

AGREEMENT FOR OPERATION
OF THE
SHOREWAY RECYCLING AND DISPOSAL
CENTER

SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY
AND
SOUTH BAY RECYCLING, LLC

July 2009

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AGREEMENT FOR THE OPERATION OF THE SHOREWAY RECYCLING AND DISPOSAL CENTER

THIS AGREEMENT is made and entered into as of this 30th day of July 2009, by and between the SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY (the "Authority"), and SOUTH BAY RECYCLING, LLC, a California limited liability company (the "Contractor").

RECITALS

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

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

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

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

5. The Member Agencies, acting in coordination with each other and the Authority, are planning to expand the recycling operations within each of their jurisdictions through a variety of measures, including the institution of "single stream" recycling, i.e., the collection of commingled recyclables in a single, wheeled container.

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

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

8. One of the anticipated improvements is the installation of a new system designed specifically for sorting and recovering recyclable materials from single stream collection programs. The new system has been selected by the Contractor, is to be installed by the manufacturer-vendor within the Materials Recovery Facility at the Shoreway Center, and operated by the Contractor.

9. On November 1, 2007, the Authority issued a Request for Proposals to select the new recyclable materials processing equipment, operate the Shoreway Center, transport recyclable materials to various specialized processors and transport residual solid waste to the Ox Mountain Landfill.

10. On March 4, 2008, Contractor submitted a Proposal which, in the judgment of the staff of the Authority, represented the greatest value to the Authority, its Member Agencies and their residents and businesses. On April 23, 2009, on the recommendation of its Facility Operations Contractor Selection Committee, the Board of Directors selected Contractor as the Operator of the Shoreway Center and directed the Authority's Executive Director to negotiate a final agreement with Contractor.

11. On July 23, 2009, the Authority's Board of Directors approved this Agreement and recommended that each of the Authority's Member Agencies also approve it before the Effective Date.

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

1

ARTICLE 1 DEFINITIONS

2

1.01 DEFINITIONS

3

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

4

have the meanings specified in Attachment 1.

1 **ARTICLE 2 TERM OF AGREEMENT**

2 **2.01 EFFECTIVE DATE**

3 The Effective Date of this Agreement shall be November 30, 2009.

4 **2.02 TERM**

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

8 **2.03 OPTION TO EXTEND TERM**

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

17 **2.04 CONDITIONS TO EFFECTIVENESS OF AGREEMENT**

18 A. The obligation of Authority to perform under this Agreement is subject to
19 satisfaction, on or before the Effective Date, of each and every one of the conditions
20 set out below:

- 21 1. Accuracy of Representations. The representations and warranties made by
22 Contractor in Article 3 of this Agreement shall be true and correct on and as
23 of the Effective Date, and a certification to that effect dated as of the Effective
24 Date shall be delivered by Contractor to Authority on the Effective Date.
- 25 2. Absence of Litigation. There shall be no litigation pending on the Effective
26 Date in any court challenging the execution of this Agreement or seeking to
27 restrain or enjoin its performance.
- 28 3. Sale of Bonds. The Authority shall have sold bonds, certificates of
29 participation, or other such instruments, or shall have secured a loan, in the
30 amount of \$56.5 million, and received the proceeds thereof.
- 31 4. Effectiveness of Authority's Approval. Authority's approval of this Agreement
32 shall have become effective, pursuant to California law, on or before the
33 Effective Date, through the action of eight or more Member Agencies' City
34 Councils or other governing bodies approving this Agreement.
- 35 5. Contract with Equipment Manufacturer. Authority shall have entered into a
36 contract with Bulk Handling Systems for the fabrication, delivery, installation
37 and warranty service of the equipment described in Attachment 2-A for a
38 price and on terms and conditions acceptable to Authority.

1 6. Performance Bond. The Contractor shall have delivered a Performance
2 Bond meeting the requirements of Section 10.03.

3 The Authority may, in its sole discretion, waive the satisfaction of conditions
4 described in paragraphs 1, 2, 5 and 6 of this Section.

5 B. The obligation of Contractor to perform under this Agreement is subject to
6 satisfaction, on or before the Effective Date, of the following condition, which may
7 be waived by Contractor:

8 1. Contract with Equipment Manufacturer. Authority shall have entered into a
9 contract with Bulk Handling Systems for the fabrication, delivery, installation
10 and warranty service of the equipment described in Attachment 2-A.

11 If this condition is not satisfied or waived by Contractor by the Effective Date, this
12 Agreement shall be void and have no force or effect.

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

2 **3.01 CORPORATE STATUS**

3 Contractor is a limited liability company duly organized, validly existing and in good
4 standing under the laws of the State of California, and is qualified to do business in the
5 State of California. It has the corporate power to own its properties and to carry on its
6 business as now owned and operated and as required by this Agreement.

7 **3.02 CORPORATE AUTHORIZATION**

8 Contractor has the authority to enter into and perform its obligations under this
9 Agreement. The Board of Managers of Contractor (and the Members, if necessary)
10 have taken all actions required by law, its articles of organization, its operating
11 agreement or otherwise to authorize the execution of this Agreement. The persons
12 signing this Agreement on behalf of Contractor have authority to do so.

13 **3.03 STATEMENTS AND INFORMATION IN PROPOSAL**

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

19 **3.04 NO CONFLICT WITH APPLICABLE LAW OR OTHER DOCUMENTS**

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

27 **3.05 NO LITIGATION**

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

35 **3.06 FINANCIAL CONDITION**

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

1 **3.07 EXPERTISE**

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

1 **ARTICLE 4 INSTALLATION OF NEW MRF EQUIPMENT**

2 **4.01 GENERAL**

3 Contractor has recommended that the Authority purchase the equipment described in
4 Attachment 2-A and illustrated on Attachment 2-C. This recommendation has been
5 made based on Contractor's analysis of the types and volumes of Recyclable Materials
6 expected to be delivered to the MRF after the Member Agencies initiate a single stream
7 collection process, the Authority's goals for materials recovery as incorporated in this
8 Agreement, and the site constraints of the MRF as it is planned to be reconstructed as
9 shown on Attachment 2-B. Contractor has had the opportunity to provide input to the
10 design process and is satisfied that its recommendations on equipment and operational
11 aspects have been incorporated in the design of the MRF building shown on Attachment
12 2-B and in the plans and specifications included in the Request for Proposals for
13 Construction dated March 9, 2009, as modified by the document entitled "SBR Building
14 Modifications with Budget Effect on SBWMA 070209" dated July 2, 2009. Contractor
15 has assured the Authority that the equipment recommended will process single stream
16 Recyclable Materials as specified and required in Attachment 2-E (MRF equipment
17 performance specification), with the composition described in the system's acceptance
18 test set forth in Attachment 2-F and will produce materials that meet the product quality
19 standards set forth in Attachment 2-G.

20 **4.02 PURCHASE OF MRF EQUIPMENT**

21 The Authority intends to execute a contract with Bulk Handling Systems on or before
22 November 1, 2009 to purchase the MRF equipment. Contractor will, upon request,
23 assist the Authority in negotiating the terms and conditions of the contract with Bulk
24 Handling Systems.

25 **4.03 INSTALLATION OF MRF EQUIPMENT**

26 The equipment will be installed by Bulk Handling Systems and is intended to operate as
27 shown on the drawings contained in Attachment 2.

28 Contractor has represented to Authority that the equipment, installed as shown on
29 Attachment 2-C, will achieve the product quality standards as described in Attachment 2-
30 G.

31 Upon request by Authority, Contractor will arrange for a technically qualified
32 representative to be on site at least five (5) days per week during the installation of the
33 equipment to observe the installation and to advise the Authority. Currently, the parties
34 expect the equipment installation process will require about 35 weeks, will begin in April
35 2010, and be completed in December 2010.

36 **4.04 SYSTEMS ACCEPTANCE TEST**

37 Upon completion of the installation, the Contractor shall immediately start up and
38 operate the MRF equipment for a shakedown period of no less than 10 days and no
39 more than 20 days prior to commencing the acceptance test.

40 The acceptance test will be conducted as provided in Attachment 2-F.

41 The Authority will accept the equipment and allow Contractor to commence full-scale
42 operation of the MRF when the equipment as installed has satisfied the standards of
43 performance contained in Attachment 2-F (which include achieving the product quality

1 standards contained in Attachment 2-G), as well as any other performance
2 representations made by the equipment manufacturer to the Authority in the contract
3 referenced in Section 4.02.

4 **4.05 DELAY IN ACCEPTANCE**

5 If the acceptance test is not completed within 20 days after the end of the shakedown
6 period, Contractor will be responsible for additional costs which may be incurred by
7 Authority in arranging for Recyclable Materials to be transported to and processed at a
8 different location, as well as for decreased revenue from sales of Recyclable Materials.

9 The Contractor is responsible to pay the Authority only for those added transportation
10 and processing costs and reduced commodity revenues arising from management and
11 supervisory failures, failure to operate the system according to the manufacturer's
12 operating protocol, or the inefficiency of the Contractor's sorters and equipment
13 operators which may cause the acceptance test period to extend beyond 20 days.

1 **ARTICLE 5 OPERATION OF SHOREWAY CENTER**

2 **5.01 SCOPE OF WORK – GENERAL**

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

11 Contractor shall perform all work in accordance with Attachment 3, all provisions of which
12 are incorporated herein whether or not such provisions are specifically referred to in any
13 other section of this Agreement.

14 **5.02 IMPLEMENTATION PLAN**

15 The parties recognize that substantial planning and preparation will be required to ensure
16 successful initiation of operations by Contractor on January 1, 2011, and full-scale MRF
17 operations in February 2011 and full-scale Transfer Station operations in March 2011. To
18 that end, Contractor has prepared a detailed implementation plan addressing the steps
19 Contractor will take, and the schedule on which it will take them, to prepare for
20 commencement of operations on January 1, 2011. The implementation plan covers
21 Contractor's schedule for hiring and training of personnel, acquiring necessary vehicles and
22 equipment, installing and testing of the new sorting equipment, etc., and is included in the
23 Implementation and Operating Plan attached as Attachment 4.

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

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

34 **5.03 SHOREWAY CENTER FACILITY OPERATIONS - GENERAL**

35 Contractor recognizes that the Authority and its Member Agencies are committed to
36 recycling materials that have in the past been disposed in landfills. Contractor shall operate
37 the Transfer Station, Materials Recovery Facility (MRF), Buy-back / Drop-off Center and
38 related facilities to allow for the convenient and efficient management of Solid Waste and
39 recovery of Recyclable Materials, and Organic Materials, including Plant Materials. The
40 Contractor's overall approach to operation of the scale house, the Transfer Station, the
41 MRF, the Public Buy-Back/Drop-Off Center, and the transportation of materials from the
42 Shoreway Center to the Designated Disposal Site and Designated Processing Facilities is
43 included in the Implementation and Operating Plan attached as Attachment 4. Also
44 included is Contractor's interim operating plan describing its operations during the period
45 from the Commencement Date to full-scale operation of the MRF.

1 Contractor shall receive and accept all Solid Waste, Recyclable Materials, Organic
2 Materials (including Plant Materials), Construction and Demolition Debris, E-waste, and U-
3 Waste delivered to the Shoreway Center by:

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

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

11 **5.04 DAYS AND HOURS OF OPERATION**

12 Contractor shall operate the Shoreway Center every day of the year, except Thanksgiving,
13 Christmas and New Years Day.

14 The hours during which the Contractor may conduct operations at the Shoreway Center
15 are:

16	Monday through Saturday:	2:00 a.m. to 11:00 p.m.
17	Sunday:	6:00 a.m. to 6:00 p.m.

18
19 Operations between the hours of 6:00 p.m. and 11:00 p.m. Monday through Saturday shall
20 be limited to operations within the Transfer Station and the MRF.

