

AMENDED AND RESTATED

FRANCHISE AGREEMENT

BETWEEN

WEST VALLEY SOLID WASTE MANAGEMENT
AUTHORITY

AND

WEST VALLEY COLLECTION & RECYCLING, LLC

FOR THE

COLLECTION OF SOLID WASTE, RECYCLABLE MATERIALS, GREEN
WASTE, FOOD SCRAPS AND CONSTRUCTION AND DEMOLITION
DEBRIS WITHIN THE AUTHORITY, THE TRANSPORTATION OF
SUCH MATERIALS TO APPROPRIATE PLACES OF PROCESSING,
RECYCLING, COMPOSTING AND/OR DISPOSAL, AND THE
PROCESSING OF RECYCLABLE MATERIALS AND FOOD SCRAPS

* * *

As of

March 1, 2014

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Exhibits

1. Company Secretary's Certificate
2. Corporate Chief Financial Officer's Certificate
3. Public Facilities and Events – Intentionally omitted
4. Clarification of Company's Compensation
5. Public Education and Community Outreach Programs
6. Initial Rates
7. Implementation Plan – Intentionally Omitted
8. Payments by Company
9. Faithful Performance Bond
10. Disposal Payment Provisions
11. Authority Approved Subcontractors
12. Notary Certification – Intentionally omitted
13. Cart Specifications
- 14a. Current Service Description
- 14b. Possible Future Diversion Services
15. Corporate Guaranty

RECITALS

This Amended and Restated Franchise Agreement (Agreement) is entered as of the 1st day of March, 2014, by and between the West Valley Solid Waste Management Authority (Authority) and West Valley Collection & Recycling, LLC (Company), for the Collection of Solid Waste, Recyclable Materials, Green Waste, Food Scraps and Construction and Demolition Debris within the Authority, the Transportation of such materials to appropriate places of Processing, Recycling, Composting and/or Disposal, and the Processing of Recyclable Materials and Food Scraps.

Recitals

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (AB 939) (California Public Resources Code Section 40000 et seq.), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris handling within their jurisdictions; and,

WHEREAS, effective October 1, 1997, the Cities of Campbell, Monte Sereno, and Saratoga, and the Town of Los Gatos formed the Authority pursuant to Government Code Section 6500 et. Seq. to manage and oversee the Franchised Services originating in the Cities of Campbell, Monte Sereno and Saratoga and the Town of Los Gatos; and,

WHEREAS, among the powers granted the Authority is the power to arrange for the Franchised Services; and,

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(2), the Board of Directors of the Authority has determined that the public health, safety, and well-being require that an exclusive Franchise be awarded to a qualified company for the Franchised Services; and,

WHEREAS, the Company currently provides the Franchised Services in the Authority pursuant to that certain Agreement between West Valley Solid Waste Management Authority and West Valley Collection & Recycling, LLC for the Collection of Solid Waste, Recyclable Materials, Green Waste, Food Scraps and Construction and Demolition Debris within the Authority, the Transportation of Such Materials to Appropriate Places of Processing, Recycling, Composting, and/or Disposal, and the Processing of Recyclable

Materials and Food Scraps, dated as of March 14, 2006 (2006 Agreement), as amended on December 2nd 2010 to include Collection of Food Scraps; and,

WHEREAS, the Company, through its proposal to the Authority, has proposed and represented that it has the ability and capacity to continue to provide for the Collection of Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris within the Authority, the Transportation of such material to appropriate places of Processing, Recycling, Composting and/or Disposal; the Processing of Recyclable Materials; the Diversion of materials in accordance with the Public Resources Code and in a manner that will achieve the Authority's Diversion Goals; and,

WHEREAS, the Company and its affiliates, through its discussions with the Authority and subsequent proposal, has agreed to enhance current services and compensation to Authority and has demonstrated its capability of further increasing the Diversion of materials in the future through creative programs such as mixed material Processing, Composting and anaerobic digestion of Organic Materials as well as operational changes such as redesigning and rerouting Collection operations (refer to Exhibit 14b); and,

WHEREAS, the Authority Board of Directors has determined that Company, by demonstrated experience, reputation and capacity, is qualified to continue to provide the services described in this Agreement; and,

WHEREAS, the Authority Board of Directors desires that Company be engaged to perform such services on the basis set forth in this Agreement; and,

WHEREAS, Authority and Company are mindful of the provisions of the laws governing the safe Collection of Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris within the Authority, the Transportation of such material to appropriate places of Processing, Recycling, Composting and/or Disposal, and the Processing of Recyclable Materials, the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601, et seq. ("CERCLA"); and,

WHEREAS, the Authority Board of Directors declares its intention of maintaining reasonable Rates and quality service related to the Franchised Services, and other services; and,

WHEREAS, Authority and Company (Parties) wish to extend the term of the 2006 Agreement, to provide for additional Franchised Services, and to amend certain other rights and obligations of each of the parties as provided for pursuant to the 2006 Agreement; and,

WHEREAS, it is the intent of the Parties that this Agreement amend and restate the 2006 Agreement.

WHEREAS, the Parties hereto have developed and desire to enter said Agreement.

NOW, THEREFORE, in consideration of the premise above stated and the terms, conditions, covenants and agreements contained herein, the Parties do hereby agree as follows:

ARTICLE 1 DEFINITIONS

1.1 AB 939

"AB 939" means the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000 et seq.), as it may be amended from time to time.

1.2 Agreement

"Agreement" means this Amended and Restated Franchise Agreement between Authority and Company for the Collection of Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris within the Authority, the Transportation of such material to appropriate places of Processing, Recycling, Composting and/or Disposal, and the Processing of Recyclable Materials, including all exhibits and attachments, and any amendments thereto.

1.3 Annual Fee

"Annual Fee" means the additional Four Hundred Fifty Thousand and 00/100 Dollars (\$450,000.00) annually paid by Company to Authority for the right to continue to hold the Franchise for the Collection of Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris within the Authority, the Transportation of such material to appropriate places of Processing, Recycling, Composting and/or Disposal, and the Processing of Recyclable Materials and Food Scraps granted by this Agreement for the ten year period ending midnight February 28, 2024. This shall be a non-allowable cost for purposes of calculating Company's Compensation.

1.4 Approved Materials Processing Sites

1.4.1 "Approved Recyclable Materials Processing Site" means the GreenWaste Recovery, Incorporated's Material Recovery Facility at 625 Charles Street in San Jose, California, which was selected by Company and approved by the Authority in writing.

1.4.2 "Approved Food Scraps Processing Site" means the Z-Best Composting Facility at 980 State Highway 25, Gilroy, California, which was selected by Company and approved by the Authority in writing.

1.5 Authority

"Authority" means the West Valley Solid Waste Management Authority and the geographic area of the Cities.

1.6 Billings

"Billings" means any and all statements of charges for services rendered, howsoever made, described or designated by Authority or Company, or made by others for Authority or Company, to Owners or Occupants of property, including Residential Property and Commercial Property, served by Company for the Collection of Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris within the Authority, the Transportation of such material to appropriate places of Processing, Recycling, Composting and/or Disposal, and the Processing of Recyclable Materials.

1.7 Bin

"Bin" means any front-load Container which is able to accept Solid Waste, Recyclable Materials, and Food Scraps.

1.8 Board of Directors

"Board of Directors" means the Board of Directors of the Authority.

1.9 California Integrated Waste Management Act

"California Integrated Waste Management Act" means Public Resources Code, Section 40000 et seq.

1.10 Cart

"Cart" means any side-load or front-load wheeled Container of 20, 35, 65 or 95 gallon capacity which is able to accept Solid Waste, Recyclable Materials, Green Waste, or Food Scraps.

1.11 City

"City" means the City of Campbell, Monte Sereno, Saratoga, or the Town of Los Gatos and includes all of the territory lying within their municipal boundaries as presently existing or as such boundaries may be modified during the term of this Agreement.

1.12 City Fees

"City Fees" shall mean all of the fees described in Article 5.

1.13 Cities

"Cities" means the cities of Campbell, Monte Sereno, Saratoga, and the Town of Los Gatos collectively and includes all of the territory lying within their boundaries as presently existing or as such boundaries may be modified during the Term of this Agreement.

1.14 Collect (or Collection)

"Collect" or "Collection" means to take physical possession, Transport, and remove Solid Waste, Recyclable Materials, Green Waste, Food Scraps and Construction and Demolition Debris within and from Authority.

1.15 Commercial Property

"Commercial Property" means commercial and industrial property upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding businesses conducted upon Residential Property which are permitted under applicable zoning regulations and are not the primary use of the property.

1.16 Company

"Company" means West Valley Collection & Recycling, LLC, a limited liability company organized and operating under the laws of the State of California and its Managers, Members, directors, employees and agents. It is a joint venture between GreenWaste Recovery Inc., and Waste Connections of California, Inc., dba GreenTeam of San Jose.

1.17 Company Compensation

"Company Compensation" means the revenue received by the Company from Billings in return for providing services in accordance with this Agreement and any amendments to this Agreement.

1.18 Company Party(ies)

"Company Party(ies) shall mean Company, officers, directors, or management or fiscal employees (where "management employee" means any employee with direct or indirect

responsibility for direction or control over the Company's activities under this Agreement and "fiscal" employee means an employee with direct or indirect responsibility and control duties relating to financial matters under this Agreement).

1.19 Company's Proposal

"Company's Proposal" means the proposal submitted by Company and received on November 15, 2005 by the Authority (in response to the Authority's August 2005 Request for Proposals for the Collection of Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris within the Authority, the Transportation of such material to appropriate places of Processing, Recycling, Composting and/or Disposal, and the Processing of Recyclable Materials and certain supplemental written materials, which are incorporated by reference) as amended by the terms of this Agreement.

1.20 Composting (or Compost)

"Composting" means a controlled biological decomposition of Organic Materials yielding a safe and nuisance free Compost Product.

1.21 Compost Product

"Compost Product" means the product resulting from Composting.

1.22 Construction and Demolition Debris

"Construction and Demolition Debris" means construction materials resulting from construction, remodeling, repair or demolition operations, as part of a total service offered by a duly-licensed demolition company or the City, including rocks, soil, tree remains, and other Green Waste which normally results from land clearing or land development operations for a construction project and such materials as defined as "construction and demolition debris" by applicable local ordinances in existence as of the Effective Date of this Agreement. Construction and Demolition Debris shall be Source Separated from Solid Waste at the site of generation and contain no more than thirty percent (30%) by volume of residue.

1.23 Construction and Demolition Debris Fee Component

"Construction and Demolition Debris Fee Component" means the total of taxes and fees assessed to the Designated Construction and Demolition Debris Processing Site solely for purposes related to the Processing operation.

1.24 Construction and Demolition Debris Proprietary Rate

“Construction and Demolition Debris Proprietary Rate” means the proprietary Rate charged by the Designated Construction and Demolition Debris Processing Site for Processing of Construction and Demolition Debris.

1.25 Containers

"Containers" means any and all types of Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris receptacles.

1.26 Criminal Activity

“Criminal Activity” means those activities described in Section 14.16.

