

D) **Covering of Loads.** Company shall properly cover all open debris boxes during Transport to the Disposal Site.

#### 6.8.6 Personnel

Company shall furnish such qualified drivers, mechanical, supervisory, clerical, management and other personnel as may be necessary to provide the services required by this Agreement in a satisfactory, safe, economical and efficient manner. All drivers shall be trained and qualified in the operation of vehicles they operate and must possess a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.

Company also agrees to establish and vigorously enforce an educational program which will train Company's employees in the identification of Hazardous Waste. Company's employees shall not knowingly place such Hazardous Waste in the Collection vehicles, nor knowingly Dispose of such Hazardous Wastes at the Disposal Site.

Company shall include stormwater topics in its regular driver training sessions, including litter topics related to Collecting, Transporting and dumping of material. The Authority may review training material and suggest topics for future training sessions related to stormwater.

Company shall train its employees in Customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection crews to perform the work as quietly as reasonably practicable. Company shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner.

If any employee is found to be discourteous or not to be performing services in the manner required by this Agreement, Company shall take all necessary corrective measures including, but not limited to, transfer, discipline or termination. If Authority has notified Company of a complaint related to discourteous or improper behavior, Company will consider reassigning the employee to duties not entailing contact with the public within the Authority while Company is pursuing its investigation and corrective action process. Authority shall have the right to approve the selection of the Company's general manager for purposes of this contract, provided that the Authority's approval is not unreasonably withheld, and to request the Company to reassign such general manager if liquidated damages levied against Company exceed \$10,000 in any three consecutive month period. If Authority requests a general manager be replaced, Company shall reassign the general manager and shall provide an interim general manager and shall propose a replacement

general manager within ninety (90) days of the date Authority notifies Company to replace a general manager.

Company shall provide suitable operations, health and safety training for all of its employees who use or operate equipment or who are otherwise directly involved in Collection or other related operations.

#### **6.8.7 Identification Required**

Company shall provide its employees, companies and subcontractors with identification for all individuals who may make face-to-face contact with residents or businesses in Authority. Authority may require Company to notify Customers yearly of the form of said identification. Company shall provide a list of current employees, companies, and subcontractors to Authority upon request.

#### **6.8.8 Fees and Gratuities**

Company shall not, nor shall it permit any agent, employee, or subcontractor employed by it, to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for temporary Bin/Roll-Off Container services or the Collection and Transportation of Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris otherwise required under this Agreement. Compensation or gratuity shall exclude Holiday gifts.

#### **6.8.9 Non-Discrimination**

Company shall not discriminate in the provision of service or the employment of Persons engaged in performance of this Agreement on account of race, color, religion, sex, age, sexual orientation, physical handicap or medical condition in violation of any applicable federal or state law.

#### **6.8.10 Report of Accumulation of Solid Waste; Unauthorized Dumping**

Company shall direct its drivers to note (1) the addresses of any Premises at which they observe that Solid Waste is accumulating and is not being delivered for Collection; and (2) the address, or other location description, at which Solid Waste has been dumped in an apparently unauthorized manner. Company shall deliver the address or description to Authority within five (5) working days of such observation.

## **6.9 Contingency Plan**

Company shall submit to Authority on or before the Effective Date of the Agreement, a written contingency plan demonstrating Company's arrangements to provide vehicles and personnel and to maintain uninterrupted service during breakdowns, and in case of natural disaster or other emergency (not including a labor dispute), including the events described in Section 13.7.

## **6.10 Transportation of Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris**

The Company shall Transport all Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris Collected under Section 6.1 through Section 6.4 for Disposal and Processing. The Company shall maintain accurate records of the quantities of Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris Transported for Disposal and Processing and will cooperate with the Authority in any audits or investigations of such quantities.

The Company shall cooperate with the operator(s) of the Disposal Site and Processing site with regard to operations therein, including, but not limited to, complying with directions from the operator to unload Collection vehicles in designated areas, accommodating to maintenance operations and construction of new Facilities, and cooperating with its Hazardous Waste exclusion program.

## **6.11 Disposal of Solid Waste**

The Company shall Dispose of all Solid Waste Collected under Section 6.1 at the Designated Disposal Site. Company shall conform to the payment provisions of the Designated Disposal Site operator included in Exhibit 10. If the Designated Disposal Site becomes unable to accept and Dispose of Authority's Solid Waste for reasons outside the Company's control, the Authority shall direct the Company to an alternative Disposal Site and the Company shall Transport and Dispose of the Authority's Solid Waste at the alternative Disposal Site. Company shall be compensated for the net additional Transportation and Disposal cost incurred in delivering the Solid Waste to another Disposal Site.

## **6.12 Processing of Green Waste**

The Company shall deliver for Processing all Green Waste Collected under Section 6.3 at the Designated Green Waste Processing Site. The Company shall conform to the payment



provisions of the Designated Green Waste Processing Site operator included in Exhibit 10. If the Designated Green Waste Processing Site becomes unable to accept and Dispose of the Authority's Green Waste for reasons outside the Company's control, the Authority shall direct the Company to an alternative Green Waste Processing site and the Company shall Transport and Dispose of the Authority's Green Waste at the alternative Processing site. The Company shall be compensated for the net additional Transportation and Disposal cost incurred in delivering the Green Waste to another Processing site, if any.

### **6.13 Processing of Construction and Demolition Debris**

The Company shall deliver for Processing all Construction and Demolition Debris Collected under Section 6.4 at the Designated Construction and Demolition Debris Processing Site. Company shall conform to the payment provisions of the Designated Construction and Demolition Debris Processing Site operator included in Exhibit 10. If the Designated Construction and Demolition Debris Processing Site becomes unable to accept and Dispose of Authority's Construction and Demolition Debris for reasons outside the Company's control, the Authority shall direct the Company to an alternative Construction and Demolition Debris Processing site and the Company shall Transport and Dispose of the Authority's Construction and Demolition Debris at the alternative Processing site. Company shall be compensated for the net additional Transportation and Disposal cost incurred in delivering the Construction and Demolition Debris to another Processing site, if any.

### **6.14 Service Exceptions; Hazardous Waste Notifications**

- A) **Hazardous Waste Inspection and Reporting.** Company reserves the right and has the duty under law to inspect Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris put out for Collection and to reject such material that is contaminated with Hazardous Waste and the right not to Collect Hazardous Waste put out with Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris. Company shall notify all agencies with jurisdiction and Authority, if appropriate, including the California Department of Toxic Substances Control and Local Emergency Response Providers and the National Response Center of reportable quantities of Hazardous Waste, found or observed in Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris anywhere within the Authority. In addition to other required notifications, if Company observes any substances which it or



its employees reasonably believe or suspect to contain Hazardous Wastes unlawfully Disposed of or released on any City property, including storm drains, streets or other public rights of way, Company will immediately notify the City Manager or the City Manager's designee of the effected City and then the Authority Executive Director.

- B) **Failure to Collect.** When Solid Waste, Recyclable Materials, Green Waste, or Construction and Demolition Debris is not Collected from any Residential Premises, Company shall notify the Generator in writing, at the time Collection is not made, through the use of a "tag" or otherwise, of the reasons why the Collection was not made. When Solid Waste, Recyclable Materials, Green Waste, Food Scraps, or Construction and Demolition Debris is not Collected from any Commercial Premises, Company shall notify Customer by phone of the reasons why the Collection was not made.
- C) **Hazardous Waste Diversion Records.** Company shall maintain records showing the types and quantities, if any, of Hazardous Waste found in Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris and which was inadvertently Collected from service recipients within the Authority, but Diverted from landfilling.

## ARTICLE 7 OTHER SERVICES

### 7.1 Public Education

Company's public education program shall focus on providing information to Customers in accordance with the specific requirements described in Exhibit 5. Educational media shall include, but not be limited, to newsletters, flyers, door hangers, notification tags, and direct contact. Information shall be provided for the initial start of service, to solicit feedback about the service and suggested improvements/changes, and to educate Customers about source reduction, reuse, and Recycling opportunities. Materials shall be printed on paper containing the highest levels of Recycled content material as is reasonably practical with a minimum requirement of 30% post-consumer content based on Federal standards.

The Authority shall review and approve all public education materials.

During the Term of the Agreement, the Company shall employ public education personnel in accordance with staffing levels in Section A of Exhibit 5.

If Company fails to perform some or all of the requirements of the public education program described in this Section and in Exhibit 5, the Company shall pay the Authority Liquidated Damages as described in Section 13.6.

### 7.2 Services and Customer Billing

#### 7.2.1 Service Description

Company shall annually prepare and distribute, subject to the direction of Authority, a notice to each Owner or Occupant of property entitled to service under this Agreement a listing of Company's Collection Rates, Rates for other services, annual holiday schedule, and a general summary of services required to be provided hereunder and optional service which may be furnished by Company. Such notice shall be in a form subject to Authority's approval prior to its distribution and may be included with Billings made by Company.

#### 7.2.2 Billing

Company shall bill and collect from Persons receiving Collection, Disposal, and Processing services at Rates fixed by the Authority from time-to-time. Billing shall be performed quarterly for each Residential account. The bill will be mailed during the second month of the billing period, thereby billing one month in arrears, one month in advance, and one

month currently. Commercial accounts shall be billed monthly in advance or arrears. Company may terminate Collection service to Solid Waste accounts that become more than sixty (60) days past due from the last day of the billing period, following thirty (30) days written notice. In the event of such termination, the Company shall notify the City in which the account is located of such termination within 10 days of termination. Company shall promptly restore service when the delinquent charges, including reinstatement charges, have been paid in full. The Company may require a deposit from Customers who are habitually delinquent. Late fees may be assessed on delinquent accounts after 30 days from the last day of the billing period.

### **7.2.3 Review of Billings**

Annually, Company shall review its Billings to Customers under Section 7.2.2. The purpose of the review is to determine that the amount which Company is billing each Customer is correct in terms of the level of service (i.e., frequency of Collection, size of Container, location of Container) being provided to such Customer by Company. Company shall provide documentation of the Billings Review to the Authority on an annual basis. Company shall distribute new route books to its drivers each quarter. Each driver is to provide the service level shown in the route book, adding and subtracting Customers and service levels, as necessary. Route supervisors shall periodically check the routes to ensure that drivers are providing service in accordance with their route books.

Company shall maintain copies of said Billings and receipts, each in chronological order, for a period of five (5) years after the date of service for inspection by Authority upon request. Company may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner.

## **7.3 Customer Service**

### **7.3.1 Business Office**

Office hours shall be, at a minimum, from 8:00 A.M. to 4:30 P.M., Monday through Friday, exclusive of holidays. A responsible and qualified representative of Company shall be available during office hours for communication with the public at an office located within Authority or no further than 15 miles from Authority.

Normal office hour telephone numbers shall either be a local or toll free call. Company's telephone system shall be adequate to handle the volume of calls typically experienced on



the busiest days (i.e., resulting in customers typically being placed on hold for not more than 3 (three) minutes). Company shall also maintain a local or toll free telephone number for use during other than normal business hours. Company shall have a representative, answering or message providing/receiving (voice-mail) service available at said after-hours telephone number.