21 There shall be no truck traffic to or from the Shoreway Center between the hours of 6:00
22 p.m. and 2:00 a.m. the following morning. Additionally, there shall be no truck traffic to or
23 from the Shoreway Center between 2:00 a.m. and 6:00 a.m. on Sundays.

24 The Center shall be open to the public only between 6:00 a.m. and 6:00 p.m. seven days a
25 week.

26 **5.05 USE OF THE SHOREWAY CENTER**

27 A. Contractor's Use of Shoreway Center. Subject to the limitations imposed by this
28 Agreement, including Attachment 5, Contractor shall have the right to use the Shoreway
29 Center (including the administrative, maintenance and repair areas) every day of the
30 year. The Authority will furnish office and interior space painted and carpeted, but
31 Contractor is responsible for providing at its expense all office equipment, furniture, and
32 supplies for areas it will occupy. No lease or other property interest is created by this
33 Agreement.

34 B. Authority's Use of Shoreway Center.

35 1. The Authority shall have priority to the use of the upstairs conference room in the
36 MRF building and visitor viewing area in the Transfer Station building, but will
37 cooperate with Contractor in scheduling use of these areas. The Authority will
38 provide, at its expense, telephones and other communications equipment, furniture,
39 computers, office supplies and moveable partitions.

40 2. The Authority shall also have access to and the right to make reasonable use of
41 common areas in the buildings, including lobbies, hallways, restrooms and eating
42 areas. The Authority shall endeavor to use these areas in a manner that does not
43 interfere with Contractor's use of them.

1 3. Finally, five (5) parking spaces in the visitor parking area in front of the west
2 entrance to the Transfer Station will be reserved for use of Authority staff and
3 invitees.

4 C. Collection Contractor's Use of Facilities and Areas. The parties anticipate that Member
5 Agencies will enter into franchise agreements with a Collection Contractor. The
6 Authority will allow the Collection Contractor to make use of the Shoreway Center, as
7 described in this section and Attachment 5. The Collection Contractor will have the
8 exclusive right to occupy and use the northeast parcel of the Shoreway Center
9 designated "Collections Yard/Collections Operations Area" on Attachment 5, as well as
10 the buildings and facilities located in this area. The Collection Contractor shall also
11 have exclusive use of approximately 21,130 square feet of office space designated as
12 "Existing Admin" on Attachment 5, together with the adjacent parking area.

13 D. Shared Use Areas. In addition, there are areas of the Shoreway Center that Contractor
14 and the Collection Contractor will need to share. The areas of shared utilization
15 include: entry/exit access roads; the fueling area; a bay in the smaller maintenance
16 building which Contractor may use; and the parking area behind the Transfer Station.
17 The Collection Contractor shall have priority to use of fueling facilities; Contractor shall
18 cooperate with the Collection Contractor in the use of other shared areas in order to
19 minimize interference with its operations. If there is a dispute between the Contractor
20 and the Collection Contractor over the shared use areas, the Authority will make a
21 determination as to the extent of use by each, which determination shall be final and
22 binding on each.

23 Each contractor using the Shoreway Center will pay for costs associated with its use. In
24 cases in which there is a single meter (e.g., water and sewer), the costs will be
25 allocated as the Contractor and the Collection Contractor agree. If they are unable to
26 agree, the Authority will make a determination, which determination shall be final and
27 binding on each.

28 E. Other Contractors Temporarily On Site. Contractor is aware that upon the
29 Commencement Date, (1) a general civil construction contractor will be working at the
30 Shoreway Center, and (2) a separate supplier/contractor will be installing recycling
31 equipment in the MRF. Contractor will conduct its operations so as to avoid interfering
32 with the work of either of these contractors.

33 5.06 PERMITS

34 A. The Authority will obtain those new permits and renew those existing permits listed as
35 its responsibility on Attachment 6.

36 B. If new operating permits and approvals (or amendments to the permits and
37 approvals obtained by the Authority) become necessary by virtue of Contractor's
38 operations or changes in operations, Contractor shall obtain them. The Authority will
39 assist the Contractor in obtaining permits provided that the operations which give rise to
40 the need for them are in compliance with this Agreement. Contractor shall submit a
41 draft of all applications for operating permits (and for subsequent renewals or
42 modifications thereof) to the Authority for its review and approval prior to filing an
43 application with the permitting agency(ies). Contractor shall keep the Authority fully
44 informed at all times on the status of all permit applications. Contractor shall apply for
45 permits in its own name or in the name of the Authority, as directed by the Authority.
46 Contractor shall not agree to permit terms and conditions on any permit which is to be
47 issued in the name of the Authority without the prior written consent of the Authority.

1 Contractor shall provide copies of all permits issued in Contractor's name and originals
2 of all permits issued in the Authority's name (and any renewals or amendments) to the
3 Authority promptly and in any case within five (5) working days of their receipt.

4 C. The Contractor will notify the Authority of all changes in permit status, involvement by
5 other regulatory agencies, accidents, and operational changes that reasonably could
6 materially affect operations at, or the movement of materials into/out of, the Shoreway
7 Center. Contractor shall comply with the terms of all licenses, permits and approvals
8 governing the Shoreway Center, including any which may require modifications to its
9 operating procedures. Contractor will comply with the terms and conditions contained
10 in the use permit and any and all other entitlements (and any and all amendments
11 thereto) issued by the City of San Carlos for the Shoreway Center.

12 D. Contractor shall be solely responsible for paying, and shall pay, any fines or penalties
13 imposed by governmental agencies for Contractor's noncompliance with permit terms.

14 **5.07 HAZARDOUS WASTE EXCLUSION PROGRAM**

15 A. Contractor shall develop, maintain, update implement and comply with a hazardous
16 waste exclusion program plan (HWEP), the requirements of which are described in
17 Attachment 7. Should additional measures be required to be incorporated into the
18 HWEP to comply with changes in law or regulations, Contractor shall incorporate,
19 implement and comply with such additional measures. Contractor shall arrange for the
20 safe and lawful temporary storage and disposal of such waste in an appropriate location
21 separate from the U-waste and E-waste materials collected at the Buyback / Drop-off
22 center.

23 As a part of the HWEP, the Contractor shall inspect outbound loads of materials that
24 are transported to the Designated Disposal Site or to Designated Processing Facilities.
25 If the Disposal Site or a Processing Facility rejects a load because it contains materials
26 that should have been removed under the HWEP, the Contractor shall notify the
27 Authority immediately and manage the disposal of the load in a safe and lawful manner,
28 at its sole expense.

29 B. Contractor shall remove and arrange for proper, safe and lawful disposal of CFCs and
30 compressor oils from appliances delivered to the Shoreway Center, as well as switches
31 containing mercury. Contractor shall arrange and pay for the proper, safe and lawful
32 disposal of hazardous wastes that are recovered from the inspection and/or the
33 processing of incoming loads to the Transfer Station and MRF and for the Recycling of
34 White Goods whenever feasible.

35 **5.08 HAZARDOUS MATERIALS GENERATED FROM CONTRACTOR'S OPERATIONS**

36 The Contractor shall be responsible for, and shall pay, all costs of transporting, treating
37 and/or disposing of any hazardous materials generated by the Contractor's operations at
38 the Shoreway Center. Contractor shall ensure that all hazardous materials and wastes are
39 properly stored on site. Cleanup costs for any on-site contamination that is the result of the
40 Contractor's activities shall be the sole responsibility of, and shall be paid in full by, the
41 Contractor.

42 **5.09 EQUIPMENT**

43 The Authority will furnish stationary equipment listed on Attachment 8-A. Contractor shall
44 provide all other equipment required to perform, in a safe and efficient manner, the services
45 required by this Agreement, including equipment listed on Attachment 8-B.

- 1 A. All equipment supplied by the Contractor to perform services under this Agreement
2 shall be new and fully functioning at the commencement of this Agreement and shall
3 comply with all representations and warranties, as well as applicable laws and
4 regulations.
- 5 B. All transfer vehicles shall be capable of loading at the Shoreway Center and unloading
6 at the Designated Disposal Site and Processing Facilities by equipment in use at the
7 Disposal Site and Processing Facilities.
- 8 C. The number of transfer vehicles and other types of equipment listed on Attachment 8-B
9 is based on the throughput of materials at the level anticipated during the first year of
10 full operation. The parties recognize that tonnage processed through the Shoreway
11 Center may change over time and that an increase in tonnage processed through the
12 Shoreway Center could require the Contractor to supply additional equipment. The
13 Contractor shall add, and shall exclusively pay the costs of, all equipment needed to
14 operate the Shoreway Center, process any increase in tonnage and achieve the
15 Diversion Program Guarantees, without any increase in the Contractor's compensation.
- 16 D. Whenever there is a material change in the number, type or composition of equipment,
17 the Contractor shall provide written notification to the Authority.
- 18 E. The Authority will not supply any shop equipment except those items listed on
19 Attachment 8-A. The Authority will not supply any parts inventory. The Contractor is
20 responsible to provide sufficient equipment and parts inventory for both stationary
21 equipment and rolling stock to support continuous operation of the Shoreway Center.

22 **5.10 AUTHORITY RIGHT TO PURCHASE CONTRACTOR'S EQUIPMENT**

23 The Authority shall have the right, but not the duty, to purchase any or all equipment owned
24 by Contractor at the expiration or earlier termination of this Agreement, at its net book value
25 as shown on Contractor's audited financial statements (which shall be no greater than the
26 purchase price less accumulated depreciation claimed by Contractor on its federal income
27 tax returns). Within thirty (30) days of the commencement of operations, the Contractor
28 shall deliver to the Authority properly signed documents necessary or appropriate for the
29 Authority to secure its purchase options. As new or replacement equipment is purchased,
30 similar documentation covering the equipment shall be provided by Contractor.

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

34 If Contractor wishes to lease (rather than purchase) the equipment which it is to furnish,
35 each lease shall provide that the lessor will, if requested, consent to its assignment to the
36 Authority without charge upon the expiration or earlier termination of this Agreement and
37 further shall provide adequate mechanisms for the Authority to acquire title to equipment if
38 desired.

39 **5.11 PERSONNEL**

- 40 A. Contractor shall furnish such qualified drivers, operators, sorters, mechanical,
41 supervisory, clerical and other personnel as may be necessary to provide the services
42 required by this Agreement in a safe, thorough, professional and efficient manner. The
43 minimum number of workers to be provided in each job classification shall be as shown
44 on Attachment 9.

1 B. Contractor shall offer employment to qualified employees of the Previous Contractor
2 who would otherwise become unemployed by reason of the change in contractors,
3 provided that (1) the Contractor shall not be obligated to offer employment to more
4 existing employees than the Contractor needs to perform the services required under
5 the Agreement, and (2) the Contractor shall not be obligated to offer employment to
6 workers who have not been employed at the Shoreway Center by the Previous
7 Contractor for at least one-hundred-twenty (120) days immediately prior to the
8 Commencement Date.

9 For purposes of this subsection B, the term "qualified employee" means an employee
10 who (1) is eligible for employment under federal and state law, (2) meets the
11 Contractor's minimum employment standards for new employees, (3) has not been
12 convicted of a crime that is related to the job or job performance, (4) is in a bargaining
13 unit covered by collective bargaining agreements between the Previous Contractor and
14 Teamsters Local 350 or Machinists Local 1414 and (5) does not present a
15 demonstrable danger to customers, co-workers or employees of the Authority or the
16 Collection Contractor. The term "qualified employee" does not include management or
17 supervisory personnel, non-represented employees, or workers furnished by an
18 employment agency operating as an independent contractor.

19 C. Contractor shall not discharge any workers employed pursuant to subsection B for at
20 least ninety (90) days after the Commencement Date, except for cause.

21 D. Contractor shall maintain a list of the Previous Contractor's qualified employees who
22 were not offered employment by the Contractor pursuant to Section 5.11 B prior to the
23 Commencement Date (January 1, 2011) or during the two (2) months following the
24 Commencement Date. If any positions become available during the three (3) months
25 following the initial two (2) month operation period (i.e., from March 1, 2011 through
26 May 30, 2011), Contractor shall offer employment to qualified employees on the list by
27 seniority within the collective bargaining unit (if it exists).

