



Staff Report

RESOLUTION APPROVING THE FIRST AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT FOR THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY

Honorable Mayor and Council Members:

Summary

The Board of Directors of the South Bayside Waste Management Authority (SBWMA) has approved amending its Joint Exercise of Powers Agreement (JPA) to improve the efficiency of its operations. Major changes are creation of an Executive Director position, a new process for selecting the Chair of the Board, and restrictions on eligibility for appointment to the Board. The SBWMA Board is now recommending that the Councils or Boards of the member agencies approve the amended and restated JPA. Approval of two-thirds, or eight of the twelve Member Agencies is needed to complete this action.

Background

In 1999, the City of Belmont joined eleven other local agencies in a Joint Exercise of Powers Agreement to form the South Bayside Waste Management Authority. SBWMA owns real property including the transfer station, employs staff and consultants, and manages contract services for the purposes of providing solid waste disposal and recycling and complying with state regulations. The other members and equity partners are the Town of Atherton, City of Burlingame, City of East Palo Alto, City of Foster City, Town of Hillsborough, City of Menlo Park, City of Redwood City, City of San Carlos, City of San Mateo, County of San Mateo, and the West Bay Sanitary District. The SBWMA replaced an earlier South Bayside Transfer Station Authority JPA formed in 1982 with the same membership.

The JPA sets out the rules of governance and the organization of SBWMA, as well as the rights and responsibilities of the members. SBWMA is governed by a Board of Directors composed of one voting representative from each member agency. The SBWMA JPA calls for these representatives to be a City Manager, Finance Director, or Public Works Director, or a designee of any of these personnel. The San Carlos Director (San Carlos City Manager) is the Chair of the Board. Neither the Chair nor other Board members are compensated by SBWMA for this service. The City of San Carlos (San Carlos Finance Director) provides financial services and is compensated by SBWMA for this work. Robert Lanzone of Aaronson, Dickenson, and Lanzone

provides legal counsel. Other administrative and technical support is obtained through contracts with Regional Government Services, the City of San Carlos, Hilton, Farnkopf & Hobson, and ESA. Altogether, the compensated consulting “staff” is roughly equivalent to 5.5 full-time positions. In addition, SBWMA funds various positions at BFI such as the Community Recycling Coordinators and transfer station gate personnel. Finally, SBWMA uses additional consultant contracts for specific on-going projects such as public outreach and production of the quarterly newsletter. All of these consultants and contractors report to the Chair of SBWMA.

In February 2004, the SBWMA Board approved formation of a staffing structure committee to evaluate the organization of the staff, consultants, and contractors doing SBWMA work. In April 2004, with Board approval, the committee contracted with Rahn Becker Municipal Consulting to evaluate the staff structure and recommend improvements. Becker presented his report to the Board at the November 2004 meeting, finding that the existing structure is inefficient and not well-matched to current needs. Becker stated that the scattered structure makes it difficult for SBWMA to respond to increasingly demanding regulatory requirements. Becker recommended that SBWMA employ an Executive Director to take over the administrative duties of the Chair. The Executive Director would report to the Board and the other staff would be transferred under the Executive Director.

SBWMA formed a new staffing structure committee to review Rahn Becker’s findings and make recommendations to the Board. The committee met through the Spring of 2005 and reached agreement that SBWMA should establish an Executive Director position. The long-standing Chair had announced his retirement and it was apparent that the SBWMA would need to reassign his administrative duties. Creating the Executive Director position does require amending the governing provisions of the JPA which, in turn, requires approval of two-thirds of the Member Agencies. The SBWMA has contracted with an executive recruiter to on the assumption that the Member Agencies will approve this action. The Chair appointed a three-member selection committee to work with the recruiter to obtain and evaluate candidates. This committee reported last month that they have completed their evaluation and will soon be ready to provide recommendations to the Board. Staff will provide an update if the committee provides further information at the November 17th Board meeting.

The staffing structure committee also discussed amending the JPA to change to a Board of Directors of elected officials, but could not reach agreement. At the May 24, 2005 meeting, Belmont’s Council directed its representative to vote in favor of changing to an elected official Board. On May 26, 2005, the SBWMA Chair canceled the staffing committee meeting and instead called for a special meeting of the City Managers of the member agencies. It would have taken the approval of two-thirds of the managers present to carry an amendment recommendation forward, but the majority voted to retain the current structure. Three members (Belmont, East Palo Alto and Redwood City) voted against retaining the current structure and one member, West Bay Sanitary District, was absent. The Chair did advise the City Managers to

restrict their Board appointments to executive and senior managers. He noted that SBWMA has started procurement for the waste hauler and operator contracts set to expire in 2010. The procurement will place massive pressure on City Councils, City Managers and the SBWMA Board and so it will be critically important for the cities to maintain clear and constant communication between these entities.

Discussion

SBWMA's Legal Counsel drafted amendments to the SBWMA JPA incorporating the changes requested by the Board. The Board discussed the proposed amendments at its August 25, 2005 and September 22, 2005 meetings and has voted to recommend that the Member Agencies approve the amendments. A redacted version of the JPA showing the additions and deletions is attached to this report. SBWMA will distribute a clean copy for signature when two-thirds of the Member Agencies have approved the amendments.

The major changes to the JPA are as follows:

Page 1-2, Recitals, Paragraphs A, M, and S. This information is added or revised to incorporate changes occurring after the JPA was executed in 1999.

Page 3, Article 4.2, Term. Added information makes explicit that SBMWA cannot be dissolved until its financial obligations are met or otherwise transferred. Bonds issued to finance purchase of the transfer are scheduled to be paid off in 2019.

Page 5-6, Article 7.1.1, SBWMA Powers. This paragraph adds the explicit requirement that SBWMA cannot complete the listed activities having financial impact until two-thirds of the Member Agencies approve. This ensures that elected officials have direct oversight over SBWMA financial commitments.

Page 6, Article 8.1, Governance, Board of Directors. These revisions change the staff positions eligible for Board appointment,

from:

- City Manager,
- Finance Director,
- Public Works Director, or
- the designee of these staff,

to:

- City Manager, Assistant City Manager or equivalent;
- Finance Director, Assistant Finance Director, or equivalent; or
- Public Works Director, Assistant Public Works Director, Environmental Programs Manager, or equivalent.

