

**Third Amendment to the Franchise Agreement between the
City of Belmont and BFI Waste Systems of North America,
Inc. for Solid Waste, Recyclable Materials, and Plant Material
Collection Services**

This THIRD AMENDMENT to the Franchise Agreement between the City of Belmont and BFI Waste Systems of North America, Inc. for Solid 1 Waste, Recyclable Materials, and Plant Material Collection Services (Agreement) of March, 2000 is made by and between the City of Belmont (Agency) and BFI Waste Systems of North America, Inc. (Contractor).

RECITALS

Whereas, Agency and Contractor entered into the Agreement; and,

Whereas, the parties contemplated that the Agreement should be extended from December 31, 2006 to December 31, 2009, conditioned on the Agency's affirmative evaluation of the Contractor's performance in certain areas; and,

Whereas, the Agency has found that Contractor's performance has been reviewed and determined to be satisfactory; and,

Whereas, the Agreement contemplated that the Agency may wish to extend the term of the Agreement beyond the December 31, 2009 termination date of the initial contract extension, for a period of one to seven years in increments of at least 12 months; and,

Whereas, the Agency has determined that the benefits offered by the Contractor in exchange for granting its request are in the best interest of the agency and its residents and businesses;

NOW THEREFORE, BE IT AGREED AS FOLLOWS:

1. The term of the Agreement shall be extended from December 31, 2006 to December 31, 2009, in accordance with Section 2.04 of the Agreement, in recognition of the Contractor's satisfactory performance with certain exceptions, namely: not having achieved the diversion program guarantees described in Section 4.05.A.1 of the and Agency has agreed to waive Contractor's failure to perform to the above standard established in the Agreement.
2. The term of the Agreement shall be extended an additional 12 months, from December 31, 2009 to December 31, 2010, through the exercise of the Agency's right under Section 2.05 of the Agreement. Any extension of the Agreement thereafter shall be at the sole discretion of the Agency.

3. This agreement shall be effective on the date on which the last of the following agreements is executed.

- a. The Amendment to the Franchise Agreements between the SBWMA Member Agencies and BFI Waste Systems of North America, Inc. for solid waste, recyclable materials and plant material collection services extending those agreements to December 31, 2010; and,
- b. Fifteen-year Agreement between the South Bayside Waste Management Authority and Browning-Ferris Industries of California, Inc. for Solid Waste Disposal Services at most-favored disposal rates and with payments by Contractor to the Authority.

4. In all other respects the Agreement shall remain the same.

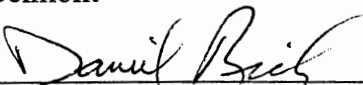
In witness thereof, the parties hereto have executed this Amendment to the Agreement on the date indicated below.

BFI Waste Systems of North America, Inc.

By: 

Dated: 5/17/05

City of Belmont

By: 
Daniel Rich, Interim City Manager

Dated: 5-4-05

FRANCHISE AGREEMENT
BETWEEN

THE CITY OF BELMONT

AND

BFI WASTE SYSTEMS OF NORTH AMERICA, INC.

FOR

SOLID WASTE, RECYCLABLE MATERIALS, AND PLANT MATERIALS COLLECTION
SERVICES

* * *

March 1, 2000

FRANCHISE AGREEMENT
 BETWEEN
 THE CITY OF BELMONT
 AND
 BFI WASTE SYSTEMS OF NORTH AMERICA, INC.
 FOR
 SOLID WASTE, RECYCLABLE MATERIALS, AND PLANT MATERIALS
 COLLECTION SERVICES

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Whereas; the Contractor has submitted a plan to provide significant Solid Waste, Recyclable Materials and Plant Materials programs at reasonable costs to the South Bayside Waste Management Authority (SBWMA) and its Member Agencies and the Agency has elected to enter into this Agreement based on the advantages of that plan; and,

Whereas; Contractor agrees to and acknowledges that it shall arrange for the proper Disposal of all Solid Waste collected in the Agency Service Area and Agency is not instructing Contractor how to Collect, process and dispose of Solid Waste, Recyclable Materials, and Plant Materials.

Whereas; Agency and Contractor desire to leave no doubts as to their respective roles, and that by entering into this Agreement, Agency is not thereby becoming a “generator” or “arranger” as those terms are used in CERCLA 107 (a)(3), and that it is Contractor, not Agency, which is “arranging for” the Collection, transportation and Disposal at the designated Transfer Station or Disposal Site of Solid Waste; and,

Whereas; Agency and Contractor acknowledge separate agreements for the (1) purchase of the Transfer Station Facility and the (2) transfer and processing and (3) landfill Disposal of Solid Waste generated in Agency and these agreements shall govern the transfer, processing and Disposal of Solid Waste;

Whereas; Agency and Contractor (Parties) hereto desire to enter said Agreement, and Contractor acknowledges that the Agency may delegate to the SBWMA any and all aspects of the administration of this Agreement with the specific exception of setting rates for the Agency; and,

Whereas; Agency has selected Contractor based on its knowledge and experience in servicing the Agency and its plans for the implementation of specific programs to meet Agency’s diversion goals; and,

Whereas; this Agreement has been developed by and is satisfactory to the parties.

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

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ARTICLE 1
DEFINITIONS

Unless the context otherwise requires, capitalized terms used in this Agreement will have the meanings specified in Exhibit A to this Agreement, which is attached hereto and incorporated by reference.

ARTICLE 2
GRANT AND ACCEPTANCE OF AGREEMENT

2.01 Grant and Acceptance of Franchise. Subject to Section 2.06 and 2.08, Agency hereby grants to Contractor the exclusive right and privilege to Collect, transport, process, and dispose of Solid Waste, residential Recyclable Materials and residential Plant Materials, accumulating in Service Area that is required to be accumulated and offered for Collection to Contractor in accordance with this Agreement and Agency's ordinance. Contractor hereby accepts the terms and conditions set forth in this Agreement.

2.02 Effective Date. The effective date of this Agreement shall be March 1, 2000.

2.03 Term. The term of this Agreement shall commence at midnight February 29, 2000 and shall end at midnight December 31, 2006, unless extended as provided in Sections 2.04 and 2.05 or terminated as provided in Sections 10.07 and 11.02.

2.04 Initial Extension Period. The Agreement shall be extended from January 1, 2007 to December 31, 2009, conditioned on the Agency's affirmative evaluation in the sixth year of the Agreement of the Contractor's performance in the following areas (one or more of which can be waived by Agency) with such affirmative evaluation not being unreasonably withheld.

A. Agency Satisfaction. During the period up to the evaluation of Contractor's performance, Contractor shall:

1) Have implemented the diversion programs specified in this Agreement and those developed in accordance with Section 2.09, in accordance with the schedule established between the Agency and Contractor and achieved the diversion program guarantees described in Section 4.05, unless, despite its best efforts, Contractor is excused from its failure to achieve these guarantees in accordance with Section 11.04 of this Agreement..

2) Not have been assessed in any single year by Agency liquidated damages in excess of 0.5% of any year's revenue requirement as established in accordance with Article 6.

3) Not have been delinquent by more than 30 days in any payment to Agency.

1
2 4) Not have had officials, with supervisory, management, or
3 administrative responsibility for the performance of services performed under this Agreement,
4 found guilty of a felony or liable for a civil penalty in excess of \$25,000 related to their duties
5 under this Agreement or any agreement with a municipal agency in the State of California.
6

7 **B. Customer Satisfaction.** Contractor shall have been rated above 80%
8 satisfaction by respondents to a customer satisfaction survey conducted by the SBWMA and
9 agreed to as to form by Contractor.
10

11 **C. Rate Comparability.** Contractor's rates shall fall within the 75th percentile
12 of all rates in the San Francisco Bay Area for similar services (adjusted for differences in landfill
13 disposal rates, government fees, programs, etc.) as determined through a survey of rates
14 conducted by the SBWMA.
15

16 **2.05 Additional Option to Extend Term.** Agency shall have the additional option to
17 extend this Agreement after the termination of the initial extension as provided in Section 2.04
18 from one to seven years in periods of at least 12 months on the same terms and conditions. If
19 Agency elects to exercise this option, it shall give written notice not later than 12 months prior
20 to the termination date.
21

22 **2.06 Conditions to the Effectiveness of Agreement.** The obligation of Agency to
23 permit this Agreement to become effective and to perform its undertakings provided for in this
24 Agreement is subject to the satisfaction of each and all of the conditions set out below, each of
25 which may be waived in whole or in part by Agency.
26

27 **A. Accuracy of Representations.** Representations and warranties made by
28 Contractor throughout this Agreement are accurate, true and correct on and as of the effective
29 date of this Agreement. Any information submitted to the Agency and/or SBWMA
30 supplementary thereto, on which the Agency has relied in awarding this franchise to Contractor
31 and entering into this Agreement, does not contain any untrue statement of a material fact nor
32 omit to state a material fact necessary in order to make the statements made, in light of the
33 circumstances in which they were made, nor is misleading.
34

35 **B. Absence of Litigation.** There is no litigation pending in any court
36 challenging the award of this franchise to Contractor or the execution of this Agreement or
37 seeking to restrain or enjoin its performance.
38

39 **C. Furnishing of Insurance and Bonds.** Contractor has furnished evidence of
40 the insurance and performance bond required by Article 9.
41
42

1 **D. Effectiveness of Agency Council/Boards Action.** The Agency has the
2 authority to enter into and perform its obligations under this Agreement. The Agency has taken
3 all actions required by law or otherwise to authorize the execution of this Agreement. The
4 Persons signing this Agreement on behalf of the Agency have the authority to do so. The
5 Agency's Resolution No. 8651, approving this Agreement, shall have become effective pursuant
6 to California law on or before the effective date.
7

8 In the event that any condition set forth in this Section 2.06 is not satisfied or waived, by
9 the effective date, by the Agency, this Agreement shall be void and shall have no further force
10 or effect. Agency may waive the satisfaction of conditions described in Section 2.06, allow this
11 Agreement to become effective, and exercise its rights and remedies under this Agreement for
12 Contractor's failure to deliver the bond and/or evidence of insurance. Each party is obligated
13 to perform in good faith the actions, if any, which this Agreement requires it to perform before
14 the effective date and to cooperate towards the satisfaction of the conditions set forth above.
15

16 **2.07 Scope of Franchise.** Subject to Section 2.08, the Franchise granted to Contractor
17 shall be exclusive for all Solid Waste, residential Recyclable Materials and residential Plant
18 Materials generated in the Service Area, except where otherwise precluded by Federal, State
19 and local laws and regulations or where other current programs provide for Collection and
20 handling of Household Hazardous Waste.
21

22 **2.08 Limitations to Scope.** The Agreement for the Collection, transportation,
23 processing, and Disposal of Solid Waste, residential Recyclable Materials, and residential Plant
24 Materials granted to Contractor shall be exclusive except as to the following materials listed in
25 this Section. The award of this Agreement shall not preclude the categories of Solid Waste,
26 Recyclable Materials and Plant Materials listed below from being delivered to and Collected
27 and transported by others provided that nothing in this Agreement is intended to or shall be
28 construed to excuse any Person from obtaining any authorization from Agency which is
29 otherwise required by law:
30

31 **A.** Other recyclers shall maintain the right to charge a fee, to Collect without a
32 fee, to accept donated Recyclable Materials and to pay the service recipient for Recyclable
33 Materials for the Collection of Source Separated Recyclable Materials and Plant Materials from
34 commercial, industrial, multi-family and institutional generators located in the Service Area.
35 For the purposes of this Agreement, Source Separated loads are loads that consist of less than
36 10% by weight or volume of Solid Waste, whichever is less. It will be the responsibility of
37 Contractor to provide enforcement of this provision. If Contractor can document that other
38 recyclers are servicing Collection Containers that contain less than 90% Source Separated
39 Recyclable Materials or Plant Materials, it shall report the location and the name of the recycler
40 to the Agency and the SBWMA, along with Contractor's evidence of the violation of the
41 exclusiveness of this Agreement;
42

1 B. Solid Waste, Recyclable Materials and Plant Materials, which are removed
2 from any Premises by the Waste Generator, and which are transported personally by the Owner
3 or occupant of such Premises (or by his or her employees or a contractor whose removal of the
4 Solid Waste, Recyclable Materials and/or Plant Materials are incidental to the service being
5 performed;

6
7 C. Recyclable Materials and Plant Materials which are Source Separated at any
8 Premises by the Waste Generator and donated to youth, civic, or charitable organizations;

9
10 D. Containers delivered for Recycling under the California Beverage
11 Container Recycling Litter Reduction Act, Section 14500, et. seq. California Public Resources
12 Code;

13
14 E. Plant Materials removed from a Premises by a gardening, landscaping, or
15 tree-trimming contractor as an incidental part of a total service offered by that contractor rather
16 than as a hauling service and for no additional or separate fee;

17
18 F. Non-putrescible Waste from roll-off/debris boxes;

19
20 G. Animal waste and remains from slaughterhouse or butcher shops for use as
21 tallow;

22
23 H. By-products of sewage treatment, including sludge, sludge ash, grit and
24 screenings; and,

25
26 I. Hazardous Waste and Designated Waste regardless of its source.
27

28 This grant to Contractor of an exclusive right and privilege to Collect, transport, or
29 process and dispose of Solid Waste, certain residential Recyclable Materials, and certain
30 residential Plant Materials shall be interpreted to be consistent with state and federal laws, now
31 and during the term of the Agreement, and the scope of this exclusive right shall be limited by
32 applicable state and federal laws with regard to the matters contained in this Agreement. In the
33 event that future interpretations of current law or new laws, regulations, interpretations or
34 trends limit the ability of Agency to lawfully provide for the scope of services as specifically set
35 forth herein, Contractor agrees that the scope of the Agreement will be limited to those services
36 and materials which may be lawfully provided and that Agency shall not be responsible for any
37 lost profits or losses claimed by Contractor to arise out of limitations of the scope of the
38 Agreement set forth herein. In such an event, it shall be the responsibility of Contractor to
39 minimize the financial impact to other services being provided as much as possible.
40
41

1 **2.09 Additional Services and Modifications to Service**

2
3 **2.09.1 General.** Agency may direct Contractor to perform additional services
4 (including new diversion programs, billing services, etc.) or modify the manner in which it
5 performs existing services. Pilot programs and innovative services which may entail new
6 Collection methods, targeted routing, different kinds of services and/or new requirements for
7 Waste Generators are included among the kinds of changes which Agency may direct.
8 Contractor shall be entitled to an adjustment in its compensation in accordance with Article 6
9 for providing such additional or modified services.

10
11 **2.09.2 New Diversion Programs.** Contractor shall present, within 30 days of a
12 request to do so by Agency, a proposal to provide additional or expanded diversion services.
13 At a minimum, the proposal shall contain a complete description of the following:

- 14 A. Collection methodology to be employed (equipment, manpower,
15 etc.).
- 16 B. Equipment to be utilized (vehicle number, types, capacity, age, etc.).
- 17 C. Labor requirements (number of employees by classification).
- 18 D. Type of materials containers to be utilized.
- 19 E. Provision for program publicity/education/marketing.
- 20 F. Estimate of the tonnage to be diverted and the methodology for
21 determining that diverted tonnage.
- 22 G. Five-year projection of the financial results of the program's
23 operations in a balance sheet and operating statement format including documentation of the
24 key assumptions underlying the projections and the support for those assumptions, giving full
25 effect to the savings or costs to existing services.

26
27 **2.09.3 Agency's Right to Permit Others to Provide Services.** Contractor
28 acknowledges and agrees that Agency may permit other Persons besides Contractor to provide
29 additional Solid Waste services not otherwise contemplated under Section 2.07 and 2.08 of this
30 Agreement. If Contractor and Agency cannot agree on terms and conditions of such services in
31 one hundred twenty (120) days from the date when Agency first requests a proposal from
32 Contractor to perform such services, Contractor acknowledges and agrees that Agency may
33 permit Persons other than Contractor to provide such services.

34
35 **2.10 Ownership of Solid Waste.** Once Solid Waste, Recyclable Materials and/or Plant
36 Materials is/are placed in Containers and properly placed at the Collection location, ownership
37 and the right to possession shall transfer directly from the Waste Generator to Contractor by
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1 operation of this Agreement. Contractor is hereby granted the right to retain, recycle, process,
2 Dispose of, and otherwise use such Solid Waste Recyclable Materials and/or Plant Material, or
3 any part thereof, in any lawful fashion or for any lawful purpose desired by Contractor. This
4 right is subject to: 1) Contractor's objective to meet both the Agency's and AB939's diversion
5 goals; and, 2) Agency's right to direct Contractor to process Solid Waste Recyclable Materials
6 and/or Plant Materials at a particular licensed Facility or to Dispose Solid Waste Recyclable
7 Materials and/or Plant Materials at a particular licensed Disposal Site, if and only if Agency
8 exercises such right by providing specific written direction to Contractor. Subject to Article 6
9 and the other provisions of this Agreement, Contractor shall have the right to retain any benefit
10 resulting from its right to retain, recycle, process, dispose of, or reuse the Solid Waste Recyclable
11 Materials and/or Plant Materials, which it Collects. Solid Waste Recyclable Materials and/or
12 Plant Materials, or any part thereof, which is disposed of at a Disposal Site, transformation
13 Facility, Transfer Station, Material Recovery Facility or other Facilities shall become the
14 property of the owner or operator of the Disposal Site(s) once deposited at facilities by
15 Contractor. Agency may obtain ownership or possession of Solid Waste Recyclable Materials
16 and/or Plant Materials placed for Collection upon written notice of its intent to do so, however,
17 nothing in this Agreement shall be construed as giving rise to any inference that Agency has
18 such ownership or possession unless such written notice has been given to Contractor.
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21 **ARTICLE 3** 22 **FRANCHISE FEE AND OTHER FEES**

23 **3.01 Franchise Fee.**

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25
26 **3.01.1 Franchise Fee Amount.** In consideration of the exclusive franchise
27 provided in Section 2.01 of this Agreement, Contractor shall pay to Agency 5.0% (or another
28 amount as provided in Section 3.01.3) of Gross Revenues derived by Contractor from services
29 provided in Agency's Service Area under this Agreement. This fee may be adjusted in
30 accordance with Section 3.01.3 by Agency by resolution. This Fee shall be a Pass-Through Cost.
31

32 **3.01.2 Time and Method of Payment.** On or before the twentieth (20th) day after
33 the end of each calendar quarter during the Term of this Agreement, Contractor shall remit to
34 Agency the Franchise Fee Amount. If the Franchise Fee is not paid on or before the twentieth
35 (20th) day after any calendar quarter, Contractor shall pay to Agency a late payment penalty in
36 an amount equal to two percent (2%) of the amount owing for that quarter. Contractor shall
37 pay an additional two percent (2%) owing on any unpaid balance for each following thirty (30)
38 day period the fee remains unpaid. Late payment penalty amounts shall not be included in any
39 Contractor revenue requirement. The late payment penalty amounts are not intended as
40 interest on debt, but rather are intended as a predetermined penalty for failure to meet an
41 obligation under this Agreement.
42

43 Each quarterly remittance to Agency shall be accompanied by a statement
44 detailing Gross Revenues for the period covered from all operations conducted or permitted

1 pursuant to this Agreement. In addition, Contractor shall maintain copies of all Billing and
2 Collection records for three (3) years, following the date of billing, for inspection and
3 verification by Agency at any reasonable time upon request.
4

5 **3.01.3 Adjustment to Franchise Fee.** The Agency may adjust the amount of the
6 Franchise Fee annually. Such adjustment shall be reflected in the rates that Contractor is
7 allowed to charge and Collect from service recipients.
8

9 **3.02 AB939 Fee.**

10
11 **3.02.1 AB939 Fee Amount.** Agency has incurred expenses for preparing,
12 adopting, and implementing the Source Reduction and Recycling and Household Hazardous
13 Waste Elements (SRRE and HHWE, respectively) required by AB 939. Agency has and will
14 continue to incur expenses for implementing the programs in the SRRE and HHWE, and other
15 programs Agency deems necessary and for administering this Agreement. These expenses may
16 be determined and a fee developed to reimburse Agency and/or SBWMA. Such fees may be set
17 by Agency resolution and the amount of the fee communicated to Contractor by Agency and/or
18 SBWMA. If a fee is developed, Contractor will Collect these fees from service recipients on the
19 regular Billings and remit collected amounts to Agency and/or SBWMA on a quarterly basis, as
20 provided below. This fee shall be a Pass-Through Cost. Contractor may be required to
21 separately identify the AB939 Fee and other specific costs on bills as determined and directed by
22 Agency.
23

