

6.03 Diversion Requirements.

a. Minimum Diversion Requirement. Contractor will recycle and/or process and market, or cause to be recycled and/or processed and marketed, Solid Waste that is Collected by Contractor each Contract Year or portion thereof in a manner which entitles County to diversion credit as specified in Section 41780 of the California Public Resources Code (“**Diversion**”), in at least the following amounts of Solid Waste:

- (1) 35% during the period beginning on the Commencement Date & ending December 31, 2003;
- (2) 40% during the calendar year period commencing January 1, 2004 & ending December 31, 2004;
- (3) 45% during the calendar year period commencing January 1, 2005 & ending December 31, 2005;
- (4) 50% during the calendar year period commencing January 1, 2006 & ending December 31, 2006;
- (5) 50% during each calendar year thereafter.

This obligation is referred to in this Agreement as the “**Minimum Diversion Requirement**”).

As part of its Quarterly Reports and Annual Report, Contractor will provide County with monthly Diversion data and calculate the Minimum Diversion Requirement on a cumulative calendar year basis in the form attached as Exhibit 6.03a.

b. Diversion Performance-based Compensation.

(1) Exceeding Minimum Diversion Requirements: Service Fee Bonus. If Contractor exceeds the Minimum Diversion Requirement during any calendar year, for each diversion percentage point or portion thereof *greater* than the Minimum Diversion Requirement, together with timely submission of its Annual Report Contractor will calculate additional Service Fee compensation during the following Contract Year in an aggregate amount equal to the percentage of its gross Service Fees as indicated on the tables in Exhibit 6.03b.

(2) Failing to meet Minimum Diversion Requirements: Service Fee Decreases. If Contractor fails to meet the Minimum Diversion Requirement during any calendar year, for each diversion percentage point or portion thereof *less* than the Minimum Diversion Requirement, together with timely submission of its Annual Report Contractor will calculate decreased Service Fee

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compensation equal to the percentage of its gross Service Fees as indicated on the tables in Exhibit 6.03b.

Contractor's compensation shall not be decreased for failure to meet the Minimum Diversion Requirement if County determines that Contractor has used reasonable business efforts to meet the Minimum Diversion Requirement and has met all other terms and conditions in the Agreement.

c. Measurement of Minimum Diversion Requirement. Compliance with the Minimum Diversion Requirement is measured by calculating the percentage that results from dividing Diverted Recyclables plus Diverted Green Waste, by Collected Recyclables plus Collected Green Waste plus Collected Refuse:

Minimum Diversion Requirement = $100 \times \frac{[\text{Diverted Recyclables} + \text{Diverted Green Waste}]}{[\text{Collected Recyclables} + \text{Collected Green Waste} + \text{Collected Refuse}]}$.

- “Diverted Recyclables”** means Program Recyclables and Market Recyclables that Contractor has Collected at Residential and Commercial premises and Diverted, including Recyclables in Bulky Waste.
- “Diverted Green Waste”** means Green Waste that Contractor has Collected at Commercial and Residential premises and Diverted, including Green Waste in Bulky Waste.
- “Collected Recyclables”** means Program Recyclables, but not Market Recyclables, that Contractor has Collected at Residential and Commercial premises, including Recyclables in Bulky Waste.
- “Collected Green Waste”** means Green Waste that Contractor has Collected at Commercial and Residential premises, including Green Waste in Bulky Waste.
- “Collected Refuse”** means Refuse that Contractor has Collected at Commercial and Residential premises, including Refuse in Bulky Waste.

d. Reporting and Substantiation of Diverted Materials. Contractor will report the amount of Diverted Recyclables and Diverted Green Waste defined in subsection c in accordance with Exhibit 6.03a. Within 7 days of County direction, Contractor will provide County with Records supporting the reported amounts, including weigh tickets, invoices, bills of lading, and receipts from Diversion Facilities with respect to Contractor delivered materials, allocated materials recovery and allocated residual. **“Diversion Facilities”** means:

(i) with respect to Program Recyclables that are Diverted, the Recyclables Processing Facility or Green Waste Processing Facility; and

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(ii) with respect to Market Recyclables that are Diverted, other materials recovery facility or materials user.