28 E. Contractor shall pay employees who (1) are retained by Contractor pursuant to this
29 Section 5.11 and (2) were in bargaining units covered by collective bargaining
30 agreements in effect as of the Effective Date between the Previous Contractor and
31 Teamsters Local 350 or Machinists Local 1414, wages and benefits no less than those
32 included in the collective bargaining agreements in place in 2010.

33 F. This Agreement does not obligate Contractor to become a party to a collective
34 bargaining agreement entered into by the Previous Contractor

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

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

- 1 I. If the Authority determines that workers provided by a particular independent contractor
2 or party working on behalf of the Contractor prove persistently unsatisfactory, the
3 Authority may require that Contractor either secure workers through a different
4 independent contractor or hire competent workers directly.
- 5 J. Contractor shall ensure that all Contractor's employees, while performing services
6 under this Agreement, shall be dressed in clean uniforms and shall wear visible
7 identification that includes the employee's name and/or the employee's number, and
8 Contractor's name. Uniform type, style, colors, and any modifications may be subject to
9 approval by the Authority.
- 10 K. The parties recognize that tonnage processed through the Shoreway Center will change
11 over time and that an increase in tonnage could require additional personnel. The
12 Contractor shall add, and shall exclusively pay the costs of, all such additional
13 personnel as needed to operate the Shoreway Center, process any increase in tonnage
14 and achieve the Diversion Program Guarantees, without any increase in the
15 Contractor's compensation. Whenever there is a material change in the number or
16 composition of personnel, the Contractor shall provide written notification to the
17 Authority.
- 18 L. Before extending an offer of employment for the position of general manager of the
19 Shoreway Center, both initially and throughout the Term, Contractor shall provide the
20 Authority with the description of the proposed position, an opportunity to review and
21 comment upon the position description, the background, experience and qualifications
22 of each candidate being considered for the position, and an opportunity to meet with
23 each candidate. Contractor shall give thoughtful consideration to the Authority's
24 comments on the descriptions of the proposed position and each candidate, but shall
25 have the ultimate right to make employment decisions in its best business judgment.
- 26 M. Contractor shall, at the Authority's request, ensure that one or more of its Members'
27 officers will be available and present onsite at the Shoreway Center to assist in
28 Contractor's initial transition and thereafter to oversee Contractor's operations for a
29 three-month period beginning one month prior to full-scale operations.
- 30 N. The Contractor is considering obtaining workers for MRF sorting through the San Mateo
31 County Human Services Agency, Vocational Rehabilitation Services (VRS). The
32 Authority endorses this approach and encourages Contractor to pursue it. The MRF
33 sorter complement shown in Attachment 9 and the MRF labor costs shown in
34 Attachment 12-B are based on the use of workers and supervisors provided by the
35 County VRS. The actual costs in 2011 will be determined by a contract to be entered
36 into between the Contractor and the County Human Services Agency. Contractor shall
37 furnish a copy of the final contract between it and the County Human Services Agency
38 before executing it. The Authority's review of the contract is to ensure that the number
39 of workers to be furnished and the annual payment to the County are consistent with
40 the assumptions included in Attachments 9 and 12-A.
- 41 O. Notwithstanding subsection A above or any other language in this agreement or
42 attachments to the contrary, Contractor may, commencing in 2012 (1) reduce the
43 number of workers at the Transfer Station below the number shown on Attachment 9 if
44 in the previous 6 consecutive month period the number of Tons delivered to the
45 Transfer Station is less than an annual average of 357,725 and/or (2) reduce the
46 number of workers at the MRF below the number shown on Attachment 9 if in any
47 previous 6 consecutive month period the number of Tons delivered to the MRF and
48 Buyback Center is less than an annual average of 74,022.

1
2 The reduction in operational personnel should approximate the percentage reduction in
3 tonnage.

4
5 Employees classified as Management and Administration may not be reduced below
6 the number shown on Attachment 9.

7
8 A reduction in personnel permitted by this subsection will not increase or decrease the
9 cost per Ton otherwise established pursuant to Sections 7.03 and 7.04. Nor will it affect
10 the Revenue Guarantee established in Section 7.07.

11
12 Such a reduction in operational personnel shall not change the Contractor's obligations
13 to perform under this Agreement.
14

15 **5.12 WEIGHING**

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

32 **5.13 COLLECTION OF FEES**

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

39 **5.14 VEHICLE TURNAROUND GUARANTEE**

40 Contractor shall operate the Shoreway Center so that:

- 41 A. Collection vehicles of Member Agencies and their Collection Contractor(s) are:
- 42 1. processed through the scale house operation in no more than five (5) minutes per
43 vehicle, measured from the vehicle's entry into the scale house vehicle queue, and

- 1 2. are able to unload and depart from the Shoreway Center in no more than fifteen (15)
2 minutes from the time they leave the scale house unless a collection vehicle breaks
3 down and causes a traffic back-up beyond Contractor's control.
- 4 B. Self-haul customers do not wait more than fifteen minutes (15) to be processed by the
5 scale and assigned a place to dump.
- 6 Should Contractor fail to meet the maximum turnaround time, Liquidated Damages shall be
7 assessed in the amounts stated in Attachment 10.

8 **5.15 OWNERSHIP OF SOLID WASTE**

9 Once materials are delivered to the Shoreway Center, ownership shall transfer directly from
10 the deliverer to Contractor.

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

15 **5.16 MARKETING OF RECYCLABLE MATERIALS**

16 A. General. Contractor shall use its best efforts in marketing and promoting the sale of all
17 Recyclable Materials to obtain the highest prices available under prevailing conditions in
18 the relevant market, whether foreign or domestic. Contractor will exert at least the same
19 effort in marketing the Recyclable Materials from the Shoreway Center as it does in
20 marketing materials which it markets for its own account as principal or as an
21 agent/broker for any third party. Except as set forth in Attachment 11B, Contractor shall
22 not use, sell to, or broker through an Affiliate in the marketing of Recyclable Materials
23 without notifying the Authority in writing and receiving approval from the Authority in
24 writing. Contractor shall not use any artifice, business structure or other attempt to
25 evade this requirement.

26 B. Materials Marketing Plan. The Materials Marketing Plan (Attachment 11A), describes
27 Contractor's strategy for optimizing revenues from the sale of Recyclable Materials
28 recovered at the Shoreway Center. The Materials Marketing Plan includes (1) the
29 commodity purchasers to which Contractor anticipates marketing each of the major
30 categories of materials to be recovered at the Shoreway Center; (2) the methods
31 Contractor will use to (a) determine the reliability of prospective purchasers in terms of
32 timely pickup, credit worthiness, prompt payment, rejection of materials and/or filing of
33 claims, and other commercial considerations, and (b) ensure that recovered materials
34 are handled in an environmentally sound manner and devoted to an end use involving
35 the creation or manufacture of new products; (3) the maximization of revenues from the
36 State of California Department of Conservation for materials that have a California
37 Redemption Value. Contractor shall implement the Materials Marketing Plan.
38 Attachment 11B describes the methods by which Contractor will provide assurance to
39 the Authority that revenues Contractor receives from sale of materials (particularly those
40 sold to Potential Industries, Inc., an Affiliate) are consistent with market prices.

41 C. Reporting. Contractor shall submit, concurrently with the quarterly report described in
42 Section 9.05, a report on materials marketing including a summary of Contractor's
43 marketing efforts during the preceding quarter, the quantity (in tons) of material sold;
44 total revenues billed and received; quantity and price data disaggregated by type and
45 grade of materials; transportation method including contact information for carriers used

1 to transport materials from the Shoreway Center to the buyers' location or unloading
2 point; and information on ultimate market destinations.

- 3 D. **No Partnership.** The Parties intend and hereby agree that their relationship shall be
4 that of independent contractors with respect to the marketing of Recyclable Materials.
5 Nothing contained herein shall be construed to create any employment, partnership,
6 joint venture, co-ownership or agency relationship between the Parties, and Contractor
7 shall not by any action allow any presumption to arise that a relationship of partnership
8 exists between the Parties.

9 **5.17 AUTHORITY'S RIGHT TO PERMIT OTHERS TO PROVIDE SERVICES**

10 The Authority may direct the Contractor to perform additional services as provided in
11 Section 12.13. If the Contractor and Authority cannot agree on terms and conditions for
12 such additional services within one-hundred twenty (120) days from the date on which the
13 Authority first requests a proposal from Contractor to perform such services, the Authority
14 may, in addition to its other rights under this Agreement, permit a third party or parties other
15 than Contractor to provide such services. Contractor will provide such third party or parties
16 all such access to and use of the Shoreway Center and Authority-owned equipment as
17 necessary for such third party or parties to perform all such additional services. The
18 Authority's rights under this section are in addition to those under Section 9.05.J.

19 **5.18 SELF-HAUL MATERIALS**

- 20 A. **Self-haul Materials.** The Contractor shall implement a Self-Haul Diversion Plan as
21 detailed in Attachment 19. The Contractor shall identify, and segregate for Diversion,
22 materials from the categories below:
- 23 1. Bunker Program materials (inert materials such as dirt, concrete, asphalt, and other)
 - 24 2. Self-haul Organic materials (plant materials, food scraps)
 - 25 3. Self-haul C&D materials (wood, concrete, insulation, roofing, metals, drywall)
 - 26 4. Recyclable Materials (paper, bottles and cans, metals)
 - 27 5. Other recoverable materials (tires, carpet, carpet padding, foam, plastics)
 - 28 6. Other materials approved by the Authority.
- 29 B. **Weighing of All Self-haul Materials.** Contractor shall ensure that Self-haul materials
30 will be dumped and kept separate from Collection Contractor materials at the Transfer
31 Station... All outbound loads of diverted Self-haul materials will be weighed before
32 leaving the Transfer Station or at a State certified scale located at a Designated
33 Processing Facility and the outbound tonnage will be recorded and reported in the Self-
34 haul Diversion Report. Self-haul materials intended for disposal do not need to be
35 weighed separately from Solid Waste at the Transfer Station provided that Contractor
36 shall provide accurate, separate and complete weights of the Self-haul materials to the
37 Authority.
- 38 C. **Self-haul Diversion.** Contractor's satisfaction of the Self-haul Diversion obligation will
39 be calculated based on diverted tons of Self-haul material shipped to a Designated
40 Processing Facility. Alternatively, Contractor may sort Self-haul materials onsite and
41 into segregated materials streams, and may market segregated Self-haul materials
42 directly to a buyer that is approved in advance by the Authority.
- 43 Self-haul materials shipped from the Shoreway Center by the Contractor for disposal
44 or for any other use at a landfill shall not be considered diverted tons, unless the

1 Authority approves, in writing and in advance, a beneficial landfill use for diverted tons.
2 Loads rejected by an off-site processor because of contamination will not count
3 towards Self-haul Diversion and the Contractor shall pay all costs of managing
4 rejected loads.

5 D. **Self-haul Diversion Report.** Contractor shall provide the Authority a Self-haul
6 Diversion Report including the following information: the amount of Self-haul material
7 received, the weight all Self-haul materials processed on-site or transported to the
8 Designated Site, the method of materials processing, and the weight and disposition of
9 all materials Diverted. The Contractor shall provide the report monthly (no later than 15
10 days after the end of each month) in a format to be approved by the Authority.

11 E. **Optional Transfer Station Processing System.** On or before June 30, 2010,
12 Contractor shall submit to the Authority a proposal to install a materials processing
13 system in the Transfer Station. The system is to be capable of accepting and efficiently
14 processing Self-haul construction/demolition debris (wood, concrete, insulation, roofing,
15 metals, drywall, dirt and other inerts) and Organic Materials (including Plant Materials
16 and wood waste). The system shall be capable of operating at a cost per Ton
17 (including capital costs amortized as provided in Attachment 12) which is equal to or
18 less than the current total cost of transporting construction and demolition debris to the
19 existing off-site facility used by the Authority and the payment to the operator of that
20 facility for processing. The proposal shall include plans and specifications for the
21 equipment, cost forms showing estimates for design, equipment purchase, installation
22 and operation, and a detailed operational plan.