24 **3.02.2 Time and Method of Payment.** Except as expressly provided below,
25 during the Term of this Agreement and any extension of it, Contractor shall remit one-fourth
26 (1/4th) of the total annual amount identified as the AB939 fee in the rate structure quarterly to
27 either Agency or SBWMA in the same fashion and subject to the same terms and conditions as
28 the Franchise Fee described in 3.01 above. Contractor shall continue to pay the same amount of
29 money to Agency each quarter until the AB939 fee has been changed. The quarterly AB939 fee
30 set upon execution of this Agreement shall be \$0.
31

32 **3.03 Other Fees.** The Agency and/or SBWMA shall reserve the right to set "other" fees,
33 as it deems necessary. These fees will be treated as a Pass-Through Cost. The amount, time and
34 method of payment and adjustment process will be set similar to Section 3.01 above.
35
36

37 **ARTICLE 4**
38 **DIRECT SERVICES**
39

40 **4.01 General.** The work to be done by Contractor pursuant to this Agreement shall
41 include, but not be limited to, the furnishing of all labor, supervision, equipment, materials,
42 supplies, and all other items necessary to perform the services required. The enumeration of,
43 and specification of requirements for, particular items of labor or equipment shall not relieve

1 Contractor of the duty to furnish all others, as may be required, whether enumerated elsewhere
2 in the Agreement or not.
3

4 The work to be done by Contractor pursuant to this Agreement shall be accomplished in
5 a thorough and professional manner so that the residents and businesses within the Agency are
6 provided reliable, courteous and high-quality service at all times. The enumeration of, and
7 specification of requirements for, particular aspects of service quality shall not relieve
8 Contractor of the duty of accomplishing all other aspects in the manner provided in this Article,
9 whether such other aspects are enumerated elsewhere in the Agreement or not.
10

11 **4.02 Solid Waste Collection.** 12

13 **4.02.1 Single Family Dwellings Collection.** Contractor shall “only” Collect Solid
14 Waste from the Containers delivered for Collection by the Waste Generator at the side or back
15 of the premises or in an approved other location from customer-provided Containers, not less
16 than once per week. Standard Collection service shall be once per week curbside Collection
17 unless another method is approved by the Agency.
18

19 Residents defined as “Disabled” pursuant to the Agency’s Municipal Code shall
20 have the option of placing their Containers near their dwelling, visible from curbside, and
21 Contractor will pick up Solid Waste, residential Recyclable Materials, and residential Plant
22 Materials at this location or other arrangement suitable to this category of rate payer and return
23 Container to same location. Authorization for residents to participate in this optional program
24 shall come from Agency and information on this option shall be provided by the Contractor
25 upon request. Contractor will notify all residents annually, beginning within thirty (30) days of
26 effectiveness of this Agreement, of this Collection option and submit, for approval, a draft
27 notification to Agency prior to distribution to service recipients. New service recipients shall be
28 notified of this option upon requesting service.
29

30 **4.02.2 Commercial, Industrial, Institutional and Multi-Family Dwelling Units**
31 **Collection.** Contractor shall Collect Solid Waste from Contractor-provided Containers and
32 service recipient-provided compactors and cans of a size and shape acceptable to Contractor,
33 not less than once per week (or such lesser frequency for non-putrescible Solid Waste). Special
34 consideration shall be given when determining the pick up area for Commercial, Industrial,
35 Institutional, and/or Multi-Family Dwelling Unit accounts to ensure that the flow of traffic is
36 not impeded and that it does not result in aesthetic degradation of an area. The designated
37 pick-up area, if disputed by service recipient or Contractor, shall be determined by the Agency.
38 Additionally, if in the Agency’s opinion the location of an existing pick up area is inappropriate,
39 Agency may require the service recipient or Contractor to relocate the pick up area.
40

41 **4.02.3 Agency Facilities' Collection.** Contractor shall Collect and dispose of all
42 Solid Waste generated at public facilities identified in Exhibit B. Contractor shall make
43 Collections from Containers Monday through Friday or on Saturdays following non-working

1 holidays. Collections from bins and debris boxes shall be scheduled at a time mutually agreed
2 upon by Contractor and Agency.

3
4 Contractor shall provide, at Agency's direction, additional Solid Waste services
5 entailing:

6
7 A. Collection of Solid Waste and Recyclable Materials from all public
8 sidewalk litter or Recycling Containers;

9
10 B. Collection of Plant Materials from Agency facilities and parks;

11
12 C. Collection of Solid Waste and Recyclable Materials from litter or
13 Recycling Containers in Agency parks;

14
15 D. Provision of debris box service to up to seven (7) locations in the
16 Agency as directed by Agency; and,

17
18 E. Review of plans for land use or property developments with regard
19 to Solid Waste service issues.

20
21 At the option of the Agency, exercised in writing, these services may be provided at no
22 charge to the Agency but shall be reimbursed to the Contractor through the rates charged other
23 service recipients.

24
25 **4.02.4 Permanent Containers/Debris Box Service.** Contractor shall provide
26 permanent/debris box Containers for the purpose of Collection of Solid Waste. Contractor shall
27 deliver to and Collect debris boxes from that location identified by the service recipient.
28 Containers shall be free of graffiti and in good repair. Containers must be clearly marked and
29 identifiable as belonging to Contractor. Special consideration shall be given when determining
30 the pick up area for temporary Containers to ensure that the flow of traffic is not impeded and
31 that it does not result in aesthetic degradation of an area. The designated pick up area, if
32 disputed by service recipient or Contractor, shall be determined by Agency. Additionally, if in
33 Agency's opinion the location of an existing pick up area is inappropriate, Agency may require
34 the service recipient or Contractor to relocate the pick up area.

35
36 **4.02.5 Periodic Special Collections.**

37
38 A. At the option of the Agency, exercised in writing, Contractor may be
39 directed to provide Agency-wide Collection of Solid Waste placed for Collection on specified
40 dates by residential (single-family and multi-family) Waste Generators in accordance with a
41 program established by Agency.

42
43 Contractor shall Collect Solid Waste from Residential Property
44 comprised of objects larger than ordinarily may be accommodated by residential Solid Waste

1 Containers including, but not necessarily limited to, objects not larger than 2 feet by 4 feet nor
2 heavier than 200 pounds, not less than once each Operating Year on a day designated by
3 Agency. Such Collections shall be made as part of community-wide "cleanup" program, and
4 Agency shall require owners or occupants of Residential Property to place such Solid Waste at
5 curbside for Collection. Such Collection shall be provided to Agency and to said owners or
6 occupants and Contractor not Compensated.

7
8 Upon Agency's request, Contractor shall provide a second such
9 Collection during any Operating Year on a day designated by Agency. Company's costs for
10 such second Collection shall be deemed Pass Through Costs in accounting therefore under
11 Article VI.

12
13 **B.** In conjunction with periodic special Collections described in Section
14 4.02.5.A, Contractor shall also offer a similar Collection service for residential Plant Materials
15 and wood to increase the amount of material diverted from landfills. Contractor shall describe
16 its plan for providing these services to the Agency, which shall approve the program annually
17 prior to its implementation. In its plan, Contractor shall describe the allowed materials for
18 Collection, costs, and the disposition of the materials. SBWMA or Agency may direct
19 Contractor to implement additional special collections programs pursuant to Section 2.09.
20 Contractor shall work with the Agency and the SBWMA to inform the public of the availability
21 of this option.

22 23 **4.03 Recyclable Materials Collection.**

24
25 **4.03.1 Residential Recyclable Materials Collection.** Contractor shall Collect and
26 remove all Recyclable Materials placed in or adjacent to Recycling Containers at the designated
27 Collection locations for Waste Generator's residing in Single Family Dwellings and Multi-
28 Family Dwelling Units. It is understood that all Single-Family Dwelling Units' Recyclable
29 Materials Collection service will be provided at curbside. Contractor shall work with
30 residential service recipients to determine mutually acceptable Collection locations to both
31 parties in the event hard-to-serve areas exist.

32
33 Recyclable Material Collection from residential Waste Generators within the
34 Agency shall be a minimum of once every two weeks. Residential Recyclable Materials
35 Collection may be on the same day of the week as Solid Waste Collection service as directed by
36 Agency. Contractor will notify Recycling service recipients, as is done for regular service,
37 regarding holiday Collection schedules. At a minimum, Contractor shall collect: aluminum
38 cans, glass bottles and jars, metal cans and narrow neck plastic containers (plastic 1 & 2), and
39 newspaper, mixed paper (including but not limited to magazines, junk mail, brown paper bags,
40 and white and colored paper), and corrugated cardboard. Agency reserves the right per Section
41 2.09 to direct Contractor to add to the list of materials to be collected and described above and
42 to perform additional Residential Recycler services in the event the Contractor is not making
43 adequate progress toward the Agency's diversion goals described in Section 4.05.

1 **4.03.2 Commercial, Industrial, and Institutional Recyclable Materials**
2 **Collection.** Contractor shall offer commingled Collection of newspaper, office paper, mixed
3 paper and cardboard in one Container to all Commercial, Industrial and Institutional Service
4 Recipients. Also, Contractor shall offer commingled Source Separated Collection of aluminum
5 cans, glass bottles and jars, metal cans and narrow neck plastic containers (plastic #1 and #2)
6 and in one Container to all Commercial, Industrial and Institutional Service Recipients, upon
7 installation of appropriate Recyclable Materials Processing system. Commercial Recycling
8 Collection shall be performed at a time mutually agreed upon by Contractor and the Waste
9 Generator or Owner of the property. Agency reserves the right per Section 2.09 to direct
10 Contractor to add to the list of materials to be collected and described above and to perform
11 additional Commercial Recycling services such as selective routing for clean loads in the event
12 that Contractor is not making adequate progress toward the Agency's diversion goals described
13 in Section 4.05.

14
15 **4.03.3 Transition from Compensated Commercial, Industrial and Institutional**
16 **Recycling.** At any time after the first year of the Agreement, the Agency at its sole discretion
17 may determine that Contractor has not demonstrated significant cost-effective progress toward
18 the overall commercial landfill diversion levels described in Section 4.05. Upon such
19 determination, Agency may upon 90 days written notice to Contractor, transition from the
20 current non-exclusive but compensated services offered by Contractor described in Section
21 4.03.2 to an open non-compensated competitive, free market system of collection by private
22 recyclers or non-exclusive permitted system utilizing one or more service providers. Contractor
23 shall not be entitled to any reimbursement for costs associated with Commercial Recycling after
24 the 90 day notification as described above.

25
26 Contractor shall assist in this transition by helping the Agency educate current
27 commercial Waste Generators as to the change in the system and the impact of the change (e.g.,
28 change in recycler, separate fee for Recycling) and how they can reduce their overall Solid
29 Waste bill by reducing the amount of Solid Waste disposed.

30
31 The Agency reserves the right to allow an unregulated system, implement a
32 permit system or use a non-exclusive system. The Agency shall also retain the right to alter or
33 reduce the commercial Recycling services provided by the Contractor as described in Section
34 4.03.2 (e.g., Contractor only Collects from small quantity Waste Generators or mixed Recyclable
35 Material loads).

36
37 **4.04 Plant Materials Program.**

38
39 **4.04.1 Plant Materials Collection.** Contractor shall Collect Plant Materials from
40 residential Waste Generators within the Agency's geographic limits a minimum of once every
41 other week. Plant Materials Collection may be on the same day as the Collection of Solid Waste.
42 The Collection day may change if prior written approval is received from Agency. Contractor
43 will notify service recipients at least two (2) weeks in advance of any scheduled Plant Materials

1 and Recycling Collection day change(s), including those required due to route changes and
2 holidays such as Labor Day, Thanksgiving, Christmas, and New Year's Day.

3
4 All Plant Materials must fit safely within a standard Plant Materials Container
5 provided by Contractor or Owner. As part of its educational activities specified in Section 5.03,
6 Contractor shall instruct residents as to any necessary preparation of Plant Materials, such as
7 the cutting of large items, and the appropriate use and placement of Plant Materials Containers.

8
9 **4.04.2 End Uses for Plant Materials.** Contractor agrees to develop, implement,
10 operate, and participate (locally and regionally) in mulching, composting, land application,
11 alternative daily cover, or other programs necessary to achieve Agency's Plant Materials
12 diversion requirements. In accordance with Section 2.09.1, Agency reserves the right to direct
13 Contractor in the end use of Plant Materials.

14
15 Contractor must provide end uses for Plant Materials that maximize diversion
16 credits according to regulations established by the California Integrated Waste Management
17 Board. To the extent allowed for diversion credits under existing regulations and unless
18 otherwise directed by SBWMA or Agency, Contractor intends to use Plant Materials as
19 alternative daily cover at its Ox Mountain Landfill. Also, Contractor shall make end products
20 (compost or mulch) available to Agency residents at a cost to residents to be determined by the
21 Agency and the cost of providing these products shall be an allowable operating expense. In
22 addition to these uses of Plant Materials, Contractor agrees to be aggressive in the pursuit of
23 new cost-effective opportunities to divert Plant Materials from Disposal and to maximize the
24 distribution of Plant Materials among approved diversion methods.

25
26 Should prevailing law preclude the use of alternative daily cover in landfill sites
27 for diversion credits under the Act, or should Contractor be unable to obtain a permit for such
28 application, Contractor (not the ratepayers nor the Agency) shall accept full responsibility,
29 financial and otherwise, for establishing alternate diversion uses of Plant Materials that will
30 fully qualify for diversion credits and Contractor and SBWMA and/or Agency shall meet and
31 agree upon the compensation to be provided Contractor.

32 33 **4.05 Diversion Program Guarantees.**

34
35 **4.05.1 Commercial Program Guarantees.** Contractor shall implement commercial
36 Recycling programs as described in Section 4.03.2 designed to increase the amount of Solid
37 Waste diverted from Landfill Disposal. To that end, Contractor has guaranteed the following
38 diversion levels for each year as stated for the Solid Waste stream generated by Commercial,
39 Industrial and Institutional generators in the SBWMA Service Area (the Commercial Program
40 Guarantees).

Rate Year Ending	Commercial Waste Tonnage Diverted
2000	23,205
2001	30,030
2002	38,025

1
2 Guarantees will be based on the tonnage of commercial waste diverted. Contractor shall
3 propose and Agency shall approve in advance the methodology and calculations used to
4 calculate Contractor's diversion tonnage. Should Contractor exceed these diversion
5 requirements, it shall be eligible for the financial benefits of the performance incentives
6 described in Section 6.07 of this Agreement. Should Contractor fail to meet these diversion
7 requirements, Contractor will be subject to the liquidated damage provisions described in
8 Section 11.03 in addition to compensation for any and all other damages to the Agency
9 resulting from the Contractor's failure. Parties shall meet by June 2000 to develop revised
10 goals for years beyond 2002. These goals assume that contractor retains the right to utilize the
11 Facilities, acknowledging that the programs designed to achieve the commercial Recycling
12 diversion goals are not duplicative to those offered at the Facilities.
13

14 **4.05.2 Residential Program Guarantees.** Additionally, Contractor is operating
15 diversion programs targeted at the residential Waste Generators. Contractor shall at no time
16 during this Agreement Recycle less than the 1999 tonnage level and shall make best efforts to
17 increase that amount annually. Contractor's failure to maintain current residential Recycling
18 levels will subject it to the provisions of Section 11.01E.
19

20 **4.06 Collection Locations.** It is understood that all Plant Materials and Recyclable
21 Materials Collection services will be provided at Curbside, with the following exceptions:
22

23 **A.** Porch or backyard pick-up of residential Plant Materials will be provided
24 by Contractor to residential Customers who are frail, or are medically disabled and as a result
25 are unable to bring their Recyclable Materials and Plant Materials Containers to the curb.
26 Contractor's Collection crew will pick up and return Containers to the alternate Collection
27 location for these service recipients.
28

29 **B.** Residents of Multi-Family Dwelling Units of two (2) to four (4) units will
30 use the same Collection Containers as residents of Single Family Dwellings. Contractor will
31 Collect these Containers at Curbside. Residents of Multi-Family Dwelling Units of five (5) or
32 more units will use larger Containers, such as wheeled carts or bins, which will be Collected in a
33 central location reasonably accessible by Collection Vehicles.
34

35 **4.07 Special Material Collection Programs.**
36

37 **4.07.1 Christmas Trees.** Contractor shall operate an annual Christmas Tree
38 Collection program for all of Agency's service recipients. Contractor shall offer to each service

1 recipient, as part of this program, the Curbside Collection of Christmas trees that are not flocked
2 and do not contain tinsel or other decorations, on at least two (2) days within the first two weeks
3 of January following Christmas. Contractor shall make best efforts to incorporate this program
4 into the Plant Materials Collection service described in Section 4.04. Contractor may also
5 provide options for service recipients to drop-off Christmas trees for two weeks after January 1st.
6 Contractor will notify all service recipients in writing of the dates, time, and places of all
7 Christmas Tree Collections.

8
9 **4.07.2 Household Battery Collection.** In conjunction with the Household
10 Hazardous Waste Program administered by San Mateo County, Contractor shall provide for the
11 Curbside Collection of household batteries if directed to do so by Agency. Contractor shall be
12 responsible for the Recycling, handling and/or proper Disposal of the batteries in compliance
13 with all applicable laws. Contractor shall work with the SBWMA to inform the public of the
14 availability of this service.

15
16 **4.08 Warning Notices.** Contractor may choose not to Collect Recyclable Materials or
17 Plant Materials that contain ten percent (10%) by volume or greater of Solid Waste subject to
18 Contractor's best efforts to educate the public, but Contractor shall issue written warning
19 notices to such service recipients stating the reason(s) why their Recyclable Materials and/or
20 Plant Materials were not Collected. Contractor shall report monthly to Agency any warning
21 notices issued. Contractor shall take direction from the Agency with regard to termination or
22 reinstatement of service to a service recipient. Contractor may refuse to Collect Recyclable
23 Materials or Plant Materials from, and shall not be obligated to continue to provide any
24 Recyclable Materials or Plant Materials Container to, any service recipient who, after efforts to
25 re-educate the service recipient and the second written warning in a twelve (12) month period,
26 fails to sort Recyclable Materials or Plant Materials from other Solid Waste and/or fails to
27 properly set out their Recyclable Materials or Plant Materials Container.

28
29 **4.09 Marketing of Plant Materials and Recyclable Materials.** Per a separate Agreement
30 for the Operation of the Facilities between the SBWMA and the Contractor, Contractor shall be
31 responsible for delivering Recyclable Materials and Plant Materials to the Facilities subject to
32 Section 2.09 and marketing and sale, donation, or reuse of all Recyclable Materials or Plant
33 Materials Collected pursuant to this Agreement.

34
35 Contractor shall prepare, submit to the Agency for approval, and maintain a marketing
36 plan for all Recyclable Materials or Plant Materials Collected by Contractor under this
37 Agreement. The approved marketing plan for Recyclable Materials or Plant Materials service
38 shall be in place with the execution of this Agreement and at the time of beginning any
39 expanded service. The marketing plan shall fully describe Contractor's marketing methods and
40 approach, targeted primary and contingent markets, pricing policy, and assumed salvage value
41 or cost for each Collected type of Recyclable Materials or Plant Materials.

1 **4.10 Operations.**
2

3 **4.10.1 Schedules.** Residential Solid Waste, Residential Recyclable Materials and
4 Plant Materials shall be collected on weekdays between 6:00 AM and 6:00 PM. To preserve
5 peace and quiet, no Solid Waste, Recyclable Materials or Plant Materials shall be Collected from
6 or within two-hundred (200) feet of residential Premises between 6:00 P.M. and 6:00 A.M. on
7 any day. Contractor shall notify Agency and service recipients in writing at least two (2) weeks
8 before an alternate Collection day is scheduled when the regularly scheduled Collection day
9 falls on a Holiday when no Collections are scheduled. Collection of Solid Waste from
10 Commercial, industrial and institutional Properties shall be scheduled at the direction of the
11 Agency.
12

13 Contractor shall be prepared to review its operations plan outlining the Collection
14 routes, intervals of Collection and Collection times for all materials Collected under this
15 Agreement with the Agency or its representatives at least annually. More frequent reviews may
16 be required if operations are not satisfactory based on documented observations or reports or
17 Complaints. If the plan is determined to be inadequate by the Agency, Contractor shall revise
18 plan incorporating any changes into a revised plan and review said revised plan with the
19 Agency within thirty (30) calendar days.
20

21 When notified of a missed pick-up, Contractor shall Collect the Solid Waste,
22 Recyclable Materials or Plant Materials on the same day, if possible, but in no case more than
23 one (1) working day (24 hours) after receipt of notice.
24

25 **4.10.2 Vehicles.**
26

27 **A. Specifications.** All vehicles used by Contractor in providing Solid
28 Waste, Recyclable Material and Plant Material Collection services shall be registered with the
29 California Department of Motor Vehicles. All such vehicles shall have bodies designed to
30 prevent leakage, spillage and/or overflow.
31

32 **B. Vehicle Identification.** Contractor's name, local telephone number,
33 and a unique vehicle identification number designed by Contractor for each vehicle shall be
34 prominently displayed on all vehicles, in letters and numbers no less than two and one-half (2
35 1/2) inches high. Contractor shall not place Swami or Agency's name and/or any SBWMA or
36 Agency logo on Contractor vehicles. Vehicles used solely for the Collection of Recycling and
37 Plant Materials shall be labeled to indicate those are the Collected materials.
38

39 **C. Cleaning and Maintenance.**
40

41 **1)** Contractor shall maintain all of its properties, vehicles,
42 facilities, and equipment used in providing service under this Agreement in a good, safe, neat,
43 clean and operable condition at all times.
44

1 2) Vehicles used in the Collection of Solid Waste, Recyclable
2 Materials and Plant Materials shall be painted, thoroughly washed, and thoroughly steam
3 cleaned on a regular basis so as to present a clean appearance. Agency may inspect vehicles at
4 any time to determine compliance with this Agreement. Contractor shall also make vehicles
5 available to the San Mateo County Health Department for inspection, at any frequency it
6 requests.

