

List of Attachments for Item No. 12

– Solid Waste Procurement

Attachments:

- 12A Memorandum – Recommendation for Disposal Contract Award
- 12B Presentation – Council Award of Solid Waste Disposal Contract
- 12C Memorandum – Results of Assessing Air Quality and Green House Gas Emissions Impact of Solid Waste Transport Scenarios
- 12D Resolution and Agreement – Waste Management Inc.
- 12E Resolution and Agreement – Greenwaste Recovery, Inc.

MEMORANDUM

Engineering Division



To: Thomas C. Williams, City Manager
Through: Steven J. Machida, Director of Engineering
From: Solid Waste Procurement Evaluation Committee
Subject: **Recommendation for Disposal Contract Award**

Date: **March 8, 2016**

Background

The City's solid waste disposal and collection agreements expire September 2017. The City issued Requests For Proposals and established a process to award the disposal agreement first and the collection agreement subsequently. The disposal contractor will receive trash from the collection contractor for landfill burial. The collection contractor will collect trash from the community and deliver it to the disposal contractor. The collection contractor will also collect recyclables and organic materials from the community for separate handling. This memorandum addresses the trash disposal service only.

The City received trash disposal proposals from two companies, GreenWaste Recovery, Inc. and Waste Management of South Bay. At the January 12, 2016 Council study session, these potential trash disposal contractors presented their qualifications and technical approaches to manage Milpitas' trash for the next 20 years.

1. GreenWaste Recovery, Inc. would receive Milpitas trash from the collection contractor at its Charles Street Materials Recovery Facility located in North San Jose and for loading into large transfer trucks and driven to the Monterey Peninsula Landfill near Marina, California for landfill burial.
2. Waste Management would receive Milpitas trash from the collection contractor for landfill burial at its Guadalupe Recycling and Disposal Facility in the Almaden Valley of San Jose.

Evaluation Process

The evaluation committee was comprised of four City staff employees. The evaluation process was conducted in two phases. First the committee reviewed and evaluated the proposals based on technical criteria to establish overall ability to provide long-term disposal services. Second, after completion and submittal of the scoring for the technical criteria, the evaluation committee reviewed the costs to provide long-term disposal services.

Recommendation for Disposal Contract Award

As defined in the RFP, four technical criteria were used to evaluate the disposal proposals. The following table contains the criteria, the maximum scores for each criterion, and the composite scores awarded to each proposer by the evaluation team.

| Evaluation Criteria (RFP Section 7.3) | | Maximum Points | GreenWaste Recovery | Waste Management |
|---------------------------------------|---|----------------|---------------------|------------------|
| | | | Weighted Score | Weighted Score |
| 1 | Experience and Qualifications - Operating Experience - Performance Record - Financial Stability | 30 | 27.0 | 26.5 |
| 2 | Technical Approach, including but not limited to: - Facility Location and Accessibility - Reasonable Operating Characteristics - Guaranteed Throughput - Permitted and Guaranteed Capacity - Facility Expansion/Modification Plans (if applicable) - New Facility Development Plans (if applicable) | 30 | 25.5 | 21.8 |
| 3 | Environmental Considerations, including but not limited to: - Diversion Ability (if applicable) - Alternative Fuels - Odor/Site Acceptability | 10 | 7.8 | 7.5 |
| 4 | Acceptance of RFP and Franchise Terms - Number and Nature - Likelihood of Prompt & Successful Negotiations | 30 | 25.5 | 22.5 |
| Total Score | | 100 | 85.8 | 78.3 |

Both disposal proposers submitted an optional proposal allowing for periodic residential self-haul disposal to address the potential loss of “Household Dump Day” currently offered by Republic Services. Since one or more collection proposers may be able to offer a similar service, the final disposal agreements do not include this as a required service. However, both agreements include language allowing the City to initiate the service at the price offered by each company, following Council review of the collection proposals and prior to the start date of September 5, 2017.

In addition to staff’s evaluation of the disposers’ written proposals, the committee conducted interviews and field visits to each facility site to gather additional information and to observe sites and operations.

Discussion

The evaluation team reviewed all available information and determined that both proposers met all criteria and could provide long-term disposal services. GreenWaste Recovery, Inc. received a composite score of 85.8 points and Waste Management, Inc. received a composite score of 78.3 points.

Recommendation for Disposal Contract Award

The second phase in the evaluation involved review of the cost to provide the service. There are two factors affecting cost. The first is the simple per ton cost to receive and bury trash. The second factor is that collection costs are directly impacted by the distance the collection truck must travel to the disposer's facility. Since the evaluation team will not receive the collection proposals until the disposal agreement is awarded, the City's consultant provided a range of the additional collection costs to drive trash from the routes to GreenWaste Recovery's Charles Street facility (about 6 miles) and to WM's Guadalupe Landfill (about 20 miles). [Note that the cost of transport from GreenWaste Recovery's Charles Street facility is already included in GreenWaste's per-ton disposal prices.] Depending on the selected collection contractor and the actual tons of solid waste needing disposal, the City's consultant estimates that the selection of GreenWaste Recovery would increase total system costs (disposal and collection combined) by about 2% to 4%.

Summary

Both proposers met all criteria and are qualified to provide long term disposal services. The differential in technical scoring was not sufficient to justify selection of GreenWaste Recovery over Waste Management, due to higher cost.

Recommendation

The evaluation team recommends selection of Waste Management based upon the information outlined in this memo.



12B

Council Award of Solid Waste Disposal Contract

City Council
City of Milpitas
March 15, 2016



12B

Milestone – Disposal Award

| Activity | Date |
|---------------------------|------------------|
| Disposal Presentations | January 12, 2016 |
| DISPOSAL AWARD | Tonight |
| Collection Shortlisting | March/April 2016 |
| Collection Presentations | April/May 2016 |
| RSRAC, Community Outreach | April/May 2016 |
| Collection Award | June 2016 |



Tonight's Agenda

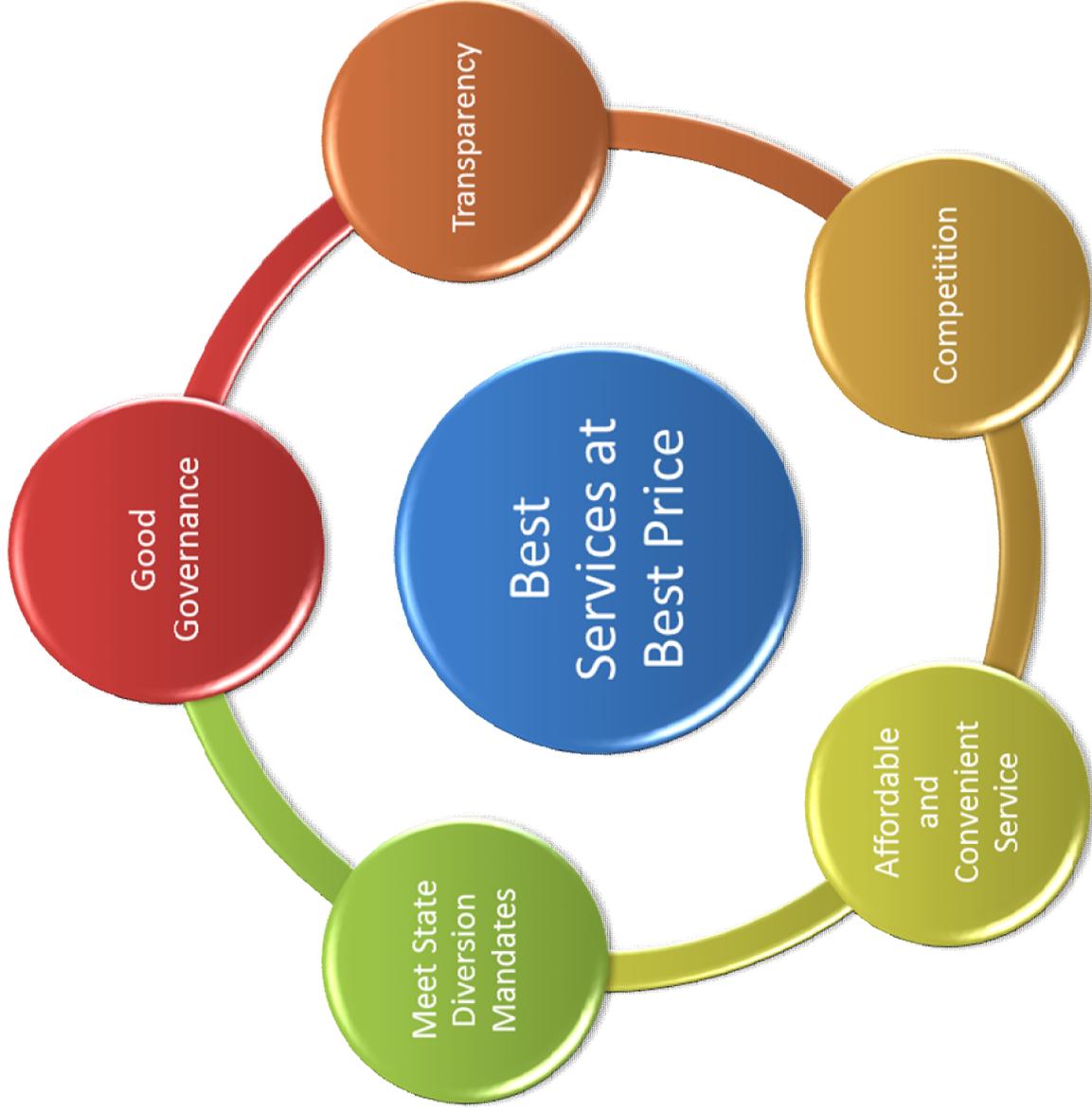
- Brief process recap
- Recap proposers and proposed services
- Summarize key contact provisions
- Review Evaluation Committee results
- Review costs
- Present Evaluation Committee's recommendation



PROCESS UPDATE



Key Goals for the Process



Achieving the Goals

- ✓ Clear statement of Council intent; direction regarding communications
- ✓ Good RFP information for competitive submittals
- ✓ Request services to result in clear “apples-to-apples” comparisons
- ✓ Separate disposal from rest of services
- ✓ No contingent arrangements or pricing
- ✓ Adequate time to prepare proposals



Maximized Flexibility for Proposers and the City

1. Proposers had the option to submit a proposal for disposal, a proposal for collection and processing, or a separate proposal for each service
2. The Council can select the same company to provide all services
3. All proposers had the opportunity to offer their “best price” – by submitting a proposal
4. The process captures the full cost of using a disposal site, including transport and tip fees



EVALUATION STEPS



Evaluation Steps

- ✓ Initial review
- ✓ Proposer interviews
- ✓ Proposer clarifications
- ✓ Facility tours
- ✓ Evaluate proposals
- ✓ Review costs
- ✓ Negotiate agreements
- ✓ Committee recommendation



DISPOSAL PROPOSERS



The Proposers

| Proposer | Facility | Location | Service | Transport Arrangements |
|---|-------------------------------------|--------------------------------------|------------------------|--|
| GreenWaste Recovery, Inc. | GreenWaste MRF and Transfer Station | 625 Charles St, San Jose | Transfer and Transport | Direct haul from collection routes – 6 miles one way |
| Monterey Regional Waste Management District | Monterey Peninsula Landfill | Marina (Monterey County) | Disposal | Consolidated transport via transfer trailer – 62 miles one way |
| Waste Management of South Bay, Inc. | Guadalupe Landfill | 15999 Guadalupe Mines Road, San Jose | Disposal | Direct haul from collection routes – 20 miles one way |



KEY REQUIREMENTS



Key RFP Provisions

- 20 year term
- May offer use of a nearby landfill with direct drop-off by collection trucks, OR
- May offer use of “transfer” to consolidate garbage in larger trucks for more efficient transport to a more distant landfill
- Option to provide “Material Drop-off” service similar to “Dump Days”
- Penalties for failure to meet standards
- City has no minimum tonnage obligation



Key Final Contract Provisions

| Issue | GWR | WM |
|---|--|--|
| Hours of Operation | <p><u>Permitted Hours:</u> 24 Hours per day, 7 days per week</p> <p><u>Current Operating Hours:</u> M-F 4:00AM-9:00PM, Sat 5:00AM-5:00PM</p> | <p><u>Permitted Hours:</u> Mon - Sat 6:00AM-6:00PM</p> <p><u>Current Operating Hours:</u> M-F 6:00AM-4:00PM, Sat 8:00AM-4:00PM</p> |
| Materials Drop-Off | <p>Offered service and City may initiate option at any time prior to September 5, 2017 start date</p> | <p>Offered service and City may initiate option at any time prior to September 5, 2017 start date</p> |
| Disposal of Residue from Solid Waste Processing | <p>City to direct residue from such processing to contractor</p> | <p>City to direct residue from such processing to contractor</p> |



Memorandum

date February 19, 2016

to Christopher Diaz, City Attorney, City of Milpitas
Steve Machida, Director of Engineering, City of Milpitas

from Jeff Caton, ESA Project Manager

cc Peter Deibler, HF&H Consultants
Tracy Swanborn, HF&H Consultants

subject Results of Assessing Air Quality and Green House Gas Emissions Impact of Solid Waste Transport Scenarios

Background

The City of Milpitas (City) is conducting a solid waste collection, processing and disposal procurement process. In response to a request for proposals, two companies submitted proposals to provide future disposal services, GreenWaste Recovery (GWR) with transfer from the Charles Street Material Recovery Facility (MRF) and Transfer Station in San Jose and disposal at the Marina Landfill in Monterey County, and Waste Management (WM) for disposal at the Guadalupe Landfill in San Jose. The City also received six proposals to provide collection services which will include transporting the collected solid waste to the GWR or WM facilities. While the identities of the collection proposers have been made public, the content of their proposals has not. Thus, they are identified only as proposer "A" – "F" in this analysis.

The City currently uses Republic Services' Newby Island Landfill in San Jose for disposal of solid waste. Republic Services did not propose to continue to provide disposal services, and thus the City Council will select either GWR or WM to provide future disposal services. The City retained ESA to conduct an analysis of impacts related to air quality and Green House Gas (GHG) emissions related to the transport of solid waste for landfill disposal. Since both the GWR and WM proposed facilities are located further away from the City than Newby Island, use of either will entail additional transport with related additional air quality and GHG emissions impacts. The degree of impact varies among the collection proposers as a function of the annual number of disposal tons, number of annual truck trips, types of trucks, and the number of tons per load. The analysis focuses on air quality and GHG impacts resulting from the use of either of the proposed facilities by any of the collection proposers, relative to the impacts of current City use of the Newby Island Landfill.

Summary of Analysis

ESA has completed its analysis of the transportation-related air quality and greenhouse gas (GHG) impacts associated with multiple scenarios for collecting and transporting municipal solid waste (MSW) from the City for landfill disposal. First, the analysis of direct haul reflects the varied tonnage and transport assumptions made by each of the collection proposers for hauling collected MSW from the City to either WM's Guadalupe Landfill in

San Jose, or to GWR’s Charles Street MRF and Transfer Station in San Jose. Second, there are two (2) possible route variations for transferring the MSW from the Charles Street facility to the Marina Landfill in Monterey County. The air quality and GHG emissions impacts of these scenarios, summarized below, are assessed and compared to the impact associated with the City’s current baseline of collecting and direct hauling MSW to the nearby Newby Island Resource Recovery Park in San Jose. The results of the analysis for GWR and WM were shared with each respective company, and neither had any comments.

