

| |
|-------------------------------------|
| AGREEMENT NUMBER DRR10073 |
| REGISTRATION NUMBER |

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME
Department of Resources Recycling and Recovery (CalRecycle)

CONTRACTOR'S NAME
NewPoint Group Inc.

2. The term of this Agreement is: 6/15/2011 through 5/31/2012
 Or upon approval by DGS/OLS

3. The maximum amount of this Agreement is: \$1,284,580.00
 (one-million and two-hundred-eighty-four thousand and five-hundred-eighty dollars and no/cents)

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

- | | |
|--|---------|
| Exhibit A – Scope of Work | 5 pages |
| Exhibit B – Budget Detail and Payment Provisions | 3 pages |
| Exhibit C* – General Terms and Conditions | GTC 610 |
| Exhibit D – Special Terms and Conditions | 6 pages |
| Attachment 1 – Recycled Content Certification | 2 pages |
| Exhibit F* – Request for Proposal (RFP) Secondary DRR10073 | |
| Exhibit G* – Proposal from NewPoint Group Inc. in response to Request for Proposal (RFP) Secondary #DRR10073 | |

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at www.ols.dgs.ca.gov/Standard+Language

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

| CONTRACTOR | |
|--|--------------------------------------|
| CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.) NewPoint Group Inc. | |
| BY (Authorized Signature)  | DATE SIGNED (Do not type) 6/29/11 |
| PRINTED NAME AND TITLE OF PERSON SIGNING James A. Gibson, Director | |
| ADDRESS 2555 Third Street, Suite 215 Sacramento, CA 95818 | |

| STATE OF CALIFORNIA | |
|---|--------------------------------------|
| AGENCY NAME Department of Resources Recycling and Recovery | |
| BY (Authorized Signature)  | DATE SIGNED (Do not type) 6/30/11 |
| PRINTED NAME AND TITLE OF PERSON SIGNING Tom Estes, Deputy Director | |
| ADDRESS 1001 I Street, Sacramento, CA 95814 | |

California Department of General Services Use Only

JUL 15 2011

DEPT OF GENERAL SERVICES

Exempt per:

THIS PAGE LEFT BLANK INTENTIONALLY

EXHIBIT A

SCOPE OF WORK

1. The Contractor agrees to provide the Department of Resources Recycling and Recovery (CalRecycle), with Cost Survey services as described herein.
2. The project coordinators during the term of this agreement will be:

CalRecycle

Name: Hieu Le
Phone: (916) 323-1493
Fax: (916) 552-4506
Email: Hieu.Le@calrecycle.ca.gov

NewPoint Group Inc.

Name: James A. Gibson
Phone: 916-442-0508
Fax: 916-442-0714
Email: jimgibson@newpointgroup.com

Direct all agreement inquiries to:

CalRecycle

Contracts Unit
Attention: Bruce Ring
Address: 1001 I Street
Sacramento, CA 95814
Phone: (916) 341-6302
Fax: (916) 552-4567
Email: Bruce.Ring@calrecycle.ca.gov

NewPoint Group Inc.

Name: James A. Gibson
Address: 2555 Third Street, Suite 215
Sacramento, CA 95818
Phone: 916-442-0508
Fax: 916-442-0714
Email: jimgibson@newpointgroup.com

3. Description of Work

- 1) Contractor agrees to provide to CalRecycle technical services in conducting an economic study to determine the statewide weighted (by volume redeemed) average actual costs to recycle for certified recycling centers as described herein.
- 2) The services shall be performed throughout the State of California.
- 3) The services shall be provided from June 2011 through May 2012.
- 4) The detailed description of work to be performed and duties of all parties include:
 - a) The Contractor shall conduct a cost survey to determine the statewide weighted average actual costs, by volume redeemed by ton based on Department data sources, to recycle for certified recycling centers, excluding those centers that receive a handling fee, by material type, including aluminum, glass, and plastics (PET #1 and HDPE #2).
 - b) The Contractor shall conduct a cost survey to determine a statewide weighted average cost per each beverage container redeemed, by volume redeemed based on Department data sources, to recycle for certified recycling centers, excluding those centers that receive a handling fee.
 - c) The Contractor shall conduct a cost survey to determine a statewide weighted average cost per each beverage container redeemed, by volume redeemed based on Department data sources, to recycle for certified recycling centers that receive a handling fee.
 - e) The Contractor shall, with consultation from Department staff, develop sampling plans for each of the cost surveys referenced in items (a), (b), and (c) of this Exhibit. Sampling plans historically have been designed based on a 90

percent confidence level and a 10 percent error rate. California Code of Regulations (CCR) § 2000(a)(47) specifies that a statistical sample means an estimate with an 85 percent confidence level. Department policy specifies a 10 percent error rate.