The intent of this change is to ensure that Board members are at a sufficiently senior level to understand implications of Board decisions and to communicate frequently with their Councils, either because they are City Managers or via unimpeded access to their City Managers. The desire to have executive staff appointments is balanced by the recognition that Cities need a sufficiently large pool of eligible staff to draw from to ensure that they will have consistent and constant representation at Board meetings.

Page 6, Article 8.5, Governance, Chair. These changes specify that the SBWMA Board will select its Chair on an annual basis from the Board of Directors. The Director from San Carlos will no longer be the permanent Chair of the Board. Other changes in this section transfer administrative and technical oversight duties of the Chair to the Executive Director.

Page 7, Article 8.10, Governance, Executive Director. This paragraph establishes the Executive Director position and defines its role and responsibilities. The Executive Director will serve at the pleasure of the Board and will administer the SBWMA.

Fiscal Impact

There is no fiscal impact to the City of Belmont budget from any action Council may take on this item. SBWMA has its own budget funded by revenues collected from the rate payers.

Employment of an Executive Director will increase SBWMA's costs. The executive recruiter advised that the appropriate total compensation package range for this position is \$205,000 to \$235,000 per year. This cost will be part of SBWMA's total expenses and will not be broken down by jurisdiction. However, a general sense of the impact to Belmont rate payers can be assessed by noting that Belmont ratepayers contribute roughly five percent of total revenues and so will fund roughly \$10,000 to \$12,000 of the Executive Director's annual compensation.

Public Contact

Discussion and approval of the proposed amendments to the JPA was posted with the SBWMA Board agendas for its August 25, 2005 and September 22, 2005 meetings. This item was also posted in this Council agenda.

Recommendation

In accordance with the SBWMA Board recommendation of September 22, 2005, staff recommends that Council adopt the attached resolution approving the first amended and restated joint exercise of power agreement for the South Bayside Waste Management Authority.

Alternatives

1. Take no action or deny approval. The JPA will remain in effect in its present form until and unless eight or more of the Member Agencies approve amendment.
2. Refer back to staff for further information.

Attachments

- A. Resolution
- B. First Amended and Restated Joint Exercise of Powers Agreement for the South Bayside Waste Management Authority (version showing additions and deletions)

Respectfully submitted,

Kathleen E. Phalen, PE
City Engineer

Raymond E. Davis, III, PE, PTOE
Director of Public Works

Jack R. Crist
Interim City Manager

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT
RESOLUTION APPROVING THE FIRST AMENDED AND RESTATED JOINT
EXERCISE OF POWERS AGREEMENT FOR THE SOUTH BAYSIDE WASTE
MANAGEMENT AUTHORITY**

WHEREAS, in 1999 the City of Belmont joined with the Town of Atherton, City of Burlingame, City of East Palo Alto, City of Foster City, Town of Hillsborough, City of Menlo Park, City of Redwood City, City of San Carlos, City of San Mateo, County of San Mateo, and the West Bay Sanitary District to form the South Bayside Waste Management Authority for the purpose of providing efficient and compliant solid waste management services for its residents and businesses; and,

WHEREAS, the governance, organization, rights and duties of the South Bayside Waste Management Authority are defined by a Joint Exercise of Authority Agreement dated December 9, 1999; and,

WHEREAS, each member agency of the South Bayside Waste Management Authority is represented by a member of its staff appointed to serve on a governing Board of Directors; and,

WHEREAS, the South Bayside Waste Management Authority establishes fees, owns real property, and enters into contracts for consultant and contractor services; and,

WHEREAS, the Board of Directors of the South Bayside Waste Management Authority desires to improve the structure and organization of its staff to increase its ability to respond to customer and regulatory demands; and,

WHEREAS, on September 22, 2005, the Board of Directors of the South Bayside Waste Management Authority voted to approve amendment and restatement of the Joint Exercise of Powers Agreement to effect the following changes:

1. Establish an Executive Director position to administer the Authority,
2. Remove administrative tasks from the duties of the Chair of the Board,
3. Require the Board of Directors to elect a Chair from the of Board membership each year,
4. Restrict Board of Director appointments to the following staff classifications:
 - a. City Manager, Assistant City Manager or equivalent;
 - b. Finance Director, Assistant Finance Director, or equivalent; or
 - c. Public Works Director, Assistant Public Works Director, Environmental Programs Manager, or equivalent; and,

WHEREAS, on September 22, 2005, the Board of Directors of the South Bayside Waste Management Authority voted to recommend that the Council or Board of each member agency approve the amended and restated Joint Exercise of Powers Agreement; and,

WHEREAS, it requires the approval of two-thirds of the member agencies to amend the Joint Exercise of Powers Agreement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Belmont approves the First Amended and Restated Joint Exercise of Powers Agreement for the South Bayside Waste Management Authority.

* * * * *

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of Belmont at a regular meeting thereof held on November 22, 2005 by the following vote:

AYES, COUNCILMEMBERS: _____

NOES, COUNCILMEMBERS: _____

ABSTAIN, COUNCILMEMBERS: _____

ABSENT, COUNCILMEMBERS: _____

CLERK of the City of Belmont

APPROVED:

MAYOR of the City of Belmont

First Amended and Restated
Joint Exercise of Powers Agreement
South Bayside Waste Management Authority

This First Amended and Restated Joint Exercise of Powers Agreement is entered into this ___ day of _____ 2005, pursuant to the provisions of the Joint Exercise of Powers Act (Title 1, Division 7, Article 1, §6500 et seq. of the California Government Code) relating to the joint exercise of powers among the County of San Mateo and those cities, and towns listed in Exhibit A and B, hereafter collectively called "Agencies."

