

NON-EXCLUSIVE FRANCHISE AGREEMENT
BETWEEN
WEST VALLEY SOLID WASTE MANAGEMENT AUTHORITY
AND

FOR
CONSTRUCTION & DEMOLITION (C&D) DEBRIS COLLECTION
SERVICES

MARCH 1, 2024

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- A. Schedule for Liquidated Damages
- B. Secretary’s Certification
- C. Statement of Applicant’s Understanding and Representations

NON-EXCLUSIVE FRANCHISE AGREEMENT
BETWEEN
WEST VALLEY SOLID WASTE MANAGEMENT AUTHORITY
AND

FOR CONSTRUCTION & DEMOLITION (C&D) DEBRIS
COLLECTION SERVICES

This Non-Exclusive Franchise Agreement (Agreement) is made and entered into this _____ day of _____, 20____, by and between the West Valley Solid Waste Management Authority, (Authority) and _____ (hereinafter referred to as the Contractor).

RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

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

WHEREAS, among the powers granted the Authority is the power to arrange for the Franchise Services.

WHEREAS, the Authority is obligated to protect the public health and safety of the residents within the boundaries of the Authority and has determined that arrangements for a franchise agreement defining non-exclusive rights be awarded to qualified companies to provide for C&D Debris Collection services.

WHEREAS, the Legislature of the State of California by enactment of the Short-Lived Climate Pollutants Act of 2016 (SB 1383), directed the responsible State agency, and all local agencies, to have a mechanism by which they can enforce CALGreen requirements.

WHEREAS, CALGreen Building Code establishes and routinely adjusts requirements for specified Diversion levels from covered C&D projects.

WHEREAS, each of the Member Agencies that form the Authority requires all haulers providing C&D Debris Collection services for Permitted Materials in the Authority to obtain a Non-Exclusive Franchise in order to regulate this business, provide risk management protections to the communities, ensure its orderly operation, achieve its Diversion goals, and to minimize the potential for adverse effects it may have on the local environment.

WHEREAS, the Authority has determined through appropriate due diligence conducted on Contractor's Application that the Contractor, by demonstrated experience, reputation, and capacity, is qualified to provide for the C&D Debris Collection of Permitted Materials within the corporate limits of the Authority and the Transportation of such material to appropriate places of Recycling, Processing and/or Disposal, and can provide insurance consistent with the Authority's requirements. The Authority desires that Contractor be engaged to perform such services on the basis set forth in this Agreement.

WHEREAS, Contractor intends to use the Authority's streets, other public rights-of way, and infrastructure to provide C&D Debris Collection services to the Authority's residents and businesses.

WHEREAS, the Authority intends to receive just and reasonable fees from the Contractor for Authority's administration of the Agreement and for Contractor's use of the Authority streets, other public rights-of-way, and infrastructure which the Authority may lawfully impose and the companies are obligated to pay.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained in this Agreement and for other good and valuable consideration, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

For purposes of this Agreement, unless a different meaning is clearly required, the following words and phrases shall have the following meanings respectively ascribed to them by this Article and shall be capitalized throughout this Agreement:

"Act" means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), as amended, supplemented, superseded, and replaced from time to time.

"Agreement" means this Agreement between the Authority and Contractor for C&D Debris Collection Services, including all exhibits, and any future amendments hereto.

"Applicable Law" means all Federal, State, and local laws, regulations, rules, orders, judgments, degrees, permits, approvals, or other requirements of any governmental agency having jurisdiction over the Roll-Off Container Collection of Permitted Materials that are in force on the Effective Date and as they may be enacted, issued, or amended during the Term of this Agreement.

"Approved Facility(ies)" means any one (1) of or any combination of a Certified Construction and Demolition Debris Processing Facility and Designated Disposal Site.

"Authority" means the West Valley Solid Waste Management Authority formed by the Member Agencies.

"Authority Contract Manager" means the Authority's Executive Director, or their designee, who is responsible for the administrative management of this Agreement.

“Authority Service Area” means the geographic boundaries of the Member Agencies collectively, and includes all of the territory lying within their boundaries as presently existing or as such boundaries may be modified during the Term of this Agreement.

“Average Index Value” means the sum of the monthly index values available during twelve (12) month calendar year period divided by twelve (12), in the case of indices published monthly, or the sum of the bi-monthly index values divided by six (6), in the case of indices published bi-monthly.

“Business Days” mean days during which Authority offices are open to do business with the public.

“CALGreen” means the California Green Building Standards Code, California Code of Regulations, Title 24, Part 11 as amended July 1, 2019 and effective January 1, 2020, as amended, supplemented, superseded and replaced from time to time.

“Certified Construction and Demolition (C&D) Processing Facility” means any of the CALGreen-compliant facilities, used to Process C&D, which have been approved by the Authority.

“Change in Law” means any of the following events or conditions that have a material and adverse effect on the performance by the Parties of their respective obligations under this Agreement (except for payment obligations):

- (A) The enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation on or after the Effective Date of any Applicable Law; or
- (B) The order or judgment of any governmental body, on or after the Effective Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the Authority or of the Contractor, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

“Collect” or “Collection” means the act of Collecting Permitted Materials and other material at the place of generation in the Authority.

“Commercial” shall mean of, from or pertaining to non-Residential Premises where business activity is conducted, including, but not limited to, retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding businesses conducted upon Residential property which are permitted under applicable zoning regulations and are not the primary use of the property.

“Construction and Demolition Debris”, “C&D Debris”, or “C&D” includes discarded building materials, packaging, debris, and rubble resulting from construction, alteration, remodeling, repair or demolition operations on any pavements, excavation projects, houses, Commercial buildings, or other structures, excluding Excluded Materials. Construction and Demolition Debris includes rocks, soils, tree remains, and other yard trimmings that result from land clearing or land development operations in preparation for construction.

“Contractor” means _____ (insert contractor’s name), a _____ (insert corporation, sole proprietorship, partnership as appropriate) organized and

operating under the laws of the State of California and its officers, directors, employees, agents, companies, and Subcontractors.

“Contractor’s Application” means an application form, submitted by Contractor for consideration by the Authority for issuance of a Non-Exclusive Franchise Agreement for C&D Debris Collection Services.

“Contractor Party(ies)” shall mean Contractor, officers, directors, management employees, or fiscal employees (where “management employee” means any employee with direct or indirect responsibility for direction and control over the Contractor’s activities under this Agreement and “fiscal employee” means an employee with direct or indirect responsibility and control duties relating to financial matters under this Agreement).

“CPI-U” means the Consumer Price Index, All Urban Consumers, all items, not seasonally adjusted San Francisco-Oakland-Hayward Metropolitan Area compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics.

“Criminal Activity” means those activities described in Section 12.12.1.

“Customer” means the Person whom Contractor submits billing invoice to and collects payment from for Collection services provided.

“Designated Disposal Site” means the Guadalupe Landfill at 15999 Guadalupe Mines Road in San Jose, which is owned and operated by Waste Management of the South Bay, Incorporated, unless the Authority designates, in writing, a different Disposal Facility.

“Designated Waste” means non-Hazardous Wastes that may pose special Disposal problems because of its potential to contaminate the environment and that may be Disposed of only in Class II Disposal sites or Class III Disposal sites pursuant to a variance issued by the California Department of Health Services.

“Disposal or Dispose (or variation thereof)” means the final disposition of Solid Waste at a Designated Disposal Site.

“Diversion” means activities that reduce or eliminate the amount of Solid Waste from Disposal including, but not limited to, Recycling, Processing, composting, recovery, or reuse.

“Effective Date” means the date on which the latter of the two (2) Parties signs this Agreement, subject to the provisions of Section 2.2.

“Federal” means belonging to or pertaining to the national general government of the United States.

“Generator” means any Person whose act or process produces Permitted Materials, or whose act first causes Permitted Materials to become subject to regulation.

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

“Holidays” are defined as New Year’s Day, Thanksgiving Day, and Christmas Day.

“Infectious Waste” means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities and other similar establishments, as defined in Health and Safety Code Section 25117.5.

“Liquidated Damages” means the amounts due by Contractor to Authority for failure to meet specific quantifiable standards of performance as described in Section 11.4 and Exhibit A.

“Member Agencies” means the Cities of Campbell, Monte Sereno, and Saratoga, and the Town of Los Gatos which form the Authority.

“Mixed C&D Debris” means material containing both recyclable C&D and nonrecyclable C&D that has not been separated, intended for Collection and Transport to a Certified C&D Processing Facility.

“Non-Exclusive Franchise Agreement” means, with the exception of this Agreement, any other contract(s) to Collect Roll-Off Containers between the Authority and Contractor for Roll-Off Container Collection of Permitted Materials by other franchisees including all exhibits, and any future amendments hereto.

“Owner” means the Person(s) holding legal title to real property and/or any improvements thereon and shall include the Person(s) listed on the latest equalized assessment roll of the County Assessor, or as otherwise defined in 14 CCR Section 18982(a)(57)

“Occupant” means the Person who occupies a Premises.

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

“Party or Parties” refers to the Authority and Contractor, individually or together.

“Permitted Materials” refers to C&D Debris resulting from a permitted construction and/or demolition project.

“Person(s)” means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the Authority, and special purpose districts.

“Premises” means any land or building in the Authority where Permitted Materials are generated or accumulated.

“Processing” means to prepare, treat, or convert through some special method.

“Rates” means the charges and fees Contractor bills and collects from each Customer receiving service pursuant to this Agreement.

“Recycle or Recycling” means the process of Collecting, sorting, cleansing, treating, and reconstituting materials for the purpose of using the altered form in the manufacture of a new product. Recycling does not include burning, incinerating, or thermally destroying Solid Waste.

“Residential” shall mean of, from, or pertaining to a single-family Premises, multi-plex, or multi-family Premises including, but not limited to, single-family homes, apartments, condominiums, townhouse complexes, mobile home parks, and cooperative apartments.

“Residue” or **“Residual”** means those materials that, after Processing, are Disposed rather than Recycled, composted, or otherwise recovered due to either the lack of markets for materials or the inability of the Processing Facility to capture and recover the materials.

“Roll-Off Container” means a Drop Box used for Collection of Permitted Materials and serviced by a Roll-Off Collection Truck. Roll-Off Containers shall also include Trailers. Roll-Off Containers with capacities of less than eight (8) cubic yards are excluded from the scope of this Agreement.