In summary, use of either proposed facility will result in increased GHG emissions and criteria air pollutant emissions relative to current practice. However, regardless of which proposer is selected, the emissions increases are negligible in the context of emissions from all on-road transportation sources in the Bay Area, as shown in Table 1.

TABLE 1 – Proposals vs. Baseline: Summary of High and Low Values for Criteria Air and GHG Emissions

| | GWR Scenarios 1 and 2 | | WM Disposal Scenario | | Baseline | Total Bay Area |
|---|---|--------|---|--------|--|---|
| | Low | High | Low | High | n.a | n.a. |
| | Collection vehicles haul from City Center to Charles St MRF; Transfer trucks haul round-Trip to Marina LF | | Collection vehicles haul from City Center to Guadalupe Landfill | | Collection vehicles haul from City Center to Newby Island Landfill | Total for On-road Motor Vehicles (a, b) |
| Total Criteria Air Pollutants (kg per year) | | | | | | |
| ROG | 19.42 | 25.16 | 9.62 | 16.53 | 1.91 | 27,620,816 |
| NOx | 459.20 | 596.09 | 85.61 | 246.50 | 28.45 | 54,950,295 |
| PM-10 | 1.37 | 1.86 | 0.22 | 0.85 | 0.04 | 4,360,136 |
| PM-2.5 | 1.31 | 1.78 | 0.22 | 0.81 | 0.04 | 2,297,596 |
| Total GHG Emissions (metric tons per year) | | | | | | |
| CO2e Lifecycle Emissions | 831 | 1,082 | 479 | 822 | 95 | n.a. |
| CO2e Tailpipe Emissions | 528 | 709 | 67 | 648 | 75 | 34,870,000 |

Scenario Descriptions

The four MSW disposal scenarios are described as follows:

1. **Baseline Scenario:** Direct haul of collected MSW from the City center (City Hall) approximately 3 miles to the Newby Island landfill.
2. **WM Scenario:** Direct haul of collected MSW from the City center approximately 20 miles to Waste Management’s Guadalupe Landfill in south San Jose.
3. **GWR Scenario 1:** Direct haul of collected MSW from the City center approximately 6 miles to the GWR Charles Street facility in north San Jose, where the material is consolidated into transfer vehicles and driven to the Monterey Peninsula Landfill in Marina about 62 miles to the south. 100% of the material would be trucked by round trip between the Charles Street MRF and the Marina Landfill.
4. **GWR Scenario 2:** The same as GWR Scenario 1, except that 70% of the trips would be round trips between the Charles Street facility and the Marina LF, while 30% of the trips would be return routed through GWR’s Watsonville facility to backhaul recyclable materials.

TABLE 2: City of Milpitas: Solid Waste Collection Vehicle Direct Haul Time and Mileage Analysis

| Proposer | GWR Disposal Scenarios | | | | | | | WM Disposal Scenario | | | | | | | Baseline Scenario |
|---|---|---------------|---------------|----------------|-------------------|----------------|--|---|----------------|----------------|----------------|-------------------|----------------|--|---|
| | Collection vehicles haul from City Center to Charles St MRF | | | | | | | Collection vehicles haul from City Center to Guadalupe Landfill | | | | | | | |
| | 12-Month Period (September 6, 2017 to September 5, 2018) | | | | | | | 12-Month Period (September 6, 2017 to September 5, 2018) | | | | | | | |
| | A | B | C | D1 | D2 | E | F | A | B | C | D1 | D2 | E | F | Newby Is |
| Cart, Bin, and Street Sweeping Collection Data | | | | | | | | | | | | | | | |
| Vehicle Type (b) | T7 SWCV | T7 SWCV | T7 SWCV | T7 SWCV | T7 SWCV | T7 SWCV | T7 SWCV | T7 SWCV | T7 SWCV | T7 SWCV | T7 SWCV | T7 SWCV | T7 SWCV | T7 SWCV | T7 SWCV |
| Vehicle Model Year | 2016 or 2017 | 2017 | 2017 | 2017 | 2017 | 2012 | 2017 | 2016 or 2017 | 2017 | 2017 | 2017 | 2017 | 2012 | 2017 | 2012 except for a 2008 Street Sweeper |
| Vehicle Fuel Type | CNG | CNG | CNG | CNG (a) | Biodiesel B20 (a) | CNG | CNG except for 1 Diesel Street Sweeper | CNG | CNG | CNG | CNG (a) | Biodiesel B20 (a) | CNG | CNG except for 1 Diesel Street Sweeper | CNG except for a 2008 Diesel Street Sweeper |
| Average Speed (mph) | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 |
| Annual Solid Waste Tons Collected | 37,567 | 45,334 | 35,899 | 38,083 | 38,083 | 38,494 | 46,742 | 37,567 | 45,334 | 35,899 | 38,083 | 38,083 | 38,494 | 46,742 | 38,494 |
| Annual Direct Haul Loads | 6,771 | 4,770 | 4,160 | 4,680 | 4,680 | 3,484 | 6,760 | 6,771 | 4,770 | 4,160 | 4,680 | 4,680 | 3,484 | 6,760 | 3,380 |
| Annual Direct Haul Transport Hours | 2,612 | 1,932 | 1,212 | 1,959 | 1,959 | 1,566 | 3,662 | 7,835 | 5,605 | 4,641 | 5,603 | 5,603 | 4,307 | 8,963 | 915 |
| Annual Direct Haul Transport Mileage (VMT) | 74,857 | 55,862 | 34,710 | 56,518 | 56,518 | 45,448 | 106,808 | 256,675 | 181,142 | 149,344 | 181,979 | 181,979 | 138,632 | 287,638 | 15,974 |
| On-Call Pick-Ups and Debris Box SW Collection Data | | | | | | | | | | | | | | | |
| Truck Type (c) | Roll-Off | Roll-Off | Roll-Off | Roll-Off | Roll-Off | Roll-Off | Roll-Off | Roll-Off | Roll-Off | Roll-Off | Roll-Off | Roll-Off | Roll-Off | Roll-Off | Roll-Off |
| Vehicle Model Year | 2016 or 2017 | 2017 | 2017 | 2017 | 2017 | 2012 | 2017 | 2016 or 2017 | 2017 | 2017 | 2017 | 2017 | 2012 | 2017 | 2012 & 2015 |
| Vehicle Fuel Type | CNG | CNG | CNG | CNG (a) | Biodiesel B20 (a) | CNG | CNG except for one Diesel Street Sweeper | CNG | CNG | CNG | CNG (a) | Biodiesel B20 (a) | CNG | CNG except for one Diesel Street Sweeper | CNG |
| Average Speed (mph) | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 | 30 |
| Annual Solid Waste Tons Collected | 13,845 | 7,818 | 12,484 | 12,199 | 12,199 | 10,891 | 0 | 13,845 | 7,818 | 12,484 | 12,199 | 12,199 | 10,891 | 0 | 10,891 |
| Annual Direct Haul Loads | 3,198 | 1,025 | 3,900 | 3,900 | 3,900 | 4,966 | 520 | 3,198 | 1,025 | 3,900 | 3,900 | 3,900 | 4,966 | 520 | 4,680 |
| Annual Direct Haul Transport Hours | 1,282 | 431 | 1,421 | 1,678 | 1,678 | 2,173 | 338 | 3,727 | 1,209 | 4,487 | 4,626 | 4,626 | 5,945 | 764 | 1,592 |
| Annual Direct Haul Transport Mileage (VMT) | 36,725 | 12,397 | 40,690 | 48,104 | 48,104 | 62,421 | 9,984 | 122,551 | 39,615 | 146,640 | 152,630 | 152,630.4 | 195,439 | 23,868 | 27,789 |
| Total SW Collection Data | | | | | | | | | | | | | | | |
| Annual Solid Waste Tons Collected | 51,412 | 53,152 | 48,383 | 50,282 | 50,282 | 49,385 | 46,742 | 51,412 | 53,152 | 48,383 | 50,282 | 50,282 | 49,385 | 46,742 | 49,385 |
| Annual Direct Haul Loads | 9,969 | 5,795 | 8,060 | 8,580 | 8,580 | 8,450 | 7,280 | 9,969 | 5,795 | 8,060 | 8,580 | 8,580 | 8,450 | 7,280 | 8,060 |
| Annual Direct Haul Transport Hours | 3,894 | 2,364 | 2,633 | 3,637 | 3,637 | 3,739 | 4,000 | 11,563 | 6,814 | 9,129 | 10,229 | 10,229 | 10,252 | 9,726 | 2,507 |
| Annual Direct Haul Transport Mileage (VMT) | 111,582 | 68,258 | 75,400 | 104,622 | 104,622 | 107,869 | 116,792 | 379,226 | 220,757 | 295,984 | 334,610 | 334,610 | 334,071 | 311,506 | 43,763 |

(a) Proposer D presented two scenarios for its collection vehicle fleet - CNG and Biodiesel

(b) For the purposes of this analysis, street sweeping vehicles have been included as T7 SWCV with the assumption that emissions impacts are comparable or less than the T7 SWCV.

(c) For the purposes of this analysis, flat-bed vehicles for on-call pick-ups have been included with roll-off vehicles with the assumption that emissions impacts are comparable or less than the roll-off vehicles.

Table 2 summarizes the pertinent data used to analyze the emissions from hauling the collected MSW to the WM and GWR facilities described above (Table 2 does not include transfer hauling for the two GWR scenarios), including vehicle information, route data, and load characteristics. Annual transport mileage was calculated for the trucks used on collection routes. To simplify the analysis, the T7 Solid Waste Collection Vehicle (SWCV) category was used to represent all trucks including the street sweeper under Proposer F and the Baseline Scenario, and the roll-off truck used for on-call and debris box pick-ups. Information for the six collection hauling proposers is identified using generic labels A through F, with the CNG and Biofuel options for Proposer D labeled D1 and D2, respectively.

The Newby Island baseline scenario, which also uses T7 SWCV and T7 Roll Off vehicles, is summarized in the far right column. Note that all vehicles run on compressed natural gas (CNG), with the exception of the diesel-powered street sweeper included under the Baseline Scenario and Proposer F. To simplify the analysis, the street sweeper, which accounts for less than 5% of the VMT, is assumed to run on CNG.

For the GWR transfer and disposal hauling scenarios, tractor trailer trucks are used to haul MSW approximately 62 miles to the Marina Landfill. In GWR Scenario 1, all trucks return to the Charles St. MRF in San Jose, for a round trip of 124.6 miles. For GWR Scenario 2, 30% of the truck trips (assumed to remain constant under all Proposer annual tonnages) are routed to a GWR facility in Watsonville to pick up recyclables before returning to the Charles St. facility, resulting in a round trip of approximately 132.4 miles. The remaining truck trips return directly to the Charles St. facility.

Table 3 summarizes the truck trips, route information, average speed, and transfer mileages used in the GWR disposal hauling analysis. Much of the data in the table come directly from an existing report prepared by Edgar & Associates on behalf of GWR¹ that quantifies the air quality and GHG impacts of GWR Scenario 2. ESA reviewed Edgar and Associates study and generally found its methodology to be sound. In conjunction with HF&H we also checked the underlying data and found some minor discrepancies, which are identified in Table 3 using italics along with the sources of our findings.

TABLE 3: Transfer Hauling Time and Mileage Analysis for GWR Scenarios

| General Assumptions | | | |
|--|--------------|---------------|--|
| | ESA | Edgar & Assoc | Source/ESA Assumption |
| Average tons per load | 21.6 | 22 | <i>GWR scale house records</i> |
| Mileage Data | | | |
| Round-trip, Charles St to Marina LF | 124.6 | 124.6 | GWR GHG analysis; verified by HF&H with Google maps |
| One-way, Charles St to Marina LF | 62.3 | 62.3 | GWR GHG analysis; verified by HF&H with Google maps |
| One-way, Marina LF to Watsonville | 15.2 | 15.1 | <i>Google maps</i> |
| One-way, Watsonville to Charles St | 54.9 | 55.3 | <i>Google maps</i> |
| Round-trip with recyclables back haul | 132.4 | 132.7 | <i>Google maps</i> |
| Transfer Truck Data | | | |
| EMFAC Category | T7 Tractor | T7 Tractor | GWR emissions analysis |
| Truck fuel efficiency | 4.2 | 4.2 | GWR emissions analysis |
| Biodiesel (B20) transfer trucks | 3 | 3 | GWR emissions analysis |
| Diesel transfer trucks | 7 | 7 | GWR emissions analysis |
| Total Transfer Trucks | 10 | 10 | |
| Average truck speed (mph) | 40.2 | 45 | <i>GWR scale records</i> |
| Back-Haul Scenario Truck Assumptions | | | |
| Recyclables back-haul loads/day | 30% | 2.6 (30%) | GWR emissions analysis (Charles St/Marina LF/Watsonville/Charles St) |
| SW round-trip loads per day | 70% | 6 (70%) | GWR emissions analysis (Charles St/Marina LF/Charles St) |
| Total loads to Marina per day | 100% | 8.6 (100%) | GWR emissions analysis |
| Backhaul reduced trips from Marina to Charles St | 35% | 3 (35%) | GWR emissions analysis and email correspondence with Edgar & Assoc |

¹ Edgar & Associates, 2016, *GreenWaste Recovery, Inc. Transportation Emissions Analysis*, January 6, 2016

Emissions Summaries

Transportation emissions were based on estimates of vehicle miles traveled (VMT) summarized in Tables 2 and 3, by vehicle type (Class 7 CNG, diesel, and biodiesel powered vehicles) for collection vehicles traveling from their point of origin to the service area, from the service area to the landfill or transfer station, and back to their point of origin at day’s end; and for long-haul vehicles traveling between the Charles St. transfer station, the Marina landfill, and the GWR Watsonville facility (GWR Scenario 2 only). Criteria air pollutants² were estimated by multiplying VMT by emission factors for grams/VMT; GHG emissions were estimated by converting VMT to units of fuel used for each truck type, and multiplying fuel use by emission factors for metric tons carbon dioxide equivalent (MT CO2e) per unit of fuel consumed.

Assumptions, methods, and emissions factors used in the analysis are described in Attachment 1 to this memorandum. The results of the modeling are summarized in Tables 4, 5, 6 and 7 for the Baseline, WM, and GWR 1, and GWR 2 Scenarios, respectively. The tables include roll up calculations for annual solid waste tons collected, and direct haul loads, transport hours and transport mileage.