23 The Authority will carefully evaluate the proposal, but is under no obligation to approve
24 it nor arrange for or permit the installation of such a processing systems.

25 The Contractor is responsible for the cost of preparation and submission of the proposal
26 and will not receive any additional payment for it.

27 **5.19 OTHER OPERATING PROCEDURES AND STANDARDS**

28 Contractor shall conduct its operations in accordance with the requirements of the
29 California Integrated Waste Management Board in effect (as codified in Title 14 and Title 27
30 of the California Code of Regulations) as of the Effective Date and as they may be changed
31 from time to time.

1 **ARTICLE 6 TRANSPORTATION OF MATERIALS.**

2 **6.01 GENERAL**

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

6 **6.02 TRANSPORTATION OF SOLID WASTE**

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

10 **6.03 TRANSPORTATION OF HAZARDOUS SUBSTANCES**

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

16 **6.04 TRANSPORTATION OF RECYCLABLE MATERIALS**

- 17 A. Single Stream Recyclable Materials. Contractor shall provide or arrange for
18 transportation and delivery of all Single Stream Recyclable Materials to a purchaser,
19 a licensed recycling facility, or a person who will use the materials in a process or
20 product and will not dispose or use them at a landfill.
- 21 B. Transfer Station Materials. Contractor shall provide or arrange for transportation to a
22 Designated Processing Facility of Organic Materials, C&D materials, and other
23 Recyclable Materials delivered to and recovered at the Transfer Station. These
24 materials shall be prepared and delivered in a condition and form which meet the
25 Designated Processing Facilities' specifications and receiving requirements.
- 26 C. E-Waste, U-Waste, and Appliances. Contractor shall supply storage containers for,
27 and arrange for the transportation of, E-Waste, U-Waste, appliances and other
28 materials that may be added to the list of Buy Back/Drop-off Center material. At the
29 request of the Authority, Contractor will pay the cost of transporting these materials.
30 The handling/disposal costs incurred by Contractor for the use of outside vendors in
31 the transportation and processing of special wastes collected in the Buy back/Drop-
32 off Center (e.g., Electronic waste, Universal waste, and batteries, oil, and paint
33 collected from Customers as part of the services to Member Agencies) and for the
34 handling and processing of appliances will be reimbursed as a Pass-Through Cost.

35 **6.05 PARKING AND MAINTENANCE OF TRANSFER VEHICLES**

36 Contractor shall park empty Transfer Vehicles at the Shoreway Center in the area(s)
37 designated for this purpose shown on Attachment 5. Transfer Vehicles containing Solid
38 Waste shall be parked in areas that prevent liquids that have come in contact with Solid
39 Waste and/or Recyclable Materials from entering the storm water system. In addition,
40 Contractor shall use due care generally to prevent liquids that have come in contact with
41 Solid Waste and/or Recyclable Materials from entering the storm water system.

1 **6.06 ALTERNATIVE FUELS PLAN**

2 Contractor will use B20 biodiesel to fuel all vehicles used (1) at the Shoreway Center
3 and (2) to transport materials from the Shoreway Center to the Designated Disposal Site
4 and Designated Processing Facilities.

1 **ARTICLE 7 COMPENSATION TO CONTRACTOR**

2 **7.01 GENERAL**

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

14 **7.02 REIMBURSEMENT OF PROJECT MANAGEMENT COSTS RELATED TO MRF**
15 **SORTING EQUIPMENT INSTALLATION**

16 The Authority will reimburse the Contractor for project management costs actually and
17 reasonably incurred during the Equipment Manufacturer's installation of the MRF sorting
18 equipment for a fixed fee of Two Hundred Seventy Six Thousand Four Hundred Sixty
19 Two Dollars (\$276,462). The foregoing amount will be adjusted by 80% of the
20 percentage change in *Index: U.S. Department of Labor, Bureau of Labor Statistics,*
21 *Consumer Price Index – All Urban Consumers, U.S. city average (not seasonally*
22 *adjusted, all items, base period: 1982-84=100, series no. cuur0000sa)*
23 between the Effective Date and the date that the equipment is installed and ready for
24 the shake down period and acceptance test per Section 4.04.

25 This amount is the full compensation for all Contractor's costs associated with
26 supervising the installation of the equipment, including coordination with the Equipment
27 Manufacturer and the Authority's architects, engineers and construction contractor
28 during installation.

29 The obligation to reimburse Contractor for these costs accrues upon the equipment's
30 successful completion of the acceptance tests and the Authority's review and approval of
31 Contractor's request for reimbursement. The amount due will be paid within thirty (30)
32 days thereafter.

33 **7.03 BASIC COMPENSATION – GENERAL**

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

36 A. Transfer Station Payment. The amount of this payment is calculated by multiplying
37 the number of Tons of material delivered to and processed at the Transfer Station by
38 the per Ton Transfer Station Fee then in effect. The Transfer Station Fee is \$9.71
39 per Ton.

40 B. Recyclable Materials Processing Payment. The amount of this payment is
41 calculated by multiplying the number of Tons of Recyclable Materials delivered to
42 and processed at the MRF by the per Ton MRF Fee then in effect. The MRF Fee is
43 \$67.36 per Ton.

44 C. Transportation Payment. The amount of this payment is calculated by multiplying
45 the number of Tons of materials transported from the Shoreway Center to the

1 Designated Disposal Site, and the Designated Processing Facilities for inerts,
2 Construction and Demolition Debris, Plant Materials and Organics by the number of
3 one-way standard miles from the Shoreway Center to the Disposal Site or
4 Processing Facility and by the applicable Transportation Fee then in effect. The
5 Transportation Fees for the five types of materials are \$1.007 per Ton/Mile for Solid
6 Waste, \$1.043 per Ton/Mile for inerts, \$0.688 per Ton/Mile for C&D debris, \$0.614
7 per Ton/Mile for Plant Materials, and \$0.745 per Ton/Mile for Organics. Tons
8 delivered to the Designated Disposal Site do not include MRF residue.

9 **7.04 ADJUSTMENT OF PROPOSED FEES TO RATE YEAR ONE (2011) AND** 10 **MODIFICATION DURING INTERIM OPERATIONS**

11 For Rate Year One, the parties expect to make a cost adjustment based on various cost
12 indices. In addition, since the full-scale operation of the MRF will not occur until
13 February 2011, the MRF Fee will be subject to a one-time modification.

14 A. Adjustment. The parties expect that the costs underlying the fees described in
15 Section 7.03.A, B and C will change between the date of this Agreement and the
16 year in which they will first be paid (2011).

17 The Authority will adjust the Transfer Station Fee, the MRF Fee, and the five
18 Transportation Fees in October 2010, following the procedure described in
19 Attachment 12-A and illustrated in Attachment 12-B, after receipt of Contractor's
20 application described in Section 7.12.

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

22 B. Modification for a Part of Rate Year One (2011). Since full-scale operation of the
23 MRF and Transfer Station are not expected to occur until February and March,
24 respectively, of Rate Year One, the Basic Compensation will need to be modified to
25 reflect the reduced scale of operations. During this interim operations period,
26 Contractor will be paid Basic Compensation as provided in Attachment 12-C. Once
27 the MRF and Transfer Station are fully operational, the Basic Compensation,
28 adjusted as described in subsection A above, will be paid during the remainder of
29 Rate Year One, as earned.

30 **7.05 ADJUSTMENT OF BASIC COMPENSATION IN SUBSEQUENT RATE YEARS**

31 The Authority will adjust the Transfer Station Fee, the MRF Fee, and the five
32 Transportation Fees in October 2011 and in October of each subsequent year during the
33 Term, following the procedure described in Attachment 13-A and illustrated in
34 Attachment 13-B.

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

37 **7.06 SUPPLEMENTAL PROCESSING FEES**

38 A. Materials Delivered to MRF. If Contractor elects, or if the Authority directs
39 Contractor, to process loads of Recyclable Materials delivered to the MRF by the
40 Collection Contractor which contain more than fifteen percent (15%) contamination,
41 Authority will pay Contractor a supplemental fee to cover the additional cost of
42 processing this material. The amount of this supplemental fee will be \$25 per ton
43 (applied to all tons over fifteen percent (15%) contamination) in Rate Year One. It
44 will be adjusted in subsequent years by the same percentage as that used to adjust
45 the MRF Fee described in Section 7.03.B.

1 B. Materials Delivered to the Transfer Station. If Contractor elects, or if the Authority
2 directs Contractor, to process loads of Plant Materials and Organics delivered to the
3 Transfer Station by the Collection Contractor which contain more than the applicable
4 maximum contamination level, but do not exceed that level by more than five percent
5 (5%), Authority will pay Contractor a supplemental fee to cover the additional cost of
6 processing this material. The amount of this supplemental fee will be \$7 per Ton
7 (applied to all Tons over the maximum contamination level) in Rate Year One. It will
8 be adjusted in subsequent years by the same percentage as that used to adjust the
9 Transfer Station Fee described in Section 7.03.A.

10 **7.07 RECYCLING REVENUES; GUARANTEE AND SHARING OF REVENUES**

11 A. Revenue Guarantee - General. Contractor will pay Authority one hundred percent
12 (100%) of Revenue earned from the sale of Recyclable Materials monthly until it has
13 paid Revenue equal to the Revenue Guarantee then in effect. If Revenue earned
14 from the sale of Recyclable Materials is less than the Revenue Guarantee in any
15 year, Contractor will pay Authority, within 60 days after the end of that Rate Year, the
16 difference between the Revenue Guarantee and the Revenue actually earned and
17 paid by Contractor to Authority.

18 "Revenue" for the purposes of this Section 7.07 means the amounts due Contractor
19 from the sale of Recyclable Materials (prices based on terms being FOB Shoreway
20 Center except for glass, in which case sales revenue will be based on the delivered
21 price less cost of transport).

22 B. Revenue Guarantee in Rate Year One.

- 23 1. General. Subject to the adjustment described in subsection B.2 and the
24 proration described in subsection B.3, the Revenue Guarantee for Rate Year
25 One is Six Million Five Hundred Thousand Dollars (\$6,500,000).
26
- 27 2. Adjustment of 2011 Revenue Guarantee. The Revenue Guarantee is based on
28 tonnage projected by the SBWMA for calendar year 2011 (74,022 Tons). The
29 Revenue Guarantee will be adjusted (up or down) proportional to the actual
30 tonnage of Recyclable Materials delivered to the MRF and Buy Back Center in
31 2011. For example, if the actual tons delivered in 2011 are 77,723, the Revenue
32 Guarantee for 2011 will be increased by 5.0% to Six Million Eight Hundred
33 Twenty Five Thousand Dollars (\$6,825,000). No subsequent adjustments to the
34 Revenue Guarantee will be made.
35
- 36 3. Temporary Proration of Revenue Guarantee. The MRF is not expected to be
37 operational until the Spring of Rate Year One. The Revenue Guarantee will be
38 prorated one time, during Rate Year One (2011). The proration will not reduce
39 the expected baseline tonnage for Rate Year One (74,022 Tons) but will be
40 applied to the Revenue Guarantee. Once the MRF equipment has been tested
41 by Contractor and accepted by Authority, the Authority will calculate the number
42 of days that the MRF is capable of full operation for the balance of Rate Year
43 One (2011).