1.27 Curbside

"Curbside" means the placement of Containers for pickup, where such Container is placed on the street or alley against the face of the curb, or where no curb exists the Container is placed no more than five (5) feet from the outside edge of the street or alleyway or as designated by the Authority.

1.28 Customer

“Customer” means the Person whom Company submits billing invoice to and collects payment from for Collection services provided to a Premises. The Customer may be the Occupant or Owner of the Premises provided that the Owner of the Premises shall be responsible for payment of Collection services if an Occupant of a Premises, which is identified as the Customer of Owner’s Premises, fails to make such payment.

1.29 Designated Construction and Demolition Debris Processing Site

“Designated Construction and Demolition Debris Processing Site” means the Guadalupe Landfill at 15999 Guadalupe Mines Road in San Jose unless the Authority designates, in writing, a different Processing site(s).

1.30 Designated Disposal Site

“Designated Disposal Site” means the Guadalupe Landfill at 15999 Guadalupe Mines Road in San Jose unless the Authority designates, in writing, a different Disposal Site in accordance with Section 6.11.

1.31 Designated Drop-Off Facility

“Designated Drop-Off Facility” means the GreenTeam of San Jose’s Materials Recovery Facility at 575 Charles Street in San Jose, unless the Company designates in writing, with Authority approval, a different drop-off site.

1.32 Designated Green Waste Processing Site

“Designated Green Waste Processing Site” means the Guadalupe Landfill at 15999 Guadalupe Mines Road in San Jose unless the Authority designates, in writing, a different processing site in accordance with Section 6.12.

1.33 Designated Waste

“Designated Waste” means non-Hazardous Waste which may pose special Disposal problems because of its potential to contaminate the environment and which may be Disposed of only in Class II Disposal Sites or Class III Disposal Sites pursuant to a variance issued by the California Department of Health Services. Designated Waste consists of those substances classified as Designated Waste by the State of California, in California Code of Regulations Title 23, Section 2522 as may be amended from time to time.

1.34 Discarded Material

“Discarded Material” means Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris placed by a Generator in a receptacle and/or at a location that is designated for Collection pursuant to the Cities’ Municipal Code.

1.35 Disposal or Dispose

“Disposal” or “Dispose” means the ultimate disposition of Solid Waste Collected by Company at a landfill in full regulatory compliance.

1.36 Disposal Fee Component

“Disposal Fee Component” means the total of taxes and fees assessed to the Designated Disposal Site solely for Disposal purposes related to the waste operation.

1.37 Disposal Proprietary Rate

“Disposal Proprietary Rate” means the proprietary Rate charged by the Designated Disposal Site for Disposal of Solid Waste.

1.38 Disposal Site(s)

"Disposal Site(s)" mean the Solid Waste handling Facility or Facilities meeting all applicable local, state, and federal licensing and permitting regulations utilized for the ultimate Disposal of Solid Waste Collected by Company.

1.39 Diversion Goal

"Diversion Goal" means the means the target Diversion ratio for each City, the numerator of which is the annual Tons of material from the Cities handled by the Company which is not Disposed and the denominator of which is the total annual Tons of material from the Cities handled by the Company. The specific Diversion Goal for each City will be negotiated based on the first six months experience, with target goals not less than 33% for Campbell, 68% for Monte Sereno, 61% for Saratoga, and 42% for the Town of Los Gatos.

1.40 Divert (or Diversion)

"Divert" or "Diversion" means activities that reduce or eliminate the amount of Solid Waste from Solid Waste Disposal including, but not limited to, Recycling and Composting.

1.41 Due Care

"Due Care" means reasonable and sufficient care, so far as the circumstances demand it; the absence of negligence including no violation of law.

1.42 Effective Date

"Effective Date" means midnight on March 1, 2014.

1.43 Environmental Laws

"Environmental Laws" means all federal and state statutes, county, local and City ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6902 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Toxic Substances Control Act, 15 USC §1601 et seq.; the Occupational Safety and Health Act, 29 USC §651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100 et seq.; the California Toxic Substances Control Act, California Health and Safety Code §25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq.;

the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5 *et seq.*; as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

1.44 E-Waste Items

"E-Waste Items" means discarded electronic equipment such as, but not limited to, television sets, computer monitors, central processing units (CPU's), laptop computers, external computer hard drives, computer keyboards, computer mice, computer printers, DVD's and VCR's.

1.45 Facility

"Facility" means any plant or site, owned or leased and maintained, operated or used by Company for purposes of performing under this Agreement.

1.46 Fiscal Year

"Fiscal Year" means the period commencing July 1 of one year and concluding June 30 of the subsequent year for Company.

1.47 Food Scraps

"Food Scraps" means food scraps such as those discarded Organic Materials that will decompose and/or putrefy including (i) all kitchen and table food waste, and animal or vegetable waste that attends or results from the storage, preparation, cooking or handling of food stuffs, and (ii) un-coated paper waste contaminated with Food Scraps and placed in Containers for Collection. Food Scraps is a subset of Organic Materials.

1.48 Food Scraps Processing Fee

"Food Scrap Processing Fee" means the per-Ton tip fee for the Transport and Processing of Food Scraps, applied to each Ton as delivered to GreenWaste Recovery, Incorporated's transfer station.

1.49 Franchise

"Franchise" means the special right granted by Authority for the Collection of Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris within the Authority, the Transportation of such material to appropriate places of

Processing, Recycling, Composting and/or Disposal, and the Processing of Recyclable Materials and Food Scraps.

1.50 Franchise Fee

“Franchise Fee” means the fee paid by Company to Cities for the right to hold the Franchise for the Collection of Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris within the Authority, the Transportation of such material to appropriate places of Processing, Recycling, Composting and/or Disposal, and the Processing of Recyclable Materials and Food Scraps granted by this Agreement.

1.51 Franchised Services

“Franchised Services” mean the Collection of Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris within the Authority, the Transportation of such material to appropriate places of Processing, Recycling, Composting and/or Disposal, and the Processing of Recyclable Materials and Food Scraps.

1.52 Generator

"Generator" means any Person as defined by the Public Resources Code, whose act or process produced Solid Waste, Recyclable Materials, Green Waste, or Food Scraps as defined in the Public Resources Code, or other materials as defined in this Agreement, or whose act first causes Solid Waste to become subject to regulation.

1.53 Green Waste

"Green Waste" means tree trimmings, grass cuttings, dead plants, leaves, branches and dead trees (not more than three (3) inches in diameter), garden and tree fruits and vegetables, and similar materials generated and separated from other materials at the Premises

1.54 Green Waste Processing Fee Component

“Green Waste Processing Fee Component” means the total of taxes and fees assessed to the Designated Green Waste Processing Site solely for Green Waste Processing purposes.

1.55 Green Waste Processing Proprietary Rate

“Green Waste Processing Proprietary Rate” means the proprietary Rate for transferring and Processing Green Waste at the Designated Green Waste Processing Site.

1.56 Gross Revenues

“Gross Revenues” means any and all revenue or compensation in any form to Company or subsidiaries, or Parent Companies of Company, for the Collection of Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris within the Authority, the Transportation of such material to appropriate places of Processing, Recycling, Composting and/or Disposal, and the Processing of Recyclable Materials and Food Scraps pursuant to this Agreement, without subtracting Franchise Fees, HHW Fees, Street Sweeping Fees, Vehicle Impact Fees, JPA Administrative Costs or any other cost of doing business.

1.57 Gross Revenues Collected

“Gross Revenues Collected” shall mean cash receipts collected by the Company for the Collection of Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris within the Authority, the Transportation of such material to appropriate places of Processing, Recycling, Composting and/or Disposal, and the Processing of Recyclable Materials and Food Scraps, without subtracting Franchise Fees, Vehicle Impact Fees or any other cost of doing business, except City Fees.

1.58 Hazardous Substance

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

1.59 Hazardous Waste

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

1.60 Household Hazardous Waste (HHW)

"Household Hazardous Waste" means Hazardous Waste generated at residential Premises within the Authority.

1.61 HHW Fee

"HHW Fee" means the fee paid by Company to Authority or Cities to offset expenses for HHW programs and Facilities which benefits all Residents.

1.62 Infectious Waste

"Infectious Waste" means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities and other similar establishments that are identified in Health and Safety Code Section 25117.5 as may be amended from time to time.

1.63 JPA Administrative Cost

"JPA Administrative Cost" means the operating costs of the West Valley Solid Waste Authority.

1.64 Legislation

"Legislation" means any code, ordinance, resolution or any other forms/enactment of the governing body of City or Authority which now exists or which may hereafter be adopted which constitutes law or regulation governing the operation of Company.

1.65 Managers

"Managers" mean the Directors of the Company.

1.66 Members

“Members” means Waste Connections of California, Inc., a California Corporation and GreenWaste Recovery Inc., a California Corporation.

1.67 Missed Pick-Up

“Missed Pick-Up” means failure of Company to pick up Solid Waste, Recyclable Materials, Green Waste, and/or Food Scraps that has been set out by the Customer at the time, at the weight, in the volume, in the proper Container, with the lawful contents in accordance with this Agreement, and at the prescribed level of service, as mutually agreed upon by the Customer and Company.

1.68 Multi-Family Dwelling Unit

“Multi-Family Dwelling Unit” means any Premises with five (5) or more units serviced in a manner similar to Commercial Property, but used for residential purposes (not including hotels or motels), irrespective of whether residence therein is transient, temporary or permanent.

1.69 Occupant

“Occupant” means the Person who occupies a Premise.

1.70 Organic Materials

“Organic Materials” means those discarded materials that will decompose and/or putrefy and that the Cities’ Municipal Code permits, directs, and/or requires Generators to separate from Solid Waste and Recyclable Materials for Collection in separately designated Containers for Organic Materials Collection. Organic Materials include Green Waste and Food Scraps such as but not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small wood pieces, other types of organic yard waste, vegetable waste, fruit waste, grain waste, dairy waste, meat waste, fish waste, paper contaminated with Food Scrap or otherwise not accepted in the Recyclable Materials Collection program, pieces of unpainted and untreated wood, and pieces of unpainted and untreated wallboard. No Discarded Material shall be considered to be Organic Materials, however, unless such material is separated from Solid Waste and Recyclable Materials.

1.71 Owner

"Owner" means the Person holding the legal title to the real property constituting the Premises to which Solid Waste, Recyclable Materials, and/or Green Waste Collection service are to be provided under this Agreement.

1.72 Parent Company

"Parent Company" refers to a company owning more than fifty percent (50%) of the shares of another company (subsidiary) or a company that has management control over such subsidiary.

1.73 Pass-Through Cost

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

1.74 Person

"Person" means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Santa Clara, towns, cities, and special purpose districts.

1.75 Premises

"Premises" means any land, or building, in Authority where Solid Waste, Recyclable Materials, Green Waste, or Food Scraps are generated or accumulated.

1.76 Process (or Processing)

"Process" or "Processing" means to prepare, treat, or convert through some special method.