- f) The Contractor shall, with consultation from Department staff, update the process to ensure proper allocation of costs and labor to all applicable material types.
- g) The Contractor shall, with consultation from Department staff, update the current Microsoft Excel-based cost survey model used in previous cost surveys, as needed.
- h) The Contractor shall, with consultation from Department staff, update the cost survey training manual and field manual used in previous cost surveys, as needed.
- i) The Contractor shall develop a process to ensure collection of required data from participants, including a process to ensure all reasonable measures are attempted to collect data from participants resistant to providing required financial and labor data, as needed.
- j) The Contractor shall conduct training, with assistance from Department staff, in cost survey processes developed by the Contractor or based on current training resources.
- k) The Contractor shall develop a quality control/peer review process to ensure quality control in the survey processes outlined in the Contractor's work plan, as needed.
- l) The Contractor shall develop a control process to ensure confidentiality of all data specific to individual recycling centers and companies, as needed.
- m) Based on previous cost surveys of recycling centers, the total number of sites to be selected for the cost surveys referenced in items (a), (b), and (c) of this Exhibit is estimated to be at minimum 200 sites and may exceed 300 sites. The Cost Proposal should be determined assuming 300 sites will be surveyed, identifying costs for the minimum 200 sites, plus the additional costs per survey site multiplied by 100 for the total costs of surveying 300 sites. The total cost for the minimum 200 sites and the cost for each additional site may be provided in narrative text after the "Total Costs" line on the Cost Proposal Worksheet. Note: The Cost Proposal will be scored on the total costs for surveying 300 sites.
- n) The Contractor shall conduct audited cost surveys including, at minimum, the following:
 - (1) A tour of the facility surveyed and a written description of the facility.
 - (2) Interviews of management and operational personnel to determine how the facility operates and how labor is allocated to specific operations and materials.
 - (3) A review of financial statements with all allowable expenses allocated to specified cost categories as outlined in the California Code of Regulations (CCR) §§2960 and 2990. Where applicable, costs must be directly allocated to specific material and resin types.
 - (4) A review of labor records to determine wages and hours paid to all company officers and employees.
 - (5) Allocations of labor by person or units to specific business interests with further separation for all labor allocated to recycling interest certified by the Division by CRV material types and non-CRV material types, and by material for all labor allocated to CRV material types.
 - (6) A reconciliation of labor records and financial statement expenses for labor.
 - (7) Complete and referenced work papers to document all final financial and labor data.
 - (8) A quality control/peer review process to ensure quality standards are met.
 - (9) A separate file with all work papers, notes, and final determinations of costs for each material and resin type.
- o) The Contractor shall submit all records and present and report the results of the cost survey of recycling centers, excluding those centers that receive a handling fee, as follows:
 - (1) The Contractor shall consolidate data from all surveyed recycling centers, excluding those centers that receive a handling fee, and provide the data in either a Microsoft Excel or Access format.
 - (2) The Contractor shall provide a separate hardcopy file including all work papers for each completed audited cost survey.
 - (3) It is expected that the cost surveys for recycling centers scheduled with the following milestones: 25 percent of the surveys completed by the end of August 2011, 50 percent by the end of September 2011, 100 percent of the surveys should be completed by the end of November 2011.

- (4) The Contractor shall submit complete all audited cost surveys for recycling centers, excluding those centers that receive a handling fee, by November 30, 2011.
- (5) The Contractor shall, based on the results of individual audited cost surveys, complete a final report outlining the process used and the results of determining (a) the statewide weighted (by volume redeemed) average cost per ton for recycling centers, excluding those centers that receive a handling fee, by material and resin type, and (b) the statewide weighted (by volume redeemed) average cost per beverage container redeemed for recycling centers, excluding those centers that receive a handling fee. The Contractor shall submit a Draft Final Report by February 15, 2012, and after receiving comments from the Department, the Contractor shall submit a Final Report by February 29, 2012.
- (6) The Contractor shall be available to present the results of the statewide weighted (by volume redeemed) average cost per ton for recycling centers, excluding those centers that receive a handling fee, by material type during any public hearings on the determination of the year 2011 processing fees and processing payments.
- (7) The Contractor shall be available to describe the cost survey process and defend the resulting statewide weighted (by volume redeemed) average cost per ton for recycling centers, excluding those centers that receive a handling fee, by material type in any challenges to the validity of the cost survey results.
- (8) The Contractor shall present the findings of the cost surveys and the draft final reports to the Audits and Data Analysis Division Management.
- (9) The Contractor shall present the findings of the cost surveys and the draft final reports to CalRecycle Administration, if so requested.
- (10) The requirement for a cost survey and determining the statewide weighted (by volume redeemed) average costs for recycling centers, excluding those centers that receive a handling fee, is based on the California Beverage Container Recycling and Litter Reduction Act (ACT) Section 14575. If there are any amendments to this section or related sections of the ACT changing the requirements to conduct a cost survey, the State shall have the option to either cancel this Agreement with no further liability accruing to the State, or offer an agreement amendment to the Contractor to reflect a revised scope of work.

p) The Contractor shall submit all records and present and report the results of the cost survey of recycling centers that receive a handling fee as follows:

