

Late Backup

Item #44

4/21/11

**Revised Exhibit A
(Balcones Service Schedule)**

BALCONES RESOURCES, INC.
EXHIBIT A
SERVICE SCHEDULE
SFR RECYCLABLE MATERIALS PROCESSING
(Description of Scope of Services and Relevant Terms)

Section 1. Summary of Terms:

- (a) Execution Date of this Service Schedule: _____
- (b) Trial Period
 - (i) Transition Commencement Date: TBD by agreement of the Parties no later than October 31, 2011 based on Vendor's construction schedule.
 - (ii) Trial Commencement Date: TBD by agreement of the Parties no later than October 31, 2011 based on Vendor's construction schedule.
- (c) Anticipated Cutover Date: October 1, 2012
- (d) Percentage of Total Collected Material Awarded: _____ TBD
- (e) Minimum Monthly Collected Material Amount: _____ [TBD] short tons
- (f) Location of Designated Facility: New BR Facility on Johnny Morris Road
- (g) Location of Storage Facility: New BR Facility on Johnny Morris Road
- (h) Location of Transition Facility: to be determined by agreement of the parties no later than sixty (60) days after execution of this Services Schedule.
- (i) Backup Facility: to be designated by Vendor.
- (j) 1st Reset Date: the third (3rd) anniversary of the Cutover Date
- (k) Future Reset Dates: every fifth (5th) anniversary of the 1st Reset Date
- (l) Processing Fee Rate per ton delivered until 1st Reset Date: \$79.00 per ton for the first 2,000 tons; \$75.00 per ton for 2,001 + tons. See ATTACHMENT 1
- (m) Annual Processing Fee Adjustment: None, but the Processing Fee Rate may be changed at 1st Reset Date, by negotiation.
- (n) Percent of Index earned by the City until 1st Reset Date: See ATTACHMENT 1
- (o) Facility Fee Rate: \$5.00 per short ton (2000 pounds) for Collected Material, \$1 per short ton for material processed at the Designated Facility obtained from third parties in a single-stream process. See ATTACHMENT 1 for additional discussion.

(p) Carbon Offset: BRI shall make available to City the net carbon credits earned from SFR Recycling Services conducted at the Designated Facility proportionate to the amount of Collected Material processed to the total amount of material processed from all sources.

(q) Transferred Employees for SFR Recycling Services: None

(r) Managed Contracts or Assigned Contracts: None. Schedule 9 of the Master Agreement is not applicable to this Service Schedule.

Section 2. Definitions:

All non-grammatical capitalized terms not defined in this Service Schedule shall have the meaning given such term in the Master Outsourcing Agreement dated _____ by and between Vendor and City (the “**Master Agreement**”). In addition to the terms defined in the Master Agreement, the following terms are used in this Service Schedule:

“**At Risk Amount**” has the meaning given such term in Schedule 13.1 to the Master Agreement and shall be calculated (as of each Reset Date) as the At Risk Amount agreed to by the parties (or by the Benchmarking Process) prior to the 1st Reset Date, times the then-applicable Minimum Award Amount times the Processing Fee. The At Risk Amount shall not be applicable until on and after the 1st Reset Date.

“**Average Residual Percentage**” means Vendor’s quarterly estimate of the average amount of Residual Material contained in the Collected Material. The Average Residual Percentage will be computed as part of the quarterly Composition Study.

“**Award Percent**” means until the first (1st) Reset Date, the percentage of Total Collected Material shown in Section 1(d). At each Reset Date, unless this Service Schedule has expired or been terminated in accordance with its terms, or the Master Agreement has expired or been terminated in accordance with its terms, the Award Percent shall apply until the earlier of (i) the next Reset Date or (ii) the expiration or termination of this Service Schedule.

“**Backup Facility**” means an off-site single-stream MRF that the operator of which will have agreed to process the Collected Materials to substantially the same specifications and with the same limitations as Vendor has agreed to herein, should the Designated Facility ever be unable to process the Collected Materials timely in accordance with the standards set forth herein.

“**Collected Material**” means (i) the material deposited in carts designated by the City to be used solely for the collection of Recyclable Materials at single family residences and collected by the City or its Designated Collection Contractor and delivered to Vendor, and (ii) material deposited by commercial operators in 96 gallon or smaller carts designated by the City to be used solely for the collection of Recyclable Materials by the City or its Designated Collection Contractor using substantially the same equipment deployed for making collections from single family residents (“**Smaller Business Accounts**”) and delivered to Vendor. The parties acknowledge that Collected Material may include Recyclable Material, Residual Material, and Trash.

“Collection Vehicles” means the vehicles currently owned and operated by the City or a Designated Collection Contractor used to collect the Collected Material at curb-side of single family residences and from Smaller Business Accounts.

“Composition Study” means a quarterly study performed by Vendor at the Designated Facility based upon a reasonable sampling of Collected Materials (the ***“sample”***) and conducted in accordance with good industry practice. The Composition Study will be conducted on a weekend day by processing the sample through the Vendor’s MRF, and measuring the quantities of Recyclable Material, Residual Material, and Trash extracted from the sample. The first Composition Study will be conducted no later than the 35th day following the Cutover Date, and thereafter each calendar quarter.

“Critical Deliverable” has the meaning given such term in Schedule 13.1 of the Master Agreement.

“Cutover Date” has the meaning given such term in Section 10.1 of the Master Agreement, and as of the Schedule Date, is anticipated to be on or about the date shown in Section 1(c).

“Deliverable Credit” means the credits that shall be payable by the Vendor to the City in the event the Vendor fails to deliver any of the Critical Deliverables within the time period specified.

“Designated Facility” has the meaning given such term in Section 3(a).