TABLE 4 – Baseline Scenario: Criteria Air Pollutants and GHG Emissions

| Baseline Scenario | |
|---|--------|
| COLLECTION & DIRECT HAULING To Newby Island Landfill | |
| Annual Solid Waste Tons Collected | 49,385 |
| Annual Direct Haul Loads | 8,060 |
| Annual Direct Haul Transport Hours | 2,507 |
| Annual Direct Haul Transport Mileage (VMT) | 43,763 |
| EMISSIONS | |
| Criteria Air Pollutants - kg per year | |
| ROG | 1.91 |
| NOx | 28.45 |
| PM-10 | 0.04 |
| PM-2.5 | 0.04 |
| Greenhouse Gas Emissions - metric tons per year | |
| CO2e Lifecycle Emissions | 94.9 |
| CO2e Tailpipe Emissions | 74.7 |

TABLE 5 – WM Scenario: Criteria Air Pollutants and GHG Emissions

| WM Scenario | | | | | | | |
|--|-----------------|---------|---------|---------|---------|---------|---------|
| | Proposer | | | | | | |
| | A | B | C | D1 | D2 | E | F |
| COLLECTION & DIRECT HAULING to Guadalupe Landfill | | | | | | | |
| Annual Solid Waste Tons Collected | 51,412 | 53,152 | 48,383 | 50,282 | 50,282 | 49,385 | 46,742 |
| Annual Direct Haul Loads | 9,969 | 5,795 | 8,060 | 8,580 | 8,580 | 8,450 | 7,280 |
| Annual Direct Haul Transport Hours | 11,563 | 6,814 | 9,129 | 10,229 | 10,229 | 10,252 | 9,726 |
| Annual Direct Haul Transport Mileage (VMT) | 379,226 | 220,757 | 295,984 | 334,610 | 334,610 | 334,071 | 311,506 |
| EMISSIONS | | | | | | | |
| Criteria Air Pollutants - kg per year | | | | | | | |
| ROG | 16.53 | 9.62 | 12.90 | 14.59 | 10.47 | 14.56 | 13.58 |
| NOx | 246.50 | 143.49 | 192.39 | 217.50 | 85.61 | 217.15 | 202.48 |
| PM-10 | 0.38 | 0.22 | 0.30 | 0.33 | 0.85 | 0.33 | 0.31 |
| PM-2.5 | 0.38 | 0.22 | 0.30 | 0.33 | 0.81 | 0.33 | 0.31 |
| Greenhouse Gas Emissions - metric tons per year | | | | | | | |
| CO2e Lifecycle Emissions | 822.1 | 478.5 | 641.6 | 725.3 | 525.0 | 724.2 | 675.3 |
| CO2e Tailpipe Emissions | 647.7 | 377.1 | 505.5 | 571.5 | 66.5 | 570.6 | 532.1 |

² Criteria air pollutants include ROG: Reactive Organic Gases; NOx: Oxides of Nitrogen; PM10: Particulate Matter less than 10 microns diameter; PM2.5: Particulate Matter less than 2.5 microns diameter.

TABLE 6 – GWR Scenario 1: Criteria Air Pollutants and GHG Emissions

| GWR Scenario 1 | | | | | | | |
|---|-----------------|----------|----------|-----------|-----------|----------|----------|
| | Proposer | | | | | | |
| | A | B | C | D1 | D2 | E | F |
| COLLECTION HAULING to GWR Charles Street Facility | | | | | | | |
| Annual Solid Waste Tons Collected | 51,412 | 53,152 | 48,383 | 50,282 | 50,282 | 49,385 | 46,742 |
| Annual Direct Haul Loads | 9,969 | 5,795 | 8,060 | 8,580 | 8,580 | 8,450 | 7,280 |
| Annual Direct Haul Transport Hours | 3,894 | 2,364 | 2,633 | 3,637 | 3,637 | 3,739 | 4,000 |
| Annual Direct Haul Transport Mileage (VMT) | 111,582 | 68,258 | 75,400 | 104,622 | 104,622 | 107,869 | 116,792 |
| Collection Emissions | | | | | | | |
| Criteria Air Pollutants - kg per year | | | | | | | |
| ROG | 4.86 | 2.98 | 3.29 | 4.56 | 3.27 | 4.70 | 5.09 |
| NOx | 72.53 | 44.37 | 49.01 | 68.00 | 26.77 | 70.11 | 75.91 |
| PM-10 | 0.11 | 0.07 | 0.08 | 0.10 | 0.27 | 0.11 | 0.12 |
| PM-2.5 | 0.11 | 0.07 | 0.08 | 0.10 | 0.25 | 0.11 | 0.12 |
| Greenhouse Gas Emissions - metric tons per year | | | | | | | |
| CO2e Lifecycle Emissions | 241.9 | 148.0 | 163.4 | 226.8 | 164.2 | 233.8 | 253.2 |
| CO2e Tailpipe Emissions | 190.6 | 116.6 | 128.8 | 178.7 | 20.8 | 184.2 | 199.5 |
| HAULING from GWR Charles Street to Marina Landfill | | | | | | | |
| Solid Waste Tons Collected per Year | 51,412 | 53,152 | 48,383 | 50,282 | 50,282 | 49,385 | 46,742 |
| Transfer Loads per Year | 2,380 | 2,461 | 2,240 | 2,328 | 2,328 | 2,286 | 2,158 |
| Total Annual Transfer Haul Hours | 7,377 | 7,627 | 6,943 | 7,215 | 7,215 | 7,087 | 6,689 |
| Total Annual Transfer Mileage (VMT) | 296,572 | 306,607 | 279,098 | 290,053 | 290,053 | 284,879 | 268,911 |
| Hauling Emissions | | | | | | | |
| Criteria Air Pollutants - kg per year | | | | | | | |
| ROG | 20.30 | 20.98 | 19.10 | 19.85 | 19.85 | 19.50 | 18.40 |
| NOx | 523.56 | 541.28 | 492.72 | 512.06 | 512.06 | 502.92 | 474.73 |
| PM-10 | 1.63 | 1.69 | 1.54 | 1.60 | 1.60 | 1.57 | 1.48 |
| PM-2.5 | 1.56 | 1.62 | 1.47 | 1.53 | 1.53 | 1.50 | 1.42 |
| Greenhouse Gas Emissions - metric tons per year | | | | | | | |
| CO2e Lifecycle Emissions | 840.3 | 868.7 | 790.8 | 821.8 | 821.8 | 807.1 | 761.9 |
| CO2e Tailpipe Emissions | 518.4 | 535.9 | 487.8 | 507.0 | 507.0 | 497.9 | 470.0 |
| TOTAL GWR Scenario 1 | | | | | | | |
| Total Emissions | | | | | | | |
| Criteria Air Pollutants - kg per year | | | | | | | |
| ROG | 25.16 | 23.96 | 22.39 | 24.41 | 23.12 | 24.20 | 23.49 |
| NOx | 596.09 | 585.65 | 541.73 | 580.06 | 538.82 | 573.04 | 550.65 |
| PM-10 | 1.75 | 1.76 | 1.61 | 1.70 | 1.86 | 1.68 | 1.60 |
| PM-2.5 | 1.68 | 1.68 | 1.55 | 1.63 | 1.78 | 1.61 | 1.53 |
| Greenhouse Gas Emissions - metric tons per year | | | | | | | |
| CO2e Lifecycle Emissions | 1082.1 | 1016.7 | 954.2 | 1048.6 | 986.0 | 1041.0 | 1015.1 |
| CO2e Tailpipe Emissions | 709.0 | 652.5 | 616.6 | 685.7 | 527.8 | 682.2 | 669.5 |

TABLE 7 – GWR Scenario 2: Criteria Air Pollutants and GHG Emissions

| GWR Scenario 2 | | | | | | | |
|---|-----------------|----------|----------|-----------|-----------|----------|----------|
| | Proposer | | | | | | |
| | A | B | C | D1 | D2 | E | F |
| COLLECTION HAULING to GWR Charles Street Facility | | | | | | | |
| Annual Solid Waste Tons Collected | 51,412 | 53,152 | 48,383 | 50,282 | 50,282 | 49,385 | 46,742 |
| Annual Direct Haul Loads | 9,969 | 5,795 | 8,060 | 8,580 | 8,580 | 8,450 | 7,280 |
| Annual Direct Haul Transport Hours | 3,894 | 2,364 | 2,633 | 3,637 | 3,637 | 3,739 | 4,000 |
| Annual Direct Haul Transport Mileage (VMT) | 111,582 | 68,258 | 75,400 | 104,622 | 104,622 | 107,869 | 116,792 |
| Collection Emissions | | | | | | | |
| Criteria Air Pollutants - kg per year | | | | | | | |
| ROG | 4.86 | 2.98 | 3.29 | 4.56 | 3.27 | 4.70 | 5.09 |
| NOx | 72.53 | 44.37 | 49.01 | 68.00 | 26.77 | 70.11 | 75.91 |
| PM-10 | 0.11 | 0.07 | 0.08 | 0.10 | 0.27 | 0.11 | 0.12 |
| PM-2.5 | 0.11 | 0.07 | 0.08 | 0.10 | 0.25 | 0.11 | 0.12 |
| Greenhouse Gas Emissions - metric tons per year | | | | | | | |
| CO2e Lifecycle Emissions | 241.9 | 148.0 | 163.4 | 226.8 | 164.2 | 233.8 | 253.2 |
| CO2e Tailpipe Emissions | 190.6 | 116.6 | 128.8 | 178.7 | 20.8 | 184.2 | 199.5 |
| HAULING from GWR Charles Street to Marina Landfill | | | | | | | |
| Solid Waste Tons Collected per Year | 51,412 | 53,152 | 48,383 | 50,282 | 50,282 | 49,385 | 46,742 |
| Transfer Loads per Year | 2,380 | 2,461 | 2,240 | 2,328 | 2,328 | 2,286 | 2,158 |
| Total Annual Transfer Haul Hours | 6,230 | 6,441 | 5,863 | 6,093 | 6,093 | 5,985 | 5,649 |
| Total Annual Transfer Mileage | 250,457 | 258,932 | 235,700 | 244,952 | 244,952 | 240,582 | 227,097 |
| EMISSIONS | | | | | | | |
| Criteria Air Pollutants - kg per year | | | | | | | |
| ROG | 17.14 | 17.72 | 16.13 | 16.76 | 16.76 | 16.46 | 15.54 |
| NOx | 442.15 | 457.12 | 416.10 | 432.43 | 432.43 | 424.72 | 400.91 |
| PM-10 | 1.38 | 1.43 | 1.30 | 1.35 | 1.35 | 1.33 | 1.25 |
| PM-2.5 | 1.32 | 1.37 | 1.24 | 1.29 | 1.29 | 1.27 | 1.20 |
| Greenhouse Gas Emissions - metric tons per year | | | | | | | |
| CO2e Lifecycle Emissions | 709.6 | 733.6 | 667.8 | 694.0 | 694.0 | 681.6 | 643.4 |
| CO2e Tailpipe Emissions | 437.8 | 452.6 | 412.0 | 428.2 | 428.2 | 420.5 | 396.9 |
| TOTAL GWR Scenario 2 | | | | | | | |
| EMISSIONS | | | | | | | |
| Criteria Air Pollutants - kg per year | | | | | | | |
| ROG | 22.00 | 20.70 | 19.42 | 21.32 | 20.04 | 21.17 | 20.63 |
| NOx | 514.68 | 501.48 | 465.11 | 500.44 | 459.20 | 494.84 | 476.83 |
| PM-10 | 1.49 | 1.50 | 1.37 | 1.45 | 1.61 | 1.43 | 1.37 |
| PM-2.5 | 1.43 | 1.43 | 1.32 | 1.40 | 1.55 | 1.38 | 1.31 |
| Greenhouse Gas Emissions - metric tons per year | | | | | | | |
| CO2e Lifecycle Emissions | 951.5 | 881.6 | 831.2 | 920.8 | 858.2 | 915.5 | 896.6 |
| CO2e Tailpipe Emissions | 628.4 | 569.2 | 540.8 | 606.8 | 449.0 | 604.8 | 596.4 |

TABLE 8 – Summary of High and Low Values for Criteria Air and GHG Emissions

| Summary Data | | | | | | | |
|--|---|--------|---|--------|---|--------|--|
| | GWR Scenario 1 | | GWR Scenario 2 | | WM Disposal Scenario | | Baseline |
| | Collection vehicles haul from City Center to Charles St MRF; Transfer Trucks haul round-Trip to Marina LF | | Collection vehicles haul from City Center to Charles St MRF; Transfer trucks haul round-Trip to Marina LF and some haul via Watsonville | | Collection vehicles haul from City Center to Guadalupe Landfill | | Collection vehicles haul from City Center to Newby Island Landfill |
| | Low | High | Low | High | Low | High | |
| COLLECTION VEHICLE DIRECT HAULING | | | | | | | |
| Criteria Air Pollutants (kg per year) | | | | | | | |
| ROG | 2.98 | 5.09 | 2.98 | 5.09 | 9.62 | 16.53 | 1.91 |
| NOx | 26.77 | 75.91 | 26.77 | 75.91 | 85.61 | 246.50 | 28.45 |
| PM-10 | 0.07 | 0.27 | 0.07 | 0.27 | 0.22 | 0.85 | 0.04 |
| PM-2.5 | 0.07 | 0.25 | 0.07 | 0.25 | 0.22 | 0.81 | 0.04 |
| Greenhouse Gase Emissions (metric tons per year) | | | | | | | |
| CO2e Lifecycle Emissions | 148.0 | 253.2 | 148.0 | 253.2 | 478.5 | 822.1 | 94.9 |
| CO2e Tailpipe Emissions | 20.8 | 199.5 | 20.8 | 199.5 | 66.5 | 647.7 | 74.7 |
| TRANSFER VEHICLE HAULING | | | | | | | |
| Criteria Air Pollutants (kg per year) | | | | | | | |
| ROG | 18.40 | 20.98 | 15.54 | 17.72 | NA | NA | NA |
| NOx | 474.73 | 541.28 | 400.91 | 457.12 | NA | NA | NA |
| PM-10 | 1.48 | 1.69 | 1.25 | 1.43 | NA | NA | NA |
| PM-2.5 | 1.42 | 1.62 | 1.20 | 1.37 | NA | NA | NA |
| Greenhouse Gase Emissions (metric tons per year) | | | | | | | |
| CO2e Lifecycle Emissions | 762 | 869 | 643 | 734 | NA | NA | NA |
| CO2e Tailpipe Emissions | 470 | 536 | 397 | 453 | NA | NA | NA |
| Total | | | | | | | |
| Criteria Air Pollutants (kg per year) | | | | | | | |
| ROG | 22.39 | 25.16 | 19.42 | 22.00 | 9.62 | 16.53 | 1.91 |
| NOx | 538.82 | 596.09 | 459.20 | 514.68 | 85.61 | 246.50 | 28.45 |
| PM-10 | 1.60 | 1.86 | 1.37 | 1.61 | 0.22 | 0.85 | 0.04 |
| PM-2.5 | 1.53 | 1.78 | 1.31 | 1.55 | 0.22 | 0.81 | 0.04 |
| Greenhouse Gase Emissions (metric tons per year) | | | | | | | |
| CO2e Lifecycle Emissions | 954 | 1,082 | 831 | 951 | 479 | 822 | 95 |
| CO2e Tailpipe Emissions | 528 | 709 | 541 | 628 | 67 | 648 | 75 |

Table 9 provides a percent comparison showing the relative values of air pollutants and GHG emissions from the WM and GWR Scenarios to the Baseline scenario values.