- (1) The Contractor shall consolidate data from all surveyed recycling centers that receive a handling fee and provide the data in either a Microsoft Excel or Access format.
- (2) The Contractor shall provide a separate hardcopy file including all work papers for each completed audited cost survey.
- (3) It is expected that the cost surveys for recycling centers that receive a handling fee be scheduled with the following milestones: 25 percent of the surveys completed by the end of September 2011, 50 percent by the end of December 2011, 75 percent by the end of January 2012, and 100 percent of the surveys should be completed by the end of February 2012.
- (4) The Contractor shall submit complete all audited cost surveys for recycling centers that receive a handling fee by February 29, 2012.
- (5) The Contractor shall, based on the results of individual audited cost surveys, complete a final report outlining the process used and the results of determining the statewide weighted (by volume redeemed) average cost per beverage container redeemed for recycling centers that receive a handling fee. The Contractor shall submit a Draft Final Report by March 15, 2012, and after receiving comments from the Department, the Contractor shall submit a Final Report by March 31, 2012.
- (6) The Contractor shall be available to present the results of the statewide weighted (by volume redeemed) average cost per ton for recycling centers that receive a handling fee, by material type and resin type, and the statewide weighted average cost for each beverage container redeemed during any public hearings on the determination of the year 2012 handling fees.
- (7) The Contractor shall be available to describe the cost survey process and defend the resulting statewide weighted (by volume redeemed) average cost per ton for recycling centers that receive a handling fee, by material type and resin type, and the statewide weighted average cost for each beverage container redeemed in any challenges to the validity of the cost survey results.
- (8) The Contractor shall present the findings of the cost surveys and the draft final reports to the Audits and Data Analysis Division Management.
- (9) The Contractor shall present the findings of the cost surveys and the draft final reports to CalRecycle Administration, if so requested.
- (10) The requirement for a cost survey and determining the statewide weighted (by volume redeemed) average costs for recycling centers that receive a handling fee is based on the California Beverage Container Recycling and Litter Reduction Act (ACT) Section 14585. If there are any amendments to

this section or related sections of the ACT changing the requirements to conduct a cost survey, the State shall have the option to either cancel this Agreement with no further liability accruing to the State, or offer an agreement amendment to the Contractor to reflect a revised scope of work.

- q) The Contractor shall provide all personnel and staffing and all supervision of personnel for the cost surveys.
- r) The Contractor shall be responsible for coordinating and scheduling all travel for personnel.
- s) The Contractor shall submit monthly progress reports to State representative, as required, describing work performed, work status, work progress difficulties encountered, remedial action, and statement of activity anticipated subsequent to reporting period for approval prior to payment of invoices. The Contractor will be reimbursed by invoicing, in detail, all costs and charges with Contract Number and sending such documents to the designated address.

4. Control of Work

- 1) CalRecycle Contract Manager has the authority to determine the quality and acceptability of the following:
 - Work to be performed
 - Rate and progress of the work
 - Fulfillment of the services provided by the Contractor
 - Compensation for services provided by the Contractor

These decisions will be deemed final and enforceable by CalRecycle Contract Manager when the Contractor fails to complete orders required by this Contract.

- 2) The Contractor will designate a Project Manager who holds the following authority:
 - Act as the Contractor's Representative for work to be provided under this Contract
 - Act as the Contractor's Representative regarding contractual matters relating to this Contract

If, during the course of the Contract, it is deemed necessary to replace the Project Manager, CalRecycle Contract Manager approval is required.

5. Contract Task Timeline

Deliverable Schedule:

Project Timeline

Processing Fee and Handling Fee Cost Survey

| PHASE 1. Manage Project | Start Date | End Date |
|--|---------------|---------------|
| A. Initiate and Administer Processing Fee and Handling Fee Cost Survey Project | June 29, 2011 | May 31, 2012 |
| B. Revise Cost Survey Model to Appropriately Allocate Material Types | June 29, 2011 | Aug. 8, 2011 |
| C. Update and Calibrate the Processing Fee Cost Survey Model and the Handling Fee Cost Survey Model | June 29, 2011 | Aug. 8, 2011 |
| D. Establish and Maintain Ongoing Project Security and Confidentiality Measures | June 29, 2011 | May 31, 2012 |
| PHASE 2. Design Sample Plan and Select Recycling Centers to be Surveyed | | |
| E. Develop Sample Design and Selection Process for Processing Fee Cost Survey | June 29, 2011 | July 12, 2011 |
| F. Develop Sample Design and Selection Process for Handling Fee Cost Survey | June 29, 2011 | July 12, 2011 |
| G. Select Statistically-Valid Sample for Processing Fee Cost Survey | June 29, 2011 | July 12, 2011 |
| H. Select Statistically-Valid Sample for Handling Fee Cost Survey | June 29, 2011 | July 12, 2011 |
| I. Prepare Sample Design and Selection Report for Both Non-Handling Fee and Handling Fee Recycling Centers | June 29, 2011 | May 31, 2012 |
| J. Monitor Site Completion Characteristics to Sample Design for Both Non-Handling Fee and Handling Fee Recycling Centers | Aug. 8, 2011 | Feb. 29, 2012 |
| PHASE 3. Train Project Team | | |
| K. Update Processing Fee and Handling Fee Cost Survey Training Manual and Field Manual | June 29, 2011 | July 25, 2011 |
| L. Enhance Processing Fee and Handling Fee Cost Survey Training Manual and Field Manual | June 29, 2011 | July 25, 2011 |
| M. Conduct Processing Fee and Handling Fee Cost Survey Training | July 25, 2011 | Aug. 5, 2011 |
| PHASE 4. Conduct Recycling Center Visits | | |
| N. Refine and Implement Cost Survey Quality Control/Peer Review Process and Procedures | July 18, 2011 | Feb. 29, 2012 |
| O. Coordinate and Schedule Cost Survey Site Visits to Non-Handling Fee and Handling Fee Recycling Centers | July 13, 2011 | Mar. 31, 2012 |
| P. Conduct Audited Processing Fee and Handling Fee Cost Surveys | Aug. 8, 2011 | Feb. 29, 2012 |
| Q. Monitor Cost Surveys and Ensure Collection of Required Data | Aug. 8, 2011 | Feb. 29, 2012 |
| R. Prepare and Finalize Site File for Each Completed Audited Processing Fee and Handling Fee Cost Survey | Aug. 25, 2011 | Feb. 29, 2012 |
| PHASE 5. Determine Costs for Processing Fee Cost Survey | | |
| S. Consolidate Processing Fee Cost Survey Data and Determine Costs by Material Type | Oct. 1, 2011 | Nov. 30, 2011 |
| T. Prepare Draft and Final Processing Fee Cost Survey Reports | Nov. 1, 2011 | Apr. 30, 2012 |
| U. Present Processing Fee Cost Survey Findings to Audits and Data Analysis Division Management and CalRecycle Administration | Nov. 15, 2011 | Dec. 15, 2011 |
| V. Present Processing Fee Cost Survey Results at Public Hearings | Jan. 4, 2012 | May 31, 2012 |
| W. Defend Processing Fee Cost Survey Methodologies, Processes, and Results | Jan. 4, 2012 | May 31, 2012 |
| PHASE 6. Determine Costs for Handling Fee Cost Survey | | |
| X. Consolidate Handling Fee Cost Survey Data and Determine Costs per Container | Dec. 1, 2011 | Feb. 29, 2012 |
| Y. Prepare Draft and Final Handling Fee Cost Survey Reports | Mar. 1, 2012 | Apr. 30, 2012 |
| Z. Present Handling Fee Cost Survey Findings to Audits and Data Analysis Division Management and | Mar. 12, 2011 | Mar. 31, 2012 |