“Designated Collection Contractor” means any person or entity which the City has identified to Vendor as being an agent or contractor of the City for the purpose of collecting or transporting Recyclable Material from single family residences and Smaller Business Accounts.

“Disposal” has the meaning assigned to such term in the Master Agreement.

“Expert” has the meaning given such term in Section 5(e).

“Master Contractor” means the City when it has contracted with an Other Municipality for the City or its Designated Collection Contractor to conduct curbside or transfer station pickup of Recyclable Materials (which may contain Trash not in excess of the Maximum Trash Percentage) which are then delivered to Vendor (by agreement between the Parties) for SFR Processing Services.

“Maximum Residual Percentage” means the largest percentage (by weight) of Residual Material that is extracted from the Collected Material. At each Reset Date, the City and Vendor shall establish a new Maximum Residual Percentage appropriate for the rate structure by mutual agreement or if the parties are unable to agree, then by the Benchmarking Process. The initial Maximum Residual Percentage shall be set by the Vendor and the City in connection with the first Reset Date based on operational results obtained from the first three years of operations. The results of composition studies may also be considered.

“Maximum Trash Percentage” means the largest percentage (by weight) of Trash that the Collected Material may contain at the point of delivery to the Vendor. Until the first Reset Date, the Maximum Trash Percentage shall be the amount set by mutual agreement based on the

results of the first two composition studies, or if the Parties are unable to agree, then by the Benchmarking Process. At each Reset Date, the City and Vendor shall establish a new Maximum Trash Percentage by mutual agreement or if the Parties are unable to agree, then by the Benchmarking Process.

“Minimum Award Amount” means the amount of Collected Material that the City agrees to deliver to the Designated Facility (calculated as a monthly average over any rolling twelve (12) calendar month period after the Cutover Date). For the term running from the Cutover Date to the second Reset Date, the minimum Award Amount is equal to the amount shown in Section 1(e). If the Award Percent established by the City for Vendor as of any Reset Date is less than twenty-five percent (25%) of the Collected Material from and after that Reset Date then Vendor may, upon thirty (30) days written notice to the City, elect to terminate this Service Schedule, provided Vendor delivers such written notice within thirty (30) days after the City has established such Award Percent. In addition, Vendor may elect for the provisions of Schedule 6.1, Article II to not apply in the event that the Award Percent is less than twenty-five percent (25%) without having to otherwise terminate this Service Schedule.

“MRF” means a materials recycling facility able to efficiently receive, store, process, and make ready for sale Recyclable Materials.

“Other Municipality” shall mean any municipality situated in Travis or surrounding counties for whom the City serves as a Master Contractor.

“Pool Percentage Available for Allocation” has the meaning set forth in Schedule 13.1 to the Master Agreement, and shall mean, with respect to each respective Service Level the amount agreed to by the parties (or by the Benchmarking Process, if no agreement). The Pool Percentage Available for Allocation shall not be applicable until on or after the first Reset Date.

“Processing Fee” means, subject to the annual true-up process set forth in Section 5(f) of this Service Schedule, the charge to be assessed by Vendor as an all-in fee for receiving, storing, sorting, disposing and marketing all Collected Material delivered to Vendor at its Designated Facility, Storage Facility and Backup Facility (without duplication) and is calculated on a monthly basis by multiplying the rate shown in Section 1(l) of this Services Schedule (or such future rate as is effective as of a Reset Date) times the Collected Material delivered to Vendor such month. A separate fee may be assessed for Sunday access to the Designated Facility as reasonably determined by Vendor commensurate with its added costs.

“Recyclable Material” shall, from the Cutover Date until the 1st Reset Date shown in Section 1(j), have the meaning given to such term in the Master Agreement, plus upon 12 month advanced written notice to Vendor, such other class of material as the City has reasonably determined there exists a commercially reasonable market for recycled items in such class and there exists an index or other reasonably reliable measurement of the economic value of such recycled items, including Aseptic Containers and Scrap Metals.

“Residual Material” means non-recyclable waste such as disposable diapers, animal waste, soiled paper plates, toilet tissue and any other materials that are rendered non-recyclable due to residual contamination as well as Fines. The amount of Residual Material shall be based upon

the weight of the Residual Material measured prior to any Disposal. Until the Parties agree on, or the Benchmarking Process shall establish, other measurement systems, use of the then-current material composition ratios to the total volume of Collected Material delivered to Vendor by the City shall constitute measurement. For purposes of this Service Schedule, Trash is not a Residual Material and defined separately.

“Revenue Percent” shall, until the 1st Reset Date, have the value assigned to such term in ATTACHMENT 1, and shall generally be the percentage of the Value of Recyclable Material earned by the City each month based upon the total weight of each class of Recyclable Material delivered by the City to Vendor for SFR Processing Services for the month in question as shown on ATTACHMENT 1. ATTACHMENT 1 is made an integral part of this Service Schedule and fully incorporated by reference.

“Revenue Share Payment” has the meaning given such term in Section 5(d).

“Schedule Date” means the date set forth in Section 1(a) of this Service Schedule.

“Service Level Credits” means a credit issued by Vendor to the City due to Vendor’s failure after the 1st Reset Date to meet any Service Level.

“SFR Processing Services” means the receipt, storage, sorting and processing of Collected Material, and the bundling and making ready for resale, and storing of inventory for resale Recyclable Material delivered by the City or its Designated Collection Contractor to Vendor which was collected in a single-stream process from single family residences and Smaller Business Accounts within the City.

“Slide Schedule” means the collection operation by recycling crews when a holiday is observed on a weekday.

“Smaller Business Accounts” means a commercial operation that is a customer of the City that uses 96 gallon or smaller carts for solid waste collection services.

“Storage Facility” means the storage facility location as shown in Section 1(g), or such other location designated to the City in writing at least thirty (30) days prior to any use of such new facility by Vendor for the provision of the SFR Processing Services.