TABLE 9 – Emissions from Proposed Hauling Scenarios as Percentage of Baseline Scenario Values

| | Proposer | | | | | | |
|---|----------|-------|-------|-------|-------|-------|-------|
| | A | B | C | D1 | D2 | E | F |
| WM Scenario | | | | | | | |
| Criteria Air Pollutants | | | | | | | |
| ROG, Nox, PM-10 and PM 2.5 | 867% | 504% | 676% | 765% | 549% | 763% | 712% |
| Greenhouse Gas Emissions | | | | | | | |
| CO2e Lifecycle Emissions | 867% | 504% | 676% | 765% | 553% | 763% | 712% |
| CO2e Tailpipe Emissions | 867% | 504% | 676% | 765% | 89% | 763% | 712% |
| GWR Scenarios - Collection hauling | | | | | | | |
| Criteria Air Pollutants | | | | | | | |
| ROG, Nox, PM-10 and PM 2.5 | 255% | 156% | 172% | 239% | 172% | 246% | 267% |
| Greenhouse Gas Emissions | | | | | | | |
| CO2e Lifecycle Emissions | 255% | 156% | 172% | 239% | 173% | 246% | 267% |
| CO2e Tailpipe Emissions | 255% | 156% | 172% | 239% | 28% | 246% | 267% |
| GWR Scenario 1 Total (Collection + Disposal Hauling) | | | | | | | |
| Criteria Air Pollutants | | | | | | | |
| ROG | 1319% | 1256% | 1173% | 1280% | 1212% | 1268% | 1232% |
| NOx | 2096% | 2059% | 1904% | 2039% | 1894% | 2014% | 1936% |
| PM-10 | 3990% | 4017% | 3687% | 3892% | 4258% | 3834% | 3653% |
| PM-2.5 | 3828% | 3850% | 3535% | 3734% | 4074% | 3679% | 3507% |
| Greenhouse Gas Emissions | | | | | | | |
| CO2e Lifecycle Emissions | 1141% | 1072% | 1006% | 1105% | 1039% | 1097% | 1070% |
| CO2e Tailpipe Emissions | 948% | 873% | 825% | 917% | 706% | 913% | 896% |
| GWR Scenario 2 Total (Collection + Disposal Hauling) | | | | | | | |
| Criteria Air Pollutants | | | | | | | |
| ROG | 1153% | 1085% | 1018% | 1118% | 1050% | 1109% | 1082% |
| NOx | 1809% | 1763% | 1635% | 1759% | 1614% | 1740% | 1676% |
| PM-10 | 3409% | 3417% | 3140% | 3324% | 3690% | 3276% | 3127% |
| PM-2.5 | 3272% | 3276% | 3012% | 3190% | 3531% | 3145% | 3003% |
| Greenhouse Gas Emissions | | | | | | | |
| CO2e Lifecycle Emissions | 1003% | 929% | 876% | 971% | 905% | 965% | 945% |
| CO2e Tailpipe Emissions | 841% | 761% | 723% | 812% | 601% | 809% | 798% |

Summary of Observations

For the collection hauling portion of the analysis, emissions associated with the WM scenario range from 504% to 867% of Baseline Scenario emissions (averaging approximately 691%), with the same exception of the much lower tailpipe GHG emissions associated with the D2 biodiesel option. Emissions associated with the GWR scenarios range from 172% to 267% of Baseline Scenario emissions (averaging approximately 215%), with the exception of the D2 biodiesel option, which represents much lower lifecycle GHG emissions.

Total emissions associated with the two GWR scenarios, which include transfer and long-haul transport to the Marina Landfill, are higher in comparison to the Baseline Scenario, ranging from approximately 1000 % to 4000% for criteria air pollutants, and 601% to 948% for tailpipe GHG emissions .

ATTACHMENT 1 – METHODOLOGY, ASSUMPTIONS AND SOURCES

GHG/AQ Modeling Assumptions

ESA used a variety of models and quantification to estimate GHG and criteria air pollutant emissions, including the EMFAC2014. Table A-1 lists general assumptions used for calculating route mileage, waste tonnages, hauling times and hauling speeds.

| | |
|----|---|
| 1 | Direct haul assumes round-trip from city center to facility for all loads except last load of the day (or last partial load of the day) which assumes the vehicle travels to the haulers' corporate yards |
| 2 | Approximate City center location at 455 E. Calaveras Blvd. |
| 3 | Solid waste tonnage, number of loads per week, average tons per route vehicle, and other route assumptions are based on proposal information; actual operating conditions will vary. This data is used to calculate VMT and travel hours. |
| 4 | The analysis focuses on solid waste tonnage estimates from the Base Proposals. Alternative proposals will result in less solid waste tonnage. |
| 5 | Analysis is limited to solid waste transportation and solid waste transfer and disposal facility locations. |
| 6 | Average hauling times for collection vehicles traveling from City center to Charles St and Guadalupe LF reported by GWR and WM respectively were used in the analysis and were confirmed as reasonable based on travel times reflected by Google maps from a five day sampling period, two samples per day. |
| 7 | Average hauling times for collection vehicles traveling from Charles St and Guadalupe LF to collection companies corporate yards were based on average speed of 30 mph which is approximate average for round-trip to Charles St and Guadalupe. |
| 8 | Collection vehicle direct haul travel time includes 20 minutes on-site unloading time at Charles Street and Guadalupe (per Disposal Agreement) and 25 minutes at Newby Island (per Republic). |
| 9 | GWR back-haul scenario relied on several of GWR assumptions per Edgar's emissions analysis; 2012 diesel vehicles used by subcontractor; 30% biodiesel/70% diesel: 30% back-haul trips/70% round-trip. |
| 10 | Baseline scenario reflects current hauling of solid waste to Newby Island at current tonnage levels. |
| 11 | Population growth, which may be large, is not factored into analysis. |
| 12 | Analysis assumes that street sweepers will directly haul street debris to Charles St or Guadalupe. |
| 13 | CWS - Proposal identified two corporate yard options. CWS indicated all vehicles will park at the Berryessa Rd yard in San Jose; not at the 10th St Oakland yard. |
| 14 | GWR has not selected a location for its corporation yard. Analysis assumed the distance to Charles St or Guadalupe equal to the average for the 5 other proposers. |
| 15 | GWR hauling time from Charles St - Marina - Watsonville = 40.2 mph per scale house data from GWR for 2 weeks in 2015. Note Edgar & Assoc analysis used 45 mpd; the scale house data showed 40.2 mph. |
| 16 | GWR average transfer load is 21.6 tons. Note that Edgar & Assoc analysis used 22 tons. |
| 17 | WM diesel for street sweeper assumed to be CNG for purpose of analysis. |

Table A-2 summarizes the emission factors used in the analysis, while Table A-3 lists assumptions and data sources used for emission factors and fuel efficiency. For modeling tailpipe criteria air pollutants (ROG, NOx, PM10 and PM2.5) from diesel and biodiesel, ESA used the California Air Resources Board (CARB) Emission FACTor model (EMFAC2014) to derive emission factors on a grams per mile basis, using average route speeds and selecting the T7 Solid Waste Collection Vehicle (SWCV) for collection hauling, and T7 Tractor vehicle category for the long haul transfer of MSW in the two GWR scenarios. For CNG, emissions factors for criteria air pollutants are based on a CARB study of CNG urban buses, as presented in EMFAC2014 Technical Documentation.

TABLE A-2 – Transportation Emissions Factors Used in Analysis of Criteria Air Pollutants and GHG Emissions

| Fuel | EMFAC Vehicle Category | Calendar Year | Model Year | Speed | Criteria Pollutants | | | | Greenhouse Gases | | | | | Heat content of Fuel (LHV) | Truck Fuel Efficiency | |
|-------------------------|------------------------|---------------|------------|-------|-----------------------------|--------|--------|--------|---------------------------|--------------------|--|--------------------------------|-------------------------------------|----------------------------|-----------------------|--------------------|
| | | | | | Tailpipe Emissions (g/mile) | | | | Lifecycle Emissions | Tailpipe Emissions | Lifecycle Emissions | Tailpipe Emissions | Lifecycle Emissions | | | Tailpipe Emissions |
| | | | | | ROG | NOx | PM-10 | PM-2.5 | | | | | | | | |
| Diesel (CA ULSD) | | | | | g/mile | | | | g of CO ₂ e/MJ | | MT CO ₂ e/MMBtu | MT of CO ₂ e/gallon | | Btu/gallon | mpg | |
| | T7 SWCV | 2017 | 2012 | 30 | 0.0518 | 0.2826 | 0.0037 | 0.0035 | 102.01 | 74.85 | 0.108 | 0.079 | 0.014 | 0.010 | 128,488 | 4.9 |
| | T7 SWCV | 2017 | 2012 | 40 | 0.0281 | 0.1840 | 0.0032 | 0.0031 | 102.01 | 74.85 | 0.108 | 0.079 | 0.014 | 0.010 | 128,488 | 4.9 |
| | T7 SWCV | 2017 | 2015 | 30 | 0.0391 | 0.2559 | 0.0028 | 0.0027 | 102.01 | 74.85 | 0.108 | 0.079 | 0.014 | 0.010 | 128,488 | 4.9 |
| | T7 SWCV | 2017 | 2015 | 40 | 0.0212 | 0.1666 | 0.0024 | 0.0023 | 102.01 | 74.85 | 0.108 | 0.079 | 0.014 | 0.010 | 128,488 | 4.9 |
| | T7 SWCV | 2017 | 2017 | 30 | 0.0391 | 0.2559 | 0.0028 | 0.0027 | 102.01 | 74.85 | 0.108 | 0.079 | 0.014 | 0.010 | 128,488 | 4.9 |
| | T7 SWCV | 2017 | 2017 | 40 | 0.0212 | 0.1666 | 0.0024 | 0.0023 | 102.01 | 74.85 | 0.108 | 0.079 | 0.014 | 0.010 | 128,488 | 4.9 |
| | T7 Tractor | 2017 | 2012 | 40 | 0.0798 | 2.2954 | 0.0064 | 0.0061 | 102.01 | 74.85 | 0.108 | 0.079 | 0.014 | 0.010 | 128,488 | 4.23 |
| | T7 Tractor | 2017 | 2015 | 40 | 0.0524 | 0.5286 | 0.0038 | 0.0037 | 102.01 | 74.85 | 0.108 | 0.079 | 0.014 | 0.010 | 128,488 | 4.23 |
| Biodiesel (BD20) | | | | | g/mile | | | | g of CO ₂ e/MJ | | MT CO ₂ e/MMBtu | MT CO ₂ e/gallon | | Btu/gallon | mpg | |
| | T7 SWCV | 2017 | 2012 | 30 | 0.0415 | 0.2826 | 0.0033 | 0.0032 | 56.95 | 59.88 | 0.060 | 0.063 | 0.008 | 0.001 | 126,700 | 4.851 |
| | T7 SWCV | 2017 | 2012 | 40 | 0.0225 | 0.1840 | 0.0029 | 0.0028 | 56.95 | 59.88 | 0.060 | 0.063 | 0.008 | 0.001 | 126,700 | 4.851 |
| | T7 SWCV | 2017 | 2015 | 30 | 0.0313 | 0.2559 | 0.0025 | 0.0024 | 56.95 | 59.88 | 0.060 | 0.063 | 0.008 | 0.001 | 126,700 | 4.851 |
| | T7 SWCV | 2017 | 2015 | 40 | 0.0170 | 0.1666 | 0.0022 | 0.0021 | 56.95 | 59.88 | 0.060 | 0.063 | 0.008 | 0.001 | 126,700 | 4.851 |
| | T7 SWCV | 2017 | 2017 | 30 | 0.0313 | 0.2559 | 0.0025 | 0.0024 | 56.95 | 59.88 | 0.060 | 0.063 | 0.008 | 0.001 | 126,700 | 4.851 |
| | T7 SWCV | 2017 | 2017 | 40 | 0.0170 | 0.1666 | 0.0022 | 0.0021 | 56.95 | 59.88 | 0.060 | 0.063 | 0.008 | 0.001 | 126,700 | 4.851 |
| | T7 Tractor | 2017 | 2012 | 40 | 0.0638 | 2.2954 | 0.0058 | 0.0055 | 56.95 | 59.88 | 0.060 | 0.063 | 0.008 | 0.001 | 126,700 | 4.1877 |
| | T7 Tractor | 2017 | 2015 | 40 | 0.0419 | 0.5286 | 0.0035 | 0.0033 | 56.95 | 59.88 | 0.060 | 0.063 | 0.008 | 0.001 | 126,700 | 4.1877 |
| CNG | | | | | g/mile | | | | g of CO ₂ e/MJ | | Metric tons of CO ₂ e/MMBtu | | Metric tons of CO ₂ e/lb | | Btu/lb | miles/lb of CNG |
| | Urban Bus | | 2007+ | | 0.0436 | 0.6500 | 0.0010 | 0.0010 | 78.37 | 61.75 | 0.0827 | 0.0651 | 0.00167 | 0.00131 | 20,160 | 0.769 |

For modeling tailpipe GHG emissions, ESA used combustion emission factors in the California-modified Greenhouse Gases, Regulated Emissions, and Energy Use in Transportation (CA-GREET) model, which informs the California Low Carbon Fuel Standard (LCFS). For modeling lifecycle GHG emissions, we used LCFS emission factors based on the CA-GREET model fuel pathways for analyzing the well-to-wheel (WTW) emissions associated with the various transportation fuels. WTW life cycle analysis of a fuel pathway includes the steps from feedstock recovery to finished fuel to actual combustion of the fuel in a motor vehicle. For the example of diesel fuel, WTW includes crude oil recovery, transport, refining of crude in a typical California refinery, transport of finished product (ULSD), and combustion in motor vehicles. For compressed natural gas (CNG), WTW analysis replaces the crude oil recovery, transport and refining steps with natural gas extraction, compression, and transport to a fueling station. For corn-based biofuels, WTW includes crop production, oil extraction and fuel production, and transport to a fueling station. Our analysis uses the CA-GREET lifecycle emission factor for biodiesel feedstock derived from plant oils, consistent with the Edgar and Associates study for GRA.

| Table A-3: Emission Factors and Truck Fuel Efficiency |
|---|
| 1. For diesel trucks, criteria air pollutant emission factors for ROG, NOx, PM-10 and PM-2.5 are derived from EMFAC2014 as a function of calendar year, vehicle model year and speed. |
| 2. For biodiesel, criteria air pollutant emission factors are derived by adjusting diesel emission factors for 20 percent biodiesel. Percent reduction for BD20 over diesel factors derived from Biodiesel Emissions Fact Sheet available at http://biodiesel.org/what-is-biodiesel/biodiesel-fact-sheets |
| 3. For CNG, criteria air pollutant emission factors are based on factors for zero mile CNG urban buses, from Table 3.2-58 on page 68 of EMFAC2014 Volume III - Technical Documentation available at http://www.arb.ca.gov/msei/downloads/emfac2014/emfac2014-vol3-technical-documentation-052015.pdf |
| 4. CNG emission factor for ROG derived from THC using factors in Table 3.2-59 on page 68 of EMFAC2014 Volume III - Technical Documentation. |
| 5. CNG emission factor for PM10 is conservatively assumed to be equal to CNG PM2.5. |
| 6. Lifecycle CO2e emission factors for all fuels are from the 2015 LCFS Regulation document (diesel factor from Table 6 on page 66, biodiesel and CNG factors from Table 7 on page 83); Available at: http://www.arb.ca.gov/fuels/lcfs/lcfs.htm |
| 7. Diesel tailpipe GHG emissions are from Table 1 on page 12 of CA-GREET 2.0 Supplemental Document and Table of Changes. Available at: http://www.arb.ca.gov/fuels/lcfs/ca-greet/ca-greet.htm |
| 8. Biodiesel (BD20) tailpipe GHG emissions are assumed to be 80 percent of diesel emissions. (20% is biogenic) |
| 9. CNG tailpipe GHG emissions calculated from using Table 2 on page 13 of CA-GREET 2.0 Supplemental Document and Table of Changes (for CO2e) and refuse truck value from Table 9 on page 20 of CA-GREET 2.0 Supplemental Document and Table of Changes (for CH4 and N2O) |
| 10. LHV for diesel, BD20 and CNG from http://www.afdc.energy.gov/fuels/fuel_comparison_chart.pdf |
| 11. Fuel efficiency for solid waste trucks (SWCVs) and long haul transfer trucks (tractor trailers) from Table 5 on page 26 of the GREET Model Expansion for WTW Analysis of HD vehicles available at file:///C:/Users/jni/Downloads/GREET%20HDV%20Module%20Expansion.pdf |
| 12. Fuel efficiency for BD20 calculated assuming 99 percent of diesel energy in biodiesel. Source: http://www.afdc.energy.gov/fuels/fuel_comparison_chart.pdf |

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS
AUTHORIZING THE CITY MANAGER TO EXECUTE AN EXCLUSIVE FRANCHISE AGREEMENT WITH
WASTE MANAGEMENT, INC. FOR SOLID WASTE DISPOSAL SERVICES**

WHEREAS, the City of Milpitas had previously awarded an exclusive franchise to Republic Services, Inc. for the disposal and collection of solid waste in the City that will expire on September 5, 2017.

