the General and Administrative costs.

3736 2. In Rate Year Ten (2020), the vehicle depreciation shall be \$4,092,539.

3737

3738 **11.03 ANNUAL REVENUE RECONCILIATION PROCESS**

3739 After completion of each Rate Year, a revenue reconciliation process will be  
3740 implemented as provided in this Section and further described in Attachment K, Section  
3741 10.

3742 The purpose of this process is to determine, for each Member Agency, the difference  
3743 between the actual Net Revenue Billed by Contractor for such Member Agency for the  
3744 preceding Rate Year and the calculated Contractor's Compensation approved for such  
3745 Member Agency for that Rate Year.

3746 The Contractor shall submit a report to Agency and SBWMA on or before March 31 of  
3747 each Rate Year, commencing March 31, 2021.

3748 The report shall include the following information (items) for the preceding Rate Year:

3749 A. **Gross Revenue Billed.** Gross Revenue Billed is the total amount billed by  
3750 Contractor or Agency to Customers for all services attributable to the Rate Year in  
3751 question as further defined in Attachment A. The report shall identify the amount of  
3752 Gross Revenue Billed attributable to each Member Agency. (In the case of Member  
3753 Agencies that bill Customers directly for some or all of the services provided by  
3754 Contractor, Gross Revenue Billed shall include all amounts paid to Contractor by  
3755 those Member Agencies.)

3756 B. **Payments to SBWMA.** Payments to SBWMA are the amounts charged by SBWMA  
3757 for delivery of materials to the Designated Transfer and Disposal Facility. They do  
3758 not include payments to SBWMA pursuant to Section 6.02 for excess  
3759 Contamination. The report shall identify the amount of these payments attributable  
3760 to each Member Agency, using the methodology described in Attachment K,  
3761 Section 8.

3762 C. **Payments to Agencies for Franchise Fees and Other Fees Described in Article**  
3763 **10.** The report shall identify the amount of these payments attributable to the Rate  
3764 Year in question made to each Member Agency.

3765 D. **Revenues Attributable to Additional Service.** In addition to regularly scheduled  
3766 Collection service, Contractor may provide additional services to Customers or  
3767 Agency on regular basis or "on-call" basis. A list of these additional services and  
3768 Charges is included as Attachment Q. Contractor shall bill Customer for these  
3769 services, or Agency when services are provided to Agency, at Agency-approved  
3770 Charges specified in Attachment Q. The report shall identify the amount of billings  
3771 for each Member Agency for additional services listed on Attachment.

3772 Because the amount of such additional services may vary from year to year and is  
3773 unpredictable, the costs and revenues associated with them are not included in  
3774 SBWMA's prospective calculation of Contractor's Compensation or in the revenue  
3775 reconciliation process described in Attachment K, with the exception that the  
3776 revenue reconciliation process shall include Gross Billed Revenue received from

3777 SFD Customers that subscribe to Backyard Collection Services up to the first twenty  
3778 percent (20%) of SFD Customers that subscribe to such service. If more than  
3779 twenty percent (20%) of the SFD Customers subscribe to Backyard Collection  
3780 Services, Contractor shall retain revenues received from SFD Customers in excess  
3781 of the first twenty percent (20%) of SFD Customers that subscribe to Backyard  
3782 Collection Services. For example, if 10,000 SFD Customer subscribe to Collection  
3783 services, the Gross Billed Revenue from up to 2,000 SFD Customers subscribing to  
3784 Backyard Collection Services shall be included in the revenue reconciliation  
3785 process. To continue this example, revenues from any additional SFD Customers  
3786 (above the first 2,000 Customers) subscribing to Backyard Collection Services shall  
3787 not be included revenue reconciliation and shall be retained by the Contractor. The  
3788 report provided by Contractor shall include the Backyard Collection Service  
3789 revenues and calculation of the portion of such revenues to be included in the  
3790 revenue reconciliation.

3791 E. **Net Revenue Billed.** Net Revenue Billed equals the result obtained by subtracting  
3792 the sum of items B, C, and D above from item A above [i.e., Net Revenue Billed = A  
3793 – (B+C+D)]. In this calculation, item D shall equal the Gross Revenue Billed from  
3794 Attachment Q Charges less revenue to be included in the revenue reconciliation  
3795 process for the Backyard Collection Service charge as described in item D above.

3796 F. **Liquidated Damages; Performance Incentives and Disincentives.** Liquidated  
3797 Damages assessed by Member Agencies pursuant to Section 14.07 are not  
3798 included in the revenue reconciliation process. Similarly, performance incentive  
3799 payments and performance disincentive assessments provided for in Section 11.07  
3800 are not included in the revenue reconciliation process.

3801 G. **Comparison to Contractor's Compensation.** The report shall identify the  
3802 approved Contractor's Compensation for each Member Agency and shall compare it  
3803 to Net Revenue Billed for such Member Agency to determine the revenue shortfall  
3804 or revenue surplus.

3805 H. **SBWMA Review.** The SBWMA will review the report and underlying financial data  
3806 for accuracy, will confer with Member Agencies to confirm data as to each Agency,  
3807 and will meet with Contractor to resolve any errors or inconsistencies.

3808 The SBWMA will incorporate its conclusions as to revenue shortfalls or revenue  
3809 surpluses experienced by Contractor as to each Member Agency into its calculation  
3810 of Contractor's Compensation for the following Rate Year distributed to all Member  
3811 Agencies in the fall of each year.

3812 I. **Final Rate Year.** The revenue reconciliation process will be conducted for the last  
3813 Rate Year of the Agreement.

#### 3814 **11.04 APPLICATION PROCESS FOR CONTRACTOR'S COMPENSATION**

3815 A. **Application Date and Content.** Contractor shall prepare and submit to Agency and  
3816 SBWMA by June 15 of each year, beginning on June 15, 2020 for Rate Year Eleven  
3817 (2021) Contractor's Compensation, an Application for determination of Contractor's  
3818 Compensation for the next Rate Year. This Application shall cover all Member  
3819 Agencies and shall present the calculation of Contractor's Compensation for each  
3820 Member Agency using the methodology prescribed in Attachment K and illustrated  
3821 in Attachment N. Contractor shall provide any additional information requested by  
3822 the Agency or by SBWMA during its review of the Application.

3823 B. **Review of Application.** The Application shall be reviewed by SBWMA for  
3824 accuracy and consistency with the procedures for determining Contractor's  
3825 Compensation specified in this Agreement as described in Attachment K. SBWMA  
3826 shall share with Contractor any factual or calculation errors identified in the  
3827 Application and Contractor shall have the opportunity to revise its Application.

3828 C. **SBWMA Report on Application.** As provided in Attachment K, SBWMA staff shall  
3829 distribute, on or before September 1 of each year, a report in draft form which (i)  
3830 identifies the amount of Contractor's Compensation and Pass-Through Costs  
3831 calculated for each Agency for the following Rate Year, and (ii) provides an overall  
3832 percentage increase or decrease in Agency's Rates which SBWMA calculates will  
3833 generate Customer revenues sufficient to cover Contractor's Compensation and  
3834 Pass-Through Costs.

3835 SBWMA will take into account comments received from Agency and other Member  
3836 Agencies within ten (10) Days after distribution of the report in draft form. If Agency  
3837 needs more time, SBWMA will consider a request for an extension. A final report  
3838 will be presented to and considered by the SBWMA Board of Directors and  
3839 approved for distribution to all Member Agencies on or before October 1 of each  
3840 year. The determination of Contractor's Compensation and the estimation of Pass-  
3841 Through Costs for each Member Agency contained in the final Report shall be  
3842 binding on Contractor and Agency.

3843 **11.05 SPECIAL COMPENSATION REVIEW**

3844 A. **Eligible Items.** The Contractor may apply to the Agency for consideration of a  
3845 special review of Contractor's Compensation, and the Agency may initiate such a  
3846 review, if one or more of the following events occur and cause an increase in or  
3847 decrease to Contractor's Compensation by two percent (2%) or more for the then-  
3848 current Rate Year. If one or more of the following events occur and cause an  
3849 increase in or decrease to Contractor's Compensation by less than two percent  
3850 (2%) for the then-current Rate Year, such cost impact shall be considered at the  
3851 time the annual Contractor's Compensation adjustment process is performed in  
3852 accordance with Section 11.02, and Contractor may be compensated retroactively  
3853 for such cost subject to Agency approval.

- 3854 1. Provision of emergency services pursuant to Section 7.08.  
3855 2. Flood, earthquake, or other similar catastrophic event affecting the Agency  
3856 which is beyond the control of and not the fault of the Contractor.  
3857 3. Change in Law occurring after January 1, 2011.  
3858 4. Changes in the Rates charged for Backyard Collection Service and/or Curbside  
3859 Collection Service that alter the price differential between the two, causing  
3860 Customers to migrate from one to the other, with the result of increasing or  
3861 decreasing Contractor's annual cost of operation by two percent (2%) or more.

3862 A special compensation review must be requested by Contractor, or initiated by  
3863 Agency, within twelve (12) months after one of the above-described events has  
3864 occurred unless otherwise agreed to by the Agency.