“Target Trash Percentage” means from time to time the average percentage of Trash expected to be contained within all Collected Material during the measurement period as calculated based upon the quarterly Composition Study.

“TCEQ” means the Texas Commission on Environmental Quality, an agency of the State of Texas.

“TDA” means the Texas Department of Agriculture.

“Total Collected Material” means, for each month after the Cutover Date, the amount of Collected Material picked up by the City or its Designated Collection Contractor from single family residences located within the city limits of the City.

“Trailer” means a walking floor or tipper transfer trailer.

“Transition Facility” means an off-site single-stream MRF that the operator of which will have agreed to process the Collected Materials to substantially the same specifications and with the same limitations as Vendor has agreed to herein, should the Designated Facility not be ready to process the Collected Materials by the Cutover Date. The Transition Facility will be used to conduct the SFR Processing Services until the Designated Facility is completed.

“Trash” means, for purposes of this Service Schedule, matter or material contained in the Collected Material that is not Recyclable Material under this Service Schedule, but is nevertheless deposited in collection carts by single family residential customers or Smaller Business Accounts.

“Value of Recyclable Material” means the dollar amount determined on a month-by-month basis by multiplying the weight of a particular class of Recyclable Material (as shown in ATTACHMENT 1, as such table may be modified from time to time on a Reset Date or by the addition of additional classes of Recyclable Materials) extracted from the Collected Material during the month in question, times the index set forth in ATTACHMENT 1 opposite such class of Recyclable Material.

Section 3. General Conditions:

(a) Operation of MRF. Vendor shall operate a MRF located at the address set forth in Section 1(f) (the **“Designated Facility”**) for the purpose of accepting, sorting and processing Collected Material, and the storing and marketing of Recyclable Material collected by the City of Austin or any Designated Collection Contractor. Except as otherwise permitted below, Vendor shall accept, sort, process, store and ship solely from the Designated Facility. In the event that at any time after the Cutover Date the Designated Facility is unable to accept and store all Collected Material from the City in compliance with Applicable Law, it shall be Vendor's sole responsibility to arrange for storage or off-site processing of all Collected Material and any costs for so doing in excess of the per ton all-in Processing Fee shown in Section 1(l), or as established pursuant to the Benchmarking Process at a Reset Date, shall be borne solely by the Vendor. The location of the Storage Facility is at the address set forth in Section 1(g).

(b) Transition Plan. By the tenth (10th) day after the Transition Commencement Date shown in Section 1(b)(i), Vendor will submit its written Transition Plan to the City, as set forth in Section 10.1 of the Master Agreement. The Vendor is to begin processing a relevant volume of Collected Material during the Trial Period to the Service Levels set forth herein (but the Service Level Credits shall not apply during the Trial Period). Any Deliverable Credits set forth in this Service Schedule shall apply during the Trial Period if the due date for the Critical Deliverable is on or after the Transition Commencement Date.

(c) Business Continuity Plan. By the forty-fifth (45th) day after the Anticipated Cutover Date shown in Section 1(c), Vendor will update its existing Business Continuity Plan, if necessary, to the City's reasonable satisfaction, and shall include in such plans the identification of the Backup Facility if not set forth in Section 1(h). Vendor shall be solely responsible for any additional costs to transfer the Collected Material to the Backup Facility, in the event that

Vendor is unable to store the Collected Materials at its Designated Facility in accordance with the requirements of the Master Agreement, until Vendor is able to perform the Services with respect to such Collected Material at its Designated Facility. Vendor shall periodically review and update its Business Continuity Plans as it determines is necessary to ensure uninterrupted Services to the City, shall notify the City whenever such update has occurred and shall permit a representative of the City to review the updated plans at Vendor's offices during regular business hours without prior notice, or in the event of any SFR Processing Services disruption lasting longer than eight (8) hours, then within four (4) hours of notice from the City, regardless of the time of day of such notice. The Business Continuity Plans shall be designed to reasonably mitigate any reasonably foreseeable acts of Force Majeure including those that would be reasonably foreseeable to an experienced operator of a MRF located in the Southwestern United States that could be subject to the weather events and extremes as occur from time to time in Central Texas.

(d) Permits; Inspections. Vendor shall (i) at all times have valid and up-to-date local and state permits, and shall allow the City designated representative access to view and make copies of such permits during regular business hours (designated below), (ii) notify the City designated representative within twenty-four (24) hours of any OSHA inspection or violation, and (iii) permit the City's designated representative access to inspect at least once per month the Designated Facility, the Backup Facility, any storage facility identified in Section I(g), if applicable, and any other facility used by Vendor in the performance of the Master Agreement.

(e) Trial Success. At the conclusion of the Trial Period, Vendor shall demonstrate that it is ready to begin processing an amount each month equal to 150% of the Minimum Award Amount of Collected Material.

Section 4. Process:

(a) The City or its Designated Collection Contractor collects the Collected Material from its residents and Smaller Business Accounts in a single stream method using trucks on regular routes for curb-side pickup from the carts designated for Recyclable Materials that have previously been distributed to single family residences and Smaller Business Accounts in the City. The material placed in the carts is selected by the residents of the City or Smaller Business Accounts and the collection personnel for the City undertake no quality assurance tests or pre-sorting of such material. As a consequence, a portion of the Collected Material placed in such carts, collected by the City and to be delivered to the MRF will contain Trash, or will have a certain amount of impurities and contamination attached to or intermingled with such Recyclable Material. Title to all Collected Material shall pass to Vendor when tipped from the Collection Vehicles or Trailers onto the tipping floor at any facility under the care, custody or control of the Vendor (including any storage facility, Designated Facility or Backup Facility). Vendor's MRF shall be designed to reasonably identify and to remove any Residual Material from the stream of Recyclable Material. If no higher and best use is commercially available for the Residual Material, then a Disposal of the Residual Material shall occur; provided that any Disposal at a landfill or other disposal facility shall only be at a landfill or other disposal facility approved by and operating under a current and effective MSWLF permit issued by the TCEQ.