### **7.3.2 Web Site**

Company shall develop and maintain a web site describing services provided in the Authority that is accessible by the public. The site shall include answers to frequently asked questions, service Rates, Recyclable Materials, Construction and Demolition Debris, and Green Waste and Food Scraps specifications, Collection service schedule and map, and other related topics. Company shall arrange for the Cities web sites to include an e-mail link to Company and a link to Company's web site. The Company's web site shall provide the public the ability to e-mail Company and make payments on-line. The Company shall provide the Authority the option to utilize the Company's website for its specific use for such purposes as publishing meeting agendas and minutes, Board of Director's information, etc.; provided, however, Company shall have the right to review and approve, in its reasonable discretion, all materials to be posted to its website and Company shall be entitled to include a disclosure on its website that such information has been provided by the Authority. Company accepts no responsibility for the accuracy or completeness of such information provided by the Authority, and the Authority shall be liable for all claims, damages and losses resulting from or arising out of such information.

### **7.3.3 Customer Service Representative Training**

Customer service representatives shall receive training during each quarter of the calendar year on City-specific service requirements. During the training, a City-specific Collection service and fee information sheet, training agenda, and associated documentation shall be provided to employees.

### **7.3.4 Complaint Documentation**

All service complaints shall be directed to Company. Daily logs of complaints concerning Collection of Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris shall be retained for a minimum of twenty-four (24) months and shall be available to Authority at all times upon request.

Company shall log all complaints received by telephone and said log shall include the date and time the complaint was received, name, address and telephone number of caller, description of complaint, employee recording complaint and the action taken by Company to respond to and remedy complaint. Complaints should be categorized into complaint types as requested by the Authority and the Company should have the ability to summarize each category for a specific time period.

All written Customer complaints and inquiries shall be date-stamped when received and shall be initially responded to within one (1) business day of receipt. Company shall log action taken by Company to respond to and remedy the complaint.

All Customer service records and logs kept by Company shall be available to Authority upon request and at no cost to Authority. Authority shall, at any time during regular Company business hours, have access to Company's Customer service department for purposes that may include monitoring the quality of Customer service or researching Customer complaints.

### **7.3.5 Resolution of Customer Complaints**

A Customer dissatisfied with Company's decision regarding a complaint may ask Authority to review the complaint. Company shall provide the Customer with the number of the Authority Liaison, as designated in accordance with Section 7.3.6. Authority Liaison shall contact Company's Government Liaison to request additional information and ask Company to respond to the complaint. Company shall attempt to cure the complaint and notify Authority Liaison by telephone or in writing of resolution. If the Customer is still dissatisfied, the matter may be referred to the Authority Executive Director.

The decision of Authority Executive Director or his/her designee shall be final on any matter under One Thousand Dollars (\$1,000.00). In the event of a decision on a matter awarding one thousand dollars or more (\$1,000.00), Company may seek review by an appeal/review board appointed as described in Section 13.8.

Nothing in this Section is intended to affect the remedies of third parties against Company.

### **7.3.6 Liaisons**

Company shall designate in writing a "Government Liaison" who shall be responsible for working with Authority and/or Authority's designated representative(s) to resolve Customer complaints. Authority shall designate in writing an "Authority Liaison" who shall

be responsible for working with Company and/or Company's designated representative to resolve Customer complaints.

#### **7.4 Waste Generation/Characterization Studies**

Company acknowledges that Authority must perform Solid Waste generation and Disposal characterization studies periodically to comply with AB 939 requirements and plan future programs. Company agrees to participate and cooperate with Authority and its agents and to accomplish studies and data collection and prepare reports, as needed, to determine weights and volumes of Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris and characterize Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris generated, Disposed, Diverted, or otherwise handled/Processed to satisfy AB 939 requirements.



## ARTICLE 8 COMPANY'S COMPENSATION AND RATES

### 8.1 General

The Company's Compensation provided for in this Article shall be the full, entire and complete compensation due to the Company pursuant to this Agreement for all labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, Disposal, and Materials Processing profit and all other things necessary to perform all the services required by this Agreement in the manner and at the times prescribed.

The Company will perform the responsibilities and duties described in this Agreement in consideration of the right to charge and collect from Customers for services rendered at Rates ratified by the Authority from time-to-time in accordance with this Agreement. The Company does not look to the Authority for the payment of any sums under this Agreement.

The Company's compensation shall cover all costs related to Company's ability to fulfill its obligations under this Agreement. Adjustments to Company's Compensation during the Term of the Agreement shall only be made for changes in inflation (which shall be determined in accordance with procedures described in this Article). As described in Section 8.3 and 8.4, the compensation mechanism in this Agreement calls for a comprehensive compensation adjustment in Rate Years 6 and 16 and indexed compensation adjustments for other Rate Years.

The Authority will incur costs, including consulting and legal fees, when determining adjustments to the Company's Compensation and shall require the Company to pay for such fees within sixty (60) calendar days of receipt of the Authority's invoice for such fees. The Company shall recover such costs through the Company's Compensation by treating it as an allowable Pass-Through Cost as described in Section 8.4.2.D.8.

### 8.2 Initial Rates

The Rates for the Rate Year 7 ending June 30, 2014, are those established by Authority Resolution No. 2013-05 (a copy of which is attached as Exhibit 6), unless amended in accordance with this Agreement. The Company will provide the service required by this Agreement, charging no more and no less than the Rates authorized by Exhibit 6 unless ratified by the Authority.

The Authority and Company agree that the Rates set forth on Exhibit 6 have been calculated to generate an amount of revenue necessary to compensate Company for its costs (including Disposal and Materials Processing) and profit and to cover the Authority's and Cities' Franchise Fees, HHW, Street Sweeping, Vehicle Impact Fees, JPA Administrative Costs, and other fees and surcharges.

The Rates shall be fixed and shall not be increased to reflect decreases in revenues below those anticipated by the Authority and Company, nor decreased to reflect increases in revenues above those anticipated by the Authority and Company.

### **8.3 Subsequent Rates for Rate Years 8 through 15 and Rate Year 17**

For each Rate Year beginning with Rate Year 8 (i.e., from July 1, 2014 to June 30, 2015), Rates shall be adjusted as described below. For purposes of this calculation, Rates shall be composed of five (5) components: a Collection Rate, a monthly Disposal Rate, a monthly Green Waste Processing Rate, a monthly Construction and Demolition Debris Processing Rate, a Franchise Fee, and other City Fees and Surcharges.

#### **8.3.1 Monthly Collection Rate per Generator Adjustment**

The monthly Solid Waste Collection Rate, monthly Recycling Collection Rate, and monthly Green Waste Collection Rate and Food Scrap Processing Fee shall be adjusted upward or downward to reflect eighty percent (80%) of the change in the "San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index (All Urban Consumers; 1982-84=100)" for the most recent twelve (12) month period ending December 31, as published by the U.S. Department of Labor, Bureau of Labor Statistics. No monthly Collection Rate increase shall exceed five percent (5%) per annum, nor shall it be less than one and one-half percent (1.5%). The commercial Solid Waste Collection Rate is inclusive of the total of Food Scrap Collection costs.

#### **8.3.2 Monthly Disposal Rate per Generator Adjustment**

The monthly Disposal Rate consists of two components: the Disposal Base Rate and Disposal Surcharge Rate. The Disposal Rate shall be adjusted in accordance with the Agreement between Guadalupe Rubbish Disposal, Inc. and the Authority dated August 30, 2005.

### **8.3.3 Monthly Green Waste Processing Rate per Generator Adjustment**

The monthly Green Waste Processing Rate consists of two components: the Processing Base Rate and the Processing Surcharge Rate. The monthly Green Waste Processing Base Rate shall be adjusted in accordance with the Agreement between Guadalupe Rubbish Disposal, Inc. and the Authority dated August 30, 2005.

### **8.3.4 Monthly Construction and Demolition Debris Processing Rate per Generator Adjustment**

The monthly Construction and Demolition Debris Processing Rate consists of two components: the Processing Base Rate and the Processing Surcharge Rate. The monthly Construction and Demolition Debris Processing Base Rate shall be adjusted in accordance with the Agreement between Guadalupe Rubbish Disposal, Inc. and the Authority dated August 30, 2005.

### **8.3.5 Franchise Fee Adjustment**

The Franchise Fee component shall be calculated as described in Exhibit 8 to the Agreement.

### **8.3.6 Other City Fees and Surcharges Adjustment**

The Surcharges component is composed of charges for the Vehicle Impact Fee, Street Sweeping Fee, HHW Fee, JPA Administrative Costs and other miscellaneous surcharges, as determined by the Cities, individually or collectively. The Fees component shall be calculated as described in Exhibit 8 to the Agreement.

## **8.4 Rates for Rate Years 6 and 16**

### **8.4.1 Company's Application**

One hundred eighty (180) days before the first day of Rate Years 6 and 16, Company shall submit an application requesting the amount of Company's Compensation for Rate Years 6 and 16. The application shall be based on the Company's actual revenues and expenses for Rate Years 4 and 14 (its supplementary information contained in Company's cost proposal, which is contained in Company's Proposal); audited financial statements for Rate Years 4 and 14; and actual and forecasted costs of Company's operations for Rate Years 4 and 14 and 5 and 15; and such application shall be prepared in accordance with this Section. Audited financial statements shall be submitted in accordance with requirements of Section 10.3.3.1. Company's application shall also include supplemental schedules, which include the data



requested in Section 10.3.3.2, for the most recent audited Rate Year and for the most recently completed twelve (12) months. Authority may request additional information as part of its review.

The application shall be submitted in the format and shall calculate Company's Compensation in the manner described in Section 8.4.2 below. Company shall assemble, provide, and submit such information that is necessary to support the assumptions made by Company with regard to the assumptions underlying the forecasted Company's Compensation for Rate Years 6 and 16.

Company shall provide all information requested by the Authority during its review of the application, including, but not limited to, all information from related parties requested by the Authority regarding any transactions between Company and any Related-Party Entity pertaining to Company's performance under this Agreement.

#### **8.4.2 Determination of Company's Compensation**

The Authority, or its representative, will review Company's application for compliance with this Agreement, accuracy, and reasonableness. The application shall clearly document Company's calculation of Company's Compensation based on the methodology described in this Section.

Company's Compensation shall equal the sum of forecasted annual cost of operations, profit, and forecasted Pass-Through Costs, each of which shall be calculated in accordance with procedures set forth below.

A) Forecasted Annual Cost of Operations. The forecasted annual cost of operations consists of the sum of:

1. Forecasted labor-related costs
2. Forecasted vehicle-related costs
3. Forecasted Recyclable Materials Processing costs
4. Forecasted other costs
5. Forecasted depreciation expense.

B) Methodology for Forecasting Annual Cost of Operations

1. Determine Actual Costs. Company's audited financial statement shall be reviewed to determine Company's actual costs necessary to perform all the services in the manner required by this Agreement for each of the forgoing categories during Rate Years 4 and 14. The Company's auditor shall determine that costs have actually been incurred and have been assigned to the appropriate cost category.
2. Calculate Adjusted Costs. Company shall adjust actual costs for Rate Years 4 and 14 (determined in Section 8.4.2.B.1) above to ensure that non-allowable costs are not included in actual costs. Non-allowable costs include the following:
  - a. Labor and equipment costs for personnel and vehicles that are not specified in Exhibit 4.
  - b. Payments to directors and/or owners of Company unless paid as reasonable compensation for services actually rendered.
  - c. Promotional advertising, entertainment, and travel expenses (above \$5,000 annually in total) unless authorized in advance by the Authority.
  - d. Payments to repair damage to property of third parties or the Authority for which Company is legally liable.
  - e. Fines for penalties of any nature.
  - f. Liquidated Damages assessed under this Agreement.
  - g. Federal or State income taxes.
  - h. Charitable or political donations.
  - i. Depreciation or interest expense for Collection vehicles, Containers, other equipment, offices and other Facilities if such items are leased as specified in Exhibit 4.
  - j. Attorney's fees and other expenses incurred by Company in any court proceeding in which the Authority and Company are adverse Parties, unless Company is the prevailing Party in such proceeding.