3865 B. **Ineligible Items.** A special review of Contractor's Compensation may not be  
3866 initiated for any of the following reasons:

- 3867 1. Increases or decreases in Contractor's cost of operations in excess of the  
3868 adjustments provided through the annual adjustment mechanism described in  
3869 Attachment K.
- 3870 2. Growth or decline in the number of Customers or their service levels, with the  
3871 exception of adjustments described in Attachment K.
- 3872 3. Changes in the mix of Container sizes or frequency of Collection, with the  
3873 exception of adjustments described in Attachment K.
- 3874 C. **Review of Costs.** Agency shall have the right to review any and all financial and  
3875 operating records of Contractor. Agency will take into account the net overall impact  
3876 of the event on Contractor's Compensation, including reductions in cost resulting  
3877 from curtailments in service levels or other factors.
- 3878 D. **Submittal of Request.** Contractor must submit its request for a special review in a  
3879 form and manner specified by the Agency, together with required cost and  
3880 operational data. Agency will review the request and determine the amount owed, if  
3881 any, to Contractor and the time period to be covered by special compensation  
3882 circumstances.
- 3883 E. **Burden of Justification.** In a special compensation review under this Section,  
3884 Contractor shall bear the burden of justifying to the Agency by substantial evidence  
3885 its entitlement to continuation of current, as well as any increases in, Contractor's  
3886 Compensation. If the Agency determines that the Contractor has not met its  
3887 burden, it shall notify Contractor that it is prepared to deny Contractor's request for  
3888 an increase in compensation, or to proceed with a reduction in compensation.  
3889 Within ten (10) Days after such notice, Contractor may request a hearing before the  
3890 Agency's governing body to produce additional evidence. Upon such request, the  
3891 Agency shall provide a hearing before the Agency governing body.
- 3892 F. **Hearing.** Based on evidence presented to it, including, that submitted by  
3893 Contractor, the Agency governing body may grant some, all, or none of the  
3894 requested increase in, or may reduce, Contractor's Compensation. In the event  
3895 Agency denies Contractor's requested increase in whole or in part, Contractor shall  
3896 have the right to present its claim to a court of competent jurisdiction.
- 3897 G. **Cost of Review.** Contractor shall bear all reasonable costs incurred by Agency  
3898 (including assistance provided to it by SBWMA) of a special review which it has  
3899 requested up to a maximum of sixty thousand dollars (\$60,000). Costs of a review  
3900 requested by Contractor may not be included in Contractor's Compensation,  
3901 charged to Agency or Customers, nor included in the calculation used as rationale  
3902 to initiate a special compensation review.

3903 **11.06 COMPENSATION ADJUSTMENTS FOR CHANGES IN SCOPE OF SERVICES OR**  
3904 **SERVICE LEVELS**

3905 In the event the Agency directs a change in accordance with Section 15.12, an equitable  
3906 adjustment in Contractor's Compensation will be made, effective with the  
3907 commencement of the change, to reflect increases or decreases, if any, in Contractor's  
3908 Compensation. The adjustment in compensation will also reflect the corresponding  
3909 change in profit. The change in Contractor's Compensation will therefore consist of the  
3910 sum of (i) the incremental change to costs, and (ii) profit adjustment at the allowed  
3911 operating ratio of ninety and one-half percent (90.5%).

3912 Within forty-five (45) Days of a request by Agency to initiate a change in service,  
3913 Contractor shall present a proposal to Agency containing a complete description of the  
3914 following, if and to the extent applicable:

- 3915 1. Collection methodology to be employed.
- 3916 2. Equipment to be utilized (number of vehicles, types, capacity, age, etc.).
- 3917 3. Labor requirements (number of employees by classification).
- 3918 4. Type of Containers to be used.
- 3919 5. Description of program publicity/education/marketing materials to be developed.
- 3920 6. Estimated Tonnage to be diverted and the methodology for determining that  
3921 diverted Tonnage.
- 3922 7. Anticipated impacts of the change, if any, on performance incentive and disincentive  
3923 measures included in Attachment I.
- 3924 8. Description of end uses of Collected material.
- 3925 9. Three (3) year projection of the financial impact of the program's operations in a  
3926 balance sheet and operating statement format including documentation of the key  
3927 assumptions underlying the projections and the support for those assumptions,  
3928 giving full effect to the savings or costs to existing services and the Rate impact to  
3929 affected Customers.
- 3930 10. Monitoring tools and quantitative measures including: cost per Ton; annual  
3931 diversion; and pre-implementation as well as expected post-implementation route  
3932 information including cost per route and accounts or lifts per route per Day.

3933 **11.07 RATE-SETTING PROCESS**

- 3934 A. **General.** The Agency shall be solely responsible for establishing and adjusting  
3935 Rates as described in this Article.
- 3936 B. **Annual Review Process.** The Rates shall be reviewed annually by Agency,  
3937 commencing with Rate Year Eleven (2021) and continuing through the remaining  
3938 Term including any extension periods. The Agency shall adjust Rates as necessary  
3939 to generate annual Gross Revenues Billed equal to Contractor's Compensation  
3940 approved for the Rate Year and other approved Pass-Through Costs (such as  
3941 Disposal and processing costs and Agency fees).

3942 If Agency elects to set Rates that are below those recommended in the SBWMA  
3943 report, (or delays acting to revise Rates such that the recommended Rates do not  
3944 go into effect until after January 1), and the Revenue Reconciliation process  
3945 conducted by SBWMA for that Rate Year demonstrates that Net Revenues Billed  
3946 were less than the approved Contractor's Compensation contained in the SBWMA  
3947 report, interest shall accrue on the difference. Interest shall apply (i) to fifty percent  
3948 (50%) of the difference during the Rate Year in which the shortfall in revenue  
3949 occurred, and (ii) one-hundred percent (100%) of the difference during the  
3950 immediately following Rate Year. The interest rate applied to both years shall be  
3951 the prime rate in effect when SBWMA issued the report for that Rate Year plus one  
3952 percent (1%). Interest payment arrangements shall be governed by the July 8, 2015  
3953 Memorandum of Understanding between Contractor and SBWMA, which is  
3954 provided in Attachment S.

3955 C. **Rate Structure.** The Agency shall have the sole and exclusive right to change the  
3956 relationship of individual Rates in comparison with other Rates and to allocate total  
3957 Contractor's Compensation among Service Sectors and Lines of Business. If a  
3958 change in the Rates charged for Backyard Collection service or Curbside Collection  
3959 service causes a Customer migration from one to the other which in turn increases  
3960 or decreases Contractor's annual cost of operation, either Party may initiate a  
3961 special compensation review subject to conditions specified in Section 11.05.

3962 If at any time Contractor believes that a Rate not included in the Agency-approved  
3963 Rate schedule would be necessary or useful, Contractor shall notify the Agency and  
3964 recommend establishment of such Rate. For example, if a Customer requests  
3965 Collection of a fifteen (15) cubic yard Compactor five (5) times per week and the  
3966 Agency-approved Rate schedule does not include this level of service, the  
3967 Contractor shall recommend that the Agency establish a Rate for this level of  
3968 service. Agency may or may not implement Contractor's recommendation.

3969 D. **Liquidated Damages.** Contractor shall pay Agency the amounts, if any, due for  
3970 Liquidated Damages under Section 14.07 and Attachment J with submittal of its  
3971 annual report to Agency pursuant to Section 9.07.

3972 E. **Performance Incentives and Disincentives.** Contractor shall submit an annual  
3973 report on the Performance Incentives and Disincentives detailed in Attachment I  
3974 with submittal of its quarterly and annual reports to Agency and SBWMA pursuant  
3975 to Section 9.06 and Section 9.07. Contractor shall pay Agency or Agency shall pay  
3976 Contractor the net amount, if any, due for Performance Incentives and Disincentives  
3977 calculated pursuant to Section 11.07, Attachment I, and Attachment N.

3978 Payment related to Performance Incentives and Disincentives are to be included in  
3979 Contractor's Application and Contractor's Compensation for the next Rate Year will  
3980 be increased or decreased by the net amount of Performance Incentive payments  
3981 and Disincentive assessments calculated.

3982 **11.08 NOTICE OF RATE ADJUSTMENTS**

3983 If requested by Agency, Contractor shall provide Agency with a complete and current list  
3984 of its Customer addresses within ten (10) Days of the request. In addition, if requested  
3985 by Agency, Contractor shall arrange for notices (prepared by Agency) to be mailed.

3986 **11.09 POTENTIAL RATE CONSTRAINTS**

3987 A. The parties recognize that, as of the date this Agreement is entered into, there is no  
3988 authoritative judicial determination of whether Articles 13.C and 13.D of the  
3989 California Constitution apply to rates and charges imposed by private enterprises for  
3990 Solid Waste handling and Recycling services when those charges are regulated by  
3991 a local government.

3992 Until such authoritative judicial guidance is available, the Agency intends to provide  
3993 notice of proposed Rates or Charges increases, and an opportunity for public  
3994 hearing and protest as required by Article 13.D of the California Constitution.