“Roll-Off Collection Truck” means a Collection vehicle with a mechanical device such as a winch that pulls or loads a Roll-Off Container onto the truck bed or attached Trailer and separately Transports each Roll-Off Container to an Approved Facility.

“SB 1383” means Short-Lived Climate Pollutants Act of 2016 (an act to add Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code), establishing methane emissions reduction targets in a Statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.

“Solid Waste” means Solid Waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, §40191 and regulations promulgated hereunder. Excluded from the definition of Solid Waste are Unpermitted Waste, C&D Debris, Source Separated C&D Debris, Mixed C&D Debris, Hazardous Waste, Infectious Waste, Designated Waste, and radioactive waste. Notwithstanding any provision to the contrary, “Solid Waste” may include de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of household Hazardous Waste in compliance with Section 41500 and 41802 of the California Public Resources Code.

“Source Separated C&D Debris” means the segregation of C&D Debris, for the purpose of Diversion, by or for the Generator thereof at the service address at which the materials were generated, and of materials designated for separate Collection for some form of Recycling, Processing, composting, recovery, or reuse, in which a minimum of 90% is recovered.

“Source Separated Recycling Facility” means any facility used under this Agreement that accepts Source Separated C&D Debris intended for Recycling, composting, recovery, or reuse, in which a minimum of ninety percent (90%) is recovered.

“State” means the State of California.

“Subcontractor” means a party who has entered into a contract, express or implied, with the Contractor for the performance of an act that is necessary for the Contractor’s fulfillment of its obligations under this Agreement.

“Term” means the Term of this Agreement, including extension periods if granted, as provided for in Article 3.

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

“Tonnage” means the total weight in Tons Collected, Recycled, composted, Diverted, or Disposed of, as the context requires.

“Trailer” means any unpowered vehicle that is designed to be detached from another, powered, vehicle and is used for the purposes of holding and/or Transporting Discarded Materials.

“Transportation” or **“Transport”** means the act of conveying Collected materials from one location to another.

“Unpermitted Waste” means wastes or other materials that the Designated Disposal Site may not receive under their Permits, including:

- (A) All materials that the Designated Disposal Site are not permitted to accept, *excluding* white goods with chlorinated fluorocarbons and capacitors removed, and other materials that Contractor accepts and safely handles, Recycles, or Disposes.
- (B) Asbestos, including friable materials that can be crumbled with pressure and are therefore likely to emit fibers, being a naturally occurring family of carcinogenic fibrous mineral substances, which may be Hazardous Materials if it contains more than one percent (1%) asbestos.
- (C) Ash Residue from the incineration of Solid Wastes, including Solid Waste, Infectious Waste described in Item (H) below, wood waste, sludge not meeting at a minimum Class B standards as defined by Title 40 of the Code of Federal Regulations, Part 503 (The Standards for the Use or Disposal of Sewage Sludge) and agricultural wastes.
- (D) Auto shredder “fluff” consisting of upholstery, paint, plastics, and other non-metallic substances, which remain after the shredding of automobiles.
- (E) Dead animals larger than one hundred (100) pounds.
- (F) Hazardous Materials.
- (G) Universal Waste defined by 22 CCR Subsections 66273.1 through 66273.9, including, but not limited to batteries, fluorescent light bulbs, mercury switches, and E-waste.
- (H) Industrial solid or semi-Solid Wastes that pose a danger to the operation of the Designated Disposal Site, including cement kiln dust, or Process Residues.
- (I) Infectious Wastes that have disease transmission potential and are classified as Hazardous Wastes by the State Department of Health Services, including pathological and surgical wastes, medical clinic wastes, wastes from biological laboratories, syringes, needles, blades, tubing, bottles, drugs, patient care items that as linen or personal or food service items from contaminated areas, chemicals, personal hygiene wastes, and carcasses used for medical purposes or with known infectious diseases, where “Infectious Waste” means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries,

blood banks, mortuaries, veterinary facilities and other similar establishments that are identified in the California Health and Safety Code Section 25117.5.

- (J) Liquid wastes that are not spadeable, usually containing less than fifty percent (50%) solids, including cannery and food Processing wastes, landfill leachate and gas condensate, boiler blowdown water, grease trap pumpings, oil and geothermal field wastes, septic tank pumpings, rendering plant byproducts, sewage sludge not meeting certain quality criteria (i.e., unclassified sludge less than B), and those liquid wastes that may be Hazardous Wastes.
- (K) Radioactive wastes under Chapter 7.6 (commencing with Section 25800) of Division 20 of the State Health and Safety Code, and any waste that contains a radioactive material, the storage or Disposal of which is subject to any other State or Federal regulation.
- (L) Sewage sludge comprised of human (not industrial) Residue, excluding grit or screenings, removed from a wastewater treatment facility or septic tank, whether in a dry or semi-dry form not meeting certain quality criteria (i.e., unclassified sludge less than "B").
- (M) Designated Waste if not permitted at the Designated Disposal Site under Applicable Law, including Permits.

The definition of Unpermitted Waste will be promptly amended to reflect any applicable changes in permits or Applicable Law.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES OF THE CONTRACTOR

2.1 Representations and Warranties

The Contractor, by execution of this Agreement, represents and warrants the following to the Authority, for the purpose of inducing Authority to enter into this Agreement and to consummate the transactions contemplated hereby:

- A. **Corporate Status.** Contractor is duly organized, validly existing, and in good standing under the laws of the State. Contractor is qualified to transact business in the Authority Service Area and State and has the power to own its properties and to carry-on its business as now owned and operated and as required by this Agreement.
- B. **Authorization.** Contractor has the authority to enter this Agreement and perform its obligations under this Agreement. The Board of Directors of Contractor (or the shareholders, if necessary), sole proprietor, or partners have taken all actions required by law, its articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement. The Person signing this Agreement on behalf of Contractor represents and warrants that they have authority to do so and the corporate secretary's certificate in Exhibit B confirms this. This Agreement constitutes the legal, valid, and binding obligation of the Contractor.

- C. **Agreement Will Not Cause Breach.** To the best of Contractor's knowledge after reasonable investigation, the execution or delivery of this Agreement or the performance by Contractor of its obligations hereunder does not conflict with, violate, or result in a breach: (i) of any law or governmental regulation applicable to Contractor; (ii) any term or condition of any judgment, order, or decree of any court, administrative agency or other governmental authority; or, (iii) any Agreement or instrument to which Contractor is a Party or by which Contractor or any of its properties or assets are bound, or constitute a default thereunder.
- D. **No Litigation.** To the best of Contractor's knowledge after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency, or instrumentality decided, pending, or threatened against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would:
1. Materially adversely affect the performance by Contractor of its obligations hereunder.
 2. Adversely affect the validity or enforceability of this Agreement.
 3. Have a material adverse effect on the financial condition of Contractor, or any surety or entity guaranteeing Contractor's performance under this Agreement.
- E. **No Adverse Judicial Decisions.** To the best of Contractor's knowledge after reasonable investigation, there is no judicial decision that would prohibit this Agreement or subject this Agreement to legal challenge.
- F. **No Legal Prohibition.** To the best of Contractor's knowledge after reasonable investigation, there is no Applicable Law in effect on the date Contractor signed this Agreement that would prohibit the Contractor's performance of its obligations under this Agreement and the transactions contemplated hereby.
- G. **Contractor's Statements.** The Contractor's Application and any other supplementary information submitted to the Authority that the Authority has relied on in entering this Agreement, do not: (i) contain any untrue statement of a material fact, or (ii) omit to state a material fact that is necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.
- H. **Contractor's Investigation.** Contractor has made an independent investigation (or satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed hereunder. Contractor has considered such matters in entering this Agreement to provide services in exchange for the compensation provided for under the terms of this Agreement.
- I. **Ability to Perform.** Contractor possesses the business, professional, and technical expertise to Collect, Transport, Recycle, Process, and Dispose of Permitted Materials generated in the Authority. Contractor possesses the equipment, facility(ies), and employee resources required to perform its obligations under this Agreement.

ARTICLE 3

TERM OF AGREEMENT

3.1 Effective Date

Contractor may provide the Roll-Off Container Collection and Transportation services authorized by this Agreement commencing on the Effective Date of March 1, 2024.

3.2 Conditions to Effectiveness of Agreement

The obligation of Authority to permit this Agreement to become effective and to perform its undertakings provided for in this Agreement is subject to the satisfaction of all the conditions below, each of which may be waived, in written form, in whole or in part by Authority.

- A. **Accuracy of Representations.** The representations and warranties made in Article 2 of this Agreement are true and correct on and as of the Effective Date of this Agreement.
- B. **Absence of Litigation.** There is no litigation pending on the Effective Date in any court challenging the award or execution of this Agreement or seeking to restrain or enjoin its performance.
- C. **Furnishings of Insurance.** Contractor has furnished evidence of the insurance required by Article 10 that is satisfactory to the Authority.
- D. **Effectiveness of Authority Board of Directors Action.** The Authority's Board of Directors' action approving this Agreement shall have become effective and all Parties shall have signed the Agreement pursuant to Applicable Law prior to or on the Effective Date, provided that no restraining order of any kind has been issued.

3.3 Initial Term

The initial Term of this Agreement shall commence on the Effective Date and continue in full force for two (2) years, until February 28, 2026. The Term may be extended pursuant to Section 3.4 or terminated early in accordance with Section 11.2.

3.4 Automatic Extension Unless Terminated

This Agreement shall be automatically extended on the final day of February for an additional Term of one (1) year, unless: 1) either Party gives notice to the other of its intent to terminate the Agreement; or, 2) the Agreement is otherwise terminated pursuant to the requirements of Section 11.2. If either Party wishes to terminate the Agreement, it shall give written notice of such intent to terminate to the other Party at least ninety (90) calendar days prior to expiration of the initial or any extended Term of the Agreement.

ARTICLE 4

SCOPE OF AGREEMENT

4.1 Scope of Agreement

This Agreement, granted to the Contractor, authorizes Contractor to Collect and Transport C&D Debris placed by Generators in Roll-Off Containers for Collection, provided that the Customer has voluntarily arranged for Contractor to provide Collection services.