(b) When a load of Collected Material delivered to Vendor contains more than the Maximum Trash Percentage contamination (estimated by Vendor in good faith based upon weight), the Vendor will immediately notify the City and will isolate the load through the next business day for inspection by City and Vendor personnel. If the load is determined to exceed the Maximum Trash Percentage, it will remain in the custody of the Vendor for processing as follows:

(i) If the contaminated load contains more than the Maximum Trash Percentage but is composed of less than 50% trash, then Vendor shall process the load to remove any Recyclable Material but deduct the tonnage of the load from the total figure used for calculation of the Revenue Share Payment to the City.

(ii) If 50% or more of the contaminated load is composed of Trash, then a Disposal of the entire load will occur. Notwithstanding any other provisions of this Service Schedule to the contrary, for any Disposal of a contaminated load pursuant to this Section (4)(b)(ii), the City shall reimburse Vendor for the tipping fee at the disposal facility plus 50% of the then-applicable processing fee as identified in Section 1(l) based on the weight of the contaminated load.

(c) The City or its Designated Collection Contractor shall deliver the Collected Material to the Designated Facility either (a) in the Collection Vehicles or (b) aggregated at another location owned or operated by the City (or a contractor selected solely by the City) and transferred into Trailers and delivered to the Designated Facility in such Trailers. In either case, Vendor shall operate its Designated Facility so that all delivery vehicles used by or for the benefit of the City shall be able to travel from publicly-maintained streets or thoroughfares to the tipping floor of the Designated Facility over all-weather drives with suitable base (underpavement) and top concrete or asphalt pavement with a rated capacity that would permit the delivery of at least ten thousand (10,000) tons per month of Collected Material (plus the weight of the delivery vehicles) across such drives without significant deterioration with normal maintenance routines.

(d) Vendor solely is responsible for the conditions within the Designated Facility and any Storage Facility and shall maintain such facilities in a manner to permit the timely and efficient delivery by City vehicles to the Designated Facility and the sorting, processing, and storage of all Recyclable Material. In addition, Vendor shall ensure that at least one safety spotter is provided during regular business hours at the Designated Facility or any Backup Facility while in use by or for Vendor for SFR Processing Services. The tipping floor and all Collected Material, until all sorting and processing is completed, shall be in an all-weather, covered facility designed to ensure that no such material is degraded by any forces of weather. If it becomes necessary for Vendor to store Recyclable Material outside, then Vendor shall store all such Recyclable Material in appropriate conditions for each category of Recyclable Material so that no appreciable amount of degradation of the Recyclable Material shall occur due to weather.

(e) Hours of Operation:

(i) The City or its Designated Collection Contractor should be able to make deliveries to the Designated Facility and tip all Collected Material at the MRF every

weekday (Monday through Friday, except for the holidays listed in subsection (ii), below, in which event, the following Saturday), between the hours of 6:30 am and 7:00 pm.

(ii) The holidays identified below are observed by City recycling collection crews when the holiday falls on a weekday. When a holiday is observed on a weekday, recycling crews will conduct collection operations on a Slide Schedule.

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Thanksgiving Day	Fourth Thursday in November
Christmas Day	December 25

Section 5. Fees and Revenue:

(a) Compliance with Federal and State Competition Laws: Vendor recognizes that the City may allocate less than one hundred percent (100%) of the Collected Material to Vendor for SFR Processing Services, and that there may exist a Designated Competitor providing to the City essentially the same or similar services. The parties have also agreed that from and after the 1st Reset Date, the Benchmarking Process may be used, but only after the failure of good-faith negotiations to establish price, revenue and Service Levels with respect to the SFR Processing Services. The parties hereby agree that they intend that the pricing and revenue, as well as any Service Levels and related Service Level Credit rates, shall be established strictly in accordance with federal and state fair competition and anti-trust laws, to the extent applicable to the SFR Processing Services and the parties. As a result, the City may mandate a change in the procedures set forth in this Service Schedule, including this Section 5, to the extent that the City or its inside or outside counsel shall ever determine that the application of the procedures set forth herein would result in a violation of fair competition or anti-trust law. In such event, the parties, or a court of competent jurisdiction in the event the parties are unable to agree, shall amend this Service Schedule to comply with such laws, but only to the minimum extent necessary to ensure compliance with such laws, and in a manner designed to most preserve the intended economic bargain of the parties, including the scope of the SFR Processing Services the City is to receive hereunder.

(b) Processing Costs and Fees:

(i) The Processing Fee shall be charged per short ton (2,000 pounds) of Collected Material actually delivered during the month in question by the City or its Designated Collection Contractor to Vendor's Designated Facility, or its storage facility or Backup Facility (without duplication), in the event that the Designated Facility is not available at the time of such delivery.

(ii) Subject to the annual true-up process set forth in Section 5(f) of this Service Schedule, Vendor shall be entitled to charge the Processing Fee as an all-in fee for the performance of all SFR Processing Services at the rate shown in Section 1(l) until the first Reset Date. Subject to the annual true-up process set forth in Section 5(f) of this

Service Schedule, during the period between the first Reset Date and the second Reset Date, the Processing Fee rate that Vendor may charge for processing the Minimum Award Amount is a rate no greater than the sum of (a) the rate shown in Section 1(l), plus (b) the Shared Cost Adjustment set out in the following subsection 5(b)(iii).