3995 B. The Agency will not be in default of this Agreement if (i) a majority protest prevents  
3996 a proposed Rate increase from being adopted, (ii) a court rules that Rates adopted  
3997 by the Agency are not consistent with Article 13.D, or (iii) an initiative reduces Rates  
3998 from those in effect. After any such event, the Parties shall promptly meet and

3999 confer in good faith to consider modifications to service levels commensurate with  
4000 the Rates that Contractor may legally charge.  
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**ARTICLE 12**  
**AGENCY RIGHT TO USE EQUIPMENT AND**  
**FACILITIES**

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4006 **12.01 PURPOSE**

4007 The Parties recognize (i) that frequent and continuous collection of Solid Waste,  
4008 Targeted Recyclable Materials, and Organic Materials is an essential public service and  
4009 an important element of public health in developed communities such as Agency, and (ii)  
4010 that even a temporary interruption in the Collection and transport services entrusted to  
4011 Contractor may threaten the public health and safety, as well as causing serious  
4012 financial harm to business operations in the Agency.

4013 The purpose of this Article is to provide the Agency the ability to respond to such threats  
4014 to the public health, safety, and welfare by making use of Contractor's Facilities and  
4015 equipment. This Article applies to any interruption of services, regardless of whether or  
4016 not Contractor's failure to perform is excused under Section 14.09.

4017 **12.02 CONDITIONS AUTHORIZING AGENCY'S RIGHT TO USE OF FACILITIES AND**  
4018 **EQUIPMENT**

4019 If Contractor, for any reason, fails, refuses or is unable to Collect Solid Waste, Targeted  
4020 Recyclable Materials, and Organic Materials at the times and in the manner required by  
4021 this Agreement, and transport them to the Designated Transfer and Processing Facility,  
4022 for more than two (2) Business Days, Agency may invoke this Article. Agency shall  
4023 provide Contractor written notice that it intends to consider invoking this Article at a  
4024 public meeting of its governing body, to be held two (2) or more Business Days from the  
4025 date of the notice.

4026 At the meeting, the governing body may invoke its rights under this Article if it  
4027 determines that there has been an interruption in Collection service and that such  
4028 interruption may continue, thereby threatening the public health, safety and welfare. If  
4029 the governing body makes that determination, it may also determine to exercise the  
4030 Agency's right to (i) perform Collection and transport services with its own personnel  
4031 and/or those of other Member Agencies which have invoked this right under their  
4032 Franchise Agreements with Contractor or authorize a third party to do so, and (ii) take  
4033 possession of any of Contractor's property, including vehicles and other equipment used  
4034 or useful in providing such services or in the Billing and collection of Rates billed for such  
4035 services (collectively "Properties").

4036 **12.03 NOTICE TO CONTRACTOR**

4037 Agency shall deliver written notice to Contractor of its determination to exercise its right  
4038 to provide Collection services and to make use of Contractor's Properties to do so.  
4039 Upon receipt of the notice, Contractor shall immediately take all steps necessary to  
4040 make available to Agency any of its vehicles and equipment that are requested by  
4041 Agency. Contractor shall also cooperate in any other way requested by Agency to assist  
4042 Agency in providing Collection services on a temporary basis.

4043 **12.04 RIGHTS AND RESPONSIBILITIES OF PARTIES**

4044 Agency will be responsible for the proper use and operation of Contractor's Properties,  
4045 including maintenance and repair of vehicles and equipment. Agency will defend,  
4046 indemnify and hold Contractor harmless from claims by third parties that are due solely  
4047 to Agency's negligence in operating Contractor's vehicles or equipment, and not due in  
4048 whole or in part to defects in the design or manufacture of the vehicles or equipment or  
4049 to Contractor's failure to maintain them in good and safe operating condition.

4050 If the interruption in service is excused under Section 14.09, Agency will pay Contractor  
4051 one hundred dollars (\$100) per Business Day per vehicle, which will constitute full  
4052 compensation for use of all Properties. If the interruption in service constitutes a breach  
4053 of contract or default, no payment is required.

4054 Revenue received from Customers that is attributable to the period of time during which  
4055 Agency provides temporary Collection service shall accrue to Agency rather than  
4056 Contractor.

4057 Agency may delegate the use and operation of any or all of Contractor's Properties to a  
4058 third party.

4059 If the interruption of Collection service is caused by a breach of contract or default by  
4060 Contractor, Liquidated Damages and performance disincentives will continue to accrue  
4061 until Contractor resumes the provision of Collection services in full compliance with the  
4062 Agreement. Agency reserves the right to seek compensation for costs associated with  
4063 providing interim service.

4064 **12.05 DURATION OF AGENCY'S RIGHT TO POSSESSION AND USE OF**  
4065 **VEHICLES/EQUIPMENT**

4066 Agency may retain possession of Contractor's Properties and provide Collection  
4067 services until the Contractor demonstrates to Agency's satisfaction that it is ready,  
4068 willing, and able to resume providing such services, or one hundred eighty (180) Days  
4069 from the notice given under Section 12.03, whichever occurs first.

4070 Agency has no obligation to exercise its rights under this Article or, having done so, to  
4071 continue to provide Collection services. It may at any time, in its sole discretion,  
4072 relinquish possession of Contractor's Properties to Contractor.

4073 Contractor's Properties shall be returned to Contractor in a condition substantially the  
4074 same as that which existed at the time the Agency took possession of them, ordinary  
4075 wear and tear excepted.

4076 **12.06 GENERAL**

4077 The Agency's exercise of its rights under this Article, (i) does not constitute taking or  
4078 damaging of property for which compensation (other than as provided in this Article)  
4079 must be paid, and (ii) does not exempt Contractor from its indemnity obligations under  
4080 Article 13, which are meant to extend to circumstances arising under this Article,  
4081 provided that Contractor is not required to indemnify Agency against claims arising from  
4082 the sole negligence of Agency's employees or agents in the operation and use of  
4083 Contractor's Properties during the time the Agency has sole possession of them.

4084 The Agency's exercise of its rights under this Article does not limit its ability to seek any  
4085 of the remedies available to it under Article 14.

4086 The Agency's rights under this Article do not preclude its permanent acquisition of  
4087 Contractor's vehicles and equipment used in providing service to Agency through the  
4088 exercise of eminent domain.  
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**ARTICLE 13**  
**INDEMNITY, INSURANCE, BOND, GUARANTY**

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4093 **13.01 INDEMNIFICATION**

4094 Contractor shall indemnify, defend, and hold harmless Agency, its officers, employees  
4095 and agents (collectively, the "Indemnitees"), from and against (i) any and all liability,  
4096 penalty, claim, demand, action, proceeding, or suit, of any and every kind and  
4097 description, whether judicial, quasi-judicial, or administrative in nature, (ii) any and all  
4098 loss including, but not limited to, injury to and death of any person and damage to  
4099 property, and (iii) contribution or indemnity demanded by third parties (collectively, the  
4100 "Claims"), arising out of or occasioned in any way by, directly or indirectly, Contractor's  
4101 performance of, or its failure to perform, its obligations under this Agreement. The  
4102 foregoing indemnity shall not apply to the extent that a Claim is caused solely by the  
4103 active negligence or intentional misconduct of the Indemnitees, but shall apply if the  
4104 Claim is caused by the joint negligence of Contractor and other Persons, including an  
4105 Indemnitee. Upon the occurrence of any Claim, Contractor shall defend (with attorneys  
4106 reasonably acceptable to Agency) the Indemnitees. Contractor's duty to defend and  
4107 indemnify shall survive the expiration or earlier termination of this Agreement.

4108 **13.02 INSURANCE**

4109 A. **Types and Amounts of Coverage.** Contractor shall procure from an insurance  
4110 company or companies admitted or authorized to do business in the State of  
4111 California, and shall maintain in force at all times during the Term, the following  
4112 types and amounts of insurance:

4113 1. **Workers' Compensation and Employer's Liability.** Contractor shall maintain  
4114 workers' compensation insurance covering its employees in statutory amounts  
4115 and otherwise in compliance with the laws of the State of California. Contractor  
4116 shall maintain employer's liability insurance in an amount not less than one  
4117 million dollars (\$1,000,000) per accident or disease. Contractor shall not be  
4118 obligated to carry workers compensation insurance if (i) it qualifies under  
4119 California law and continuously complies with all statutory obligations to self-  
4120 insure against such risks; (ii) furnishes a certificate of Permission to Self Insure  
4121 issued by the Department of Industrial Relations; and (iii) furnishes updated  
4122 certificates of Permission to Self Insure periodically to evidence continuous self  
4123 insurance.

4124 2. **Comprehensive General Liability.** Contractor shall maintain comprehensive  
4125 general liability insurance with a combined single limit of not less than ten million  
4126 dollars (\$10,000,000) per occurrence covering all claims and all legal liability for  
4127 personal injury, bodily injury, death, and property damage, including the loss of  
4128 use thereof, arising out of, or occasioned in any way by, directly or indirectly,  
4129 Contractor's performance of, or its failure to perform, services under this  
4130 Agreement.