The Contractor shall be responsible for the following services:

- A. Collecting C&D Debris placed by Customers in Roll-Off Containers for permanent or temporary Collection as requested by Customer consistent with Section 5.1.
- B. Providing each Customer, upon or prior to the delivery of Roll-Off Container, a printed list that specifies the C&D Debris allowed in the Roll-Off Container and Unpermitted Waste that cannot be placed in the Roll-Off Container (e.g., Hazardous Wastes). Such list shall be reviewed and approved by the Authority Contract Manager.
- C. Providing in-person site visits at large C&D Collection Sites within the Authority Service Area to train staff on proper sorting for C&D Containers consistent with Section 5.5.
- D. Transporting Collected Source Separated and Mixed C&D Debris intended for Recycling to the Approved Processing Facility and any C&D Debris intended for Disposal to the Designated Disposal Facility.
- E. Furnishing all labor, supervision, vehicles, Roll-Off Containers, other equipment, materials, supplies, and all other items and services necessary to perform its obligations under this Agreement.
- F. Paying all expenses related to provision of services required by this Agreement including, but not limited to, per load fees, taxes, regulatory fees, Collection costs, Transportation costs, Processing costs, Disposal costs, utilities, etc.
- G. Providing all services required by this Agreement in a thorough and professional manner so that residents, businesses, and the Authority are provided timely, reliable, courteous, and high-quality service at all times.
- H. Performing all services in substantial accordance with this Agreement at all times using best industry practice for comparable operations.
- I. Complying with Applicable Law.
- J. Performing or providing all other services necessary to fulfill its obligations under this Agreement.

The enumeration and specification of particular aspects of service, labor, or equipment requirements shall not relieve Contractor of the duty of accomplishing all other aspects necessary to fulfill its

obligations under this Agreement whether such requirements are enumerated elsewhere in the Agreement or not.

4.2 Limitations to Scope

The scope of the Agreement shall be non-exclusive and shall be limited to C&D Debris. Permitted Materials may be Collected and Transported by other Persons provided that such Persons do so in accordance with an approved Non-Exclusive Franchise Agreement with the Authority, including but not limited to the following:

- A. **Permitted Materials Collected by Other Approved Parties.** Permitted Materials Collected by a Party that has executed a Non-Exclusive Franchise Agreement with the Authority or that has been otherwise allowed or permitted to operate without a Non-Exclusive Franchise Agreement by the Authority's Contract Manager.
- B. **Permitted Materials Collected by Authority's Franchisee.** Contractor explicitly acknowledges that the Authority has issued a separate exclusive franchise agreement for Collection of Solid Waste, Recyclable Materials, and Organic Materials and Contractor has no right to Collect any such exclusive materials under this Agreement.
- C. **Donated Recyclable Materials.** Any items that are Source Separated at any Premises by the Generator and sold or donated to other Persons.
- D. **Materials Hauled by Owner or Occupant, or its Contractor.** Permitted Materials that are removed from any Premises and are Transported to an Approved Facility by (i) the Owner or Occupant of such Premises, (ii) by full-time employee of Owner or Occupant that uses the Owner's or Occupant's equipment to Transport materials; or (iii) by a Construction and/or Demolition contractor performing Construction and/or Demolition work at the Premises, whose removal of the Permitted Materials is incidental to the service being performed, provided that such Contractor does not use a Roll-Off Container, and such Contractor removes materials at no additional or separate fee using Contractor's employees and Contractor's equipment. For the purposes of this Section, the term "incidental to the service being performed" shall mean that the material generated and requiring hauling is created by the activity of the Contractor performing the hauling. For example, a construction contractor who remodels a kitchen can haul those materials in a fixed body truck without infringing on the scope of this Agreement. However, as an alternate example, a contractor whose sole responsibility is to clean up a site and remove materials generated by other contractors or the Owner or Occupant would be subject to the requirements of this Agreement. In the event of a dispute between the Contractor and Authority Contract Manager regarding the applicability of this Section, the Authority's Contract Manager shall make all final determinations.

4.3 Authority's Right to Grant Multiple Non-Exclusive Agreements

The Authority may grant, to an unlimited number of additional Persons, similar Non-exclusive Franchise Agreements for C&D Debris Collection Services.

4.4 Agreement Consistent with Applicable Law

This Agreement and scope of this franchise shall be interpreted to be consistent with Applicable Law, now and throughout the Term. If future judicial interpretations of current law or new laws, regulations, or judicial interpretations limit the ability of the Authority to lawfully provide for the scope of services as specifically set forth herein, Contractor agrees that the scope of the Agreement will be limited to those services and materials that may be lawfully provided and that the Authority shall not be responsible for any lost profits or losses claimed by Contractor to arise out of limitations of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of Contractor to minimize the financial impact of such future judicial interpretations or new laws.

4.5 Ownership of Materials

Once Permitted Materials are placed in a Roll-Off Container for Collection by Customer, ownership and the right to possession of such materials shall transfer directly from the Customer to Contractor.

4.6 Notification to Authority of Non-Franchised Haulers

If Contractor can produce evidence that other Persons are Collecting Permitted Materials and do not have rights to do so, as granted by Non-Exclusive Franchise Agreement with the Authority or otherwise, or in a manner that is not consistent with the Member Agency's Construction and Demolition Debris ordinances and regulations. Contractor shall notify the Authority in writing, within five (5) calendar days of Contractor witnessing such circumstances. The Contractor's notice shall include the name and telephone number of the Person or company Collecting Permitted Materials (if known), the date the Contractor witnessed the event, the location of the Roll-Off Container along with Contractor's evidence of the violation of the rights granted by this Non-Exclusive Franchise Agreement. The Authority or any of its Member Agencies, may in its sole discretion, take action in response to specific notification by Contractor.

ARTICLE 5 COLLECTION SERVICES

5.1 Collection

Contractor is hereby authorized to Collect Permitted Materials from permitted construction and/or demolition projects within the Authority Service Area that subscribe to Contractor's services at Rates mutually agreed upon between Contractor and Customer. Contractor shall provide its Customers with a Roll-Off Container for Permitted Materials Collection or shall allow its Customers to provide a Roll-Off Container serviced by Contractor. Contractor shall Collect Permitted Materials from Premises as frequently as scheduled and/or as mutually agreed in writing with the Customer. Contractor shall provide requested service to its Customers and shall charge Customers for service at Rates mutually agreed by Customer and Contractor. Contractor shall Transport Permitted Materials Collected pursuant to this Agreement to the Approved Facility(ies). Source Separated C&D Debris shall be Collected and Transported to a facility that can demonstrate minimum recovery rate of 90%. Mixed C&D Debris intended for Processing shall be Collected and Transported to a Certified C&D Processing Facility,

approved by the Authority. C&D Debris intended for Disposal shall be Collected and Transported to the Designated Disposal Site. Contractor shall pay all costs associated with Transporting and Processing and Recycling of Permitted Materials including payment of any tipping fees charged at the Approved Facility

Contractor may enter into contracts with Customers for Collection services provided that in no case shall the term of such contracts extend beyond the Term of this Agreement, and provided that in the event the Authority terminates this Agreement the contracts with any and all Customers shall terminate on the termination date of this Agreement. Authority shall have no responsibility for any claims or damage resulting from or related to such termination.

5.2 Disposal

- A. **Disposal of Solid Waste Collected.** Contractor shall Transport any C&D Debris Collected within the Authority Service Area that is intended by the Customer to be Disposed of rather than Recycled or Processed to the Designated Disposal Site. Contractor shall pay all costs associated with Transporting and Disposal of Solid Waste including payment of any tipping fees charged at the Designated Disposal Site. Delivery of C&D Debris to another landfill or Disposal location is expressly prohibited by this Agreement and Contractor shall be liable for Liquidated Damages to the Authority and/or Designated Disposal Site for each Ton of C&D Debris Collected in the Authority that is delivered to another landfill or Disposal location.
- B. **Compliance with Regulations.** Contractor shall observe and comply with all regulations in effect at the Designated Disposal Site and cooperate with the operator thereof with respect to delivery of C&D Debris, including directions to unload Collection vehicles in designated areas, accommodating operations and maintenance activities, and complying with Hazardous Waste exclusion programs.
- C. **Disposal at Approved Site.** Contractor shall not Dispose of C&D Debris intended for Disposal by depositing it on any public or private land, in any river, stream, or other waterway, in any sanitary sewer or storm drainage system, or in any other manner that violates Applicable Laws.
- D. **Alternative Disposal Site.** If Contractor is unable to use the Designated Disposal Site due to an emergency or sudden unforeseen closure of the Approved Disposal Site, Contractor may use an alternative Disposal Site provided that: (i) the Contractor provides verbal and written notice to the Authority within twenty-four (24) hours of use of an alternative Disposal Site; and, (ii) the alternative Disposal Site is fully permitted and in compliance with all Applicable Laws. The written notice shall include a description of the reasons the Designated Disposal Site is not feasible and the period of time Contractor proposes to use the alternative Disposal Site. Contractor shall use the alternative Disposal Site for no more than twenty-four (24) hours without obtaining Authority's written approval. In the event that Contractor uses an alternate Disposal Site without adequate cause, in the sole discretion of the Authority Contract Manager, or for a period of more than twenty four (24) hours, Contractor shall be liable for Liquidated Damages to the Authority and/or Designated Disposal Site for each Ton of C&D Debris Collected in the Authority that is delivered to another landfill or Disposal location other than the Designated Disposal Site.

5.3 Billing

Contractor shall bill all Customers and collect billings in accordance with Contractor-established Rates, which are set in a manner consistent with provisions of Section 9.3. The Contractor shall prepare, distribute, and collect bills (or issue written receipts for cash payments) for Collection services provided by Contractor. Contractor shall be responsible for collection of payment from Customers with past due accounts.

Contractor shall maintain copies of all billings and receipts, in digital format capable of being exported to Microsoft Excel, for five (5) years after expiration or termination of this Agreement. Contractor shall retrieve and make available to the Authority copies of the digital records within three (3) Business Days of the Authority Contract Manager's written request for such records.

5.4 Customer Service

Contractor shall maintain a business office within Santa Clara County. In the event that during the Term of this Agreement Contractor's business office location changes, Contractor shall obtain written approval from the Authority prior to making the change. The business office shall staff at least one customer service representative capable of accepting payments from Customers, answering service questions, and resolving Customer service issues.