- k. Attorney's fees and other expenses incurred by Company arising from any act or omission in violation of this Agreement.
- l. Attorneys' fees and other expenses incurred by Company in any court proceeding in which Company's own negligence, violation of law or regulation, or wrong doing are in issue and occasion, in whole or in part, the attorneys' fees and expenses claimed; and attorneys' fees and expenses incurred by Company in a court proceeding in which the legal theory or statute providing a basis of liability against Company also provides for separate potential liability for the Authority derived from the action of its citizens or Rate payers (such as in a CERCLA lawsuit) unless the Company is found not liable in such claims and such claims arise from acts or occurrences within the Term of the Agreement.
- m. Payments to Related-Party Entities for products or services, in excess of the cost to the Related-Party Entities for those products or services, except for Recyclable Materials Processing.
- n. Goodwill.
- o. Processing costs for Recyclable Materials in excess of Processing costs stated in Exhibit 4 based on Tonnage provided in Exhibit 4.
- p. Unreasonable profit sharing distributions.
- q. Replacement costs for Carts, Bins, or Drop Boxes that need to be replaced because the useful life of such Container was less than the Term.
- r. Administrative costs greater than the administrative costs proposed for Rate Year 6 adjusted using the consumer price index described in Section 8.4.2.B.5.d.
- s. Bad debt write-offs in excess of 2% of annual Rate revenues.
- t. Annual Fee payment in accordance with Section 5.2.



3. Adjust Costs to Reflect Change to Customer Base and Program Changes. The Company may propose adjustments to the actual costs for Rate Years 4 and 14 for the following reasons:
  - a. To adjust costs that Company has demonstrated to the Authority to be necessary in order to provide service to Customers due to growth or decline in the Customer base (based on the number of Customers and subscription level).
  - b. To adjust for changes in costs due to an Authority approved interim compensation adjustment as described in Section 8.7 that will carry forward into the following Rate Year.
4. Summarize Allowed Costs. The adjusted costs for Rate Years 4 and 14 determined in accordance with Section 8.4.2.B.3 shall be considered "Allowed Costs" for the purposes of forecasting costs for Rate Years 6 and 16 following procedures described in Section 8.4.2.B.5 and shall be presented in cost categories which are consistent with Rate Years 4 and 14 cost categories as follows:
  - a. Allowed labor-related costs
  - b. Allowed vehicle-related costs
  - c. Allowed other costs
5. Forecast Annual Cost of Operations. Forecasted annual cost of operations for Rate Years 6 and 16 shall be calculated using allowed costs of operations for Rate Years 4 and 14 determined in Sections 8.4.2.B.1 through 8.4.2.B.4 above, adjusted to reflect the impact of consumer price indices, forecasted Recyclable Materials Processing costs, and forecasted depreciation expenses. The forecasts shall be performed in the following manner:
  - a. Forecasted labor-related costs shall be calculated for Rate Years 6 and 16 by multiplying (i) the Allowed labor-related costs for Rate Years 4 and 14 by one plus the percentage change in the "San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index (Urban Wage Earners; 1982-84=100)," which is compiled and published by

the U. S. Department of Labor, Bureau of Labor Statistics or its successor agency, between the most-recently-published monthly index at the time of the application and the corresponding monthly index published 12 months earlier, and (ii) multiplying the result of step one by the same percentage change used in step one.

- b. Forecasted vehicle-related costs shall be calculated for the Rate Years 6 and 16 by (i) multiplying the Allowed vehicle-related costs for Rate Years 4 and 14 by one plus the percentage change in the "Motor Vehicle Repair Index, All Urban Consumers, U.S. Authority Average (PI-U) 1982-1984 = 100," which is compiled and published by the U. S. Department of Labor, Bureau of Labor Statistics or its successor agency, between the most-recently-published monthly index at the time of the application and the corresponding monthly index published 12 months earlier, and (ii) multiplying the result of step one by the same percentage change used in step one.
- c. Forecasted Recyclable Materials Processing costs shall be calculated for Rate Years 6 and 16 in the following manner:

Forecasted Recyclable Materials Processing cost = (Recyclable Materials Processing cost per Ton in accordance with Exhibit 4) x (total Tons of Recyclable Materials Collected for the most-recently reported twelve month Year).

- d. Forecasted other costs shall be calculated for the Rate Years 6 and 16 by (i) multiplying the allowed other-related costs for Rate Years 4 and 14 by 1 one plus 75% of the percentage change in the "San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index (All Urban Consumers; 1982-84=100)," which is compiled and published by the U. S. Department of Labor, Bureau of Labor Statistics or its successor agency, between the most-recently-published monthly index at the time of application and the corresponding monthly index published 12 months earlier, and (ii) multiplying the result of step one by the same percentage change used in step one.

- e. Forecasted depreciation expense shall be the amount specified in Exhibit 4 for vehicles, Containers, and Facilities.
  - f. Forecasted annual cost of operations for Rate Years 6 and 16 shall equal the sum of the following costs, which shall have been calculated in accordance with procedures in this Section:
    - (1) Forecasted labor-related costs
    - (2) Forecasted vehicle-related costs
    - (3) Forecasted Recyclable Materials Processing costs
    - (4) Forecasted other costs
    - (5) Forecasted depreciation expense
- C) Calculate profit. Company shall be entitled to profit on forecasted annual costs of operations. Profit shall be calculated by dividing the forecasted annual cost of operations, which shall be determined in accordance with procedures described in Section 8.4.2.B.5.f above, by 84.7% and subtracting the forecasted annual costs of operations from the dividend. The Annual Fee payment shall be paid from the Company's profits. It shall not be passed on to the Rate payers and shall be a non-allowable cost as referenced in Section 8.4.2.B.2.t.
- D) Forecast Pass-Through Costs. Company's Compensation shall include Pass-Through Costs as calculated below:
- 1. Forecasted Disposal cost. Annual forecasted Disposal cost = (Disposal fee at Designated Disposal Site) x (total Tons of Solid Waste Collected for the most-recently reported twelve-month Year).
  - 2. Forecasted Green Waste Processing cost and Food Scraps Processing Fee. Annual forecasted Green Waste Processing cost = (Green Waste Processing fee at Designated Green Waste Processing Site) x (total Tons of Green Waste Collected for the most-recently reported twelve month Year). Annual forecasted Food Scraps Processing fee = (Food Scraps Processing fee at Approved Food Scraps Processing Site) x (total Tons of Food Scraps Collected for the most-recently reported twelve month Year).



3. Forecasted Construction and Demolition Debris Processing cost.  
Annual forecasted Construction and Demolition Debris Processing cost  
= (Construction and Demolition Debris Processing fee at Designated  
Construction and Demolition Debris Processing Site) x (total Tons of  
Construction and Demolition Debris Collected for the most-recently  
reported twelve month Year).
  4. Forecasted interest expense. Forecasted interest expense shall be  
amount specified in accordance with Exhibit 4.
  5. Forecasted lease cost. Forecasted lease cost shall be the amount  
specified in Exhibit 4 for vehicles, equipment, Containers, and Facilities.
  6. Forecasted regulatory fees. The forecasted regulatory fees shall be  
calculated in accordance with the appropriate methodology for the  
relevant fees using forecasted Rate Years 6 and 16 values.
  7. Forecasted Franchise Fees, HHW Fees, Street Sweeping Fees, Vehicle  
Impact Fees, and other fees. The forecasted Franchise Fees, Vehicle  
Impact Fees, JPA Administrative Costs and other fees specified in  
Article 5 shall be calculated using forecasted Rate Years 6 and 16 values.
  8. Compensation Review Fee. An amount agreed-upon by the Authority  
and Company to reimburse the Company payment of the Authority's  
costs, including consulting and legal fees, associated with determination  
of the Company's Compensation under this Article.
- E) Determine Company's Compensation for Rate Years 6 and 16. Company's  
Compensation necessary to perform all the services in the manner required by  
this Agreement for Rate Years 6 and 16 shall be equal to the sum of the  
following:
1. Forecasted annual cost of operations (determined in accordance with  
Section 8.4.2.B.5 above)
  2. Profit (determined in accordance with Section 8.4.2.C above)
  3. Forecasted Pass-Through Costs (determined in accordance with Section  
8.4.2.D above).

- F) The Rate Adjustment Factor shall be equal the Total Company Compensation for the coming Rate Period divided by the Gross Revenues for the most-recently reported 12-month period, which shall be rounded to the nearest thousandth. It shall be shall it be composed of five (5) components: a Collection Rate Adjustment, a Disposal Rate Adjustment, a Green Waste Processing Rate Adjustment, a Construction and Demolition Debris Processing Rate Adjustment, and City Fees Adjustment (Franchise Fee, HHW Fee, Street Sweeping Fee, Vehicle Impact Fee, JPA Administration Costs and other City Fees and Surcharges). The Collection Rate Adjustment factor shall not exceed five percent (5%), nor less than one and one-half percent (1.5%).

The Company's Compensation for Rate Years 6 and 16 shall be the only compensation due to Company for such Rate Year. No adjustments for actual costs shall be made at the conclusion of Rate Years 6 and 16 or at any other time during the Agreement.

#### **8.5 Variances from Projections**

The Company assumes all risk of variations from the revenue projection such that the Company shall retain any revenue from actual revenue being greater than projected but shall not be compensated for actual revenue being less than projected. In addition, calculations of the Rates shall not be adjusted for past variances of actual revenues from those projected.

#### **8.6 Schedule**

The Company shall submit its annual Calculation of Rate Adjustment on or before March 1 of each year for the following Rate Year. The Authority shall use its best efforts to make the adjustment effective by July 1 of the following year. However, the Authority shall not make any retroactive adjustments to compensate for any delay in calculating the Rates which results in whole or in part from the failure of the Company to submit its request by March 1 and/or respond promptly and completely to requests of the Authority for information related to any of the calculations required by this Section. The Authority shall make retroactive CPI adjustments calculated in accordance with Section 8.3 to compensate for any delay in processing and approving the calculation of the Rate Adjustment that is the sole responsibility of the Authority.

#### **8.7 Interim Rate Adjustment**

In the event the Authority directs the Company to change its operations in accordance with Section 4.5 of this Agreement or in the event of an extraordinary or unanticipated event

including a change in law, a change in Disposal Site, Green Waste Processing site, Food Scraps Processing site, Construction and Demolition Debris Processing site, or an extraordinary adjustment to the Disposal Proprietary Rate, Disposal Fee Component, Green Waste Processing Proprietary Rate, Green Waste Processing Fee Component, Food Scraps Processing fee, Construction and Demolition Debris Proprietary Rate and/or Construction and Demolition Debris Fee Component, and such adjustment materially affects the Company's annual cost of operations then the Company or the Authority may submit a request for an interim Rate adjustment. In such case, the Company shall provide Authority with its calculations of the impact of the change in a format approved by the Authority. Any proposed change in the approved Rates shall be subject to Authority review and approval. The Company shall not be entitled to an interim Rate adjustment for any costs associated with additional routes beyond those outlined in the Proposal, unless required under Section 4.5. Nothing in this section shall be construed to require Authority to accept Company's calculations as correct.