(iii) The Shared Cost Adjustment is fifty percent (50%) of the difference (increase or decrease) between Vendor's average per-short ton costs for performing the SFR Processing Services during the 6-month period ending at the first anniversary of the Cutover Date and Vendor's average per-short ton costs for performing the SFR Processing Services during the 6-month period ending 6 months before the first Reset Date. For the purposes of this paragraph, Vendor's costs for performing the SFR Processing Services are limited to the following costs directly related to Vendor's performance of SFR Processing Services: direct labor payroll costs (excluding adjustment for Living Wage requirements in subsection 5(h)), payroll taxes, and medical benefits; workers compensation insurance costs calculated by using the then-effective rate times the gross pay for employees performing SFR Processing Services (excluding adjustments for Living Wage requirements in subsection 5(h)); fuel costs; electricity costs; equipment repair and maintenance costs, exclusive of vehicles; and costs of Residual Disposal.

(iv) At each Reset Date, the Processing Fee rate shall be re-established based upon the agreement of the parties, or if the parties cannot agree, then through the Benchmarking Process. The parties agree that for the purposes of avoiding any anti-competitive price signaling to any Designated Competitor, and subject to the requirements of state law, including the Texas Public Information Act (Tex. Gov. Code, Chapter 552), neither the City nor Vendor shall make public prior to the finalization of any change in the Processing Fee rate at a Reset Date the amount of the proposed Processing Fee, but the City may take such new Processing Fee rate (whether determined by negotiation or through the Benchmarking Process) into consideration when determining, as of a Reset Date, the Award Percent for Vendor that will be applicable from such Reset Date, forward. Subject to the mutual agreement of the parties, such Processing Fee shall be the only fee, charge, expense or cost to be paid by the City for all Services provided by Vendor with respect to SFR Processing Services.

(v) For the avoidance of doubt, Vendor shall be compensated for the sorting, processing and disposal of all Residuals solely through the Processing Fee charged on Collected Material delivered by the City or its Designated Collection Contractor to Vendor, with no additional disposal fees charged to the City.

(c) Determination of Recyclable Material Quantity: Daily, Vendor shall provide each Collection Vehicle driver upon his or her exit of the Designated Facility a copy of the weight ticket for that Collection Vehicle's delivery of Collected Material delivered for SFR Processing Services. The amount of Recyclable Material shall be determined as follows:

The parties shall rely on a Composition Study. Each Composition Study shall be based upon a reasonable sampling of Collected Materials delivered by the City and any of its Designated Collection Contractors conducted in accordance with good industry practice. Until the 1st Reset Date, such composition studies shall be

conducted approximately every 3 months, beginning one (1) month after the Cutover Date, and shall be conducted at the Designated Facility unless the Backup Facility is then the facility at which Vendor is providing most of the SFR Processing Services and it is unlikely that such SFR Processing will return solely to the Designated Facility within the next thirty (30) days. From and after any Reset Date until the next Reset Date, the frequency of such composition studies shall be as the parties mutually agree. Vendor shall reasonably cooperate in each such Composition Study, including providing a safe, all-weather location for Vendor's personnel or designated agent to select random samples in a mutually agreed amount from Collected Material tipped by the City and/or its Designated Collection Contractor (not commingled with material received from any other source, commercial or residential), weigh such samples, and then conduct separation and weighing of the sorted Recyclable Material extracted from the samples and any Residual Material. After the 1st Reset Date, based upon the results of such Composition Study, the parties shall calculate the Target Residual Percentage to be applicable until the next Composition Study. The City shall be permitted to have its personnel observe all aspects of the Composition Study and verify the results obtained therefrom, but shall promptly register with the Composition Study team established by mutual agreement of the City and Vendor any disagreement with the study results before Recyclable Materials are processed at the Designated Facility. Vendor shall make its equipment and personnel reasonably available to conduct the Composition Study at no additional cost, unless the City requests additional studies beyond those specified herein. During the conduct of such Composition Study, the City or its designated agent may take or make video, still photographs or other electronic records of the process for archival purposes.

(d) Revenue Share: Vendor shall compensate the City by paying to the City an amount each month equal to the Revenue Percent set forth in ATTACHMENT 1 times the Value of Recyclable Material derived from the Collected Material delivered by the City to Vendor for such month (the "**Revenue Share Payment**"). The calculation of the Revenue Share Payment shall be made by the Vendor monthly based upon the Value of Recyclable Material extracted from the Collected Material for that month, and such calculation shall be sent to the City by the fifteenth (15th) calendar day of the following month, or such later date as the last index shall be published for the month in question. The calculation of the Revenue Share Payment shall be a simple mathematical equation equal to the sum, for all Recyclable Material classes, of the Value of Recyclable Material for such class (calculated based upon the number of tons of each Recyclable Material class, derived from the most recent Composition Study) for the month in question, times the Revenue Percent (with all tons to be short tons, so that if the applicable index is quoting metric tons, then the index shall be converted to an equivalent value for short tons).

(e) Replacement or New Index; Dispute Resolution. To the extent that either party determines in good faith that any index listed in ATTACHMENT 1 no longer reasonably represents the market price for the referenced Recyclable Material class, then such party may propose a different index, and shall support its proposal by evidence as to how such different index more closely approximates the market price, from month to month, of the applicable class of Recyclable Material, and demonstrating that the proposed index is published in a manner that

makes it equally available to both parties by a source that is unaffiliated with either party. If the other party, in good faith, concurs in such assessment, then the proposed index shall replace the index from the table above in calculating the amount of the Revenue Share Payment to which the City is entitled.

In the event that the parties agree that a bona fide, ready market is developed for the sale of Recyclable Material in classes not then subject to SFR Processing Services, then the parties shall mutually agree upon an index for such new Recyclable Material class, and in such case, Vendor shall no longer be permitted to include any such material in Residual Materials or to make a Disposal of any such Recyclable Material.