5.5 Public Education And Outreach

Contractor must follow best practices for outreach and education of Customers that directly subscribe to Collection services. In providing such services, Contractor shall:

- A. Comply with the Member Agency's Construction and Demolition Debris ordinances and regulations.
- B. Educate C&D Customers on the requirement to Source Separate Organic Materials generated during C&D projects. Organic Materials shall be Collected separately from other C&D and Transported for Processing to an Approved Facility, unless C&D is delivered to a Certified C&D Processing Facility, upon request by the Customer.
- C. Provide in-person site visits at large C&D Collection Sites within the Authority Service Area to train staff on proper sorting for C&D Containers to assist them in achieving Diversion targets as required by California Building Standards Code Part 11 California Green Building Standards Code (CALGreen) requirements.

5.6 Diversion Requirements

Contractor shall perform services under this Agreement in a manner that supports the Authority's environmental goals. Each calendar year, Contractor's total Diversion rate for all C&D Debris Collected under this Agreement shall be sixty five percent (65%) or greater. The diversion rate shall be calculated as the total tonnage Collected by Contractor and Diverted from Landfill Disposal divided by the total tonnage Collected by Contractor. The Diversion rate shall be calculated by Contractor for each calendar month and year and included in each report submitted by Contractor. Contractor's failure to maintain

the sixty five percent (65%) Diversion rate in any calendar year may result in the assessment of liquidated damages and/or termination of this Agreement. In the event that Authority has cause to believe, based on partial year reporting, that Contractor may fall short of the Diversion rate required under this Agreement, the Authority may require a corrective action plan from Contractor, as described in Exhibit A, to provide assurance to the Authority that Contractor will meet or exceed the Diversion rate before the end of the current calendar year.

ARTICLE 6

STANDARDS AND REQUIREMENTS FOR SERVICES, EQUIPMENT, AND PERSONNEL

6.1 Operating Days, Hours, And Schedules

A. Days and Hours of Collection.

1. **Residential Premises.** Delivery or Collection of a Roll-Off Container to or from Residential Premises shall only occur between the hours of 6:00 a.m. and 6:00 p.m., Monday through Saturday.
2. **Commercial Premises.** Delivery or Collection of a Roll-Off Container to or from Commercial Premises that are two hundred (200) feet or less from Residential Premises shall only occur between the hours of 6:00 a.m. and 6:00 p.m., any day of the week. Delivery or Collection of a Roll-Off Container to or from Commercial Premises that are more than two hundred (200) feet from Residential Premises shall only occur between the hours of 3:00 a.m. and 10:00 p.m., any day of the week. The Authority Contract Manager may require modifications to hours for delivery and Collection from Commercial Premises to resolve noise complaints, and, in such case, the Authority Contract Manager may change the allowable operating hours.
3. **Exceptions.** In the event of an unforeseen and/or extraordinary circumstance, the Contractor may deliver or Collect a Roll-Off Container from Residential or Commercial Premises that are two hundred (200) feet or less from Residential Premises during alternative hours, upon prior written approval from the Authority Contract Manager.
4. **Failure to Comply.** If the Contractor fails to comply with the Collection hours described in this Section, the Contractor shall pay the Authority Liquidated Damages as described in Section 11.4 and Exhibit A.

6.2 Collection Standards

6.2.1 Instructions to Customer

Contractor shall instruct Customers as to any preparation of Permitted Materials necessary prior to placing in the Roll-Off Container. Contractor shall, in written form, inform all Customers as to the

Permitted Materials that can be included in the Roll-Off Container and any Unpermitted Waste not allowed for Collection.

6.2.2 Care of Private Property

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

Authority shall refer complaints about damage to private property to Contractor. Contractor shall repair all damage to private and public property caused by its employees to its previous condition.

6.2.3 Litter Abatement and Stormwater Management

A. **Minimization of Spills.** All Permitted Materials Collected by Contractor shall be conveyed in modern Collection equipment, so constructed and so loaded that there will not be any leakage or spillage. Contractor shall use due care to prevent spills or leaks of materials placed for Collection, fuel, and other vehicle fluids while providing services under this Agreement. The Authority Contract Manager reserves the right to require modifications to Collection vehicle equipment (e.g., tarping, screening materials) to prevent litter from falling from vehicles. If spills or leaks enter Member Agency storm drains, Contractor must immediately notify the Member Agency's Fire Department.

Contractor shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure, hot load (combustion of material in the truck), accidental damage to a vehicle, or unless approved by the Authority.

If Contractor fails to perform some or all of the requirements described in this Section, the Contractor shall pay the Authority Liquidated Damages as described in Section 11.4 and Exhibit A.

B. **Clean-Up.** Each Collection vehicle shall be equipped at all times with spill kits, including, but not limited to, a broom, shovel, and absorbent. If any solid materials are spilled during Collection and Transportation, the Contractor shall clean up all spills or leaks before leaving the site of the spill. If any fluids are spilled during Collection and Transportation, the Contractor shall clean up all spills or leaks within the same business day that spills or leaks are identified or reported. (Contractor shall clean up litter in the direct vicinity of Containers that is spilled during the course of Collection.

C. **Covering of Loads.** Contractor shall cover all Roll-Off Containers at the pickup location before Transporting materials to the Approved Facility and until it is unloaded to prevent Permitted Materials from escaping during Transportation.

6.2.4 Noise

All Collection operations shall be conducted as quietly as possible and shall conform to Applicable Law. Contractor will promptly resolve any complaints of noise during the morning or evening hours of the day to the satisfaction of the Authority. In the event of repeat occurrences of noise complaints in excess of

three (3) per calendar year, the Contractor shall pay Liquidated Damages in accordance with Section 11.4 and Exhibit A.

6.3 Vehicle Requirements

- A. **General.** Vehicles used to provide services under this Agreement shall be kept in a safe, neat, clean, and operable condition at all times. If Contractor fails to keep Collection vehicles in a safe and sanitary condition, the Contractor shall pay the Authority Liquidated Damages as described in Section 11.4 and Exhibit A.
- B. **Specifications.** Contractor shall register all vehicles with the California Department of Motor Vehicles. All such vehicles shall comply with California Environmental Protection Agency (EPA) noise emission and air quality regulations and other applicable noise control regulations.
- C. **Vehicle Identification.** Contractor's name, local telephone number, and a unique identification number for each vehicle used to provide services under this Agreement, shall be prominently displayed on all vehicles, in letters and numbers that are a minimum of three (3) inches high. Contractor shall not place the Authority's logo on its vehicles.
- D. **Cleaning and Maintenance.** Contractor shall always maintain the cleanliness of vehicles to present a clean appearance. Collection vehicles should be inspected daily, and Contractor shall perform all scheduled maintenance functions. Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment that are in need of repair because of accidents, breakdown, or any other cause, so as to maintain all equipment in a safe and operable condition. Authority may require Contractor to suspend operation of a vehicle determined by the Authority to be non-compliant with this Section until corrective action has been taken.
- E. **Operation.** Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. Contractor shall not load vehicles in excess of the manufacturer's load recommendations or limitations imposed by State or local weight restrictions for vehicles and roads.
- F. **Vehicle Inspection.** Authority may inspect vehicles at any time to determine compliance with the requirements of this Agreement. Contractor shall make vehicles available to the Authority and/or Member Agencies for inspection, at any frequency Authority reasonably requests. The Contractor may have such inspections conducted by the California Highway Patrol, or other designated agency, and shall provide the results of such inspection to the Authority Contract Manager within ten (10) days of receipt. The Contractor shall maintain, at its primary business office(s) a record of daily vehicle inspection reports for all Collection-related vehicles and shall make such reports available to the Authority Contract Manager for review at all times.
- G. **Facility Accounts.** Contractor shall establish and maintain, throughout the Term of this Agreement, an account with the Designated Disposal Site and any other Certified C&D Processing Facilities. Such account(s) shall be used for all transactions covered by this Agreement. Contractor shall have a stored tare weight set for each Collection vehicle and each Roll-Off Container at the Designated Disposal Site. Contractor must also re-tare each Collection vehicle and/or Roll-Off Container after each major maintenance and/or repair to maintain an accurate weight. Contractor shall have each Collection vehicle weighed at each Certified C&D Processing Facility or the

Designated Disposal Site to determine the total loaded weight of each load delivered to the Certified C&D Processing Facilities and Designated Disposal Site.

6.4 Roll-Off Container Requirements

- A. **General.** All Roll-Off Containers shall meet applicable Federal, State, County, and local regulations for safety.

If Contractor fails to comply with the provisions of this Section 6.4, the Contractor shall pay the Authority Liquidated Damages as described in Section 11.4 and Exhibit A.

- B. **Specifications.** All Roll-Off Containers shall be built to OSHA standards.
- C. **Prevent Leakage.** Contractor shall be responsible for the general repair and upkeep of Roll-Off Containers that it furnishes to Customers to ensure they remain in a sanitary, non-leaking condition. Roll-Off Containers shall be non-absorbent, water-tight, vector-resistant, durable, easily cleanable, and shall be designed for safe handling and the containment of Permitted Materials.
- D. **Roll-Off Container Identification.** All Contractor-provided Roll-Off Containers shall prominently display the Contractor's name, local or toll-free telephone number, a unique Roll-Off Container identification number, and a list of acceptable materials.
- E. **Cleaning, Painting, and Maintenance.** All Roll-Off Containers shall be maintained in a safe, serviceable, and functional condition. Contractor shall steam clean and repaint all Roll-Off Containers at least once every two (2) years, or more frequently, to present a clean, graffiti-free appearance.
- F. **Roll-Off Container Inspections.** Authority may inspect Roll-Off Containers at any time to determine compliance with the requirements of this Agreement. Contractor shall make Containers available to the Authority Contract Manager at any reasonable frequency requested. The Authority Contract Manager may, in their sole discretion, require Contractor to remove a Roll-Off Container from service in the Authority Service Area if such container is unsafe, has been impacted by graffiti in a manner that is obscene, or otherwise does not comply with the requirements of this Agreement or Applicable Law. In the event a Container is removed from service at the direction of the Authority Contract Manager, prior to placing that container back in service, Contractor shall provide the Authority Contract Manager with proof of correction demonstrating, with photographic evidence, that the concern has been corrected. Upon written approval by the Authority Contract Manager, the Container may be placed back into service within the Authority Service Area.
- G. **Abandoned Roll-Off Containers.** Contractor shall not abandon any Roll-Off Container used to provide Permitted Materials Collection services under this Agreement. If the Contractor abandons a Roll-Off Container, Authority may remove, or cause the removal of, the Roll-Off Container. In such a case, the Authority may Process and/or Dispose of the contents. If the Authority or its agent removes a Roll-Off Container abandoned by Contractor, the Authority may charge Contractor for the Authority's costs incurred for removing such Roll-Off Container, Transporting, Processing, and Disposing of its contents, and/or the cost of storing such Roll-Off Container. Contractor shall reimburse the Authority for such costs within fourteen (14) calendar days of the

date of the Authority's invoice to the Contractor for such costs. If the Contractor does not pay the invoice amount within fourteen (14) days, the Authority or its agent shall become the Roll-Off Container Owner if the invoice stated the Authority's intent to become the Container Owner.