#### **8.8 Subsequent Rates**

From time to time and based on changes to the Rates, as described above, and other considerations, the Authority Board of Directors shall ratify the Rates presented by Company by resolution or ordinance, as determined in the good faith exercise of its legislative discretion.



## ARTICLE 9 REVIEW OF SERVICES AND PERFORMANCE

### 9.1 Performance Hearing

Authority may hold a public hearing on or about ninety (90) days after receipt of the Annual Report from Company, at which time Company shall be present and shall participate to review the Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris Collection services and overall performance. The purpose of the hearing is to provide for a discussion and review of technological, economic, and regulatory changes in Collection to achieve a continuing, advanced Solid Waste, Recyclable Materials, Green Waste, Food Scraps and Construction and Demolition Debris Collection system; and to ensure services are being provided with adequate quality, effectiveness and economy.

Forty-five (45) days after receiving notice from Authority of a Solid Waste, Recyclable Materials, Green Waste, Food Scraps and Construction and Demolition Debris services performance review hearing, Company shall, at a minimum, submit a report to Authority indicating the following:

- A) Changes recommended and/or new services to improve Authority's Collection Services and to contain costs and minimize impacts on Rates.
- B) Any specific plans for provision of changed or new services by Company.

The reports required by this Agreement regarding Customer complaints may be used as one basis for review. Company may submit other relevant performance information and reports for consideration. Authority may request, and Company shall submit, specific information related to the performance for the hearing. In addition, any Customer may submit comments or complaints during or before the hearing, either orally or in writing, and these shall be considered.

Topics for discussion and review at the Solid Waste, Recyclable Material, Green Waste, Food Scraps and Construction and Demolition Debris services performance review hearing shall include, but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, Customer complaints, amendments to this Agreement, developments in the law, regulatory constraints and Company performance. Authority and Company may each select additional topic for discussion at any Solid Waste, Recyclable

Material, Green Waste, Food Scraps and Construction and Demolition Debris Services Performance Review Hearing.

Not later than sixty (60) days after the conclusion of each Solid Waste, Recyclable Material, Green Waste, Food Scraps and Construction and Demolition Debris Services Performance Review Hearing, Authority may issue a report. As a result of the review, Authority may require Company to provide expanded or new services within a reasonable time and for reasonable Rates and compensation, as determined in the Authority Board of Director's good faith legislative discretion, and Authority may direct or take corrective actions for any performance inadequacies.

## **ARTICLE 10**

### **RECORDS, REPORTS AND INFORMATION REQUIREMENTS**

#### **10.1 General**

Company shall maintain such accounting, statistical and other records related to its performance under this Agreement as shall be necessary to develop the financial statements and other reports required by this Agreement and to conduct the review of services and performance described in Article 9 above. Also, Company agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with applicable laws and regulation and to meet the reporting and Solid Waste, Recyclable Material, Green Waste, Food Scraps, and Construction and Demolition Debris program management needs of Authority. To this extent, such requirements set out in this and other Articles of this Agreement shall not be considered limiting or necessarily complete. In particular, this Article is intended to only highlight the general nature of records and reports and is not meant to define exactly what the records and reports are to be and their content. Further, with the written direction or approval of Authority, the records and reports to be maintained and provided by Company in accordance with this and other Articles of the Agreement shall be adjusted in number, format, or frequency. The foregoing is not intended to require significant additional administrative labor or the modification of Company's computer software.

#### **10.2 Records**

##### **10.2.1 Maintenance of Records**

Company shall maintain records required to conduct its operations, to support requests it may make to Authority, and to respond to requests from Authority in the conduct of Authority business.

##### **10.2.2 Security and Retention of Records**

Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as a fire, theft and earthquake. Electronically maintained data/records shall be protected and backed up.

All records shall be maintained for five (5) years after the expiration of this Agreement, with the exception of accounts payable records, which will be maintained for three (3) years after payment.



Company agrees that the specific records required to be maintained by this Agreement shall be provided or made available in a timely manner to Authority and its official representatives during normal business hours. Records and data not specifically identified in this Agreement that are not required for the determination of the Company's compensation or performance do not need to be retained by Company. In such a case and when such records and data are required but are not retained by the Company, the Authority may make reasonable assumptions regarding what information is contained in such records and data, and such assumption(s) shall be conclusive in whatever action the Authority takes.

### **10.2.3 Inspection of Records**

The Authority and its agents shall have the right during regular business hours, to conduct unannounced on-site inspections of specific documents required by this Agreement or any other similar records or reports of Company that the Authority shall deem, at its sole discretion, necessary to evaluate annual reports, compensation applications, and the Company's performance provided for in this Agreement. The Authority may make copies of documents it deems relevant to this Agreement.

### **10.2.4 Financial Records**

Company shall maintain financial records containing the underlying financial data relating to and showing the basis for computation of all costs associated with providing services in a manner such that cost and revenue information can be allocated among the service types (residential Solid Waste, Recycling, and Green Waste, Food Scraps, commercial Solid Waste, Recycling, and Food Scraps, and drop box Solid Waste and Construction and Demolition Debris) and to the Authority, distinct from other similar operations of the Company. The accounting records shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP) consistently applied.

### **10.2.5 Solid Waste, Recyclable Materials, Green Waste, Food Scraps and Construction and Demolition Debris Records**

Records shall be maintained by Company for Authority relating to:

- A) Customer services and billing including service exemption information;
- B) Weight and volume of Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris. Information is to be separated

between Single-Family Dwelling Units, Multi-Family Dwelling Units, and Commercial Premises by City;

- C) Special annual cleanup event results;
- D) Routes;
- E) Facilities, equipment and personnel used;
- F) Facilities and equipment operations, maintenance and repair;
- G) Tonnage by City
- H) Processing of Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris (Tonnage, participation and set-out rates, end-use, revenue);
- I) Diversion level;
- J) Complaints; and,
- K) Missed Pick-Ups.

#### **10.2.6 Processing Records**

Company shall maintain records of Processing of all Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris Collected in Authority for the period of this Agreement and all extensions to this Agreement or successor Agreements. In the event Company discontinues providing Recyclable Materials and Green Waste services to Authority, Company shall provide all records of Processing of all Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris Collected in Authority within thirty (30) days of discontinuing service. Records shall be in chronological and organized form and readily and easily interpreted.

#### **10.2.7 Disposal Records**

Company shall maintain records of Disposal of all Solid Waste Collected in Authority for the period of this Agreement and all extensions to this Agreement or successor Agreements. In the event Company discontinues providing Solid Waste services to Authority, Company shall provide all records of Disposal or Processing of all Solid Waste Collected in Authority

within thirty (30) days of discontinuing service. Records shall be in chronological and organized form and readily and easily interpreted.

#### **10.2.8 Other Programs Records**

Records for other programs shall be tailored to specific needs. In general, the records shall include:

- a) Plans, tasks and milestones; and.
- b) Accomplishments in terms such as dates, activities conducted, quantities of materials Collected, Processed and/or sold or distributed, and numbers of participants and responses.

#### **10.2.9 Customer Service Records**

Records shall be maintained by Company for Authority related to:

- a. Number of calls;
- b. Average hold time for calls; percentage of calls answered in 30 seconds; percentage of calls answered in 3 minutes;
- c. Categories (Missed Pick-Ups, complaints, damage, etc.) of calls;
- d. Training materials and records;
- e. Complaint log noting the name and address of complainant, date and time of complaint, nature of complaint, and nature of resolution; and,
- f. New Customer log.

#### **10.2.10 CERCLA Defense Records**

Authority views the ability to defend against CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 USC §9601, et seq.) and related litigation as a matter of great importance. For this reason, the Authority regards the ability to prove where Solid Waste Collected in the Authority was taken for Disposal, as well as where it was not taken, to be matters of concern. Company shall maintain data retention and preservation systems which can establish where Solid Waste Collected in the Authority was landfilled (and therefore establish where it was not landfilled) and provide a copy or summary of the reports required in Section 6.14 for five (5) years after the term during which



Collection services are to be provided pursuant to this Agreement, or to provide copies of such records to Authority. Company agrees to notify Authority's Risk Manager and Authority Counsel before destroying such records. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.

### **10.3 Reports**

#### **10.3.1 Report Formats and Schedule**

Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:

- A) Determine and set Rates and evaluate the financial efficacy of operations;
- B) Evaluate past and expected progress towards achieving AB 939 goals and objectives;
- C) Determine needs for adjustment to programs; and,
- D) Evaluate Customer service and complaints.

Company may propose report formats that are responsive to the objectives and audiences for each report. The format of each report will be mutually agreed upon by Authority and Company. Company agrees to submit all reports on computer discs in a mutually agreed upon format at no additional charge, if requested by Authority. Company will provide a certification statement, under penalty of perjury, by the responsible Company official, that the report being submitted is true and correct.

Monthly reports shall be submitted within thirty (30) calendar days after the end of the report month. Quarterly reports shall be submitted within forty-five (45) calendar days after the end of the quarter. Quarter's end on September 30, December 31, March 31, and June 30. Annual reports shall be submitted before September 30th following the reporting Rate Year.

All reports shall be submitted to:

Executive Director  
West Valley Solid Waste Management Authority  
c/o HF&H Consultants, LLC  
201 North Civic Drive, Suite 230

Walnut Creek, CA 94596

City Manager  
City of Campbell  
70 North First Street  
Campbell, CA 95008

City Manager  
City of Monte Sereno  
18041 Saratoga – Los Gatos Road  
Monte Sereno, CA 95050

City Manager  
City of Saratoga  
13777 Fruitvale Avenue  
Saratoga, CA 95070

Town Manager  
Town of Los Gatos  
110 East Main Street  
Los Gatos, CA 95030

### 10.3.2 Quarterly Reports

The information listed shall be the minimum reported for each service:

#### A. Regular Services

1. Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris Tonnage Collected by Company, sorted by each City and between Single-Family Dwelling Units, Multi-Family Dwelling Units and Commercial and Industrial Premises and the Processing and Disposal Sites used, in Tons.
2. Tonnage Diverted by Company divided by the Tonnage Collected by Company multiplied by 100. The report shall state the Tonnage Diverted and Tonnage Collected as well as the calculated Diversion Level.
3. Customer Service
  - a) Number of calls by category (Missed Pick-Ups, complaints, damage, etc.)

- b) Number of complaints, resolved complaints, and number of complaints which were unresolved for more than five business days, for month and cumulative for report year, with explanations for unresolved complaints
- c) In table format, the number of Customers and service levels for all programs (Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris) and service types (single-family, multi-family, commercial, industrial, etc.) and the number of all service location exemptions.
- d) Education Activities:
  - i. Public education materials produced and total number of each distributed;
  - ii. Dates, times and group names of meetings attended; and,
  - iii. Dates, times and names of schools where presentations were performed.
- 4. In table format, list all overweight vehicle citations.
- 5. List of Customers that received warning notices from Company for contamination levels.
- 6. Narrative summary of problems encountered (including scavenging) and actions taken with recommendations for Authority, as appropriate.
- 7. A summary or copy of the Hazardous Waste records required under Section 6.14.
- 8. Other information or reports that Authority may reasonably request or require.