4131 The insurance required by this subsection shall include:

- 4132 (i) Premises Operations (including use of owned and non-owned  
4133 equipment);
- 4134 (ii) Personal Injury Liability with employment exclusion deleted;
- 4135 (iii) Broad Form Blanket Contractual with no exclusions for bodily injury,  
4136 personal injury or property damage (including coverage for the  
4137 indemnity obligations contained herein);
- 4138 (iv) Owned, Non-Owned, and Hired Motor Vehicles;
- 4139 (v) Broad Form Property Damage.

4140 The comprehensive general liability insurance shall be written on an "occurrence"  
4141 basis (rather than a "claims made" basis) in a form at least as broad as the most  
4142 current version of the Insurance Service Office commercial general liability  
4143 occurrence policy form (CG0001). If occurrence coverage is not obtainable,  
4144 Contractor must arrange for "tail coverage" on a claims made policy to protect  
4145 Agency from claims filed within four (4) years after the expiration or earlier  
4146 termination of this Agreement relating to incidents that occurred prior to such  
4147 expiration or termination.

4148 3. Automobile Liability. Contractor shall maintain automobile liability insurance  
4149 covering all vehicles used in performing service under this Agreement with a  
4150 combined single limit of not less than ten million dollars (\$10,000,000) per  
4151 occurrence for bodily injury and property damage.

4152 4. Pollution (Environmental Impairment) Liability. Contractor shall maintain pollution  
4153 liability insurance coverage of not less than ten million dollars (\$10,000,000) per  
4154 occurrence covering claims for on-site, under-site, or off-site bodily injury and  
4155 property damage as a result of pollution conditions arising out of its operations  
4156 under this Agreement.

4157 B. Acceptability of Insureds. The insurance policies required by this section shall be  
4158 issued by an insurance company or companies admitted to do business in the State  
4159 of California, subject to the jurisdiction of the California Insurance Commissioner,  
4160 and with a rating in the most recent edition of Best's Insurance Reports of size  
4161 category XV or larger and a rating classification of A+ or better.

4162 C. Required Endorsements. Without limiting the generality of Sections 13.02.A and  
4163 13.02.B, the policies shall contain endorsements in substantially the following form:

4164 1. Workers' Compensation and Employers' Liability Policy.

4165 (a) "Thirty (30) Days prior written notice shall be given to the Town of Atherton  
4166 in the event of cancellation or non-renewal of this policy." Such notice shall  
4167 be sent to:

4168 Town of Atherton  
4169 91 Ashfield Road  
4170 Atherton, CA 94027  
4171 Attn: City Manager

4172 (b) "Insurer waives all right of subrogation against the Town of Atherton and its  
4173 officers and employees for injuries or illnesses arising from work performed  
4174 for the Town of Atherton."  
4175

4176 2. Comprehensive General Liability Policy; Automobile Liability Policy; Pollution  
4177 Liability Policy; and Hazardous Materials Policy.

4178 (a) "Thirty (30) Days prior written notice shall be given to the Town of Atherton  
4179 in the event of cancellation, reduction of coverage, or non-renewal of this  
4180 policy." Such notice shall be sent to:

4181 Town of Atherton  
4182 91 Ashfield Road  
4183 Atherton, CA 94027  
4184 Attn: City Manager

4185 (b) "The Town of Atherton, its officers, employees, and agents are additional  
4186 insureds on this policy."  
4187

4188 (c) "This policy shall be considered primary insurance as respects any other  
4189 valid and collectible insurance maintained by the Town of Atherton, including  
4190 any self-insured retention or program of self-insurance, and any other such  
4191 insurance shall be considered excess insurance only."

4192 (d) "Inclusion of the Town of Atherton as an insured shall not affect the Town of  
4193 Atherton's rights as respects any claim, demand, suit or judgment brought or  
4194 recovered against the Contractor. This policy shall protect Contractor and  
4195 the Town of Atherton in the same manner as though a separate policy had  
4196 been issued to each, but this shall not operate to increase the company's  
4197 liability as set forth in the policy beyond the amount shown or to which the  
4198 company would have been liable if only one party had been named as an  
4199 insured."

4200 D. Deductibles and Self-Insured Retentions. The liability policies described in  
4201 Sections 13.02.A(2) and 13.02.A(3) may contain a deductible or self-insured  
4202 retention not to exceed \$500,000 per occurrence. This amount may not be  
4203 increased without Agency's prior written consent.

4204 Contractor remains responsible for the payment of all losses and investigation,  
4205 claim administration and defense expenses, including those of the Agency.

4206 E. Delivery of Proof of Coverage. No later than ninety (90) Days before the  
4207 commencement of operations, Contractor shall furnish Agency one or more  
4208 certificates of insurance on a standard ACORD form substantiating that each of the  
4209 coverages required hereunder is in force, in form and substance satisfactory to  
4210 Agency. Such certificates shall show the type and amount of coverage, effective  
4211 dates and dates of expiration of policies and shall be accompanied by all required  
4212 endorsements. If Agency requests, copies of each policy, together with all  
4213 endorsements, shall also be promptly delivered to Agency. Contractor shall furnish  
4214 renewal certificates to Agency to demonstrate maintenance of the required  
4215 coverages throughout the Term.

4216 F. Other Insurance Requirements

4217 1. In the event performance of any services is delegated to a Subcontractor,  
4218 Contractor shall require such subcontractor to provide statutory workers'  
4219 compensation insurance and employer's liability insurance for all of the  
4220 Subcontractor's employees engaged in the work. The liability insurance

4221 required by Section 13.02.A(2) and the automobile liability policy required by  
4222 Section 13.02.A(3) shall cover all Subcontractors or the Subcontractor must  
4223 furnish evidence of insurance provided by it meeting all of the requirements of  
4224 this Section 13.02.

4225 2. Contractor shall comply with all requirements of the insurers issuing policies.  
4226 The carrying of insurance shall not relieve Contractor from any obligation under  
4227 this Agreement, including those imposed by Section 13.01. If any claim is  
4228 made by any third Person against Contractor or any Subcontractor on account  
4229 of any occurrence related to this Agreement, other than claims by employees  
4230 for work-related incidents, Contractor shall promptly report the facts in writing to  
4231 the insurance carrier and to the Agency.

4232 3. If Contractor fails to procure and maintain any insurance required by this  
4233 Agreement, Agency may take out and maintain such insurance as it may deem  
4234 proper and may require Contractor to reimburse it for the cost incurred within  
4235 thirty (30) Days and/or deduct the cost from any monies due Contractor.  
4236 Agency may also treat the failure as a Contractor default.

4237 4. Agency is not responsible for payment of premiums for or deductibles under  
4238 any required insurance coverages.

4239 5. Any excess or umbrella policies shall be written on a "following form" basis.

### 4240 **13.03 FAITHFUL PERFORMANCE BOND**

4241 Pursuant to the 2009 Franchise Agreement, Contractor shall have a faithful performance  
4242 bond in effect until December 31, 2020. On or before the Commencement Date,  
4243 Contractor shall file with Agency a bond securing the Contractor's faithful performance of  
4244 its obligations under this Agreement. The principal sum of the bond shall be no less  
4245 than ten percent (10%) of the amount of the Rate Year Ten (2020) annual Revenue  
4246 Requirement for Agency shown on Attachment N. The form of the bond shall be as set  
4247 out in Attachment F. The bond shall be executed as surety by a corporation admitted to  
4248 issue surety bonds in the State of California, regulated by the California Insurance  
4249 Commissioner, and with a financial condition and record of service satisfactory to  
4250 Agency.

4251 The term of the bond shall be twenty-four (24) months. The bond shall be extended, or  
4252 replaced by a new bond in the same principal sum (adjusted by the Annual Index  
4253 Change in the CPI-U, which are defined in Attachment K), for the same term (i.e.,  
4254 twenty-four (24) months) and in the same form, bi-annually thereafter. Not less than  
4255 ninety (90) Days before the expiration of the initial, or any subsequent, bond, Contractor  
4256 shall furnish either a replacement bond or a continuation certificate substantially in the  
4257 form attached as Attachment F, executed by the surety.

4258 It is the intention of this Section that there be in full force and effect at all times a bond  
4259 securing the Contractor's faithful performance of the Agreement, throughout its Term,  
4260 including any extensions pursuant to Section 3.03 herein.

4261 For the purposes of this Section, the Consumer Price Index shall be "CPI-U" means the  
4262 All Urban Consumers Index (CPI-U) compiled and published by the U.S. Department of  
4263 Labor, Bureau of Labor Statistics or its successor agency, using the following  
4264 parameters.