EXHIBIT B

BUDGET DETAIL AND PAYMENT PROVISIONS

1. INVOICING AND PAYMENT:

- A. For services satisfactorily rendered and upon receipt and approval of the invoices, the State agrees to compensate the Contractor for actual expenditures incurred in accordance with the rates specified herein.
- B. Itemized invoices shall be submitted in triplicate, with two sets of supporting documentation (i.e., receipts, timesheets, etc), not more frequently than monthly in arrears to:

Accounts Payable
Department of Resources Recycling and Recovery
Financial Services Unit
U.S. Postal Correspondence:
P.O. Box 4025, MS-19A
Sacramento, CA 95812-4025
Federal Express Correspondence:
1001 I Street, MS-19A
Sacramento, CA 95814

- C. Each invoice submitted to CalRecycle must include the following information:

- Invoice Number
- Contract Number
- Description of Rendered Activities/Services
- Submitting Contractor's Address
- Invoice Period

2. BUDGET CONTINGENCY CLAUSE:

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to the Contractor or to furnish any other considerations under this Agreement and the Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either: cancel this Agreement with no liability occurring to the State, or offer an Agreement Amendment to the Contractor to reflect the reduced amount.

3. PROMPT PAYMENT CLAUSE: Payment will be made in accordance with and within the time specified in Government Code, Chapter 4.5 (commencing with Section 927).

4. TAXES: The State of California is exempt from Federal Excise Taxes, and no payment will be made for any taxes levied on employees' wages. The State will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement. California may pay any applicable sales or use tax imposed by another state.

5. COST BREAKDOWN:

Summary Cost Proposal Sheet
Processing Fee / Handling Fee Cost Survey
DRR10073

| Direct Labor | Hours | | Rate | Total | |
|--|----------|---|-------|-------------|--------------|
| Contractor/Company Name: NewPoint Group, Inc. | | | | | |
| Program Manager 1 (<i>Gibson</i>) | 982.00 | @ | \$100 | \$98,200.00 | |
| Program Manager 2 (<i>Kaempf</i>) | 540.00 | @ | \$100 | 54,000.00 | |
| Staff Assistant 1 (<i>Pratt/Nylund</i>) | 1,236.00 | @ | \$100 | 123,600.00 | |
| Staff Assistant 2 (<i>Liu/Julien</i>) | 1,949.90 | @ | \$120 | 233,988.00 | |
| Technician (<i>Lorente/Cuckovich</i>) | 1,270.00 | @ | \$55 | 69,850.00 | |
| Clerical (<i>Montas</i>) | 350.00 | @ | \$35 | 12,250.00 | |
| Subtotal | 6,327.90 | | | | \$591,888.00 |

| Subcontractor(s) Cost Itemized | | | | | |
|---------------------------------------|-----------|---|-------|--------------|------------|
| Perry-Smith LLP | | | | \$481,692.00 | |
| <i>Audit Partner/Manager</i> | 664.00 | @ | \$150 | | |
| <i>Audit Staff</i> | 3,184.10 | @ | \$120 | | |
| Geiss Consulting | 512.50 | @ | \$120 | 61,500.00 | |
| Leon E. Tuttle, CPA | 260.20 | @ | \$125 | 32,525.00 | |
| Dennis Nelson, CPA | 279.80 | @ | \$125 | 34,975.00 | |
| Subtotal | | | | | 610,692.00 |
| Subtotal Hours | 4,900.60 | | | | |
| Total Hours | 11,228.50 | | | | |

| Direct Costs (Except Labor) | | |
|---|--|-------------|
| Travel Costs (Transportation, Car Rental, Air Fare, Per Diem, etc.) | | \$72,000.00 |
| Telephone (Monthly Usage Charges) | | 3,000.00 |
| Office Supplies (Training Materials, Site Files, and Mailing Costs) | | 7,000.00 |
| Other Direct Costs | | 0.00 |
| Rental Equipment | | 0.00 |
| Subtotal | | 82,000.00 |

| Indirect Costs | | |
|---|--|--------|
| Fringe Benefits (Included in Above Rates) | | \$0.00 |
| Overhead (Included in Above Rates) | | 0.00 |
| Subtotal | | 0.00 |

| | | |
|-------------|--|----------------|
| Total Costs | | \$1,284,580.00 |
|-------------|--|----------------|