## **B. Event Specific Information**

1. **Special Event Collection.** The Company shall submit to the Authority a written report identifying the Tonnage of Solid Waste and Recyclable Materials Collected from Special Events. The report shall be submitted no later than ten (10) business days following each event.
2. **Report of Overflowing Containers and Improper Enclosure Maintenance.** As required by Section 6.8.5.C, Company shall report the addresses of any Premises at which the driver observes that Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and/or Construction and Demolition Debris is overflowing on a consistent basis and/or the Premises' enclosures are not adequately maintained in regards to litter abatement.
3. **Report of Unauthorized Dumping.** As required by Section 6.8.10, Company shall report: (i) the addresses of any Premises at which the driver

observes that Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and/or Construction and Demolition Debris is accumulating; and (ii) the address, or other location description, at which Solid Waste, Recyclable Materials, and/or Green Waste has been dumped in an apparently unauthorized manner. The report shall be delivered to the City within five Business Days of such observation.

4. **Hazardous Waste.** As required by Section 6.14, the Company shall notify the City of any Hazardous Waste identified in Containers or left at any Premises within twenty-four (24) hours of identification of such material.

**C. Summary Assessment.** Provide a summary assessment of the overall Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris program from Company's perspective relative to financial and physical status of program. The physical status is to relate to how well the program is operating for efficiency, economy and effectiveness relative to meeting all the goals and objectives of this Agreement and AB 939. Provide recommendations and plans to improve. Highlight significant accomplishments and problems.

### **10.3.3 Annual Report**

The annual report is to be essentially in the form and content of the quarterly reports. In addition, Company's annual audited/reviewed financial statements shall be included as well as certain operational information. The annual report shall also include a list of Company's Managers and Members.

#### **10.3.3.1 Financial Statements.**

Financial statements shall show Company's results of operations on a combined basis for the Cities of Campbell, Monte Sereno, Saratoga and the Town of Los Gatos, including the specific revenues and expenses in connection with the operations provided for in this Agreement and others included in such financial statements. The financial statements and footnotes shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP). The financial statements shall be prepared by the Company and marked "unaudited" except for Rate Year 4. The financial statements for Rate Year 4 shall be audited in accordance with Generally Accepted Auditing Standards (GAAS) by a certified public accountant (CPA) licensed (in good standing) to practice public accounting in the State of California as determined by the State of California Department of Consumer Affairs Board of



Accountancy. The CPA opinion on Company's audited financial statements shall be unqualified.

### **10.3.3.2 Operational Information**

In addition to requirements stated elsewhere in this Agreement, the annual report shall include the following information:

- A. Routes by Service Type
  - 1. Number of routes per day
  - 2. Number of full time equivalent (FTE) routes
  - 3. Number of accounts per route
- B. Personnel
  - 1. Organizational chart
- C. Productivity Statistics
  - 1. Number of accounts per service type
  - 2. Summary of Tonnage information provided in Section 10.3.2.A.1
- D. Operational Changes
  - 1. Number of routes
  - 2. Staffing
  - 3. Supervision
  - 4. Collection services.
- E. Equipment: An inventory of equipment in accordance with Section 6.8.4.
- F. Billing: Billing review report in accordance with Section 7.2.3.

### **10.4 Adverse Information**

- A) **Reporting Adverse Information.** Company shall provide Authority two (2) copies (one to the Authority Executive Director, one to the Authority Counsel) of all reports, pleadings, applications, notifications, Notices of Violation, or other formal actions relating specifically to Company's performance of services pursuant to this Agreement, submitted by Company to, or received by Company from, the United States or California Environmental Protection Agency, the California Integrated Waste Management Board, the Securities and Exchange Commission or any other federal, state or local agency, including any federal or state court actions brought by any of the aforementioned agencies, with regard to

Company's operations in the State of California. Copies shall be submitted to Authority simultaneously with Company's filing or submission of such matters with said agencies. Company's routine correspondence to said agencies need not be routinely submitted to Authority, but shall be made available to Authority promptly upon Authority's written request.

- B) **Failure to Report.** The refusal or failure of Company to file any required reports, or to provide required information to Authority, or the inclusion of any materially false or misleading statement or representation by Company in such report shall be deemed a material breach of the Agreement as described in Section 13.1 and shall subject Company to all remedies which are available to the Authority under the Agreement or otherwise.

## ARTICLE 11 INDEMNIFICATION, INSURANCE AND BOND

### 11.1 Indemnification

Company hereby agrees to and shall indemnify and hold harmless Authority, its elected and appointed boards, commissions, officers, employees, and agents and Cities, its elected officials and employees (collectively, indemnities) from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit in law or equity of any and every kind and description (including, but not limited to, injury to and death of any Person and damage to property, or for contribution or indemnity claimed by third parties) arising or resulting from and in any way connected with (1) the negligence or willful misconduct of Company, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement; (2) the failure of Company, its officers, employees, agents, and/or subcontractors to comply in all respects with the provisions of this Agreement, applicable laws (including, without limitation, the Environmental Laws), ordinances and regulations, and/or applicable permits and licenses; (3) the acts of Company, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws). The foregoing indemnity shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is also caused in part by any of the indemnitees' negligence, but shall not extend to matters resulting from the indemnitees' negligence, willful misconduct or breach of this Agreement. Company further agrees to and shall, upon demand of Authority, at Company's sole cost and expense, defend (with attorneys acceptable to Authority) Authority, its elected and appointed boards and commissions, officers, employees, and agents and Cities, its elected officials and employees against any claims, actions, suits in law or equity or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any of the aforementioned events.

Company, upon demand of the Authority, made by and through the Authority Counsel, shall protect Authority and appear in and defend the Authority and its elected officials, officers, employees and agents, in any claims or actions by third parties, whether judicial, administrative or otherwise, including, but not limited to disputes and litigation over the definitions of "Solid Waste" or the limits of Authority's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or federal or state laws to provide Solid Waste services in the Authority.

This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement. The Company shall be entitled to recover costs of defense and damages arising only under this paragraph from the Authority in accordance with Section 8.3.6, if authorized in accordance with State law.

Company's duty to indemnify and defend from the aforementioned events arising during the Term of the Agreement and as it may be extended shall survive the expiration or earlier termination of this Agreement.

## **11.2 Hazardous Substances Indemnification**

Company shall indemnify, defend with counsel reasonably acceptable to Authority and City, protect and hold harmless Authority, its elected and appointed boards, commissions, officers, employees, and agents (collectively, Indemnitees) from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, costs, (including without limit any and all response, remediation and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, attorney's fees for the adverse party and expenses (including without limit attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (collectively, "Damages") of any kind whatsoever paid, incurred or suffered by, or asserted against, Indemnities arising from or attributable to the acts or omissions of Company, its officers, directors, employees, companies or agents, whether or not negligent or otherwise culpable, in connection with or related to the performance of this Agreement, including without limit Damages arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Substance, Hazardous Waste, and/or HHW (Collectively, "Waste") at any places where Company Collects and Transports, Processes, stores, or Disposes of Authority Solid Waste, and/or construction and street debris, or other waste. The foregoing indemnity shall not apply to the Processing, storage, or Disposal of City-Generated Solid Waste, and/or construction and street debris, or other waste, if the Company can establish the Waste generated by one of the Cities directly caused the claims or damages. The foregoing indemnity is intended to operate as an agreement pursuant to §107(e) of CERCLA and California Health and Safety Code §25364, to defend, protect, hold harmless, and indemnify Authority from liability. This provision is in addition to all other provisions in this Agreement and shall survive the end of the term of this Agreement. The



foregoing applies only to Facilities owned or operated by Company pursuant to this Agreement.

### 11.3 Insurance

Authority does not, and shall not, waive any rights against Company which it may have by reason of the aforesaid hold harmless agreements, because of acceptance by Authority or the deposit with Authority by Company of the insurance policies described in this provision. Company shall maintain insurance policies meeting the following specifications at all times during the term of this Agreement.

A) **Minimum Scope of Insurance.** Coverage shall be at least as broad as:

1. The most recent editions of Insurance Services Office form number GL 0002 covering Comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).
2. The most recent editions of Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 "any auto" and endorsement CA 0025.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.
4. Employee Blanket Fidelity Bond.
5. Pollution Legal Liability.

B) **Minimum Limits of Insurance.** Company shall maintain in force for the term of this Agreement limits no less than:

1. Comprehensive General Liability: Ten Million Dollars (\$10,000,000) combined single limit per occurrence for bodily injury, Personal injury and property damage.
2. Automobile Liability: Ten Million Dollars (\$10,000,000) combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.
4. Employee Blanket Fidelity Bond in the amount of Five Hundred Thousand Dollars (\$500,000) per employee, covering dishonesty, forgery, alteration, theft, disappearance, destruction (inside or outside).

5. Pollution Legal Liability: Five Million Dollars (\$5,000,000) for bodily injury, property damage and remediation of contamination site.

C) **Deductibles and Self-Insured Retentions.** If Company wants to increase its deductibles over the amount as of the Effective Date of this Agreement, the Company shall obtain the written consent of the Authority. Authority's consent will not be unreasonably withheld.

D) **Other Insurance Provisions.** The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverage

- a. Authority, its elective and appointive boards, commissions, officials, employees, agents and volunteers are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of Company; products and completed operations of Company; Premises owned, leased or used by Company; or vehicles owned, leased, hired or borrowed by Company. The coverage shall contain no special limitations on the scope of protection afforded to Authority, its elective and appointive boards, commissions, officials, employees, agents or volunteers.
- b. Company's insurance coverage shall be primary insurance as respects Authority, its elective and appointive boards, commissions, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by Authority, its officials, elective and appointive boards, commissions, employees, agents or volunteers shall be excess of Company's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Authority, its officials, elective and appointive boards, commissions, employees, agents or volunteers.
- d. Coverage shall state that Company's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. **Workers' Compensation and Employers Liability Coverage** - The insurer shall agree to waive all rights of subrogation against Authority, its officials, elective and appointive boards, commissions, employees, agents and volunteers for losses arising from work performed by Company for Authority.
3. **All Coverages** - Each insurance policy required by this clause shall be endorsed to state that should any of the policies carried pursuant hereto be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. Notwithstanding any obligation of the insurer, Company shall notify Executive Director in writing thirty (30) days prior to the suspension, voiding, cancelling by either party or reductions in coverage or limits and Company shall describe and provide copies of the replacement policy and said policy shall have an effective date not later than the termination date of the original insurance.

- E) **Acceptability of Insurers.** The insurance policies required by this Section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better.
- F) **Verification of Coverage.** Simultaneously with the execution of this Agreement, Company shall furnish Authority with certificates of insurance and with original endorsements affecting coverage required hereunder, in form and substance satisfactory to Authority. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. Such certificates and endorsements shall show the type and amount of coverage, effective date and dates of expiration of policies, and shall have all required endorsements. Authority reserves the right to review copies of all required insurance policies, at a site within the Authority, upon the reasonable request of the Authority.

Renewal certificates will be furnished periodically to Authority to demonstrate maintenance of the required coverage throughout the Term.

If Company fails to procure and maintain any insurance required by this Agreement, Authority may take out and maintain, at Company's expense, such insurance as it may deem proper.

**G) Companies and Subcontractors.** Company shall include all companies and subcontractors providing Collection services under this Agreement as insureds under its policies or shall furnish separate certificates and endorsements for each company and subcontractor. All coverages for companies and subcontractors shall be subject to all of the requirements stated herein. All other subcontractors having face-to-face contact with the Customers shall be required by Company to carry general liability insurance.