RECITALS

A. WHEREAS the Agencies heretofore entered into a Joint Exercise of Powers Agreement on December 9, 1999 (the JPA Agreement). The JPA Agreement was first amended on June 4, 2002 to change the definition of Fiscal Year; and

B. WHEREAS the Agencies are responsible for the health and safety of the citizens within their geographic boundaries; and

C. WHEREAS the Agencies regulate Solid Waste, Recyclable Material, and Plant Material, Collection in areas under their jurisdiction and award Franchises for Collection to private organization(s), herein called "Collector(s)"; and

D. WHEREAS the Agencies find it in their mutual economic interest to address Solid Waste and Recycling issues on a regional level; and that the costs for planning and implementing Solid Waste and Recycling Programs will be based on a fair and equitable allocation system that considers the relative benefits to each Agency and the additional cost of services provided to each Agency; and

E. WHEREAS the Agencies have used and are committed to owning and using certain regional Facilities located in the City of San Carlos, which are part of the San Mateo County Integrated Waste Management Plan, as approved by the California Integrated Waste Management Board; and

F. WHEREAS the ownership and use of these regional Solid Waste Facilities provides economic benefits to the ratepayers of the Agencies; and

G. WHEREAS the California Integrated Waste Management Act (CIWMA)(California Public Resources Code, §40000 et seq.) requires that the Agencies reduce by fifty (50) percent the amount of Solid Waste they landfill by the end of the year 2000; and

H. WHEREAS the CIWMA requires that the Agencies prepare, adopt, and implement source reduction and recycling elements to meet the fifty (50) percent reduction goal; and

I. WHEREAS the Agencies intend to coordinate their efforts to produce and share Solid Waste, Recyclable Material and Plant Material reports, including program and operational information derived from the operation of regional Facilities, as required by California Public Resources Code, §40000 et seq.; and

J. WHEREAS each Agency has the authority to regulate their Solid Waste, Recyclable Material, and Plant Material stream, including the Collection, Transfer, Transportation, and Processing thereof, and has the authority to establish rates for the conduct of such functions; and

K. WHEREAS Solid Waste from each Agency is landfilled at the Ox Mountain Sanitary Landfill located off State Highway 92, approximately two miles east of Half Moon Bay; and

L. WHEREAS in the absence of a regional Solid Waste Transfer Facility, Solid Waste Collectors would individually have to travel to Ox Mountain to dispose of Solid Waste, which would increase (a) driving distances and times, (b) the size and cost of the Collection vehicles, (c) traffic and congestion on the highways, and (d) the wear and tear on the highways; altogether which would increase the costs to Solid Waste Collection ratepayers; and

M. WHEREAS each Agency has been a member of the South Bayside Waste Management Authority (SBWMA) under a Joint Exercise of Powers Agreement dated December 9, 1999, and has since enjoyed the benefits of such membership, and in accordance with the terms of that agreement has directed its Solid Waste to be Processed at the regional Facility; and

N. WHEREAS modifying the method of Solid Waste, Recyclable Material, and Plant Material Collection, Transfer and Transportation Processing and Disposal could cause disruptions in service to the ratepayers; and

O. WHEREAS California Government Code §6500 et seq. (Joint Exercise of Powers Act) permits two or more public agencies to create joint powers authorities for the purposes cited herein, and permits the agencies to exercise jointly any power that the public agencies could exercise separately, and further grants certain additional powers to such joint powers authorities; and

P. WHEREAS the Agencies' use of regional Solid Waste, Recyclable Material and Plant Material Collection and Processing Facilities under the SBWMA provides a proven history of economic and environmental benefits to its users; and

Q. WHEREAS the parties to this Agreement wish to continue to possess ownership over these regional Solid Waste Facilities; and

R. WHEREAS each Agency has the individual power to plan, acquire, construct, manage, regulate, operate, and control Facilities and operations for the Collection, Transfer, and Transportation, Processing, and Disposal of Solid Waste, Recyclable Material, and Plant Material generated within its jurisdictional boundaries, as well as to create and issue Franchise agreements for such activities; and

S. WHEREAS the Agencies have issued Revenue Bonds to pay for the purchase of these Facilities in March 2000.

NOW, THEREFORE BE IT RESOLVED that the Agencies do hereby establish the South Bayside Waste Management Authority for the purpose of owning, financing, administering, and operating regional Facilities and for administering rates for Solid Waste and diversion programs and do hereby agree as follows:

ARTICLE 1. DEFINITIONS

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

ARTICLE 2. PURPOSE

2.1 Purpose. This Agreement is entered into pursuant to the Act to provide for the exercise of powers as provided therein, and to provide for the joint exercise of certain powers common to the Agencies. The purpose of this Agreement is to provide for the joint ownership, financing, administration, and operation of the Facilities, and for the joint planning, adoption, financing, administration, management, review, monitoring, enforcement, and reporting of Solid

Waste, Recyclable Material, and Plant Material Collection activities in the Service Area. By entering this joint powers authority, the Agencies earn economic benefits not realized when using alternate means of Transferring and Transportation Processing of Solid Waste, Recyclable Material and Plant Materials and Disposal of Solid Waste. Further, the establishment of this joint powers authority provides for the economic viability and utilization requirement of the Facilities.

ARTICLE 3. CREATION OF AUTHORITY

3.1 Creation. Pursuant to the Act, the Agencies hereby create and establish a public entity to be known as the “South Bayside Waste Management Authority” (SBWMA).

3.2 Separate Entity. The SBWMA shall be a public entity separate from the Agencies, and separate from the SBTSA.

3.3 Assets, Rights, and Liabilities. The assets, rights, debts, liabilities, and obligations of the SBWMA shall not constitute assets, rights, debts, liabilities, or obligations of any of the Agencies or the SBWMA. However, nothing in this Agreement shall prevent any Agency from separately contracting for, or assuming responsibility for, specific debts, liabilities, or obligations of the SBWMA, provided that both the Board and that Agency approve such contract or assumption.

ARTICLE 4. TERM

4.1 Effective Date. This First Amended Agreement shall be dated as of, and become effective on, the date of its execution by the last of the Founding Members (Effective Date).

4.2 Term. This Agreement shall continue at least until December 31, 2019, or such further period of time necessary to repay any revenue bonds issued by the SBWMA, and thereafter shall continue until terminated or dissolved by a vote taken in accordance with Section 10.8 of this Agreement. However, in no event shall the Members vote to terminate or dissolve the SBWMA if its termination or dissolution would conflict with or violate the terms or conditions of any bonds, financial instruments, or related documentation by or on behalf of the SBWMA, including, without limitation, indentures, resolutions, and letter of credit agreements.