Records may also include documentation from Recyclables and Green Waste transporters, shippers, brokers, beneficiators, remanufacturers and purchasers or other users. County may also compare Contractor's reported Diverted amounts with any reports of Recyclables or Green Waste processing residual that Diversion Facilities may make to the California Integrated Waste Management Board.

e. Reporting and Substantiation of Collected Materials. Contractor will report the amount of Collected Recyclables, Collected Green Waste and Collected Refuse defined in subsection c in accordance with Exhibit 6.03a. Within 7 days of County direction, Contractor will provide County with Records supporting the reported amounts, including, with respect to Collected Recyclables and Collected Green Waste defined in subsection c, the Records described in subsection d. County may compare Contractor's reported amounts of Collected Refuse with reports by the Disposal Facility to the California Integrated Waste Management Board.

f. Disputes. If County questions reports, Records or other documentation that serves as the basis of measuring the volume of Solid Waste types and determining compliance with the Minimum Diversion Requirement, Contractor will respond to County's questions and provide additional clarifying documentation as soon as possible, but in all events within 30 days from the date County submits questions to Contractor. If Contractor does not timely respond and provide documentation to County's satisfaction, County may conduct additional investigation to resolve its questions and secure additional documentation, and Contractor will reimburse County its County's Reimbursement Costs therefor. County may re-calculate the Minimum Diversion Requirement based on Records or other documentation deemed reliable by County, including documentation described in subsections d and e.

EXHIBIT 6.03a: DIVERSION REPORT (example)

Form of Diversion Report (Example: Amounts do not reflect actual tons but are for example purposes only)

Summary of Monthly Amounts Year to Date:

| Column: | A | B | C | D | E | F | G | H | I | J | K | L | M | N |
|-------------|---|--|------------------------|-----------------------|-----------------------------------|--------------|--------------------|-------------------|------------------|-------------------------------|-----------------------------|--------------|-----------------------|--------------------|
| Month | Program Recyclables and Green Waste (a) | | | | | | Refuse | | | | | | Total Solid Waste (d) | Market Recyclables |
| | Residential Recyclables | Residential and Commercial Green Waste | Commercial Recyclables | Roll-offs Recyclables | 'Super Recycling Day' Recyclables | Subtotal (b) | Residential Refuse | Commercial Refuse | Roll-offs Refuse | 'Supers Recycling Day' Refuse | Allocated Residual Disposal | Subtotal (c) | | |
| January | 150 | 200 | 70 | 120 | 75 | 615 | 650 | 130 | 80 | | 25 | 885 | 1,500 | 100 |
| February | 150 | 200 | 70 | 120 | 75 | 615 | 650 | 130 | 80 | | 25 | 885 | 1,500 | 100 |
| March | 150 | 200 | 70 | 120 | 75 | 615 | 650 | 130 | 80 | 75 | 25 | 960 | 1,575 | 100 |
| April | 150 | 200 | 70 | 120 | 75 | 615 | 650 | 130 | 80 | | 25 | 885 | 1,500 | 100 |
| May | 150 | 200 | 70 | 120 | 75 | 615 | 650 | 130 | 80 | | 25 | 885 | 1,500 | 100 |
| June | 150 | 200 | 70 | 120 | 75 | 615 | 650 | 130 | 80 | | 25 | 885 | 1,500 | 100 |
| July | 150 | 200 | 70 | 120 | 75 | 615 | 650 | 130 | 80 | | 25 | 885 | 1,500 | 100 |
| August | 150 | 200 | 70 | 120 | 75 | 615 | 650 | 130 | 80 | | 25 | 885 | 1,500 | 100 |
| September | 150 | 200 | 70 | 120 | 75 | 615 | 650 | 130 | 80 | 75 | 25 | 960 | 1,575 | 100 |
| October | 150 | 200 | 70 | 120 | 75 | 615 | 650 | 130 | 80 | | 25 | 885 | 1,500 | 100 |
| November | 150 | 200 | 70 | 120 | 75 | 615 | 650 | 130 | 80 | | 25 | 885 | 1,500 | 100 |
| December | 150 | 200 | 70 | 120 | 75 | 615 | 650 | 130 | 80 | | 25 | 885 | 1,500 | 100 |
| Total – YTD | 1,800 | 2,400 | 840 | 1,440 | 900 | 7,380 | 7,800 | 1,560 | 960 | 150 | 300 | 10,770 | 18,150 | 1,200 |