6. TRAVEL CLAUSE: All travel will be reimbursed at the excluded employee travel rates in accordance with the California Code of Regulations Title 2, Division 1, Chapter 3, Subchapter 1, Article 2, Section 599.615.1 et seq. For specific per diem (lodging, meals and incidentals) reimbursement rates, see California Code of Regulations Title 2, Division 1, Chapter 3, Subchapter 1, Article 2, Section 599.619. For this agreement, the Contractor's headquarters are located at 1001 "I" Street, Sacramento, CA 95814>. Per diem will not be reimbursed for travel within 50 miles of Contractor's headquarters.
7. PAYMENT WITHHOLD: The provisions for payment under this contract will be subject to a ten percent (10%) withholding per invoice. The withheld payment amount will be included in the final payment to the Contractor and will only be released when all required work has been completed to the satisfaction of CalRecycle. The Contractor agrees to comply with the requirements of Public Contract Code (PCC), Section 10346.

EXHIBIT D

SPECIAL TERMS AND CONDITIONS

1. AGENCY LIABILITY: The Contractor warrants by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, CalRecycle shall, in addition to other remedies provided by law, have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.
2. BANKRUPTCY: In the event proceedings in bankruptcy are commenced against the Contractor, or if Contractor is adjudged bankrupt, or if a receiver is appointed and qualifies, then CalRecycle may terminate this Agreement by giving Contractor five (5) days written notice.
3. CALIFORNIA WASTE TIRES: Unless otherwise provided for in this contract, in the event the Contractor and/or Subcontractor(s) purchases waste tires or waste-tire derived products for the performance of this Agreement, only California waste tires and California waste tire-derived products shall be used. As a condition of payment under this Agreement, the Contractor must provide documentation substantiating the source of the tire materials used during the performance of this Agreement to the Contract Manager.

All formal notices required by this Agreement must be given in writing and sent by prepaid certified mail, fax, personal delivery or telex.
4. CONTRACT MANAGEMENT: The Contractor and the agents and employees of the Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California. The Contractor may change the designated Project Director, but CalRecycle reserves the right to approve any substitution of the Project Director. Contractor's key personnel may not be substituted without CalRecycle's Contract Manager's prior written approval. CalRecycle may change the Contract Manager by notice given to the Contractor at any time. CalRecycle staff will be permitted to work side by side with the Contractor's staff to the extent and under conditions that may be directed by the Contract Manager. In this connection, CalRecycle's staff will be given access to all required data, working papers, etc. The Contractor will not be permitted to utilize the CalRecycle's staff for the performance of services, which are the responsibility of the Contractor unless the Contract Manager previously agreed to such utilization in writing, and any appropriate adjustment in price is made. No charge will be made to the Contractor for the services of CalRecycle's staff for coordination or monitoring functions.
5. CONTRACTOR EVALUATIONS: CalRecycle will evaluate the Contractor's performance within sixty days of the completion of this Agreement and shall remain on file by CalRecycle for a period of thirty-six months. If the Contractor does not satisfactorily perform the work or service specified in this Agreement, CalRecycle will submit a copy of the negative evaluation to the Department of General Services (DGS), Office of Legal Services, within five (5) working days of the completion of the evaluation. Upon filing an unsatisfactory evaluation with the DGS, CalRecycle shall notify and send a copy of the evaluation to the Contractor within fifteen days. The Contractor shall have thirty days to prepare and send a written response to CalRecycle and the DGS. CalRecycle and the DGS shall file the Contractor's statement with the evaluation. (PCC §10369).

6. CONFIDENTIALITY/PUBLIC RECORDS: The Contractor and CalRecycle understand that each party may come into possession of information and/or data, which may be deemed confidential or proprietary by the person or organization furnishing the information or data. Such information or data may be subject to disclosure under the California Public Records Act, commencing with GC § 6250, or the PCC. CalRecycle agrees not to disclose such information or data furnished by Contractor and to maintain such information or data as confidential when so designated by Contractor in writing at the time it is furnished to CalRecycle, only to the extent that such information or data is exempt from disclosure under the California Public Records Act and the PCC.
7. CONFLICT-FUTURE BIDDING LIMITATION: Pursuant to Public Contracts Code Section 10365.5:
 - (a) No person, firm, or subsidiary therefore who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract for, the provision of services, procurement of goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.
 - (b) Subdivision (a) does not apply to any person, firm, or subsidiary thereof who is awarded a subcontract of a consulting services contract that amounts to no more than ten (10) percent of the total monetary value of the consulting services contract.
 - (c) Subdivisions (a) and (b) do not apply to consulting services contracts subject to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.
8. CONSULTING SERVICES: If this Agreement is for consulting services, the Contractor is hereby advised of its duties, obligations and rights under PCC §§10335 through 10381.
9. COPYRIGHTS AND TRADEMARKS: The Contractor shall assign to CalRecycle any and all rights, title and interests to any copyrightable material or trademarkable material created or developed in whole or in any part as a result of this Agreement, including the right to register for copyright or trademark of such materials. The Contractor shall require that its subcontractors agree that all such materials shall be the property of CalRecycle. Such title will include exclusive copyrights and trademarks in the name of CalRecycle.