ARTICLE 5. BOUNDARIES

5.1 Service Area. The SBWMA shall exercise its powers within its Service Area boundaries, as they may change from time to time. The Service Area shall be the consolidated boundaries of the Agencies as defined in Exhibit C. If an Agency withdraws from the SBWMA, the boundary of the SBWMA shall be modified to exclude the area of the withdrawing Agency. Such withdrawal and redrawing of boundaries shall not prevent any Facilities from being located outside of the boundary of the SBWMA.

ARTICLE 6. MEMBERSHIP REQUIREMENTS OF SBWMA

6.1 Required Powers. Each Member of the SBWMA must at all times have the following powers:

- a. The authority to grant Solid Waste Collection Franchises.
- b. The authority, commitment, and agreement to direct the flow of Solid Waste, Recycling and Plant Material generated within the Member’s respective jurisdiction to those Facilities specified by the SBWMA, except as provided

in Sections 2.08 and 2.09 of the Uniform Franchise Agreement, Exhibit D hereto, for a period of time which shall minimally be until December 31, 2019, or such further period of time necessary to repay any revenue bonds issued by the SBWMA .

- c. The authority to set rates sufficient to provide for the financing and operation of the SBWMA Facilities.
- d. The authority, by law, to enter into this Joint Powers Agreement (JPA).

6.2 Founding Members. A Founding Member of the SBWMA shall be one who has joined on the formation of the SBWMA December 9, 1999. Founding Members are listed as such in Exhibit A and B hereto.

6.3 Membership. A Member shall, on joining the SBWMA, elect whether to be an Equity Member or a Non Equity Member.

- a. An Equity Member shall have all of the rights and liabilities of a Member of the SBWMA. An Equity Member shall be a Founding Member who, on joining, elects to be an Equity Member, and shall include a New Member who agrees to pay the equity equalizing fees and payments imposed as a condition of membership. Only an Equity Member shall have the right to vote on any matter before the Board and on any matter to be voted on by a Member except as provided in Section 6.3(b).
- b. A Non Equity Member shall not be required to pay an equity equalizing payment, and shall not have the rights and liabilities of Equity Members, particularly under Section 15 Withdrawal and Section 16 on Termination of the JPA. The Non Equity Member shall, however, direct its flow of Solid Waste, Recyclable Material, and Plant Material to the Facilities subject to the exception in Exhibit D hereto, and comply with the terms of the JPA with respect to the flow of Solid Waste, Recyclable Material, and Plant Material. The Non Equity Member shall be entitled to participate in Board Meetings and activities, and receive all notices and information. However, it shall not be entitled to vote on any matter before the Board, or on any other matter unless the right to vote is expressly provided for the Non Equity Member.
- c. Exhibit A hereto shall designate Equity Members and Exhibit B shall designate Non Equity Members.

6.4 All Members. Equity Members and Non-Equity Members shall, during the term of this Agreement, equally have the right to direct the flow of Solid Waste, Recyclable Material and Plant Material to the Facilities. With respect to the Uniform Franchise Agreement all Equity and Non-Equity Members shall have the right to participate in Board deliberations and negotiations and to vote on all matters, including rates, that are contained therein.

ARTICLE 7. POWERS

7.1 SBWMA Powers. The SBWMA is authorized, but is in no way required, to act in its own name on any or all of the following matters, as each Member could act separately, and as it deems in the best interest of its Members, to the extent permitted by any and all applicable laws, codes, ordinances, resolutions and regulations:

- a. Acquire, construct, finance, refinance, operate, regulate, and maintain Facilities.
- b. Acquire, improve, hold, lease, and dispose of real and personal property of all

- types.
- c. Enter into agreements to operate Solid Waste, Recyclable Material, and Plant Material Transfer, Transport and Processing Facilities.
 - d. Plan, study, and recommend proper and appropriate Solid Waste Recyclable Material and Plant Material Transfer, Transport and Processing management practices. Research and study issues related to Solid Waste Generation, Collection, Transfer, Processing, Diversion, and Disposal, including but not limited to source reduction, re-use, Recycling, and recovery.
 - e. Resolve disputes between the public and any entities providing Solid Waste, Recycling Material, and Plant Material Transfer, Transportation and Processing services.
 - f. Plan, design, and implement programs that address CIWMA transfer, processing and diversion requirements.
 - g. Educate the public as to Solid Waste, Diversion, and Recycling matters.
 - h. Provide for or enter into agreements to provide for financial, engineering, legal, audit, and any other professional services supporting any of the SBWMA's programs including, but not limited to, Solid Waste, Recyclable Material, and Plant Material Transfer, Transport and Processing Facility operations and Disposal. Such agreements can be made with any Person, including any Member.
 - i. Apply for, accept, and receive grants, gifts, donations, advances, and contributions.
 - j. Hire agents and employees.
 - k. Sue and be sued in its own name.
 - l. Incur and discharge debts, liabilities, and obligations.
 - m. Issue bonds or notes and associated covenants, for designated purposes, subject to the provisions and limitations of the California Government Code.
 - n. Issue and receive loans.
 - o. Establish rates and fees at Solid Waste, Recyclable Material, and Plant Material Transfer, Transport and Processing Facilities.
 - p. Require Members to pass-through the cost of the SBWMA's operations to the rates assessed on Facility users.
 - q. Adopt, as authorized by California law, ordinances and resolutions necessary to carry out the purposes of this Agreement.
 - r. Enter into Franchise Agreements for use of the Transfer Station and pay a Franchise fee.
 - s. Require Members to direct all of their Solid Waste, Recyclable Materials and Plant Materials generated and Collected by Collectors within their respective boundaries to the Facilities, except as provided in Exhibit D hereto.

7.1.1 The following powers require the approval of two-thirds of the Members as would be required under Article 17 for an amendment to this JPA Agreement:

- a. Acquisition of real property
- b. Disposal or transfer of any interest in real property
- c. Entering into or amending Franchise Agreements for the operation of the Facilities
- d. Issuance of bonds or notes, or the refinance of such bonds or notes.

ARTICLE 8. GOVERNANCE

8.1 Board of Directors. The SBWMA shall be governed and administered by a Board of Directors composed of one Director from each Member. The Board shall exercise all powers and authority on behalf of the SBWMA. Each Member must select its Director or the Director's designee alternate from among the following positions:

- a. County, District, City, or Town Manager or the equivalent position
- b. County, District, City, or Town Assistant Manager or the equivalent position
- c. Finance Director or Assistant Finance Director or the equivalent position
- d. Public Works Director or Assistant Public Works Director or Environmental Programs Manager or the equivalent position.