For the purposes of this Section 6.4.G, "abandon" means the following:

1. Contractor's failure to remove a Contractor-owned Roll-Off Container within five (5) calendar days of receiving a written request from a Customer or the Authority or within five (5) calendar days after the termination of the customer service agreement between Contractor and the Customer, or
2. Contractor's failure to remove a Contractor-owned Roll-Off Container within ten (10) calendar days upon expiration or termination of this Agreement, except in the case where Contractor has been granted an extension of the Term of the Agreement or Contractor has been granted a subsequent agreement authorizing Contractor to Collect and Transport the type or types of materials for which the Roll-Off Container was used pursuant to this Agreement.

6.5 Personnel

- A. **General.** Contractor shall furnish such qualified drivers, maintenance, supervisory, Customer service, clerical and other personnel as may be necessary to provide the services required by this Agreement in a safe and efficient manner. Contractor shall submit to the Authority's Contract Manager, the phone number and names of personnel designated to be contacted in cases of emergencies.
- B. **Driver Qualifications.** All drivers shall be trained and qualified in the operation of Collection vehicles, and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles. Contractor shall use the Class B California Department of Motor Vehicles employer "Pull Notice Program" to monitor its drivers for safety.
- C. **Safety Training.** Contractor shall provide suitable operational and safety training for all of its employees who operate Collection vehicles or equipment or who are otherwise directly involved in such Collection. Upon the Authority's request, Contractor shall provide a copy of its safety policy and safety training program, the name of its safety officer, and the frequency of its trainings within three (3) Business Days of the Authority Contract Manager's written request for such records.
- D. **Employee Conduct and Courtesy.** Contractor shall use its best efforts to ensure that all employees present a neat appearance and conduct themselves in a courteous manner. Contractor shall regularly train its employees in Customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection employees to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by this Agreement, Contractor shall take all appropriate corrective measures and shall pay the Authority Liquidated Damages as described in Section 11.4 and Exhibit A.

6.6 Hazardous Waste and Unpermitted Waste Inspection and Handling

- A. **Response to Hazardous Waste and Excluded Materials Identified during Collection.** If Contractor determines that material placed in any Roll-Off Container for Collection is a Hazardous Waste and/or Excluded Material that may not legally be Disposed of at the Designated Disposal Site or handled at the Certified C&D Processing Facility or presents a hazard to Contractor's employees, the Contractor shall refuse to accept such material. Contractor shall make reasonable efforts to identify and notify the Customer. Under no circumstances shall Contractor's employees knowingly Collect Hazardous Waste and/or Excluded Material.

If Hazardous Wastes and/or Excluded Materials are found in a Roll-Off Container that could possibly result in imminent danger to people or property, the Contractor shall immediately notify the Fire Department using the 911 emergency number.

The Contractor shall notify the Authority of any Hazardous Waste and/or Excluded Materials identified in Roll-Off Containers or left at any Premises within twenty-four (24) hours of identification of such material.

- B. **Response to Hazardous Wastes Identified at the Approved Processing Site(s).** If Hazardous Waste and/or Excluded Material are delivered to an Approved Facility by Contractor before its presence is detected, and the Generator cannot be identified or fails to remove the material after being requested to do so, the Contractor shall arrange for its proper Disposal. The Contractor may make a good faith effort to recover the cost of Disposal from the Generator, and the cost of this effort, as well as the cost of Disposal shall be chargeable to the Generator.
- C. **Regulations and Record Keeping.** Contractor shall comply with emergency notification procedures required by Applicable Laws and regulatory requirements. All records required by regulations shall be maintained at the Contractor's facility. These records shall include waste manifests, waste inventories, waste characterization records, inspection records, incident reports, and training records.

6.7 Communication and Cooperation with Authority

- A. **Communications.** If requested, the Contractor shall meet with the Authority or its agent to discuss service issues.
- B. **Inspection by Authority.** The Authority, or its designated representatives, shall have the right to observe and review Contractor operations and enter Contractor's Premises for the purposes of such observation and review during reasonable hours without advance notice. This shall include inspection of Contractor-placed Roll-Off Containers at the location where service is provided to the Customer(s).
- C. **Cooperate with Authority-Initiated Studies.** The Contractor shall cooperate with and assist the Authority or its agent with the performance of Authority-initiated studies of Permitted Materials such as, but not limited to, waste characterization and composition studies.

ARTICLE 7

RECORD KEEPING AND REPORTING

7.1 General

7.1.1 Maintenance of Records

The Contractor shall maintain full and complete financial and accounting records, pertaining to cash, billing and Recycling, Processing, and Disposal transactions for this Agreement, prepared on an accrual basis in accordance with generally accepted accounting principles. Such records shall be made available in the Contractor's local offices. Such records shall be subject to audit and inspection, for the primary purpose of reviewing billing operations, accounts receivable, Recycling, Processing, and Disposal fee charges, and compliance with service classifications by the Authority and its authorized officers, agents, or employees, at any reasonable time at the Contractor's local office.

The gross receipts derived from the services provided for under this Agreement, whether such services are performed by the Contractor or by a Subcontractor or Subcontractors, shall be recorded as revenues in the accounts of the Contractor.

To the extent such requirements are set out in this and other Articles of this Agreement, they shall not be considered limiting or necessarily complete.

7.1.2 Retention of Records

Unless otherwise required in this Article, Contractor shall retain all records and data required to be maintained by this Agreement for the Term of this Agreement plus three (3) years after its expiration or earlier termination. Records and data shall be in chronological order and readily and easily interpreted.

7.1.3 Inspection of Records

The Contractor's cash receipts, billing and Disposal records shall be available at the Contractor's local office at any time during regular business hours for inspection and audit by the Authority Contract Manager during the Term of this Agreement and for a period of three (3) years following the expiration or termination of the Agreement.

7.1.4 Record Security

Contractor shall maintain adequate record security to preserve electronic records from events that can be reasonably anticipated such as fire, theft, and earthquake. Maintained data and records shall be protected and backed-up.

7.2 Records

7.2.1 Financial and Operational Records

At a minimum, the following operational records shall be maintained by Contractor for the Authority relating to:

- A. Customer account information and billing records.
- B. Tonnage of material Collected by type including, but not limited to, C&D Debris, Recyclable materials, and Solid Waste listed by the Approved Facility where such materials were delivered.
- C. Tonnage of C&D Diverted from Disposal by Contractor and supporting documentation.
- D. Diversion level, which shall equal Tonnage Diverted by Contractor divided by the Tonnage Collected by Contractor multiplied by one hundred (100), listed separately by month for the previous quarter. Tonnage Diverted shall reflect Permitted Materials Processed less Residue Disposed.
- E. Residue levels of Processed materials.
- F. Weight tickets from (i) Designated Disposal Site documenting the Tonnage of C&D Collected within the Authority and delivered to the Designated Disposal Site; (ii) Certified C&D Processing Facility documenting the Tonnage of Permitted Materials Collected within the Authority and delivered to the Certified C&D Processing Facility; and, (iii) Any other facilities documenting the Tonnage of Permitted Materials Collected with the Authority and delivered for Recycling or reuse. All weight tickets shall be provided listing a unique vehicle number, date, and time.

Contractor shall make records available to the Authority upon request.

7.2.2 Customer Records

Contractor shall maintain accurate and complete records containing the number and types of accounts served by the Contractor. The records shall contain, at a minimum, the Customer's name, phone number, address of Roll-Off Container delivery and Collection location, date of delivery and Collection, itemized listing of services performed, type of Permitted Material Collected, Tonnage Collected, and the amount charged to provide services. The information shall be provided to the Authority upon request.

7.2.3 CERCLA Defense Records

The Authority views its ability to defend itself against the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and related litigation as a matter of great importance. For this reason, the Authority regards its ability to prove where Permitted Materials Collected by the Contractor are taken for Processing, Recycling, or Disposal, as well as where they are not taken, to be matters of concern. Contractor shall maintain, retain, and preserve records that can establish where Permitted Materials Collected were Processed, composted, and Disposed (and therefore establish where they were not). This provision shall survive the expiration or earlier termination of this Agreement.

Contractor shall maintain these records for a minimum of ten (10) years beyond expiration or earlier termination of the Agreement. Contractor shall provide these records to Authority (upon request or at the end of the record retention period) in an organized and indexed manner rather than destroying or disposing of them.

7.3 General Reporting Requirements

The format of each report shall be designated by the Authority. Contractor may propose alternative report formats if Contractor can demonstrate to the satisfaction of the Authority Contract Manager that the alternative report formats will achieve the Authority's objectives and reduce the effort for both the Contractor and Authority. Contractor agrees to submit all reports by e-mail in a format compatible with Authority's software and computers at no additional charge. Contractor will provide a certification statement, under penalty of perjury, by the responsible Contractor official, that the report being submitted is true and correct to the best knowledge of such official after their reasonable inquiry.

Contractor shall submit reports within twenty (20) calendar days after the end of each quarter. If Contractor does not submit the reports by the dates required in this Article, Contractor shall pay the Authority Liquidated Damages as described in Section 11.4 and Exhibit A.

Contractor shall submit (via e-mail in an excel based format) all reports to:

Authority Contract Manager
West Valley Solid Waste Management Authority
WVSWMA@hfh-consultants.com

7.4 Reports

The report shall present the following information.

- A. **Total Tonnage.** Total Permitted Materials Tonnage Collected by Contractor within the Authority Service Area during the previous quarter, listed separately by month, material type, and the Approved Facility(ies) used.
- B. **Diverted Tonnage.** Permitted Materials Tonnage Collected by Contractor within the Authority Service Area that was Diverted during the previous quarter, listed separately by month, material type, and the Processing facility(ies) used.
- C. **Disposed Tonnage.** Permitted Materials Tonnage Collected by Contractor within the Authority Service Area that was Disposed of during the previous quarter, listed separately by month.
- D. **Diversion Level.** Tonnage Diverted by Contractor divided by the Tonnage Collected by Contractor multiplied by one hundred (100) for the previous month. Tonnage Diverted shall reflect Permitted Materials Processed less Residue Disposed.
- E. **Disposal and Processing Locations.** Contractor shall provide a list of the names and addresses where Permitted Materials Collected within the Authority during the previous month were Diverted and Disposed. Such list shall include the amount of Permitted Materials Tonnage

Diverted and/or Disposed at each location during the previous month, listed separately by material type.