1.77 Rate Year

"Rate Year" means the twelve month period, commencing July 1, of one year and concluding June 30 of the subsequent year, for which Company Compensation is calculated. The Rate Years, commencement and concluding dates are shown below:

Rate Year 1	July 1, 2007	June 30, 2008
Rate Year 2	July 1, 2008	June 30, 2009
Rate Year 3	July 1, 2009	June 30, 2010
Rate Year 4	July 1, 2010	June 30, 2011
Rate Year 5	July 1, 2011	June 30, 2012
Rate Year 6	July 1, 2012	June 30, 2013
Rate Year 7	July 1, 2013	June 30, 2014
Rate Year 8	July 1, 2014	June 30, 2015
Rate Year 9	July 1, 2015	June 30, 2016
Rate Year 10	July 1, 2016	June 30, 2017
Rate Year 11	July 1, 2017	June 30, 2018
Rate Year 12	July 1, 2018	June 30, 2019
Rate Year 13	July 1, 2019	June 30, 2020
Rate Year 14	July 1, 2020	June 30, 2021
Rate Year 15	July 1, 2021	June 30, 2022
Rate Year 16	July 1, 2022	June 30, 2023
Rate Year 17	July 1, 2023	February 28, 2024

1.78 Rate(s)

"Rate(s)" means the unit to be charged Customers by Company for providing the Collection of Solid Waste, Recyclable Materials, Green Waste, Food Scraps and Construction and Demolition Debris within the Authority, the Transportation of such material to appropriate places of Processing, Recycling, Composting and/or Disposal, and the Processing of

Recyclable Materials and Food Scraps. Rates may be adjusted from time to time in accordance with this Agreement.

1.79 Recycle and Recycling

"Recycle" and "Recycling" means recycling as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, §40180 and includes the process of Collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become Solid Waste, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet quality standards necessary to be used in the market place. "Recycling" does not include transformation, as defined in Public Resources Code §40201.

1.80 Recyclable

"Recyclable" means a material which can be Processed into a form suitable for reuse through reprocessing or re-manufacture consistent with the requirements of the California Integrated Waste Management Act.

1.81 Recyclable Materials

"Recyclable Materials" means residential, commercial or industrial Source Separated by-products of some potential economic value, set aside, handled, packaged, or offered for Collection in a manner different from Solid Waste, which are able to fit in Residential Recycling Containers or Commercial Recycling Containers, as the case may be. As of the date of execution of this Agreement, Recyclable Materials shall include, but not be limited to the following:

- (1) **Metals:** aerosol cans, aluminum foil, aluminum pans, beverage cans, can lids, car parts, doors and screens, electrical motors, food/soup cans, furniture, hangers, keys, lids/caps, nuts and bolts, paint cans, pet food cans, pipes, plumbing fixtures, pots and pans, propane tanks, scrap metal, screws and nuts, sporting goods, tools, toys, umbrellas, and utensils
- (2) **E-Waste:** appliances, calculators, cameras, cell phones, computer mice, computer tower, cords, DVD players, DVRs, fax machines, inkjet toner cartridges, keyboards, microwaves, pagers, PDAs, printers, radios, scanners, stereos, telephones, and VCRs

- (3) **Paper:** aseptic packaging, books, carbonless paper, cardboard, catalogs, cereal boxes, coffee cups, colored paper, computer paper, construction paper, coupons, egg cartons, envelopes, frozen food boxes, gift wrap, juice boxes, junk mail, magazines, mailers, milk cartons, newspapers (including inserts), office paper, paper bags, paper cups/plates, photographs, pizza boxes, shoe boxes, shredded paper, telephone books, and tissue paper
- (4) **Plastic:** auto parts, baby wipe containers, baskets, beverage bottles, bleach/detergent bottles, buckets, coffee cup lids, coolers, crates, disposable razors, flower pots, food containers, furniture, gloves, hangers, hoses, household cleaner bottles, mouthwash bottles, pet carriers, pipes, plastics (numbers 1 – 7), prescription bottles, shampoo bottles, shelving, squeeze bottles, swimming pools, take-out containers, toys, and umbrellas
- (5) **Film Plastics:** bread bags, bubble wrap, cellophane bags, dry cleaning bags, frozen food bags, newspaper bags, pallet wrap, plastic liners, plastic wrap, produce bags, and shrink wrap
- (6) **Glass:** beverage bottles, broken glass, dishware, food jars, windows, and wine bottles
- (7) **Miscellaneous:** textiles, and used oil and used oil filters

1.82 Recycled

"Recycled" means the act of having Processed Recyclable Materials into a form suitable for reuse and having marketed those Processed materials for a use consistent with the requirements of the California Integrated Waste Management Act for Recycled materials. The act of marketing does not require that revenue is generated from the Processed materials.

1.83 Related-Party Entity(ies)

"Related Party Entity(ies)" means any Affiliate which has financial transactions with Company pertaining to this Agreement that has been approved by the Authority. For the purposes of this Agreement and at the time of its execution, Related-Party Entities shall include, but are not limited to: GreenWaste Recovery, Inc., and Waste Connections of California, Inc.

1.84 Residential Household Batteries

"Residential Household Batteries" means household consumable batteries, except for car batteries.

1.85 Residential Property

"Residential Property" means property used for residential purposes, irrespective of whether such dwelling units are rental units or are Owner-occupied.

1.86 Roll-Off Container

"Roll-Off Container" means any unit, Container, or enclosure including, but not limited to sizes ranging from 8 to 40 cubic yards which can be used for Solid Waste. A Roll-Off Container may be an open top Container or an enclosed Container with a compaction unit.

1.87 Roll-Off Collection Services

"Roll-Off Collection Services" means the service provided to Customers for the Collection of Solid Waste using a Roll-Off Container.

1.88 Rubbish

"Rubbish" means all waste wood, wood products, printed materials, paper, paste board, rags, straw, used and discarded clothing, packaging materials, ashes, floor sweepings, glass and other materials not included in the definition of Solid Waste, Hazardous Substance, Green Waste or Recyclable Materials, and such materials defined as "Rubbish" by applicable local ordinances in existence as of the Effective Date of this Agreement.

1.89 Salvageable Material

"Salvageable Material" means those Discarded Materials that may be reused in their existing form or may be reused after some form of Processing including, but not limited to, Green Waste and Recyclable Materials.

1.90 Single-Family Dwelling Unit

"Single-Family Dwelling Unit" means each Premises used for or designated as a single family residential dwelling, including each unit of a duplex, triplex, four-plex, or town house in all cases in which there is separate or individual Solid Waste Collection service using cans or Carts.

1.91 Solid Waste

"Solid Waste" means Solid Waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, §40191. Excluded from the definition of Solid Waste are Construction and Demolition Debris, Hazardous Waste, Infectious Waste, Designated Waste, Source Separated Recyclable Materials, Source Separated Green Waste, Food Scraps, and radioactive waste. Notwithstanding any provision to the contrary, Solid Waste may include de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of HHW in compliance with Section 41500 and 41802 of the California Public Resources Code as may be amended from time to time.

Solid Waste includes Salvageable Materials only when such materials are included for Collection in a Solid Waste Container.

1.92 Source Separation (or Source Separated)

"Source Separation" or "Source Separated" means the segregation into separate Containers by the Generator of individual components of material which otherwise would become Solid Waste, such as glass bottles, metal cans, newspapers, plastic containers, construction materials, etc., for the sole purpose of Recycling, to be picked up by Company.

1.93 Special Event

"Special Event" means a large event as defined in AB2176 (Montanez, Chapter 879, Statutes of 2004) which includes all events that charge admission or are operated by a local agency and serve an average of at least 2,000 attendees and workers per day of the event.

1.94 Street Sweeping Fee

"Street Sweeping Fee" means the fee paid by the Company to reimburse the Cities for street sweeping costs incurred to clean up all City streets because of Collection Vehicles travelling on Cities' streets.

1.95 Ton (or Tonnage)

"Ton (or Tonnage)" means a unit of measure for weight equivalent to two thousand (2,000) standard pounds where each pound contains sixteen (16) ounces.

1.96 Transport (or Transportation)

“Transport” means the Transportation of Solid Waste, Recyclable Materials, Green Waste or Food Scraps from the point of Collection to a MRF, Processing Facility, or Disposal Site.

1.97 Unacceptable Waste

"Unacceptable Waste" means any and all waste, including but not limited to, Hazardous Waste, Hazardous Substances, Biohazardous and Biological Waste, the acceptance or handling of which would cause a violation of any permit condition or legal or regulatory requirements, substantial damage to Company's equipment or Facilities, or present a substantial endangerment to the health or safety of the public or Company's employees, provided, that de minimis quantities or waste of a type and amount normally found in residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment and Disposal of HHW in compliance with Section 41500 and 41802 of the California Public Resources Code shall not constitute Unacceptable Waste.

1.98 Universal Waste

“Universal Waste “ means Universal Waste as defined in California Code of Regulations Title 22, Division 4.5, Ch 11, Article 1, §66261.9. Included in the definition are, but are not limited to, common Residential Household Batteries, fluorescent tubes and bulbs and other mercury-containing lamps, thermostats, electronic devices, electrical switches and relays, pilot light sensors, mercury gauges, mercury added novelties, mercury thermostats and non-empty aerosol cans that contain hazardous materials.

1.99 Vehicle Impact Fee

“Vehicle Impact Fee” means the fee paid by Company to reimburse the Cities for public rights of way maintenance costs incurred because of Collection Vehicles traveling on Authority streets.

ARTICLE 2 REPRESENTATIONS AND WARRANTIES OF COMPANY

2.1 Company Status

Company is a duly organized, validly existing and in good standing under the laws of the State of California. It is qualified to transact business in the State of California and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

2.2 Company Authorization

Company has the authority to enter into and perform its obligations under this Agreement. The Managers and Members of the Company have taken all actions required by law, its operating agreement or otherwise to authorize the execution of this Agreement.

2.3 Agreement Duly Executed

The Person(s) signing this Agreement on behalf of Company have been duly authorized by Company to do so, and this Agreement has been duly executed and delivered by Company in accordance with the authorization of its Managers and Members, if necessary, and is enforceable against Company in accordance with its terms, except as enforcement of this Agreement may be limited by bankruptcy, insolvency, reorganization moratorium or other laws relating to or affecting generally the enforcement of creditors' rights and except to the extent that availability of the remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding therefore may be brought as confirmed by the Company's Secretary's Certificate in Exhibit 1.

2.4 No Conflict With Applicable Law or Other Documents

To the best of Company's knowledge after reasonable investigation, neither the execution and delivery by Company of this Agreement, nor the performance by Company of its obligations hereunder and the transactions described herein:

- A) Conflicts with, violates or will result in a violation of any existing applicable law;
or
- B) Conflicts with, violates or will result in a breach or default under any term or condition of any existing judgment, order or decree of any court, administrative

agency or other governmental authority, or of any existing agreement or instrument to which Company is a party, or by which Company or any of Company's properties or assets is bound; or

- C) Will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of Company which will interfere materially with Company's performance hereunder.