44 As an example:

45 Revenue Guarantee -	\$6,500,000
46 First day MRF is fully operational -	April 1
47 Number of days operational -	275 (April 1 - December 31)
48 Proportion of year operational -	75% (275 days/365 days)

1 Prorated Revenue Guarantee = \$4,875,000 (75% x Revenue Guarantee)
2

3 C. Revenue Guarantee During Rate Year Two and Thereafter.

4 The Revenue Guarantee for all rate years after Rate Year One will be equal to the
5 dollar amount calculated under subsection B.2 above.

6 D. Sharing of Revenues.

7 1. General. As an incentive to Contractor to maximize both the quantity and
8 quality of materials recovered and successfully marketed for recycling,
9 Contractor will be entitled to twenty five percent (25%) of the Revenue from
10 the sale of Recyclable Materials delivered to or recovered at the Shoreway
11 Center in excess of the Revenue Guarantee. Once the Contractor's payment
12 of Revenue from the sale of Recyclable Materials equals the Revenue
13 Guarantee, for the balance of that Rate Year, Revenue will be divided
14 between the Authority and the Contractor as provided in Section 7.07.D.2 and
15 3.

16 2. Minimum Share. The Contractor is entitled to a minimum of twenty five
17 percent (25%) of Revenue earned and received from the sale of Recyclable
18 Materials. Commencing with the month immediately following the month in
19 which Contractor has paid the Authority the Revenue Guarantee, Contractor
20 will be entitled to retain twenty five percent (25%) of Revenue received
21 thereafter in that Rate Year, paying the Authority seventy five percent (75%)
22 of Revenue monthly. Contractor's entitlement to twenty five percent (25%)
23 of a portion of the Revenue paid to Authority in the month in which the Revenue
24 Guarantee was attained will be determined and paid within 60 days after the
25 end of the Rate Year.

26 3. Increased Share. As a further incentive for Contractor to maximize recovery
27 of Recyclable Materials at the MRF, the Contractor's share of Revenues (in
28 excess of the Revenue Guarantee) will be increased as provided in this
29 subsection 3.
30

31 Materials not recovered at the MRF will be sent to the Transfer Station for
32 transport to the Designated Disposal Site. Commencing with the first Rate
33 Year in which full-scale sorting operations are continuous (expected to be
34 2012), the MRF residue generation rate will be calculated. The MRF residue
35 generation rate is the percentage obtained by dividing the total Tons of
36 material sent from the MRF to the Transfer Station during the Rate Year by
37 the total Tons of material delivered to the MRF.
38

39 For any Rate Year in which the MRF residue generation rate is less than ten
40 percent (10%), the Contractor's percentage share of Revenues in excess of
41 the Revenue Guarantee will be increased as follows:

<u>MRF RESIDUAL GENERATION</u>	<u>INCREASE IN COMMODITY SHARE</u>
10%>	no increase
9.0% - 9.9%	1% increase (becomes 26%)
8.0% - 8.9%	2% increase (becomes 27%)

7.0% - 7.9%	3% increase (becomes 28%)
6.0% - 6.9%	4% increase (becomes 29%)
5.0% - 5.9%	5% increase (becomes 30%)
4.0% - 4.9%	6% increase (becomes 31%)
<3.9%	7% increase (becomes 32%)

The amounts due the Contractor pursuant to Section 7.07.D.3 will be calculated annually on a Rate Year basis, and paid as provided in Section 8.08.

7.08 DIVERSION GUARANTEE.

A. Transfer Station Diversion Program. As an incentive to Contractor to Divert Self-haul materials from disposal, the Contractor’s Compensation may be adjusted (decreased) based on its performance in diverting from the Disposal Facility, material delivered to the Transfer Station by self-haul customers. The Contractor has guaranteed the diversion of a minimum of 30,000 Tons annually (the “Minimum Self-Haul Diversion Guarantee”). The 30,000 Tons per year Minimum Self-haul Diversion Guarantee amount shall not include Self-haul Plant Materials (Self-haul Diversion shall be equal to the annual Tons of Diverted Self-haul materials less the Tons of Diverted Self-haul Plant Materials). If Contractor fails to achieve the Minimum Self-Haul Diversion Guarantee in any Rate Year, the Contractor will pay the Authority (through the rate structure) Seventy Dollars (\$70.00) for each Ton below 30,000 Tons.

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

The amounts due Authority pursuant to Sections 7.08.A will be calculated annually on a Rate Year basis, and paid as provided in Section 8.08.

If the Authority approves the Optional Transfer Station Processing System. described in Section 5.18.E, then the parties will mutually agree on a reduction in, or elimination of the requirements in subsection A.

B. MRF Residual. As an incentive to Contractor to increase recovery efficiency at the MRF, the Contractor will be responsible for paying (a) the amount charged at the Designated Disposal Site for accepting and disposing of residue from the MRF (the current tip fee at Ox Mountain is \$33.24 per Ton), and (b) the Transportation Fee per Ton/Mile attributable to delivering MRF residue to the Disposal Site. The cost of disposal of MRF residue will be deducted monthly from the MRF Payment provided in Section 7.03.B. Materials in a load that constitute contamination in excess of the applicable limitation, as identified by an audit of that load, are not counted as residue for purposes of this section or Section 7.07.D.3.

7.09 REIMBURSEMENT OF PASS-THROUGH COSTS

Contractor will pay the following costs and will be reimbursed by Authority with no allowance for overhead or profit:

- 1 • Interest paid on loans to acquire capital equipment per the debt service schedule
- 2 provided by the Contractor.
- 3 • Payments to Buy Back Center customers for CRV and scrap value.
- 4 • Permit and regulatory fees (which do not include penalties or fines).
- 5 • Recycling of E-Waste, U-Waste and HHW from the Drop-Off Center, White Goods
- 6 and CFCs (including transportation), unless paid directly by the Authority.

7 **7.10 RECONCILIATION OF SELF-HAUL GATE FEE COLLECTIONS**

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

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

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

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

26 **7.11 ADJUSTMENTS FOR SPECIAL CIRCUMSTANCES**

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

- 34 (1) A flood, earthquake, other acts of nature or other similar catastrophic events
35 outside the control of Contractor that physically damage the Shoreway Center.
- 36 (2) A change in law occurring after the Effective Date that requires a change in
37 operations.
- 38 (3) A community emergency which requires Contractor to provide increased or
39 different services.
- 40 (4) The annual average Single Family Targeted Recyclable Materials contamination
41 level exceeds ten percent (10%) for two consecutive years or more. The annual
42 average Single Family Targeted Recyclable Materials contamination level will be
43 calculated on the basis of the arithmetic average of the measured contamination

1 level for Single Family Targeted Recyclable Materials in eight (8) consecutive
2 quarterly sampling events conducted in accordance with the methodology
3 described in Attachment 2-H.

- 4 B. A change in the scope of services directed by the Authority pursuant to Section
5 12.13 will be considered a basis for an adjustment in compensation whether or not it
6 will increase or decrease Contractor's component costs by two percent (2%) or
7 more.
- 8 C. If the Contractor requests, or the Authority initiates, a special review of the
9 Contractor's compensation, the Authority shall have the right to review the financial
10 and operation records of the Contractor and Affiliated Entities that it determines are
11 reasonably necessary to conduct such special review.
- 12 D. Contractor shall bear the burden of justifying to the Authority by substantial evidence
13 its entitlement to continuation of current, as well as any increases in, Contractor's
14 compensation for special circumstances. If the Authority determines that the
15 Contractor has not met its burden, it shall notify Contractor that it is prepared to deny
16 Contractor's request for an increase in compensation, or to proceed with a reduction
17 in compensation. The Contractor may request a hearing to produce additional
18 evidence. Upon such request, the Authority shall provide a hearing before the
19 Authority's Board of Directors. In the event the Authority's Board of Director's denies
20 Contractor's request, Contractor shall have the right to present its claim in a court of
21 competent jurisdiction.

22 **7.12 APPLICATION FOR ANNUAL ADJUSTMENT IN BASIC COMPENSATION**

- 23 A. Application Date and Content. Contractor shall prepare and submit to the Authority
24 by July 1 of each year, an application for adjustment of the elements of Basic
25 Compensation for the next Rate Year. The first application will be due on July 1,
26 2010 for Rate Year One (2011). The application will adjust the Transfer Station Fee,
27 the MRF Fee and the Transportation Fees following the methodology prescribed in
28 Attachment 12-A (for Rate Year One) and Attachment 13-A (for subsequent Rate
29 Years). It will substantially follow the format of Attachment 12-B (for Rate Year One)
30 and Attachment 13-B (for subsequent Rate Years) with such modifications as the
31 Authority may approve in advance, in writing.
- 32 B. Review of Application. The Authority staff will review the application for
33 completeness, accuracy and consistency with the procedures described in
34 Attachments 12-A and 13-A and the format illustrated in Attachments 12-B and 13-B.
35 The Authority staff will bring to the Contractor's attention any factual or calculation
36 errors, omissions or other discrepancies in the application which come to their
37 attention. Contractor shall provide any additional information requested by Authority
38 staff during the review of the application, shall meet with Authority staff, at the
39 Shoreway Center, to discuss the application, and shall make revisions to the
40 application necessary for it to be complete, accurate and consistent.
- 41 C. Report to Authority Board of Directors. On or before September 1 of each year,
42 Authority staff shall submit a report to the Authority Board of Directors recommending
43 the adjustments, if any, to the elements of Contractor's Basic Compensation for the
44 next Rate Year. The Authority Board of Directors will take action on the
45 recommendation at a public meeting held on or before October 31. All changes to
46 the elements of Contractor's Basic Compensation must be approved by the Board of
47 Directors.

1 **ARTICLE 8 PAYMENT PROCEDURES**

2 **8.01 BASIC COMPENSATION**

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

7 **8.02 SUPPLEMENTAL PROCESSING FEES**

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

10 **8.03 PASS THROUGH COSTS REIMBURSEMENT**

11 The interest reimbursement provided for in Section 7.09 will be made monthly in
12 accordance with the debt service schedule provided by Contractor until the principal
13 amount of the loan(s) approved by the Authority is paid. The interest rate on capital
14 equipment will be adjusted as part of the compensation adjustment process for Rate
15 Year One only, based on a market based on the change in the interest rate on United
16 States Treasury 10-year notes between March 2008 (3.5%) and July 2010, based on
17 official United States Treasury data." If Contractor incurs other costs which are
18 reimbursable under Section 7.09, it shall include these costs, together with information
19 sufficient to substantiate the amount and purpose of each expense, in the monthly
20 statement required by Section 8.07 due the month immediately following the month in
21 which the cost was incurred. The Authority will pay the cost reimbursements due
22 concurrently with payment of the Basic Compensation due under Section 8.01.

23 **8.04 GATE FEES FOR PUBLICLY HAULED WASTE**

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

29 **8.05 REVENUE FROM SALE OF RECYCLABLE MATERIALS**

30 Contractor will pay to the Authority (by wire transfer or otherwise as Authority may direct)
31 all Revenue earned from third parties for the sale of Recyclable Materials delivered to or
32 recovered at the Shoreway Center until the annual Revenue Guarantee, or the Prorated
33 Revenue Guarantee for 2011 as determined by Section 7.07.B, has been remitted.
34 Thereafter, Contractor shall pay to Authority seventy five percent (75%) of such
35 Revenue, unless otherwise adjusted by Section 7.07.D.3. Such payments will be made
36 on or before the fifteenth (15th) day of each month based on sales during the
37 immediately preceding month. These payments will be reflected in the monthly
38 statement from Contractor required by Section 8.07.