- F. **Revenues.** Gross revenues (e.g., cash receipts) earned on all Roll-Off Container Collection services provided to Customers within the Authority during the previous quarter, listed separately by month.
- G. **Compliance Documentation.** Updated insurance certificates and business licenses.
- H. **Account Information.** In table format, Contractor shall provide the name and service address for Customers within the Authority Service Area and number of Roll-Off Containers serviced per month, listed by Roll-Off Container size, and listed separately by Permitted Material type.
- I. **Contractor Officers and Board Members.** Provide a list of Contractor's officers and members of its board of directors (only required with the January quarter report each year, or in the event of a change in the officers or board members).

The Authority reserves the right to request additional reports from Contractor, and upon Authority's request, Contractor shall provide information required above for the time period requested by the Authority. It is the desire of the Authority to track the above required information on an ongoing basis throughout the Term of this Agreement.

7.5 Authority Contract Manager

The Authority Contract Manager will be responsible for the monitoring and administration of this Agreement. Contractor shall meet and confer with the Authority Contract Manager to resolve differences of interpretation and to implement and execute the requirements of this Agreement in an efficient and effective manner that is consistent with the stated objectives of this Agreement.

From time to time, the Authority Contract Manager may designate other agents of the Authority or Member Agencies to work with Contractor on specific matters. In such cases, those individuals should be considered designees of the Authority Contract Manager for those matters that they have been engaged for. Such designees shall be afforded all of the rights and access granted thereto. In the event of a dispute between the Authority Contract Manager's designee and Contractor, the Authority Contract Manager's determination shall be conclusive.

In the event of dispute between the Authority Contract Manager and the Contractor regarding the interpretation of or the performance of Services under this Agreement, the Authority Contract Manager's determination shall be conclusive except where such determination results in a material impact to the Contractor's revenue and/or cost of operations. In the event that a dispute between the Authority Contract Manager and the Contractor results in such material impact to the Contractor, Contractor may appeal the determination of the Authority Contract Manager to the Board of Directors, whose determination shall be conclusive. For the purposes of this Section, "material impact" is an amount equal to or greater than one percent (1%) of Contractor's annual Gross Receipts under this Agreement.

ARTICLE 8

REGULATORY FEES AND OTHER FEES

8.1 General

Contractor shall collect the fees described in this Section from Customers through Contractor's regular billings and remit collected amounts to Authority on a monthly basis, as described in Section 8.5.

8.2 Administrative Fee

The Contractor shall pay an Administrative Fee to the Authority each month based on the number of Roll-Off Container pulls performed by Contractor. The amount of the Administrative Fee shall be twenty-five dollars (\$25) per pull of all material types and shall be paid in equal monthly installments. The Authority shall use the Administrative Fee to offset expenses, including staffing costs related to contract management, compliance, and monitoring, and to enforce the Agreement with respect to any violations by third parties, including initiating and/or assisting in prosecuting enforcement actions. The Authority shall retain the sole right to set priorities for its contract monitoring and enforcement among Authority personnel.

8.3 Other Fee

The Authority may set other fees or adjust the fees established in this Section from time-to-time during the Term of this Agreement.

8.4 Adjustment to Fees

The Authority may adjust the fees established in this Article annually, each July 1, during the Term of this Agreement.

8.5 Payment Schedule and Late Fees

On or before the twenty-fifth (25) day of each month during the Term of this Agreement, Contractor shall remit to Authority Administrative Fees and other fees as described in this Article. If such remittance is not paid to the Authority on or before the twenty-fifth (25) day of any month, Contractor shall pay, in addition to the amount owed to Authority, two percent (2%) of the amount owing for that month; plus an additional two percent (2%) owing on any unpaid balance for each following thirty (30) calendar day period the fee remains unpaid.

Each monthly remittance to Authority shall be accompanied by a statement itemizing each fee paid; detailing calculation of all fees; stating actual gross revenues (e.g., cash receipts) for the monthly period collected from all operations conducted or permitted by this Agreement, and stating the number and size of Roll-Off Containers serviced by Contractor for the monthly period. Contractor shall provide each remittance, including all supporting documentation, to:

Attn: West Valley Solid Waste Management Authority
City of Campbell – Finance Department
City Hall
70 N. First St.
Campbell, CA 95008

8.6 Errors in Payment of Fees

If Contractor believes it has paid Administrative Fees or other fees as described in this Article, in excess of the fees due to the Authority, Contractor may submit a request for refund to the Authority Contract Manager. If proof of overpayment is satisfactory to the Authority Contract Manager, the Authority Contract Manager shall authorize the Authority to refund the overpayment to the Contractor for a period no greater than 12 months prior to receiving submitted request. Contractor shall not apply any overpayment as a credit against any Administrative Fees or other amounts payable to the Authority, unless specifically authorized to do so by the Authority Contract Manager in writing.

If the Authority believes Contractor has underpaid Administrative Fees or other fees as described in this Article that are due to the Authority, Authority may submit a request for payment to the Authority Contract Manager. If proof of underpayment is satisfactory to Contractor, Contractor shall authorize the payment to the Authority for a period no greater than three (3) years prior to receiving submitted request.

ARTICLE 9

CONTRACTOR'S COMPENSATION AND RATES

9.1 Contractor's Compensation

Contractor's compensation for performance of all its obligations under this Agreement shall be the actual Rate revenues paid to Contractor (e.g., cash receipts) by Customers that obtained Contractor's Collection services, less fees dues to the Authority in accordance with Article 8.

Contractor's compensation provided for in this Article shall be the full, entire, and complete compensation due to Contractor pursuant to this Agreement for all labor, equipment, materials and supplies, Processing, and Disposal fees, regulatory fees, Authority fees, taxes, insurance, bonds, overhead, operations, profit, and all other things necessary to perform all the services in the manner required by this Agreement.

If Contractor's costs are more than Contractor's compensation, Contractor shall not be compensated for the difference in costs and revenues. If Contractor's costs are less than Contractor's compensation, Contractor shall retain the difference.

9.2 Contractor's Rates

Contractor shall set the Rates it charges its Customers for Roll-Off Collection services. In the event that the number of parties authorized by the Authority to provide Non-Exclusive C&D Debris Collection

services is less than three (3), the Authority's Board of Directors may establish maximum Rates for the services provided by non-exclusive C&D Debris contractors.

ARTICLE 10 INDEMNITY AND INSURANCE

10.1 Indemnification

Contractor shall indemnify, defend with counsel acceptable to the Authority, protect and hold harmless the Authority and each of its officers, officials, employees, volunteers, 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, and expenses (including without limit attorneys' 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, indemnitees arising from or attributable to the acts or omissions of Contractor whether or not negligent or otherwise culpable, in connection with or related to the performance of this Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the Authority.

Contractor's duty to defend and indemnify herein shall include Damages arising from or attributable to any operations, repairs, clean-up or detoxification, or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Waste Collected in the Authority. The foregoing is intended to operate as an agreement to defend and indemnify and hold harmless indemnitees to the full extent permitted for liability pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364.

In addition, Contractor's duty to defend and indemnify herein includes all fines and/or penalties imposed by the California Department of Resources Recycling and Recovery, subject to the restrictions set forth in Public Resources Code Section 40059.1, if the requirements of the Act are not met by the Contractor with respect to the Permitted Materials Collected under this Agreement, and such failure is due to Contractor delays in providing information that prevents Contractor or Authority from submitting reports required by the Act in a timely manner.

This provision will survive the expiration or earlier termination of this Agreement and shall not be construed as a waiver of rights by Authority to contribution or indemnity from third parties.

10.2 Insurance

10.2.1 Minimum Scope of Insurance

Coverage shall be at least as broad as:

- A. Insurance Services Office Commercial General Liability coverage.

1. Personal injury
 2. Contractual liability
- B. Insurance Services Office covering Automobile Liability, code I “any auto.”
- C. Worker’s Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.
- D. Such other insurance coverages and limits as may be required by the Authority.

10.2.2 Minimum Limits of Insurance

Contractor shall maintain limits no less than:

- A. General Liability: \$2,000,000 each occurrence for bodily injury and property damage; \$1,000,000 for personal and advertising injury; \$2,000,000 products and completed operations aggregate, and \$2,000,000 general aggregate. If Commercial General Liability insurance or other form with a general aggregate liability is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- B. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- C. Workers’ Compensation: Workers’ compensation limits as required by the Labor Code of the State of California.
- D. Employer’s Liability: \$1,000,000 each accident for bodily injury.
\$1,000,000 disease each employee.
\$1,000,000 disease policy limit.

10.2.3 Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Authority. At the option of the Authority, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Authority, its officials and employees; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

10.2.4 Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- A. General Liability and Automobile Liability Coverages
1. The Authority, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; Premises owned, leased or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection

afforded to the Authority, its officials, employees, or volunteers. The automobile liability shall be endorsed to contain MCA-90 coverage.

2. The Contractor's insurance coverage shall be primary insurance as respects the Authority, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the Authority, its officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
 3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Authority, its officials, employees, or volunteers.
 4. Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- B. Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the Authority, its officers, employees, and volunteers for losses arising from work performed by the Contractor for the Authority.
- C. All Coverages. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either Party, reduced in coverage or in limits except after 30 calendar days' prior written notice by certified mail, return receipt requested, has been given to the Authority.

10.2.5 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.

10.2.6 Verification of Coverage

Contractor shall furnish Contractor's insurance agent a copy of these specifications and direct the agent to provide the Authority with certificates of insurance and with original endorsements affecting coverage required by this clause. Issuance of documentation indicates the Contractor's insurance complies with these provisions. 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. The certificates and endorsements are to be received and approved by the Authority before work commences. The Authority may require complete, certified copies of all required insurance policies, at any time.

10.2.7 Required Endorsements

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

"Thirty calendar days' prior written notice shall be given to the Authority in the event of cancellation, reduction in coverage, or non-renewal of this policy."