4265 CPI-U Parameters:

4266 Area – San Francisco-Oakland-San Jose Metropolitan Area  
4267 Item – All Items  
4268 Base Period – Current 1982-84=100  
4269 Not seasonally adjusted  
4270 Periodicity – Bi-monthly  
4271 Series ID – cuura422sa0

4272 **13.04 ALTERNATIVE SECURITY**

4273 Agency may, in its sole discretion, allow Contractor to provide alternative security in the  
4274 amount set forth in Section 13.03, in the form of (a) a prepaid irrevocable standby letter  
4275 of credit in form and substance satisfactory to Agency, approved by the Agency's  
4276 Attorney and issued by a financial institution acceptable to Agency, or (b) a certificate of  
4277 deposit in the name of the Agency and in a form and with a term satisfactory to Agency,  
4278 accompanied by an agreement giving Agency the right to draw on the funds deposited  
4279 satisfactory to Agency and with a financial institution acceptable to Agency. Interest on  
4280 the certificate of deposit will be payable to Contractor.

4281 **13.05 HAZARDOUS WASTE INDEMNIFICATION**

4282 Contractor shall indemnify, defend, and hold harmless the Agency against all claims, of  
4283 any kind whatsoever paid, incurred, or suffered by, or asserted against Agency arising  
4284 from or attributable to any repair, cleanup or detoxification, or preparation and  
4285 implementation of any removal, remedial, response, closure. or other plan (regardless of  
4286 whether undertaken due to governmental action) concerning any Hazardous Wastes  
4287 released, spilled. or disposed of by Contractor pursuant to this Agreement. The  
4288 foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e)  
4289 of the Comprehensive Environmental Response, Compensation and Liability Act,  
4290 ("CERCLA"), 42 U.S.C. Section 9607(e), and California Health and Safety Code Section  
4291 25364, to defend, protect, hold harmless. and indemnify Agency from liability and shall  
4292 survive the expiration or earlier termination of this Agreement. Notwithstanding the  
4293 foregoing, Contractor is not required to indemnify the Agency against claims arising from  
4294 Contractor's delivery of Solid Waste, Recyclable Materials, and Organic Materials to the  
4295 Designated Transfer and Processing Facility, or their subsequent delivery to other  
4296 processing locations or the ultimate Disposal Site, unless such claims are due to  
4297 Contractor's negligence or willful misconduct.

4298 **13.06 INDEMNIFICATION RELATED TO VARIOUS STATE REQUIREMENTS**

4299 Contractor agrees to indemnify and hold harmless the Agency against all fines and/or  
4300 penalties imposed by the California Department of Resources Recycling and Recovery  
4301 (CalRecycle) or the Local Enforcement Agency (LEA) based on Contractor's failure to  
4302 comply with laws, regulations. or permits issued or enforced by CalRecycle or the LEA  
4303 or caused or contributed to by the Contractor's failure to perform obligations under this  
4304 Agreement. This indemnity obligation is subject to the limitations and conditions in  
4305 Public Resource Code Section 40059.1 but is enforceable to the maximum extent  
4306 allowable by that Section. This indemnity shall survive the termination or earlier  
4307 expiration of this Agreement. The indemnity shall pertain to the Act, AB 341, AB 901, AB  
4308 1826, AB 1594, SB 1016, SB 1383, and other laws, regulations. or permits issued or  
4309 enforced by the CalRecycle or the LEA.

4310 **13.07 GUARANTY**

4311 Concurrently with execution of the 2009 Franchise Agreement, Contractor furnished a  
4312 Guaranty of its performance thereunder, in the form of Attachment G, properly executed  
4313 by Recology Inc., a California corporation. Said Guaranty by its terms applies to any  
4314 amendment to the 2009 Franchise Agreement, including this Agreement. Recology Inc.  
4315 then owned and as of the date hereof continues to own all of the issued and outstanding  
4316 common stock of Contractor.

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## ARTICLE 14 DEFAULT AND REMEDIES

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4320 **14.01 EVENTS OF DEFAULT**

4321 Each of the following shall constitute an event of default ("Contractor default"):

4322 A. Contractor fails to perform its obligations under Article 5, 6, or 7 of this Agreement  
4323 and its failure to perform is not cured within ten (10) Business Days after written  
4324 notice from Agency.

4325 B. Contractor fails to perform its obligations under any other Article of this Agreement  
4326 and its failure to perform is not cured within ten (10) Days after written notice from  
4327 Agency, provided that if the nature of the failure is such that it will reasonably  
4328 require more than ten (10) Days to cure, Contractor shall not be in default so long  
4329 as it promptly commences the cure and diligently proceeds to completion of the  
4330 cure, and provided further that neither notice nor opportunity to cure applies to  
4331 events described in subsections C through H.

4332 C. Contractor ceases to provide Collection and transportation services for a period of  
4333 two (2) Business Days for any reason within the Contractor's control, including labor  
4334 unrest such as strike, work stoppage or slowdown, sickout, picketing, or other  
4335 concerted job action by Contractor's employees.

4336 D. Contractor files a voluntary petition for relief under any bankruptcy, insolvency, or  
4337 similar law.

4338 E. An involuntary petition is brought against Contractor under any bankruptcy,  
4339 insolvency, or similar law which remains un-dismissed or un-stayed for ninety (90)  
4340 Days.

4341 F. Contractor fails to furnish a replacement bond or a continuation certificate of the  
4342 existing bond not less than ten (10) Days before expiration of the performance  
4343 bond, as required by Section 13.03 or fails to maintain all required insurance  
4344 coverage in force.

4345 G. Contractor fails to provide reasonable assurance of performance when required  
4346 under Section 14.10.

4347 H. A representation or warranty contained in Article 2 proves to be false or misleading  
4348 in a material respect as of the date such representation or warranty was made.

4349 **14.02 RIGHT TO SUSPEND OR TERMINATE UPON DEFAULT**

4350 A. Upon any Contractor default, Agency may terminate this Agreement or suspend it, in  
4351 whole or in part. Such suspension or termination shall be effective thirty (30) Days  
4352 after Agency has given notice of suspension or termination to Contractor, except that  
4353 such notice may be effective in a shorter period of time, or immediately, if the  
4354 Contractor default is one which endangers the health, welfare, or safety of the public,  
4355 such as the failure to Collect Solid Waste, Recyclable Materials, or Organic Materials  
4356 for the period of time specified in Section 14.01.C. Notice may be given orally in  
4357 person or by telephone to the representative of Contractor designated in or under  
4358 Section 15.10 (or, if he/she is unavailable, to a responsible employee of Contractor)  
4359 and shall be effective immediately. Written confirmation of such oral notice of

4360 suspension or termination shall be sent by personal delivery, facsimile, or other  
4361 expedited means of delivery to Contractor within twenty-four (24) hours of the oral  
4362 notification at the address shown in Section 15.09. Contractor shall continue to  
4363 perform the portions of the Agreement, if any, not suspended, in full conformity with  
4364 its terms.

4365 B. Agency may also suspend or terminate this Agreement, upon the same notice  
4366 provisions, if Contractor's ability to perform is prevented or materially interfered with  
4367 by a cause which excuses nonperformance under Section 14.09, despite the fact  
4368 that nonperformance in such a case is neither a breach nor a Contractor default.

4369 **14.03 SPECIFIC PERFORMANCE**

4370 By virtue of the nature of this Agreement, the urgency of timely, continuous, and high-  
4371 quality service, the lead time required to effect alternative service, and the rights granted  
4372 by Agency to Contractor, the remedy of damages for a breach hereof by Contractor is  
4373 inadequate and Agency shall be entitled to injunctive relief.

4374 **14.04 RIGHT TO PERFORM; USE OF CONTRACTOR PROPERTY**

4375 If this Agreement is suspended and/or terminated due to a Contractor default, Agency  
4376 shall have the right to perform, by contract, in conjunction with other Member Agencies,  
4377 or otherwise, the work herein or such part thereof as it may deem necessary. In the  
4378 event of Contractor's default, Agency shall have the right to use any of Contractor's  
4379 equipment, Facilities, and other property reasonably necessary for the provision of  
4380 services hereunder and for the Billing and collection of Rates and Charges billed for  
4381 those services, upon the terms provided in Article 12. Agency shall have the right to  
4382 continue use of such property until other suitable arrangements can be made for the  
4383 provision of such services, which may include the award of a contract to another service  
4384 provider.

4385 **14.05 DAMAGES**

4386 Contractor shall be liable to Agency for all direct, indirect, special, and consequential  
4387 damages arising out of Contractor's default. This Section is intended to be declarative of  
4388 existing California law.

4389 **14.06 AGENCY'S REMEDIES CUMULATIVE**

4390 Agency's rights to suspend or terminate the Agreement under Section 14.02, to obtain  
4391 specific performance under Section 14.03, and to perform under Section 14.04 are not  
4392 exclusive, and Agency's exercise of one such right shall not constitute an election of  
4393 remedies. Instead, they shall be in addition to any and all other legal and equitable  
4394 rights and remedies that Agency may have, including a legal action for damages under  
4395 Section 14.05 or imposition of Liquidated Damages under Section 14.07.