For contracts of \$5,000 or more, any document or written report prepared for or under the direction of CalRecycle, shall include a notation on the inside cover as follows:

"Prepared as part of CalRecycle contract number (Insert), Total Contract Amount (Insert), pursuant to Government Code Section 7550."
10. DELIVERABLES: All documents and/or reports drafted for publication by or for CalRecycle in accordance with this contract shall adhere to CalRecycle's Contractor Publications Guide at www.calrecycle.ca.gov/Publications/PubGuide/ and shall be reviewed by CalRecycle's Contract Manager in consultation with CalRecycle editor.
11. ENTIRE AGREEMENT: This Agreement supersedes all prior agreements, oral or written, made with respect to the subject hereof and, together with the Attachments and/or Exhibits hereto, contains the entire Agreement of the parties.
12. ENVIRONMENTAL JUSTICE: In the performance of this Agreement, the Contractor shall conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low income populations of the State. (Government Code Section 65040.12(e)).

13. FORCE MAJEURE: Neither CalRecycle nor the Contractor, including the Contractor's subcontractor(s), if any, will be responsible hereunder for any delay, default or nonperformance of this Agreement, to the extent that such delay, default or nonperformance is caused by an act of God, weather, accident, labor strike, fire, explosion, riot, war, rebellion, sabotage, or flood, or any other cause beyond the reasonable control of such party.
14. GRATUITIES: CalRecycle may terminate this Agreement if gratuities were offered or given by the Contractor, or any agent or representative of the Contractor, to any employee of CalRecycle, with a view toward securing a contract or securing favorable treatment with respect to awarding or amending or making a determination with respect to performance of this Agreement.
15. IMPRACTICABILITY OF PERFORMANCE: This Agreement may be suspended or cancelled, without notice at the option of the Contractor, if the Contractor's or CalRecycle premises or equipment is destroyed by fire or other catastrophe, or so substantially damaged that it is impractical to continue service or in the event the Contractor is unable to render service as a result of any action by any governmental authority.
16. INSURANCE: When required, the Contractor must provide: 1) a Certificate of Insurance insuring CalRecycle, and/or 2) verification of Worker's Compensation insurance. The Contractor must provide said Certificate of Insurance and/or verification to CalRecycle within ten (10) days after notification of CalRecycle's intent to award the Agreement. The Agreement will not be executed nor can work begin unless said Certificate of Insurance and/or verification is provided to CalRecycle.

The Certificate of Insurance must be in effect and shall include the following terms and conditions:

- (a) CalRecycle, its officers, agents, employees, and servants shall be included as additional insured.
- (b) The dates of inception and expiration of coverage shall be specified.
- (c) A minimum liability coverage of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined shall be specified. The coverage shall not include a deductible feature.
- (d) The insurer will not cancel the insured's coverage without thirty days prior written notice to CalRecycle.
- (e) CalRecycle is not liable for the payment of premiums or assessments on said policy.
- (f) The insurance coverage shall be on an occurrence basis only.

In the event the Certificate of Insurance should expire or be cancelled during the term of this Agreement, the Contractor agrees to provide, at least thirty days prior to said expiration or cancellation, a new Certificate of Insurance evidencing coverage, as provided for herein, for not less than one (1) year or for the remainder of the contractual agreement, whichever is greater. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, CalRecycle may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.

17. LIABILITY FOR NONCONFORMING WORK: The Contractor will be fully responsible for ensuring the completed work conforms to the agreed upon terms. If nonconformity is discovered prior to the Contractor's deadline, the Contractor will be given a reasonable opportunity to cure the nonconformity. If the nonconformity is discovered after the deadline for the completion of the project, CalRecycle, in its sole discretion, may use any reasonable means to cure the nonconformity. The Contractor shall be responsible for reimbursing CalRecycle for any additional expenses incurred to cure such defects.

18. LICENSE OR PERMITS: The Contractor shall be an individual or firm licensed to do business in California and shall obtain at his/her expense all license(s) and permit(s) required by law for accomplishing any work required in connection with this Agreement.

In the event the Contractor fails to keep in effect at all times all required license(s) and permit(s), CalRecycle may, in addition to other remedies it may have, terminate this Agreement upon occurrence of such event.

19. LIQUIDATED DAMAGES: It is the intent of this Contract that individual projects proceed in an uninterrupted manner from the date of commencement until all work contemplated in the Contract/Work Order has been completed. The Contract/Work Order authorized by CalRecycle Staff, and accepted by the Contractor shall include the number of days authorized to complete the project. All parties to the Contract agree that CalRecycle will sustain damage for any day on which the Contractor arbitrarily suspends operations, or fails to prosecute the work. It is and will be impracticable and extremely difficult to ascertain and determine the actual damage which CalRecycle will sustain in the event of and by reason of such delay; and it is therefore agreed that the Contractor will pay to CalRecycle the sum of \$1,000 for each day on which the Contractor fails to perform work in accordance with the approved schedule without the approval of CalRecycle staff. The Contractor agrees to pay said liquidated damages herein provided for, and further agrees that CalRecycle may deduct the amount thereof from any moneys due or that may become due the Contractor under the Contract. The Contractor shall not be assessed liquidated damages when the delay in completing the project is caused by the state.

20. OWNERSHIP OF DRAWINGS, PLANS AND SPECIFICATIONS: CalRecycle will have separate and independent ownership of all drawings, design plans, specifications, notebooks, tracings, photographs, negatives, reports, findings, recommendations, data and memoranda of every description or any part thereof, prepared under this Agreement. The originals and all copies thereof will be delivered to CalRecycle upon request. CalRecycle will have the full right to use said originals and copies in any manner when and where it may determine without any claim on the part of the Contractor, its vendors or subcontractors to additional compensation.