WHEREAS, in anticipation of the expiration of the existing franchise agreement, the City put out a Request for Proposals (RFP) seeking proposals for disposal services only, and proposals for collection services only.

WHEREAS, the City received two proposals for disposal services, including from GreenWaste Recovery, Inc. (with the Monterey Regional Waste Management District) and Waste Management, Inc. A third entity, Republic Services, Inc., sought to be considered for the disposal contract, but failed to submit a disposal proposal as defined under the terms of the RFP.

WHEREAS, at the January 12, 2016 City Council study session, the two proposers presented their qualifications and approach for managing Milpitas' disposal services beginning in September 2017.

WHEREAS, as part of the RFP process, a City Evaluation Committee was formed to review and evaluate the disposal proposals, with the Committee recommending the selection of Waste Management, Inc.

WHEREAS, Public Resources Code Section 40059 and Milpitas Municipal Code Section V-200-5.10 authorizes the City to award an exclusive franchise for the disposal of solid waste, and to determine the procedure by which such franchises will be awarded.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council hereby approves and authorizes the City Manager to execute an exclusive franchise agreement with Waste Management, Inc. for solid waste disposal services.

PASSED AND ADOPTED this ____ day of _____, 2016, by the City Council by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

AGREEMENT
BETWEEN
THE CITY OF MILPITAS
AND
USA WASTE OF CALIFORNIA, INC. D/B/A WASTE MANAGEMENT OF
SOUTH BAY
FOR
DISPOSAL OF SOLID WASTE

_____, 2016

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LIST OF EXHIBITS

- A. Definitions
- B. Reserved
- C. Guaranty Agreement
- D. Contractor’s Proposal
- E. Performance Bond
- F. Labor Agreement(s)
- G. Per-Ton Rates Approved by City for Rate Period One
- H. Approved Subcontractors

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**AGREEMENT
BETWEEN
CITY OF MILPITAS
AND
USA WASTE OF CALIFORNIA, INC. D/B/A WASTE
MANAGEMENT OF SOUTH BAY
FOR
DISPOSAL OF SOLID WASTE**

9 THIS AGREEMENT is made and entered into as of _____, 2016, between the City of
10 Milpitas, California, a political subdivision of the State of California (hereinafter "City"), and USA Waste
11 of California, Inc. d/b/a Waste Management of South Bay, (hereinafter referred to as the "Contractor").

12

RECITALS

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

14 **WHEREAS;** the Legislature of the State of California, by enactment of the California Integrated Waste
15 Management Act of 1989 (AB 939) (California Public Resources Code Section 40000 et seq.), and various
16 ensuing legislation, has declared that it is in the public interest to authorize and require local agencies to
17 make adequate provisions for Solid Waste Collection within their jurisdiction;

18 **WHEREAS;** the State of California has found and declared that the amount of refuse generated in
19 California, coupled with diminishing Disposal capacity and potential adverse environmental impacts
20 from landfilling and the need to conserve natural resources, have created an urgent need for State and
21 local agencies to enact and implement an aggressive integrated waste management program. The State
22 has, through enactment of the AB 939, AB 341, AB 1826, AB 1594, SB 1016 and other related legislation
23 directed the responsible State agency, and all local agencies, to promote Diversion and to maximize the
24 use of feasible waste reduction, re-use, Recycling, and Composting options in order to reduce the
25 amount of refuse that must be Disposed;

26 **WHEREAS;** pursuant to California Public Resources Code Section 40059(a)(2), the City has determined
27 that the public health, safety, and well-being require that an exclusive right be awarded to a qualified
28 Contractor to provide for the Collection of Solid Waste, Recyclable Materials, Organic Materials, and
29 C&D, and other services related to meeting the City's integrated waste management goals;

30 **WHEREAS;** the City further declares its intent to approve and maintain reasonable Maximum Rates for
31 the Collection, Recycling, Processing, Composting, and/or Disposal of Solid Waste, Recyclable Materials,
32 Organic Materials, and C&D; and,

33 **WHEREAS;** the City has determined that Contractor, by demonstrated experience, reputation and
34 capacity, and demonstrated ability to accept all governmentally-mandated responsibilities associated
35 with operations, Closure and Post-Closure of such facilities, is qualified to provide for the Acceptance

36 and Disposal of such material at appropriate places of Disposal; and, therefore, desires that Contractor
37 be engaged to perform such services on the basis set forth in this Agreement.

38 **WHEREAS;** the City and Contractor have attempted to address conditions affecting their performance of
39 services under this Agreement but recognize that reasonably unanticipated conditions may occur during
40 the Term of this Agreement that will require the Parties to meet and confer to reasonably respond to
41 such changed conditions;

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

44 **ARTICLE 1. GRANT AND ACCEPTANCE OF AGREEMENT**

45 **1.1 Grant and Acceptance of Agreement**

46 Through this Agreement, the City grants to Contractor the right and privilege to Dispose of all Solid
47 Waste Collected in the Service Area by the Franchised Collector including street sweeping debris, and
48 that is Delivered by the Franchised Collector with the City intention of Disposal. This Agreement and
49 scope of this franchise shall be interpreted to be consistent with Applicable Law, now and during the
50 Term of the Agreement. If future judicial interpretations of current law or new laws, regulations, or
51 judicial interpretations limit the ability of the City to lawfully contract for the scope of services in the
52 manner and consistent with all provisions as specifically set forth herein, Contractor agrees that the
53 scope of the Agreement will be limited to those services and materials which may be lawfully included
54 herein and that the City shall not be responsible for any lost profits or losses claimed by Contractor to
55 arise out of limitations to the scope or provisions of the Agreement set forth herein. In such an event, it
56 shall be the responsibility of Contractor to minimize the financial impact of such future judicial
57 interpretations or new laws and the Contractor may meet and confer with City and may petition for a
58 Rate adjustment pursuant to Section 8.5.

59 **1.2 Reserved**

60 **1.3 Obligations of Both Parties**

61 In addition to the specific performance required under the Agreement:

- 62 A. Contractor shall use its reasonable commercial efforts to enforce its rights under this Agreement
63 by the Contractor's identification and documentation of violations of the Agreement by third
64 parties.
- 65 B. Contractor and City shall provide timely notice to the other Party of a failure or perceived failure
66 to perform any obligations under this Agreement, and each shall have access to information
67 demonstrating the Party's failure or perceived failure to perform.
- 68 C. Contractor and City shall provide timely access to the City Contract Manager and the
69 Contractor's designated representative as applicable, and complete and timely responses to
70 requests of the other Party.
- 71 D. Contractor and City shall provide timely notice of matters which may affect either Party's ability
72 to perform under the Agreement.

73 **1.4 City Obligations**

74 City obligations are limited to the following.

- 75 **A. Provide for Delivery of Solid Waste.** The City shall, at all times, direct all Solid Waste that is
76 Collected in the Service Area by the Franchised Collector, and that is intended by the City for
77 Disposal to be Delivered to the Approved Disposal Facility.
- 78 **B. Excluded Waste.** The City shall direct its Franchised Collector to implement an Excluded Waste
79 screening, identification, and prevention protocol. City shall prohibit its Franchised Collector
80 from knowingly delivering Excluded Waste to the Approved Disposal Facility.
- 81 **C. Adjustment of Per-Ton Rates.** The City shall ensure that Contractor’s Per-Ton Rates are adjusted
82 as provided in Article 8.

83 **ARTICLE 2. TERM OF AGREEMENT**

84 **2.1 Term and Option to Extend**

85 The Term of this Agreement shall commence September 6, 2017 (Commencement Date) and continue in
86 full force for a period of twenty (20) years, through and including December 30, 2037, unless the
87 Agreement is extended in accordance with this Section or terminated pursuant to Section 10.2.
88 Beginning with the Effective Date, Contractor shall perform all activities necessary to ensure it can
89 provide the full services required by this Agreement on the Commencement Date.

90 Except as provided below in this Section 2.1, the Term of this Agreement shall only be extended with the
91 prior consent of both Parties. Should the Parties choose to extend this Agreement, both Parties shall
92 meet and confer no later than one (1) year prior to the expiration of this Agreement to determine and
93 specify the duration and terms of such extension.

94 Notwithstanding the above, City may at its sole discretion and with a six (6) month notice, require
95 Contractor to enter into a one (1) year extension of the Agreement without changes to its material
96 provisions.

97 **2.2 Conditions to Effectiveness of Agreement**

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

- 101 **A. Accuracy of Representations.** The Contractor’s representations and warranties made in
102 Contractor’s Proposal and Article 11 of this Agreement are true and correct on and as of the
103 Effective Date.
- 104 **B. Furnishings of Insurance and Performance Bond.** Contractor has furnished evidence of the
105 insurance and performance bond required by Article 9 that is satisfactory to the City.
- 106 **C. Absence of Litigation.** To the best of Contractor's knowledge, after reasonable investigation,
107 there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or
108 governmental authority, commission, board, agency or instrumentality decided, pending or

- 109 threatened against Contractor wherein an unfavorable decision, ruling or finding, in any single
110 case or in the aggregate, would:
- 111 1. Materially adversely affect the performance by Contractor of its obligations hereunder;
 - 112 2. Adversely affect the validity or enforceability of this Agreement; or,
 - 113 3. Have a material adverse effect on the financial condition of Contractor, or any surety or
114 entity guaranteeing Contractor's performance under this Agreement.
- 115 D. **Permits Furnished.** Contractor has provided City with copies of all permits necessary for
116 operation of the Approved Disposal Facility owned or operated by Contractor or Subcontractor
117 for use under the terms of this Agreement.

118 **ARTICLE 3. SCOPE OF AGREEMENT**

119 **3.1. Summary Scope of Services**

120 The Contractor shall be responsible for the following:

- 121 A. Acceptance and Disposal of Solid Waste Delivered to the Approved Disposal Facility by the
122 Franchised Collector;
- 123 B. Performing all other services required by this Agreement including, but not limited to, record
124 keeping and reporting pursuant to Article 6;
- 125 C. Furnishing all labor, supervision, equipment, materials, supplies, and all other items and services
126 necessary to perform its obligations under this Agreement;
- 127 D. Obtaining and maintaining all permits and regulatory approvals necessary to perform the
128 services specified in the Agreement;
- 129 E. Paying all expenses related to provision of services required by this Agreement including, but
130 not limited to, taxes, regulatory fees, City fees, and utilities, and closure and post-closure of the
131 Approved Disposal Facility;
- 132 F. Receiving proceeds from the Per-Ton Rates as the only compensation for provision of services
133 under this Agreement;
- 134 G. Performing or providing all services specified in this Agreement at all times in accordance with
135 Applicable Laws and the specified requirements of this Agreement; and,
- 136 H. Performing or providing all services specified in this Agreement at all times in accordance with
137 best industry practices with due diligence.

138 The enumeration and specification of particular aspects of service, labor, or equipment requirements
139 shall not relieve Contractor of the duty to perform all other tasks and activities necessary to fulfill its
140 obligations under this Agreement, regardless of whether such requirements are enumerated elsewhere
141 in the Agreement, unless excused in accordance with Section 10.7.

142 **3.2 Limitations to Scope**

143 The scope of this Agreement does not include Acceptance or Disposal of the following:

- 144 A. Solid Waste generated in the City which is not Collected by the City or its Franchised Collector.

- 145 B. Solid Waste generated outside of the City.
- 146 C. E-Waste, Universal Waste, Hazardous Waste and sharps Collected by the Franchised Collector
147 under the terms of its agreement with the City.
- 148 D. Other material Collected by the Franchised Collector but excluded from the definition of Solid
149 Waste.
- 150 E. Residue resulting from Processing of materials generated in the Service Area.

151 **3.3 Use of Approved Disposal Facility**

152 The Contractor, without constraint and as a free-market business decision in accepting this Agreement,
153 agrees to use the Approved Disposal Facility for the purposes of Disposal of all Solid Waste Delivered by
154 the Franchise Collector under the terms of this Agreement. Such decision by Contractor in no way
155 constitutes a restraint of trade notwithstanding any Change in Law regarding flow control limitations or
156 any definition thereof.

157 Contractor shall maintain accurate records of the quantities of Solid Waste Delivered to and Accepted at
158 the Approved Disposal Facility and will cooperate with City and any regulatory authority in any audits or
159 investigations of such quantities.

160 **3.4 Capacity Assurance**

161 Contractor warrants that as of the Commencement Date it has sufficient capacity at the Approved
162 Disposal Facility to Dispose of all Solid Waste Delivered by the Franchised Collector as intended for
163 Disposal throughout the Term, and that it shall maintain that capacity through the Term.

164 If at any time during the Term or an extension Contractor fails to provide the capacity needed to fulfill
165 its obligations under this Agreement, the City may assess Liquidated Damages for each Ton of the City's
166 Solid Waste that the Contractor does not Accept in accordance with Section 10.6.B.

167 **3.5 No Limitation on City Diversion Programs**

168 The City maintains programs to reduce the amount of waste intended for Disposal. It is the City's intent
169 to continue to improve, develop, and enhance existing programs as well as to implement new programs
170 and services throughout the Term as it deems necessary to meet or exceed mandated Diversion
171 program requirements and goals established by AB 939 and subsequent federal, State, County or local
172 legislation including, but not limited to the State 75 percent recycling goal established in AB 341 and the
173 programmatic requirements of AB 1826. Contractor acknowledges that the characterization and
174 quantity of materials Delivered to the Approved Disposal Facility will change over the Term and may
175 over time be significantly different than that as of the Commencement Date of the Agreement.

176 Nothing in this Agreement shall prevent, penalize, or impede, in any manner, the City from continuing
177 programs, altering programs, or developing new programs that have the effect of reducing or increasing
178 the amount of Solid Waste Collected and Delivered to the Approved Disposal Facility by the Franchised
179 Collector, including Processing of Collected Solid Waste in lieu of Delivery for Disposal.