Collector's Year to Date Diversion Rate Calculation:

- | | |
|-----|--|
| (a) | Net of allocated residual disposal amount. |
| (b) | Sum of amounts in columns A through E. |
| (c) | Sum of amounts in columns G through K. |
| (d) | Sum of amounts in columns F and L. |
| (e) | From year to date total in column F above. |
| (f) | From year to date total in column N above. |
| (g) | From year to date total in column M above. |
| (h) | Sum of Program and Market Recyclables as a percentage of Total Solid Waste Collected |

| | |
|---------------------------------------|--------|
| Program Recyclables (e) | 7,380 |
| Market Recyclables (f) | 1,200 |
| Sum of Program and Market Recyclables | 8,580 |
| Total Solid Waste Collected (g) | 18,150 |
| Collector's Diversion Rate (h) | 47.3% |

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EXHIBIT 6.03b: DIVERSION PERFORMANCE-BASED COMPENSATION

| Calendar Year in which Diversion is Achieved | | 2003 | 2004 | 2005 | 2006 | 2007 | 2008* |
|--|------------------------------|------|------|------|------|-------|-------|
| Contract Year Ending June 30 in which Compensation is Modified | | 2004 | 2005 | 2006 | 2007 | 2008* | 2009* |
| If Diversion Rate is: | | | | | | | |
| Less Than | But Equal to or Greater Than | | | | | | |
| 60% | 58% | 10% | 10% | 10% | 6% | 6% | 6% |
| 58% | 56% | 10% | 10% | 8% | 4% | 4% | 4% |
| 56% | 54% | 10% | 10% | 6% | 3% | 3% | 3% |
| 54% | 52% | 10% | 10% | 4% | 2% | 2% | 2% |
| 52% | 50% | 10% | 8% | 3% | 1% | 1% | 1% |
| 50% | 48% | 10% | 6% | 2% | 0% | 0% | 0% |
| 48% | 46% | 8% | 4% | 1% | -1% | -1% | -1% |
| 46% | 44% | 6% | 3% | 0% | -2% | -2% | -2% |
| 44% | 42% | 4% | 2% | -1% | -4% | -4% | -4% |
| 42% | 40% | 3% | 1% | -2% | -8% | -8% | -8% |
| 40% | 38% | 2% | 0% | -4% | -12% | -12% | -12% |
| 38% | 36% | 1% | -1% | -8% | -16% | -16% | -16% |
| 36% | 34% | 0% | -2% | -12% | -20% | -20% | -20% |
| 34% | 32% | -1% | -4% | -16% | -24% | -24% | -24% |
| 32% | 30% | -2% | -8% | -20% | 28% | 28% | 28% |
| 30% | 28% | -4% | -12% | -24% | -32% | -32% | -32% |
| 28% | 26% | -8% | -16% | -28% | -36% | -36% | -36% |
| 26% | 24% | -12% | -20% | -32% | -40% | -40% | -40% |
| 24% | 22% | -16% | -24% | -36% | -44% | -44% | -44% |
| 22% | 20% | -20% | -28% | -40% | -48% | -48% | -48% |
| 20% | 18% | -24% | -32% | -44% | -52% | -52% | -52% |
| 18% | 16% | -28% | -36% | -48% | -56% | -56% | -56% |

Dates with (*) represent possible contract extension year.