2.5 No Litigation

To the best of Company's knowledge after reasonable investigation, there is no judicial decision, action, suit, proceeding or action at law or equity, or to the best of Company's knowledge, any investigation before or by any court or governmental entity, pending or threatened against Company or otherwise affecting Company, wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect Company's performance hereunder, or which in any way, would adversely affect the validity or enforceability of this Agreement, or which would, in any single case or in the aggregate:

- A) Materially adversely affect the performance by Company of its obligations hereunder;
- B) Adversely affect the validity or enforceability of this Agreement;
- C) Have a material adverse effect on the financial condition of Company, or any surety or entity guaranteeing Company's performance under this Agreement: or,
- D) Prohibit this Agreement or subject this Agreement to legal challenge

2.6 Financial Ability, Disclosures, No Material Change

Company represents that it has sufficient financial resources to perform all aspects of its obligations hereunder. Company has provided the Authority with audited financial statements as of August 31, 2012 for Green Waste Recovery, Inc. and as of December 31, 2012 for Waste Connections, Inc., the Parent Company of Waste Connections of California, Inc. prepared by a certified public accountant whose audit was performed in accordance with Generally Accepted Auditing Standards which present fairly, in accordance with Generally Accepted Accounting Principles, the financial resources of such Members. Company represents that there has been no material adverse change in Company's or its Members

financial circumstances since the date of the most recent financial statements, as confirmed by Corporate Chief Financial Officer's Certificate in Exhibit 2.

2.7 Expertise

Company has the expert, professional, and technical capability to perform all of its obligations under this Agreement.

2.8 Company's Investigation

Company has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed by Company under the Agreement, and enters into this Agreement on the basis of that independent investigation.

2.9 Company's Statements

The Company's Proposal and any other supplementary documents submitted to the Authority, which the Authority relied upon in awarding and entering this Agreement, do not: (i) contain any untrue statement of a material fact, or (ii) omit a material fact that is necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.

2.10 Voluntary Use of Designated Disposal Site, Designated Green Waste Processing Site, and Designated Construction and Demolition Debris Processing Site

The Company, without constraint and as a free-market business decision in accepting this Agreement, agrees to use the Designated Disposal Site for the purposes of Disposing of all Solid Waste Collected in the Authority, the Designated Green Waste Processing Site for purposes of Processing of all Green Waste Collected in the Authority, and the Designated Construction and Demolition Debris Processing Site for purposes of Processing of all Construction and Demolition Debris Collected in the Authority. Such decision by Company in no way constitutes a restraint of trade notwithstanding any Change in Law regarding flow control limitations or any definition thereof.

ARTICLE 3
AMENDED AND RESTATED AGREEMENT / TERM OF FRANCHISE

3.1 Amended and Restated 2006 Agreement

The parties mutually agree that this Agreement is intended to amend and restate the 2006 Agreement, as amended in December 2010, and that all rights and obligations of the parties set forth in the 2006 Agreement shall be modified, amended and restated as set forth herein.

3.2 Effective Date and Commencement Date

The Effective Date of this Agreement shall be March 1, 2014.

The Commencement Date shall be March 1, 2014 and shall be the date on which Company initiates provision of the Franchised Services required by this Agreement.

3.3 Term of Agreement

The term of this Agreement shall be ten (10) years commencing at 12:00 a.m. March 1, 2014, and expiring at midnight February 28, 2024.

3.4 Conditions to Effectiveness of Agreement

The obligation of Authority to permit this Agreement to become effective and to perform its undertakings provided for in this Agreement is subject to the satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by Authority, upon Authority's expressed written consent. Waivers are limited to those expressed in writing, and are in the sole and exclusive discretion of the Authority.

- A) Accuracy of Representations. Representations and warranties made by Company throughout this Agreement are accurate, true and correct on and as of the Effective Date of this Agreement.
- B) Absence of Litigation. There is no litigation pending or threatened in any court challenging the award of this Franchise to Company or the execution of this Agreement or seeking to restrain or enjoin its performance.
- C) Furnishing of Insurance and Bonds. Company has furnished evidence of the insurance and bonds required by Article 11.

D) Effectiveness of Authority Board Action. Authority's Resolution No. Resolution No. 2013-06 approving this Agreement shall have become effective pursuant to California law prior to the Effective Date.

ARTICLE 4 SCOPE OF FRANCHISE

4.1 Grant and Acceptance of Franchise

Subject to Section 3.4, Authority hereby grants to Company, and the Company hereby accepts the exclusive Franchise, right and privilege for the Franchised Services that is required to be accumulated and offered for Collection to Company in accordance with terms and conditions set forth in this Agreement, and such rules and regulations set forth by ordinances of the Cities that are not inconsistent with this Agreement.

This grant to Company of an exclusive Franchise, right and privilege for the Franchised Services shall be interpreted to be consistent with state and federal laws, now and during the term of the Franchise, and the scope of this exclusive Franchise shall be limited by current and developing state and federal laws with regard to Solid Waste, Recyclable Materials, Organic Materials, and Construction and Demolition Debris handling, exclusive Franchise, Solid Waste, Organics Materials, and Construction and Demolition Debris, flow control, and related doctrines. In the event that future interpretations of current law, enactment or developing legal trends limit the ability of Authority to lawfully provide for the scope of Franchise services as specifically set forth herein, Company agrees that the scope of the Franchise will be limited to those services and materials which may be lawfully provided for under this Agreement, and that Authority shall not be responsible for any lost profits claimed by Company to arise out of further limitations of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of Company to minimize the financial impact to other services being provided as much as possible.

4.2 Scope of Franchise

This Franchise granted to Company shall be exclusive with regards to the Franchised Services, except as described in Section 4.3 or except where otherwise precluded by applicable law.

The Company shall be responsible for the following services:

- A) Collecting all separated Solid Waste, Recyclable Materials, Green Waste, Construction and Demolition Debris and Food Scraps generated in the Authority and placed by Generator for Collection.

- B) Transporting Collected materials to the Designated Disposal Site, Designated Green Waste Processing Site, Designated Construction and Demolition Debris Processing Site, Approved Recyclable Materials Processing Site, and Approved Food Scraps Processing Site.
- C) Processing and marketing of the following materials Collected in the Authority by Company:
 - i. Recyclable Materials
 - ii. Food Scraps
- D) Processing and marketing the products resulting from Composting of Food Scraps Collected in the Authority by Company.
- E) Providing temporary Bins/Roll-Off Collection Service for the purpose of Collection of non-Hazardous Waste.
- F) Furnishing all labor supervision, vehicles, Containers, other equipment, materials, supplies, and all other items and services necessary to perform its obligations under this Agreement.
- G) Paying all expenses related to provision of services required by this Agreement including but not limited to, taxes, regulatory fees, and utilities.
- H) Providing all service required by this Agreement in a thorough and professional manner so that residents, businesses, and the Cities are provided timely, reliable, courteous and high-quality service at all times.
- I) Perform all service in substantial compliance with the Company's Proposal and in full accordance with this Agreement at all time using best industry practices for comparable operations. If the Company's Proposal, other written documents submitted by Company as part of the selection process and attached hereto and this Agreement conflict, the Agreement shall prevail and the supplemental material shall prevail over the Company's Proposal.
- J) Complying with applicable laws.
- K) Performing or providing all other service necessary to fulfill its obligations under this Agreement.

L) Accomplishing the Diversion Goals set in Section 1.39.

4.3 Limitations to Scope

The categories of materials listed below may be Collected and Transported by others provided that nothing in this Agreement is intended to or shall be construed to excuse any Person from obtaining any authorization from Authority or Cities which is otherwise required by law:

- A) Solid Waste which is removed from any Premises by the Generator, and which is Transported personally by the Owner or Occupant of such Premises (or by his or her full-time employees) to any Processing or Disposal Site;
- B) Collection and Processing of Recyclable Materials not specifically included in the definition of Recyclable Materials in Section 1.81;
- C) Source separated Recyclable Materials that are generated in the Authority that are donated by the Generator to youth, civic, charitable, or other nonprofit organizations;
- D) Source separated Recyclable Materials generated in the Authority that are placed in Containers, Collected through a private arrangement with the Generator and the Generator is compensated for the Recyclable Materials Collected; provided, however, that the Owner or Occupant of such Premises shall be required to subscribe to and pay for the basic level of service provided by Company;
- E) Recyclable Materials containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500 et.seq. California Public Resources Code as may be amended from time to time;
- F) Green Waste Composted on residential Premises;
- G) Solid Waste, Recyclable Materials, and/or Organic Materials removed from a Premises by a contractor (e.g., gardener, landscaper, tree-trimming service, but not by a subcontractor whose primary service is such removal) as an incidental part of the service being performed and such contractor is providing a service which is not included in the scope of this Agreement;
- H) Animal waste and remains from slaughterhouses or butcher shops, grease waste, or used cooking oil;

- I) Construction and Demolition Debris which is removed from any Premises by employees of the construction or demolition company or the City, using equipment owned by the company or the City;
- J) By-products of sewage treatment, including sludge, sludge ash, grit and screenings;
- K) Hazardous Waste, Household Hazardous Waste, Infectious Waste and Designated Waste regardless of its source; and,
- L) Materials generated by public schools and other State institutions located in the Authority.
- M) Clean up Services including removal of Rubbish from residential or commercial Premises where all of the following conditions are met:
 - a) The Person who Transports the Rubbish for Disposal or Processing is the Person who actually enters on the Customer's Premises and performs the clean-up services, loads the Rubbish directly to the Transportation vehicle, and removes the Rubbish from the Premises.
 - b) The Rubbish is not stored or Collected in a debris box, Roll-Off Container, a Container designed to be emptied by a Collection Vehicle, or a Container provided by the Person performing the services.
 - c) The services are provided to the particular Premises on a temporary basis, not on a regular or on-going basis.
- N) Any services not specifically identified in Section 4.2.

Company acknowledges and agrees that Authority may permit other Persons besides Company to Collect any or all types of the Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris listed in this Section 4.3, without seeking or obtaining approval of Company under this Agreement.

4.4 Ownership of Materials

Once Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and/or Construction and Demolition Debris are placed in Containers and properly placed at the designated Collection location and picked up by the Company, ownership and the right to possession shall transfer

directly from the Generator to Company by operation of this Agreement. Subject to the provisions of this Agreement, Company shall have the right to retain any benefit resulting from its right to retain, Recycle, Process, Dispose of, or reuse the Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and/or Construction and Demolition Debris, which it Collects. Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and/or Construction and Demolition Debris, or any part thereof, which is Disposed of or Processed at a Facility (whether landfill, Composting facility, transfer station, Recyclable Materials Processing site, Green Waste Processing site, Food Scrap Processing site, and/or Construction and Demolition Debris Processing site) shall become the property of the Owner or operator of the Facility/Facilities once deposited there by Company. Authority may obtain ownership or possession of Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and/or Construction and Demolition Debris placed for Collection upon written notice of its intent to do so, however, nothing in this Agreement shall be construed as giving rise to any inference that Authority has such ownership or possession unless such written notice has been given to Company.