180 However, in the event City directs Processing of Solid Waste by a third party for purposes of Diverting
181 recoverable elements thereof, instead of Delivery for Disposal, City shall cause the third party to Deliver
182 to the Approved Disposal Facility a tonnage of material ("Residue") for Disposal equivalent to the non-
183 recovered fraction of the Processed Solid Waste. The City will provide documentation to Contractor to

184 evidence that equivalent tons of all Residue from the Processed Solid Waste are delivered to the
185 Approved Disposal Facility.

186 **3.6 No Tonnage Obligation; Only Compensation**

187 **A. No Tonnage Obligation.** This Agreement neither expresses nor implies City commitment to
188 cause Delivery of any minimum tonnage of Solid Waste to the Approved Disposal Facility or
189 Alternative Facilities, or corresponding compensation for undelivered minimum tonnages in the
190 form of “put-or-pay” payments.

191 **B. Only Compensation.** The then-current Per-Ton Rate as provided in Article 8, as adjusted, shall
192 be the only form of compensation due Contractor for services provided under this Agreement.
193 Per-Ton Rates shall not be adjusted for any changes in the characterization of, quantity of, or
194 other changes to Solid Waste it receives. Nor shall any action, or lack of action by City regarding
195 the availability of Solid Waste for Disposal provide Contractor the opportunity for an adjustment
196 to the Maximum Rates.

197 **3.7 Subcontracting**

198 Contractor shall not engage any Subcontractors without the prior written consent of City Contract
199 Manager. As of the Effective Date of this Agreement, City has approved Contractor’s use of those
200 subcontractors identified in Contractor’s Proposal (Exhibit D), included herein as Exhibit H. If the
201 Contractor plans to engage other Affiliate or related party entities in the provision of services,
202 Contractor shall obtain written approval from City Contract Manager thirty (30) days prior to its plans to
203 use party. Contractor shall submit written request to the City seeking approval of other Affiliate or
204 related party entities. Such request shall include a description of its plans, name and qualifications of
205 party, and an explanation of any potential impacts related to the quality, timeliness, or cost of providing
206 services under this Agreement.

207 **3.8 Transfer of Ownership and Responsibility for Delivered Material**

208 Once Solid Waste is Delivered by the Franchised Collector and Accepted by Contractor at the Approved
209 Disposal Facility, full ownership and the right to possession of the Solid Waste shall transfer to the
210 Contractor. All benefits and liabilities resulting from ownership and possession of the Solid Waste shall
211 accrue to Contractor except as provided in Section 3.11.

212 Responsibility for Excluded Waste that has been Accepted by the Contractor shall remain with the
213 Contractor as provided in Section 5.3.

214 **3.9 City Contract Manager**

215 City has designated the City Contract Manager, to be responsible for monitoring and administration of
216 this Agreement. Contractor shall meet and confer with the City Contract Manager to resolve differences
217 of interpretation and implement and execute the requirements of this Agreement in an efficient,
218 effective, manner that is consistent with the stated objectives of this Agreement.

219 From time to time the City Contract Manager may designate other agents of City to work with
220 Contractor on specific matters. In such cases, those individuals should be considered designates of the
221 City Contract Manager for those matters to which they have been engaged. Such designates shall be
222 afforded all of the rights and access granted thereto. In the event of a dispute between the City Contract
223 Manager’s designate and Contractor, the City Contract Manager’s determination shall be conclusive.

224 In the event of dispute between the City Contract Manager and the Contractor regarding the
225 interpretation of or the performance of services under this Agreement, the City Contract Manager's
226 determination shall be conclusive except where such determination results in a material impact to the
227 Contractor's revenue and/or cost of operations. In the event of such material impact to the Contractor,
228 Contractor may appeal the determination of the City Contract Manager to the City Council, whose
229 determination shall be conclusive. For the purposes of this Section, "material impact" is an amount
230 equal to or greater than one-quarter (1/4) of one (1) percent of Contractor's annual Gross Receipts
231 under this Agreement. Should Contractor disagree with a determination of the City Contract Manager or
232 City Council, it shall have the right to present its claim in a court of competent jurisdiction

233 **3.10 Cooperation with City or County**

234 The Contractor shall with no added compensation cooperate with the City, its agent, and/or Santa Clara
235 County and/or its agent, or any State regulatory authority and/or its agent if the City or County or State
236 regulatory authority seek to collect data, perform field work, and/or evaluate and monitor Diversion
237 program results through characterization of Solid Waste, including providing reasonably requested data,
238 allowing visits to the Approved Disposal Facility, and allowing use of Contractor-designated areas of the
239 Approved Disposal Facility as needed to perform Solid Waste characterizations.

240 Contractor shall also cooperate with City and/or County or State regulatory authority by providing
241 requested data and review and otherwise assisting with any Disposal Reporting System Investigations or
242 Origin Report Studies by providing documentation deemed reasonably necessary by the City Contract
243 Manager, the County or State regulatory authority.

244 **3.11 Carbon Offset Credits**

245 In the event Contractor has or will receive benefits from carbon offset credits or other environmental
246 credits obtained by Contractor related to services performed under this Agreement, the Parties shall
247 meet and confer. Contractor shall promptly notify City as soon as it learns that it has or will receive such
248 benefits, and the Parties shall meet to determine a fair City share of profits after Contractor is paid its
249 margins and return on capital investment. Such City share shall be limited to investments Contractor
250 makes after the Effective Date and shall accurately reflect the relative tonnage of Solid Waste caused to
251 be Delivered by City.

252 **3.12 City-Directed Changes to Scope**

253 City may meet and confer with Contractor to establish the scope of any additional services or
254 modification to existing services (which may include use of the Approved Disposal Facility) to be
255 provided under this Agreement. In such case, Contractor shall present, within thirty (30) calendar days
256 of City's request, a written proposal to provide such modified or additional services.

257 City shall review the Contractor's proposal for the change in scope of services. City and Contractor may
258 meet and confer to negotiate Contractor's proposed revisions and costs and shall amend this
259 Agreement, as appropriate, to reflect the mutually agreed-upon changes in scope.

260

ARTICLE 4. DISPOSAL SERVICES

261 **4.1 General**

262 Contractor shall perform the services described in this Article 4. Failure of Agreement to specifically
263 require an act necessary to perform the service does not relieve Contractor of its obligation to perform
264 such act. To the extent any of the services specified in Article 4 are provided by a City-approved
265 Subcontractor, the requirements of Article 4 shall pertain.

266 **4.2. Reserved**

267 **4.3 Disposal Operations**

268 Contractor shall provide Disposal services at the Approved Disposal Facility in accordance with
269 Applicable Laws and regulations, best industry practice, due diligence and specification, and other
270 requirements of this Agreement. In addition, Contractor shall comply with the following service
271 specifications:

- 272 A. Operating, managing, and maintaining the Approved Disposal Facility including all buildings,
273 scales, roads, and utilities.
- 274 B. Operating, managing and maintaining the Solid Waste fill areas, including the placement,
275 burying, and compaction of Solid Waste in the refuse fill areas; stockpiling, placement and
276 compaction of daily cover, intermediate cover, and final cover; management of fill operations
277 with regard to fill sequencing, side slopes configuration, and working face location and
278 configuration.
- 279 C. Providing and maintaining staffing levels and expertise as necessary or required to ensure safe
280 and lawful operation at all times, and as provided in Section 5.4.
- 281 D. Providing, operating, and maintaining all equipment, rolling stock, and supplies necessary for
282 operations, Closure, Post-Closure, and environmental monitoring.
- 283 E. Operating and maintaining the scale house and scale system and weighing Solid Waste
284 Delivered by Franchised Collector as specified in Section 4.4 of this Agreement.
- 285 F. Ensuring that Franchised Collector vehicles can enter and leave the Approved Disposal Facility
286 property within the turnaround times specified in Section 5.2.
- 287 G. Providing residents of, and businesses located within, the Service Area an opportunity to drop-
288 off material at a location approved by the City, as provided in Section 4.5.
- 289 H. Directing on-site traffic to appropriate unloading areas and providing a safe working
290 environment for Approved Disposal Facility users, visitors, and employees.
- 291 I. Safely managing the Solid Waste Delivered to or Transported to the Approved Disposal Facility.
- 292 J. Implementing an Excluded Waste screening, identification, and prevention protocol as provided
293 in Section 5.3. Contractor shall not knowingly place Excluded Waste in the fill area of the
294 Approved Disposal Facility.
- 295 K. Operating, maintaining, and managing liquids (“leachate”) and landfill gas management systems,
296 groundwater monitoring and management systems, storm water drainage and control systems,

297 treatment facilities, buildings, on-site roadways, utilities, and any other required Facility
298 elements.

299 L. Conducting required or prudent Closure and Post-Closure activities as provided in Section 5.8.

300 M. Arranging for Alternative Facilities.

301 Contractor may, at its sole discretion, use Solid Waste for Beneficial Reuse in compliance with Applicable
302 Law.

303 **4.4 Vehicle Weighing**

304 Contractor is solely responsible for ensuring accurate weighing of all materials entering and leaving the
305 Approved Disposal Facility.

306 **A. Facility Scales.** Contractor shall maintain State certified motor vehicle scales in accordance with
307 Applicable Law. All scales shall be linked to a centralized computer recording system at the
308 Approved Disposal Facility to record weights for all incoming and outgoing materials. Contractor
309 shall provide back-up generator(s) capable of supplying power to the scales in the event of a
310 power outage. Contractor shall promptly arrange for use of substitute portable scales should its
311 usual scales not be available for whatever reason. Pending substitution of portable scales,
312 Contractor shall as necessary estimate the tonnages of Solid Waste Delivered to the Approved
313 Disposal Facility, on the basis of Delivery vehicle volumes, tare weights, and/or other available
314 facility weight records. These estimates shall take the place of actual weights while scales are
315 inoperable, and shall be identified as estimates in electronic records and reporting. Contractor
316 shall upon City request, weigh and provide tare weights for City vehicles should City directly
317 Deliver Solid Waste for Disposal.

318 **B. Tare Weights for Franchise Collector Vehicles.** Within thirty (30) Days prior to the
319 Commencement Date, Contractor shall coordinate with the Franchise Collector to ensure that all
320 Collection vehicles used by Franchise Collector to Deliver Solid Waste to the Approved Disposal
321 Facility are weighed to determine unloaded (“tare”) weights. Contractor and Franchise Collector
322 shall electronically record the tare weight, identify vehicle as Franchise Collector owned, and
323 provide a distinct vehicle identification number for each vehicle. Contractor shall provide City
324 with a report listing the vehicle tare weight information upon request. Contractor shall promptly
325 coordinate with Franchise Collector to weigh additional or replacement Collection vehicles prior
326 to Franchise Collector placing them into service. Contractor shall check tare weights at least
327 annually, or within fourteen (14) Days of a City request, and shall retare vehicles immediately
328 after any major maintenance service.

329 **C. Testing.** Contractor shall test and calibrate all scales in accordance with Applicable Law, but at
330 least every twelve (12) months or upon City request.

331 **D. Records.** Contractor shall maintain computerized scale records and reports that provide
332 information including date of receipt, inbound time, inbound and outbound weights of vehicles,
333 vehicle identification number, as further provided in Section 6.1. Contractor shall also maintain
334 computerized scale records and reports providing historical vehicle tare weights for each vehicle
335 and the date and location for each tare weight recorded.

336 **E. Upon-Request Reporting.** If vehicle receiving and unloading operations are recorded on video
337 cameras at the Approved Disposal Facility, Contractor shall make those videos available for City

338 review during the Facility's operating hours, upon request of the City, and shall provide the
339 name of the driver of any particular load if available.

340 **4.5 Drop-Off Services**

341 Contractor has proposed an optional approach to and pricing for public drop-off services. The City may,
342 in its sole discretion, include that service and associated cost in the scope of work for this Agreement
343 any time prior to the commencement of services under this Agreement. If City decides to include that
344 scope of work, the City and Contractor shall meet and confer to develop appropriate language and
345 pricing and will include that language in an amendment to this Agreement.

346 **ARTICLE 5. STANDARD OF PERFORMANCE**

347 **5.1 Days and Hours of Operation**

348 **A. Approved Disposal Facility.** Contractor shall operate the Approved Disposal Facility for the
349 receipt of the City's Solid Waste in accordance with the days and hours of operation set forth
350 below. At a minimum, Contractor shall provide for Delivery of Solid Waste Monday through
351 Friday from 6 a.m. to 4 p.m. and 8 a.m. to 4 p.m. on Saturdays. Approved Disposal Facility is
352 permitted from 6am to 6pm. Should the City or Contractor request the facility to be open
353 additional hours than current operating hours, Contractor shall accommodate the request
354 provided it is within the parameters of the permitted hours. Contractor may not reduce the
355 hours or total number of hours for Delivery of City's Solid Waste without prior written approval
356 of the City, except for reductions required by a change in a Permit subsequent to the
357 Commencement Date in which case Contractor shall make every effort to provide the City a
358 minimum of sixty (60) Days written Notice of such an anticipated modification.

359 **5.2 Facility Turnaround Times**

360 Contractor shall maintain a maximum average vehicle turnaround time of twenty (20) minutes for
361 Franchise Collector Delivery of Solid Waste to the Approved Disposal Facility. Maximum average vehicle
362 turnaround time shall be the elapsed time from entering to leaving the Approved Disposal Facility
363 property.

364 **5.3 Rejection of Excluded Waste**

365 **A. Inspection Program and Training.** Contractor shall develop a load inspection program that
366 includes the following components:

367 (i) personnel and training; (ii) load checking activities; (iii) management of wastes; and, (iv)
368 record keeping and emergency procedures. Contractor's load checking personnel shall be
369 trained in: (i) the effects of Hazardous Substances on human health and the environment; (ii)
370 identification of prohibited materials; and, (iii) emergency notification and response procedures.

371 **B. Inspection.** Contractor shall use best industry practices to detect and reject Excluded Waste in a
372 uniform manner and shall not knowingly Accept Excluded Waste at the Approved Disposal
373 Facility. Contractor shall comply with the inspection procedure contained in its Permit
374 requirements. Contractor shall promptly modify that procedure to reflect any changes in
375 Permits or Applicable Law.

- 376 C. **Excluded Waste Handling and Costs.** Contractor shall arrange for or provide handling,
377 transportation, and delivery to a facility permitted in accordance with Applicable Law of all
378 Excluded Wastes detected at the Approved Disposal Facility. Contractor is solely responsible for
379 making those arrangements or provisions and for all costs thereof, subject to the remedies
380 available under Section 5.3.D below.
- 381 D. **Detection Prior to Acceptance.** If Contractor identifies Excluded Waste Delivered from the
382 Service Area to the Approved Disposal Facility by the Franchised Collector prior to Acceptance,
383 Contractor shall notify the Franchised Collector who shall collect, transport and recycle or
384 dispose of that Excluded Waste and/or remediate any contamination resulting at the Approved
385 Disposal Facility from it at Franchised Collector’s expense.
- 386 E. **Detection Following Acceptance.** If Contractor identifies Excluded Waste Delivered from the
387 Service Area to the Approved Disposal Facility by the Franchised Collector following Acceptance,
388 and is able to verify such Excluded Waste was delivered by the Franchise Collector, Franchise
389 Collector shall collect, transport and recycle or dispose of that Excluded Waste and/or
390 remediate any contamination resulting at the Approved Disposal Facility at Franchise Collector’s
391 expense.