39
40 The Revenues received by Contractor from the sales of Recyclable Materials are held in
41 trust for the benefit of the Authority and such Revenues shall be disbursed only as
42 provided in this Agreement and shall not be subject to levy or attachment or lien by or for
43 any creditor of Contractor. Contractor shall account for all such Revenues, when and as

1 received, separately and apart from all other money, funds, accounts or other resources
2 of Contractor.
3

4 **8.06 DISPOSAL AND TRANSPORTATION COST OF MRF RESIDUE**

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

10 **8.07 MONTHLY CONTRACTOR'S STATEMENT**

11 A On or before the fifteenth (15th) day of each month, Contractor shall submit to
12 Authority a statement showing amounts due to Contractor and Authority under
13 Sections 8.01 through 8.06. The statement shall include at least the following
14 information, all of which shall be for the immediately preceding month:

- 15 1. the amount (in Tons) of Recyclable Materials delivered to the MRF during each
16 day of the preceding month by each of the Member Agencies and/or their
17 Collection Contractor(s);
- 18 2. the amount (in Tons or cubic yards, whichever is applicable) of Recyclable
19 Materials delivered to the Buyback/Dropoff Center during each day of the
20 preceding month;
- 21 3. the amount (in Tons) of Recyclable Materials recovered by Contractor from all
22 materials delivered to the Transfer Station;
- 23 4. the amount (in Tons) of Recyclable Materials sold by type and grade, and the
24 total sales price, transportation costs and commodity revenues net of
25 transportation costs;
- 26 5. a daily accounting showing the following information for each sales transaction:
 - 27 • date of sale;
 - 28 • type of material sold and grade, if applicable;
 - 29 • quantity of material sold;
 - 30 • unit price;
 - 31 • total revenue due from sale;
 - 32 • name and address of purchaser; and
 - 33 • a copy of the sales invoice, sales contract or other document evidencing
34 transfer of title.
- 35 6. weight and volume of Solid Waste, Plant Materials, Organic Materials, inerts, and
36 Construction and Demolition Debris entering the Shoreway Center by the hauler
37 type (Collection Contractor(s) by Member Agency), commercial haulers, self
38 haul, public, and other)(by type of vehicle);
- 39 7. weight and volume of all Solid Waste, Plant Materials, Organics Materials, inerts,
40 and Construction and Demolition Debris leaving the Shoreway Center;

- 1 8. weight and volume of all materials moving between the buildings and operations
2 on the Shoreway Center site (e.g. between the MRF building, Transfer Station
3 building and Buyback center) (by material type);
- 4 9. mass balance accounting of all materials that enter and leave the Shoreway
5 Center so that all inbound tons equal outbound / shipped materials less inventory
6 (by material type);
- 7 10. location to which all Solid Waste, Plant Materials, Organics Materials, and
8 Construction and Demolition Debris received by the Facilities were delivered for
9 transfer, processing, ultimate use or disposal;

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

- 11 B. Undisputed sums will be paid by Contractor and Authority within fifteen (15) days
12 from the date the Authority receives the statement.
- 13 C. Authority may request additional information regarding a report within thirty (30) days
14 from receipt. Such request shall be in writing and shall describe the information
15 requested with reasonable specificity. Contractor shall furnish the requested
16 information to Authority within thirty (30) days from the date of the request. Authority
17 shall notify Contractor within thirty (30) days after receipt of the initial report and
18 payment, or within thirty (30) days after receipt of the additional information if such
19 information is requested, of any dispute as to the accuracy of the report and the
20 amount of the payment.

21 **8.08 ANNUAL CALCULATION AND RECONCILIATIONS**

22 Adjustments to Contractor's Compensation may be due for one or more of the following:

- 23 A. Shortfall of Recycling Revenue Guarantee (Section 7.07.A)
- 24 B. Additional share of Recycling Revenue over Revenue Guarantee for MRF Residue
25 control (Section 7.07.D.3)
- 26 C. Minimum Self-Haul Diversion Guarantee (Section 7.08.A)
- 27 D. Reconciliation of Self-Haul Gate Fee Collections (Section 7.10)

28 The Authority will calculate the amounts, if any, due from Contractor and will provide
29 Contractor with its calculations and supporting information on or before January 31 of
30 each Rate Year. If Contractor requests, Authority shall meet with Contractor during the
31 month of February to discuss the calculations, will attempt to answer any questions that
32 Contractor may have, and will endeavor to resolve objections that Contractor may have.

33 Contractor shall pay the amount due, as initially calculated or as subsequently adjusted
34 by Authority, within thirty (30) days after receiving the Authority's initial calculation.

35 **8.09 LIQUIDATED DAMAGES**

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

1 **ARTICLE 9 CONTRACTOR RECORDS/REPORTING**

2 **9.01 TONNAGE RECORDS**

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

8 **9.02 CERCLA DEFENSE RECORDS**

9 The Authority views the ability to defend against CERCLA and related litigation as a
10 matter of great importance. For this reason, the Authority regards the ability to prove
11 where Solid Waste Collected in the Authority Service Area was taken for Disposal, as
12 well as where it was not taken, to be matters of significant importance. Therefore,
13 Contractor shall maintain data retention and preservation systems that can establish
14 where Solid Waste was transferred and disposed of.

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

19 **9.03 PROVISION OF RECORDS TO THE AUTHORITY**

20 In the event Contractor's services are terminated before expiration of the Term,
21 Contractor shall provide to the Authority all records required by this Agreement within
22 thirty (30) days of discontinuing service. Records shall be in chronological order, in an
23 organized form, and readily and easily interpreted.

24 **9.04 REPORTS AND SCHEDULES**

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

- 28 A. determine and set rates and evaluate the financial efficiency of operations;
- 29 B. evaluate past and expected progress towards achieving goals and objectives of the
30 Act and the Authority;
- 31 C. determine needs for program adjustments; and,
- 32 D. evaluate customer service and complaints.

33 Either the Authority or Contractor may propose report formats that are responsive to the
34 objectives of and audiences for each report. The format of each report shall be
35 approved by the Authority. Contractor agrees to submit all reports on computer discs or
36 in electronic format compatible with the Authority's software and computers at no
37 additional charge, if requested by the Authority. Contractor will provide a certification
38 statement, under penalty of perjury, by the responsible Contractor official, that the report
39 being submitted is true and correct to the best knowledge of such official.

40 Quarterly Reports shall be submitted within thirty (30) calendar days after the end of the
41 calendar quarter. Annual reports shall be submitted within thirty (30) calendar days after

1 the end of the calendar year. Failure to submit reports in the prescribed timeframe will
2 result in the assessment of liquidated damages as stated in Attachment 10.

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

7 All reports shall be submitted to:

8 South Bayside Waste Management Authority
9 610 Elm Street, Suite 202
10 San Carlos, CA 94070
11 Attention: Executive Director

12 **9.05 QUARTERLY REPORT REQUIREMENTS**

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

- 16 A. Weight and volume of all materials (by material type) entering the Shoreway Center
17 from Member Agencies;
- 18 B. Weight and volume of Solid Waste, Organic Materials, and Recyclable Materials (by
19 material type) entering the Shoreway Center by the hauler type (Collection
20 Contractor(s), commercial haulers, self haul, public, and other)(by type of vehicle);
- 21 C. Weight and volume of all Solid Waste, Organics Materials, Recyclable Materials (by
22 material type) leaving the Shoreway Center;
- 23 D. Weight and volume of all materials moving between the buildings and operations on
24 the Shoreway Center site (e.g. between the MRF building, Transfer Station building
25 and Buyback center) (by material type);
- 26 E. Mass balance accounting of all materials that enter and leave the Shoreway Center
27 so that all inbound tons equal outbound / shipped materials less inventory (by
28 material type);
- 29 1. The percentage of materials diverted by material type, category (Residential,
30 Commercial, Self haul) and operation (MRF, Transfer Station, Bunker Program,
31 Buyback/drop off center and other), and residual from MRF operations.
 - 32 2. Location to which all Solid Waste, Organics Materials, and Recyclable Materials,
33 received by the Facilities was delivered for transfer, processing, sale, ultimate
34 use or disposal;
 - 35 3. Recyclable Materials commodity sales value (by material type);
 - 36 4. Changes to facilities, equipment and personnel used;
 - 37 5. Changes to facilities and equipment operations, maintenance and repair;
 - 38 6. Reporting incidence of accidents involving either employees or customers of the
39 facilities;
 - 40 7. Documentation of hazardous spills and removals shipment, and ship manifesting;
 - 41 8. Other information or reports that the Authority may reasonably request or require.

- 1 F. Determination and Payment of Liquidated Damages. Contractor shall provide a
2 report that identifies any non-compliance with performance measures listed in
3 Attachment 10 (except for compliance with standards which shall be reported as part
4 of the Contractor's annual report) and include calculation of the Liquidated Damages
5 due. This report shall be accompanied by supporting documentation identifying
6 either compliance with or level of non-compliance with the performance measures.
7 The report submittal shall be accompanied by a check from the Contractor in the
8 amount of the Liquidated Damages due (per Contractor's calculation and self-
9 reporting) for the reporting period.
- 10 G. Programs. For each program, provide activity-related and narrative reports on goals,
11 milestones, and accomplishments. Contractor shall describe problems encountered,
12 actions taken and any recommendations to facilitate progress.
- 13 H. Summary Assessment. Contractor shall provide a summary assessment of the
14 overall materials handling systems from Contractor's perspective relative to financial
15 and physical status of the Shoreway Center. Contractor shall assess how well the
16 program is operating in terms of efficiency, economy and effectiveness relative to
17 meeting all the goals and objectives of this Agreement. Contractor shall provide
18 recommendations and plans to improve operations, which highlight significant
19 accomplishments and problems. Contractor shall document changes on a monthly
20 basis and include monthly documentation in the quarterly reporting.
- 21 I. Meet and Confer with Authority. Beginning on the Commencement Date, and on a
22 quarterly basis thereafter, Contractor shall meet with the Authority to describe the
23 services performed at the Shoreway Center and the progress of each active
24 Diversion Program. Contractor shall document the results of the programs on a
25 monthly basis, including the tonnage diverted by material type, the end use or
26 processor of the diverted materials and the cost per ton for transporting and
27 processing each type of material and other such information requested by the
28 Authority necessary to evaluate the performance of each program.
- 29 J. Addition and Changes to Programs. The Authority shall have the right to terminate a
30 program if in its sole discretion the Contractor is not cost effectively achieving the
31 program's goals and objectives. Prior to such termination, the Authority shall meet
32 and confer with Contractor for a period of up to 90 days to resolve the Authority's
33 concerns. Thereafter, the Authority may utilize a third party to perform these
34 services if the Authority reasonably believes the third party can improve on
35 Contractor's performance and/or cost. Notwithstanding these changes, Contractor
36 shall continue the program during the meet and confer period and, thereafter, until
37 the third party takes over the program.

38 **9.06 ANNUAL REPORT REQUIREMENTS**

39 The Annual Report shall be in the form of the Quarterly Reports and shall provide the
40 same type of information as required pursuant to Section 9.05 summarized for the
41 preceding four quarters. The Annual Report shall also include a complete inventory of
42 equipment used to provide all services, and a list of Contractor's personnel used to
43 operate the Shoreway Center.

44 **9.07 INSPECTION OF RECORDS**

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

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

3 **9.08 RETENTION OF RECORDS**

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

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

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

16 **9.09 ADVERSE INFORMATION**

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

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

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

2 **10.01 INDEMNIFICATION**

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

19 **10.02 INSURANCE**

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

- 24 1. Workers' Compensation and Employer's Liability. Contractor shall maintain
25 workers' compensation insurance covering its employees in statutory amounts
26 and otherwise in compliance with the laws of the State of California. Contractor
27 shall maintain employer's liability insurance in an amount not less than One
28 Million Dollars (\$1,000,000) per accident or disease. Contractor shall not be
29 obligated to carry workers compensation insurance if (i) it qualifies under
30 California law and continuously complies with all statutory obligations to self-
31 insure against such risks; (ii) furnishes a certificate of Permission to Self Insure
32 issued by the Department of Industrial Relations; and (iii) furnishes updated
33 certificates of Permission to Self Insure periodically to evidence continuous self
34 insurance, at least ten (10) days before the expiration of the previous certificate.
- 35 2. Comprehensive General Liability (and Automobile Liability). Contractor shall
36 maintain comprehensive general liability insurance with a combined single limit of
37 not less than Ten Million Dollars (\$10,000,000) per occurrence and Twenty
38 Million Dollars (\$10,000,000) annual aggregate covering all claims and all legal
39 liability for personal injury, bodily injury, death, and property damage, including
40 the loss of use thereof, arising out of, or occasioned in any way by, directly or
41 indirectly, Contractor's performance of, or its failure to perform, services under
42 this Agreement.