In the event that at any time there is no published reasonably acceptable index with respect to any of the items in the table above (as adjusted from time to time by the inclusion of additional Recyclable Material classes), the parties agree to instead select three independent brokers of the referenced Recyclable Material active in the Southwestern region of the United States to provide an estimate of the mid-point of bid/ask quotations for the month in question for such referenced Recyclable Material, and the index used to calculate the Revenue Share Payment to the City shall be the simple arithmetic average of the estimates provided by such independent brokers. In the event a party shall nominate a replacement index for any of the indices listed in the above table (as adjusted from time to time by the inclusion of additional Recyclable Material classes), or shall nominate an index with respect to new classes of Recyclable Materials to be subject to SFR Processing Services, and the other party shall reject such nominated index, then the parties agree that they shall meet and confer in good faith as to an acceptable replacement index or new index, and if unable thereafter to agree, then they shall submit their respective positions to a person designated by the City within 15 days of the rejected index nomination and agreed to by Vendor, with such agreement not be unreasonably withheld or delayed (the “*Expert*”), not as an arbitrator but as an expert in the industry and that if such Expert shall concur with a party as to the appropriate index to use for the referenced Recyclable Material class, then the parties shall each abide by such decision, absent either bad faith on the part of the Expert or manifest error by the Expert. In the event either party shall believe that the decision by such Expert was made in bad faith or by manifest error, such party may bring an action in litigation to prevent the use of such index within thirty (30) days of the Expert’s decision. If either party fails to contest the Expert’s decision by the filing of a lawsuit in the state courts of Travis County, Texas within such 30-day period, then the Expert’s decision shall be deemed accepted by the parties and shall become the index for the referenced Recyclable Material class until there shall be a material change in the marketplace such that it is reasonably likely that the index no longer reasonably represents the market price for the referenced Recyclable Material class. If such litigation is initiated, then the parties agree that the predicate issue for the court with respect to such index shall be whether or not the Expert acted in bad faith or made the decision in manifest error, and only if such finding is found in the affirmative by the court shall the litigation then be concerned with determining what is the appropriate index with respect to the referenced Recyclable Material class.

(f) Annual True-up of Processing Fee: In the event that as of each anniversary of the Cutover Date the City and its Designated Collection Contractors have failed to deliver a monthly average amount (measured in short tons) of Collected Material equal to the Minimum Award Amount, then Vendor shall calculate, invoice the City and be entitled to a payment equal to the difference in short tons between the average amount delivered by or for the City to Vendor for

SFR Processing Services and the Minimum Award Amount, times the then-applicable Processing Fee Rate (as determined in accordance with Section 5(b)) times twelve (12).

(g) No Material Breach: The parties agree that if the City fails to deliver at least the percentage of total Collected Material committed to Vendor but is within 5% of the Minimum Award Amount owed to Vendor over such 12-month period, the City will not commit a material breach under the Master Agreement.

(h) Living Wage and Healthcare: Vendor understands that, in order to help assure low employee turnover, quality services, and to reduce costs for health care provided to uninsured citizens, the Austin City Council is committed to ensuring fair compensation for City employees and those persons employed elsewhere in Austin. This commitment has been supported by actions to establish a “living wage” and affordable health care protection. Vendor shall ensure that \$11.00/hour will be paid to those employees performing work under this Service Schedule for their time spent on the City contract. Vendor will also provide an option for health insurance, to the extent required by federal and state law, to employees performing work under this Service Schedule. Pursuant to Paragraph 3.3 of the Master Agreement, this provision takes precedence over Schedule 7.6.2 to the Master Agreement. The Parties agree that Schedule 7.6.2 will not apply to this Service Schedule. The Parties agree that the Living Wage Surcharge identified in ATTACHMENT 1 is a pass-through fee paid by the City to cover Vendor’s best estimate of costs for complying with this subsection 5(h). The Living Wage Surcharge shown on ATTACHMENT 1 is subject to quarterly reconciliation based on Vendor’s actual costs for complying with the requirements of this subsection 5(h).

Section 6. Metrics and Composition Studies:

(a) Residual Limits. Vendor shall use all reasonable commercially acceptable efforts in the industry to limit the amount of Residual Materials subject to a Disposal so that Recyclable Materials actually recovered from the Collected Material equal one hundred percent (100%) of the percentage of Recyclable Materials indicated by the most recent and agreed upon material Composition Study.

(b) Weighing Procedures; Wait Time. Vendor shall maintain at the Designated Facility in good working order accurately calibrated automated inbound and outbound scales suitable for weighing of both Collection Vehicles and Trailers entering and exiting the Designated Facility in conformance with the TDA certified truck scales. At least one set of scales shall be at an entrance to the Designated Facility. The automated scales shall (i) be capable of printing a ticket with the weight, time and date stamp for each vehicle in question, including a duplicate that shall be given to the driver of the vehicle, (ii) meet the TDA’s standards for the determination of quantities, and (iii) be able to determine the quantity of all delivered and sold recyclable materials in accordance with TDA standards. Average wait time during regular business hours (designated above) for City Collection Vehicles from the time of weigh-in until the time of weigh-out shall be no greater than 12 minutes. Delays caused by factors beyond the reasonable control of Vendor shall be excluded from average Wait Time calculations. Given the volume of Collected Material anticipated to be delivered to the Designated Facility, the City will make its best efforts to ensure that the inbound Collection

Vehicles and Trailers time their deliveries so that they do not create unnecessary points of congestion leading into the Designated Facility.