**H) Required Endorsements**

1. The Workers' Compensation policy shall contain an endorsement in substantially the following form:

"Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions." Such notice shall be sent to:

Executive Director  
West Valley Solid Waste Management Authority  
c/o HF&H Consultants, LLC  
201 North Civic Drive, Suite 230  
Walnut Creek, CA 94596

2. Each Company's Automobile and Pollution Liability Policy shall contain endorsements in substantially the following form:

- a. "Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions." Such notice shall be sent to:

Executive Director  
West Valley Solid Waste Management Authority  
c/o HF&H Consultants, LLC  
201 North Civic Drive, Suite 230  
Walnut Creek, CA 94596

- b. "Authority, its officers, elective and appointive boards, commissions, employees, and agents are additional insureds on this policy."



- c. "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by Authority, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."
- d. "Inclusion of Authority as an insured shall not affect Authority's rights as respects any claim, demand, suit or judgment brought or recovered against Company. This policy shall protect Company and Authority in the same manner as though a separate policy had been issued to each, but this shall not operate to increase Company's liability as set forth in the policy beyond the amount shown or to which Company would have been liable if only one party had been named as an insured."

**l) Delivery of Proof of Coverage.**

Simultaneously with the execution of this Agreement, Company shall furnish the Authority certificates of each policy of insurance required, hereunder, in form and substance satisfactory to City. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall have all required endorsements. If the Authority requests, copies of each policy, together with all endorsements, shall also be promptly delivered to Authority; provided, however, Company shall be entitled to redact: the amounts of any premiums, deductibles, or self-insured retentions; any other additional insured names and/or addresses; any names and addresses of any other properties, facilities, or operations not directly related to the services provided by Contractor under this Agreement; any other policies held by Contractor not explicitly requested under the Agreement; and, any other endorsements not explicitly requested under this Agreement from such policies. Renewal certificates will be furnished periodically to Authority to demonstrate maintenance of the required coverages throughout the Term.

**11.4 Faithful Performance Bond**

Company shall deposit either a letter of credit or a performance bond (collectively referred to as "Performance Bond") in the amount of One Million Dollars (\$1,000,000). The letter of credit or Performance Bond shall be in a form acceptable to the Authority (see Exhibit 9).

The Performance Bond shall serve as security for the faithful performance by Company of all the provisions and obligations of this Agreement.

## ARTICLE 12 AUTHORITY'S RIGHT TO PERFORM SERVICE

### 12.1 General

In the event that Company, for any reason whatsoever, fails, refuses or is unable to Collect or Transport any or all Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris which it is required by this Agreement, at the time and in the manner provided in this Agreement, for a period of more than forty-eight (48) hours, and if, as a result thereof, Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris should accumulate in Authority to such an extent, in such a manner, or for such a time that Authority should find that such accumulation endangers or menaces the public health, safety or welfare, then Authority shall have the right, but not the obligation, upon twenty-four (24) hour prior written notice to Company during the period of such emergency as determined by Authority, (1) to perform, or cause to be performed, such services itself with its own or other personnel without liability to Company; and/or (2) to take temporary possession of any or all of Company's land, equipment and other property used or useful in the Collection and Transportation of Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris, and to use such property to Collect and Transport any Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris generated within Authority which Company would otherwise be obligated to Collect and Transport pursuant to this Agreement.

If Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris accumulates in Authority to such an extent, in such a manner or for such a time that Authority finds that such accumulation represents an immediate danger or menace to the public health safety or welfare, Authority shall not be required to provide the twenty-four (24) hour prior written notice set forth above in order to take the above actions.

Notice of Company's failure, refusal or neglect to Collect and Transport Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris may be given orally by telephone to Company at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to Company within twenty-four (24) hours of the oral notification.

Company further agrees that in such event:

- A) It will take direction from Authority to effect the transfer of possession of equipment and property to Authority for Authority's use.
- B) It will, if Authority so requests, keep in good repair and condition all of such equipment and 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 operational condition.
- C) Authority may immediately engage all or any personnel necessary or useful for the Collection and Transportation of Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris, including, if Authority so desires, employees previously or 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 Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris Collection, Transportation, Processing and Disposal operations and for the billing and Collection of fees for these services.

Authority agrees that it assumes complete responsibility for the proper and normal use of such equipment and Facilities while in its possession.

If the interruption or discontinuance in service is caused by any of the reasons listed in Section 13.7, Authority shall pay to Company the reasonable rental value of the equipment and Facilities, possession of which is taken by Authority, for the period of Authority's possession, if any, which extends beyond the period of time for which Company has rendered bills in advance of service, for the class of service involved.

Except as otherwise expressly provided in the previous paragraph, Authority's exercise of its rights under this Article 12 (1) does not constitute a taking of private property for which compensation must be paid; (2) will not create any liability on the part of Authority to Company; and (3) does not exempt Company from any of the indemnity or insurance provisions of this Agreement, 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 negligence or willful misconduct of Authority, its elective and appointive boards, commissions, officers, employees and agents in the operation of Collection vehicles during the time Authority has taken possession of such vehicles.



## **12.2 Temporary Possession of Company's Property**

If Authority suffers an interruption or discontinuance of service (including interruptions and discontinuance due to events described in Section 13.7), Authority may take possession of and use all of Company's property described above until other suitable arrangements can be made for the provision of Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris Services.

## **12.3 Billing and Compensation to City and Authority During Authority's Possession**

During such time that Authority is providing Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris services, as above provided, Company shall bill and Collect payment from all users of the above-mentioned services as described in Section 7.2. Company further agrees that, in such event, it shall reimburse Authority for any and all costs and expenses incurred by Authority beyond that billed and received by Company in taking over possession of the above-mentioned equipment and property for Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris service in such manner and to an extent as would otherwise be required of Company under the Terms of this Agreement. Such reimbursement shall be made from time to time after submission by Authority to Company of each statement listing such costs and expenses, but in no event later than five (5) working days from and after each such submission.

## **12.4 Authority's Right to Relinquish Possession**

It is further mutually agreed that Authority may at any time at its discretion relinquish possession of any or all of the above-mentioned property to Company and thereupon demand that Company resume the Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris services as provided in this Agreement, whereupon Company shall be bound to resume the same.

## **12.5 Duration of Authority's Possession**

Authority's right pursuant to this Article to retain temporary possession of Company's Facilities and equipment, and to render Collection services, shall terminate when the event which caused the taking possession under Section 12.1 is cured and the Performance Bond is fully restored. In any case, Authority has no obligation to maintain possession of Company's property or equipment and/or continue its use for any period of time and may at any time, in its sole discretion, relinquish possession to Company.

## ARTICLE 13 DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

### 13.1 Events of Default

All provisions of the Franchise and this Agreement to be performed by Company are considered material. Each of the following shall constitute an event of default.

- A) **Fraud or Deceit.** If Company practices any fraud or deceit upon Authority.
- B) **Failure to Maintain Coverage.** If Company fails to provide or maintain in full force and effect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement unless such insurance becomes unavailable.
- C) **Violations of Regulation.** If Company violates any orders or filings of any regulatory body having jurisdiction over Company, which orders or filings have a material impact on Company's ability to perform this Agreement, provided that Company may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Franchise and this Agreement shall be deemed to have occurred.
- D) **Failure to Perform.** If Company ceases to provide Collection services as required under this Agreement for a period of two (2) consecutive days or more, for any reason within the control of Company, including labor disputes. If Authority performs service under Article 12, the Company's failure to perform shall not be considered a default.
- E) **Failure to Pay.** If Company fails to make any payments required under this Agreement and/or Solid Wastes to provide Authority with required information, reports, and/or records in a timely manner as provided for in the Agreement.
- F) **Acts or Omissions.** Any other act or omission by Company which violates the terms, conditions, or requirements of this Agreement, the California Integrated Waste Management Act of 1989, as it may be amended from time to time, or any law, statute, ordinance, order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if Company cannot reasonably correct or remedy the breach

within the time set forth in such notice, if Company should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

- G) **False or Misleading Statements.** Any material representation, warranty or disclosure made to Authority by Company in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.
- H) **Seizure or Attachment.** There is a seizure of, attachment of, or levy on, the operating equipment of Company, including without limits its equipment, maintenance or office Facilities, or any part thereof.
- I) **Petition for Debt Relief.** If Company files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of equipment no longer useful to Company or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) of the Company for any part of Company's operating assets or any substantial part of Company's property, or shall make any general assignment for the benefit of Company's creditors, or shall fail generally to pay Company's debts as they become due or shall take any action in furtherance of any of the foregoing;
- J) **Bankruptcy.** A court having jurisdiction shall enter a decree or order for relief in respect of the Company, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Company shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Company or for any part of the Company's operating equipment or assets, or orders the winding up or liquidation of the affairs of Company;
- K) **Failure to Provide Assurance of Performance.** If Company fails to provide reasonable assurances of performance as required under Section 13.7.



Company shall be given forty-eight (48) hours from notification by Authority to cure any default arising under subsections B, D, E, H, and K

### **13.2 Right to Terminate Upon Default**

In the event that Company should default and subject to the right of the Company to cure, in the performance of any provisions of this contract, and the default is not cured within forty-eight (48) hours from notification of default from Authority for any default arising under Section 13.1.B, D, E, H, and K, or ten (10) days' notice if the public health or safety is threatened, or otherwise thirty (30) days after receipt of written notice of default from the Authority, then the Authority may, at its option, hold a hearing at its next practically available Authority Board of Directors meeting to determine whether this contract should be terminated. In the event Authority decides to terminate this contract, Authority shall serve thirty (30) days' written notice of its intention to terminate upon Company. In the event Authority exercises its right to terminate this contract, Authority may, at its option, either directly undertake performance of the services or arrange with other Persons to perform the services with or without a written agreement. This right of termination is in addition to any other rights of Authority upon a failure of Company to perform its obligations under this Agreement.

Authority's right to terminate this Agreement and to take possession of Company's Facility are not exclusive, and Authority's termination of this Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies which Authority may have.

By virtue of the nature of this Agreement, the urgency of timely continuous and high-quality service, the time required to effect alternative service, and the rights granted by Authority to Company, the remedy of damages for a breach hereof by Company may be inadequate and Authority may seek injunctive relief.

### **13.3 Termination for Cause**

In the event the Company does not meet the productivity standards as set out in their proposal, the Authority may take the following progressive actions:

- A) Assess liquidated damages as listed in Section 13.6.B.1.b for failure to complete Collection of Solid Waste, Recyclable Materials, Green Waste and Construction and Demolition Debris within the prescribed hours and on the scheduled day;



- B) Require Company to add a route(s) at the Company's cost;
- C) If, in the event twenty (20) days of Collecting Solid Waste, Recyclable Materials, and Green Waste during unauthorized hours occurs in two consecutive quarters (occurrences in the first ninety (90) days of this Agreement will not apply towards Rate Year 1 total) after the Company has added a route(s) in accordance with Section 13.3.B, the Authority has the right to terminate the Agreement.

#### **13.4 Possession of Property Upon Termination**

In the event of termination for default, the Authority shall have the right to take possession of any and all of Company's land, equipment, and other property used or useful in the Collection, Transportation, Processing, and Disposal of Solid Waste, Recyclable Materials, or Green Waste, Food Scraps, and the Billing and collection of fees for these services and to use such property. The Authority shall have the right to retain the possession of such property until other suitable arrangements can be made for the provision of Solid Waste, Recyclable Materials, or Green Waste Collection services and Recyclable Materials Processing, which may include the award of an Agreement to another waste hauling company or for 180 days, whichever occurs first. If the Authority retains possession thereof after the period of time for which Company has already been paid by means of bills issued in advance of providing service for the class of service involved, the Company shall be entitled to the reasonable rental value of such property (which shall be offset against any damages due the Authority for the Company's default).

Company shall furnish the Authority with immediate access to all of its business records related to its Customers and Billing of accounts for Collection services.