8.2 Tenure. Each Director shall hold office from the first meeting of the Board after appointment by the Member until his or her successor is selected by the Member.

8.3 Compensation. Directors shall receive no compensation from the SBWMA for serving on the Board. The SBWMA may reimburse Directors for reasonable expenses necessarily incurred on the Board's behalf, with prior approval of the Board.

8.4 Member Mergers. If any Member merges with another public entity, the successor public entity shall have one (1) Director position on the Board.

8.5 Chair. The Board shall annually select a Chair, by a vote taken in accordance with Section 10.8 of this Agreement, who shall serve without compensation at the pleasure of the Board. The duties of the Chair include, but are not limited to the following:

- a. Conducts Board meetings.
- b. Review and set meeting agendas with the Executive Director.
- c. Signs any and all SBWMA official documents.

8.6 Vice Chair. The Board shall annually select a Vice Chair, by a vote taken in accordance with Section 10.8 of this Agreement, who serves without compensation at the pleasure of the Board. The Vice Chair shall act in the absence of the Chair, with full powers of the Chair.

8.7 Finance Director. The Board shall select, by a vote taken in accordance with Section 10.8 of this Agreement, a Finance Director from one of the Members to be Finance Director for the SBWMA, who serves at the pleasure of the Board. The duties of the Finance Director include, but are not limited to the following, all in accordance with prudent financial management and California law, including but not limited to California Government Code §6505 et seq.:

- a. Reports to the Chair on any and all SBWMA financial matters.
- b. Serves as the SBWMA's treasurer and controller.
- c. Receives and accounts for any and all SBWMA revenues.
- d. Makes any and all SBWMA investments using sound and prudent investment practices.
- e. Disburses and accounts for any and all SBWMA funds.
- f. Issues or causes to be issued all Revenue Bond payments, according to the payment schedule as part of the Revenue Bonds.
- g. Maintains any and all reserves, as may be required by the Revenue Bonds or any other instruments.
- h. Prepares, within one hundred twenty (120) days after the close of each Fiscal Year, an annual financial report reflecting SBWMA financial activity,

including activity associated with the operations of the Facilities, whether such operation is performed by the SBWMA directly or is contracted.

- i. Prepares other financial statements and reports for the SBWMA, as needed.
- j. Causes the annual financial report to be audited by an independent Certified Public Accountant (CPA) currently licensed to practice in the State of California.
- k. Presents the audit report, including the associated management letter, to the Board at the first scheduled Board meeting subsequent to the release of the audit report.

8.8 Other Officers. The Board may create or eliminate other officers not specifically mentioned in Sections 8.5–8.7 of this Agreement from time to time, as the Board deems necessary, upon majority vote. Such officers shall serve without compensation.

8.9 Employee Status. None of the officers, agents, or employees employed or hired by the SBWMA shall by reason thereof become officers, agents, or employees of any Member. The SBWMA may contract with any Member for any services, upon a vote in accordance with Section 10.8 of this Agreement; however, none of the Persons whose services are supplied by a Member shall by reason thereof become an employee of the SBWMA.

8.10 Executive Director. The position of Executive Director is created. The Executive Director is appointed by the Board and serves at the will of the Board. The duties of the Executive director include, but are not limited to the following:

- a. Administers any and all meeting agendas, including compliance with noticing requirements and meeting locations, as provided under California Government Code §54950-54962 (Brown Act).
- b. Causes accurate minutes and records to be taken of all meetings in accordance with California law, including but not limited to California Government Code §54957.2 et seq.
- c. Has authority to appoint, remove, promote, demote, supervise, and determine compensation of any and all SBWMA employees in accordance with Board approved salary ranges.
- d. Manages any and all SBWMA contracts or agreements, including but not limited to, the Facilities operating agreement.
- e. Approves any and all SBWMA payments in conformance with Board approved appropriations.
- f. Attends all Board meetings.
- g. Prepares and submits to the Board an annual budget.
- h. Performs such other duties as the Board shall require.

8.10.1 The Executive Director shall be bonded with a corporate surety to be approved by the Board.

8.10.2 The Executive Director shall receive such compensation as the Board shall from time to time determine.

ARTICLE 9. VACANCIES

9.1 Director Vacancies. **9.1 Director Vacancies.** Should a vacancy occur on the Board due to the separation from service by a Director from a Member, the person who is acting in the capacity of the former Director with the Member shall temporarily assume the duties of the former Director until such time as the Member appoints a permanent Director. Such

temporary Director shall have the full powers and authority of a permanent Director.

9.2 Officer Vacancies. Should a vacancy occur among any officer authorized in Article 8 of this Agreement, the Board shall elect a new officer at its next scheduled Board meeting.

ARTICLE 10. MEETINGS

10.1 Regular Meetings. The Board shall schedule by Resolution regular monthly meetings during each Fiscal Year.

10.2 Special Meetings. Special meetings of the Board may be called in accordance with provisions of the California Government Code §54956.

10.3 Notice of Meetings. All meetings of the Board shall be held subject to the provisions of California Government Code §54950-54962 (Brown Act) and other applicable laws of the State of California.

10.4 Meeting Location. All meetings of the Board must be held within the Service Area at a location determined by the Chair, except that the Board may hold a special meeting outside the Service Area upon an affirmative vote in accordance with Section 10.8 of this Agreement.

10.5 Minutes. The Chair shall cause the taking and keeping of minutes of all Board meetings. Promptly after each meeting, the Chair shall cause a copy of the minutes to be forwarded to each Director, either electronically or in paper form.

10.6 Quorum. A majority of the Directors shall constitute a quorum for the transaction of business of the Board, except that Directors constituting less than a quorum may adjourn any meeting.

10.7 Voting Rights. Each Member is entitled to cast one vote on any matter presented to the Board for a vote.

10.8 Voting Requirement. The vote of two thirds (2/3) of the Directors present shall constitute the act of the Board, unless otherwise provided in this Agreement.