4.5 Authority-Directed Changes to Scope

4.5.1 Types of Changes.

Authority may, by written notice, direct Company to perform additional services or modify existing services. For example, and without limitation, the Authority may request the following:

- A) Collection of certain materials, which were originally Solid Waste, but during the Term can be, in the reasonable opinion of the Authority, economically Recycled or Composted;
- B) Inclusion of new Diversion programs;
- C) Expansion of public education activities;
- D) Elimination of programs;
- E) Modification of the manner in which Company performs existing services;
- F) Performance of pilot programs;

- G) Implementation of innovative services, which may entail new Collection methods, targeted routing, different kinds of services, different types of Collection vehicles, and/or new requirements for Generators;
- H) Transportation of materials to a Disposal Site, or Green Waste Processing Site other than that specified on the Effective Date;
- I) Increasing or decreasing the Diversion Goals.

4.5.2 Procedure for Making Changes in Scope.

Company shall present, within 30 calendar days of the Authority's written request, a written proposal to provide revised, additional or expanded services. At a minimum, the proposal shall contain a complete description of the following:

- A) Collection methodology to be employed (equipment, manpower, etc.).
- B) Equipment to be utilized (vehicle number, types, capacity, age, etc.).
- C) Labor requirements (number of employees by classification).
- D) Type of materials to be Collected or Containers to be utilized.
- E) Provision for program publicity/education/marketing.
- F) Five-year projection of the financial results of the program's operations in a balance sheet and operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions, giving full effect to the savings or costs to existing services.
- G) Plans for implementing the service change.

The Authority shall review the Company's proposal for the change in scope of services. If the Company's proposal is desirable to the Authority, the Authority may negotiate with the Company to amend the Agreement to reflect the change in scope. If the Authority chooses not to negotiate with the Company, then the Authority waives its right to permit Persons other than the Company to provide the additional services. Company acknowledges and agrees that Authority may permit other Persons besides Company to provide additional Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris Collection and Diversion services if Company and Authority cannot agree on terms and conditions of such services in 120 calendar days from the date when Authority

first requests a proposal from Company to perform such services. If the Company and Authority do not reach an agreement on the change in scope, the Company shall forfeit its exclusive right to Collect such material from Generators or provide the services under consideration and the Authority may solicit proposals from one or more other parties for such service and Company shall be invited to submit a proposal during the process.

4.5.3 Change in Designated Disposal Site, Designated Green Waste Processing Site, Approved Food Scraps Processing Site, or Designated Construction and Demolition Debris Processing Site.

If the Authority changes the Designated Disposal Site, the Designated Green Waste Processing Site, or the Designated Construction and Demolition Debris Processing Site, or specifies use of a Recyclable Materials Processing site that is different from the Approved Recyclable Materials Processing Site or use of Food Scraps Processing site that is different from the Approved Food Scraps Processing Site, the Authority shall provide written notice to Company six months before effective date of the change and the date Company shall commence use of the site.

4.5.4 Adjustment to Company's Compensation.

If the Authority directs a change in scope, Designated Disposal Site, Designated Green Waste Processing Site, or Designated Construction and Demolition Debris Processing Site, Company may be entitled to an adjustment in its compensation in accordance with Section 8.8. Company shall not be compensated for the proposal preparation costs or other costs incurred during the negotiation of its proposal for the change in scope of such services.

4.5.5 Implementation of New Services.

The Company's implementation of the new services or change in the Designated Disposal Site, Designated Green Waste Processing Site, Designated Construction and Demolition Debris Processing Site, Approved Recyclable Materials Processing Site, or Approved Food Scraps Processing Site shall occur in a timely, smooth, and seamless manner such that Customers and/or Generators do not experience disruption in Collection services. Company shall be responsible for managing implementation of new Collection services or change in the Designated Disposal Site, Designated Green Waste Processing Site, Designated Construction and Demolition Debris Processing Site, Approved Recyclable Materials Processing Site, or Approved Food Scraps Processing Site, and other related services, and shall do so in accordance with an Authority-approved implementation plan.

4.5.6 Monitoring and Evaluation of Changes in Scope.

If the Authority requests, the Company shall meet with the Authority to describe the progress of each new service. If applicable, Company shall document the results of the new programs on a monthly basis, including at a minimum the Tonnage Diverted by material type, the end use or processor of the Diverted materials and the cost per Ton for Transporting and Processing each type of material and other such information the Authority deems is necessary to evaluate the performance of each program.

At each meeting, the Authority and Company shall have the opportunity to revise the program based on mutually agreed upon terms in accordance with provisions of this Section. The Authority shall have the right to terminate a program if, in its sole discretion, the Company is not cost effectively achieving the program's goals and objectives. Before such termination, the Authority shall meet and confer with the Company for a period not to exceed 90 calendar days to resolve the Authority's concerns. Thereafter, the Authority may utilize a third party to perform these services if the Authority reasonably believes the third party can improve on Company's performance and/or cost. Notwithstanding these changes, Company shall continue the program during the meet and confer period and, thereafter, until the third party takes over the program.

4.6 Authority's Right to Perform Services and Possess Equipment

4.6.1 General

The Authority, in its sole discretion, may determine a period of emergency if both of the following conditions occur: (i) Company, for any reason whatsoever, fails, refuses, or is unable to perform its Collection, Processing, and Disposal obligations, at the time and in the manner provided in this Agreement, for a period of more than 48 hours, and (ii) the Authority finds that such failure, refusal, or inability endangers or menaces the public health, safety, or welfare. If the Authority determines a period of emergency, then the Authority shall have the right during the period of such emergency to: (i) perform, or cause to be performed, such services with its own or other personnel without liability to Company; and/or (ii) take possession of and use any or all of Company's land, equipment, and other property used or useful in providing the Collection, Transportation, Processing, and Disposal services under this Agreement. If the Authority chooses to exercise such rights, the Authority shall provide written notice to the Company 24-hours prior to its plans to exercise its rights. Upon exercise of that right the Authority shall assume complete responsibility for the proper and normal use of such equipment and Facilities while in its possession.

The Authority shall provide oral notice (by telephone or in person) to Company of the Company's failure, refusal, or inability to perform its Collection obligations and of the Authority's intent to perform Collection services and/or possess Company's equipment. The Authority shall send written confirmation of such oral notification to Company, by certified mail, within 24 hours of the oral notification, unless the 24 hour deadline ends on a Sunday, or U.S. Postal Service holiday, then confirmation of such notice shall be sent on the day following such day.

Company agrees that in such event:

- A. It will take direction from the Authority to effect the transfer of possession of property to the Authority for Authority's use.
- B. It will, if Authority so requests, keep in good repair and condition all of such property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain said property in satisfactory operational condition.
- C. Authority may immediately engage all or any personnel necessary or useful for the Collection and Transportation of Solid Waste, Recyclable Material, Green Waste and Food Scraps, including, if the Authority so desires, but subject to the terms of any labor agreements then in effect employees then employed by Company. Company further agrees, if Authority so requests, to furnish Authority the services of any or all management or office personnel employed by Company whose services are necessary or useful for Collection, Transportation, Processing, and Disposal operations. If the Authority so requests, Company shall continue to perform billing services of the Authority and shall remit all payments received for Collection, Processing and Disposal services provided by Authority to Authority. Authority shall reimburse Company for the costs of such services.

If the interruption or discontinuance of service is caused by any of the reasons listed in Section 13.7, the Authority shall pay to Company \$100 per day for use of each Collection vehicle, \$2 per square foot per month (prorated for the actual time used) for use of the Facilities, and the reasonable rental value of other equipment, possession of which is taken by the Authority, for the period of the Authority's possession, if any, which extends beyond the period of time for which Company has rendered bills to Customers in advance of service.

Except as otherwise expressly provided in the previous paragraph, the Authority's exercise of its rights under this Article: (i) does not constitute a taking of private property for which compensation must be paid; (ii) will not create any liability on the part of Authority to Company; and (iii) does not exempt Company from the indemnity provisions of Article 11, which are meant to extend to circumstances arising under this Section, provided that Company is not required to indemnify Authority against claims and damages arising from the sole negligence of Authority officers, employees, and agents in the operation of Collection vehicles during the time the Authority has taken possession of such vehicles.

4.6.2 Duration of Authority's Possession

Authority has no obligation to maintain possession of Company's property and/or continue its use in Collection, Transportation, Processing and Disposal operations for any period of time and may, at any time, in its sole discretion, relinquish possession to the Company.

The Authority's right to retain temporary possession of Company's property, and to provide Collection services, shall continue until the event which caused the taking of possession is cured and Company can demonstrate to the Authority's satisfaction that it is ready, willing and able to resume such services or for 180 calendar days, whichever occurs first.

4.6.3 Condemnation

The Authority fully reserves the rights to acquire the Company's property utilized in the performance of this Agreement, by purchase or through the exercise of the right of eminent domain.

4.7 Transition to Next Company at End of Agreement

If applicable, before expiration or earlier termination of this Agreement, Company will take direction from the Authority and cooperate with the subsequent Company to assist in a timely and orderly transition of services from Company to subsequent Company. In response to the Authority's direction, Company shall provide route lists (which identify each Customer on the route, its service level and scheduled Collection day, and any special Collection notes) and detailed Customer account and Billing information. Company may, but shall not be obliged to, sell Collection vehicles, equipment, or Facilities to the subsequent Company. Authority has the option to maintain ownership of all Carts at expiration or earlier termination of the Agreement.

4.8 Authority Free to Negotiate with Third Parties

The Authority may investigate all options for Collection, Transportation, Processing and Disposal services that will be scheduled to commence after the expiration of the Term or earlier termination of this Agreement. Without limiting the generality of the foregoing, the Authority may solicit proposals from Company and from third parties for the provision of Collection, Transportation, Processing, or Disposal of Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris, and any combination thereof. The Authority may negotiate and execute agreements for such services that will take effect upon the expiration or earlier termination of this Agreement.

ARTICLE 5 FRANCHISE FEE AND OTHER FEES

5.1 Franchise Fee Amount

In consideration of the exclusive Franchise provided in Section 4.2 of this Agreement, Company shall pay to the Cities in accordance with the schedule on Exhibit 8. Payment will be calculated as a percentage (%) of Gross Revenues Collected (or another amount as provided in Section 5.7) by the Company from services provided in the Authority.

5.2 Annual Fee Amount

In addition to the Franchise Fee provided for in Section 5.1 above, Company shall make an annual payment to the Authority of Four Hundred Fifty Thousand and 00/100 Dollars (\$450,000.00) (Annual Fee). The Annual Fee shall be payable in equal monthly installments of Thirty-Seven Thousand Five Hundred and 00/100 Dollars (\$37,500.00), due on or before the fifteenth (15th) of each month, in arrears, of the term of this Agreement.

5.3 HHW Fee

Company shall pay an HHW Fee to the Cities each month in accordance to the schedule on Exhibit 8.

5.4 Street Sweeping Fee

Company shall pay a Street Sweeping Fee to the Cities each month in accordance to the schedule on Exhibit 8.

5.5 Vehicle Impact Fee

Company shall pay a Vehicle Impact Fee to the Cities each month in accordance to the schedule on Exhibit 8.

5.6 JPA Administrative Costs

Company shall reimburse the Cities their applicable share of the JPA Administrative Costs each month in accordance to the schedule on Exhibit 8.