7
8 3) Contractor shall repaint or refurbish to the satisfaction of the
9 Agency all vehicles used in the Collection of Solid Waste, Recyclable Materials and Plant
10 Materials within thirty (30) days' notice from Agency, if Agency determines that their
11 appearance warrants painting.

12
13 4) Contractor shall inspect each vehicle daily to ensure that all
14 equipment is operating properly. Vehicles which are not operating properly shall be removed
15 from service until repaired and operating properly. Contractor shall perform all scheduled
16 maintenance functions in accordance with the manufacturer's specifications and schedule.
17 Contractor shall keep accurate records of all vehicle maintenance, recorded according to date
18 and mileage and shall make such records available to Agency upon request.

19
20 5) Contractor shall repair, or arrange for the repair of, all of its
21 vehicles and equipment for which repairs are needed because of accident, breakdown or any
22 other cause so as to maintain all equipment in a safe and operable condition. If an item of repair
23 is covered by a warranty, Contractor shall obtain warranty performance. Contractor shall
24 maintain accurate records of repair, which shall include the date and mileage, nature of repair
25 and the verification by signature of a maintenance supervisor that the repair has been properly
26 performed.

27
28 6) Contractor shall furnish sufficient equipment to provide all
29 service required under this Agreement, including back-up Collection vehicles. Contractor shall
30 furnish within thirty (30) days of request to Agency, a written inventory of all equipment,
31 including Collection vehicles, used in providing service, and shall update the inventory
32 annually. The inventory shall list all equipment by manufacturer, ID number, and date of
33 acquisition, type, and capacity.

34
35 7) Contractor shall arrange to store all vehicles and other
36 equipment in safe and secure location(s) in accordance with all applicable zoning regulations.

37
38 **D. Operation.** Vehicles shall be operated in compliance with Federal,
39 State and local laws and regulations including but not limited to the California Vehicle Code,
40 and all applicable safety and local ordinances. Contractor shall not load vehicles in excess of the
41 manufacturer's recommendations or limitations imposed by state or local weight restrictions on
42 vehicles.

1 Contractor equipment used for Solid Waste, Recyclable Materials, and Plant
2 Materials services shall be registered with the California Department of Motor Vehicles.
3 Equipment shall comply with US EPA noise emission regulations, currently codified at 40 CFR
4 Part 205 and other applicable noise control regulations, and shall incorporate noise control
5 features throughout the entire vehicle. Noise and pollution emission levels of equipment used
6 for Collection shall comply with Agency's ordinance.

7 8 **4.11 Containers.**

9
10 **4.11.1 Residential Solid Waste Containers.** Single Family Dwelling service
11 recipients shall provide and maintain Containers in good repair. Multi-Family Residential
12 Complexes shall be provided by Contractor appropriately sized Containers (carts or bins). All
13 carts shall be constructed of heavy gauge plastic with wheels and attached lids.

14
15 **4.11.2 Non-Residential Solid Waste Containers.** Contractor shall furnish
16 Commercial, Industrial and Institutional service recipients receiving one (1) cubic yard service
17 or more with appropriate Containers to Collect Solid Waste upon service recipient request.
18 Containers with a capacity of one cubic yard or more shall be available in standard sizes. The
19 kind, size and number of Containers furnished to particular service recipients shall be as
20 determined mutually by the service recipient and Contractor. All Containers with a capacity of
21 one cubic yard or more shall meet applicable regulations for Solid Waste bin safety and shall
22 have reflector zed markings. All Containers shall be maintained in good repair with neatly and
23 uniformly painted surfaces and shall prominently display the name and telephone number of
24 Contractor and the types of material accepted.

25
26 **4.11.3 Residential Recyclable Material and Plant Materials Containers.**
27 Residential service recipients shall place their Recyclable Materials in the Contractor-provided
28 Recycling Containers for collection by Contractor. Extra Containers shall be provided to service
29 recipients upon request.

30
31 Residents shall place their Plant Materials in Contractor- provided 64, or 96 gallon
32 Containers for Collection by Contractor.

33
34 **4.11.4 Commercial, Industrial and Institutional Recyclable Materials**
35 **Containers.** Contractor shall furnish Commercial, Industrial and Institutional service recipients
36 Containers for the Collection of materials described in Section 4.03.2 of a size appropriate to the
37 particular service recipient's needs and availability of space. Multiple sizes shall be made
38 available by Contractor.

39
40 **4.11.5 Delivery.** Appropriate containers as described in this Section 4.11 shall be
41 delivered to new service recipients within five (5) business days of the service recipient's
42 request for service. Contractor shall notify Agency if it fails to deliver Containers within five (5)
43 business days.

1 **4.11.6 Container Replacement.** Agency and Contractor acknowledge that from
2 time to time Contractor-provided Containers may be stolen or damaged. When notified of such
3 occurrence, Contractor shall replace the stolen Container(s), at no charge to the service recipient,
4 not more than one (1) time within any twelve (12) month period. If the service recipient
5 requests more than one (1) replacement set of Containers per twelve (12) month period, the
6 Contractor shall make Containers available for purchase at a price not to exceed the cost to
7 Contractor of purchasing the Containers.

8
9 **4.12 Litter Abatement.**

10
11 **4.12.1. Minimization of Spills.** Contractor shall use due care to prevent Solid
12 Waste, Recyclable Materials and/or Plant Materials or fluids from leaking being spilled and/or
13 scattered during the Collection or transportation process. If any material or fluids leak or are
14 spilled during Collection, Contractor shall promptly clean up all such materials. Each
15 Collection vehicle shall carry a broom and shovel at all times for this purpose.

16
17 Contractor shall not transfer loads from one vehicle to another on any public
18 street, unless it is necessary to do so because of mechanical failure, accidental damage to a
19 vehicle, or a pre-approved method of Solid Waste transfer between vehicles, without prior
20 written approval by Agency.

21
22 **4.12.2 Clean Up.** During the Collection or transportation process, Contractor
23 shall clean up litter in the immediate vicinity of any storage area (including the areas where
24 Collection bins and debris boxes are delivered for Collection) whether or not Contractor has
25 caused the litter. Contractor shall discuss instances of repeated spillage not caused by it directly
26 with the Waste Generator responsible and will report such instances to Agency. Agency will
27 attempt to rectify such situations with the Waste Generator if Contractor has already attempted
28 to do so without success.

29
30 **4.12.3 Covering of Loads.** Contractor shall properly cover all open debris boxes
31 during transport to the Disposal Site.

32
33 **4.13 Personnel.** Contractor shall furnish such qualified drivers, mechanical,
34 supervisory, clerical, management and other personnel as may be necessary to provide the
35 services required by this Agreement in a satisfactory, safe, economical and efficient manner in
36 accordance with all applicable Federal, State and local laws and regulations. If additional
37 personnel are required to meet the service standards of this Agreement, Contractor shall
38 provide such additional personnel if approved in advance by the Agency. All drivers shall be
39 trained and qualified in the operation of vehicles they operate and must possess a valid license,
40 of the appropriate class, issued by the California Department of Motor Vehicles and participate
41 in periodic driver safety trainings.

42
43 Contractor also agrees to establish and vigorously enforce an educational program which
44 will train Contractor's employees in the identification of Hazardous Waste. Contractor's

1 employees shall not knowingly place such Hazardous Waste in the Collection vehicles, nor
2 knowingly dispose of such Hazardous Wastes at the Processing Facility or Disposal Site.

3
4 Contractor shall train its employees in courtesy, shall prohibit the use of loud or profane
5 language, and shall instruct Collection crews to perform the work quietly. Contractor shall use
6 its best efforts to assure that all employees present a neat appearance and conduct themselves in
7 a courteous manner. If any employee is found to be discourteous or not to be performing
8 services in the manner required by this Agreement, Contractor shall take all necessary
9 corrective measures including, but not limited to, transfer, discipline or termination. If Agency
10 has notified Contractor of a Complaint related to discourteous or improper behavior,
11 Contractor will consider reassigning the employee to duties not entailing contact with the
12 public while Contractor is pursuing its investigation and corrective action process. Contractor
13 shall provide suitable operations, health and safety training for all of its employees who use or
14 operate equipment or who are otherwise directly involved in Collection or other related
15 operations.

16
17 **4.14 Identification Required.** Contractor shall provide its employees and
18 subcontractors with identification for all individuals who may make personal contact with
19 residents or businesses in the Agency. Agency may require Contractor to notify service
20 recipients yearly of the form of said identification. Contractor shall provide a list of current
21 employees, and subcontractors to Agency upon request.

22
23 **4.15 Fees and Gratuities.** Contractor shall not, nor shall it permit any agent, employee,
24 or subcontractors employed by it, to request, solicit, demand, or accept, either directly or
25 indirectly, any compensation or gratuity for services or the Collection, transportation,
26 Recycling, processing, and Disposal of Solid Waste, Recyclable Material and Plant Materials,
27 otherwise required under this Agreement.

28
29 **4.16 Non-Discrimination.** Contractor shall not discriminate in the provision of service
30 or the employment of Persons engaged in performance of this Agreement on account of race,
31 color, religion, sex, age, sexual orientation, physical handicap or medical condition in violation
32 of any applicable federal or state law.

33
34 **4.17 Change in Collection Schedule.** Contractor shall notify Agency thirty (30) days
35 prior to, and residential service recipients not later than fourteen (14) days prior to, any change
36 in residential Collection operations which results in a change in the day on which Solid Waste,
37 Recyclable Materials, and Plant Materials Collection occurs. Contractor will not permit any
38 service recipient to go more than seven (7) days without service in connection with a Collection
39 schedule change.

40
41 **4.18 Report of Accumulation of Solid Waste; Unauthorized Dumping.** Contractor
42 shall direct its drivers to note (1) the addresses of any service recipients at which they observe
43 that Solid Waste is accumulating and is not being delivered for Collection; and (2) the address,
44 or other location description, at which Solid Waste has been dumped in an apparently

1 unauthorized manner. Contractor shall deliver the address or description to Agency within five
2 (5) working days of such observation.
3

4 **4.19 Contingency Plan.** Contractor shall submit to Agency on or before the effective
5 date of the Agreement, a written contingency plan demonstrating Contractor's arrangements to
6 provide vehicles and personnel and to maintain uninterrupted service during breakdowns, and
7 in case of natural disaster or other emergency, including the events described in Section 11.4.
8

9 **4.20 General.** Routes over which Contractor's vehicles travel to effect the Collection
10 and transport of Solid Waste, Recyclable Materials and Plant Materials shall be selected to
11 minimize damage to Agency and private streets, inconvenience and disturbance to the public
12 and shall be subject to the approval of Agency. Contractor shall use due care to obey all traffic
13 laws and prevent materials being transported from being spilled or scattered during transport.
14 If any materials are spilled within the Agency, Contractor shall immediately clean up all spilled
15 materials, whether on private or public property.
16

17 **4.21 Transportation of Solid Waste.** Contractor shall transport and deliver to the
18 Facilities all Solid Waste. Solid Waste shall be processed through the Recycling and Diversion
19 program described herein. The remaining Solid Waste may not be disposed of at any location
20 other than the designated Disposal Sites.
21

22 **4.22 Transportation of Recyclable Materials and Plant Materials.** Contractor shall
23 Collect, transport and deliver (or arrange for the transportation and delivery of) all Recyclable
24 Materials and Plant Materials to a purchaser, a licensed Material Recovery Facility, licensed
25 Processing Facility, or a Person who will use the materials in a process or product and will not
26 dispose of them in a landfill. Contractor has designated the San Carlos Transfer Station and
27 Recycler as its material processing and transfer Facility.
28

29 **4.23 Processing of Solid Waste.** The Agency, upon prior written notice to the
30 Contractor, reserves the right, prior to Disposal, to direct portions of the Solid Waste stream
31 Collected under this Agreement to a Material Recovery Facility ("MRF") or Processing Facility
32 for separation, reuse, and Recycling of any Recyclable Materials or Plant Materials contained
33 therein. The Contractor agrees to assist the Agency by identifying loads suitable for processing
34 in the MRF. The MRF currently designated for use by Contractor shall be the San Carlos
35 Recycler owned by the SBWMA.
36

37 **4.24 Disposition of Solid Waste.** The Contractor shall dispose of all Solid Waste,
38 Collected under this Agreement, at the designated Disposal Site. Unless and until the Agency
39 otherwise obtains ownership of the Solid Waste stream, the Disposal Site Contractor has
40 designated shall be the San Carlos Transfer Station owned by the SBWMA Ox Mountain
41 Landfill owned and operated by Contractor or an affiliate or subsidiary of Contractor under a
42 separate agreement with San Mateo County.
43
44

1 **5.01.2 Billing.** Contractor shall prepare, mail and collect bills (or shall issue writ-
2 ten receipts for cash payments) for Solid Waste Services provided by Contractor. Bills shall be
3 for service for a three month period (i.e., using a quarterly format), unless the Agency requests a
4 more frequent billing interval in which case the Contractor shall be entitled to a reasonable
5 adjustment in its compensation related to the additional costs as described in Article 6. Bills for
6 residential service shall be mailed in advance of the provision of service but no more than three
7 (3) months in advance. Agency shall have the right to revise the billing format (size, font,
8 frequency, etc.) and to itemize certain charges and to review the Billing procedures. Agency
9 may also direct Contractor to insert mailers relating to service with the Billings. The mailers
10 must fit in standard envelopes and not increase the required postage. Contractor also agrees to
11 insert with the Billings, at Agency's expense for the incremental cost, mailers describing
12 activities of the Agency. Agency will provide not less than thirty (30) days notice to Contractor
13 prior to the mailing date of any proposed mailing to permit Contractor to make appropriate
14 arrangements for inclusion of Agency's materials. Agency will provide Contractor the mailers
15 at least thirty (30) days prior to the mailing date. All Contractor generated mailers must be
16 approved in advance by the SBWMA with the exception of Contractor's quarterly newsletter.

17
18 Contractor shall maintain, for inspection by the Agency, copies of said Billings and
19 receipts, in chronological order, for a period of three (3) years after the date of service.
20 Contractor may, at its option, maintain those records in computer form, on microfiche, or in any
21 other manner, provided that the records can be preserved and retrieved for inspection and
22 verification in a timely manner.

23
24 Agency shall establish, by resolution, rates for the types of service provided,
25 Contractor shall bill and Collect at those rates. Service recipients will be considered delinquent
26 sixty (60) days after start of the quarter in which the services are provided. Contractor may
27 discontinue service to any account, if payment is not received by Contractor within thirty (30)
28 days after the end of the quarter in which the bill was issued. Contractor must provide all
29 accounts with written notice of its intent to discontinue service at least thirty (30) days prior to
30 such discontinuance. Any disputes related to billing shall be handled as described in Section
31 5.02.3.

32
33 **5.01.3 Contractor as Billing Agent.** Contractor shall act as Billing agent on behalf
34 of the Agency. Revenues collected on behalf of the SBWMA or the Agency shall be handled as
35 described in Article 3 of this Agreement.

36
37 **5.01.4 Review of Billings.** Contractor shall review its Billings to service recipients
38 under Section 5.01.2. The purpose of the review is to determine that the amount which
39 Contractor is billing each service recipient is correct in terms of the level of service (i.e.,
40 frequency of Collection, size of container, location of container) being provided to such service
41 recipient by Contractor. Contractor shall review service recipient accounts not less than every
42 other year, unless Agency shall direct Contractor to do so annually, and submit to Agency a
43 written report of that review annually on the anniversary of the effective day of this Agreement.
44 The intent of this Section is for Agency to receive reports on an annual basis which will cover

1 the entire list of service recipients every other year. The scope of the review and the reviewer's
2 work plan shall be submitted to Agency for approval no later than six (6) months before the
3 submission of the first report.

4 5 **5.02 Service Recipient Service.**

6
7 **5.02.1 Local Office.** Contractor shall operate its local office at 225 Shoreway Road
8 in San Carlos. Office hours shall be, at a minimum, from 8:00 A.M. to 5:00 P.M., Monday
9 through Friday, exclusive of holidays. A responsible and qualified representative of Contractor
10 shall be available during office hours for communication with the public at the local office.
11 Normal office hour telephone numbers shall either be a local or toll free call. Contractor's
12 telephone system shall be adequate to handle the volume of calls typically experienced on the
13 busiest days. Contractor shall also maintain a local or toll free telephone number for use during
14 other than normal business hours. Contractor shall have a representative, answering or
15 message providing/receiving (voice-mail) service available at said after-hours telephone
16 number.

17
18 **5.02.2 Complaint Documentation.** All service Complaints shall be directed to
19 Contractor. Daily logs of Complaints concerning Collection of Solid Waste shall be retained for
20 a minimum of thirty-six (36) months and shall be available to SBWMA or Agency at all times
21 upon twenty-four (24) hour notice.

22
23 Contractor shall log all Complaints received by telephone and said log shall
24 include the date and time the Complaint was received, name, address and telephone number of
25 caller, description of Complaint, employee recording Complaint and the action taken by
26 Contractor to respond to and remedy Complaint.

27
28 All Complaints and inquiries shall be date-stamped when received and shall be
29 initially responded to within one (1) business day of receipt. Contractor shall log action taken
30 by Contractor to respond to and remedy the Complaint.

31
32 All service records and logs kept by Contractor shall be available to Agency upon
33 request and at no cost to Agency. Agency shall, at any time during regular Contractor business
34 hours, have access to Contractor's Facilities, records and personnel for purposes that may
35 include monitoring the quality of service or researching Complaints.