4396 **14.07 LIQUIDATED DAMAGES**

4397 The Parties acknowledge that consistent, courteous, and efficient Collection of Solid  
4398 Waste, Targeted Recyclable Materials, and Organic Materials is of utmost importance  
4399 and Agency has considered and relied on Contractor's representations as to its quality of  
4400 service commitment in entering into this Agreement. The Parties further recognize that  
4401 quantified standards of performance are necessary and appropriate to ensure consistent  
4402 and reliable service. The Parties further recognize that if Contractor fails to achieve the  
4403 performance standards, Agency and its residents will suffer damages and that it is and

4404 will be impracticable and extremely difficult to ascertain and determine the exact amount  
4405 of damages that Agency will suffer. Therefore, the Parties agree that the Liquidated  
4406 Damage amounts listed in Attachment J and the Performance Disincentive amounts  
4407 listed in Attachment I represent a reasonable estimate of the amount of such damages  
4408 considering all of the circumstances existing on the date of this Agreement, including the  
4409 relationship of the sums to the range of harm to Agency that reasonably could be  
4410 anticipated and recognition that proof of actual damages would be costly or  
4411 inconvenient. By initialing the places provided, each Party specifically confirms the  
4412 accuracy of the statements made above and the fact that each Party had ample  
4413 opportunity to consult with legal counsel and obtain an explanation of this liquidated  
4414 damage provision at the time that this Agreement was made.

4415 Contractor Initial Here: \_\_\_\_\_ Agency Initial Here: \_\_\_\_\_

4416 Contractor agrees to pay (as liquidated damages and not as a penalty) the amount set  
4417 forth in Attachments J and I.

4418 In addition to considering the reports submitted by Contractor pursuant to Article 9,  
4419 Agency may determine the occurrence of events giving rise to Liquidated Damages or  
4420 Performance Disincentives through the observation of its own employees or agents,  
4421 through discussions with Customers, and through investigation of Customer Complaints  
4422 made directly to Agency. Prior to assessing Liquidated Damages or Performance  
4423 Disincentives based on such observations or investigations, Agency shall give  
4424 Contractor notice of its intention to do so. The notice will include a brief description of  
4425 the incident(s)/non-performance. Contractor may review (and make copies at its own  
4426 expense) all non-confidential information in the possession of Agency relating to  
4427 incident(s)/non-performance. Contractor may, within ten (10) Days after receiving the  
4428 notice, request a meeting with Agency's Manager or his or her designee. Contractor  
4429 may present evidence in writing and through testimony of its employees and others  
4430 relevant to the incident(s)/non-performance. Agency's Manager or his or her designee  
4431 will provide Contractor with a written explanation of his or her determination on each  
4432 incident(s)/non-performance prior to authorizing the assessment of Liquidated Damages  
4433 or Performance Disincentives. The decision of Agency's Manager or his or her designee  
4434 shall be final.

4435 Agency's right to recover Liquidated Damages for Contractor's failure to meet the  
4436 service performance standards shall not preclude Agency from obtaining equitable relief  
4437 for persistent failures to meet such standards nor from terminating the Agreement for  
4438 such persistent failures.

4439 **14.08 AGENCY DEFAULT**

4440 Agency shall be in default under this Agreement ("Agency default") in the event Agency  
4441 commits a material breach of the Agreement and fails to cure such breach within thirty  
4442 (30) Days after receiving notice from the Contractor specifying the breach, provided that  
4443 if the nature of the breach is such that it will reasonably require more than thirty (30)  
4444 Days to cure, Agency shall not be in default so long as Agency promptly commences the  
4445 cure and diligently proceeds to completion of the cure.

4446 In the event of an asserted Agency default, Contractor shall continue to perform all of its  
4447 obligations hereunder until a court of competent jurisdiction has issued a final judgment  
4448 declaring that Agency is in default.

4449 **14.09 EXCUSE FROM PERFORMANCE**

4450 A. **Force Majeure.** Neither Party shall be in default of its obligations under  
4451 this Agreement in the event, and for so long as, it is impossible or extremely  
4452 impracticable for it to perform its obligations due to an “act of God” (including, but  
4453 not limited to, flood, earthquake, or other catastrophic events), war, insurrection,  
4454 riot, labor unrest of other than the Party’s employees (including strike, work  
4455 stoppage, slowdown, sick out, picketing, or other concerted job action), or other  
4456 similar cause not the fault of, and beyond the reasonable control of, the Party  
4457 claiming excuse. A Party claiming excuse under this Section must (i) have taken  
4458 reasonable precautions, if possible, to avoid being affected by the cause, and (ii)  
4459 notify the other Party in writing as provided in Subsection C.

4460 B. **Obligation to Restore Ability to Perform.** Any suspension of  
4461 performance by a Party pursuant to this Section shall be only to the extent, and for  
4462 a period of no longer duration than, required by the nature of the event, and the  
4463 Party claiming excuse shall use its best efforts to remedy its inability to perform as  
4464 quickly as possible and to mitigate damages that may occur as result of the event.

4465 C. **Notice.** The Party claiming excuse shall deliver to the other Party a  
4466 written notice of intent to claim excuse from performance under this Agreement by  
4467 reason of an event of Force Majeure. Notice required by this Section shall be given  
4468 promptly in light of the circumstances, but in any event not later than five (5) Days  
4469 after the occurrence of the event of Force Majeure. Such notice shall describe in  
4470 detail the event of Force Majeure claimed, the services impacted by the claimed  
4471 event of Force Majeure, the expected length of time that the Party expects to be  
4472 prevented from performing, the steps which the Party intends to take to restore its  
4473 ability to perform, and such other information as the other Party reasonably  
4474 requests.

4475 D. **Agency's Rights in the Event of Force Majeure.** The partial or complete  
4476 interruption or discontinuance of Contractor’s services caused by an event of Force  
4477 Majeure shall not constitute a Contractor default. Notwithstanding the foregoing: (i)  
4478 Agency shall have the right to make use of Contractor’s Facilities and equipment in  
4479 accordance with Article 12 in the event of non-performance excused by Force  
4480 Majeure; (ii) if Contractor’s failure to perform by reason of Force Majeure continues  
4481 for a period of thirty (30) Days or more, Agency shall have the right to immediately  
4482 terminate this Agreement; (iii) if Contractor is unable to Collect and transport Solid  
4483 Waste as required by this Agreement for a period of two (2) or more consecutive  
4484 Business Days or for any three (3) Business Days in a seven (7) Day period as a  
4485 result of Force Majeure, Agency shall have the right to make use of Contractor’s  
4486 Facilities and equipment in accordance with Article 12, and (iv) if Contractor’s  
4487 inability to Collect and transport Solid Waste continues for two (2) Days or more  
4488 from the date by which Contractor gave or should have given notice under  
4489 Subsection C, Agency may terminate this Agreement.

4490 **14.10 ASSURANCE OF PERFORMANCE**

4491 If Contractor (i) persistently suffers the imposition of Liquidated Damages under Section  
4492 14.07; (ii) is the subject of any labor unrest including work stoppage or slowdown,  
4493 sickout, picketing, or other concerted job action; (iii) appears in the reasonable judgment

4494 of Agency to be unable to regularly pay its bills as they become due; (iv) is the subject of  
4495 a civil or criminal proceeding brought by a federal, State, regional, or local agency for  
4496 violation of an Environmental Law in the performance of this Agreement, or (v) performs  
4497 in a manner that causes Agency to be uncertain about Contractor's ability and intention  
4498 to comply with this Agreement, Agency may, at its option and in addition to all other  
4499 remedies it may have, demand from Contractor reasonable assurances of timely and  
4500 proper performance of this Agreement, in such form and substance as Agency may  
4501 require.

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## ARTICLE 15 OTHER AGREEMENTS OF THE PARTIES

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4505 **15.01 RELATIONSHIP OF PARTIES**

4506 The Parties intend that Contractor shall perform the services required by this Agreement  
4507 as an independent contractor engaged by Agency and not as an officer or employee of  
4508 Agency nor as a partner of or joint venture with Agency. No employee or agent of  
4509 Contractor shall be deemed to be an employee or agent of Agency. Except as expressly  
4510 provided herein, Contractor shall have the exclusive control over the manner and means  
4511 of conducting the services performed under this Agreement, and over all Persons  
4512 performing such services. Contractor shall be solely responsible for the acts and  
4513 omissions of its officers, employees, Subcontractors, and agents. Neither Contractor nor  
4514 its officers, employees, Subcontractors, and agents shall obtain any rights to retirement  
4515 benefits, workers' compensation benefits, or any other benefits which accrue to Agency  
4516 employees by virtue of their employment with Agency.

4517 **15.02 COMPLIANCE WITH LAW**

4518 In providing the services required under this Agreement, Contractor shall at all times  
4519 comply with all Applicable Laws of the United States, the State and Agency, with all  
4520 applicable ordinances, regulations promulgated by federal, state, regional, or local  
4521 administrative and regulatory agencies, and by Agency, now in force and as they may be  
4522 enacted, issued, or amended during the Term, and with all permits affecting the services  
4523 to be provided.

4524 **15.03 ASSIGNMENT**

4525 Contractor acknowledges that this Agreement involves rendering a vital service to  
4526 Agency's residents and businesses, and that Agency has selected Contractor to perform  
4527 the services specified herein based on (i) Contractor's experience, skill, and reputation  
4528 for conducting its operations in a safe, effective, and responsible fashion, and (ii)  
4529 Contractor's and the Guarantor's financial resources to maintain the required equipment  
4530 and to support its indemnity obligations to Agency under this Agreement. Agency has  
4531 relied on each of these factors, among others, in choosing Contractor to perform the  
4532 services to be rendered by Contractor under this Agreement.