- B. The Commercial General Liability, Business and Automobile Liability, and Pollution Legal Liability policies shall contain endorsements in substantially the following form:
1. "Thirty calendar days' prior written notice shall be given to the Authority in the event of cancellation, reduction in coverage, or non-renewal of this policy."
 2. "The Authority, its officers, employees, and agents are additional insureds on this policy."
 3. "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the Authority, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."
 4. "Inclusion of the Authority as an insured shall not affect the Authority's rights as respects any claim, demand, suit, or judgment brought or recovered against the Contractor. This policy shall protect Contractor and the Authority in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the Contractor's liability as set forth in the policy beyond the amount shown or to which the Contractor would have been liable if only one Party had been named as an insured."

10.2.8 Delivery of Proof of Coverage

Simultaneously with the execution of this Agreement, Contractor shall furnish the Authority certificates of each policy of insurance required hereunder, in form and substance satisfactory to Authority. 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.

Renewal certificates will be furnished annually to Authority to demonstrate maintenance of the required coverages throughout the Term.

10.2.9 Other Insurance Requirements

- A. If any services are delegated to a Subcontractor, the Contractor shall require such Subcontractor to provide statutory Workers' Compensation insurance and Employer's Liability insurance for all of the Subcontractor's employees engaged in the work, in accordance with Sections 10.2.2.C and 10.2.2.D and 10.2.4.B. Contractor shall also require such Subcontractor to provide Automobile Liability insurance for all of the Subcontractor's vehicles engaged in the work, in accordance with Sections 10.2.2.B. The liability insurance required by Section 10.2.2.A shall cover all Subcontractors or the Subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section 10.2.
- B. If at any time during the life of the Agreement or any extension, Contractor or any of its Subcontractors fail to maintain any required insurance in full force and effect, Contractor shall be in breach of the Agreement until notice is received by Authority that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to Authority. Any failure to maintain the required insurance shall be sufficient cause for Authority to terminate this Agreement. No action taken by Authority pursuant to this Section shall in any way relieve Contractor of its responsibilities under this Agreement.

- C. The Contractor shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third person against the Contractor or any Subcontractor because of any occurrence related to this Agreement, the Contractor shall promptly report the facts in writing to the insurance carrier and to the Authority.
- D. The Commercial General Liability, Automobile Liability, and Pollution Legal Liability insurance policies shall be written on an "occurrence," rather than a "claims made" basis. If Contractor is unable to purchase Pollution Legal Liability insurance on an occurrence form and must purchase such insurance on a claims-made form:
 - 1. The "Retro Date" must be shown and must be before the Effective Date of the Agreement or the commencement of work by Contractor.
 - 2. The policy shall be endorsed to provide not less than a five (5) year discovery period. This requirement shall survive expiration or termination of the Agreement.
 - 3. If coverage is canceled or not -renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the Effective Date of the Agreement, Contractor must purchase "extended reporting" coverage for a minimum of five (5) years following the expiration or termination of the Agreement.
 - 4. A copy of the claims reporting requirements must be submitted to Authority for review.
 - 5. These requirements shall survive expiration or termination of this Agreement.

ARTICLE 11

DEFAULT AND REMEDIES

11.1 Events of Default

Each of the following shall constitute an event of default ("Event of Default") hereunder:

- A. **Fraud or Deceit.** Contractor, its Affiliates, any Subcontractor, or any other Person employed by or with an ownership interest in Contractor, its Affiliates, or any Subcontractor practices, or attempts to practice, any fraud or deceit upon the Authority, including, but not limited to, any representation or disclosure made to the Authority by Contractor in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement that 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; and, any Contractor-provided report containing a misstatement, misrepresentation, data manipulation, or an omission of fact or content explicitly defined by the Agreement, excepting non-numerical typographical and grammatical errors.

- B. **Acts or Omissions.** Any other act or omission by Contractor that violates the terms, conditions, or requirements of this Agreement, or Applicable Law and that is not corrected or remedied within the time set in the written notice of the violation or, if Contractor cannot reasonably correct or remedy the breach within the time set forth in such notice, Contractor shall commence correction or remediation within the time set forth in such notice and diligently effect such correction or remedy thereafter.
- C. **Violations of Regulation.** Contractor violates any orders or filings of any regulatory body having authority over Contractor relative to this Agreement, provided that Contractor may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach or default of this Agreement shall be deemed to have occurred.
- D. **Insolvency, Bankruptcy, Seizure, or Attachment.** Contractor becomes insolvent, unable, or unwilling to pay its debts, upon entry of an order for relief in favor of Contractor in a bankruptcy proceeding, or upon a seizure of, attachment of, or levy on, some or all of Contractor's operating equipment, including without limits its equipment, maintenance or office facilities, Approved Facility(ies), or any part thereof of such proportion as to substantially impair Contractor's ability to perform under this Agreement and that cannot be released, bonded, or otherwise lifted within forty-eight (48) hours excluding weekends and Holidays;
- E. **Failure to Pay or Report.** Contractor fails to make any payments to Authority required under this Agreement including payment of Administrative Fees or Liquidated Damages and/or refuses to provide Authority with required information, reports, and/or records in a timely manner, as provided for in this Agreement.
- F. **Failure to Maintain Coverage.** Contractor fails to provide or maintain in full force and effect the Workers' Compensation, liability, or indemnification coverage, as required by this Agreement.
- G. **Failure to Maintain Business License.** Contractor fails to provide or maintain a business license in the City/Town of the Member Agencies that it is providing services in.
- H. **Failure to use Approved Facility.** Contractor fails to deliver C&D Debris intended for Disposal to the Designated Disposal Site or Mixed C&D Debris intended for Processing to a Certified C&D Processing Facility, as required by this Agreement.
- I. **Failure to Perform Any Obligation.** Contractor fails to perform any obligation established under this Agreement.

11.2 Right To Terminate Upon Default

Upon Authority's identification of a default by Contractor, the Authority may terminate this Agreement within ten (10) calendar days of the default but no later than one hundred eighty (180) calendar days after the default. Such termination shall be effective ten (10) calendar days following the Authority's written notice to Contractor, and such termination shall be effective without the need for any hearing, suit, or legal action.

11.3 Authority's Remedies Cumulative; Specific Performance

The Authority's right to terminate the Agreement under Section 11.2 is 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 that 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 Contractor, the remedy of damages for a breach hereof by Contractor is inadequate and Authority shall be entitled to injunctive relief.

11.4 Liquidated Damages

- A. **General.** The Parties find that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages that shall be incurred by Authority, as a result of a breach by Contractor 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 that are incapable of measurement in precise monetary terms; (iii) that 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 that 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 C&D Debris Collection service is of utmost importance to Authority and that Authority has considered and relied on Contractor's representations as to its quality of service commitment in executing this Agreement. The Parties 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 Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, Authority and its residents and businesses will suffer damages, and that it is, and will be, impractical and extremely difficult to ascertain and determine the exact amount of damages that Authority will suffer. Therefore, without prejudice to Authority's right to treat such non-performance as an event of default under this Article, the Parties agree that the Liquidated Damages amounts established in Exhibit A of this Agreement and the following Liquidated Damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective 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.

Contractor agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth in the Schedule of Liquidated Damages, Exhibit A.

Authority may determine the occurrence of events giving rise to Liquidated Damages through the observation of its own employees or representatives, Member Agencies' employees, or representatives or investigation of complaints by Customers, Occupants, and Generators.

Before assessing Liquidated Damages, Authority shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s) and/or non-performance. The Authority may review (and make copies at its own expense) all information in the possession of Contractor relating to incident(s) and non-performance. Authority may, within ten (10) calendar days after issuing the notice, request a meeting with Contractor. Authority may present evidence of non-performance in writing and through testimony of its employees and others relevant to the incident(s) and non-performance. Authority will provide Contractor with a written explanation of its determination on each incident(s) and non-performance prior to authorizing the assessment of Liquidated Damages under this Section 11.4. The decision of Authority shall be final and Authority shall not be subject to, or required to exhaust, any further administrative remedies.

- C. **Amount.** Authority may assess Liquidated Damages for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement in the amounts specified in Exhibit A subject to annual adjustment described below.
- D. **Timing of Payment.** Contractor shall pay any Liquidated Damages assessed by Authority within ten (10) calendar days of the date the Liquidated Damages are assessed. If they are not paid within the ten (10) day period, Authority may order the termination of the rights or "franchise" granted by this Agreement.

11.5 Conditions Upon Termination

In the event this Agreement is terminated under the provisions of this Article, the following conditions shall be effective:

- A. **Prohibit Roll-Off Collection Services.** Contractor shall have no right or authority to engage in C&D Collection services in the Authority Service Area for a period of five (5) years from the date of termination. After five (5) years, should the Contractor provide proof that the event causing the Contractor to default under this Agreement has been corrected, the Contractor may reapply for a non-exclusive C&D Collection service franchise, and the Authority, at its sole and complete discretion, may reinstate the Contractor based on review of its reapplication.
- B. **Continuing Liabilities.** Contractor shall remain liable to the Authority for:
 - 1. Fees due in accordance with Article 8 that would otherwise be payable by the Contractor.
 - 2. Liquidated Damages assessed pursuant to Section 11.4.
 - 3. Reports required by Article 7 for Roll-Off Collection activities performed by Contractor up to and including the date of termination.
 - 4. Indemnity obligations under Section 10.1.
 - 5. Record keeping and retention obligations under Sections 7.1 and 7.2.

- C. **Release Customers and Generators from Obligations.** Contractor shall allow Permitted Materials Generators served by Contractor to arrange for Permitted Materials Collection services with a hauler authorized to perform such services, without penalty or liability for breach of any contract between Contractor and its Customers or Generators.
- D. **Remove Roll-Off Containers.** Contractor shall remove all of Contractor's Roll-Off Containers from all of Contractor's Collection locations within ten (10) calendar days and shall properly Recycle, Process, or Dispose of Permitted Materials in such Roll-Off Containers.

ARTICLE 12

OTHER AGREEMENTS OF THE PARTIES

12.1 Relationship of Parties

The Parties intend that Contractor shall perform the services required by this Agreement as an independent Contractor engaged by Authority and neither as an officer, nor employee of the Authority, or as a partner of, or joint venturer with the Authority. No employee or agent of Contractor shall be, or shall be deemed to be, an employee or agent of the Authority. Except as expressly provided herein, Contractor shall have control over the manner and means of conducting the Roll-Off Container Collection services performed under this Agreement, and all Persons performing such services. Contractor shall be solely responsible for the acts and omissions of its officers, employees, Subcontractors, and agents. Neither Contractor, nor its officers, employees, Subcontractors, and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits that accrue to Authority employees by virtue of their employment with the Authority.