36 37 **5.02.3 Resolution of Complaints.**

38
39 **A. Scope.** The provisions of this Section 5.02.3 shall govern the
40 procedure for reviewing Complaints; provided that resolution of disputes relating to audits or
41 compensation reviews pursuant to this Agreement shall be governed by that Section and not the
42 provisions of this Section. The provisions of this Section are not exclusive, are cumulative, and
43 are in addition to any and all other remedies which may accrue to Agency as a result of

1 Contractor's performance or failure to perform its duties and obligations, express or implied,
2 hereunder, or otherwise as a result of Contractor's actions in violation of this Agreement.
3

4 Nothing in this section 5.02.3 is intended to affect the remedies of third
5 parties against Contractor; nor will the imposition of service recipient charges prevent the
6 imposition of liquidated damages by Agency pursuant to Section 11.3.
7

8 **B. Manager's Review.** All Complaints received or initiated by Agency
9 shall be reviewed by the Manager who shall provide copies thereof to Contractor. The Manager
10 shall review each Complaint to determine whether the Complaint can be resolved informally, or
11 whether the formal action hereunder is warranted. If the Manager determines that formal action
12 is warranted, he or she shall give written notice to Contractor and all interested parties of a
13 hearing to be held by the Manager on each such Complaint not less than ten (10) days from the
14 date of said notice.
15

16 At the Manager's hearing on the Complaint, Contractor may present its
17 response thereto, including, but not necessarily limited to, a written response including
18 supporting documents. Within ten (10) days following the hearing, the Manager shall make a
19 determination upon the Complaint. The hearing conducted by the Manager shall be informal,
20 and rules of evidence shall not apply, but the Manager may hear and consider such relevant
21 statements, documents, or other materials as he or she shall determine appropriate under the
22 circumstances.
23

24 If the Manager determines that Contractor has violated, or is in continuing
25 violation of, its duties and obligations under this Agreement, or otherwise in violation of any of
26 the provisions hereof, the Manager may issue a Compliance Order to Contractor or may order
27 that the Complaint shall be heard by the Agency Council/Board. In all cases in which the
28 Manager determines that the appropriate remedy should be Termination or payment of
29 compensatory damages, the Complaint shall be heard by the Agency Council/Board. If the
30 Manager orders that the Complaint shall be heard by the Agency Council/Board, he or she shall
31 prepare a written report to the Agency Council/Board which shall state his or her findings, the
32 basis therefore, and a recommended action by the Agency Council/Board.
33

34 **C. Agency Council/Board Review.** Contractor may appeal a
35 Compliance Order issued by the Manager to a subcommittee of the Agency Council/Board by
36 filing a notice of appeal with the Clerk of the Agency Council/Board within ten (10) days of the
37 date of the Manager's Compliance Order. The Clerk of the Agency Council/Board shall set the
38 matter for hearing by a subcommittee of the Agency Council/Board within thirty (30) days of
39 receipt of the notice of appeal unless Contractor consents to an extension of the time for the
40 hearing.
41

42 If the Manager orders a Complaint to be heard by the Agency
43 Council/Board subcommittee pursuant to this Section, the Clerk of the Agency Council/Board

1 shall set the matter for hearing within thirty (30) days of the date of such order, unless the time
2 for hearing is extended by consent of Contractor.
3

4 At it's hearing the Agency Council/Board subcommittee shall consider the
5 Complaint anew, irrespective of whether the hearing is on appeal by Contractor or by order of
6 the Manager. If a Complaint is based upon the manner or quality of Contractor's service to
7 service recipients or members of the public, the hearing shall be a public hearing. If a Complaint
8 is based upon a violation of the standards and procedures implemented under this Agreement,
9 the hearing may, but shall not necessarily, be a public hearing, as the Manager shall determine.
10

11 Agency and/or Contractor shall have the right to request that the
12 Complaint be referred to a fact-finding panel pursuant to Section 5.02.3.D. prior to hearing and
13 final determination by the Agency Council/Board subcommittee. The findings of fact made by
14 the panel shall be advisory only, and shall not be binding on the Agency Council/Board
15 subcommittee.
16

17 If, upon conclusion of the hearing and consideration of any advisory
18 findings of fact, the Agency Council/Board subcommittee determines that Contractor has
19 violated, or is in continuing violation of, any of its duties and obligations, either express or
20 implied, under this Agreement, the Agency Council/Board may issue a Compliance Order,
21 Termination Order for violations described in Section 11.01 C, E, F, I, J or K, or Order for
22 Payment of Compensatory Damages, as it deems appropriate. The Agency Council/Board's
23 decision shall be the final administrative determination, and shall be supported by written
24 findings.
25

26 **D. Fact Finding.** 27

28 **1) Panel.** A fact-finding panel shall be comprised of one
29 member, each, appointed by Contractor and Agency, respectively. The panel members
30 appointed aforesaid shall, in turn, appoint a third panel member who shall be the Chairperson
31 and preside over the proceeding conducted by the panel.
32

33 **2) Procedure.** The fact-finding panel shall review the
34 controversy between the parties pursuant to the provisions of Part 3, Title 9 ("Arbitration")
35 commencing with Section 1280 of the California Code of Civil Procedure, as said provisions
36 exist upon the date hereof or from time to time may be amended, revised, or superseded, except
37 to the extent that any provisions of this Agreement conflict with the provisions of said Title 9.
38 Notwithstanding the foregoing, the fact-finding panel shall have authority only to receive
39 evidence relating to the controversy and to make advisory findings of fact. The panel's findings
40 of fact shall be written and shall identify the evidence upon which each finding, respectively, is
41 based.
42

1 3) **Costs.** All costs associated with the review by the fact-finding
2 panel shall be borne solely by Contractor as an Operating Cost, except that Agency shall bear
3 the costs and fees of its own attorney or attorneys and its witnesses.
4

5 4) **Limitation.** The provisions of this Section 5.02.3 shall apply
6 solely to controversies within the provisions of this Article 5, and expressly shall not apply to
7 controversies, if any, which may arise under Article 6.
8

9 **E. Remedies.**

10
11 1) **Named.** Remedies available to Agency pursuant to this
12 Article include the issuance of a Compliance Order, Termination Order, or Order for Payment
13 of Compensatory Damages, which terms are defined and described hereinafter. Such Orders
14 may be issued subject to such terms and conditions as the Manager (in the case of Compliance
15 Orders) and the Agency Council/Board (in the case of all such Orders issued by it) shall deem
16 appropriate.
17

18 2) **Compliance Order.** A Compliance Order may be issued by
19 the Manager or the Agency Council/Board upon a determination that Contractor has violated,
20 or is in continuing violation of, any of its duties or obligations, either express or implied, under
21 this Agreement, and shall direct Contractor forthwith to cease such violation, and may specify,
22 if appropriate, the time within which such violation shall be remedied, and otherwise establish
23 terms and conditions governing compliance there under.
24

25 3) **Termination Order.** If the Agency Council/Board determines
26 that Contractor has violated, or is in continuing violation of, Section 11.01 C, E, F, I, J or K under
27 this Agreement, the Agency Council/Board may order termination of this Agreement. Such
28 Termination Order shall be effective not less than thirty (30) days from the date of the
29 Termination Order. Contractor shall not be entitled to any further revenues from Collection
30 operations authorized hereunder from and after the effective date of termination.
31

32 4) **Order for Payment of Compensatory Damages.** If the
33 Agency Council/Board determines that Contractor has violated, or is in continuing violation of,
34 any of its duties or obligations, either express or implied, under this Agreement, which has
35 caused loss of revenues to Agency, or caused Agency to incur unnecessary costs or has caused
36 loss or damages to any Person, it may order Contractor to pay compensatory damages therefore
37 to Agency, or to the Person so damaged.
38

39 **5.02.4 Government Liaison.** Contractor shall designate in writing a "Government
40 Liaison" who shall be responsible for working with the Manager and/or the Manager's
41 designated representative(s) to resolve service recipient complaints.
42

1 **5.03 Education and Public Awareness.**
2

3 **5.03.1 General.** Contractor acknowledges and agrees that education and public
4 awareness are critical, key, and essential elements of any efforts to achieve diversion.
5 Accordingly, Contractor agrees to take direction from Agency to explore opportunities to
6 expand public and service recipient knowledge concerning needs and methods to reduce, reuse,
7 and recycle Solid Waste, and to cooperate fully with Agency in this regard. Contractor's public
8 education plan is included as Exhibit C.
9

10 Contractor shall perform all of the public education activities related to the
11 transition to new services, as described in Exhibit C. These education activities shall include,
12 but not be limited to: mailings prior to the start of service, flyers handed out, follow-up mailings
13 or hand-outs related to the new services, commercial advertising, annual Recycling Day
14 schedules and the mailing and hand-outs of SBWMA/Agency newsletters upon request.
15

16 **5.03.2 Content Approval.** Contractor shall make available to Agency, and
17 Agency shall approve prior to their use, all public educational materials used by Contractor. At
18 a minimum, Contractor materials will describe the specific types of Recyclable Materials and
19 Plant Materials, explain how to prepare materials for Collection, and explain how, where, and
20 when to set out Containers for Collection.
21

22 All public educational materials shall be printed on or manufactured from
23 recycled materials whenever possible and contain the highest practical level of post-consumer
24 content. Contractor's primary educational materials shall be available in English and Spanish.
25 Contractor may produce materials in additional languages for which there is a demand.
26

27 **5.03.3 Community Events.** At the direction of Agency or SBTSA, Contractor shall
28 participate in and promote diversion techniques at community events and local activities. Such
29 participation would normally include providing, without cost, educational and publicity
30 information promoting the goals of Agency's waste reduction and recycling programs.
31

32 **5.03.4 Notification to New Service Recipients.** Immediately upon request for
33 new service, Contractor shall notify the new service recipients of the Recyclable Materials and
34 Plant Materials Collection services offered by Contractor. At Agency's request, such
35 notification shall be available in languages other than English and Spanish.
36

37 **5.04 Waste Generation/Characterization Studies.** Contractor acknowledges that
38 Agency may perform Solid Waste generation and characterization studies periodically.
39 Contractor agrees to participate and cooperate with SBTSA and Agency and its agents and to
40 accomplish studies and data collection and prepare reports, as needed, to determine weights
41 and volumes of Solid Waste and characterize Solid Waste generated, disposed, transformed,
42 diverted or otherwise handled/processed to satisfy AB 939 requirements.
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ARTICLE 6
CONTRACTOR'S COMPENSATION AND RATES

6.01 General. Contractor's Compensation provided for in this Article 6 shall be the full entire and complete compensation due to Contractor pursuant to this Agreement for all labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, profit, and all other things necessary to perform all the services required by this Agreement in the manner and times prescribed.

6.02 Initial Contractor Compensation. The Contractor's Compensation for the initial twelve (12) months of this Agreement (Rate Year One) (i.e., from January 1, 2000 to December 31, 2000) is expected to be two million six hundred eighty-nine thousand dollars (\$2,689,000.00), based on the estimated costs plus profit as presented in Exhibit D.

6.03 Balancing Account. Any balance maintained by Contractor due to prior years surplus or insufficient revenues from services provided Agency through February 29, 2000 and due to or due from Agency's ratepayers shall carry forward into this Agreement.

6.04 Phase-out of Recycling Surcharge Limit. In the First Amendment to the Agreement for Recyclable Materials between Contractor and Agency (which this Agreement supersedes) Contractor (or its predecessor) agreed to limit its revenues from ratepayers for recycling services to a surcharge of 4.24% applied to refuse collection rates. This method resulted in a shortfall (loss plus unrealized profit) from recycling operations through the SBWMA service area estimated to equal \$1,827,000 in 1999. The SBWMA and Agency believe that such a loss creates a disincentive for Contractor to expend additional funds for recycling and have agreed to provide the same profit for recycling as for refuse collection operations. In order to minimize the rate impact in a single year from eliminating this loss, Contractor, SBWMA and Agency believe that phasing-in the transition from the current loss to the new profit level is desirable. Therefore, when calculating Contractor's Compensation for 2000, the calculations have been made using the methodology described in Exhibit D, except that \$1,218,000 has been subtracted from the calculated Revenue Requirement. Similarly in 2001, \$609,000 shall be subtracted from the calculated Revenue Requirement. In 2002, no amount shall be subtracted from the Revenue Requirement for these purposes.

6.05 Contractor's Compensation for Each Subsequent Rate Year.

A. Contractor's Application. By August 1, of each Rate Year, the Contractor shall submit a Request for Adjustment to Compensation. This request shall be prepared in accordance with the procedures and submitted in a form as described in Exhibit D. The Contractor will provide all information requested by the Agency and the SBWMA as part of their review of the Contractor's application, including, but not limited to, all information from related parties requested by the Agency and the SBWMA regarding any transactions between the Contractor and any Related Party Entity.

1 **B. Determination of Contractor's Compensation.** The Agency and the
2 SBWMA, or their representative, will review the Contractor's application for compliance with
3 this Agreement, accuracy, and reasonableness.
4

5 **C. Review Methodology.** The methodology for reviewing the Contractor's
6 Application is described in Exhibit D. The Agency shall use its best efforts to make the
7 adjustment effective by January 1, of the following year. However, the Agency shall not make
8 any retroactive adjustments to compensate for any delay in calculating the Contractor's
9 Compensation which results from the failure of the Contractor to submit its request by August
10 1, and/or respond promptly and completely to requests of the Agency and SBWMA for
11 information related to any of the calculations required by this Section or from appeals of the
12 determination to the Agency and SBWMA which extends the process of determination.
13

14 **6.06 Lease or Purchase of Equipment and Facilities and Hiring of Additional**
15 **Employees.** In order to protect against unforeseen rate increases related to unanticipated
16 increases in Contractor expenses, Contractor agrees not to enter into leases, purchase significant
17 quantities or change the types of new vehicles, equipment or facilities or hire additional
18 employees that materially affect the Contractor's profit without the advance, written approval
19 of Agency.
20

21 **6.07 Performance Incentives.** In addition to the operating ratio allowed the
22 Contractor, the Contractor shall be entitled to the following performance incentives: which are
23 also described in Exhibit D1 of this Agreement:
24

25 **A.** If Contractor diverts from 90% - 100% of the annual Commercial Program
26 Guarantees shown in Section 4.05, Contractor shall receive \$2,000 for each 1,000 tons diverted
27 above 90% up to 100%. (No credit shall be given for fractions of this 1,000 ton unit.)
28

29 **B.** If Contractor diverts from 101% - 200% of the Commercial Program
30 Guarantee shown in Section 4.05, Contractor shall receive \$4,000 for each 1,000 tons diverted
31 above 100%. (No credit shall be given for fractions of this 1,000 ton unit and no payment shall be
32 made for tons diverted above 200% of the Commercial Program Guarantee.)
33

34 **C.** Each year of the Agreement, the amount shown in the Commercial
35 Program Guarantee shall be increased (for purposes of this Section 6.07 only), if the actual
36 amount of diversion is greater than shown in 4.05, to the actual amount of diversion and the
37 diversion tonnage shown in 6.07 A and B above shall be increased as indicated (i.e., 90% to 100%
38 and 101% to 200% of the actual tonnage diverted).
39

40 **6.08 Cost Savings Incentives.** Pursuant to the procedure herein described, Contractor
41 is encouraged to achieve cost savings in its operations which will provide extraordinary rate
42 reductions to Agency's ratepayers. Contractor may, concurrently with its submittal of reports
43 for the Contractor Compensation modification process, submit in writing, a proposal for any
44 extraordinary Operating Cost savings (a "Cost Savings Program" or "Program"). Agency shall

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

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

14	15	16				
		17				
	<u>Party Benefited</u>	<u>Years</u>				
		1	2	3	4	5 and above
17	% to Contractor	80%	60%	40%	20%	0
18	% to Rate Payer	20%	40%	60%	80%	100%

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

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

34 It is understood that some proposals made by Contractor may require significant capital
 35 investments by Contractor, and that the allocation of the Operating Cost savings there from to
 36 Contractor in accordance with the above table may be insufficient to justify the investment. In
 37 such instances, Contractor and Agency, upon the recommendation of the SBWMA, may agree
 38 upon a reasonable return to Contractor for its investment in lieu of distributing the benefits in
 39 accordance with the above table. Should Contractor and Agency fail to agree on such Program,
 40 Contractor shall not be required to initiate the Program, nor incur further significant additional
 41 capital investment beyond that required for normal operations.

43 **6.09 Interim Compensation Adjustment.** In the event the Agency directs the
 44 Contractor to change its operations in accordance with Section 2.09 of this Agreement or in the

1 event of an extraordinary or unanticipated event including a change in law, or an adjustment to
2 the Disposal or Transfer Rate, and such adjustment materially affects the Contractor's cost of
3 operations, then the Contractor or the Agency may submit a request for an interim
4 compensation adjustment. In such case, the Contractor shall prepare a complete application in
5 accordance with Exhibit D, unless otherwise agreed to by the Agency.
6

7 **6.10 Initial Rates.** The rates for the Rate Year ending 1999, are those established by
8 Agency Resolution No. 8709, (a copy of which is attached as Exhibit E), unless amended in
9 accordance with this Agreement. Unless and until the rates set forth on Exhibit E are adjusted
10 by the Agency, the Contractor will provide the service required by this Agreement, charging no
11 more and no less than the rates authorized by Exhibit E unless authorized to do so by the
12 Agency.
13

14 **6.11 Subsequent Rates.** From time to time and based on changes to the Contractor's
15 Compensation, as described above, and other considerations, the Agency shall revise the initial
16 rates by resolution.
17

18 **ARTICLE 7**

19 **REVIEW OF SERVICES AND PERFORMANCE**

20

21 **7.01 Performance Hearing.** Agency may hold a public hearing on or about the first
22 anniversary date of this Agreement and each subsequent anniversary, at which time Contractor
23 shall be present and shall participate, to review the Solid Waste Collection, Recycling, waste
24 reduction, processing and other diversion services and overall performance. The purpose of the
25 hearing is to provide for a discussion and review of technological, economic, and regulatory
26 changes in Collection, waste reduction, Recycling, processing and Disposal to achieve a
27 continuing, advanced Solid Waste Collection, waste reduction and diversion system; and to
28 ensure services are being provided with adequate quality, effectiveness and economy.
29

30
31 Forty-five (45) days after receiving notice from Agency of a Solid Waste performance
32 review hearing, Contractor shall, at a minimum, submit a report to Agency indicating the
33 following:
34

35 **A.** Changes recommended and/or new services to improve Agency's ability to
36 meet the Agency's waste reduction and recycling goals and those of AB 939 and to contain costs
37 and minimize impacts on rates.
38

39 **B.** Any specific plans for provision of changed or new services by Contractor.
40 The reports required by this Agreement regarding service recipient Complaints shall be used as
41 one basis for review. Contractor may submit other relevant performance information and
42 reports for consideration. Agency may request Contractor to submit specific information for the
43 hearing. In addition, any service recipient may submit comments or Complaints during or
44 before the hearing, either orally or in writing, and these shall be considered.

1 C. Topics for discussion and review at the Solid Waste performance hearing
2 shall include, but shall not be limited to, services provided, feasibility of providing new
3 services, application of new technologies, service recipient Complaints, amendments to this
4 Agreement, developments in the applicable laws and regulations, new initiatives for meeting or
5 exceeding waste reduction and recycling goals, regulatory constraints and Contractor
6 performance. Agency and Contractor may each select additional topics for discussion at any
7 performance review hearing.
8

9 Not later than sixty (60) days after the conclusion of each performance hearing,
10 Agency may issue a report. As a result of the review, Agency may require Contractor to
11 provide expanded or new services within a reasonable time and for reasonable rates and
12 compensation and Agency may direct Contractor to take corrective actions for any performance
13 inadequacies.
14

15
16 **ARTICLE 8**
17 **RECORDS, REPORTS AND INFORMATION REQUIREMENTS**
18

19 **8.01 General.** Contractor shall maintain such accounting, statistical and other records
20 related to its performance under this Agreement as shall be necessary to develop the financial
21 statements and other reports required by this Agreement. Also, Contractor agrees to conduct
22 data collection, information and record keeping, and reporting activities needed to comply with
23 and to meet the reporting and Solid Waste program management needs of the Agency and
24 AB939 and other Federal and State and local laws and regulations and the requirements of this
25 Agreement. To this extent, such requirements set out in this and other Articles of this
26 Agreement shall not be considered limiting or necessarily complete. In particular, this Article is
27 intended to only highlight the general nature of records and reports and their minimum content
28 and is not meant to comprehensively define what the records and reports are to be and their
29 content. Further, with the written direction or approval of Agency, the records and reports to
30 be maintained and provided by Contractor in accordance with this and other Articles of the
31 Agreement shall be adjusted in number, format, or frequency. Records and reporting may be
32 revised to reflect current record keeping and reporting.
33

34 **8.02 Records.**
35

36 **8.02.1 General.** Contractor shall maintain records required to conduct its
37 operations, to support requests it may make to Agency, and to respond to requests from
38 Agency in the conduct of Agency business. Adequate record security shall be maintained to
39 preserve records from events that can be reasonably anticipated such as a fire, theft and
40 earthquake. Electronically maintained data/records shall be protected and backed up. All
41 records shall be maintained for five (5) years after the expiration of this Agreement.
42

1 Contractor agrees that the records of any and all companies conducting
2 operations addressed in the Agreement shall be provided or made available to Agency and its
3 official representatives during normal business hours.
4

5 **8.02.2 Maintenance of Financial and Operational Records.** 6

7 **A. General.** In order to effectuate the periodic rate review
8 contemplated by Article 6, it is necessary for Contractor to maintain accurate, detailed financial
9 and operational information in a consistent format and to make such information available to
10 the Agency and the SBWMA in a timely fashion.
11

12 **B. Contractor's Accounting Records.** Contractor shall maintain
13 accurate and complete accounting records containing the underlying financial and operating
14 data relating to and showing the basis for computation of all costs associated with providing
15 services under this Agreement. The accounting records shall be prepared in accordance with
16 Generally Accepted Accounting Principles (GAAP) consistently applied.
17

18 **C. Inspection of Records.** The Agency, its auditors and other agents
19 selected by the Agency, shall have the right, during regular business hours, to conduct
20 unannounced on-site inspections of the records and accounting systems of Contractor and to
21 make copies of any documents relevant to this Agreement.
22

23 **D. Retention of Records.** Unless otherwise herein required, Contractor
24 shall retain all records and data required to be maintained by this Agreement for at least five (5)
25 years.
26

27 Records and data required to be maintained that are specifically directed to
28 be retained shall be retrieved by Contractor and made available to the Agency.
29

30 Records and data required to be maintained that are not specifically
31 directed to be retained that are, in the sole opinion of the Agency, material to the rate review or
32 to a determination of the Contractor's performance under this Agreement, shall be retrieved by
33 Contractor and made available to the Agency.
34

35 Records and data required to be maintained that are not specifically
36 directed to be retained and that are not material to a rate review and/or not required for the
37 determination of the Contractor's performance do not need to be retrieved by Contractor. In
38 such a case, however, the Agency may make reasonable assumptions regarding what
39 information is contained in such records and data, and such assumption shall be conclusive in
40 whatever action the Agency takes.
41

42 **E. Delivery of Financial Statements, Auditors' Reports.** Within 120
43 days after the close of each Fiscal Year, Contractor shall deliver to the Agency four (4) copies of
44 the audited consolidated financial statements of the operations pursuant to this Agreement for

1 the preceding Fiscal Year. These statements shall have been examined by and shall be
2 accompanied by the report of an independent certified public accountant containing such
3 accountant's representation that it has examined the Contractor's financial statements in
4 accordance with Generally Accepted Auditing Standards (GAAS) and the accountant's opinion
5 that such statements have been prepared in accordance with Generally Accepted Accounting
6 Principles (GAAP) consistently applied and fairly reflect the results of operations and
7 Contractor's financial condition.