10.9 Conduct of Meetings. Meetings of the Board shall be conducted by the Chair, or in the Chair's absence by the Vice Chair. In the absence of both the Chair and the Vice Chair, meetings shall be conducted by the Director in attendance who represents the largest Member, by population.

ARTICLE 11. BYLAWS

11.1 Bylaws. The Board from time to time may adopt and amend bylaws for the conduct of its affairs, provided that they are consistent with this Agreement and are necessary and appropriate in order to carry out the SBWMA's purpose.

ARTICLE 12. FUNDING

12.1 Debts and Liabilities. The SBWMA's debts, liabilities, and obligations shall not be debts, liabilities, or obligations of any of the Members, and each Member's obligation hereunder is expressly limited only to the appropriation and contribution of such funds as may be levied pursuant to this Agreement or as the Members hereto may agree.

12.2 SBWMA Activities. Unless otherwise authorized by the Board, all costs associated with SBWMA activities shall be paid by the Facilities' users. The SBWMA shall be solely responsible for determining the amount of any charge to recover these pass-through costs. The Members hereby agree to pass any such charge as approved by the SBWMA, to users as part

of the Solid Waste, Recyclable Material and Plant Material and Transfer and Transport and Processing rate, without reduction, limitation, offset, or adjustment of any kind.

12.3 SBWMA Records and Accounts. The Finance Director shall maintain accurate and correct books of account showing in detail revenues and expenditures, together with supporting documentation including, but not limited to, receipts, invoices, and vouchers for SBWMA financial transactions.

12.4 Facilities Records and Accounts. The Finance Director shall maintain or cause to be maintained accurate and correct books of account of the Facilities' operations showing in detail revenues and expenditures, together with supporting documentation including, but not limited to, receipts, invoices, and vouchers.

12.5 Revenue Bond Payments. The revenue stream pledged to the Revenue Bonds may in no way be used for any purpose other than to make payment on the indebtedness associated with those bonds. Such revenues are not in any way considered revenues to the Agencies, and may not be used for any other purpose unless and until such Revenue Bonds are defeased or repaid in full.

12.6 Franchise Fee Payments. Monthly, SBWMA shall distribute to the City of San Carlos, from funds received from Contractor, one twelfth (1/12th) of the annual franchise fee agreed to by the SBWMA and the City of San Carlos for the operation of the Facilities.

12.7 Priority of Distribution of Funds Received by SBWMA.. Monthly, the SBWMA shall receive funds from the Contractor of the Facilities under Section 6.04 of the Agreement for the Operation of the South Bayside Waste Management Authority's Transfer Station and Recyclery. The SBWMA shall distribute the funds received in accordance with the following priority:

- a. Debt Service Payments.
- b. Contributions to Reserves.
- c. Management Costs.
- d. Payment of Franchise Fees to the City of San Carlos.
- e. Such other distribution as authorized by the Board.

ARTICLE 13. SBWMA ADMINISTRATION POWERS

13.1 Assertion of Authority. The Members shall not engage in any action that would duplicate, circumvent, by-pass, or supersede the SBWMA's powers, as expressed in this Agreement.

13.2 Facility Operator. The Members agree that the SBWMA shall have sole authority to operate or contract for the operation of the Facilities, and have sole authority to direct the delivery of all or a portion of each Member's Solid Waste, Recyclable Material, and Plant Material to the Facilities, except as provided in Exhibit D hereto. No Member shall take any action in any manner, inconsistent with the terms of this Agreement.

13.3 Operating Records. The SBWMA will cause the Facilities' Contractor to maintain accurate, timely, and complete records of operations at the Facilities, as necessary to comply with any CIWMA or other State requirements, or this Agreement.

13.4 Operations Reporting. The SBWMA shall cause the Facilities' Contractor to compile information and report on any of its Facilities operations, in accordance with the CIWMA and this Agreement.

13.5 Solid Waste Reporting. The SBWMA shall cause the Facilities' Contractor to compile and report to the CIWMA and other State of California agencies data on Solid Waste

accepted at the Facilities, all on behalf of the Members.

13.6 Require Compliance with Laws. The SBWMA shall require the Facilities Contractor to operate said Facilities in compliance with all Federal, State, and local laws, Environmental Laws, guidelines, and regulations, as may exist, or as may exist from time to time.

13.7 Bond Payment Review. The SBWMA shall at least annually review the Revenue Bond payment history and payment projections to the end of bond repayment.

13.8 Bond Management. The SBWMA shall periodically consider defeasing the Revenue Bonds and refinancing any existing debt to the economic benefit of the Members, as market conditions allow.

13.9 Bond Reserves. The SBWMA shall maintain at least the minimum reserve fund requirements specified in the Revenue Bond covenants.

13.10 Asset Reserves. The SBWMA shall establish and maintain an asset replacement reserve fund at a level at least adequate to finance appropriate and ordinary asset replacement at the Facilities.

13.11 Annual Inspection. At least annually, the SBWMA shall inspect or cause to be inspected by a qualified and licensed civil engineer all of its Facilities, including all property, land, equipment, and other items owned by the SBWMA.

13.12 Attributing Solid Waste. The SBWMA shall establish a fair and equitable method of attributing Solid Waste, Recyclable Materials and Plant Materials to the Members that are delivered to the Facilities.

13.13 Miscellaneous. The SBWMA may operate programs, conduct analyses, and perform studies from time to time, all in support of the purposes under this Agreement, as the Board so approves.

13.14 Member Cooperation. Members agree to cooperate in the accumulation of information supporting goals approved by the Board, as provided in this Agreement.

ARTICLE 14. PENALTIES

14.1 Apportionment of Penalties. Any penalties assessed by regulatory authorities against the SBWMA shall be paid by the SBWMA.

ARTICLE 15. WITHDRAWAL FROM SBWMA

15.1 Withdrawal Conditions. A Member may not withdraw from the SBWMA unless and until that Member achieves the following:

- a. The liquidation in full of its proportion of any and all existing debts, obligations, and liabilities incurred, earned, or expected to be earned by the date of withdrawal, including but not limited to the Revenue Bonds, as determined by the Board.
- b. The provision to the SBWMA of a written notice of intent to withdraw from the SBWMA at least six (6) months prior to the end of the current Rate Year, specifying the date on which the Member intends to withdraw.
- c. The approval of such withdrawal by a 4/5 affirmative vote of Equity Members.