392 **5.4 Personnel**

- 393 A. **General.** Contractor shall furnish such qualified personnel as may be necessary to provide the
394 services required by this Agreement in a safe and efficient manner. Contractor shall designate at
395 least one (1) qualified employee as City’s primary point of contact with Contractor who is
396 principally responsible for Disposal operations and resolution of service requests and complaints
397 who shall be available telephonically at all times Disposal operations are taking place.
- 398 B. **Driver Qualifications.** All drivers must have in effect a valid license, of the appropriate class,
399 issued by the California Department of Motor Vehicles. Contractor shall use the Class II
400 California Department of Motor Vehicles employer “Pull Notice Program” to monitor its drivers
401 for safety.
- 402 C. **Safety Training.** Contractor shall provide suitable operational and safety training consistent
403 with Applicable Law for all of its employees who operate vehicles or equipment at, or in
404 conjunction with the Approved Disposal Facility. Contractor shall train its employees to identify,
405 and to not Accept Excluded Waste. Upon the City Contract Manager’s request, Contractor shall
406 provide a copy of its safety policy and safety training program, the name of its safety officer, and
407 the frequency of its trainings.
- 408 D. **Labor Agreements.** Contractor shall be solely responsible for its labor arrangements. Any labor
409 agreements for staffing at the Approved Disposal Facility shall be included as Exhibit F and
410 future modification shall be submitted to the City. The Contractor shall, as applicable provide
411 full copies of the labor agreements including any and all amendments, extensions, renewals, or
412 other forms of modification.
- 413 E. **Subcontractor Obligations.** Subcontractors shall be required to comply with the obligations
414 stated in this Section 5.4.

415 **5.5 Permits**

- 416 A. **Securing Permits.** Contractor is solely responsible for obtaining and maintaining, at Contractor’s
417 sole cost, all Permits required under Applicable Law to perform the services required by this

418 Agreement. Contractor shall provide City copies of Permits and all documents submitted in
419 application for said Permits for the Approved Disposal Facility within ten (10) Days of City
420 request. In its monthly report or more frequently, as necessary, Contractor shall inform City of
421 Contractor's status of securing the issuance, revision, modification, extension or renewal of
422 Permits including those at its or any Affiliate's Alternative Disposal Facility. Contractor shall
423 inform City at least 15 days prior to application, of its intent to apply for any Permit authorized
424 or required under Applicable Law regarding services performed under this Agreement. Within
425 ten (10) Days following City's request, Contractor shall provide the City with copies of any
426 applications or other correspondence that the Contractor submits in connection with securing
427 Permits.

428 **B. Compliance with Permits.** Contractor shall comply with all Permits or environmental
429 documents, including any mitigation measures related to the operation and maintenance of the
430 Approved Disposal Facility at no additional cost to the City. Contractor shall demonstrate
431 compliance with the terms and conditions of Permits within ten (10) Days of City request.
432 Contractor shall provide City with all documentation verifying compliance with Permit
433 conditions that is provided to the permitting authority at the same time such is provided to the
434 permitting authority. Contractor is solely responsible for paying any fines or penalties imposed
435 for noncompliance with or violation of Permits or failure to obtain Permits.

436 **5.6 Safety**

437 The Contractor shall conduct the operations of the Approved Disposal Facility in a safe manner, in
438 accordance with Applicable Law and the insurance requirements of Section 9.2. In particular, Contractor
439 shall construct and maintain all roads at the Approved Disposal Facility to which Franchise Collector
440 Delivers Solid Waste as necessary and required for such vehicles to safely and efficiently access and use
441 the Approved Disposal Facility. Contractor shall direct on-site traffic to appropriate unloading areas and
442 provide a safe working environment for Approved Disposal Facility users, visitors, and employees.
443 Contractor shall provide necessary signs and personnel to assist drivers to proper unloading areas.
444 Contractor shall maintain all signs at the Approved Disposal Facility in a clean and readable condition.
445 The Contractor shall provide and maintain signs for the convenience of Persons using the Approved
446 Disposal Facility and to facilitate safe and efficient traffic flow at the Approved Disposal Facility.

447 **5.7 Right to Enter Facility and Observe Operations**

448 The City and its designated representative(s) reserve the right to enter, observe, and inspect and
449 compliance test the Approved Disposal Facility during operations; meet with Approved Disposal Facility
450 manager(s) or his or her representatives at any time, provided that the City and its representatives
451 comply with Contractor's reasonable safety and security rules and do not interfere with operations at
452 the Approved Disposal Facility. Contractor is obligated to allow entry of City staff or their designated
453 representative(s) to the Approved Disposal Facility, and to allow for representatives to conduct
454 observations, inspections, studies, or surveys.

455 Upon City direction, Contractor shall make Approved Disposal Facility personnel available to accompany
456 City employees or representatives on inspections. Contractor shall ensure that its employees cooperate
457 with the City and respond to the City's reasonable inquiries. Contractor shall facilitate observation and
458 inspection at the Approved Disposal Facility upon three (3) Business Days of receiving a City request.

459 If the Approved Disposal Facility manager or his or her representative is not at the Approved Disposal
460 Facility when the City or its designated representative(s) visit without prior announcement, staff of the

461 Approved Disposal Facility may limit the visit of the City or its designated representative to a portion of
462 the Approved Disposal Facility property. In that event, Contractor shall arrange for City or its designated
463 representative(s) to return for a visit of the complete facility within twenty four (24) hours of the City's
464 visit.

465 **5.8 Closure and Post-Closure of Approved Disposal Facility**

466 Contractor shall safely operate, maintain, and manage (including fulfillment of State funding
467 requirements) the Approved Disposal Facility in compliance with Applicable Law not only during the
468 Term but also thereafter until and during the Approved Disposal Facility Closure and Post-Closure
469 period(s). Contractor is solely responsible, operationally and financially, for: (i) The appropriate Closure
470 and Post-Closure activities of the Approved Disposal Facility; and, (ii) The establishment and funding of
471 any reserve funds required by Applicable Law for the purposes of providing funds for the payment of
472 costs of Closure of the Approved Disposal Facility (or any cell within the Approved Disposal Facility) or
473 Post-Closure activities relating to the Approved Disposal Facility. City shall be in no way responsible for
474 paying any deficiencies in necessary or required reserves. In addition, City shall be in no way responsible
475 should Contractor costs for Closure and Post-Closure relating to the Approved Disposal Facility exceed
476 the amounts reserved by Contractor for that purpose. This obligation survives expiration or termination
477 of this Agreement.

478 **5.9 Alternative Facilities**

479 **A. Purpose.** Contractor shall identify, and enter into arrangements with Alternative Disposal
480 Facilities, whether an Affiliate or owned by a third-party prior to the Effective Date, and subject
481 to review by the City upon City request in order to ensure uninterrupted service should
482 Contractor for any reason be unable to provide services at the Approved Disposal Facility.

483 **B. Alternative Facility Arrangements.** Alternative Disposal Facility arrangements must ensure that
484 Franchise Collector or Contractor, as applicable, can Deliver or Transport Solid Waste to an
485 Alternative Disposal Facility within two (2) Business Days of Contractor or City notice of need to
486 use such Alternative Disposal Facility. Contractor shall ensure that Alternative Disposal Facilities
487 are able to accept Solid Waste on a continuous basis for no less than thirty (30) Days. Should
488 Contractor use of the Alternative Disposal Facility exceed thirty (30) Days, City may require
489 Contractor provide additional reasonable assurances of the Alternative Disposal Facility's ability
490 to accept Solid Waste on an ongoing basis under the terms of this Agreement. Contractor may
491 request, and City may at its discretion grant a change in an Alternative Disposal Facility owned
492 and operated by Contractor or an Affiliate, or owned and/or operated by a third party with the
493 third party's prior written consent.

494 **C. Contractor Responsibility for Additional Cost.** If Contractor is unable to, or chooses not to
495 provide for Delivery of Solid Waste to the Approved Disposal Facility for reasons other than
496 those specified in Section 10.7, Contractor shall provide immediate notice to City and Franchised
497 Collector of its need to use an Alternative Facility, and shall be solely responsible for incremental
498 differences in cost due to per-ton fees charged at the Alternative Facility and any additional
499 transportation costs incurred in Delivering Solid Waste to the Approved Disposal Facility. Such
500 added expense is not subject to adjustment as provided in Section 8.5.

501 **D. City Responsibility for Additional Cost.** If Contractor is unable to provide for Delivery of Solid
502 Waste to the Approved Disposal Facility for a reason specified in Section 10.7, Contractor shall
503 provide immediate notice to City and Franchised Collector of its need to use an Alternative
504 Facility. City shall be responsible for incremental differences in cost due to per-ton fees charged

505 at the Alternative Facility and any additional transportation costs incurred in Delivering or
506 Transport of Solid Waste to the Approved Disposal Facility, or for any added transport cost
507 incurred by the Franchised Collector as provided in Article 8. Such added expense shall be
508 subject to adjustment as provided in Section 8.5. .

509 **E. City Right to Terminate.** If, for any reason, the Contractor is unable to use the Approved
510 Disposal Facility for an extended period of time, the City may, at its sole discretion, terminate
511 this Agreement as provided in accordance with Section 10.2.

512 **5.10 Delivery to Non-Approved Facilities Prohibited**

513 Should Contractor Transport Solid Waste to a facility other than an Approved Facility or an Alternative
514 Facility as provided in Section 5.9 without prior City approval, Contractor shall be subject to the penalty
515 identified in Section 10.6.C for “Delivery to a Non-Approved Facility”.

516 **ARTICLE 6. RECORD KEEPING AND REPORTING**

517 **6.1 Record Keeping and Audit of Records**

518 **A. Tons Delivered by Franchise Collector.** Contractor shall maintain daily electronic accounting of
519 tons of Solid Waste Delivered to the Approved Disposal Facility by each incoming Franchise
520 Collector vehicle at each then-current per-ton Rate.

521 **B. Other Records.** Contractor shall maintain accounting, statistical, operational, and other records
522 related to its performance as necessary to provide reporting demonstrating compliance with
523 this Agreement. The Contractor shall maintain complete financial statements and accounting
524 records for operations under this Agreement sufficient to allow for independent verification of
525 Contractor’s ability to continue providing service through the Term.

526 **C. City Right to Examine.** Upon request, the Contractor shall allow the City Contract Manager to
527 examine all data supporting Contractor’s invoices for services provided under this Agreement.
528 Such request shall be made at reasonable times and with reasonable notice. City reserves the
529 right to produce any such documents examined to any State or local regulatory or permitting
530 authority upon request.

531 **D. Extraordinary Adjustment.** In the event that an extraordinary Rate adjustment pursuant to
532 Section 8.5, such records shall be subject to review in accordance with appropriate professional
533 standards, and inspection, for the primary purpose of reviewing changes in costs to the
534 Contractor attributable to the extraordinary Rate adjustment request, at any reasonable time by
535 an independent third party. The selection of the independent third party as well as the scope of
536 work for such review shall be approved in advance by the City Contract Manager. The
537 independent reviewer shall provide any and all drafts of its review to the City and the
538 Contractor. The Party requesting the extraordinary Rate adjustment review shall bear the cost of
539 the review.

540 **E. Retention of Records.** Unless otherwise required in this Article, and as expressly provided in
541 subsection G. below, Contractor shall retain all records and data required to be maintained by
542 this Agreement for the Term of this Agreement plus three (3) years after its expiration or earlier
543 termination. Records and data shall be in chronological and organized form and readily and
544 easily interpreted. Upon request, any such records shall be retrieved in a timely manner by
545 Contractor and made available to the City Contract Manager. Contractor shall maintain

546 adequate record security to preserve records from events that can be reasonably anticipated
547 such as a fire, theft, and an earthquake. Electronically-maintained data and records shall be
548 protected and backed-up. The Contractor shall provide, within one hundred twenty (120) days
549 of a request by the City Contract Manager, complete independently audited financial
550 statements from the corporate parent (Waste Management Inc.) for the prior calendar year,
551 including its balance sheet, statement of revenues and expenses, and statement of changes in
552 cash position, and provide such financial statements to the City Contract Manager.

553 **F. CERCLA Data.** City's ability to defend itself against Comprehensive Environmental Response,
554 Compensation and Liability Act (CERCLA), and related litigation is a matter of great importance.
555 For this reason, City regards as paramount its ability to prove where Collected Solid Waste is
556 taken for Disposal. Contractor shall maintain records regarding quantities, on-site location, and
557 timing of Disposal at the Approved Disposal Facility. This provision shall survive the expiration or
558 earlier termination of this Agreement. Contractor shall maintain these records for a minimum of
559 ten (10) years beyond expiration or earlier termination of the Agreement. Contractor shall
560 provide these records to City (upon request or at the end of the record retention period) in an
561 organized and indexed manner rather than destroying or disposing of them.

562 **6.2 Report Submittal Requirements**

563 Contractor shall submit monthly and quarterly reports within thirty (30) calendar days after the end of
564 the calendar month or quarter, as applicable. Contractor shall submit annual reports no later than forty-
565 five (45) calendar days after the end of each calendar year. Monthly, quarterly, and annual reports shall,
566 at a minimum, include all data and information as described in Section 6.3, and shall be provided in
567 Word and Excel.

568 Contractor may propose report formats. The format of each report shall be approved by the City
569 Contract Manager and such approval shall not be unreasonably withheld. City Contract Manager may,
570 from time to time during the Term, review and request changes to Contractor's report formats and
571 content and Contractor shall not unreasonably deny such requests.

572 Contractor shall submit (via mail and e-mail) all reports to the City Contract Manager.

573 City reserves the right to require Contractor to provide additional reports or documents as City Contract
574 Manager reasonably determines to be required for the administration of this Agreement or compliance
575 with Applicable Law.

576 **6.3 Report**

577 Reports shall be submitted monthly and shall include, at a minimum the following:

- 578 A. Total number of vehicle loads Delivered by Franchise Collector to the Approved Disposal Facility
- 579 B. Totals tons for all vehicle loads Delivered by Franchise Collector to the Approved Disposal
580 Facility
- 581 C. Average tons per vehicle load Delivered by Franchise Collector to the Approved Disposal Facility
- 582 D. Date, time, route number, Franchise Collector truck number, and reason for Contractor
583 rejection of any Delivered vehicle loads

584 Each monthly report shall be formatted to show the previous months for the year-to-date with quarterly
585 totals. The December report shall also discuss any issues, plans, and concerns related to the use of the
586 Approved Disposal Facility during the past year and anticipated for the following year, including but not
587 limited to, additional services provided or available, actual or anticipated need for use of Alternative
588 Facilities, regulatory issue or concerns, permit and regulatory violations, etc.

589 **ARTICLE 7. FEES**

590 **7.1 City Right to Establish Fees**

591 City retains the right to establish fees on Disposal activities, and to adjust such fees during the Term of
592 this Agreement. Such fees shall be established and adjusted as part of the governmental component of
593 the then-applicable Per-Ton Rate as provided in Section 8.4 C.