5.7 Other Fees and Surcharges

The Authority may set other fees and surcharges, as it deems necessary. The amount, time and method of payment and adjustment process will be set in a manner similar to that for other fees described in this Article or as prescribed by State law.

5.8 Time and Method of Payment

On or before the twentieth (20th) day of each month, Company shall calculate and pay the Franchise, HHW, Street Sweeping, Vehicle Impact Fee, JPA Administrative Costs, and other fees and surcharges due to the Cities for services rendered during the preceding calendar month. Payment is to be made as an Electronic Funds Transfer (EFT). Company shall send support for the calculation to the City and to the Authority. The City and Authority shall review the Company's schedule and calculations and may request, and Company shall provide, supporting documents related to the schedule provided. Should the City or Authority identify adjustments to the schedules or calculations, City or Authority shall notify Company within thirty (30) days after receipt of Franchise, HHW, Street Sweeping, Vehicle Impact Fee, JPA Administrative Costs, and other fee payment and seek an explanation for any apparent differences. If the Franchise, HHW, Street Sweeping, Vehicle Impact Fee, JPA Administrative Costs, and other fee is not paid on or before the twentieth (20th) day of any month, Company shall pay to City a late payment fee in an amount equal to one percent (1%) of the amount owing for that month for each thirty (30) day period the Franchise Fee remains unpaid.

5.8.1 Adjustment to Franchise, HHW, Street Sweeping, Vehicle Impact Fee, JPA Administrative Costs and Other Fees and Surcharges

Authority may adjust the amount of the Franchise, HHW, Street Sweeping, Vehicle Impact Fee, JPA Administrative Costs, and other fees and surcharges annually. Such adjustment shall be reflected in the Rates that Company is allowed to charge and collect from Customers in accordance with Article 8, such that Company may receive the calculated Company Compensation including the amount of Franchise, HHW, Street Sweeping, Vehicle Impact Fee, JPA Administrative Costs, and other fees and surcharges payable to the Cities.

ARTICLE 6 DIRECT SERVICES

6.1 Solid Waste Collection

6.1.1 General

The work to be done by Company pursuant to this Agreement shall include, but not be limited to, the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. The enumeration of, and specification of requirements for, particular items of labor or equipment shall not relieve Company of the duty to furnish all others, as may be required, whether enumerated elsewhere in the Agreement or not.

The work to be done by Company pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents and businesses within Authority are provided reliable, courteous and high-quality Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris Collection at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Company of the duty of accomplishing all other aspects in the manner provided in this Section, whether such other aspects are enumerated elsewhere in the Agreement or not.

Company shall direct its employees not to Collect Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris beyond each Customer's subscription level of service unless the business office of Company has granted prior authorization to make such Collection.

Company shall not damage private property. Company shall ensure that its employees: (i) close all gates opened in making Collections, unless otherwise directed by the Generator, (ii) do not cross landscaped areas, and (iii) do not climb or jump over hedges and fences.

6.1.2 Residential Solid Waste - Single-Family Dwelling Unit

Company shall Collect Solid Waste from the 20, 35, 65, and 95-gallon Company-provided Carts, as requested by the Customer and placed for Collection by the Generator, not less than once per week. Standard Collection service shall be automated Collection from the curb, unless another method is approved by the Authority. Authority approval will not be unreasonably withheld. If Occupant is physically unable to place the Cart Curbside,

Company shall Collect Carts from an alternative service location (such as a porch, side yard, or backyard). Time restrictions are detailed in Section 6.8.1.

6.1.3 Commercial, Industrial, and Multi-Family Dwelling Units

Company shall Collect Solid Waste, as frequently as scheduled by the Customers but not less than once per week and in compliance with any and all local ordinances in existence as of the Effective Date of this Agreement, from: 35, 65, 95-gallon Company-provided Carts; 1 to 6 cubic yard Bins; and/or, 8 to 40 cubic yard Roll-Off Containers and compactors as selected by the Customer. Special consideration shall be given when determining the pickup area for Commercial, and/or Multi-Family accounts to ensure that the flow of traffic is not impeded and that it does not result in aesthetic degradation of an area. Additionally, if in the Authority's opinion the location of an existing pickup area is inappropriate, Authority may require the Customer to relocate the pickup area. Time restrictions are detailed in Section 6.8.1.

6.1.4 Temporary Bins/Roll-off Box Service

Company shall provide temporary Bins/Roll-Off Container service for the purpose of Collection of non-hazardous Solid Waste. Company shall deliver and Collect Bins/Roll-Off Containers at the direction of the Customer within seven (7) days of such request Bins/Roll-Off Containers shall be free of graffiti and in good repair. Bins/Roll-Off Containers must be clearly marked and identifiable as belonging to Company (such Bins may be temporarily substituted but not replaced by Bins of affiliated or related parties). Special consideration shall be given when determining the pickup area for temporary Bins/Roll-Off Containers service accounts to ensure that the flow of traffic is not impeded and that it does not result in aesthetic degradation of an area. The designated pick up area, shall be in accordance with all applicable laws and permit conditions. Additionally, if in Authority's opinion the location of an existing pickup area is inappropriate, Authority may require the Customer or Company to relocate the pickup area. Time restrictions are detailed in Section 6.8.1.

Should a non-franchised hauler provide service that falls under the scope of this Franchise, the Authority, upon notification by Company, shall attempt to give written notification, within twenty-four (24) hours, but no later than seventy-two (72) hours, of Company's notification, to the non-franchised hauler to cease and desist such activity. Should the non-franchised hauler fail to cease and desist, within twenty-four (24) hours of receipt of the Authority's written notification, and the activity consists of the placement of Bins/Roll-Off Containers on Authority streets or other City-owned property, the Authority, or Company

on behalf of the Authority, if so authorized in advance by the City in which the Bin or Roll-Off Container is located, may summarily remove or have the same removed. If the Bins/Roll-Off Containers are located on private property, Company may, in cooperation with the Authority, initiate all appropriate civil or criminal action to cause the activity to cease and desist. Notwithstanding the foregoing and without regard to any actions taken by the Authority, Company shall have the right to enforce its rights hereunder, including, but not limited to, notification to and filing suit against non-franchised haulers.

6.2 Recyclable Materials Collection

6.2.1 General

Company shall Collect Recyclable Materials that are commingled in the Customer's Recyclable Materials Collection Container provided that the Customer has separated the Recyclable Materials from Solid Waste.

In accordance with Section 4.5, the Authority may request Company to modify its scope of service to include Collection of additional types of Recyclable Materials beyond those materials defined in Article 1. If the Authority requests Collection of additional Recyclable Materials, the Company shall not receive additional compensation for Collection service, if the Recyclable Materials are placed by Generator in the Recyclable Materials Container unless Company can demonstrate that Collection of the additional material(s) requires modifications to Collection routes to accommodate the additional volume of the material(s). An adjustment to Company's Compensation may be made for changes in Processing costs in accordance with Sections 4.5 and 8.7.

6.2.2 Single-Family Premises

Company shall Collect commingled Recyclable Materials from 35, 65, or 95-gallon Company-provided Carts, as requested by the Customer, and placed for Collection by the Recyclable Materials Generator, not less than once per week. Standard Collection service shall be automated Collection from the curb, unless another method is approved by the Authority. Authority approval will not be unreasonably withheld. If Occupant is physically unable to place the Cart Curbside, Company shall Collect Carts from an alternative service location (such as a porch, side yard, or backyard). In addition, as part of Company's Recyclable Materials Collection, Company shall Collect Residential Household Batteries that are placed on top of the Single-Family Dwelling Units Customer's Recyclable Materials Collection Container in a clear-sealed plastic bag. In addition, as part of Company's Recyclable

Materials Collection, Company shall Collect bundled cardboard (of a size that would be able to fit within the Collection Container) that are placed next to the Single-Family Dwelling Units Customer's Recyclable Materials Collection Container.

6.2.3 Multi-Family Premises

Company shall Collect commingled Recyclable Materials from Multi-Family Premises as frequently as scheduled by Customer, but not less than once per week. Recycling Collection shall be provided to all Multi-Family Customers subscribing to Solid Waste Collection of at least four (4) cubic yards per week or is a Multi-Family Dwelling of five (5) units or more.

Company shall provide each Customer with a 95- Cart, or Bins with capacities ranging from 1 to 6 cubic yards, as requested by the Customer. Carts and Bins may be shared by the Occupants of the Multi-Family Premises.

Company shall Collect Recyclable Materials at the designated location agreed upon by Company and Customer. Special consideration shall be given when determining the pickup area for Multi-Family accounts to ensure that the flow of traffic is not impeded and that it does not result in aesthetic degradation of an area. Additionally, if in the Authority's opinion, the location of an existing pickup area is inappropriate, Authority may require the Customer to relocate the pickup area. In addition, as part of Company's Recyclable Materials Collection, Company shall Collect Multi-Family Household Batteries that are placed on top of the Multi-Family Dwelling Units Customer's Recyclable Materials Collection Cart in a clear-sealed plastic bag. In addition, as part of Company's Recyclable Materials Collection, Company shall Collect bundled cardboard (of a size that would be able to fit within the Collection Container) that are placed next to the Multi-Family Dwelling Units Customer's Recyclable Materials Collection Container.

6.2.4 Commercial Premises

Company shall Collect Recyclable Materials from Commercial Premises as frequently as scheduled by Customer. If Customer requests Recyclable Materials Collection services more frequently than once per week, Company shall provide requested service. Recycling Collection shall be provided to all Commercial Customers subscribing to Solid Waste Collection of at least four (4) cubic yards per week or is a Multi-Family Dwelling of five (5) units or more.

Company shall allow Commercial Customers to select a Collection service method that best suits the needs of its Premises. Specifically, the Company shall offer the following choices to Commercial Customers:

- A) **Cart or Bin service.** Company shall allow Commercial Customers to use Cart(s) or Bin(s) for Recyclable Materials Collection. Company shall provide each Customer with a choice of one or more Carts with capacities of 95 gallons, or Bins with capacity ranging from 1 to 6 cubic yards.
- B) **Centralized Cart or Bin service.** Company shall allow for Commercial Customers to use Cart(s) or Bin(s) for Recyclable Materials Collection that are shared by the Occupants of two or more Commercial Premises. In such case, Company shall provide one or more Carts or Bins to such Premises as requested by Customer(s) provided that a minimum of 96 gallons (or similar volume) of Container capacity for Recyclable Materials is provided for every four Commercial Premises.
- C) **Drop Boxes and Compactors.** Company shall allow Commercial Customers to use a Drop Box or Compactor for Recyclable Materials Collection to meet Customer's permanent needs. In such case, Company shall provide Customers with a choice of Container capacities ranging from 8 to 40 cubic yards. Company shall offer Customers the option to purchase or lease Compactors either through Company or an outside vendor.

Company agrees to identify commercial and industrial Solid Waste Containers containing significant quantities of Recyclable Materials and offer the Generator commercial Recycling service.

6.3 Organic Materials Collection

6.3.1 General

Company shall Collect Green Waste placed in the Customer's Green Waste Materials Collection Container provided that the Customer has Source Separated the Green Waste from Solid Waste. Company shall Transport all Green Waste to the Designated Green Waste Processing Site.