8
9 **8.02.3 Solid Waste Records.** Records shall be maintained by Contractor for
10 Agency relating to:

11
12 A. Service recipient services and billing;

13
14 B. Character, weight and volume of Solid Waste by type (e.g., Solid
15 Waste, Recyclable Materials, and Plant Materials), especially as related to reducing and
16 diverting Solid Waste. Where possible, information is to be separated between service
17 recipients residing in Single-Family and Multi-Family Dwelling Units from occupants of
18 Commercial, industrial and institutional Premises.

19
20 C. Routes;

21
22 D. Facilities, equipment and personnel used;

23
24 E. Facilities and equipment operations, maintenance and repair;

25
26 F. Processing and Disposal of Solid Waste;

27
28 G. Complaints; and,

29
30 H. Missed pick-ups.

31
32 Contractor shall maintain records of all Solid Waste Collected in the
33 Agency for the period of this Agreement and all extensions to this Agreement or successor
34 Agreements. In the event Agency requests certain records or Contractor discontinues providing
35 services to Agency, Contractor shall provide all records of all Solid Waste requested to Agency
36 within thirty (30) days of discontinuing service. Records shall be in chronological and
37 organized form and readily and easily interpreted.

38
39 **8.02.4 CERCLA Defense Records.** Agency views the ability to defend against
40 CERCLA and related litigation as a matter of great importance. For this reason, the Agency
41 regards the ability to prove where Solid Waste Collected in the Agency area was taken for
42 Transfer or Disposal, as well as where it was not taken, to be matters of concern. Contractor
43 shall maintain data retention and preservation systems which can establish where Solid Waste
44 Collected in the Agency area was disposed of (and therefore establish where it was not

1 landfilled). This provision shall survive the expiration of the period during which Collection
2 services are to be provided under this Agreement. Contractor shall maintain these records for a
3 minimum of ten (10) years. Contractor shall provide these records to Agency in an organized
4 and indexed manner rather than destroying or disposing of them.
5

6 **8.02.5 Recyclable Materials, and Plant Materials Collection Service Records.**

7 Records shall be maintained for Agency that relate to:
8

9 A. Records described in 8.02.3, above;

10 B. Recyclable Materials, and Plant Materials Collection participation
11 especially as related to determining participation and set-out rates and implementing programs
12 to increase existing participation and to expand diversion (names, addresses, contacts made,
13 etc.);
14

15 C. Recyclable Material sales value;

16 D. Weight of material by type; and,
17

18 E. End use and markets.
19
20
21

22 **8.02.6 Transfer and Disposal Records.** Contractor shall maintain records of
23 Transfer, Disposal and processing of all Solid Waste Collected in Agency for the period of this
24 Agreement and all extensions to this Agreement or successor Agreements at the Transfer
25 Station or Disposal Site. In the event Contractor discontinues providing Solid Waste services to
26 Agency, Contractor shall provide all records of Transfer and Disposal or processing of all Solid
27 Waste Collected in Agency within thirty (30) days of discontinuing service. Records shall be in
28 chronological and organized form and readily and easily interpreted.
29

30 **8.02.7 Other Programs' Records.** Records for other programs shall be tailored to
31 specific needs. In general, they shall include:
32

33 A. Plans, tasks, and milestones; and,
34

35 B. Accomplishments in terms such as dates, activities conducted,
36 quantities of products used, produced or distributed, and numbers of participants and
37 responses.

1 **8.03 Reports.**

2
3 **8.03.1 Report Formats and Schedule.** Records shall be maintained in forms and
4 by methods that facilitate flexible use of data contained in them to structure reports, as needed.
5 Reports are intended to compile recorded data into useful forms of information that can be used
6 to, among other things:

7
8 A. Determine and set rates and evaluate the financial efficacy of
9 operations;

10
11 B. Evaluate past and expected progress towards achieving the
12 Agency's diversion goals and objectives;

13
14 C. Determine needs for adjustment to programs; and,
15 evaluate service recipient service and Complaints.

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

24
25 Quarterly reports shall be submitted within forty-five (45) calendar days
26 after the end of the report quarter. Annual reports shall be submitted before April 1st following
27 the reporting year.

28
29 All reports shall be submitted to:

30
31 If to the Agency: City Manager
32 City of Belmont
33 1070 Sixth Avenue
34 Belmont, CA 94002

35
36 If to the SBWMA: SBWMA Chairman
37 City of San Carlos
38 600 Elm Street
39 San Carlos, CA 94070

40
41 If to the Contractor: District Manager
42 Browning-Ferris Industries, San Mateo District
43 225 Shoreway Road
44 San Carlos, CA 94070

1 **8.03.2 Quarterly Reports.** The information listed below shall be the minimum
2 reported for each service:

3
4 **A. Solid Waste Services.**

5
6 1. Solid Waste Collected by Contractor and when possible,
7 sorted between residents of Single-Family Dwelling Units and Multi-Family Dwelling Units
8 from occupants of Commercial and Institutional Premises.

9
10 2. The Disposal Site or Transfer Station used, in tons.

11
12 3. Complaint summary, for month and cumulative for report
13 year, as above. Summarized by nature of Complaints on a compatible computer disc.

14
15 4. Narrative summary of problems encountered (including
16 scavenging) and actions taken with recommendations for Agency, as appropriate.

17
18 5. Description of promotional and public education materials
19 created or distributed.

20
21 6. A summary or copy of the Hazardous Waste records required
22 under Section 8.02.4.

23
24 7. Other information or reports that Agency may reasonably
25 request or require.

26
27 **B. Recyclable Materials and Plant Materials Services.** Contractor shall
28 provide the same information as Solid Waste Service, but for Recyclable Materials and Plant
29 Materials Services, Contractor shall provide:

30
31 1. The percentage diverted by material type and category
32 (residential, Commercial, and Industrial).

33
34 2. Number of accounts by category shown for each month of
35 reporting year and previous years, as above.

36
37 3. Participation and set-out rates in same format as number of
38 accounts.

39
40 4. End Uses. Sales statement showing: quantity of material by
41 type and type of end-use.

42
43 5. Recyclable Material sales revenue by material type.

1 **C. Meet and Confer with Agency and/or SBWMA .** Beginning on the
2 effective date of the Agreement, and then on a quarterly basis thereafter, Contractor shall meet
3 with the Agency and/or SBWMA to describe the progress of each active diversion program.
4 Contractor should document the results of the programs on a monthly basis, including at a
5 minimum the tonnage diverted by material type, the end use or processor of the diverted
6 materials and the cost per ton for transporting and processing each type of material and other
7 such information requested by the Agency and/or SBWMA necessary to evaluate the
8 performance of each program.
9

10 At each quarterly meeting, the Agency and/or SBWMA and Contractor
11 shall have the opportunity to revise the program based on mutually agreed upon terms. The
12 Agency and/or SBWMA shall have the right to terminate a program if in its sole discretion the
13 Contractor is not cost effectively achieving the program's goals and objectives. Prior to such
14 termination, the Agency and/or SBWMA shall meet and confer with the Contractor for a period
15 of up to 90 days to resolve the Agency and/or SBWMA's concerns. Thereafter, the Agency
16 and/or SBWMA may utilize a third party to perform these services if the Agency and/or
17 SBWMA reasonably believes the third party can improve on Contractor's performance and/or
18 cost. Notwithstanding these changes, Contractor should continue the program during the meet
19 and confer period and, thereafter, until the third party takes over the program.
20

21 **D. Other Programs.** For each program, provide activity related and
22 narrative reports on goals and milestones and accomplishments. Describe problems
23 encountered, actions taken and any recommendations to facilitate progress. Describe vehicles,
24 personnel, and equipment utilized for each program.
25

26 **E. Summary Assessment.** Provide a summary assessment of the
27 overall Solid Waste program from Contractor's perspective relative to financial and physical
28 status of program. The physical status summary is to report: operating efficiency, economy
29 and effectiveness of the program relative to the goals and objectives of this Agreement
30 including particularly the Agency's diversion goals; provide recommendations and plans to
31 improve; highlight significant accomplishments and problems.
32

33 **8.03.3 Annual Report Requirements.** Annual Report shall be in the form of the
34 quarterly reports and shall provide the same type of information as required pursuant to
35 Section 8.03 and of this Agreement, summarized for the preceding four quarters. In addition,
36 Contractor and Related Party Entities' annual financial reports/statements shall be included.
37 The annual report shall also include a complete inventory of equipment used to provide all
38 services, and a list of Contractor's officers and members of its board of directors.

39 **A. Financial Information.** Within 120 days after the close of each Fiscal
40 Year, Contractor shall deliver to the Agency four (4) copies of the audited consolidated financial
41 statements and profit and loss statements for operations under this Agreement of Contractor for
42 the preceding fiscal year. If the financial statements are consolidated with operations not under
43 the Agreement, then they shall include a supplemental combining schedule showing

1 Contractor's results of operations, including the specific revenues and expenses in connection
2 with the operations provided for in this Agreement and others included in such financial
3 statements. The financial statements and footnotes shall be prepared in accordance with
4 Generally Accepted Accounting Principles (GAAP) consistently applied and fairly reflecting the
5 results of operation and Contractor's financial condition. Annual financial statements shall be
6 audited, in accordance with Generally Accepted Auditing Standards (GAAS) by a Certified
7 Public Accountant (CPA) licensed (in good standing) to practice public accounting in the State
8 of California as determined by the State of California Department of Consumer Affairs Board of
9 Accountancy, and that the CPA opinion on Contractor's annual financial statements shall be
10 unqualified or with an exception for a quantified exception to GAAP, and that the supplemental
11 schedule be prepared on a compiled basis.

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

21 Contractor agrees that all financial transactions with all Related
22 Party Entities shall be approved in advance in writing and disclosed annually (coinciding with
23 Contractor's annual audited financial statements referred to in this Section 8.03) to the Agency
24 in a separate disclosure letter to the Agency. This letter shall include, but not be limited to, the
25 following information:

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

32 At the Agency 's request, Contractor shall provide the Agency with
33 copies of working papers or other documentation deemed relevant by the Agency relating to
34 information shown in the annual disclosure letter. The annual disclosure letter shall be
35 provided to the Agency within ninety (90) days of Contractor's Fiscal Year end.

36 **8.03.4 Resource Recovery Plan.** As part of its Annual Report to the SBWMA
37 described in Section 8.03.3, Contractor shall submit to the SBWMA an annual proposal
38 describing proposed resource recovery programs, their diversion potential and associated
39 detailed costs for programs that Contractor believes can significantly increase diversion. Within
40 sixty days, SBWMA shall respond to the Plan in writing. If the Parties reach agreement on

1 implementation of additional programs, Contractor shall be obligated to implement those
2 programs on a schedule and for a cost agreed to by the Parties.

3
4 **8.04 Adverse Information.**

5
6 **A. Reporting Adverse Information.** Contractor shall provide Agency two
7 copies (one to the Agency Manager, one to the Agency Attorney) of all reports, pleadings,
8 applications, notifications, Notices of Violation, communications or other material relating
9 specifically to Contractor's performance of services pursuant to this Agreement, submitted by
10 Contractor to, or received by Contractor from, the United States or California Environmental
11 Protection Agency, the California Integrated Waste Management Board, the Securities and
12 Exchange Commission or any other federal, state or local agency, including any federal or state
13 court Copies shall be submitted to Agency simultaneously with Contractor's filing or
14 submission of such matters with said agencies. Contractor's routine correspondence to said
15 agencies need not be routinely submitted to Agency, but shall be made available to Agency
16 promptly upon Agency's written request.

17
18 **B. Failure to Report.** The refusal or failure of Contractor to file any required
19 reports, or to provide required information to Agency, or the inclusion of any materially false or
20 misleading statement or representation by Contractor in such report shall be deemed a material
21 breach of the Agreement as described in Section 11.01 and shall subject Contractor to all
22 remedies which are available to the Agency under the Agreement or otherwise.

23
24 **8.05 Right to Inspect Records.** Agency shall have the right to inspect or review the
25 payroll tax reports, specific documents or records required expressly or by inference pursuant
26 to this Agreement, or any other similar records or reports of Contractor or its Related Party
27 Entities that Agency shall deem, in its sole discretion, necessary to evaluate annual reports,
28 compensation applications provided for in this Agreement and Contractor's performance
29 provided for in this Agreement.

30
31
32 **ARTICLE 9**
33 **INDEMNIFICATION, INSURANCE AND BOND**

34
35 **9.01 Indemnification.**

36
37 **A. General Indemnification.** Contractor shall indemnify, defend and hold
38 harmless, at Contractor's sole cost and expense, the Agency, the SBWMA, their officers,
39 employees and agents, from and against any and all loss, liability, penalty, forfeiture, claim,
40 demand, action, proceeding or suit, of any and every kind and description, whether judicial,
41 quasi-judicial or administrative in nature including, but not limit to, injury to and death of any
42 Person and/or damage to property or for contribution or indemnity claimed by third parties
43 (collectively, the "Claims"), arising out of or occasioned in any way by, directly or indirectly,
44 Contractor's performance of, or its failure to perform, its obligations under the Agreement, but

1 not limited to, Contractor's failure to comply with applicable laws or the Contractor's breach of
2 its representation and warranties in this Agreement. The foregoing shall also apply if the Claim
3 is caused by the joint negligence of Agency and Contractor, but only to the extent to
4 Contractor's negligence. This indemnification will not extend to Claims to the extent they are
5 caused by the sole negligence or intentional misconduct or omission of the Agency.

6
7 **B. Hazardous Substance Indemnification.** Contractor shall indemnify,
8 defend with counsel selected by Agency or SBWMA, protect and hold harmless the Agency and
9 SBWMA, its officers, Directors, employees, volunteers, and agents, and member agencies, their
10 officers, Directors, employees, volunteers, and agents, (collectively, indemnities) from and
11 against all claims, damages (including but not limited to special, consequential, natural
12 resources and punitive damages), injuries, costs, (including without limit any and all response,
13 remediation and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits,
14 legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including
15 without limit attorneys' expert witness fees and costs incurred in connection with defending
16 against any of the foregoing or in enforcing this indemnity), (Collectively, "Damages") or any
17 kind whatsoever paid, incurred or suffered by, or asserted against, indemnities arising from or
18 attributable to the acts or omissions of Contractor, its officers, directors, employees, companies
19 or agents, whether or not negligent or otherwise culpable, in connection with or related to the
20 performance of this Agreement, including without limit damages arising from or attributable to
21 any operations, repair, clean-up or detoxification, or preparation and implementation of any
22 removal, remedial, response, closure, post-closure or other plan (regardless of whether
23 undertaken due to governmental action) concerning any Hazardous Substance, Hazardous
24 Waste, and/or construction and street debris, or other waste Collected under this Agreement.
25 This indemnity afforded indemnities, shall only be limited to exclude coverage for intentional
26 wrongful acts and negligence of indemnities, indemnities delivery of material to Contractor
27 which does not conform to the descriptions of Solid Waste under this Agreement and as
28 provided below. The forgoing indemnity is intended to operate as an agreement in recognition
29 of §107(e) of the Comprehensive Environmental Response, Compensation and Liability Act,
30 CERCLA, 42 USC. §9607(e) and California Health and Safety Code §25364, to defend, protect,
31 hold harmless, and indemnify Agency from liability. This provision is in addition to all other
32 provisions in this Agreement and is intended to survive the end of the Term of this Agreement.
33 Nothing in this paragraph shall prevent Contractor from seeking indemnification or
34 contribution from Persons or entities other than indemnities, for any liabilities incurred by
35 Contractor, or the indemnities. As appropriate, Contractor's parent company should provide
36 the guarantees necessary to meet this provision.

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

1 **9.02 AB 939 Indemnification.** In addition to all other relief provided Agency and
2 SBWMA under this Agreement, Contractor agrees to indemnify and hold harmless Agency, the
3 SBWMA , their officers, Directors, Councils, employees, and agents from and against all fines
4 and/or penalties imposed by the California Integrated Waste Management Board in the event
5 the source reduction and Recycling goals or any other requirement of the Act are not met by the
6 Agency with respect to the waste stream Collected under this Agreement and such failure is
7 due to the failure of Contractor to meet its obligations under this Agreement and/or for delays
8 in providing information that prevents Agency or Agency from submitting reports required by
9 AB 939 in a timely manner.

10
11 **9.03 Insurance.**

12
13 **A. Minimum Scope of Insurance.** Coverage shall be at least as broad as:

14
15 1) The most recent editions of Insurance Services Office form number
16 GL 0002 covering Comprehensive or Commercial General Liability and Insurance Services
17 Office form number GL 0404 covering Broad Form Comprehensive or Commercial General
18 Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence"
19 form CG 0001).

20
21 2) The most recent editions of Insurance Services Office form number
22 CA 0001 covering Automobile Liability, code 1 "any auto" and endorsement CA 0025.

23
24 3) Workers' Compensation insurance as required by the Labor Code of
25 the State of California and Employers Liability insurance.

26
27 **B. Minimum Limits of Insurance.** Contractor shall maintain limits no less
28 than:

29
30 1) Comprehensive General Liability: Ten Million Dollars (\$10,000,000)
31 combined single limit per occurrence for bodily injury, Personal injury and property damage.

32
33 2) Automobile Liability: Ten Million Dollars (\$10,000,000) combined
34 single limit per accident for bodily injury and property damage.

35
36 3) Workers' Compensation and Employers Liability: Workers'
37 compensation limits as required by the Labor Code of the State of California and Employers
38 Liability limits of \$1,000,000 per accident.

39
40 **C. Deductibles and Self-Insured Retentions.** Any deductibles or self-insured
41 retentions are the responsibility of Contractor and must be declared to Agency. At the option of
42 the Agency, either: the insurer shall reduce or eliminate such deductibles or self-insured
43 retentions as respects the Agency, SBWMA , their officials and employees, directors, agents and
44 volunteers; or Contractor shall procure a bond guaranteeing payment of losses and related
45 investigations, claim administration and defense expenses.

1 **D. Other Insurance Provisions.** The policies are to contain, or be endorsed to
2 contain, the following provisions:

3
4 **1) General Liability and Automobile Liability Coverages**

5
6 a) The Agency, SBWMA, their officials, employees, directors,
7 agents and volunteers are to be covered as additional insured as respects: liability arising out of
8 activities performed by or on behalf of Contractor; products and completed operations of
9 Contractor; Premises owned, leased or used by Contractor; or automobiles owned, leased, hired
10 or borrowed by Contractor. The coverage shall contain no special limitations on the scope of
11 protection afforded to the Agency, SBWMA, its officials, employees or volunteers.

12
13 b) Contractor's insurance coverage shall be primary insurance as
14 respects Agency, SBWMA , their officials, directors, employees and volunteers. Any insurance
15 or self-insurance maintained by Agency, SBWMA , its officials, employees, directors, agents or
16 volunteers shall be excess of Contractor's insurance and shall not contribute with it.

17
18 c) Any failure to comply with reporting provisions of the
19 policies shall not affect coverage provided to Agency, SBWMA , their officials, employees,
20 directors, agents or volunteers.

21
22 d) Coverage shall state that Contractor's insurance shall apply
23 separately to each insured against whom claim is made or suit is brought, except with respect to
24 the limits of the insurer's liability.

25
26 **2) Workers' Compensation and Employers Liability Coverage** The
27 insurer shall agree to waive all rights of subrogation against Agency, SBWMA, its officials,
28 employees, directors, agents and volunteers for losses arising from work performed by
29 Contractor for Agency.

30
31 **3) All Coverages -** Each insurance policy required by this clause shall
32 be endorsed to state that coverage shall not be suspended, voided, canceled by either party,
33 reduced in coverage or in limits except after thirty (30) days' prior written notice by certified
34 mail, return receipt requested, has been given to Agency.

35
36 **E. Acceptability of Insurers.** The insurance policies required by this Section
37 shall be issued by an insurance Company or companies admitted or approved non-admitted to
38 do business in the State of California subject to the Authority of the California Insurance
39 Commissioner and with a rating in the most recent edition of Best's Insurance Reports of size
40 category VII or larger and a rating classification of A or better.