4533 A. **Agency Consent Required.** Contractor shall not assign its rights or delegate or  
4534 otherwise transfer its obligations under this Agreement to any other Person without  
4535 the prior written consent of Agency. Any such assignment made without the  
4536 consent of Agency shall be void and the attempted assignment shall constitute a  
4537 Contractor default.

4538 B. **Assignment Defined.** For the purpose of this Section, "assignment" shall include,  
4539 but not be limited to, (i) a sale, exchange, or other transfer to a third party of  
4540 substantially all of Contractor's assets dedicated to service under this Agreement;  
4541 (ii) a sale, exchange, or other transfer of outstanding common stock of Contractor to  
4542 a Person who is not a shareholder as of the Effective Date which results in a  
4543 change in control of Contractor; (iii) any dissolution, reorganization, consolidation,  
4544 merger, re-capitalization, stock issuance or reissuance, voting trust, pooling  
4545 agreement, escrow arrangement, liquidation, or other transaction which results in a  
4546 change of ownership or control of Contractor; (iv) any assignment by operation of

4547 law, including insolvency or bankruptcy, an assignment for the benefit of creditors, a  
4548 writ of attachment for an execution being levied against this Agreement,  
4549 appointment of a receiver taking possession of Contractor's property, or transfer  
4550 occurring in the event of a probate proceeding; and (v) any combination of the  
4551 foregoing (whether or not in related or contemporaneous transactions) which has  
4552 the effect of any such transfer or change of ownership, or change of control of  
4553 Contractor.

4554 C. **Consent Requirements.** If Contractor requests Agency's consideration of and  
4555 consent to an assignment, Agency may deny or approve such request in its  
4556 complete discretion. No request by Contractor for consent to an assignment need  
4557 be considered by Agency unless and until Contractor has met the following  
4558 requirements:

4559 1. Contractor shall pay Agency its reasonable expenses for attorneys' fees and  
4560 investigation costs necessary to investigate the suitability of any proposed  
4561 assignee, and to review and finalize any documentation required as a condition  
4562 for approving any such assignment;

4563 2. Contractor shall furnish Agency with audited financial statements of the proposed  
4564 assignee's operations for the immediately preceding three (3) operating years;

4565 3. Contractor shall furnish Agency with satisfactory proof: (i) that the proposed  
4566 assignee has at least ten (10) years of Solid Waste/Recycling management  
4567 experience on a scale equal to or exceeding the scale of operations conducted  
4568 by Contractor under this Agreement; (ii) that in the last five (5) years, the  
4569 proposed assignee has not been the subject of any administrative or judicial  
4570 proceedings initiated by a federal, State, or local agency having jurisdiction over  
4571 its operations due to an alleged failure to comply with federal, State, or local laws  
4572 or that the proposed assignee has provided Agency with a complete list of such  
4573 proceedings and their status; (iii) that the proposed assignee conducts its  
4574 operations in a safe and environmentally conscientious manner, in accordance  
4575 with sound Solid Waste management practices in full compliance with all federal,  
4576 State, and local laws regulating the Collection and Disposal of Solid Waste and  
4577 all Environmental Laws; and (iv) of any other information required by Agency to  
4578 ensure the proposed assignee can fulfill the terms of this Agreement in a timely,  
4579 safe, and effective manner.

4580 D. **No Obligation to Consider.** Agency will not be obligated to consider a proposed  
4581 assignment if Contractor is in default.

#### 4582 **15.04 AFFILIATED ENTITY**

4583 Contractor will not form or use any Affiliate to perform any of the services or activities  
4584 that Contractor is required or allowed to perform under this Agreement, other than as a  
4585 Subcontractor approved by Agency under Section 15.04.

4586 If Contractor enters into any financial transactions with an Affiliate for the provision of  
4587 labor, equipment, supplies, services, or capital related to the furnishing of service under  
4588 this Agreement, that relationship shall be disclosed to Agency, and in the financial  
4589 reports submitted to Agency. In such event, Agency's rights to inspect records and  
4590 obtain financial data shall extend to records and data of such Affiliate that are relevant to  
4591 those specific financial transactions.

4592 **15.05 CONTRACTOR'S INVESTIGATION**

4593 Contractor has made an independent investigation, satisfactory to it, of the conditions  
4594 and circumstances surrounding the Agreement and the work to be performed by it.  
4595 Contractor has had the opportunity to inspect the Designated Transfer and Processing  
4596 Facility and to review the permits governing its operation, as well as the Source  
4597 Reduction and Recycling Element adopted by Agency as required by the Act.  
4598 Contractor has taken such matters into consideration in agreeing to provide the services  
4599 required by, for the compensation to be provided under, this Agreement.

4600 **15.06 RESERVED**

4601 **15.07 CONDEMNATION**

4602 Agency reserves the rights to acquire the Contractor's property utilized in the  
4603 performance of this Agreement through the exercise of eminent domain.

4604 **15.08 NOTICE**

4605 All notices, demands, requests, proposals, approvals, consents, and other  
4606 communications which this Agreement requires, authorizes or contemplates shall,  
4607 except as provided in Article 14, be in writing and shall either be personally delivered to  
4608 a representative of the Parties at the address below or be deposited in the United States  
4609 mail, first class postage prepaid, addressed as follows:

4610 If to Agency:

4611 Town of Atherton  
4612 91 Ashfield Road  
4613 Atherton, CA 94027  
4614 Attn: City Manager

4615

4616 If to Contractor:

4617 General Manager  
4618 Recology San Mateo County  
4619 225 Shoreway Rd.  
4620 San Carlos, CA 94070

4621 The address to which communications may be delivered may be changed from time to  
4622 time by a notice given in accordance with this Section.

4623 Contact information for Contractor's General Manager is as follows:

4624 General Manager  
4625 Recology San Mateo County  
4626 225 Shoreway Rd.  
4627 San Carlos, CA 94070

4628 Contact information for Contractor's Environmental Technician is as follows:

4629 Environmental Technician  
4630 Recology San Mateo County  
4631 225 Shoreway Rd.  
4632 San Carlos, CA 94070

4633 Contractor shall promptly provide Agency the name and contact information for the  
4634 above employees if there is a change during the Term.

4635 **15.09 REPRESENTATIVES OF THE PARTIES**

4636 A. **Representatives of Agency.** References in this Agreement to “Agency” shall  
4637 mean the Town and all actions to be taken by Agency shall be taken by the City  
4638 Council except as provided below. The City Council may delegate authority to the  
4639 City Manager, and/or to other Agency officials and may permit such officials, in turn,  
4640 to delegate in writing some or all of such authority to subordinate officers.  
4641 Contractor may rely upon actions taken by such delegates if they are within the  
4642 scope of the authority properly delegated to them.

4643 B. **Representative of Contractor.** Contractor shall, by the Commencement Date,  
4644 designate in writing a responsible officer who shall serve as the representative of  
4645 Contractor in all matters related to the Agreement and shall inform Agency in writing  
4646 of such designation and of any limitations upon his or her authority to bind  
4647 Contractor. Agency may rely upon action taken by such designated representative  
4648 as actions of Contractor unless they are outside the scope of the authority  
4649 delegated to him/her by Contractor as communicated to Agency.

4650 **15.10 DUTY OF CONTRACTOR NOT TO DISCRIMINATE**

4651 In the performance of this Agreement Contractor shall not discriminate, nor permit any  
4652 subcontractor to discriminate, against any employee, applicant for employment, or  
4653 Customer on account of race, color, national origin, ancestry, religion, sex, age, physical  
4654 disability, medical condition, sexual orientation, marital status, or other characteristic, in  
4655 violation of any Applicable Law.

4656 **15.11 RESERVED**

4657 **15.12 RIGHT OF AGENCY TO MAKE CHANGES IN SERVICES AND SERVICE LEVELS**

4658 A. Agency may, without amending this Agreement, direct Contractor to cease  
4659 performing one or more types of service described in Articles 5 or 6, or may direct  
4660 Contractor to modify the scope of one or more such services, may direct  
4661 Contractor to perform additional Solid Waste, Targeted Recyclable Materials,  
4662 Organic Materials, Used Motor Oil, Used Motor Oil Filters, Household Batteries  
4663 and Cell Phones or Plant Materials handling services, or may otherwise direct  
4664 Contractor to modify its performance under any other Section of this Agreement.  
4665 In addition, SBWMA may, without amendment of this Agreement, direct a change  
4666 in the number of Waste Zero Specialists as provided in Section 7.04.A, or a  
4667 change in Other Services as provided in Section 7.13. Contractor shall promptly  
4668 and cooperatively comply with such direction.