21. PATENTS: The Contractor assigns to CalRecycle all rights, title, and interest in and to each invention or discovery that may be capable of being patented, that is conceived of or first actually reduced to practice in the course of or under this Agreement.

22. PUBLICITY AND ACKNOWLEDGEMENT: The Contractor agrees that it will acknowledge CalRecycle's support whenever projects funded, in whole or in part, by this Agreement are publicized in any news media, brochures, or other type of promotional material.

23. RECYCLED-CONTENT PRODUCT PURCHASING: In the performance of this Agreement, the Contractor shall purchase used and/or recycled-content products as set forth on the back of the Recycled-Content Certification Form (Exhibit D, Attachment 1). For assistance in locating recycled-content products, please search the recycled-content product database available at: www.calrecycle.ca.gov/RCP. If after searching the database, contractors are unable to find the recycled-content products they are looking for, please notify CalRecycle's Contract Manager. All recycled content products purchased or charged/billed to CalRecycle that are printed upon such as promotional items, publications, written materials, and other educational brochures shall have both the total recycled content (TRC) and the post-consumer (PC) content clearly printed on them.

In addition, any written documents such as, publications, letters, brochures, and/or reports shall be printed double-sided on 100% post-consumer (PC) paper. Specific pages containing full-color photographs or other ink-intensive graphics may be printed on photographic paper. The paper

should identify the post-consumer recycled content of the paper (i.e., "printed on 100% post-consumer paper"). When applicable, the Contractor shall provide the Contract Manager with an electronic copy of the document and/or report for CalRecycle's uses. When appropriate, only an electronic copy of the document and/or report shall be submitted and no hard copy shall be provided.

24. **REMEDIES:** Unless otherwise expressly provided herein, the rights and remedies hereunder are in addition to, and not in limitation of, other rights and remedies under the Agreement, at law or in equity, and exercise of one right or remedy will not be deemed a waiver of any other right or remedy.
25. **SETTLEMENT OF DISPUTES:** In the event of a dispute, the Contractor shall file a "Notice of Dispute" with CalRecycle's Director or his/her designee with ten (10) days of discovery of the problem. Within ten (10) days, the Director or his/her designee shall meet with the Contractor and CalRecycle Project Manager for the purpose of solving the dispute.
26. **STOP WORK NOTICE:** Immediately, upon receiving a written notice to stop work, the Contractor shall cease all work under this Agreement.
27. **SUBCONTRACTORS:** All Subcontractors previously identified in the bid/proposal submitted are considered to be acceptable to CalRecycle. Any change or addition of Subcontractors will be subject to the prior written approval of the Contract Manager or the Director or his/her designee. Upon termination of any Subcontract, the Contractor shall notify the Contract Manager or the Executive Director immediately. If CalRecycle or the Contractor determines that the level of expertise or the services required are beyond that provided by the Contractor or its routine Subcontractors, The Contractor will be required to employ additional Subcontractors. Nothing contained in this Agreement or otherwise, shall create any contractual relation between CalRecycle and any Subcontractors, and no Subcontract shall relieve the Contractor of its responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to CalRecycle for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its Subcontractors is an independent obligation from CalRecycle obligation to make payments to the Contractor. As a result, CalRecycle shall have no obligation to pay or to enforce the payment of any moneys to any Subcontractor.
28. **SUCCESSORS:** The provisions of this Agreement will be binding upon and inure to the benefit of CalRecycle, the Contractor, and their respective successors.
29. **TERMINATION:** CalRecycle shall have the right to terminate this Agreement at its sole discretion at any time upon thirty days written notice given to the Contractor. In the case of early termination, a final payment will be made to the Contractor upon approval by the Contract Manager of a financial report, invoices for costs incurred to date of termination and a written report describing all work performed by the Contractor to date of termination.
30. **UNRELIABLE LIST:** Prior to authorizing a Subcontractor(s) to commence work under this Agreement, the Contractor shall submit to CalRecycle a declaration from the Subcontractor(s), signed under penalty of perjury, stating that within the preceding three years, none of the events listed in Section 17050 of Title 14, California Code of Regulations, Natural Resources, Division 7, have occurred with respect to the subcontractor(s).

Placement of Contractor on CalRecycle Unreliable List anytime after award of this Agreement may be grounds for termination of Agreement. If a Subcontractor is placed on CalRecycle Unreliable List after award of this Agreement, the Contractor may be required to terminate the Subcontract.