ARTICLE 16. TERMINATION

16.1 Termination Requirements. This Agreement may only be terminated by

consent of all Equity Members, and upon full and complete liquidation of all liabilities, including, but not limited to, the Revenue Bonds. Upon the date of termination (hereinafter "Termination Date"), payment of any and all obligations and division of any and all assets of the SBWMA shall be conducted subject to the then-applicable requirements of the law (currently California Government Code §6511 et seq.), pursuant to the following:

- a. In the event of termination of the SBWMA where there is a successor public entity that will conduct all of the activities of the SBWMA and will assume all of its obligations, any and all SBWMA assets and liabilities remaining upon termination of the SBWMA shall be transferred to the successor public agency.
- b. If there is no successor public agency that would conduct the SBWMA's activities, all assets and liabilities shall be apportioned to each Member in proportion to the contribution of each current Member's ratepayers' total contribution during the Term of this Agreement. A reference to ratepayers' contribution means payment of Collection fees under each jurisdiction's respective Uniform Franchise Agreement.
- c. If there is a successor public agency that would conduct some of the SBWMA's activities, then the Board shall allocate the SBWMA's assets and liabilities between the successor public agency and the Members. In this case, the Members' portion of the allocation shall be allocated based on Section 16.1(b).
- d. In the event the SBWMA is terminated under circumstances falling within (b) or (c) above, all decisions of the Board with regard to determinations of amounts to be transferred to the Members or any successor shall be final.
- e. The obligations of the SBWMA terminate on the Termination Date, and each Member shall pay all amounts owed to the SBWMA prior to that date. In the event of default by a Member with regard to payment of amounts due, the obligation to pay all sums due to the SBWMA shall survive and remain in full force after the Termination Date.
- f. By unanimous agreement of Equity Members, Equity Members may dispose of, divide, distribute, or return assets on a basis different from that established in this Section 16.1.

ARTICLE 17. AMENDMENTS

17.1 Amendment Requirements. Subject to all legal obligations of the SBWMA, this Agreement may be amended by one or more supplemental agreements executed by a vote of two thirds (2/3) of all Equity and Non-Equity Members of the SBWMA.

17.2 Signature Requirements. Signatures shall not be required on any effective amendment by those Members, if any, whose Directors did not approve the amendment; however, such Members shall nonetheless be bound by the amendment as if it were approved by all Members.

ARTICLE 18. FILINGS

18.1 Filing with Secretary of State. The Chair shall cause to be filed all required notices with the California Secretary of State, in accordance with California Government Codes §6503.5 and 53051.

ARTICLE 19. NOTICES

19.1 Notices to Agencies. All notices to the Agencies shall be deemed to have been given to the Agencies when mailed, postage prepaid by United States mail, or when hand delivered to the governing body of each Agency during usual business hours at the principal office, or to the person apparently in charge of that office.

19.2 Notices to SBWMA. All notices to the SBWMA shall be deemed to have been given to the SBWMA when mailed, postage prepaid by United States mail, or when hand delivered to each of the Chair, Vice Chair, and Finance Director of the SBWMA during usual business hours at the principal office, or to the Person apparently in charge of that office.

ARTICLE 20. SUCCESSORS AND ASSIGNMENTS

20.1 Assignments. This Agreement shall be binding upon and shall inure to the benefit of the successors of any Member. No Member may assign any right or obligation hereunder without the written consent of all other Members.

ARTICLE 21. SEVERABILITY

21.1 Severability. If any provision of this Agreement or its application to any Person or circumstances is held invalid or illegal by a final judgment of a court of law in the State of California, the remainder of this Agreement and the application of the provision to other Persons or circumstances shall not be affected.

ARTICLE 22. ARTICLE HEADINGS

22.1 Headings. All section headings contained in this Agreement are for convenience and reference only. They are not intended to define or limit the scope of any provision of this Agreement.

THEREFORE THE AGENCIES LISTED IN EXHIBITS A AND B HERETO AND EXECUTING THIS AGREEMENT BY SIGNING EITHER AS AN EQUITY MEMBER IN EXHIBIT A OR NON EQUITY MEMBER IN EXHIBIT B HEREBY ENTER INTO THIS AGREEMENT.

**EXHIBIT A
EQUITY MEMBERS**

TOWN OF ATHERTON

BY:
TITLE:

CITY OF BURLINGAME

BY:
TITLE:

CITY OF FOSTER CITY

BY:
TITLE:

CITY OF MENLO PARK

BY:
TITLE:

CITY OF SAN CARLOS

BY:
TITLE:

WEST BAY SANITARY DISTRICT

BY:
TITLE:

CITY OF BELMONT

BY:
TITLE:

CITY OF EAST PALO ALTO

BY:
TITLE:

TOWN OF HILLSBOROUGH

BY:
TITLE:

CITY OF REDWOOD CITY

BY:
TITLE:

CITY OF SAN MATEO

BY:
TITLE:

COUNTY OF SAN MATEO

BY:
TITLE:

EXHIBIT B
NON EQUITY MEMBERS

NONE

EXHIBIT C
DEFINITIONS

Unless the context otherwise requires, capitalized terms used in this Agreement will have the meanings specified below in this Exhibit C.

Act

“Act” means the California Joint Exercise of Powers Act (California Government Code §6500 et. seq.).

Agency/Agencies

“Agency/Agencies” means the public entities which are or have been Members of the SBTSA and/or the SBWMA.

Agreement

“Agreement” means this joint exercise of powers agreement, as it may be amended from time to time.

Board

“Board” means the governing Board of Directors of the SBWMA, comprising one Director from each of the Members, as described in Article 8 of this Agreement.

Chair

“Chair” means the SBWMA Chair of the Board, as described in Section 8.5 of this Agreement.

CIWMA

“CIWMA” means the California Integrated Waste Management Act of 1989 (California Public Resources Code, §40000 et seq.), and all regulations adopted under that legislation, as that legislation and those regulations may be amended from time to time.

CIWMA Board

“CIWMA” means the California Integrated Waste Management Board, created under the provisions of the CIWMA, whose duties include implementing the CIWMA.

Collect/Collection

“Collect/Collection” means to take physical possession, transport and remove Solid Waste, Recyclable Materials, and Plant Materials within and from the Service Area.