#### **13.5 Authority's Remedies Cumulative; Specific Performance**

The Authority's rights to terminate the Agreement under Section 13.2 and to take possession of the Company's properties under Section 13.3 are not exclusive, and the Authority's termination of the Agreement and/or the imposition of Liquidated Damages shall not constitute an election of remedies. Instead, these rights shall be in addition to any and all other legal and equitable rights and remedies which the Authority may have.

By virtue of the nature of this Agreement, the urgency of timely, continuous and high quality service, the lead time required to effect alternative service, and the rights granted by Authority to the Company, the remedy of damages for a breach hereof by Company is inadequate and Authority shall be entitled to injunctive relief.

## 13.6 Liquidated Damages

- A) **General.** The Authority finds, and Company agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by Authority as a result of a breach by Company of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that Franchised Services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and, (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.
- B) **Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The parties further acknowledge that consistent, reliable Solid Waste, Recyclable Material, Green Waste, and Food Scraps Collection service is of utmost importance to Authority and that Authority has considered and relied on Company's representations as to its quality of service commitment in awarding the Franchise to it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if Company fails to achieve the performance standards, or fails to submit required documents in a timely manner, Authority and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which Authority will suffer. Therefore, without prejudice to Authority's right to treat such non-performance as an event of default under this Article 13, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the

relationship of the sums to the range of harm to Authority that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

Company

Initial Here   *AD*  

Authority

Initial Here   *Adam*  

Company agrees to pay (as liquidated damages and not as a penalty) the amounts set forth below.

The amount of Liquidated Damages specified below shall be adjusted annually on the first day of the Rate Year. The adjustment shall be rounded to the nearest cent. Liquidated Damage amounts shall be adjusted to reflect changes in the All Urban Consumers Index (CPI-U), all items, for the San Francisco-Oakland-San Jose, CA, Base Period 1982 – 1984 = 100, not seasonally adjusted, compiled and published by the U. S. Department of Labor, Bureau of Labor Statistics or its successor agency, using the method following:

**1. Collection Reliability**

- a) For each failure to commence service to a new Customer account within seven (7) days after order, which exceed twenty-four (24) such failures annually: \$150.00
- b) For each failure to Collect Solid Waste, Recyclable Materials, Green Waste, Food Scraps, or Construction and Demolition Debris, which has been properly set out for Collection, from an established Customer account on the scheduled Collection day and not Collected within the period described in this Agreement which exceeds twenty (20) such failures quarterly: \$150.00



- c) For each failure to Collect Solid Waste, Recyclable Materials, Green Waste, Food Scraps, or Construction and Demolition Debris, which has been properly set out for Collection, from the same Customer on two (2) consecutive scheduled pickup days: \$150.00
- d) For each failure to prepare for or properly conduct Annual Cleanups including advertising and press releases: \$250.00
- e) For each failure to perform and submit billing reviews: \$250.00

**2. Collection Quality**

- a) For each occurrence of damage to private property which exceeds 36 such occurrences annually: \$250.00
- b) For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments or to place cans upright with lids secured which exceeds twenty (20) such occurrences annually: \$150.00
- c) For each occurrence of excessive noise or discourteous behavior: \$250.00
- d) For each failure to clean up Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris spilled from Containers which exceeds twenty (20) such failures annually: \$150.00
- e) For each day one or more routes Company Collects Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris during unauthorized hours (occurrences in the first ninety (90) days of this Agreement will not apply towards Rate Year 1 total): \$150.00



- |    |   |                          |
|----|---|--------------------------|
| f) | For each day one or more routes Company Collects Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris during unauthorized hours which exceeds twenty (20) such occurrences quarterly (occurrences in the first ninety (90) days of this Agreement will not apply towards Rate Year 1 total): | \$500.00                 |
| g) | In the event twenty (20) days of Collecting Solid Waste, Recyclable Materials, Food Scraps, and Green Waste during unauthorized hours occurs in two consecutive quarters then the Company will add one route (occurrences in the first ninety (90) days of this Agreement will not apply towards Rate Year 1 total).                        | Cost absorbed by Company |
| h) | For each overweight vehicle citation (occurring on or after July 1, 2017):  | \$675.00                 |

**3. Customer Responsiveness**

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|----|--|----------|
| a) | For each failure to initially respond to a Customer complaint within one (1) business day: | \$100.00 |
| b) | For each failure to process Customer complaints to Authority as required by Article 7:     | \$500.00 |
| c) | For each failure to carry out responsibilities for establishing service:                   | \$500.00 |

**4. Public Education**

- |    |   |   |
|----|---|---|
| a) | For each failure to prepare and distribute door hanger, flyer or mailer to Customers regarding specific Collection day, holiday, holiday tree, and clean-up events. | \$150.00<br>per day for each day<br>until mailer is sent. |
| b) | For each failure to conduct community presentations targeted at residents   | \$150.00<br>per event.                                    |

- |  |  |
|--|--|
| c) For each failure to prepare and mail quarterly newsletter to all residents by the end of each quarter                         | \$150.00<br>per day for each day until mailer is sent. |
| d) For each failure to prepare and distribute "how-to" brochures for each of the four (4) business types                         | \$150.00<br>per day.                                   |
| e) For each failure to meet with business associations   | \$150.00<br>per day.                                   |
| f) For each failure to conduct waste audits and submit audit reports   | \$150.00<br>per audit.                                 |
| g) For each failure to provide comprehensive report of findings and suggestions to each company for which an audit was performed | \$150.00<br>per day.                                   |
| h) For each failure to distribute period update for Holiday tree Recycling on or before December 25 of each year                 | \$150.00<br>per day.                                   |
| i) For each failure to develop outreach program for individual Commercial sectors  | \$150.00<br>per day.                                   |
| j) For each failure to prepare and during the Rate Year update to Recycling resource guide                                       | \$150.00<br>per day.                                   |
| k) For each failure to participate in Special Events listed in this Agreement  | \$300.00<br>per event-day.                             |

##### 5. **Timeliness of Submissions to Authority**

Any report shall be considered late until such time as a correct and complete report is received by Authority. For each calendar day a report is late, the daily liquidated damage amount shall be:

- |                       |               |
|-----------------------|---------------|
| a) Quarterly Reports: | \$100 per day |
| b) Annual Reports:    | \$350 per day |

C) **Process.** Liquidated damages will only be assessed after Company has been given the opportunity but failed to rectify the damages as described in this Agreement.

Authority may determine the occurrence of events giving rise to liquidated damages through the observation of its representative or investigation of Customer complaints.

Prior to assessing liquidated damages, Authority shall give Company written notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. Company may review (and make copies at its own expense) all information in the possession of Authority relating to incident(s)/non-performance. Company may, within ten (10) days after receiving the notice, request a meeting with Authority. Company may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. Authority will provide Company with a written explanation of its determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of Authority shall be final.

- D) **Amount.** Authority may reasonably assess liquidated damages for each calendar day or event, as appropriate, that Company is determined to be liable in accordance with this Agreement.
- E) **Timing of Payment.** Company shall pay Authority any liquidated damages assessed by Authority within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, Authority may proceed against the performance bond required by the Agreement or order the termination of the Franchise granted by this Agreement, or both.

### 13.7 Excuse from Performance

The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes, other natural disasters, war, civil insurrection, riots, acts of terrorism, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder. Labor unrest, including, but not limited to, strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by Company's employees or directed at Company is not an excuse from performance and Company shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events.

The party claiming excuse from performance shall, within two (2) days after such party has notice of such cause, give the other party notice of the facts constituting such cause and asserting its claim to excuse under this Section.

The interruption or discontinuance of Company's services caused by one or more of the events excused shall not constitute a default by Company under this Agreement.

Notwithstanding the foregoing, however, if Company is excused from performing its obligations hereunder for any of the causes listed in this Section for a period of seven (7) days or more, Authority shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' notice, in which case the provisions relative to taking possession of Company's land, equipment and other property and engaging Company's Personnel in Article 11 and Article 12 will apply.

### **13.8 Notice, Hearing and Appeal of Authority Breach**

Should Company contend that Authority is in breach of this Agreement, it shall file with the Authority Executive Director a written request with Authority for an administrative hearing. Said request shall be made within ninety (90) days of the event or incident which allegedly gave rise to the breach. Authority shall notify Company of the time and date said hearing shall be held within thirty (30) days of receipt of Company's request. Company shall present its position and all relevant facts after Authority staff has made its presentation. Company shall be notified of Authority's ruling in writing within fourteen (14) days of the administrative hearing.

If Company is not in agreement with the ruling issued by Authority at the administrative hearing, it shall have the right to appeal this ruling to the Authority Board of Directors or to a three (3) Person appeal/review board, one member appointed by the Authority Board of Directors, another member appointed by Company, and the third member selected by the other two appointees. This appeal shall be made in writing to Authority no later than fourteen (14) days after receipt of the administrative hearing ruling. Authority shall notify Company of the time and date the Board will review Company's allegation. Company shall present its position and all relevant facts after staff has made its presentation. Company shall be notified in writing within thirty (30) days of the Board's ruling. The Board's ruling shall be final, and Company shall have no further rights of appeal.

Notwithstanding any other provision to the contrary in this Agreement, Company's sole remedy for any dispute or claim it may have relating to compensation or Rates is to file a



petition for writ of mandate pursuant to C.C.P. Section 1085. Company shall have no cause of action for damages against Authority in relation to any such dispute or claim.

### **13.9 Assurance of Performance**

Each party may, at its option and in addition to all other remedies it may have, demand from the other Party reasonable assurances of timely and proper performance of this Agreement, citing specific reasons for the Party's concern over the other Party's ability to perform, in such form and substance as the Party may require. If the other Party fails to provide satisfactory assurances of timely and proper performance in the form and by the date required by the Party, such failure or refusal shall be an event of default.

## ARTICLE 14 OTHER AGREEMENTS OF THE PARTIES

### 14.1 Relationship of Parties

The parties intend that Company shall perform the services required by this Agreement as an independent Company engaged by Authority and not as an officer or employee of Authority, nor as a partner of or joint venture with Authority. No employee or agent or Company shall be or shall be deemed to be an employee or agent of Authority. Except as expressly provided herein, Company shall have the exclusive control over the manner and means of conducting the Collection of Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris and the Processing of Recyclable Materials performed under this Agreement, and all Persons performing such services. Company shall be solely responsible for the acts and omissions of its officers, employees, Companies, subcontractors and agents. Neither Company nor its officers, employees, Companies, subcontractors and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to Authority employees by virtue of their employment with Authority.

### 14.2 Compliance with Law

In providing the services required under this Agreement, Company shall at all times, at its sole cost, comply with all applicable laws and regulations of the United States, the State of California, and local agencies. Authority shall comply with all applicable regulations promulgated by federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term.

### 14.3 Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

### 14.4 Jurisdiction

Any lawsuits between the parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits.

With respect to venue, the parties agree that this Agreement is made in and will be performed in Santa Clara County.

## **14.5 Assignment**

### **14.5.1 Company's Assignment**

Except as may be provided for in Article 12 (Authority's Right to Perform Service), Company shall not assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of the other party. Any such assignment made without the consent of the other party shall be void and the attempted assignment shall constitute a material breach of this Agreement.

For purposes of this Section when used in reference to Company, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of Company's assets dedicated to service under this Agreement to a third party including the account receivables from Authority Customers; (ii) a sale, exchange or other transfer of outstanding common stock of Company to a third party provided said sale, exchange or transfer may result in a change of control of Company, excluding stock transfers among the existing shareholders; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which results in a change of Ownership or control of Company; (iv) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Company's property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of Ownership, or change of control of Company.