31. WASTE REDUCTION: In the performance of this Agreement, the Contractor shall take all reasonable steps to ensure that materials purchased or consumed in the course of the project are utilized both effectively and efficiently to minimize the generation of waste. The steps should include, but not necessarily be limited to, the use of reusable products, the use of recyclable and compostable products, discretion in the amount of materials used, the provision of alternatives to disposal for materials consumed, and the practice of other waste reduction measures where feasible and appropriate.
32. WORK AUTHORIZATION: If this Agreement is for services as needed, or has clearly specified sub-categories a work authorization will be required before work can begin pursuant to this Agreement. The Contract Manger will make this determination, when work authorizations are required, the Contract Manager will prepare a work authorization for each item of work. Each work authorization, as appropriate, will consist of a detailed statement of the purpose, objectives or goals to be undertaken by the Contractor, identification of the Contractor/subcontractor team, all significant material to be developed and delivered by the Contractor, all materials to be furnished by CalRecycle to the Contractor, the Contractor's estimated time schedule and person hours, billing rates and total cost of the work authorization.
- (a) All work authorizations will be in writing, negotiated and approved by the Contract Manager and the Contractor's Project Director prior to beginning work. However, in situations where expedience is of the utmost importance, the Contract Manager may verbally authorize the Contractor to begin work following up with written authorization.
 - (b) The level of effort required for each work authorization will vary for each proposed project. Therefore, the Contract Manager will establish the time lines for completion of duties to be performed at the time of assignment.
 - (c) CalRecycle reserves the right to require the Contractor to stop or suspend work on any work authorization. The Contract Manager will provide, in writing to Contractor's Project Director, notice of the date work is to be halted or suspended. Approved costs incurred to that date shall be reimbursed in accordance with this Agreement's provision.
 - (d) Each work authorization will be numbered sequentially.
 - (e) The actual costs of a completed, approved work authorization will not exceed the authorized amount, except if, in the performance of the work, the Contractor determines that the actual cost will exceed the estimated costs; the Contractor will immediately notify the Contract Manager. Upon such notification, the Contract Manager may:
 - 1. Alter the scope of the work authorization to accomplish the work within the estimated costs; or
 - 2. Augment the work authorization budget; or
 - 3. Authorize the Contractor to complete the work for the actual costs; or
 - 4. Terminate the work authorization.

Prior to exceeding the approved budget, approval must be secured in writing from the Contract Manager and the work authorization must be modified to reflect the change. If the problem occurs because the Contractor is in fault, the Contractor will absorb the additional costs.

STATE OF CALIFORNIA
 Department of Resources Recycling and Recovery (CalRecycle)
 CalRecycle 74C (Rev. 01/10 for Contracts)

| | |
|---|---------------|
| To be completed by Contractor | |
| Name of Contractor: NewPoint Group Inc. | |
| Contract #: DRR10073 | Work Order #: |

Recycled-Content Certification

Check this box if no products, materials, goods, or supplies were purchased with contract dollars and submit to the CalRecycle Contract Manager.
 This form to be completed by contractor. The form must be completed and returned to CalRecycle with a row completed for each product purchased with contract dollars. Attach additional sheets if necessary. **Information must be included, even if the product does not contain recycled-content material.** Product labels, catalog/website descriptions, or bid specifications may be attached to this form as a method of providing that information. Add additional rows as needed.

Contractor's Name _____ Date _____
 Address _____ Phone _____
 Fax _____ E-mail _____ Web site _____

| Product Manufacturer | Product Description / Brand | Purchase Amount (\$) | ¹ Percent Postconsumer Material | ² SABRC Product Category Code | Meets SABRC |
|----------------------|-----------------------------|----------------------|--|--|-------------|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

Public Contract Code sections 12205 (a) (1) (2) (3) (b) (1) (2) (3)

I certify that the above information is true. I further certify that these environmental claims for recycled content regarding these products are consistent with the Federal Trade Commission's Environmental Marketing Guidelines in accordance with PCC Section 12205.

Print name _____ Signature _____ Company _____ Date _____
 (See footnotes on the back of this page.)

1. Postconsumer material comes from products that were bought by consumers, used, and then recycled. For example: a newspaper that has been purchased and read, next recycled, and then used to make another product would be postconsumer material.

If the product does not fit into any of the product categories, enter "N/A." Common N/A products include wood products, natural textiles, aggregate, concrete, electronics such as computers, TV, software on a disk or CD, telephone

2. Product category refers to one of the product categories listed below, into which the reportable purchase falls. For products made from multiple materials, choose the category that comprises most of the product by weight, or volume.

Note: For reused or refurbished products, there is no minimum content requirement.

For additional information visit www.calrecycle.ca.gov/BuyRecycled/

| Code | Description Product Categories (11) | Minimum content requirement |
|------|---|--|
| 1 | Paper Products - Recycled | 30 percent postconsumer fiber, by fiber weight |
| 2 | Printing and Writing - Recycled | 30 percent postconsumer fiber, by fiber weight |
| 3 | Compost, Co-compost, and Mulch – Recycled | 80 percent recovered materials. i.e., material that would otherwise be normally disposed of in a landfill |
| 4 | Glass – Recycled | 10 percent postconsumer, by weight |
| 5 | Rerefined Lubricating Oil - Recycled | 70 percent re-refined base oil |
| 6a | Plastic – Recycled | 10 percent postconsumer, by weight |
| 6b | Printer or duplication cartridges | a. Have 10 percent postconsumer material, or b. Are purchased as remanufactured, or c. Are backed by a vendor-offered program that will take back the printer cartridges after their useful life and ensure that the cartridges are recycled and comply with the definition of recycled as set forth in Section 12156 of the Public Contract Code. |
| 7 | Paint – Recycled | 50 percent postconsumer paint (exceptions when 50% postconsumer content is not available or is restricted by a local air quality management district, then 10% postconsumer content may be substituted) |
| 8 | Antifreeze – Recycled | 70 percent postconsumer material |
| 9 | Retreated Tires - Recycled | Use existing casing that has undergone retreading or recapping process in accordance with Public Resource Code (commencing with section 42400). |
| 10 | Tire- Derived - Recycled | 50 percent postconsumer tires |
| 11 | Metals – Recycled | 10 percent postconsumer, by weight |