43 The insurance required by this subsection shall include:

- 44 • Premises Operations (including use of owned and non-owned equipment);

- Products and Completed Operations (including protection against liability resulting from use of Recyclable Materials by another person);
- Personal Injury Liability with employment exclusion deleted;
- Broad Form Blanket Contractual with no exclusions for bodily injury, personal injury or property damage (including coverage for the indemnity obligations contained herein);
- Owned, Non-Owned, and Hired Motor Vehicles;
- Broad Form Property Damage.

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

3. Pollution Liability. Contractor shall maintain pollution liability insurance with limits in an amount of not less than Ten Million Dollars (\$10,000,000) per occurrence and annual aggregate covering claims for on-site, under-site, or off-site bodily injury and property damage as a result of pollution conditions arising out of its operations under this Agreement.
 4. Hazardous Materials Storage and Transport. Contractor shall maintain insurance coverage of not less than Ten Million Dollars (\$10,000,000) for personal injury, bodily injury and property damage arising out of the sudden and accidental release of any hazardous materials or wastes during storage at facilities operated by Contractor or transport of such materials by vehicles owned, operated or controlled by Contractor in the performance of the services required under this Agreement.
 5. Physical Damage. Contractor shall maintain comprehensive (fire, theft and collision) physical damage insurance covering the vehicles and equipment used in providing service to Authority under this Agreement, with a deductible or self-insured retention not greater than One Hundred Thousand Dollars (\$100,000). Notwithstanding the foregoing, Contractor shall be allowed to self-insure for physical damage to its vehicles provided Contractor provides adequate audited financial information to Authority and Authority is reasonably satisfied that Contractor has the financial net worth to cover any losses.
- B. Acceptability of Insureds. The insurance policies required by this section shall be issued by an insurance company or companies admitted to do business in the State of California, subject to the jurisdiction of the California Insurance Commissioner, and with a rating in the most recent edition of Best’s Insurance Reports of size category XV or larger and a rating classification of A+ or better.
- C. Required Endorsements. Without limiting the generality of Sections 10.02.A and B, the policies shall contain endorsements in substantially the following form:

1 Workers' Compensation and Employers' Liability Policy.

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

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

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

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

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

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

23 • "South Bayside Waste Management Authority (SBWMA), its officers,
24 employees, and agents, are additional insureds on this policy."

25 • "This policy shall be considered primary insurance as respects any other valid
26 and collectible insurance maintained by the South Bayside Waste
27 Management Authority, including any self-insured retention or program of
28 self-insurance, and any other such insurance shall be considered excess
29 insurance only."

30 • "Inclusion of the South Bayside Waste Management Authority as an insured
31 shall not affect the SBWMA's rights as respects any claim, demand, suit or
32 judgment brought or recovered against the Contractor. This policy shall
33 protect Contractor and the SBWMA in the same manner as though a
34 separate policy had been issued to each, but this shall not operate to
35 increase the company's liability as set forth in the policy beyond the amount
36 shown or to which the company would have been liable if only one party had
37 been named as an insured."

38 Physical Damage Policy.

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

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

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

11 E. Other Insurance Requirements

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

33 **10.03 FAITHFUL PERFORMANCE BOND**

34 On or before the Effective Date, Contractor shall deliver to Authority a bond securing the
35 Contractor's faithful performance of its obligations under this Agreement. The principal
36 sum of the bond shall be Two Million Dollars (\$2,000,000). The form of the bond shall
37 be as set out in Attachment 16. The bond shall be executed as surety by a corporation
38 admitted to issue surety bonds in the State of California, regulated by the California
39 Insurance Commissioner and with a financial condition and record of service satisfactory
40 to Authority.

41 The term of the bond shall be not less than twenty-four (24) months, or until November
42 1, 2011, whichever occurs first. The bond shall be extended, or replaced by a new bond
43 in the same principal sum (adjusted by the percentage change in the Consumer Price
44 Index All Urban Wage Earners and Clerical Workers for the San Francisco-Oakland-San
45 Jose Metropolitan Area between July 2009 and July 2011), for the same term (i.e.,
46 twenty-four (24) months) and in the same form, bi-annually thereafter. Not less than

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

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

6 **10.04 ALTERNATIVE SECURITY**

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

14 **10.05 HAZARDOUS WASTE INDEMNIFICATION**

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

26 **10.06 INTEGRATED WASTE MANAGEMENT ACT INDEMNIFICATION**

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

35 **10.07 GUARANTY**

36 Concurrently with the execution of this Agreement, Contractor shall deliver to Authority a
37 Guaranty in the form attached as Attachment 17, properly executed by its Members:
38 Community Recycling and Resource Recovery, Inc. and Potential Industries, Inc.

1 **ARTICLE 11 DEFAULT AND REMEDIES**

2 **11.01 EVENTS OF DEFAULT**

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

- 4 A. Contractor fails to perform any of its obligations under Sections 4.03 and 4.04 of
5 Article 4 or Articles 5 and 6 of this Agreement and its failure to perform is not cured
6 within ten (10) days after written notice from the Authority, provided that neither
7 notice nor opportunity to cure applies to events described in subsections C through
8 H.
- 9 B. Contractor fails to perform any of its obligations under any other provision of this
10 Agreement and its failure to perform is not cured within fifteen (15) days after written
11 notice from the Authority, provided that if the nature of the breach is such that it will
12 reasonably require more than fifteen (15) days to cure, Contractor shall not be in
13 default so long as it promptly commences the cure and diligently proceeds to
14 completion of the cure, and provided further that neither notice nor opportunity to
15 cure applies to events described in subsections C through H.
- 16 C. Contractor ceases to provide Shoreway Center operations or Solid
17 Waste/Recyclable Materials transportation services for a period of two (2)
18 consecutive business days for any reason within the Contractor's control, including
19 labor unrest such as strike, work stoppage or slowdown, sickout, picketing, or other
20 concerted job action by Contractor's employees or others.
- 21 D. Contractor files a voluntary petition for relief under any bankruptcy, insolvency or
22 similar law.
- 23 E. An involuntary petition is brought against Contractor under any bankruptcy,
24 insolvency or similar law which remains undismissed or unstayed for ninety (90)
25 days.
- 26 F. Contractor fails to furnish a replacement bond or a continuation certificate of the
27 existing bond not less than ninety (90) days before expiration of the performance
28 bond, as required by Section 10.03 or fails to maintain all required insurance
29 coverages in force.
- 30 G. Contractor fails to provide reasonable assurance of performance when requested by
31 the Authority under this Agreement.
- 32 H. A representation or warranty contained in Article 3 proves to be false or misleading in
33 a material respect as of the date such representation or warranty was made.
- 34 I. Contractor makes any other material misrepresentation to the Authority in
35 discharging any of its obligations under this Agreement.

36 **11.02 RIGHT TO SUSPEND OR TERMINATE UPON DEFAULT**

- 37 A. Upon any Contractor Default, the Authority may terminate this Agreement or
38 suspend it, in whole or in part. Such suspension or termination shall be effective
39 thirty (30) days after the Authority has given notice of suspension or termination to
40 Contractor, except that such notice may be effective in a shorter period of time, or
41 immediately, if the Contractor Default is one which endangers the health, welfare or
42 safety of the public, such as the failure to process Solid Waste or Recyclable
43 Materials and arrange for their prompt disposal or recovery. Notice may be given

1 orally in person or by telephone to the representative of Contractor designated in or
2 under Section 12.10 (or, if he/she is unavailable, to a responsible employee of
3 Contractor) and shall be effective immediately. Written confirmation of such oral
4 notice of suspension or termination shall be sent by personal delivery, facsimile, or
5 other expedited means of delivery to Contractor within twenty-four (24) hours of the
6 oral notification at the address shown in Section 12.09. Contractor shall continue to
7 perform the portions of the Agreement, if any, not suspended, in full conformity with
8 its terms.

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

13 **11.03 SPECIFIC PERFORMANCE**

14 By virtue of the nature of this Agreement, the urgency of timely, continuous and high-
15 quality service and the lead time required to effect alternative service, the remedy of
16 damages for a breach hereof by Contractor is inadequate and Authority shall be entitled,
17 without limitation on any other remedy or right, to injunctive relief and specific
18 performance of Contractor's obligations under this Agreement.

19 **11.04 RIGHT TO PERFORM; USE OF CONTRACTOR PROPERTY**

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

29 **11.05 DAMAGES**

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

33 **11.06 AUTHORITY'S REMEDIES CUMULATIVE**

34 Authority's rights to suspend or terminate the Agreement under Section 11.02, to obtain
35 specific performance under Section 11.03, and to perform and use property under
36 Section 11.04 are not exclusive, and shall not be construed as a limitation on any of the
37 Authority's other rights or remedies, and the Authority's exercise of one such right shall
38 not constitute an election of remedies. Instead, they shall be in addition to any and all
39 other legal and equitable rights and remedies that the Authority may have, including a
40 legal action for damages under Section 11.05 or imposition of liquidated damages under
41 Section 11.07.

42 **11.07 LIQUIDATED DAMAGES**

43 The Parties acknowledge that efficient, consistent, and courteous operations of the
44 Shoreway Center is of utmost importance and the Authority has considered and relied
45 on Contractor's representations as to its quality of service commitment in entering into

1 this Agreement. The Parties further recognize that quantified standards of performance
2 are necessary and appropriate to ensure consistent and reliable service. The Parties
3 further recognize that if Contractor fails to achieve the performance standards identified
4 in Attachment 10, the Authority will suffer damages and that it is and will be
5 impracticable and extremely difficult to ascertain and determine the exact amount of
6 damages that the Authority will suffer. Therefore, the Parties agree that the liquidated
7 damage amounts listed on Attachment 10 represent a reasonable estimate of the
8 amount of such damages considering all of the circumstances existing on the date of this
9 Agreement, including the relationship of the sums to the range of harm to the Authority
10 that reasonably could be anticipated and anticipation that proof of actual damages would
11 be costly or inconvenient. In placing their initials at the places provided, each party
12 specifically confirms the accuracy of the statements made above and the fact that each
13 party had ample opportunity to consult with legal counsel and obtain an explanation of
14 this liquidated damage provision at the time that this Agreement was made.

15 Contractor Initial Here:  Authority Initial Here: 

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

18 The Authority may determine the occurrence of events giving rise to liquidated damages
19 based upon any or all of the following: Contractor's reporting pursuant to Article 9 of this
20 Agreement; the observation of the Authority's or Contractor's employees, agents or
21 representatives; and/or through investigation and/or reports by any third party or parties.

22 The Authority may assess liquidated damages for each calendar day or event, as
23 appropriate, that Contractor is determined to be liable in accordance with this
24 Agreement.

25 Contractor shall pay any liquidated damages assessed by the Authority within ten (10)
26 days after they are assessed.

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

31 Notwithstanding any other provision of this Agreement, if this Paragraph 11.07,
32 Attachment 10, or any provision or requirement contained in either, is set aside or
33 invalidated by a court for any reason, the provision and/or requirement that is set aside
34 or invalidated shall be severed from the rest of this Agreement, and the Authority shall
35 reserve and be entitled to any and all other rights and remedies available under this
36 Agreement, law and equity.