Collector

“Collector” means a private organization which holds a franchise from an Agency for Solid Waste Collection.

Contractor

“Contractor” shall mean the entity the SBWMA contracts with to operate the Facilities.

County

“County” means the County of San Mateo, California.

Director

“Director” means the appointed representative from each Member who serves on the governing Board of Directors.

Disposal

“Disposal” means the ultimate disposition of Solid Waste received by Collector at a landfill in Full Regulatory Compliance.

Diversion

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

Effective Date

“Effective Date” means the effective date of this Agreement, which is December 9, 1999, as provided in Section 4.1.

Environmental Laws

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

Executive Director

“Executive Director” means the person appointed by the Board as the executive officer and director of the SBWMA.

Facility/Facilities

“Facility/Facilities” means any plant or site, existing or planned, owned or leased, and constructed, maintained, operated, or used for purposes of performing under this Agreement. As of the Effective Date, the Facilities are: the San Carlos Transfer Station and the San Mateo Recyclery, located at 225, 229, and 333 Shoreway Road, in San Carlos, California.

Fiscal Year

“Fiscal Year” means the period commencing on each October 1 and ending on the following September 30.

Founding Member

“Founding Member” means any one of the public entities listed in Exhibit A and B attached hereto.

Franchise

“Franchise” means the special right granted by the Agencies to operate a public utility for Solid Waste Collection and Processing services within the Service Area.

Full Regulatory Compliance

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

Legislation

“Legislation” means any code, ordinance, resolution, or any other forms or enactment of the Agencies or any Member which now exists or which may hereafter be adopted which constitutes law or regulation.

Member

“Member” means any one of the public entities listed in Exhibit A (Equity Members) or Exhibit B (Non Equity Members) attached hereto, and any public entity that becomes a New Member in accordance with Section 6.3 of this Agreement.

Person

“Person” means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, special purpose district, town, city, county, state, or the United States.

Plant Materials

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

Process/Processing

“Process/Processing” means the Recycling, reuse, reformation, reconstituting, or otherwise manipulation of Solid Waste in preparation for its ultimate use or disposal.

Rate Year

“Rate Year” means the period commencing on July 1 and ending on the following June 30.

Recyclable Materials

“Recyclable Materials” means discarded materials that are re-used, re-manufactured or

processed.

Recycling

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

Revenue Bonds

“Revenue Bonds” means those certain revenue bonds titled “South Bayside Waste Management Authority (San Mateo County, California) Solid Waste System Revenue Bonds, Series 2000,” and issued in the amount of \$20,090,000 on March 1, 2000.

SBWMA

“SBWMA” means the South Bayside Waste Management Authority, a joint powers authority created under Government Code §6500 et seq. by this Agreement.

SBTSA

“SBTSA” means the South Bayside Transfer Station Authority, a joint powers authority created in 1982.

Service Area

“Service Area” means the collective territory within, and, if applicable, outside the Member’s boundaries with respect to which the Member 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 the Chair, to which reference is hereby made for the description of said area.

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.

Term

“Term” means the period of time specified in Article 4 of this Agreement.

Transfer

“Transfer” means the process of transferring Solid Waste from collection vehicles to transfer vehicles.

Transport

“Transport” means the transportation of Solid Waste in either collection or transfer vehicles.

Uniform Franchise Agreement

“Uniform Franchise Agreement” means the franchise agreement negotiated by the SBWMA with BFI Waste Systems of North America, Inc. or its successor, for the Collection of Solid Waste,

Recyclable Materials, and Plant Materials in each Agency, as amended.

Exhibit D

Exceptions to the SBWMA power to direct Members' Solid Waste, Recyclable Materials, and Plant Materials to the Facilities.

The following sections are excerpts from the Uniform Collection Agreement adopted by SBWMA member entities and details the exceptions to the SBWMA's power to direct Members' Solid Waste, Recyclable Materials, and Plant Materials to the Facilities:

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

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

- a. Other recyclers shall maintain the right to charge a fee, to Collect without a fee, to accept donated Recyclable Materials and to pay the service recipient for Recyclable Materials for the Collection of Source Separated Recyclable Materials and Plant Materials from commercial, industrial, multi-family and institutional generators located in the Service Area. For the purposes of this Agreement, Source Separated loads are loads that consist of less than 10% by weight or volume of Solid Waste, whichever is less. It will be the responsibility of Contractor to provide enforcement of this provision. If Contractor can document that other recyclers are servicing Collection Containers that contain less than 90% Source Separated Recyclable Materials or Plant Materials, it shall report the location and the name of the recycler to the Agency and the SBWMA, along with Contractor's evidence of the violation of the exclusiveness of this Agreement.
- b. Solid Waste, Recyclable Materials and Plant Materials, which are removed from any Premises by the Waste Generator, and which are transported personally by the Owner or occupant of such Premises (or by his or her employees or a contractor whose removal of the Solid Waste, Recyclable Materials and/or Plant Materials are incidental to the service being performed.
- c. Recyclable Materials and Plant Materials which are Source Separated at any Premises by the Waste Generator and donated to youth, civic, or charitable

organizations;

- d. Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et. seq. California Public Resources Code;
- e. Plant Materials removed from a Premises by a gardening, landscaping, or tree trimming contractor as an incidental part of a total service offered by that contractor rather than as a hauling service and for no additional or separate fee;
- f. Non-putrescible Waste from roll-off/debris boxes;
- g. Animal waste and remains from slaughterhouse or butcher shops for use as tallow;
- h. By-products of sewage treatment, including sludge, sludge ash, grit and screenings; and,
- i. Hazardous Waste and Designated Waste regardless of its source.

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

2.09 Additional Services and Modifications to Service.

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

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

- a. Collection methodology to be employed (equipment, manpower, etc.).
- b. Equipment to be utilized (vehicle number, types, capacity, age, etc.)
- c. Labor requirements (number of employees by classification).
- d. Type of materials containers to be utilized.
- e. Provision for program publicity/education/marketing.
- f. Estimate of the tonnage to be diverted and the methodology for determining that diverted tonnage.
- g. Five-year projection of the financial results of the program's operations in a balance sheet and operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions, giving full effect to the savings or costs to existing services.

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