41
42 **F. Verification of Coverage.** Contractor shall furnish Agency with certificates
43 of insurance and with original endorsements affecting coverage required by this clause. The
44 certificates and endorsements for each insurance policy are to be signed by a Person authorized
45 by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on

1 forms provided by or acceptable to Agency and are to be received and approved by Agency
2 before work commences. Agency reserves the right to require complete, certified copies of all
3 required insurance policies, at any time.

4
5 **G. Subcontractor.** Contractor shall include all subcontractors as insured under
6 its policies or shall furnish separate certificates and endorsements for each subcontractor. All
7 coverage's for subcontractors shall be subject to all of the requirements stated herein.

8
9
10 **H. Required Endorsements.**

11
12 1) The Workers' Compensation policy shall contain an endorsement in
13 substantially the following form:

14
15 "Thirty (30) days prior written notice shall be given to Agency in the
16 event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be
17 sent to:

18 City Manager
19 City of Belmont
20 1070 Sixth Avenue
21 Belmont, CA 94002

22
23 2) The Public Liability policy shall contain endorsements in
24 substantially the following form:

25
26 a) "Thirty (30) days prior written notice shall be given to Agency
27 in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice
28 shall be sent to:

29 City Manager
30 City of Belmont
31 1070 Sixth Avenue
32 Belmont, CA 94002

33
34 b) "Agency, SBWMA, its officers, employees, directors , agents
35 and volunteers are additional insured on this policy.

36
37 c) "This policy shall be considered primary insurance as respects
38 any other valid and Collectible insurance maintained by Agency, including any self-insured
39 retention or program of self-insurance, and any other such insurance shall be considered excess
40 insurance only."

41
42 d) Inclusion of Agency and SBWMA as an insured shall not
43 affect Agency's or SBWMA 's rights as respects any claim, demand, suit or judgment brought or
44 recovered against Contractor. This policy shall protect Contractor and Agency in the same
45 manner as though a separate policy had been issued to each, but this shall not operate to

1 increase Contractor's liability as set forth in the policy beyond the amount shown or to which
2 Contractor would have been liable if only one party had been named as an insured."
3

4 **I. Delivery of Proof of Coverage.** On or before the Effective Date, Contractor
5 shall furnish the Agency with certificates of each policy of insurance required hereunder. Such
6 certificates shall show the type and amount of coverage, effective dates, and dates of expiration
7 of policies and shall note all required endorsements. The certificates for each policy are to be
8 signed by a Person authorized at the insurer to bind coverage on its behalf. If at any time the
9 Agency so requests, complete certified copies of each policy, together with all endorsements,
10 shall also be promptly delivered to the Agency. Contractor shall periodically furnish renewal
11 certificates to the Agency to demonstrate maintenance of the required coverage throughout the
12 Term.
13

14 **J. Other Insurance Requirements.**
15

16 1) In the event any services are delegated to a subcontractor,
17 Contractor shall require such subcontractor to provide statutory workers' compensation
18 insurance and employers liability insurance for all of the subcontractor's employees engaged in
19 the work. The liability insurance required by this Section shall cover all subcontractors or the
20 subcontractor must furnish evidence of insurance provided it meets all of the requirements of
21 this Section.
22

23 2) Contractor shall comply with all requirements of the insurer's
24 policies. The carrying of insurance shall not relieve Contractor from any obligation under this
25 Agreement. If any claim is made by any third party against Contractor or a subcontractor on
26 account of any occurrence related to this Agreement, Contractor shall promptly report the facts
27 in writing to the insurance carrier and to the Agency.
28

29 3) If Contractor fails to procure and maintain any insurance by this
30 Agreement, the Agency may take out and maintain, at Contractor's expense, such insurance as
31 Agency may reasonably deem proper in accordance with the limits set forth herein and
32 Contractor shall reimburse the Agency for the Cost of such insurance within thirty days of
33 being invoiced by Agency for such costs.
34

35 4) The Comprehensive General Liability insurance required by the
36 Section shall be written on an occurrence (not accident) rather than a "claims made" basis, if
37 such coverage is obtainable. If its is not obtainable, Contractor shall notify Agency and arrange
38 for "tail coverage" to protect the Agency from claims filed during the three years immediately
39 following the expiration or termination of this Agreement relating to incidents which occurred
40 prior to such expiration or termination.
41

42 **9.04 Faithful Performance Bond.** Contractor shall file with the Agency a bond
43 securing Contractor's faithful performance of its obligations under this Agreement and shall
44 maintain such bond on an annual basis and shall be annually renewed thereafter throughout the

1 Term of this Agreement and evidenced by a continuation certificate. The form of the bond shall
2 be as set out in Exhibit G. The principal sum of the bond shall be \$672,250. The performance
3 bonds required by this Sections shall be issued by a bonding Contractor or companies
4 authorized to do business in the State of California and with a rating in the most recent edition
5 of Best's Insurance Reports of size category VII or larger and a rating classification of A or
6 better.

7
8
9 **ARTICLE 10**
10 **EMERGENCY OPERATIONS**

11
12 **10.01 Purpose.** The purpose of this Article is to provide a procedure for Collecting Solid
13 Waste from Agency's Service Area upon the occurrence of an emergency condition resulting
14 from the causes described in Section 11.04 which endanger the public health, safety, and
15 welfare. The parties acknowledge that either temporary cessation or cessation of indeterminate
16 duration of the services to be provided by Contractor hereunder may result in conditions
17 detrimental to the public health, safety, and welfare, and that, in order to protect the public,
18 invoking the extraordinary provisions of this Article may be necessary.

19
20 **10.02 Emergency Condition.**

21
22 **A. Cause.** "Emergency Condition" as used in this Article means the existence
23 of a condition or conditions which threaten or threatens the public health, safety, and welfare
24 resulting from Contractor's failure or inability to perform its duties and obligations hereunder
25 due to the effect upon Contractor of fire, flood, storm, earthquake, or other natural calamity,
26 riot, insurrection, public disobedience, labor controversy, labor strike, insolvency of Contractor,
27 or similar condition. "Emergency Condition" does not include the results of failure of
28 Contractor to comply with standards and procedure implemented pursuant to this Agreement
29 or other substandard performance by the Contractor.

30
31 **B. Hearing; Determination.** Agency may hold a hearing on the question of
32 the existence of an emergency condition upon giving not less than forty-eight (48) hours prior
33 written notice to Contractor and to all member agencies of SBWMA of said hearing. At the
34 hearing, Contractor and any and all interested Persons shall be given the opportunity to be
35 heard on the question aforesaid. Upon conclusion of the hearing, Agency conducting the
36 hearing shall determine if an emergency condition exists in the Service Area of Agency. If it is
37 determined that an emergency condition does exist, the Agency shall, by resolution, declare the
38 existence of the emergency condition, and transmit a certified copy of the resolution to
39 Contractor and to all member agencies of SBWMA.

40
41 **10.03 Emergency Operations.** From and after the declaration of the existence of an
42 emergency condition pursuant to Section 10.02, SBWMA and/or Agency may assume and carry
43 out, as the "Emergency Operator," the Solid Waste Collection operations of Contractor
44 hereunder if Agency's Service Area is within the area to which the emergency condition

1 pertains. Except as provided in Section 10.04, during the period the emergency condition exists,
2 all revenues which, but for the emergency condition would accrue hereunder to Contractor,
3 shall instead accrue and be payable to the Emergency Operator.
4

5 **10.04 Use of Contractor's Facilities.** Upon the declaration of the existence of an
6 emergency condition pursuant to Section 10.02, Contractor shall make available and relinquish
7 to the Emergency Operator all of Contractor's operable vehicles, equipment, and other facilities
8 necessary or convenient for Collecting Solid Waste from Agency's Service Area. Further,
9 Contractor shall provide the Emergency Operator access, and/or rights of access, to such
10 Transfer Station facilities and/or Disposal facilities available to, or under the control of,
11 Contractor for the transferring and processing of Solid Waste, and Contractor shall, to the extent
12 it possesses rights to use such transfer or processing facilities, assign such rights to the
13 Emergency Operator for use during the existence of the emergency condition. Notwithstanding
14 the foregoing provisions of this Section 10.04, the use of Contractor's vehicles, equipment and
15 other facilities, and the assignment of rights to Contractor shall, in the case of Contractor's
16 insolvency, bankruptcy, or other adverse financial condition, be subject to the provisions of the
17 United States Bankruptcy Act (11 USC §101 et seq.) to the extent applicable.
18

19 During the existence of an emergency condition the Emergency Operator shall operate,
20 maintain, and repair, without cost to Contractor, Contractor's vehicles, equipment, and other
21 facilities used by it. Upon the cessation of the emergency condition, the right to use such
22 vehicles, equipment, and facilities shall expire, and the emergency operator shall return said
23 vehicles, equipment, and facilities to Contractor in a condition substantially the same as that
24 which existed upon acquiring said vehicles, equipment, and facilities, ordinary wear and tear
25 excepted.
26

27 **10.05 Indemnification.** In the event that an Emergency Operator appointed by Agency
28 or SBWMA utilizes any facilities and/or equipment of Contractor, Agency shall defend,
29 indemnify, and hold harmless Contractor and its Affiliates from and against any and all losses,
30 expenses, liens, claims, demands, and causes of action of every kind and character (excluding
31 those based upon the sole active or passive negligence or willful misconduct of Contractor, its
32 officers, employees and agents) for death, personal injury, property damage, or any other
33 liability or damages, including costs, attorneys' fees, and settlements arising out of, or in
34 connection with, the use of Contractor's facilities and/or equipment by said Emergency
35 Operator.
36

37 **10.06 Cessation of Emergency.**

38

39 **A. Hearing; Determination.** At any time after the Emergency Operator has
40 commenced the Collection of Solid Waste, Agency may hold a hearing on the question of the
41 cessation of the emergency condition upon giving not less than forty-eight (48) hours' prior
42 written notice to Contractor, the Emergency Operator, and all other Member Agencies of
43 SBWMA of said hearing. At the hearing, Contractor, the Emergency Operator, and any and all
44 interested Persons shall be given the opportunity to be heard on the question aforesaid. Upon

1 conclusion of the hearing, the Agency shall determine if the emergency condition has ceased. If
2 it is determined that the emergency condition has ceased, the Agency shall, by resolution,
3 declare the cessation of the emergency condition, and transmit a certified copy of the resolution
4 to Contractor and to all members, or all other member agencies of SBWMA , and to SBWMA.
5

6 **B. Resumption of Service.** Upon the declaration of cessation of the emergency
7 condition, the emergency operator shall return to Contractor its vehicles, equipment, and other
8 facilities acquired and used by it under Section 10.04 Further, upon the declaration of cessation
9 of the emergency condition, and unless Agency has terminated this Agreement pursuant to
10 Section 10.07, Contractor shall recommence its operations hereunder and shall perform all of its
11 duties and obligations in accordance with the provisions hereof, and shall be entitled to all of its
12 rights hereunder, including accrual of revenues for its benefit, from and after the date upon
13 which the emergency condition shall be deemed to have ceased.
14

15 **C. Limitation.** Notwithstanding anything herein contained to the contrary, no
16 emergency condition shall exist for more than 180 consecutive days. Upon the expiration of said
17 180 days, and unless the emergency condition has ceased prior thereto, this Agreement shall
18 terminate. In the event of such termination, no rights shall accrue to Contractor under this
19 Agreement from and after the date of termination.
20

21 **10.07 Agency Termination of Agreement.** Notwithstanding the provisions of Section
22 10.06, if, upon the cessation of the emergency condition, Agency's determines (irrespective of
23 contrary determinations by SBWMA or other member agencies of that). Contractor is not
24 substantially able to perform its duties and obligations hereunder due to the effects of the
25 emergency condition, the Agency Council/Board may declare this Agreement terminated
26 effective upon the date of the cessation of the emergency condition. In the event of such
27 termination, no rights shall accrue to Contractor under this Agreement from and after the date
28 of termination.
29

30 **ARTICLE 11**

31 **DEFAULT, REMEDIES AND LIQUIDATED DAMAGES**

32

33
34 **11.01 Events of Default.** All provisions of the Agreement and this Agreement to be
35 performed by Contractor are considered material. Each of the following shall constitute an
36 event of default.
37

38 **A. Fraud or Deceit.** If Contractor practices, or attempts to practice, any fraud
39 or deceit upon Agency.
40

41 **B. Insolvency or Bankruptcy.** If Contractor becomes insolvent, unable, or
42 unwilling to pay its debts, or upon listing of an order for relief in favor of Contractor in a
43 bankruptcy proceeding.
44

1 **C. Failure to Maintain Coverage.** If Contractor fails to provide or maintain in
2 full force and effect the Workers' Compensation, liability, or indemnification coverage as
3 required by this Agreement.
4

5 **D. Violations of Regulation.** If Contractor violates any orders or filings of
6 any regulatory body having authority over Contractor relative to this Agreement, provided that
7 Contractor may contest any such orders or filings by appropriate proceedings conducted in
8 good faith, in which case no breach of this Agreement shall be deemed to have occurred.
9

10 **E. Failure to Perform.** If Contractor ceases to provide Collection, processing
11 or Recycling services as required under this Agreement for a period of two (2) consecutive days
12 or more, for any reason within the control of Contractor, including labor disputes.
13

14 **F. Failure to Pay.** If Contractor fails to make any payments required under
15 this Agreement and/or Refuses to provide Agency with required information, reports, and/or
16 records in a timely manner as provided for in the Agreement.
17

18 **G. Acts or Omissions.** Any other act or omission by Contractor which violates
19 the terms, conditions, or requirements of this Agreement, the Act of 1989, as it may be amended
20 from time to time, or any law, statute, ordinance, order, directive, rule, or regulation issued
21 there under and which is not corrected or remedied within the time set in the written notice of
22 the violation or, if Contractor cannot reasonably correct or remedy the breach within the time
23 set forth in such notice, if Contractor should fail to commence to correct or remedy such
24 violation within the time set forth in such notice and diligently effect such correction or remedy
25 thereafter.
26

27 **H. False or Misleading Statements.** Any representation or disclosure made to
28 Agency by Contractor in connection with or as an inducement to entering into this Agreement,
29 or any future amendment to this Agreement, which proves to be false or misleading in any
30 material respect as of the time such representation or disclosure is made, whether or not any
31 such representation or disclosure appears as part of this Agreement.
32

33 **I. Attachment.** There is a seizure of, attachment of, or levy on, the operating
34 equipment of Contractor, including without limits its equipment,
35 maintenance or office facilities, or any part thereof.
36

37 **J. Suspension or Termination of Service.** There is any termination or
38 suspension of the transaction of business by Contractor related to this Agreement, including
39 without limit, due to labor unrest including strike, work stoppage or slowdown, sick-out,
40 picketing, or other concerted job action lasting more than two (2) consecutive days.
41

42 **K. Failure to Provide Assurance of Performance.** If Contractor fails to
43 provide reasonable assurances of performance as required under Section 11.06, Contractor shall
44 be given ten (10) business days from written notification by Agency to cure any default arising

1 under subsections C, E, F, I, J and K provided, however, that the Agency shall not be obligated
2 to provide Contractor with a notice and cure opportunity if the Contractor has committed the
3 same or similar breach within a twenty-four (24) month period.
4

5 **11.02 Right to Terminate Upon Default.** In the event that Contractor should default
6 and subject to the right of the Contractor to cure, in the performance of any provisions of this
7 contract, and the default is not cured for any default arising under Section 11.01.C., E, F, I, J or
8 K, within ten (10) days' notice if the public health or safety is threatened, or otherwise thirty (30)
9 days after receipt of written notice of default from the Agency, then the Agency may, at its
10 option, terminate this Agreement and/or hold a hearing at its next Agency Council/Board
11 meeting to determine whether this contract should be terminated. In the event Agency decides
12 to terminate this contract, Agency shall serve twenty (20) days' written notice of its intention to
13 terminate upon Contractor. In the event Agency exercises its right to terminate this contract,
14 Agency may, at its option, upon such termination, either directly undertake performance of the
15 services or arrange with other Persons to perform the services with or without a written
16 agreement. This right of termination is in addition to any other rights of Agency upon a failure
17 of Contractor to perform its obligations under this Agreement.
18

19 Agency's right to terminate this Agreement and to take possession of Contractor's
20 Facility are not exclusive, and Agency's termination of this Agreement shall not constitute an
21 election of remedies. Instead, they shall be in addition to any and all other legal and equitable
22 rights and remedies which Agency may have. By virtue of the nature of this Agreement, the
23 urgency of timely continuous and high-quality service, the time required to effect alternative
24 service, and the rights granted by Agency to Contractor, the remedy of damages for a breach
25 hereof by Contractor may be inadequate and Agency may seek injunctive relief.
26

27 **11.03 Liquidated Damages.**

28
29 **A. General.** The Agency finds, and Contractor agrees, that as of the time of
30 the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the
31 extent of damages which shall be incurred by Agency as a result of a breach by Contractor of its
32 obligations under this Agreement. The factors relating to the impracticability of ascertaining
33 damages include, but are not limited to, the fact that: (i) substantial damage results to members
34 of the public who are denied services or denied quality or reliable service; (ii) such breaches
35 cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to
36 individual members of the general public for whose benefit this Agreement exists, in subjective
37 ways and in varying degrees of intensity which are incapable of measurement in precise
38 monetary terms; (iii) that Franchised services might be available at substantially lower costs
39 than alternative services and the monetary loss resulting from denial of services or denial of
40 quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the
41 termination of this Agreement for such breaches, and other remedies are, at best, a means of
42 future correction and not remedies which make the public whole for past breaches.
43

1 **2. Collection Quality.**

2
3 a) For each occurrence of damage to private property which
4 exceeds seven (7) such occurrences annually: \$250.00

5
6 b) For each occurrence of failure to properly return empty
7 Containers to avoid pedestrian or vehicular traffic impediments or to place cans upright with
8 lids secured (in areas where service recipients own their containers, if applicable) which exceeds
9 ten (10) such occurrences annually: \$150.00

10
11 c) For each occurrence of excessive noise or discourteous
12 behavior: \$250.00

13
14 d) For each failure to clean up Solid Waste spilled by Contractor
15 from Solid Waste, Recyclable Materials and Plant Materials Containers which exceeds fifteen
16 (15) such failures annually: \$150.00

17
18 e) For each occurrence of Collecting Solid Waste, Recyclable
19 Materials and Plant Materials during unauthorized hours which exceeds ten (10) such
20 occurrences annually: \$250.00

21
22 f) For each year that Contractor fails to meet the annual
23 diversion levels described in Section 4.05: \$50,000 in total for the SBWMA Service Area.

24
25 **3. Service Recipient Responsiveness.**

26
27 a) For each failure to initially respond to a service recipient
28 Complaint within one (1) business day: \$100.00

29
30 b) For each failure to process service recipient Complaints to
31 Agency as required by Article 5: \$500.00

32
33 **4. Timeliness of Submissions to Agency.** Any report shall be

34 considered late, after the seventh late day, until such time as a correct and complete report is
35 received by Agency. For each calendar day a report is late, the daily liquidated damage amount
36 shall be:

37
38 a) Quarterly Reports: \$100 per day

39
40 b) Annual Reports: \$500 per day

41
42 Liquidated damages will only be assessed after Contractor has been given the
43 opportunity but failed to rectify, in a timely manner, the breach as described in this Agreement.
44 Agency may determine the occurrence of events giving rise to liquidated damages through the
45

1 observation of its own employees or representative or investigation of service recipient
2 Complaints.

3
4 Prior to assessing liquidated damages, Agency shall give Contractor notice of its
5 intention to do so. The notice will include a brief description of the incident(s)/non-
6 performance. Contractor may review (and make copies at its own expense) all information in
7 the possession of Agency relating to incident(s)/non-performance. Contractor may, within ten
8 (10) days after receiving the notice, request a meeting with Agency. Contractor may present
9 evidence in writing and through testimony of its employees and others relevant to the
10 incident(s)/non-performance. Agency will provide Contractor with a written explanation of his
11 or her determination on each incident(s)/non-performance prior to authorizing the assessment
12 of liquidated damages. The decision of Agency shall be final.

13
14 **C. Amount.** Agency may assess liquidated damages for each calendar day or
15 event, as appropriate, that Contractor is determined to be liable in accordance with this
16 Agreement.

17
18 **D. Timing of Payment.** Contractor shall pay any liquidated damages assessed
19 by Agency within ten (10) days after they are assessed. If they are not paid within the ten (10)
20 day period, Agency may proceed against the performance bond required by the Agreement or
21 order the termination of the Agreement granted by this Agreement, or both.