37 **11.08 AUTHORITY DEFAULT**

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

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

1 **11.09 EXCUSE FROM PERFORMANCE**

- 2 A. Force Majeure. Neither party shall be in default of its obligations under this
3 Agreement in the event, and for so long as, it is impossible or extremely
4 impracticable for it to perform its obligations due to an “act of God” (including, but
5 not limited to, flood, earthquake or other catastrophic events that have taken place
6 at or in close proximity to the Shoreway Center), war, insurrection, riot, labor unrest
7 of other than the party’s employees (including strike, work stoppage, slowdown, sick
8 out, picketing, or other concerted job action), or other similar cause not the fault of,
9 and beyond the reasonable control of, the party claiming excuse. A party claiming
10 excuse under this Section must (1) have taken reasonable precautions, if possible,
11 to avoid being affected by the cause, and (2) notify the other party in writing as
12 provided in Subsection C. This Section 11.09 A shall not apply to, nor shall it
13 excuse any failure to satisfy or perform an obligation arising from, any “act of God,”
14 catastrophic event, war, insurrection, riot, labor unrest or similar cause that does not
15 directly and immediately impact or affect Contractor’s operations at the Shoreway
16 Center. Indirect impacts and effects from such events and/or causes at remote
17 locations and times are not intended to be included as “acts of God” or an event of
18 Force Majeure under this Section 11.09.
- 19 B. Obligation to Restore Ability to Perform. Any suspension of performance by a party
20 pursuant to this Section shall be only to the extent, and for a period of no longer
21 duration than, required by the nature of the event, and the party claiming excuse
22 shall use its best efforts to remedy its inability to perform as quickly as possible and
23 to mitigate damages that may occur as result of the event.
- 24 C. Notice. The party claiming excuse shall deliver to the other party a written notice of
25 intent to claim excuse from performance under this Agreement by reason of an
26 event of Force Majeure. Notice required by this Section shall be given promptly in
27 light of the circumstances, but in any event not later than five (5) days after the
28 occurrence of the event of Force Majeure. Such notice shall describe in detail the
29 event of Force Majeure claimed, the services impacted by the claimed event of
30 Force Majeure, the expected length of time that the party expects to be prevented
31 from performing, the steps which the party intends to take to restore its ability to
32 perform, and such other information as the other party reasonably requests.
- 33 D. Authority's Rights in the Event of Force Majeure. The partial or complete
34 interruption or discontinuance of Contractor’s services caused by an event of Force
35 Majeure shall not constitute a Contractor Default. Notwithstanding the foregoing: (i)
36 the Authority shall have the right to make use of Contractor’s facilities and
37 equipment in the event of non-performance excused by Force Majeure; (ii) if
38 Contractor’s failure to perform by reason of Force Majeure continues for a period of
39 thirty (30) days or more, the Authority shall have the right to immediately terminate
40 this Agreement; (iii) if Contractor is unable to process and dispose of Solid Waste or
41 arrange for recovery of Recyclable Materials as required by this Agreement for a
42 period of two (2) or more consecutive days or for any three (3) days in a seven
43 (7)-day period as a result of Force Majeure, the Authority shall have the right to
44 make use of Contractor’s property, and (iv) if Contractor’s inability to process and
45 dispose of Solid Waste or arrange for recovery of Recyclable Materials continues
46 for ten (10) days or more from the date by which Contractor gave or should have
47 given notice under Subsection C, the Authority may terminate this Agreement.

1 **11.10 ASSURANCE OF PERFORMANCE**

2 If the Authority in its reasonable judgment determines that Contractor (1) has repeatedly
3 incurred liquidated damages under Section 11.07; (2) is the subject of any labor unrest
4 including work stoppage or slowdown, sickout, picketing or other concerted job action;
5 (3) appears to be unable to regularly pay its bills as they become due; (4) is the subject
6 of a civil or criminal proceeding brought by a federal, state, regional or local agency for
7 violation of laws, regulations or permits in the performance of this Agreement, or (5)
8 performs in a manner that causes uncertainty about Contractor's ability and intention to
9 comply with this Agreement, the Authority may, at its option and in addition to all other
10 rights and remedies it may have, demand from Contractor reasonable assurances of
11 timely and proper performance of this Agreement, in such form and substance as the
12 Authority may require.

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

2 **12.01 RELATIONSHIP OF PARTIES**

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

14 **12.02 COMPLIANCE WITH LAW**

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

20 **12.03 ASSIGNMENT**

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

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

34 B. Assignment Defined. For the purpose of this Section, "assignment" shall include, but
35 not be limited to, (i) a sale, exchange or other transfer to a third party of substantially
36 all of Contractor's assets dedicated to service under this Agreement; (ii) a sale,
37 exchange or other transfer of a membership interest in Contractor to a person who is
38 not a Member as of the Effective Date which results in a change in control of
39 Contractor; (iii) any dissolution, reorganization, consolidation, merger, re-
40 capitalization, stock issuance or reissuance, voting trust, pooling agreement, escrow
41 arrangement, liquidation or other transaction which results in a change of ownership
42 or control of Contractor; (iv) any assignment by operation of law, including insolvency
43 or bankruptcy, an assignment for the benefit of creditors, a writ of attachment for an
44 execution being levied against this Agreement, appointment of a receiver taking
45 possession of Contractor's property, or transfer occurring in the event of a probate
46 proceeding; and (v) any combination of the foregoing (whether or not in related or

1 contemporaneous transactions) which has the effect of any such transfer or change
2 of ownership, or change of control of Contractor. The term "assignment" also
3 includes (1) any change in the identity of the members of the Contractor, (2) the sale
4 or other transfer of substantially all of the assets of any member of the Contractor
5 (including in the context of a bankruptcy or other insolvency proceeding or an
6 assignment for the benefit of creditors), and (3) any event that results in a change of
7 voting power, as defined in California Corporations Code, with respect to the persons
8 who exercise such voting power in a member of Contractor on the date of this
9 Agreement, other than a transfer to members of such person's immediate family.

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

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

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

40 **12.04 SUBCONTRACTING**

41 Contractor shall not engage any subcontractors to perform any of the services required
42 of it by Articles 5 or 6 of this Agreement without the prior written consent of Authority.
43 Contractor shall notify Authority no later than ninety (90) days prior to the date on which
44 it proposes to enter into a subcontract. Authority may approve or deny any such request
45 in its sole discretion.

1 **12.05 AFFILIATED ENTITY**

2 Contractor will not form or use any Affiliate to perform any of the services or activities
3 which Contractor is required or allowed to perform under this Agreement, other than as a
4 subcontractor approved by Authority under Section 12.04.

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

11 **12.06 CONTRACTOR'S INVESTIGATION**

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

24 **12.07 NO WARRANTY BY AUTHORITY**

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

31 **12.08 CONDEMNATION**

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

34 **12.09 NOTICE**

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

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

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If to Contractor: SOUTH BAY RECYCLING, LLC
9189 DeGarmo Avenue
Sun Valley, CA 91352
Attention: John Richardson

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

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

12.10 REPRESENTATIVES OF THE PARTIES

- A. Representatives of Authority. References in this Agreement to “Authority” shall mean the Authority Board of Directors and all actions to be taken by Authority shall be taken by the Authority Board of Directors except as provided below. The Authority Board of Directors may by formal action taken at an open meeting of the Board of Directors delegate authority to the Executive Director and may permit the Executive Director, in turn, to delegate in writing some or all of such authority to subordinate officers. Contractor may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.
- B. Representative of Contractor. Contractor shall, by the Effective Date, designate in writing a responsible officer who shall serve as the representative of Contractor in all matters related to the Agreement and shall inform Authority in writing of such designation and of any limitations upon his or her authority to bind Contractor. Authority may rely upon action taken by such designated representative as actions of Contractor unless they are outside the scope of the authority delegated to him/her by Contractor as communicated in writing to Authority.

12.11 DUTY OF CONTRACTOR NOT TO DISCRIMINATE

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

12.12 RIGHT TO INSPECT CONTRACTOR OPERATIONS

Authority shall have the right, but not the obligation, to observe and inspect all of the Contractor’s operations under this Agreement. In connection therewith, Authority shall have the right to enter facilities used by Contractor during operating hours (and to enter the Shoreway Center at any time), speak to any of Contractor’s employees and receive cooperation from such employees in response to inquiries. In addition, upon reasonable notice and without interference with Contractor’s operations, Authority may review and copy any of Contractor’s operational and business records related to this Agreement. If Authority so requests, Contractor shall make specified personnel available to

1 accompany Authority employees on inspections and shall provide electronic copies of
2 records stored in electronic media.

3 **12.13 RIGHT OF AUTHORITY TO MAKE CHANGES**

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

10 If such changes cause an increase or decrease in the cost of performing the services, or
11 an increase or decrease in the amount of Revenue earned from the sale or other
12 transfer of materials delivered to the Shoreway Center, an equitable adjustment in the
13 Contractor's compensation shall be made pursuant to Section 7.11. Contractor will
14 continue to perform the new or changed service while the appropriate adjustment in
15 compensation is being determined.

16 **12.14 TRANSITION TO NEXT SERVICE PROVIDER**

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

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

29 **12.15 REPORTS AS PUBLIC RECORDS**

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

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

38 **12.16 DESTRUCTION OF PREMISES**

39 If the facilities at the Shoreway Center are destroyed or damaged (by fire, earthquake or
40 other similar event) so that operations as contemplated in this Agreement are impossible
41 or commercially infeasible, Authority has the right, but no obligation, to repair or rebuild
42 the facilities.

43 Authority will notify Contractor promptly (no later than 120 days after destruction or
44 damage occurs) whether or not it will repair and rebuild the facilities.

1 If Authority elects not to repair and rebuild, this Agreement shall terminate 30 days after
2 Authority notifies Contractor of that decision.

3 If Authority elects to repair and rebuild, then until reconstruction is sufficiently completed
4 for Contractor to resume operations, the obligations of Contractor to perform and the
5 obligations of Authority to pay compensation will both be abated or modified in a
6 commercially reasonably and equitable manner reflecting, for example, the ability of
7 Contractor to resume partial operations, and the compensation appropriately due for
8 doing so.

1 **ARTICLE 13 MISCELLANEOUS AGREEMENTS**

2 **13.01 GOVERNING LAW**

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

5 **13.02 JURISDICTION**

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

10 **13.03 BINDING ON SUCCESSORS**

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

13 **13.04 PARTIES IN INTEREST**

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

16 **13.05 WAIVER**

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

20 **13.06 ATTACHMENTS**

21 Each of the Attachments, identified as Attachments "1" through "19," is attached hereto
22 and incorporated herein and made a part hereof by this reference.

23 **13.07 ENTIRE AGREEMENT**

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

27 **13.08 SECTION HEADINGS**

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

31 **13.09 INTERPRETATION**

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

35 **13.10 AMENDMENT**

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

1 **13.11 SEVERABILITY**

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

6 **13.12 COSTS AND ATTORNEYS' FEES**

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

11 **13.13 INDEMNITY AGAINST CHALLENGES TO AGREEMENT**

12 Contractor shall indemnify, defend and hold harmless Authority, and its officers,
13 employees and agents (collectively, the "Indemnitees") from and against any and all
14 liability, claim, demand, action, proceeding or suit of any and every kind and description
15 brought by a third person challenging the process by which Proposals were solicited and
16 evaluated, or this Agreement was negotiated or awarded. Contractor's financial
17 obligation under this section is limited to the expenditure of fifty thousand dollars
18 (\$50,000).

19 **13.14 NO DAMAGES FOR INVALIDATION OF AGREEMENT**

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

24 **13.15 REFERENCES TO LAWS**

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

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

SOUTH BAY RECYCLING, LLC
("Contractor")

SOUTH BAYSIDE WASTE MANAGEMENT
AUTHORITY

By Its Board of Managers

Name: Thomas J. Fung
(Appointed By Community Recycling and
Resource Recovery, Inc.)

By: Martha DeBry
Chair, Board of Directors

Name: Joy Sa
(Appointed By Potential Industries, Inc.)

ATTEST:
[Signature]
Secretary

APPROVED:
[Signature]
Executive Director

APPROVED AS TO FORM:
[Signature]
Legal Counsel