4669 B. If such changes cause an increase or decrease in the cost of performing the  
4670 services, an equitable adjustment in the Contractor’s Compensation shall be made  
4671 pursuant to Section 11.06. Contractor will continue to perform the new or changed  
4672 service while the appropriate adjustment in Contractor’s Compensation is being  
4673 determined.

4674 C. The Agency shall have the right to terminate a program if, in its discretion, the  
4675 Contractor is not cost-effectively achieving the program’s goals and objectives.  
4676 Thereafter, the Agency may utilize a third party to perform these services if the

4677 Agency reasonably believes the third party can improve on Contractor's  
4678 performance and cost effectiveness. Notwithstanding these changes, Contractor  
4679 shall continue the program during the meet and confer period and, thereafter, until  
4680 the third party takes over the program. This subsection C applies to programs  
4681 initiated at Agency's direction after the Commencement Date that are beyond the  
4682 basic scope of services described in Section 4.01.A.

4683 **15.13 TRANSITION TO NEXT SERVICE PROVIDER**

4684 At the expiration of the Term or the earlier termination of the Agreement, or upon  
4685 Agency's approval of a proposed assignment, Contractor shall cooperate fully with  
4686 Agency to ensure an orderly transition to any and all new service providers. Contractor  
4687 shall provide, within ten (10) Days of a written request by Agency, then-current route  
4688 lists, which identify each Customer on the route, its service level (number of Containers,  
4689 Container sizes, frequency of Collection, scheduled Collection day), any special  
4690 Collection notes, and detailed then-current Customer account and Billing information.  
4691 Contractor may, but is not required to, sell Collection vehicles and Containers to the next  
4692 service provider.

4693 Contractor shall upon Agency request, at least one-hundred-eighty (180) Days prior to  
4694 the transition of services, attend meetings with the next service provider and with  
4695 Agency and SBWMA staff and consultants to plan the recovery of Contractor's  
4696 Containers and placement of the new Containers. Contractor shall perform in  
4697 accordance with such plan and direct route supervisors to provide "ride-alongs" so that  
4698 the new service provider's employees may ride with drivers in Collection vehicles during  
4699 Collection operations. Contractor shall direct its drivers and other employees to provide  
4700 accurate information to the new provider about routing and Customers.

4701 **15.14 REPORTS AS PUBLIC RECORDS**

4702 The reports, records, and other information submitted or required to be submitted by  
4703 Contractor to Agency (and documents copied pursuant to Section 9.02) are public  
4704 records within the meaning of that term in the California Public Records Act,  
4705 Government Code Section 6250 *et seq.* Unless a particular record is exempted from  
4706 disclosure by the California Public Records Act, it must be disclosed to the public by  
4707 Agency upon request.

4708 Contractor will not object to Agency making available to the public any information  
4709 submitted by the Contractor, or required to be submitted in connection with the  
4710 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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4714 **16.01 GOVERNING LAW**

4715 This Agreement shall be governed by, and construed and enforced in accordance with,  
4716 the laws of the State of California.

4717 **16.02 JURISDICTION**

4718 Any lawsuits between the Parties arising out of this Agreement shall be brought and  
4719 concluded in the courts of the State of California, which shall have exclusive jurisdiction  
4720 over such lawsuits. With respect to venue, the Parties agree that this Agreement is  
4721 made in and will be performed in San Mateo County.

4722 **16.03 BINDING ON SUCCESSORS**

4723 The provisions of this Agreement shall inure to the benefit of and be binding on the  
4724 successors and permitted assigns of the Parties.

4725 **16.04 PARTIES IN INTEREST**

4726 Nothing in this Agreement is intended to confer any rights on any Persons other than the  
4727 Parties to it and their permitted successors and assigns.

4728 **16.05 WAIVER**

4729 The waiver by either Party of any breach or violation of any provisions of this Agreement  
4730 shall not be deemed to be a waiver of any breach or violation of any other provision nor  
4731 of any subsequent breach or violation of the same or any other provision.

4732 **16.06 ATTACHMENTS**

4733 Each of the attachments, identified as Attachments "A" through "S," is attached hereto  
4734 and incorporated herein and made a part hereof by this reference.

4735 **16.07 ENTIRE AGREEMENT**

4736 This Agreement, including the attachments, represents the full and entire agreement  
4737 between the Parties with respect to the matters covered herein and supersedes all prior  
4738 negotiations and agreements, either written or oral.

4739 **16.08 SECTION HEADINGS**

4740 The article headings and section headings in this Agreement are for convenience of  
4741 reference only and are not intended to be used in the construction of this Agreement nor  
4742 to alter or affect any of its provisions.

4743 **16.09 INTERPRETATION**

4744 This Agreement shall be interpreted and construed reasonably and neither for nor  
4745 against either Party, regardless of the degree to which either Party participated in its  
4746 drafting.

4747 **16.10 AMENDMENT**

4748 This Agreement may not be modified or amended in any respect except by a writing  
4749 signed by the Parties.

4750 **16.11 SEVERABILITY**

4751 If a court of competent jurisdiction holds any non-material provision of this Agreement to  
4752 be invalid and unenforceable, the invalidity or unenforceability of such provision shall not  
4753 affect any of the remaining provisions of this Agreement which shall be enforced as if  
4754 such invalid or unenforceable provision had not been contained herein.

4755 **16.12 COSTS AND ATTORNEYS' FEES**

4756 The prevailing Party in any action brought to enforce the terms of this Agreement or  
4757 arising out of this Agreement may recover its reasonable costs expended in connection  
4758 with such an action from the other Party.

4759 **16.13 NO DAMAGES FOR INVALIDATION OF AGREEMENT**

4760 If a final judgment of a court of competent jurisdiction determines that this Agreement is  
4761 illegal or was unlawfully entered into by Agency, neither Party shall have any claim  
4762 against the other for damages of any kind (including but not limited to loss of profits) on  
4763 any theory.

4764 **16.14 REFERENCES TO LAWS**

4765 All references in this Agreement to laws and regulations shall be understood to include  
4766 such laws and regulations as they may be subsequently amended or recodified, unless  
4767 otherwise specifically provided. In addition, references to specific governmental  
4768 agencies shall be understood to include agencies that succeed to or assume the  
4769 functions they are currently performing.

4770 **16.15 INDEMNITY AGAINST CHALLENGES TO AGREEMENT**

4771 Contractor shall indemnify, defend, and hold harmless SBWMA, Agency, and its and  
4772 their officers, employees, and agents (collectively, the "Indemnitees") from and against  
4773 any and all liability, claim, demand, action, proceeding, or suit of any and every kind and  
4774 description brought by a third party challenging the process by which proposals were  
4775 solicited and evaluated, or this Agreement was negotiated or awarded to the extent that  
4776 such liability, claim, demand, action, proceeding, or suit was caused by Contractor's  
4777 failure to comply with Applicable Law or the instructions of any indemnitee with respect  
4778 to such process.

4779 **16.16 DISPUTE RESOLUTION**

4780 Should any dispute between the Parties arise out of this Agreement and should the  
4781 Parties be unable to resolve the issue, the Parties shall, at the written request of either  
4782 Party, meet in mediation and attempt to reach a resolution with the assistance of a  
4783 mutually acceptable mediator. Neither Party shall be permitted to file legal action  
4784 without first meeting in mediation and making a good faith attempt to reach a mediated  
4785 resolution, provided that this limitation shall not apply to a Party if the other Party fails to  
4786 comply with this section. The costs of the mediator, if any, shall be paid equally by the  
4787 Parties. If a mediated settlement is reached, neither Party shall be deemed the  
4788 prevailing Party for purposes of the settlement and each Party shall bear its own legal  
4789 costs. The mediation shall be completed within sixty (60) days of the written request of a  
4790 Party for mediation unless both Parties agree to extend this timeframe. If litigation is filed  
4791 regarding any dispute arising under this Agreement, the action shall be filed in San  
4792 Mateo County Superior Court and the court shall award reasonable attorney's fees and  
4793 costs to the prevailing Party. To the maximum extent permitted by law, all offers,

4794 promises, conduct and statements, whether oral or written, made in the course of the  
4795 mediation by any of the Parties, their agents, employees, experts or attorneys, or by the  
4796 mediator or any employees of the mediation service, are confidential, privileged and  
4797 inadmissible for any purpose, including impeachment, in any arbitration or other  
4798 proceeding involving the Parties, provided that evidence that is otherwise admissible or  
4799 discoverable shall not be rendered inadmissible or non-discoverable as a result of its  
4800 use in the mediation. All applicable statutes of limitation and defenses based upon the  
4801 passage of time shall be tolled until the end of the sixty (60) day period referred to  
4802 above. The Parties will take such action, if any, required 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 the day and year first above written.**

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TOWN OF ATHERTON

RECOLOGY SAN MATEO COUNTY

4811

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

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

4812

George Rodericks

Michael J. Sangiacomo

4813

City Manager

President and CEO

4814

ATTEST: \_\_\_\_\_

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

4815

Theresa DellaSanta

Cary Chen

4816

City Clerk

Secretary

4817

APPROVED AS TO FORM:

4818

\_\_\_\_\_  
William B. Conners

4819

City Attorney

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\_\_\_\_\_

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