22
23 **11.04 Excuse from Performance.** The parties shall be excused from performing their
24 respective obligations hereunder in the event they are prevented from so performing by reason
25 of floods, earthquakes, other natural disasters, war, civil insurrection, riots, acts of any
26 government (including judicial action), and other similar catastrophic events which are beyond
27 the control of and not the fault of the party claiming excuse from performance hereunder.
28 Labor unrest, including, but not limited to, strike, work stoppage or slowdown, sick-out,
29 picketing, or other concerted job action conducted by Contractor's employees or directed at
30 Contractor is not an excuse from performance and Contractor shall be obligated to continue to
31 provide service notwithstanding the occurrence of any or all of such events.

32
33 The party claiming excuse from performance shall, within two (2) days after such party
34 has notice of such cause, give the other party notice of the facts constituting such cause and
35 asserting its claim to excuse under this Section.

36
37 The interruption or discontinuance of Contractor's services caused by one or more of the
38 events excused shall not constitute a default by Contractor under this Agreement.
39 Notwithstanding the foregoing, however, if Contractor is excused from performing its
40 obligations to Collect; transfer, transport, process and dispose of Solid Waste hereunder for any
41 of the causes listed in this Section for a period of ten (10) days or more, Agency shall
42 nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10)
43 days' notice, in which case the provisions relative to taking possession of Contractor's land,

1 equipment and other property and engaging Contractor's Personnel in Article 10 and this
2 Article 11 will apply.

3
4 **11.05 Notice, Hearing and Appeal of Agency Breach.** Should Contractor contend that
5 Agency is in breach of this Agreement, it shall file with the Agency Manager a written request
6 with Agency for an administrative hearing. Said request shall be made within ninety (90) days
7 of the event or incident which allegedly gave rise to the breach. Agency shall notify Contractor
8 of the time and date said hearing shall be held within thirty (30) days of receipt of Contractor's
9 request. Contractor shall present its position and all relevant facts first and then Agency staff
10 shall make its presentation. Contractor shall be notified of Agency's ruling in writing within
11 fourteen (14) days of the administrative hearing.

12
13 If Contractor is not in agreement with the ruling issued by Agency at the administrative
14 hearing, it shall have the right to appeal this ruling to Agency Council/Board members. This
15 appeal shall be made in writing to Agency no later than fourteen (14) days after receipt of the
16 administrative hearing ruling. Agency shall notify Contractor of the time and date the Agency
17 Council/Board will review Contractor's allegation. Contractor shall present its position and all
18 relevant facts. Contractor shall be notified in writing within thirty (30) days of the Agency
19 Council/Board's ruling. The Agency Council/Board's ruling shall be final, and Contractor shall
20 have no further rights of administrative appeal.

21
22 **11.06 Assurance of Performance.** Each party may, at its option and in addition to all
23 other remedies it may have, demand from the other Party reasonable assurances of timely and
24 proper performance of this Agreement, in such form and substance as the Party may require. If
25 the other Party fails or refuses to provide satisfactory assurances of timely and proper
26 performance in the form and by the date required by the Party, such failure or refusal shall be
27 an event of default.

28
29 **11.07 Damage to Property.** Contractor shall endeavor to resolve all claims as soon as
30 reasonably practicable following receipt thereof, made by Owners or occupants of property
31 served by Contractor, for damages to property including, but not limited to, Containers. In the
32 event such damage shall have been caused by the negligence or intentional acts of Contractor,
33 its officers, agents, or employees, Contractor shall promptly repair or replace such damaged
34 property. The provisions of this Section 11.07 shall not be deemed a limitation upon any other
35 provisions of this Agreement, or any rights or remedies which may accrue to Agency by reason
36 of Contractor's acts or omissions to act hereunder.

37
38 **11.08 Agency Remedies Cumulative; Specific Performance.** The Agency's rights to
39 suspend or terminate this Agreement or to perform under Article 10 are not mutually exclusive,
40 and the Agency's exercise of one such right shall not constitute a selection of remedies. Instead,
41 they shall be in addition to any and all other legal and equitable rights and remedies which the
42 Agency may have.

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ARTICLE 12
OTHER AGREEMENTS OF THE PARTIES

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

12.02 Compliance with Law. In providing the services required under this Agreement, Contractor shall at all times comply with all applicable laws (including but not limited to the "Environmental Laws") of the United States, the State of California, the County of San Mateo, the Agency and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the Term, collectively, the "Laws"). In the event of any conflict between this Agreement and Laws, the requirements of the Laws shall govern, and Contractor shall not be in breach of this Agreement if Contractor complies with the Laws in contravention of this Agreement, provided that nothing in this Section is intended to limit or enlarge Contractor's obligations or diminish its right to satisfy its obligation to provide Solid Waste, Recycling, and Plant Materials services.

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

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

1 **12.05 Assignment by Contractor.**
2

3 **A. Permitted Assignments.** Contractor shall have the right to assign this
4 Agreement to any other company which is owned and controlled by Browning-Ferris
5 Industries, Inc., provided that such company is (i) qualified to do business in California, has a
6 net worth at least equal to that of Contractor, and assumes in writing all of Contractor's
7 obligations under this Agreement prior to or concurrently with such assignment, and (ii)
8 provides the performance bond as required of Contractor and (iii) the guaranty described in
9 Section 12. 18 remains in full force and effect. Contractor shall not otherwise assign its rights
10 nor delegate or otherwise transfer its obligations under this Agreement to any other Person.
11

12 **B. Assignment Defined.** For the purpose of this Section, when used in
13 reference to Contractor, "assignment" shall include, but not be limited to (1) a sale, exchange or
14 other transfer of substantially all of Contractor's assets dedicated to service under this
15 Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock
16 of Contractor to a third party provided said sale, exchange or transfer may result in a change of
17 control of contractor; (iii) any dissolution, organization, consolidation, merger, re-capitalization,
18 stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation
19 or other transaction to which results in a change of Ownership or control of Contractor; (iv) any
20 assignment by operation of law, including insolvency or bankruptcy, making assignment for the
21 benefit of creditors, writ of attachment for an execution being levied against this Agreement,
22 appointment of a receiver taking possession of Contractor's property, or transfer occurring in
23 the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in
24 related or contemporaneous transactions) which has the effect of any such transfer or change of
25 Ownership, or change of control of Contractor.
26

27 Contractor acknowledges that this Agreement involves rendering a vital service to
28 Agency's residents and business, and that Agency has selected Contractor to perform the
29 services specified herein based on (1) Contractor's experience, skill and reputation for
30 conducting its operations in a safe, effective and responsible fashion, at all times in keeping with
31 applicable Environmental Laws, regulations, and best management practices, and (2)
32 Contractor's obligations to Agency under this Agreement. Agency has relied on each of these
33 factors, among others, in choosing Contractor to perform the services to be rendered by
34 Contractor under this Agreement.
35

36 If Contractor requests Agency's consideration of and consent to an assignment, Agency
37 may reasonably deny or approve such request. No request by Contractor for consent to any
38 assignment need be considered by Agency unless and until Contractor has met the following
39 requirements:
40

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

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

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

20 Under no circumstances shall Agency be obligated to consider any proposed assignment
21 by Agency if Contractor is in default at any time during the period of consideration.
22

23 **12.06 Binding on Assigns.** The provisions of this Agreement shall inure to the benefit
24 to and be binding on the permitted assigns of the parties.
25

26 **12.07 Affiliated Companies.** Contractor shall maintain accounting records and
27 financial statements on a basis showing the results of Contractor's operations under this
28 Agreement separately from operations in other locations, as if Contractor were an independent
29 entity providing service only to Agency. For purposes of this Agreement, the costs and
30 revenues associated with providing service to Agency shall not be combined, consolidated or in
31 any other way incorporated with those of other operations conducted by Contractor in other
32 locations, or with those of an Affiliate.
33

34 If Contractor enters into any financial transactions with a Related Party Entity or Affiliate
35 for the provision of labor, equipment, supplies, services, capital, etc., related to the furnishing of
36 service under this Agreement, that relationship shall be disclosed to Agency, and in the
37 financial reports submitted to Agency. In such event, Agency's rights to inspect records, and
38 obtain financial data shall extend to such Related Party Entity or entities.
39

40 **12.08 Subcontracting.** Contractor shall not engage any subcontractors for Collection or
41 Disposal of Solid Waste without the prior written consent of Agency.
42

43 **12.09 Transition to Next Contractor.** If the transition of services to another Contractor
44 occurs through expiration of term, default and termination, or otherwise, Contractor will

1 cooperate with Agency and subsequent Contractor(s) to assist in an orderly transition which
2 will include Contractor providing route lists and billing information. Contractor will not be
3 obliged to sell Collection vehicles, bins and Containers to the next Contractor. Depending on
4 Contractor's circumstances at the point of transition, Contractor at its option may enter into
5 negotiations with the next Contractor to sell (in part or all) Collection vehicles, bins and
6 Containers.

7
8 **12.10 Parties in Interest.** Nothing in this Agreement, whether express or implied, is
9 intended to confer any rights on any Persons other than the parties to it and their
10 representatives, successors and permitted assigns.

11
12 **12.11 Waiver.** The waiver by either party of any breach or violation of any provisions of
13 this Agreement shall not be deemed to be a waiver of any breach or violation of any other
14 provision nor of any subsequent breach or violation of the same or any other provision. The
15 subsequent acceptance by either party of any monies which become due hereunder shall not be
16 deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party
17 of any provision of this Agreement.

18
19 **12.12 Contractor's Investigation.** Contractor has made an independent investigation
20 (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the
21 work to be performed by it.

22
23 **12.13 Notice.** All notices, demands, requests, proposals, approvals, consents and other
24 communications which this Agreement requires, authorizes or contemplates shall be in writing
25 and shall either be personally delivered to a representative of the parties at the address below or
26 be deposited in the United States mail, first class postage prepaid, addressed as follows:

27
28 If to the Agency: City Manager
29 City of Belmont
30 1070 Sixth Avenue
31 Belmont, CA 94002

32
33 If to the SBWMA: SBWMA Chairman
34 City of San Carlos
35 600 Elm Street
36 San Carlos, CA 94070

37
38 If to the Contractor: District Vice President
39 Browning-Ferris Industries, San Mateo District
40 225 Shoreway Road
41 San Carlos, CA 94070

42
43 The address to which communications may be delivered may be changed from time to
44 time by a notice given in accordance with this Section.

1
2 Notice shall be deemed given on the day it is Personally delivered or, if mailed, three
3 days from the date it is deposited in the mail.
4

5 **12.14 Representatives of the Parties.**
6

7 **A. Representatives of the Agency.** References in this Agreement to the
8 "Agency" shall mean the City Manager and all actions to be taken by Agency shall be taken by
9 the City Manager who may delegate his/her authority in writing to another Agency employee
10 or to SBWMA, to the SBWMA Manager, Contractor may rely upon actions taken by such
11 delegates if they are within the scope of the Agency and properly delegated to them.
12

13 **B. Contractor Representatives.** Contractor shall, by the effective date,
14 designate in writing a responsible officer who shall serve as the representative of Contractor in
15 all matters related to the Agreement and shall inform Agency Manager in writing of such
16 designation and of any limitations upon his or her authority to bind Contractor. Agency
17 Manager may rely upon action taken by such designated representative as actions of Contractor
18 unless they are outside the scope of the Contractor and properly delegated to him/her by
19 Contractor as communicated to Agency.
20

21 **12.15 Agency Free to Negotiate with Third Parties.** Agency may investigate all options
22 for the Collection and processing of Solid Waste after the expiration of the Term. Without
23 limiting the generality of the foregoing, Agency may solicit proposals from Contractor and from
24 third parties for the provision of services, and any combination thereof, and may negotiate and
25 execute agreements for such services which will take effect upon the expiration or earlier
26 termination under Section 11.01 of this Agreement.
27

28 **12.16 Compliance with Agency Codes.** Contractor shall comply with those provisions
29 of the ordinances and municipal codes of the Agency which are applicable, and with any and all
30 amendments to such applicable provisions during the term of this Agreement provided,
31 however, that if a change in any such municipal code materially affects Contractor's annual cost
32 of operations, the Contractor shall be entitled to an interim compensation adjustment as
33 provided for in Section 6.06. Moreover, no such change may revoke or override the grant of the
34 exclusive franchise Contractor in Section 2.1 of this Agreement or override the Contractor's
35 designations of a MRF and Disposal Site pursuant to this Agreement.
36

37 **12.17 Privacy.** Contractor shall strictly observe and protect the rights of privacy of
38 service recipients. Information identifying individual service recipients or the composition or
39 contents of a service recipient's waste stream shall not be revealed to any Person, governmental
40 unit, private agency, or Contractor, unless upon the authority of a court of law, by statute, or
41 upon valid authorization of the service recipient. This provision shall not be construed to
42 preclude Contractor from preparing, participating in, or assisting in the preparation of waste
43 characterization studies or waste stream analyses which may be required by AB 939.
44

1 California. It has the corporate power to own its properties and to carry on its business as now
2 owned and operated and as required by this Agreement.
3

4 **13.02 Corporate Authorization.** Contractor has the authority to enter into and perform
5 its obligations under this Agreement. The Board of Directors of Contractor (or the shareholders,
6 if necessary) have taken all actions required by law, its articles of incorporation, its bylaws, or
7 otherwise, to authorize the execution of this Agreement. The Person signing this Agreement on
8 behalf of Contractor has authority to do so.
9

10 **13.03 Agreement Will Not Cause Breach.** To the best of Contractor's knowledge, after
11 reasonable investigation, neither the execution or delivery of this Agreement nor the
12 performance of this Agreement by Contractor: (i) conflicts with, violates, or results in a breach
13 of any applicable law; or (ii) conflicts with, violates or results in a breach of any term or
14 condition of any judgment, order or decree of any court, administrative agency or other
15 governmental authority, or any agreement or instrument to which Contractor is a party or by
16 which Contractor or any of its properties or assets are bound, or constitutes a default there
17 under.
18

19 **13.04 No Litigation.** To the best of Contractor's knowledge, after reasonable
20 investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or
21 by any court or governmental authority, commission, board, agency or instrumentality decided,
22 pending or threatened against Contractor wherein an unfavorable decision, ruling or finding, in
23 any single case or in the aggregate, would materially adversely affect the performance by
24 Contractor of its obligations hereunder or which, in any way, would adversely affect the
25 validity or enforceability of this Agreement or which would have a material adverse effect on
26 the financial condition of Contractor or any surety guaranteeing Contractor's performance
27 under this Agreement, which has not been waived by the Agency in writing.
28

29 **13.05 No Adverse Judicial Decisions.** To the best of Contractors knowledge, after
30 reasonable investigation, there is no judicial decision that effects the validity of this Agreement
31 and may subject this Agreement to legal challenge.
32

33 **13.06 Ability to Perform.** Contractor possesses the business, professional, and technical
34 expertise to manage, handle, treat, store and dispose of the Solid Waste, and possesses the
35 equipment, plant, and employee resources required to perform this Agreement.
36
37

38 **ARTICLE 14**

39 **MISCELLANEOUS PROVISIONS**

40

41 **14.01 Entire Agreement.** This Agreement, including the Exhibits, represents the full and
42 entire Agreement between the parties with respect to the matters covered herein.
43

1 **14.02 Section Headings.** The article headings and section headings in this Agreement
2 are for convenience of reference only and are not intended to be used in the construction of this
3 Agreement nor to alter or affect any of its provisions.
4

5 **14.03 References to Laws and Other Agreements.** All references in this Agreement to
6 laws shall be understood to include such laws as they may be subsequently amended or
7 recodified, unless otherwise specifically provided. This Agreement supersedes any and all
8 agreements heretofore entered into by the parties.
9

10 **14.04 Interpretation.** This Agreement, including the exhibits attached hereto, shall be
11 interpreted and construed reasonably and neither for nor against either party, regardless of the
12 degree to which either party participated in its drafting.
13

14 **14.05 Agreement.** This Agreement may not be modified or amended in any respect
15 except by a writing signed by the parties. Any conflict between the body of the Agreement and
16 the exhibits shall be resolved in favor of the Agreement.
17

18 **14.06 Severability.** If any non-material provision of this Agreement is for any reason
19 deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision
20 shall not affect any of the remaining provisions of this Agreement which shall be enforced as if
21 such invalid or unenforceable provision had not been contained herein.
22

23 **14.07 Exhibits.** Each of Exhibits identified as Exhibit "A" through "H" is attached hereto
24 and incorporated herein and made a part hereof by this reference.
25

26 **14.08 Attorneys' Fees.** The prevailing party in any action brought to enforce the terms
27 of this Agreement or arising out of this Agreement may recover its reasonable costs and
28 attorneys' fees expended in connection with such an action from the other party.
29

30 **14.09 Compilation of Information for State Law Purposes.** Contractor shall compile
31 information on amounts of Solid Waste delivered to the Facilities and other information, which
32 the Agency may reasonably request.
33

34 **14.10 Definitions.** Capitalized terms used in this Agreement without definition have
35 the meanings specified in Exhibit A, unless the context clearly requires otherwise.
36

37 **14.11 Counterparts.** This Agreement may be executed in counterparts, each of which
38 shall be deemed to be an original.
39

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

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ATTEST: _____
Clerk

10 By _____
11 Agency Manager

12
13
14

15 APPROVED AS TO FORM: _____
16 ("Agency Attorney")

17
18 _____ By: _____

19 Contractor Name:

20 Title: _____

21 By: _____

22 Name:

23 Title: _____

24
25
26
27
28

EXHIBIT A

Definitions

1 **Exhibit A**
2 **DEFINITIONS**

3
4 This Agreement will be construed in accordance with the following definitions.

5 **Act**

6 "Act" means the Act of 1989 (AB939) Public Resources Code, Section 40000 et seq., as it may be
7 amended from time to time.

8 **Affiliate**

9 "Affiliate" means all businesses (including corporations, limited and general partnerships and
10 sole proprietorships) which are directly or indirectly related to Contractor by virtue of direct or
11 indirect ownership interest or common management shall be deemed to be "Affiliated with"
12 Contractor and included within the term "Affiliates" as used herein. An Affiliate shall include a
13 business in which Contractor owns a direct or indirect ownership interest, a business which has
14 a direct or indirect ownership interest in Contractor and/or a business which is also owned,
15 controlled or managed by any business or individual which has a direct or indirect ownership
16 interest in Contractor. For purposes of determining whether an indirect ownership interest
17 exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of
18 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) "ten
19 percent (10%)" shall be substituted for "fifty percent (50%)" in Section 318(a)(2)(C) and in Section
20 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of
21 determining ownership under this paragraph and constructive or indirect ownership under
22 Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and
23 percentage interests shall be determined on the basis of the percentage of voting interest or
24 value which the ownership interest represents, whichever is greater.

25 **Agency**

26 "Agency" means the municipal corporation or political subdivision (as the case may be) of the
27 State of California named a party to this Agreement and which is also an active member of the
28 SBWMA.

29 **Agreement**

30 "Agreement" means this Agreement, including any amendments, between Agency and
31 Contractor.

32 **Billings**

33 "Billings" means any and all statements of charges for services rendered, howsoever made,
34 described or designated by Contractor, or made by others for Agency or Contractor, to Owners
35 or occupants of property, including Residential Property and commercial, industrial and
36 institutional Property, served by Contractor for the Collection of Solid Waste, Recyclable
37 Materials, and Plant Materials.
38

1 **Collect/Collection**

2 "Collect" or "Collection" means to take physical possession, transport, and remove Solid Waste,
3 Recyclable Materials or Plant Materials within and from Agency.

4 **Commercial, Industrial and Institutional Service Recipient**

5 "Commercial, Industrial and Institutional Service Recipient " means Waste Generators whose
6 business activity includes but is not limited to retail sales, services, wholesale sales, research and
7 development, government, non-profit, hospital, manufacturing and industrial operations, but
8 excluding businesses conducted upon Residential Property which are permitted under
9 applicable zoning regulations and are not the primary use of the property.
10

11 **Complaint**

12 "Complaint" means the written statement (prepared by the Manager, if based on oral
13 statements made by members of the public or Owners or occupants of property) made by
14 members of the public, Owners or occupants of properties served by Contractor, or officers,
15 employees or agents of Agency or SBWMA alleging non-performance or deficiencies in
16 performance of Contractor's duties and obligations under this Agreement, or otherwise alleging
17 a violation by Contractor of the provisions of this Agreement.

18 **Construction Debris**

19 "Construction Debris" means used or discarded construction materials generated during the
20 construction of a structure.

21 **Containers**

22 "Containers" means any and all types of Solid Waste, Recyclable Materials, and Plant Materials
23 receptacles including but not limited to metal or plastic cans, carts, bins, tubs, bins/dumpsters,
24 roll-off boxes, debris boxes, or Construction Debris.

25 **Contractor**

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

29 **Contractor Compensation**

30 "Contractor Compensation" means the revenue received by the Contractor from Billings for
31 providing services in accordance with this Agreement.