Company acknowledges that this Agreement involves rendering a vital service to Authority's residents and businesses, and that Authority has selected Company to perform the services specified herein based on (1) Company's experience, skill and reputation for conducting its Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris management operations in a safe, effective and responsible fashion, at all times in keeping with applicable Environmental Laws, regulations and best Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris management practices, and, (2) Company's financial resources to maintain the required equipment and to support its indemnity obligations to Authority

under this Agreement. Authority has relied on each of these factors, among others, in choosing Company to perform the services to be rendered by Company under this Agreement.

If Company requests Authority's consideration of and consent to an assignment, Authority may reasonably deny or approve such request. No request by Company for consent to an assignment need be considered by Authority unless and until Company has met the following requirements:

- A) Company shall undertake to pay Authority its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment;
- B) Company shall furnish Authority with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years;
- C) Company shall furnish Authority with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris management experience on a scale equal to or exceeding the sale of operations conducted by Company under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any federal, state or local agency having jurisdiction over its Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris management operations due to any significant failure to comply with state, federal or local Environmental Laws and that the assignee has provided Authority with a complete list of such citations and censures; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris management practices in accordance with sound Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris management practices in full compliance with all federal, state and local laws regulating the Collection of Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and



Demolition Debris including Hazardous Substances; and, (v) of any other information required by Authority to ensure the proposed assignee can fulfill the Terms of this Agreement in a timely, safe and effective manner.

Under no circumstances shall Authority be obliged to consider any proposed assignment by Authority if Company is in default at any time during the period of consideration.

#### **14.5.2 Authority's Assignment**

Authority may assign and delegate all rights and duties of the Authority, and its Council, Boards and Officials, its rights under this Agreement to any joint powers authority or other public agency; provided, however, that this Agreement will continue to govern only the Collection and Transportation of Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris and Processing of Recyclable Materials generated within Authority.

#### **14.6 Contracting or Subcontracting**

Company shall not engage any Companies or subcontractors for Collection or Transportation of Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris and Processing of Recyclable Materials without the prior written consent of Authority.

#### **14.7 Binding on Assigns**

The provisions of this Agreement shall inure to the benefit to and be binding on the permitted assigns of the parties.

#### **14.8 Transition to Next Company**

If the transition of services to another company occurs through expiration of term, default and termination, or otherwise, Company will cooperate with Authority and subsequent company(ies) to assist in an orderly transition which will include Company providing route lists and billing information. Company will not be obliged to sell Collection vehicles, Bins and Containers to the next company. Depending on Company's circumstances at the point of transition, Company at its option may enter into negotiations with the next company to sell (in part or all) Collection vehicles, Bins and Containers, except Carts. The Authority has the option to maintain ownership of Carts at the end of the term of this Agreement.

#### **14.9 Parties in Interest**

Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons other than the parties to it and their representatives, successors and permitted assigns.

#### **14.10 Waiver**

The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach of violation of the same or any other provision. The subsequent acceptance by either party of any moneys which become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement.

#### **14.11 Condemnation**

Authority fully reserves the rights to acquire Company's property utilized in the performance of this Agreement, by purchase or through the exercise of the right of eminent domain. This provision is additive, and not intended to alter the rights of the parties set forth in Article 12.

#### **14.12 Notice**

All notices, demands, requests, proposals, approvals, consents and other communications which this Agreement requires, authorizes or contemplates shall be in writing and shall either be personally delivered to a representative of the parties at the address below or be deposited in the United States mail, first class postage prepaid, addressed as follows:

If to Authority:

Executive Director  
West Valley Solid Waste Management Authority  
c/o HF&H Consultants, LLC  
201 North Civic Drive, Suite 230  
Walnut Creek, CA 94596

If to City/Town:

City Manager  
City of Campbell  
70 North First Street  
Campbell, CA 95008

City Manager  
City of Monte Sereno  
18041 Saratoga – Los Gatos Road  
Monte Sereno, CA 95050

City Manager  
City of Saratoga  
13777 Fruitvale Avenue  
Saratoga, CA 95070

Town Manager  
Town of Los Gatos  
110 East Main Street  
Los Gatos, CA 95030

If to Company:

Mr. Paul Nelson  
General Manager  
West Valley Collection & Recycling, LLC  
1333 Old Oakland Road  
San Jose, CA 95112

With a copy to:

Waste Connections, Inc.  
Attn: Legal Department  
3 Waterway Square Place, Suite 110  
The Woodlands, Texas 77380

The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this Section.

Notice shall be deemed given on the day it is personally delivered or, if mailed, three days from the date it is deposited in the mail.

#### **14.13 Representatives of the Parties**

References in this Agreement to the "Authority" shall mean the Authority Board of Directors and all actions to be taken by Authority shall be taken by the Authority Board of Directors except as provided below. The Authority Board of Directors may delegate, in writing, authority to the Authority Executive Director, and/or to other Authority employees and may

permit such employees, in turn, to delegate in writing some or all of such authority to subordinate employees. Company may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

Company shall, by the Effective Date, designate in writing a responsible officer who shall serve as the representative of Company in all matters related to the Agreement and shall inform Authority in writing of such designation and of any limitations upon his or her authority to bind Company. Authority may rely upon action taken by such designated representative as actions of Company unless they are outside the scope of the authority delegated to him/her by Company as communicated to Authority.

#### **14.14 Authority Free to Negotiate with Third Parties**

During the Term of this Agreement, Authority may investigate all options for the Collection, Transportation, Processing and Disposal of Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris after the expiration of the Term. Without limiting the generality of the foregoing, 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 may negotiate and execute agreements for such services which will take effect upon the expiration or earlier termination under Section 13.1 of this Agreement.

#### **14.15 Compliance with Municipal Code**

Company shall comply with those provisions of the municipal code of City which are applicable, and with any and all amendments to such applicable provisions during the term of this Agreement.

#### **14.16 Criminal Activity of Company**

##### **14.16.1 Criminal Activity**

For purpose of this Section, Criminal Activity shall mean any of the following events or circumstances:

**A. Convictions.** The entry against any Company Party of a criminal conviction or a permanent mandatory or prohibitory injunction from a court, municipality or regulatory agency of competent jurisdiction based on acts taken in his or her official capacity on behalf of Company with respect to:



1. Fraud or criminal offense in connection with obtaining, attempting to obtain, procuring or performing a public or private agreement related to Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris of any kind (including Collection, Transportation, transfer, Processing, Composting or Disposal), including this Agreement or any amendment thereto;
2. Bribery or attempting to bribe a public officer or employee of a local, State, or Federal agency;
3. Embezzlement, extortion, racketeering, false claims, false statements, forgery, falsification or destruction of records, obstruction of justice, knowingly receiving stolen property, theft, or misprision (failure to disclose) of a felony;
4. Unlawful Disposal of material quantities of Hazardous Waste or Designated Waste the occurrence of which any of Company Party knew or should have known;
5. Violation of antitrust laws, including laws relating to price-fixing, bid-rigging and sales and market allocation, and of unfair and anti-competitive trade practices laws, including with respect to inflation of fees for Solid Waste, Recyclable Materials, Green Waste, Food Scraps, and Construction and Demolition Debris Collection, Transportation, Processing or Disposal;
6. Violation of securities laws;
7. Felonies.

**B. Pleas.** A conviction shall mean an entry of a plea of "guilty," "nolo contendere," or "no contest" by a Company Party based on acts taken in his, her, or its official capacity on behalf of Company with respect to the conduct described in preceding subdivision (1) of this Section.

#### 14.16.2 Notice

Company shall notify Authority in writing within five calendar days of occurrence of any Criminal Activity.

#### 14.16.3 Company's Cure

Upon occurrence of any Criminal Activity, Company shall immediately do or cause to be done all of the following:

**A.** Terminate from employment or remove from office any offending individual Company Party, unless otherwise directed or ordered by a court or regulatory agency of competent jurisdiction or authority, and unless that termination would constitute a breach of any labor agreement entered into by Company, or

**B.** In the event of a court or regulatory agency order prohibiting termination, eliminate participation by any individual offending Company Party in any management, supervision, or decision activity that affects or could affect, directly or indirectly, the performance of the Company under this Agreement.

#### **14.16.4 Transfer and Hiring**

Company shall not allow the hiring or transfer of any individual who has committed Criminal Activity to the position of Company representative, field supervisor, officer, or director who is directly or indirectly responsible for performance of this Agreement without obtaining prior written consent of Authority, following full disclosure to Authority of the facts and circumstances surrounding such Criminal Activity.

#### **14.16.5 Authority's Remedy**

In the event of any occurrence of Criminal Activity, the Authority, in its sole discretion, may terminate the Agreement within 30 calendar days written notice to Company, or may impose other sanctions (which may include financial sanctions, temporary suspensions, or any other condition deemed appropriate short of termination) as it will deem proper, in the following events:

**A.** Company fails to comply with the foregoing obligation of this Section, or

**B.** The Criminal Activity concerns or relates directly or indirectly to this Agreement.

Company shall be given the opportunity to present evidence in mitigation during the thirty (30) calendar day notice period.

#### **14.17 Privacy**

Company shall strictly observe and protect the rights of privacy of Customers. Information identifying individual Customers or the composition or contents of a Customer's waste stream shall not be revealed to any Person, governmental unit, private agency, or company, unless upon the authority of a court of law, by statute, or upon valid authorization of the Customer. This provision shall not be construed to preclude Company from preparing,

participating in, or assisting in the preparation of waste characterization studies or waste stream analyses which may be required by AB 939.

## ARTICLE 15 MISCELLANEOUS AGREEMENTS

### 15.1 Entire Agreement

This Agreement, including the Exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein.

### 15.2 Section Headings

The article headings and section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

### 15.3 References to Laws and Other Agreements

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided. This Agreement supersedes any and all agreements heretofore entered into by the parties and Authority.

### 15.4 Interpretation

This Agreement, including the Exhibits attached hereto, shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

### 15.5 Agreement

This Agreement may not be modified or amended in any respect except by a writing signed by the parties.

### 15.6 Severability

If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement which shall be enforced as if such invalid or unenforceable provision had not been contained herein.



**15.7 Exhibits**

Each of the Exhibits identified as Exhibit "1" through "15" is attached hereto and incorporated herein and made a part hereof by this reference. In the case of conflict between the Exhibits and this Agreement, the Agreement shall govern.

**15.8 Non-Waiver Provision**

Failure of either party to exercise any of the remedies set forth herein within the time periods provided for shall not constitute a waiver of any rights of that party with regard to that failure to perform or subsequent failures to performing whether determined to be a breach, excused performance or unexcused defaults by the other party.

IN WITNESS WHEREOF, Authority and Company have executed this Agreement as of the day and year first above written.

WEST VALLEY SOLID WASTE  
MANAGEMENT AUTHORITY  
("Authority")

By:   
AUTHORITY

ATTEST: \_\_\_\_\_  
AUTHORITY CLERK

APPROVED AS TO FORM:

WEST VALLEY COLLECTION & RECYCLING,  
LLC  
("COMPANY")  
By: Waste Connections of California, Inc.,  
Manager

By:   
Name: Ronald J. Mittelstaedt  
Title: Chief Executive Officer

  
AUTHORITY ATTORNEY

By:   
Name: Patrick J. Shea  
Title: Secretary