In accordance with Section 4.5, the Authority may request Company to modify its scope of service to include Collection of additional types of Organic Materials (e.g., Food Scraps). If

the Authority requests Collection of Food Scraps or other Organic Materials, the Company shall not receive additional compensation for Collection service if the Food Scraps or other Organic Materials are placed by Generator in the Green Waste Container unless Company can demonstrate that Collection of the additional material(s) requires modifications to Collection routes to accommodate the additional volume of the material(s). An adjustment to Company's Compensation may be made for changes in Collection costs in accordance with Sections 4.5 and 8.7.

6.3.2 Single-Family Premises

Company shall Collect Green Waste from Single-Family Premises once a week. Company shall provide each Customer with a 35, 65 or 95-gallon Cart, as requested by the Customer. Customer has the option to receive up to three (3) 95-gallon Carts at no additional charge. Company shall Collect Carts from the Curb unless Occupant is physically unable to place the Container at the Curb. In such event, Company shall Collect Carts from an alternative service location (such as the porch, side yard, or backyard).

6.3.3 Multi-Family Premises

Company shall Collect Green Waste from Multi-Family Premises as frequently as scheduled by Customer, but not less than once per week. Company shall provide each Customer with a 95-gallon Cart, or Bins with capacities ranging from 1 to 6 cubic yards, as requested by Customer. Company shall Collect Green Waste at the designated location agreed upon by Company and Customer.

If Customer requests Green Waste Collection services, Company shall provide requested service and shall charge Customer for service at Authority-approved Rates.

6.3.4 Holiday Tree Collection

Holiday Tree Collection will be available for all residential and multi-family Customers. Collection will begin the first business day after December 25 and continuing through the Friday of the third full week in January. Residential Customers will be able to place their tree in their Green Waste Container or cut-up in lengths of five (5) feet or less and placed next to the Green Waste Container on their regular service day. The Company will coordinate the placement and Collection of commercial boxes at multi-family Premises with the Owners or property managers.

6.3.5 Commercial Food Scraps Collection

Company shall Collect Food Scraps from each participating commercial Customer up to two times per week (if Company so determines), and not less than once per week. An increase in Collections to more than two (2) times per week, it shall only occur when there is sufficient Customer demand for an additional whole route. Company shall provide each participating Customer with a 96-gallon Cart, or Bins with capacities of up to 6 cubic yards (or similar volume), as requested by Customer and approved by Company. Company shall Collect Food Scraps at the designated location agreed upon by Company and Customer.

If Customer requests Food Scrap Collection services, Company shall provide requested service and shall charge Customer at the Authority-approved Rates for Commercial service, which are inclusive of Food Scraps Collection.

6.4 Construction and Demolition Debris Collection

6.4.1 General

Company shall Collect Construction and Demolition Debris placed in the Company-provided Construction and Demolition Debris Collection Container provided that the Customer has Source Separated the Construction and Demolition Debris from Solid Waste. Company shall Transport all Construction and Demolition Debris to the Designated Construction and Demolition Debris Processing Site.

6.4.2 Recycling

The Cities may establish an ordinance for Construction and Demolition Debris Diversion during the term of this Agreement. It is expected the ordinances will mandate a fifty percent (50%) Diversion Goal based upon the material being taken to any City-approved Processing facility through a contract with the Generator. Customer may use any Collection company and any City-approved Processing facility if the Diversion Goal is met.

Upon the adoption of the ordinance, the Collection of Construction and Demolition Debris delivered to a City-approved Processing facility will not be under the Scope of this Agreement. See Section 4.3.I.

6.5 Cleanups

6.5.1 City-Directed Cleanups.

Company shall provide services for Solid Waste cleanups as directed by the City within five (5) working days of a request. If the City determines that the public health or safety is threatened, Company shall provide clean up services within twenty-four (24) hours of a request to do so by City. Company shall pick up authorized cleanup items and Transport such items to the Disposal Site. Services shall be provided at the Customer's sole cost and expense and the Company shall bill the Customers for the services. If Company is unable to collect the Customer's bill from Customer, Authority shall use whatever means it reasonably has available to it to obtain payment on behalf of Company.

6.5.2 Annual Cleanups.

The Authority elects to have the Company provide each Customer account with Single-Family Cart Collection service one (except for the Town of Los Gatos which will have two) pre-scheduled clean-up during a period mutually established by the Company and the City or Authority. The Company shall pick up Solid Waste placed at Curbside and Transport such items to the Disposal Facility at no additional charge to Customers. The following guidelines must be followed for either type of service:

- A) All waste must be left at the curb by 6:00 a.m.
- B) Items, where appropriate, should be placed in Company-approved cans, bags or boxes.
- C) Tree prunings and branches cannot exceed three (3) inches in diameter, or be longer than three (3) feet, and weigh no more than seventy (70) pounds per bundle.
- D) Items that cannot be safely loaded by one Person will not be accepted. No single item can weigh more than seventy (70) pounds.
- E) The following items will not be picked up: Hazardous Waste, including Waste Oil or anti-freeze; concrete or dirt; tires; and items containing CFCs.

Company may refuse to Collect clean-up items and shall not be obligated to provide this service to any Person who does not set out Solid Waste, as described above.

Company shall record the kinds and weights (in Tons) of Solid Waste Diverted from the landfill, if any, during these cleanups through Recycling, reuse, transformation or other means of approved Diversion.

6.5.3 E-Waste Items, Oil, Universal Waste and Paint Collection.

Company shall provide E-Waste Items, Universal Waste, oil, and paint Collection at a permanent drop-off site. Customers may drop off E-Waste Items, Universal Waste, water based paints, and oil during pre-scheduled times at the Designated Drop-Off Facility.

6.6 City Facilities' Collection

Company shall Collect and Dispose of all Solid Waste, Collect and Process all Recyclable Materials and Green Waste generated at public facilities as a result of routine and customary municipal operations and City-sponsored events at no charge to the City or Authority. Company shall make Collections from Containers Monday through Friday or on Saturdays following non-working holidays, as mutually agreed upon between City and Company. Collections from Bins and Roll-Off Containers shall be scheduled at a time mutually agreed upon by Company and City. Within six months of the execution of this Agreement, Company shall meet with each City to confirm the quantity, size and frequency of bins and containers collected historically by the Company pursuant to this section, as well as City-sponsored events for which the Company has historically provided collection services. Cities and Company shall meet annually to review the services being provided under this section.

6.7 Recyclable Materials and Food Scrap Processing

6.7.1 Processing.

Company agrees to Transport and deliver all Recyclable Materials and Food Scraps it Collects in the Authority to the Approved Recyclable Materials Processing Site and the Approved Food Scraps Processing Site, respectively. The Company shall arrange for the Approved Food Scraps Processing Site to Process the Food Scraps to produce Compost. Residue from the Processing of Recyclable Materials and Food Scraps shall be Disposed of by the Approved Food Scraps Processing Site or Compost Facility, as the case may be, at a Disposal Site selected by Company.

Company shall secure sufficient capacity to Process Recyclable Materials and Food Scraps Collected under this Agreement. Company shall provide the Authority, upon request, with documentation demonstrating the availability of such capacity. All costs associated with Transporting to and Processing Recyclable Materials at the Approved Recyclable Materials Processing Site, and with Transporting to and Processing Food Scraps at the Approved Food Scraps Processing Site shall be paid by Company.

Company shall ensure that all existing permits and approvals necessary for use of the Approved Recyclable Materials Processing Site(s) and the Approved Food Scraps Processing Site(s) in full regulatory compliance are maintained by the owners of those Facilities at all times during the term of this Agreement. Company shall, upon request of Authority, provide copies of notices of violation or permits that it receives to the Authority.

If Company elects to use a Recyclable Materials Processing site(s) that is different than the Approved Recyclable Materials Processing Site, or a Food Scraps Processing site(s) that is different than the Approved Food Scraps Processing Site, it shall request written approval from the Authority Executive Director sixty (60) days prior to use of the site and obtain the Authority's written approval no later than ten (10) days prior to use of the site. Company shall not be compensated for paying any increased Transportation and Processing costs associated with the use of Processing site(s) different from the Approved Recyclable Materials Processing Site, or the Approved Food Scraps Processing Site.

If Company is unable to use the Approved Recyclable Materials Processing Site or Approved Food Scraps Processing Site due to an emergency or sudden unforeseen closure of the Approved Recyclable Materials Processing Site or Approved Food Scraps Processing Site, Company may use an alternative Processing site provided that the Company provides verbal and written notice to the Authority within 24 hours of use of an alternative Processing site. The written notice shall include a description of the reasons the Approved Recyclable Materials Processing Site or Approved Food Scraps Processing Site is not feasible and the period of time Company proposes to use the alternative Processing site. Company shall receive the Authority's written approval to use the alternative Processing site within twenty-four (24) hours of the Authority's receipt of the Company's written notice. Except in the event of an emergency, Company shall not be compensated for paying any increased Transportation and Processing costs associated with the use of Processing site(s) different from the Approved Recyclable Materials Processing Site or Approved Food Scraps Processing Site.

6.7.2 Transfer.

If the Company (i) Transports Recyclable Materials or Food Scraps to a Facility where the materials will be unloaded from Collection vehicles and loaded into large-capacity vehicles and Transported to the Processing site(s) or, (ii) pulls two or more Collection trailers in tandem with one truck, and the Company is unable to do so then the Company shall be responsible for making other Transportation arrangements. In such event, Company shall

not be compensated for any additional costs. If the Company plans to change its transfer method, Company shall obtain written approval from the Authority prior to making the change which approval shall not be unreasonably withheld, delayed or conditioned.

6.7.3 Marketing.

The Company shall be responsible for marketing Recyclable Materials and Compost produced from Food Scraps Collected in the Authority. Company shall be compensated for such Recyclable Materials and Compost at not less than fair market value.

Company shall prepare and maintain an Authority-approved marketing plan for all Recyclable Materials and Food Scraps Collected in the Authority. The plan shall be in place on or before the Commencement Date of this Agreement. The marketing plan shall fully describe the Company's marketing methods and approach, targeted primary and contingent markets, pricing policy and assumed salvage value for each Collected type of Recyclable Material products and Food Scrap Compost Products, and contingency plans if market conditions are severe.

Company shall provide proof to the Authority that all Recyclable Materials and Food Scraps Collected are marketed for Recycling or reuse in such a manner that materials shall be considered as Diverted in accordance with the State regulations established by the Act, except that Compost produced from Food Scraps may not be used for beneficial reuse at a Disposal Site. All residual material from the Processing activities that is not marketed for use shall be accounted for as Disposal Tonnage at a permitted Disposal Site. No Recycling Material or Food Scraps shall be Transported to a domestic or foreign location if Solid Waste Disposal of such material is its intended use.

Company shall provide Authority with a list of broker/buyers used in its marketing program each quarter. Authority may audit one broker or buyer per month to confirm that materials are being Recycled. If Company becomes aware that a broker or buyer has illegally handled or Disposed of material generated by the Authority or elsewhere, Company shall immediately inform the Authority and terminate its contract or working relationship with such party immediately.