(c) Tipping Floor and Non-sorted Material Storage. Vendor shall ensure that (i) its tipping floor is clean at all times in accordance with industry practices and safety standards, and (ii) has the capacity to store thereon no less than two (2) days of Collected Material delivered from the City or its Designated Collection Contractor, based upon a monthly tonnage of Collected Material delivered to the Designated Facility for the second largest monthly tonnage for the immediately preceding twelve (12) months in an all-weather condition.

(d) Storage of Recyclable Material. All Recyclable Material, once sorted and processed, shall be stored in a manner suitable for the particular kind and grade of such Recyclable Material so that it may efficiently be shipped to or picked up by the purchasers of such Recyclable Material, and so that such Recyclable Material does not experience significant degradation in quality or quantity while being stored prior to sale and delivery.

Section 7. Priority:

With respect to acceptance of material, storage, or processing, the City shall, in all cases, be provided the priority of Vendor compared to material received from any other source so that the City shall experience uninterrupted Services from Vendor and if Vendor's capacity at any time is in any way limited, material received from the City shall be accepted, processed and stored in the manner and conditions set forth herein.

Section 8. Testing and Transition from Existing Service Provider:

(a) No later than thirty (30) days prior to the Trial Commencement Date set forth in Section 1(b)(ii), Vendor shall certify to the City that the MRF at the Designated Facility is substantially complete and ready to commence operations (subject to testing and transition), with a daily throughput capacity of not less than 150% of the Minimum Award Amount of Collected Material divided by twenty-two (22), including but not limited to a certification that (i) all road and parking surfaces necessary to operate the MRF are installed, cured and ready for travel, (ii) all life-safety equipment and systems have been installed and tested, (iii) sufficient automated scales are installed, calibrated and certified by all appropriate government agencies as required by law, (iv) all utilities necessary to operate the MRF are installed, hooked up and all deposits, tests or other requirements of any utility operator have been met, (v) the installer of the equipment is satisfied that the equipment is properly installed, hooked up to any necessary utility service, in a new condition or comprehensively refurbished to original performance specifications, with an adequate supply of consumable materials and spare parts to keep such equipment efficiently operating are on hand and stored in an acceptable manner, and (vi) all approvals (including, if applicable, any certificates of occupancy) necessary to be obtained from any government agency to begin operations at the MRF on a schedule with throughput reasonably able to process all of the City's Collected Material have been obtained.

(b) No later than thirty (30) days after the Trial Commencement Date, Vendor shall commence a testing of the readiness and throughput of its Designated Facility and operating staff. The City may have personnel or a designated agent (not from a competitor of the Vendor) present to observe such testing. The readiness testing shall consist of Vendor, for a minimum of

three (3) consecutive days, receiving at its gates and weighing vehicles of the City with no less than 100 tons in the aggregate for each day of the testing period, weighing such vehicles at its automated scales, accepting upon the tipping floor of the MRF the material from such vehicles, and then processing (with only a reasonable level of Residual material as the City's observer shall reasonably determine based upon the composition of the Collected Material delivered to the Designated Facility during the test period) no less than twenty (20) tons per hour, on average, during a five (5) hour period for each day of the testing period. In the event that the MRF shall fail an initial three (3) day testing period, the test shall be repeated under the same requirements until such test is successfully completed. Notwithstanding the foregoing, if the MRF shall fail to pass the three (3) day testing period at least twenty (20) days prior to the anticipated Cutover Date shown in Section 1(c), then Vendor must implement the delivery of the Collected Material to the Storage Facility or Backup Facility, and shall not commence processing Collected Material (except for test purposes) at the MRF on behalf of the City until it has successfully passed a three (3) day testing period, as the City shall reasonably determine. Any costs incurred by the use of the Storage Facility or Backup Facility shall be solely those of the Vendor, as well as any costs of the City paid to any third party for any retesting of the throughput of the Designated Facility necessary as a result of any failed test.

Section 9. Commencement of Operations:

Vendor shall be ready to commence accepting 100% of the Collected Material from the City or its Designated Collection Contractor no later than twenty (20) days prior to the anticipated Cutover Date shown in Section 1(c) (but the City shall not have an obligation to begin deliveries of Collected Material at the Award Percentage until the Cutover Date set forth in the agreed-upon Transition Plan), and shall continue to maintain such readiness condition thereafter throughout the term of the Master Agreement.

Section 10. Assurances:

In the event that Vendor shall fail to meet the deadline set forth above for commencement of operations or materially fail to meet any of the Metrics or other quality or quantity standards set forth in this Service Schedule, the City may in good faith if it has reason to question Vendor's intent or ability to perform, make demand to the Vendor for written and/or financial assurance of the intent to perform, including the posting of a bond as the City in its reasonable discretion shall determine is necessary to protect the City from additional cost or expense it might incur as a result of Vendor's failure, and in such event Vendor may not commence or continue operations on behalf of the City at the MRF until such bond is posted. In the event that the assurance requested is not given within the time specified after demand is made, the City may treat this failure as an anticipatory repudiation of the Master Agreement. Negotiation over amount or form of assurance is not repudiation of the Master Agreement. This right to demand such financial assurances is without prejudice to the City's rights to demand assurance as otherwise provided in herein, and is without prejudice to any other rights or remedies the City may have with respect to any breach of the Master Agreement by Vendor.