32 **Curbside**

33 "Curbside" means the location of a Container for pick-up, not more than fifteen (15) feet from
34 the street curb. Where no street curb exists, the location shall be within five (5) feet from the
35 outside edge of the street nearest the property's entrance.

36 **Demolition Debris**

37 "Demolition Debris" means used or discarded construction materials generated during the
38 razing or renovation of a structure.

1 **Designated Waste**

2 "Designated Waste" means auto fluff, and petroleum-contaminated soils.

3 **Disposal**

4 "Disposal" means the ultimate disposition of Solid Waste collected by Contractor at a Disposal
5 Site in Full Regulatory Compliance.

6 **Disposal Site(s)**

7 "Disposal Site(s)" means the Solid Waste facility or facilities utilized for the ultimate landfill
8 Disposal of Solid Waste Collected by Contractor. The Ox Mountain Landfill owned by
9 Contractor, shall be the designated Disposal Site of Contractor as of the effective date of this
10 Agreement.

11 **Environmental Laws**

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

24 **Facility/Facilities**

25 "Facility/Facilities" means any plant or site, owned or leased and maintained, operated or used
26 by Contractor or the SBWMA for purposes of performing Contractor's obligations under this
27 Agreement. Subject to Section 2.09 of this Agreement, Contractor and Agency have designated
28 the San Carlos Transfer Station located at 225 Shoreway Road and the San Carlos "Recyclery"
29 located 333 Shoreway Road and any other building and improvement located at these addresses
30 in the City of San Carlos (including the administration and vehicle repair and maintenance
31 building) as its Facilities to be utilized under this Agreement.

32 **Fiscal Year**

33 "Fiscal Year" means the period commencing January 1 and concluding December 31 of year for
34 Contractor.

35 **Full Regulatory Compliance**

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

1 **Franchise Fee**

2 "Franchise Fee" means the fee paid by Contractor to Agency for the right to hold the franchise
3 granted by this Agreement.

4 **Gross Revenues**

5 "Gross Revenues" means any and all revenue or compensation in any form to Contractor or
6 other Affiliates of Contractor, for the Collection, transportation and processing of Solid Waste
7 pursuant to this Agreement, determined in accordance with Generally Accepted Accounting
8 Principles, including, but not limited to, service recipient fees for Collection of Solid Waste,
9 without subtracting the other cost of doing business.

10 **Hazardous Substance**

11 "Hazardous Substance" shall mean any of the following: (a) any substances defined, regulated
12 or listed (directly or by reference) as "Hazardous Substances", "hazardous materials",
13 "Hazardous Wastes", "toxic waste", "pollutant" or "toxic substances" or similarly identified as
14 hazardous to human health or the environment, in or pursuant to (i) the Comprehensive
15 Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et
16 seq.(CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the
17 Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33
18 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and
19 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and (vii) California Water Code §13050; (b)
20 any amendments, rules or regulations promulgated there under to such enumerated statutes or
21 acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance,
22 material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any
23 other applicable federal, state or local Environmental Laws currently existing or hereinafter
24 enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"),
25 petroleum, natural gas and synthetic fuel products, and by-products.

26 **Hazardous Waste**

27 "Hazardous Waste" means all substances defined as Hazardous Waste, acutely Hazardous
28 Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code
29 §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes
30 or identified and listed as Hazardous Waste by the US Environmental Protection Agency (EPA),
31 pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all
32 future amendments thereto, and all rules and regulations promulgated there under.
33

34 **Manager**

35 "Manager" means Agency's chief executive officer, howsoever designated by Agency, or his or
36 her designee.

37 **Materials Recovery Facility (MRF)**

38 "Materials Recovery Facility" means a permitted Facility where Solid Waste, Recyclable
39 Materials, or Plant Materials are sorted or separated for the purposes recovering reusable or
40 Recyclable Materials.

1 **Multi-Family Residential Complex**

2 "Multi-Family Residential Complex" means any residential Premises, other than a Single
3 Family Dwelling, used for residential purposes. Such Premises normally have centralized Solid
4 Waste and Recyclable Materials Collection service for all units in the building and are billed as
5 one address.

6 **Owner**

7 "Owner" means the Person holding the legal title to the real property constituting the Premises
8 to which Solid Waste, Recyclable Materials and Plant Materials Collection service is to be
9 provided under this Agreement.

10 **Operating Cost**

11 "Operating Cost" means those costs reasonably necessary and actually incurred by Contractor
12 to perform under this Agreement, excluding only those costs specifically excluded in this
13 Agreement.

14 **Pass-Through Cost**

15 "Pass-Through Cost" means a particular cost to which no element of overhead, administrative
16 expense, profit, or other cost is added nor with respect to which any other amount is credited,
17 such that the specific amount of such cost is included without modification in the calculations or
18 reports to which such costs pertain.

19 **Person**

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

23 **Plant Materials**

24 "Plant Materials" means a subset of organic Recyclable Materials consisting of grass cuttings,
25 weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees (not more
26 than six (6) inches in diameter) and four (4) feet in length, and similar materials generated at
27 Premises within Agency, separated and set out for Collection, processing, and Recycling. Plant
28 Materials does not include materials not normally produced from farms, gardens or landscapes,
29 such as, but not limited to, brick, rock, gravel, large quantities of dirt, concrete, sod, non-organic
30 wastes, oil, and painted or treated wood or wood products. Diseased plants and trees are also
31 excluded from Plant Materials.

32 **Plant Materials Processing Facility**

33 "Plant Materials Processing Facility" means a permitted Facility where Plant Materials are
34 sorted, ground and chipped, mulched or separated for the purposes of land application,
35 alternate daily cover, reuse or composting, so long as that material is diverted from landfill
36 disposal.

37 **Premises**

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

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Rate Year

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

Recycling

"Recycling" means the process of collecting, sorting, cleansing, treating and reconstituting discarded materials which meet the quality standards necessary to be re-used, remanufactured or processed. The Collection, transportation or Disposal of Solid Waste not intended for, or capable of, reuse is not Recycling.

Recyclable Materials

"Recyclable Materials" means discarded materials that are re-used, remanufactured or processed.

Related Party Entity

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

Residential Property

"Residential Property" means property used for residential purposes.

Service Area

"Service Area" means that territory within, and, if applicable, outside Agency's boundaries with respect to which Agency exercises franchising authority for the collection of Solid Waste, Recyclable Materials and Plant Materials which territory is shown on a map on file in the office of Agency's Manager, to which reference is hereby made for the description of said area.

Single Family Dwellings

"Single Family Dwellings" means each Premises used for or designated as a single family residential dwelling, including each unit of a duplex, triplex or townhouse condominium in all cases in which there is separate or individual Solid Waste, Recyclable Materials, and Plant Materials Collection are provided separately to each dwelling unit.

Solid Waste

"Solid Waste" means all putrescible and nonputrescible solid, semisolid, and liquid wastes, as defined in California Public Resources Code §40191, as that section may be amended from time to time. For the purposes of this Agreement, "Solid Waste" does not include abandoned vehicles and parts thereof, Hazardous Waste or low-level radioactive waste, medical waste, Recyclable Materials, or Plant Materials.

Source Separate

"Source Separate" means to have the generator segregate from Solid Waste material which otherwise would become Solid Waste, such as Recyclable Materials or Plant Materials, for the sole purpose of reuse, Recycling, or composting, to be collected by Contractor or others.

1 **Transfer Station**

2 "Transfer Station" means a Facility primarily used for the purpose of transferring Solid Waste
3 from collection vehicles to transfer vehicles (but which may include recovery attributes) to
4 more efficiently transport said Solid Waste to its ultimate Disposal Site. For the purposes of this
5 Agreement, Contractor has designated the San Carlos Transfer Station, located at 225 Shoreway
6 Road, owned by SBWMA and operated by BFI, as its designated Transfer Station.

7 **Unacceptable Spillage**

8 "Unacceptable Spillage" means any Solid Waste spilled or left at established Collection sites by
9 Contractor after Collection, except that small particles of grass clippings and leaves of the size
10 and volume that may be collected by regular street sweeping operations may be left behind.

11 **Waste Generator**

12 "Waste Generator" means any Person, whose act or process produced Solid Waste, or whose act
13 first causes Solid Waste to become subject to regulation.

EXHIBIT B

Agency Facilities

EXHIBIT C

Public Education Plan

EXHIBIT D

Contractor Compensation Methodology

Exhibit D1

Commercial Diversion Program Performance Incentive

EXHIBIT E

Initial Rates

EXHIBIT F

Faithful Performance Bond

CONTRACTOR'S FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____, a California _____, as PRINCIPAL, and _____, a Corporation organized and doing business by virtue of the laws of the State of California, and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as SURETY, are held and firmly bound to the _____, hereinafter called OBLIGEE, in the penal sum of Six Hundred Seventy Two Thousand Two Hundred and Fifty and No/100 Dollars (\$672,250.00) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

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

WHEREAS, the above bounden PRINCIPAL has entered into a contract, entitled "SOLID WASTE, RECYCLABLE MATERIALS, AND PLANT MATERIALS COLLECTION SERVICES " with the Agency, to do and perform the following work, to wit: Collect Recyclable materials generated within the Agency, in accordance with the contract.

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

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

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

Name/Title: _____

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this _____ DAY OF _____, 199_.

a California Corporation
By: _____
(PRINCIPAL)

SURETY
By: _____
(ATTORNEY IN FACT)

(SEAL)
(SEAL)

The bond in all terms, conditions and limitations is acknowledged and accepted
by: _____ By: _____

EXHIBIT G

Performance Guaranty

PERFORMANCE GUARANTY

Guaranty

THIS GUARANTY (the "Guaranty") is given as of the ____ day of ____, 1999.

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

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

B. Owner and the Agency have negotiated an Agreement for Solid Waste, Recyclable Materials and Plant Materials Collection Services dated as of _____, (hereinafter "Agreement"). A copy of this Agreement is attached hereto.

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

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

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

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

B. **Guarantor's Obligations Are Absolute.** The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited, and with respect to any payment obligation of Owner under the Agreement, shall constitute a guarantee of payment and not of Collection, and are not conditional upon the genuineness, validity, regularity or enforceability of the Agreement. In any action brought against the Guarantor to enforce, or for damages for breach of, its obligations hereunder, the Guarantor shall be entitled to all defenses, if any, that would be available to the Owner in an action to enforce, or for damages for breach of, the Agreement (other than discharge of, or stay of proceedings to enforce, obligations under the Agreement under bankruptcy law).

C. **Waivers.** Except as provided herein the Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under it for any reason whatsoever, including, without limitation: (1) the

insolvency, bankruptcy, reorganization or cessation of existence of the Owner; (2) the actual or purported rejection by a trustee in bankruptcy of the Agreement, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (3) any waiver with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of the Agency's rights or remedies against the Owner; or (4) any merger or consolidation of the Owner with any other corporation, or any sale, lease or transfer of any or all the assets of the Owner. Without limiting the generality of the foregoing, Guarantor hereby waives the rights and benefits under California Civil Code Section 2819.

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

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

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

D. Term. This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed or otherwise discharged and Guarantor shall remain fully responsible under this Guaranty without regard to the acceptance by the Agency of any performance bond or other collateral to assure the performance of Owner's obligations under the Agreement. Guarantor

shall not be released of its obligations hereunder so long as there is any claim by the Agency against Owner arising out of the Agreement based on Owner's failure to perform which has not been settled or discharged.

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

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

G. **Governing Law: Agency.** This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of laws, rules for all purposes including, but not limited to, matters of construction, validity and performance. Guarantor agrees that any action brought by the Agency to enforce this Guaranty may be brought in any court of the State of California and Guarantor consents to authority over it by such courts. Guarantor appoints the following Person as its agents for service of process in California:

With a copy by certified mail to:

H. **Severability.** If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will have no effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.

I. **Binding On Successors.** This Guaranty shall inure to the benefit of the Agency and its successors and shall be binding upon Guarantor and its successors, including

transferee(s) of substantially all of its assets and its shareholder(s) in the event of its dissolution or insolvency.

J. **AUTHORITY.** Guarantor represents and warrants that it has the corporate power to give this Guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Article of Incorporation and by-laws, and that the Person signing this Guaranty on its behalf has the authority to do so.

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

To the Agency:

City Manager

City of Belmont

1070 Sixth Avenue

Belmont, CA. 94002

with a copy to the Agency Counsel at the same address.

To the Guarantor:

By: _____
(title)

EXHIBIT H

Notary Certification

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NOTARY CERTIFICATION

EXHIBIT H

STATE OF CALIFORNIA)

COUNTY OF _____) ss:

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

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

Notary Public

My Commission Expires:

This FIRST AMENDMENT to the Franchise Agreement between the City of San Carlos and BFI Waste Systems of North America Inc., for Solid Waste, Recyclable Materials, and Plant Materials Collection Services is made by and between BFI Waste Systems of North America, Inc. (Contractor) and the City of San Carlos (City).

RECITALS

Whereas, City and Contractor entered into the Agreement, effective March 1, 2000; and,

Whereas Agreement contemplated that the City might desire additional services or the modification of existing services, and, the Agreement requires Contractor to submit a proposal describing additional or expanded diversion services; and,

Whereas, the City desires to increase diversion by providing collection of Plant Materials, as that term is defined in the Agreement, to Commercial, Industrial and Institutional Service Recipients; and,

Whereas, in accordance with the Agreement, Contractor has prepared a proposal in response to the City's request; and,

Whereas, Contractor and the City have agreed to amend the Agreement to incorporate this modification to existing services;

NOW, THEREFORE, BE IT AGREED THAT THE AGREEMENT IS AMENDED AS FOLLOWS:

1. Section 4.03.2 is amended to add: "Contractor shall also offer commercial plant material collection to Commercial, Industrial and Institutional Service Recipients (the Recipients). Initially, collection shall only be provided to those Recipients who have a minimum of two cubic yards of plant material available for collection per week."
2. Section 4.04.1 is amended to add: "Contractor shall collect Plant Materials from Commercial, Industrial and Institutional Service Recipients as provided in Section 4.03.2."
3. Section 8.03.5 is added to the Agreement as follows: "BFI shall submit a "90 day Progress Report" to the Recycling Committee and jurisdiction to provide tons collected, program costs, participating accounts and any issues requiring discussion."
4. In all other respects the Agreement is reaffirmed.

In witness whereof, the parties hereto have executed this Amendment to the Agreement on the date indicated below.

Dated: _____

BFI Waste Systems of North America, Inc.

City of San Carlos

By: _____
Dan Day, District Manager
Manager

By: _____
Michael Garvey, City

SECOND AMENDMENT to the Agreement for Solid Waste, Recyclable Materials, and Plant Materials Collection Services ("Agreement"), dated for reference January 27, 2004, is made by and between the City of Belmont (hereinafter "CITY" and BFI WASTE SYSTEMS OF NORTH AMERICA, Inc. (hereinafter "CONTRACTOR"))

RECITALS

Whereas, The CITY and Contractor entered into the Agreement, dated January 3, 2001; and,

Whereas Agreement anticipates that the CITY may request additional services or the modification of existing services there under; and,

Whereas, the Agreement provides that the CITY may direct Contractor to submit proposals from time to time to provide additional or expanded services; and

Whereas, the CITY is a Member Agency of the South Bayside Waste Management Authority (herinafter "Authority"), and the Authority, on behalf of the CITY, has requested a proposal from Contractor for a Commercial Organics Collection Program; and,

Whereas, Contractor has prepared a proposal in response to the Authority's request; and,

Whereas, Contractor and the CITY now desire to amend the Agreement to incorporate the Commercial Organics Collection Program.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Contractor shall implement the program to diverted commercial organic material from landfill disposal (hereinafter the "Commercial Organics Collection Program", or "Program") consistent with Contractor's November 20, 2002 proposal (Attachment 1), and subsequent clarifications and revisions dated: January 27, 2003 (Attachment 2); February 7, 2003 (Attachment 3); March 14, 2003 (Attachment 4); August 6, 2003 (Attachment 5); and August 13, 2003 (Attachment 6). Copies of the foregoing documents are on file with the Authority, the CITY, and the Contractor.

2. The Commercial Organics Collection Program shall commence not later than December 2004, and shall continue for the remaining term of the Agreement and any extension thereof.

3. Contractor shall report Program tonnage information and other such other operational information (e.g., changes in participants' solid waste service levels), in a content and format satisfactory to the Authority, as part of the existing quarterly MIS report provided by Contractor to Authority. In addition, Contractor shall submit Program financial information as a part of Contractor's annual rate application consistent with the provisions of Article 6 of the Agreement.

4. The Contractor shall be compensated for services rendered hereunder in accordance with Article 6 of the Agreement, except as provided below for processing expenses.

5. Accounting for processing expenses incurred hereunder shall be the product of multiplying the number of commercial organic tons processed by Contractor by the applicable Processing Fee (per ton) specified below (hereinafter referred to as the "Processing Fee").

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

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

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

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

9. As an additional part of the Program, Contractor shall provide the CITY with finished compost measured by the inbound tonnage of organic material delivered to the Newby Compost Facility from Agency's Service Area. The CITY may elect to receive finished compost in accordance with the following exchange factors: (a) one cubic yard of *bulk* compost in exchange for each incoming ton of material delivered; (b) one, one cubic foot *bag of* compost in exchange for each two tons of material delivered; or (c) any combination of the foregoing. Contractor will provide additional bagged compost at \$1.00 per bag, subject to a CPI adjustment after the December 31, 2004. Compost requested by The CITY within a calendar year shall be charged against inbound tonnage only in the same calendar year.

10. In the event the Agreement is not extended after December 31, 2006, the Authority shall pay the Contractor the Net Book Value of the vehicles and containers required for the Commercial Organics Collection Program. In such event, the Authority shall have the option, but not the obligation, to assume ownership of such vehicles and/or containers. If the Agreement is extended after December 31, 2006, then the Authority shall have the option, but not the obligation, to purchase the commercial organics collection vehicles and/or containers by payment to Contractor of the Net Book Value thereof at the end of the final term of any such extensions.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written by their respective officers duly authorized in that behalf.

CITY OF BELMONT

Dated: _____

City Manager

APPROVED AS TO FORM

Dated: _____

City Attorney

FUNDING VERIFIED:

Dated: _____

Finance Director

CONSULTANT

Dated: _____

**Third Amendment to the Franchise Agreement between the
City of Belmont and BFI Waste Systems of North America,
Inc. for Solid Waste, Recyclable Materials, and Plant Material
Collection Services**

This THIRD AMENDMENT to the Franchise Agreement between the City of Belmont and BFI Waste Systems of North America, Inc. for Solid Waste, Recyclable Materials, and Plant Material Collection Services (Agreement) of March 1, 2000 is made by and between the City of Belmont (Agency) and BFI Waste Systems of North America, Inc. (Contractor).

RECITALS

Whereas, Agency and Contractor entered into the Agreement; and,

Whereas, the parties contemplated that the Agreement should be extended from December 31, 2006 to December 31, 2009, conditioned on the Agency's affirmative evaluation of the Contractor's performance in certain areas; and,

Whereas, the Agency has found that Contractor's performance has been reviewed and determined to be satisfactory; and,

Whereas, the Agreement contemplated that the Agency may wish to extend the term of the Agreement beyond the December 31, 2009 termination date of the initial contract extension, for a period of one to seven years in increments of at least 12 months; and,

Whereas, the Agency has determined that the benefits offered by the Contractor in exchange for granting its request are in the best interest of the agency and its residents and businesses;

NOW THEREFORE, BE IT AGREED AS FOLLOWS:

1. The term of the Agreement shall be extended from December 31, 2006 to December 31, 2009, in accordance with Section 2.04 of the Agreement, in recognition of the Contractor's satisfactory performance with certain exceptions, namely: not having achieved the diversion program guarantees described in Section 4.05.A.1 of the and Agency has agreed to waive Contractor's failure to perform to the above standard established in the Agreement.
2. The term of the Agreement shall be extended an additional 12 months, from December 31, 2009 to December 31, 2010, through the exercise of the Agency's right under Section 2.05 of the Agreement. Any extension of the Agreement thereafter shall be at the sole discretion of the Agency.

3. This agreement shall be effective on the date on which the last of the following agreements is executed.

- a. The Amendment to the Franchise Agreements between the SBWMA Member Agencies and BFI Waste Systems of North America, Inc. for solid waste, recyclable materials and plant material collection services extending those agreements to December 31, 2010; and,
- b. Fifteen-year Agreement between the South Bayside Waste Management Authority and Browning-Ferris Industries of California, Inc. for Solid Waste Disposal Services at most-favored disposal rates and with payments by Contractor to the Authority.

4. In all other respects the Agreement shall remain the same.

In witness thereof, the parties hereto have executed this Amendment to the Agreement on the date indicated below.

BFI Waste Systems of North America, Inc.

By: _____

Dated: _____

City of Belmont

By: _____
Daniel Rich, Interim City Manager

Dated: _____