6.7.4 Disposal of Recyclable Materials and Food Scraps Prohibited.

Recyclable Materials and Food Scraps may not be Disposed of in lieu of Recycling the material, without the written approval of the Authority which approval shall not be unreasonably withheld, delayed or conditioned. If Company believes that it cannot Divert

the Recyclable Material and Food Scraps from Disposal, then it shall prepare a written request for approval to Dispose of such material. Such request shall contain the basis for its belief, describe the Company's efforts to arrange for the Diversion from Disposal of such material, the period required for such Disposal, the incremental costs or cost savings resulting from such Disposal, and any additional information supporting the Company's request. The Authority shall consider the Company's request and inform Company in writing of its decision within 30 calendar days of the date of its written request for approval. If the Authority approves such request, any difference in the cost of such Disposal compared to Diversion shall be adjusted in accordance with Section 8.7.

6.8 Operations

6.8.1 Schedules

To preserve peace and quiet, no Solid Waste, Recyclable Materials, Green Waste or Construction and Demolition Debris shall be Collected from Residential Property between 6:00 P.M. and 6:00 A.M. on any day. The times for Collection in non-residential areas that are two hundred (200) feet or less from residential areas shall be fixed by mutual agreement of City and Company after consideration, among others, of traffic conditions, accessibility to and from the Collection areas and any other circumstances which may require an early pickup. If Company and City fail to agree on a Collection time, the Company must take direction from the City. Such Solid Waste, Recyclable Materials, Green Waste, or Construction and Demolition Debris shall be Collected, Monday through Friday. Annually, Company shall notify Authority and Customers in writing of the alternate Collection day when the regularly scheduled Collection day falls on Christmas Day or New Year's Day. Collection of Solid Waste, Recyclable Materials, Food Scraps, or Construction and Demolition Debris from Commercial Properties may include Saturdays and shall be between the hours of 3:00 a.m. and 10:00 p.m.

Company shall provide Authority with route maps and daily schedules for each type of Collection. The Authority shall review and approve such maps and schedules. Company may not change its regularly scheduled Residential Collection days without prior written approval from the Authority. Company shall obtain such written approval from the Authority thirty (30) calendar days before the effective date of the schedule change, and such approval will not be unreasonably withheld, delayed or conditioned. Once approved, Company shall notify any Residential Customer not less than four weeks before any Collection schedule changes. Company shall not permit any Customer to go more than

seven calendar days without service during a Collection schedule change. Company may not change any Commercial Customer's regularly scheduled Collection days without prior approval from the Commercial Customer.

Company shall be prepared to review its operations plan outlining the Collection routes, intervals of Collection and Collection times for all Solid Waste, Recyclable Materials, Green Waste, Food Scraps, or Construction and Demolition Debris Collected under this Agreement with Authority once annually upon 30-day written notice requesting said review. More frequent reviews may be required if operations are not satisfactory based on documented observations or reports or complaints. If the plan is determined to be inadequate by Authority, Company shall revise the plan, incorporating any changes into a revised plan, and review said revised plan with Authority within thirty (30) calendar days.

When notified of a Missed Pick-Up, Company shall Collect the Solid Waste, Recyclable Materials, Green Waste, Food Scraps, or Construction and Demolition Debris within one (1) business day. For residential service, a business day shall mean Monday through Friday, excluding Christmas and New Year's Day.

6.8.2 Vehicles

- A) **General.** Company shall provide Collection vehicles sufficient in number and capacity to efficiently perform the work required by the Agreement in strict accordance with its terms. Company shall have available sufficient back-up vehicles for each type of Collection vehicle on Collection days (e.g., Cart service, Bin service and Roll-Off Container service) used to respond to complaints and emergencies.

Any used vehicles, Bins and Roll-Off Containers placed into service at the inception of the Agreement will be depreciated over their remaining useful life(e.g. if a vehicle is five years old, it will be depreciated over five (5) years) and any new vehicles will be depreciated over a ten (10) year life. By initialing below, the Company acknowledges that it will not be compensated for the portion of the life of a new vehicle placed into service during this Agreement that extends beyond the term of this Agreement

Company
Initial Here 

Authority 
Initial Here _____

- B) **Specifications.** All vehicles used by Company in providing Solid Waste, Recyclable Materials, Green Waste, or Food Scraps services shall be registered with the California Department of Motor Vehicles. All such vehicles shall have bodies designed to prevent leakage, spillage or overflow.
- C) **Vehicle Identification.** Company's name, local telephone number, and a unique vehicle identification number designed by Company for each vehicle shall be prominently displayed on all vehicles, in letters and numbers no less than two and one-half (2 1/2) inches high. Company shall not place City's and/or Authority's name and/or any City and/or Authority logos on Company vehicles.
- D) **Operation.** Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. Company shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local weight restrictions on vehicles. Company shall balance each load on a route to avoid overweight loads, balance loads between and among routes to avoid overweight loads, place Roll-Off Containers at City corporation yards City for the Collection of leaves, maximize Recycling of material to avoid overweight refuse loads, and acquire trucks with wheel bases and tare weights to maximize payloads to avoid overloading trucks. Having taken these actions, should such overweight loads persist, Company shall make commercially reasonable efforts to resolve any remaining overweight loads. In the case where such overweight loads persist Company and Executive Director shall meet and confer to discuss the resolution of such chronic overweight problems.
- E) **CNG Vehicle Replacement.** In Rate Years 8, 9, and (10), Company shall replace all Collection vehicles in its fleet used in connection with this Agreement with compressed natural gas Collection vehicles. Company shall replace such Collection vehicles in accordance with the following schedule:
- i. Rate Year 8– twenty (20) Collection vehicles replaced
 - ii. Rate Year 9 – ten (10) Collection vehicles replaced
 - iii. Rate Year 10 – eight (8) Collection vehicles replaced

Equipment shall comply with US EPA noise emission regulations, currently codified at 40 CFR Part 205 and other applicable noise control regulations, and shall incorporate noise

control features throughout the entire vehicle. Noise levels of equipment used for Collection shall comply with applicable City ordinances.

Subject to Section 11.1, Company shall be responsible for any damage resulting from or directly attributable to any of its operations.

6.8.3 Containers

6.8.3.1 Residential Solid Waste, Recyclable Materials and Green Waste Containers.

The standard sizes of Containers for single-family residential Solid Waste Collection shall be 20, 35, 65 and 95-gallons and shall be compatible with automated Collection equipment. The standard sizes of Containers for single-family residential Recyclable Materials and Green Waste Collection shall be 35, 65 and 95-gallons and shall be compatible with automated Collection equipment. Green Waste Collection shall continue in the 90-101 gallon Carts provided under previous agreement. Company will, within the first six months of Rate Year 8, inspect all Carts and repair or replace the existing Carts. A new Cart of the same color will be provided at no cost to the Customer if Container is replaced due to normal wear and tear. Authority has the option to maintain ownership of all Carts at the end of the Agreement.

At the inception of the Agreement, the Company shall encourage Customers to retain their existing Solid Waste and Recyclable Materials Containers for storage or future use as part of their annual clean-up. If the Customer chooses to have the existing Containers picked up by the Company, the Company is to Recycle the Containers where possible.

6.8.3.2 Non-Residential Solid Waste, Recyclable Materials, Green Waste, Food Scraps Containers, or Construction and Demolition Debris.

Company shall furnish Customers appropriate Containers to Collect Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris at Multi-Family Dwelling Unit, commercial, and other Premises upon Customer request. Company shall furnish Customers appropriate Containers to Commercial Premises to Collect Food Scraps upon Customer request. The standard sizes for Multi-Family Dwelling Unit, commercial, and other non-residential Premises Solid Waste Collection shall be: automated Collection Carts of 35, 65 and 95-gallons capacity; Bins of 1 to 6 cubic yard capacity; and Roll-Off Containers of 8 to 40 cubic yards capacity. The standard sizes for Recyclable Materials,

Green Waste and Food Scraps Collection shall be 95-gallon Carts or Bins of 1 to 6 cubic yard capacity. The kind, size and number of Containers furnished to particular Customers shall be as determined mutually by the Customer and Company. Containers which are front loading Bins shall have lids. All Containers with a capacity of one (1) cubic yard or more shall meet applicable regulations for Solid Waste Bin safety, shall have reflectorized marking (unless normally located in an enclosure), shall be maintained in good repair with neatly and uniformly painted surfaces, and shall prominently display the name and telephone number of Company. Reflectorized markings are to be placed on Bins by Company.

6.8.4 Cleaning and Maintenance

- A) Company shall maintain all of its properties, vehicles, Facilities, and equipment used in providing service under this Agreement in a good, safe, neat, clean and operable condition at all times.
- B) Vehicles used in the Collection of Solid Waste, Recyclable Materials, Green Waste, Food Scraps, or Construction and Demolition Debris shall be painted, thoroughly washed, and thoroughly steam cleaned on a regular basis so as to present a clean appearance. Upon reasonable notice, Authority may inspect vehicles at any time to determine compliance with this Agreement. Company shall repaint or refurbish to the reasonable satisfaction of the Authority all vehicles used in the Collection of Solid Waste, Recyclable Materials, Green Waste, Food Scraps or Construction and Demolition Debris within thirty (30) days' notice from Authority, if Authority reasonably determines that their appearance warrants painting. Company shall also make vehicles available to the Santa Clara County Health Department for inspection, at any frequency it requests.
- C) Company shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles which are not operating properly shall be removed from service until repaired and operating properly. Company shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. If an item of repair is covered by a warranty, Company shall obtain warranty performance. Company shall maintain accurate records of repair, which shall include the date and operating

hours, nature of repair and the verification by signature of a maintenance supervisor that the repair has been properly performed.

- D) Company shall perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. Company shall keep accurate records of all vehicle maintenance, recorded according to date and operating hours and shall make such records available to Authority upon request.
- E) Company shall furnish Authority a written inventory of all Collection equipment, including Collection vehicles, used in providing service under this Agreement, and shall update the inventory annually. The inventory shall list all equipment by manufacturer, ID number, date of acquisition, type, and capacity.

6.8.5 Litter Abatement

- A) **Minimization of Spills.** Company shall use Due Care to prevent Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris or fluids from leaking, being spilled, and/or scattered during the Collection or Transportation process. If any Solid Waste, Recyclable Materials, Green Waste, Food Scraps, or Construction and Demolition Debris or fluids leak or are spilled during Collection, Company shall promptly clean up all such materials. Each Collection vehicle shall carry a broom and shovel at all times for this purpose.
- B) **Transfer of Loads.** Company shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure or accidental damage to a vehicle, without prior written approval by Authority.
- C) **Clean Up.** During the Collection or Transportation process, Company shall clean up litter in the immediate vicinity of any Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris storage area (including the areas where Collection Bins and debris boxes are delivered for Collection) unless the litter is pre-existing. Company shall discuss instances of repeated spillage not caused by it directly with the Generator responsible and will report such instances to Authority. Authority will attempt to rectify such situations with the Generator if Company has already attempted to do so without success.