Section 11. Deliverables

(a) **Deliverable Matrix.** The failure of Vendor to perform the Deliverables listed below within the timetable provided shall result in the indicated Deliverable Credits to the City:

Deliverable	Standard	Deliverables Credit
I. Transition Plan Due on or before the 10th day after the Transition Commencement Date. a) Late b) Late more than 5 business days c) Late more than 30 business days d) Late more than 60 business days	a) Per day b) Per business day c) Per business day d) City may terminate	a) \$100 b) \$1,000 c) \$10,000
II. Readiness Testing Due on or before the 20th day before the anticipated Cutover Date. a) Late b) Late more than 5 business days c) Late more than 30 business days d) Late more than 60 business days	a) Per day b) Per business day c) Per business day d) City may terminate	a) \$100 b) \$1,000 c) \$10,000
III. Rolling 3-Year Services Strategic Plan Due on or before the 90th day after the date of the second quarterly composition study and by March 31 of each calendar year thereafter (beginning with 2012). a) Late b) Late more than 5 business days c) Late more than 30 business days d) Late more than 60 business days	a) Per day b) Per business day c) Per business day d) City may terminate	a) \$100 b) \$1,000 c) \$10,000
IV. Initial Business Continuity Plan (in conformance with the requirements of this Service Schedule) Due on or before the 45th day after the Transition Commencement Date, by March 31 of each calendar year (beginning with 2012) either (a) certify that there has been no need to revise the Business Continuity Plan, or (b) deliver a new Business Continuity Plan. a) Late b) Late more than 5 business days c) Late more than 30 business days d) Late more than 60 business days	a) Per day b) Per business day c) Per business day d) City may terminate	a) \$100 b) \$1,000 c) \$10,000

Deliverable	Standard	Deliverables/Credit
<p>V. Business Continuity Plan (in conformance with the requirements of this Service Schedule)</p> <p>Due by March 31 of each calendar year (beginning with 2012) either (a) certify that there has been no need to revise the Business Continuity Plan, or (b) deliver a new Business Continuity Plan.</p> <p>a) Late b) Late more than 5 business days c) Late more than 30 business days d) Late more than 60 business days</p>	<p>a) Per day b) Per business day c) Per business day d) City may terminate</p>	<p>a) \$100 b) \$1,000 c) \$10,000</p>
<p>VI. Community Engagement Plan</p> <p>Adjusted annually.</p> <p>a) Late b) Late more than 5 business days c) Late more than 30 business days d) Late more than 60 business days</p>	<p>a) Per day b) Per business day c) Per business day d) Per business day</p>	<p>a) \$50 b) \$500 c) \$1000 d) \$10,000</p>

Section 12. Service Levels:

(a) Service Level Process.

(i) Establishment of Service Levels. This Service Schedule will be amended to reflect the establishment of Service Levels by agreement of the Parties not later than the 1st Reset Date.

(ii) Service Level Credits. Subject to subsection 12(a)(i), Service Level Credits shall be implemented in accordance with subsection (c), below, and will apply the month after Service Level Reporting begins.

(iii) Access to Service Levels. Subject to subsection 12(a)(i), Vendor will provide written Service Level Reporting to the City for each month by the 15th calendar day of the following month.

(iv) Modification of Service Levels. Subject to subsection 12(a)(i) the parties may agree to add, delete, or modify Service Level categories and Metrics.

(b) Exceptions to Service Level Requirements. Failure to meet Service Levels will not be deemed to be a failure by Vendor resulting in Service Level Credits or any other penalty with respect to a particular Service Level, if one of the following conditions exist:

(i) The Service Level is missed because of the acts or omissions of the City or its partners, employees, subcontractors, and agents that substantially impaired the ability of Vendor to perform the Processing Services and could not have been prevented by the exercise of due diligence by Vendor consistent with the due diligence that would have been performed by a recycling entity acting within the United States.

(ii) A failure to meet the Service Level occurs that is mutually agreed in writing by a City-designated representative not to be the fault of Vendor.

(iii) City fails to carry out any of its responsibilities hereunder, which are material to Vendor's proper performance of the Processing Services.

(iv) A Force Majeure event occurs, as described in Section 26 of the Master Agreement.

(c) Service Level Credits. The following provisions apply with respect to the issuance of Service Level Credits.

(i) Service Level Credits. In some cases, if Vendor fails to meet Minimum Service Objectives (as defined within a particular Service Level Metric) for any calendar month, or upon the occurrence of a specified event, as set forth in subsection (d), below, for each Service Level Category, Vendor will be required to issue to City Service Level Credits in accordance with the provisions of subsection (d).

(ii) Modifications to Service Levels. If Service Level Credits for a particular Metric are issued for three (3) consecutive months, that Service Level category and Metric shall be reviewed by Vendor and the City to determine whether it should be modified. No modification shall be made without the written mutual agreement of the parties which may be withheld at a party's discretion.

(d) Service Level Matrix. To be completed by the parties prior to the 1st Reset Date. The matrix below is an example of format, solely.

Service Level Metric	Definition
Processing time. ("Processing time" shall mean _____ _____)	Troubles will be prioritized using Severity Levels.
	SERVICE OBJECTIVES
	Service Time Objective
	Minimum Service Objective

Service Level Metric	Definition
	<p>Target Service Objective</p> <p>M E T R I C :</p> <p><u>Minimum Service Objective:</u> The time it takes Vendor to process _____.</p> <p><u>Target Service Objective:</u> The time to _____ for a month shall be averaged to determine the average Processing Time for that month.</p> <p>M E A S U R E M E N T P R O C E S S :</p> <p>Processing Time will be [captured]/[measured] using _____.</p> <p>S E R V I C E L E V E L C R E D I T S :</p> <p><u>Severity 1:</u> 50% of _____.</p> <p><u>Severity 2:</u> Per occurrence- 20% of _____.</p>

Section 13. Piggyback:

(a) Should Other Municipalities in the greater Austin area enter into a contract with the City as a Master Contractor for the provision of SFR Processing Services by the City, Vendor may agree to provide the SFR Processing Services of any Collected Material delivered by the City or its Designated Collection Contractor obtained from such Other Municipalities at the same terms and conditions of the Master Agreement, during the period of time that the Master Agreement is in effect.

(b) Any liability of any Other Municipality created by entering into an agreement directly with Vendor shall be the sole responsibility of the Other Municipality.