12.2 Permits and Licenses

Contractor shall obtain and maintain, at Contractor's sole cost and expense, all permits and licenses applicable to Contractor's operations under this Agreement that are required by any governmental agency.

12.3 Compliance with Law

Contractor shall, at all times, at its sole cost, comply with all Applicable Laws.

12.4 Governing Law

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

12.5 Jurisdiction

Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of the individual Member Agencies in 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 the Authority Service Area.

12.6 Binding on Successors

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

12.7 Assignment

Neither Party shall assign its rights, nor delegate or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of the other Party. In the event Contractor seeks to assign its rights or delegate or transfer its obligations under this Agreement, the Authority may withhold its consent within its sole discretion, for any reason or no reason. 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. Under no circumstances shall any assignment be considered by Authority if Contractor is in default at any time during the period of consideration.

12.8 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.

12.9 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 or violation of the same or any other provision. The subsequent acceptance by either Party of any monies that 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.

12.10 Notice Procedures

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

A. If to Authority:

Executive Director
West Valley Solid Waste Management Authority
1821 S Bascom Ave. #405
Campbell, CA 95008

B. If to Contractor:

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

Notice shall be deemed given on the day it is personally delivered or, if mailed, three (3) calendar days from the date it is deposited in the mail.

12.11 Representatives of the Parties

References in this Agreement to the “Authority” shall mean the Authority’s elected body and all actions to be taken by the Authority, except as provided below. The Authority may delegate, in writing, authority to the Authority Contract Manager, and/or to other Authority officials and may permit such officials, in turn, to delegate in writing some or all of such authority to subordinate officers. The Contractor may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

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

12.12 Criminal Activity of Contractor

12.12.1 Criminal Activity

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

A. **Convictions.** The entry against any Contractor Party or its officers, 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 their official capacity on behalf of Contractor 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 C&D Debris services of any kind, 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 Hazardous Wastes, that any Contractor 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.
 6. Violation of securities laws.
 7. Felonies.
- B. **Pleas.** Entry of a plea of “guilty,” “nolo contendere,” or “no contest” by a Contractor Party based on acts taken in their official capacity on behalf of Contractor with respect to the conduct described in preceding Section 12.12.1.A.

12.12.2 Notice

Contractor shall notify Authority in writing within five (5) calendar days of occurrence of any Criminal Activity by any Contractor Party.

12.12.3 Contractor’s Cure

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

- A. Terminate from employment or remove from office any offending individual Contractor 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 Contractor, and,
- B. Eliminate participation by any offending individual Contractor Party in any management, supervision, or decision activity that affects or could affect, directly or indirectly, the performance of the Contractor under this Agreement.

12.12.4 Transfer and Hiring

Contractor shall not allow or cause to be allowed the hire or transfer of any individual from any Parent Company or subsidiary company or business entity of Contractor who has committed Criminal Activity as a Contractor 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.

12.12.5 Authority's Remedy

In the event of any occurrence of Criminal Activity, the Authority, in its sole discretion, may terminate the Agreement within thirty (30) calendar days written notice to Contractor, 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 either the following events:

- A. Contractor fails to comply with the foregoing obligation of this Section.
- B. The Criminal Activity concerns or relates directly or indirectly to this Agreement.

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

12.13 Acknowledgment of Public Resources Code Section 49523 Notice

Nothing in this Agreement shall be construed as providing Contractor with the five- (5) year noticing rights required under PRC 49520. The Parties agree that the provisions of PRC 49523 apply instead.

ARTICLE 13 MISCELLANEOUS AGREEMENTS

13.1 Entire Agreement

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

13.2 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.

13.3 References to Laws

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.

13.4 Interpretation

This Agreement 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.

13.5 Pronouns and Plurals; Tense

When not inconsistent with the context, words, and phrases used in the present tense include the future, and words and phrases used in the singular number include the plural number. Whenever the context may require, any pronoun used in this Agreement shall include the neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

13.6 Text to Control

The captions of the Articles or Sections in this Agreement are for convenience only and in no way define, limit, extend, or describe the scope or intent of any of the provisions hereof, and shall not be deemed part of this Agreement and shall not be used in construing or interpreting this Agreement.

13.7 Amendment

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

13.8 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.

13.9 Counterparts

This Agreement may be executed in counterparts, each of which shall be considered an original.

13.10 Exhibits

Each of the exhibits identified as Exhibit "A" through "C" is attached hereto and incorporated herein and made a part hereof by this reference.

IN WITNESS WHEREOF, this Agreement is entered into by the Parties hereto in Santa Clara County, California on the day and year first above written.

AUTHORITY

CONTRACTOR

Authority Contract Manager

Name

APPROVED AS TO FORM:

Title

Authority Attorney

Address

ATTEST:

Secretary of the Board

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**EXHIBIT A:
SCHEDULE FOR LIQUIDATED DAMAGES**

EXHIBIT A: SCHEDULE FOR LIQUIDATED DAMAGES

Contractor may be assessed Liquidated Damages if Contractor fails to fulfill its obligations with regards to the events listed in this Exhibit in accordance with the terms and conditions of the Agreement, with regards to the time frame for accomplishing each event and nature of the responsibility associated with the event unless otherwise stated in this Exhibit.

1.	Failure to Submit and Maintain Required Documents for Compliance Review. For each occurrence of Contractor's failure to submit and maintain insurance certificates and Member Agency business tax license in full compliance.	\$300/event
2.	Leaks, Litter, or Spills. For each occurrence over five (5) during a calendar year of unreasonable leaks, litter, or spills of Permitted Materials near or on public streets and failure to pick up or clean up such material immediately.	\$300/ event
3.	Unauthorized Collection Hours. For each occurrence over five (5) during a calendar year of Collecting Permitted Materials during unauthorized hours.	\$300/ event
4.	Excessive Noise. For each occurrence over three (3) during a calendar year of excessive noise.	\$300/ event
5.	Cleaning Collection Vehicles. For each occurrence over five (5) during a calendar year for failure to keep Collection vehicles in a safe and sanitary condition.	\$150/ event
6.	Labeling of Roll-Off Containers. For each occurrence of Contractor's failure to correctly label Contractor-owned Roll-Off Containers (in accordance with Section 6.4.D).	\$500/ event
7.	Discourteous Behavior. For each occurrence of discourteous behavior by Collection vehicle personnel, customer service personnel, or other employees of Contractor.	\$500/ event
8.	Injuries to Others. For each incident of personal injury to a Person requiring medical treatment or hospitalization, where the negligence of the Contractor or its personnel was a contributing factor to the injury.	\$5,000/ incident
9.	Quarterly Reports. Failure to submit quarterly reports in the timeframe specified in this Agreement.	\$300/ day*
10.	Report Hazardous Waste. For each failure to notify the appropriate authorities of reportable quantities of Hazardous Waste.	\$500/ event
11.	Report Excluded Material. For each failure to notify the appropriate authorities of reportable quantities of Excluded Material.	\$500/ event
12.	Delivery to Non-Approved Facility. Each occurrence of Delivering materials to a Facility other than the applicable Designated Facility or Approved Facility.	\$1,000/ load
13.	Failure of Other Obligations. Failure to perform any of the obligations set forth in this Agreement not specifically stated above and not corrected or proceeding in good faith to correct within 24 hours upon 24-hour notification by Authority.	\$150/ for each obligation per day until obligation is performed

EXHIBIT A: SCHEDULE FOR LIQUIDATED DAMAGES

14.	Diversion Noncompliance. For each instance of failure to meet Diversion requirements set forth in Section 5.6.	\$200/ day
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* Quarterly reports shall be considered late until such time as a correct and complete monthly report is received by Authority. For each calendar day a report is late, the daily Liquidated Damage shall be as indicated in the quarterly reports Section above.

Should the Authority Contract Manager determine that Contractor is noncompliant with the provision(s) of this Agreement, as provided in this Exhibit, the Authority Contract Manager may, but is not required, to develop a corrective action plan, or may require Contractor to develop a corrective action plan for Authority Contract Manager approval. Failure to meet the mutually agreed upon plan development, review timelines specified in the corrective action plan schedule, demonstrate good faith effort to do so, or failure to demonstrate achievement of compliance within the Franchise Agreement will result in the Authority Contract Manager’s recommendation to the Board to assess liquidated damages.

Liquidated Damages shall be subject to an annual adjustment on March 1 of each year based on the change in CPI-U. The annual adjustment shall be calculated as the average index value for the most recently available calendar year minus the average index value for the prior calendar year with the result to be divided by the average index value for the prior calendar year.

In placing Designee’s 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 Liquidated Damage provisions of the time that the Agreement was made.

Contractor
Initial Here: _____

Authority
Initial Here: _____

**EXHIBIT B:
SECRETARY'S CERTIFICATION**

EXHIBIT B: SECRETARY'S CERTIFICATION

The undersigned, being the Secretary of _____, a
Company Name
California corporation ("the Company"), do hereby certify that the following resolution was adopted by the Board of Directors of the Company and that such resolution has not been amended, modified, or rescinded and is in full force and effect as of the date hereof:

RESOLVED, that _____ be, and hereby is, authorized to
Name of Designated Representative
Execute by and on behalf of the Company any and all agreements, instruments, documents, or papers, as they may deem appropriate or necessary, pertaining to or relating to the Non-Exclusive Franchise Agreement between the West Valley Solid Waste Management Authority and Company for C&D Debris Collection Services and that any such action taken to date is hereby ratified and approved.

Dated: _____

Signature

Title

**EXHIBIT C:
STATEMENT OF APPLICANTS UNDERSTANDING AND
REPRESENTATIONS**

EXHIBIT C: STATEMENT OF APPLICANT'S UNDERSTANDING AND REPRESENTATIONS

The undersigned (who is duly authorized to bind the company submitting this application) has reviewed the requirements of the Non-Exclusive Franchise Agreement for C&D Debris Collection Services, its exhibits, and reference documents. In addition, the undersigned attests that this application and any other supplementary information submitted with this application do not: i) contain any untrue statement of a material fact, (ii) contain inaccurate or misleading information, or (iii) omit to state a material fact that is necessary to make the statements made, in light of the circumstances in which they were made, not misleading.

Print Name

Date

Title

Company Name

Signature