594 **7.2 Reserved**

595 **7.3 Payment Schedule and Late Fees**

596 At the end of each month, during the Term of this Agreement, Contractor shall as applicable remit to
597 City all fees established pursuant to Section 7.1 for the previously completed month as described in this
598 Article. Such fees shall be remitted to City and sent or delivered to the City Contract Manager. If such
599 remittance is not paid to City on or before the last day of the month, all fees due shall be subject to a
600 delinquency penalty of two percent (2%), which attaches on the first day of delinquency. The
601 delinquency penalty shall be increased an additional two percent (2%) for each additional month the
602 payment remains delinquent.

603 Each monthly remittance to City shall be accompanied by a statement listing the amount of each fee
604 paid; calculation of each fee; and, statement of Gross Receipts, by Customer Type for the period
605 collected from all operations conducted or permitted by this Agreement. City Contract Manager may, at
606 any time during the Term, request a detailed calculation of Gross Receipts which may include, but is not
607 necessarily limited to, the number of Customers charged at each Service Level and Rate for each billing
608 period.

609 City Contract Manager may, at any time during the Term, perform an audit of Contractor's payment of
610 fees. Contractor shall cooperate with the City Contract Manager in any such audit. Should City or its
611 agent perform this review and identify errors in payment of fees valued at one (1) percent or more of
612 Gross Receipts, Contractor shall, in addition to compensating City for lost fees, reimburse the City's cost
613 of the review.

614 **ARTICLE 8. CONTRACTOR'S COMPENSATION AND RATE SETTING**

615 **8.1 General**

616 Contractor's Compensation for performance of all its obligations under this Agreement shall be Per-Ton
617 Rates, paid to the Contractor by the Franchised Collector in exchange for Disposal services provided.
618 Contractor's Compensation provided for in this Article shall be the full, entire and complete
619 compensation due to Contractor pursuant to this Agreement for all labor, equipment, materials and

620 supplies, taxes, insurance, bonds, overhead, operations, profit, government fees and all expenses
621 Contractor deems necessary to perform all the services required by this Agreement in the manner and
622 at the times prescribed. Nothing herein shall obligate City or Franchised Collector to provide any
623 compensation to Contractor beyond Per-Ton Rates, and there shall be no obligation placed on the City
624 General Fund.

625 If Contractor's actual costs, including any fees or payments due to City, are more than the Per-Ton
626 Rates, Contractor shall not be compensated for the difference in actual costs and actual Per-Ton Rates
627 except to the extent the City grants an extraordinary adjustment request pursuant to Section 8.5. If
628 Contractor's actual costs are less than the actual Per-Ton Rates, Contractor shall retain the difference
629 provided that Contractor has paid City fees pursuant to Article 7.

630 Under this Agreement, Contractor shall have the right and obligation to charge and collect from the
631 Franchised Collector, Per-Ton Rates approved by the City, for Tonnage Delivered to the Approved
632 Disposal Facility by the Franchised Collector. The Per-Ton Rates for Rate Period One are based on the
633 Contractor's Proposal. Contractor's proposed Per-Ton Rates and operating assumptions for Rate Period
634 One are presented in Exhibit G.

635 **8.2 Remittances to Contractor**

636 Each month, within five (5) working days after the last day of the preceding month, Contractor shall
637 provide to the Franchised Collector an invoice detailing the total Tons Delivered to the Approved
638 Disposal Facility from the City service area by the Franchised Collector, and the resulting moneys owed
639 to Contractor, based on the then-current Per-Ton Rates. Within fifteen (15) working days after the last
640 day of the preceding month, the Franchised Collector shall remit to Contractor payment each month
641 equaling actual Tons of Solid Waste Delivered to the Approved Disposal Facility by the Franchised
642 Collector, multiplied by the then-current Per-Ton Rate. Contractor shall cooperate with the Franchised
643 Collector as needed to calculate and/or reconcile remittance amounts. Notwithstanding the above, the
644 Contractor shall annually provide up to the equivalent of 500 cubic yards of Disposal at no charge for
645 City materials, or for special events.

646 **8.3 Per-Ton Rates**

647 **A. General.** The City shall be responsible for approving Per-Ton Rates as described in this Article.
648 Each Per-Ton Rate shall have two components: (i) the Contractor component; and (ii) the
649 governmental component; the sum of which shall equal the total Per-Ton Rate. The "Contractor
650 component" of the rates reflects the Contractor's compensation for the service provided under
651 this Agreement, and the "government component" reflects government fees assessed for
652 materials handled at the Approved Disposal Facility.

653 **B. Rates for Rate Period One.** Per-Ton Rates for Rate Period One were determined by Contractor
654 and City and were approved by City resolution on or before the execution of the Agreement.
655 The Per-Ton Rates for Rate Period One shall be effective from the Commencement Date of this
656 Agreement through December 31, 2018. Per-Ton Rates for Rate Period One, and are as follows:

657 Contractor Component for Rate Period One: \$22.42 +
658 Governmental Component for Rate Period One: \$20.36 =
659 **Total Per-Ton Rate for Rate Period One: \$42.78**

660 **8.4 Per-Ton Rate Adjustments**

661 Per-Ton Rates for Rate Periods Two through Twenty shall be adjusted annually by CPI commencing
 662 January 1, 2019, in accordance with this Section 8.4.

663 **A. Definitions.** For the purposes of this Section 8.4, the following terms shall be defined as follows:

664 **“Annual Percentage Change”** means the Average Index Value of an index for the 12-month
 665 period ending June of the then-current Rate Period minus the Average Index Value for the 12-
 666 month period ending June of the most-recently completed Rate Period, divided by the Average
 667 Index Value for the 12-month period ending June of the most-recently completed Rate Period.
 668 The Annual Percentage Change shall be rounded to the nearest thousandth (1,000th).

669 **“Average Index Value”** means the sum of the monthly index values during the 12-month period
 670 ending in June divided by 12 (in the case of indices published monthly) or the sum of the bi-
 671 monthly index values divided by 6 (in the case of indices published bi-monthly).

672 For example, if the Contractor is preparing its Rate application for Rates to be effective for Rate
 673 Period 2, the Annual Percentage Change in CPI shall be calculated as follows: [(Average CPI for
 674 July 2017 through June 2018) – (Average CPI for July 2016 through June 2017)] / (Average CPI for
 675 July 2016 through June 2017)].

676 **B. Contractor Component.** The Contractor component of the Approved Disposal Facility Per-Ton
 677 Rate shall be adjusted on: (i) the basis of one hundred percent (100%) of the Annual Percentage
 678 Change in the Consumer Price Index, All Urban Consumers (All Items), for the San
 679 Francisco/Oakland Metropolitan Area as published by the U.S. Department of Labor, Bureau of
 680 Labor Statistics ("Index"), Series ID: CUURA422SA0, or (ii) five percent (5%), whichever is less.

681 If said CPI is discontinued, it shall be replaced by the CPI which most closely approximates the
 682 original category as determined by the U.S. Bureau of Labor Statistics.

683 **C. Governmental Component.** The governmental component of the Approved Disposal Facility
 684 Per-Ton Rate shall be adjusted upward or downward to reflect the actual changes in
 685 governmental fees and/or other elements of the governmental component, which are outside
 686 the control of Contractor and are not a factor in applying the five percent (5%) cap as provided
 687 in subsection B. Governmental fees for Rate Period One are as follows:

| Fee Title | Fee Amount | Fee Basis | Governing Body | Tons Eligible for Fee in RP1 |
|---------------------------|----------------|-----------|---------------------|------------------------------|
| CA AB 939 (AB1220) | \$1.40 | Per ton | State of California | 100% of Delivered Tons |
| San Jose Business Tax | \$13.00 | Per ton | City of San Jose | 100% of Delivered Tons |
| County Planning Fee | \$0.78 | Per ton | Santa Clara County | 100% of Delivered Tons |
| Household Hazardous Waste | \$1.50 | Per ton | Santa Clara County | 100% of Delivered Tons |
| County AB 939 | \$2.60 | Per ton | Santa Clara County | |
| City of San Jose LEA | \$1.08 | Per ton | City of San Jose | 100% of Delivered Tons |
| Total | \$20.36 | per ton | N/A | 100% of Delivered Tons |

688
689 **D. Total Adjusted Per-Ton Rates.** The Total Adjusted Per-Ton Rate shall be calculated as the sum of
690 the adjusted Contractor component, as calculated in subsection (A) above, and the adjusted
691 governmental component, as calculated in subsection (B) above.

692 **E. Per-Ton Rate Application.** On September 1, prior to the commencement of the Rate Period for
693 which Per-Ton Rates are to be determined (coming Rate Period), Contractor shall submit to the
694 City Contract Manager an application requesting the adjustment of Per-Ton Rates for the
695 coming Rate Year via mail and an electronic copy in Microsoft Excel format with all supporting
696 schedules, formulas, and calculations via email. For example, on September 1, 2019, the
697 Contractor shall submit its application for the adjustment of Maximum Rates to be effective
698 January 1, 2020 (i.e., Rate Period Three).

699 Such Application shall include the rate adjustment calculation in accordance with Section 8.4.A-
700 8.4.C; and a copy of the Per-Ton Rate schedule currently in effect.

701 City shall evaluate Contractor's application for mathematical accuracy and consistency with the
702 requirements of the Agreement, and shall have the ability to require changes to the application
703 prior to approval on the basis of the application's mathematical inaccuracy or failure to comply
704 with the procedures defined in the Agreement. Upon City Contract Manager's agreement that
705 the calculations are consistent with the requirements of this agreement and are mathematically
706 accurate, the Rate adjustment (if any) will be approved by City Contract Manager.

707 **8.5 Extraordinary Rate Adjustments**

708 It is understood that the Contractor accepts the risk for changes in cost of providing services and/or
709 quantities and composition of materials Delivered to the Approved Disposal Facility, and therefore the
710 extraordinary adjustments to Per-Ton Rates shall be limited to a Change in Law, a City-directed change
711 in scope or services, or City failure to ensure Delivery pursuant to Section 5.9.D. If a Change in Law or
712 City-directed change in scope (pursuant to Section 3.12) occurs, the Contractor may petition City for an
713 adjustment to the Per-Ton Rates in excess of the annual adjustment described in Section 8.4.

714 Contractor shall prepare an application for the extraordinary Per-Ton Rate adjustment calculating the
715 net financial effect on its operations (both increases and decreases of costs) resulting from the Change
716 in Law or City Directed Change in Scope, clearly identifying all assumptions related to such calculations
717 and providing the underlying documentation supporting the assumptions. The application shall provide
718 all information requested by City Contract Manager specific to the nature of the request being made.
719 City Contract Manager shall evaluate the application for reasonableness. As part of that review, the City
720 Contract Manager may request access to the financial statements and accounting records required to be
721 maintained by the Contractor (pursuant to Article 6) in order to determine the reasonableness of the
722 Contractor's application. Should the Contractor not grant such access, then the City may rely on the
723 Contractor's Proposal and other information available to it as the basis for making reasonable
724 assumptions regarding what those accounting and financial records would have shown and therefore
725 the reasonableness of the Contractor's application. Contractor shall pay all reasonable costs incurred by
726 the City, including the costs of outside accountants, attorneys, and/or consultants, in order to make a
727 determination of the reasonableness of the requested Rate adjustment.

728 In the event of such an application for extraordinary Per-Ton Rate adjustment, it is understood that the
729 City or Contractor, as the case may be, shall have the burden of demonstrating the reasonableness of
730 the requested adjustment

731 The Contractor may appeal the decision of the City Contract Manager to the City Council, which shall
732 then make the final determination as to whether an adjustment to the Per-Ton Rates will be made, and
733 if a Per-Ton Rate adjustment is permitted, the amount of the adjustment. With respect to an
734 extraordinary Per-Ton Rate adjustment requested by the City Contract Manager, the City Council shall
735 then make the final determination as to whether an adjustment to the Per-Ton Rates will be made, and
736 if an adjustment is permitted, the amount of the adjustment.

737 **ARTICLE 9. INDEMNITY, INSURANCE, AND PERFORMANCE BOND**

738 **9.1 Indemnification**

739 **A. General.** Contractor shall indemnify, defend with counsel acceptable to City, and hold harmless
740 (to the full extent permitted by law) City and its officers, officials, employees, volunteers, and
741 agents from and against any and all claims, liability, loss, injuries, damage, expense, and costs
742 (including without limitation costs and fees of litigation, including attorneys' and expert witness
743 fees) (collectively, "Damages") of every nature arising out of or in connection with Contractor's
744 performance under this Agreement, or its failure to comply with any of its obligations contained
745 in the Agreement, except to the extent such loss or damage was caused by the sole negligence
746 or willful misconduct of City.

747 **B. Excluded Waste.** Contractor acknowledges that it is responsible for compliance during the
748 entire Term of this Agreement with all Applicable Laws. Contractor shall not store, transport,
749 use, or Dispose of any Excluded Waste except in strict compliance with all Applicable Laws.

750 In the event that Contractor negligently or willfully mishandles Excluded Waste in the course of
751 carrying out its activities under this Agreement, Contractor shall at its sole expense promptly
752 take all investigatory and/or remedial action reasonably required for the remediation of such
753 environmental contamination. Prior to undertaking any investigatory or remedial action,
754 however, Contractor shall first obtain City's approval of any proposed investigatory or remedial
755 action. Should Contractor fail at any time to promptly take such action, City may undertake such
756 action at Contractor's sole cost and expense, and Contractor shall reimburse City for all such
757 expenses within thirty (30) calendar days of being billed for those expenses, and any amount not
758 paid within that thirty (30) calendar day period shall thereafter be deemed delinquent and
759 subject to the delinquent fee payment provision of Section 7.3. These obligations are in addition
760 to any defense and indemnity obligations that Contractor may have under this Agreement. The
761 provisions of this Section shall survive the termination or expiration of this Agreement.
762 Contractor's duties under this subsection extend to any claims arising from Solid Waste Disposal
763 and all other services provided under the terms of this Agreement at the Approved Disposal
764 Facility including, but not limited to, claims arising under Comprehensive Environmental
765 Response, Compensation and Liability Act (CERCLA).

766 **C. Environmental Indemnity.** Contractor shall defend, indemnify, and hold City harmless against
767 and from any and all claims, suits, losses, penalties, damages, and liability for damages of every
768 name, kind and description, including attorneys' fees and costs incurred, attributable to the
769 negligence or willful misconduct of Contractor in handling Excluded Waste.

770 **D. Related to AB 939, AB 341, AB 1826, AB 1594 and SB 1016.** Contractor's duty to defend and
771 indemnify herein includes all fines and/or penalties imposed by CalRecycle if the requirements

772 of AB 939, AB 341, AB 1826, AB 1594 or SB 1016 are not met by the City due to Contractor
773 failure to submit scheduled reports or City-requested information in a timely manner.

774 **E. Related to Proposition 218.** Should there be a Change in Law or a new judicial interpretation of
775 Applicable Law, including, but not limited to, Article XIII C and D of the California Constitution
776 (Commonly Proposition 218), which impacts the Rates for the Collection services established in
777 accordance with this Agreement, Contractor agrees to meet and confer with City to discuss the
778 impact of such Change in Law on either Party's ability to perform under this Agreement.

779 If, at any time, a Rate adjustment determined to be appropriate by both City (which
780 determination shall not be unreasonably withheld) and Contractor to compensate Contractor
781 for increases in costs as described in this Agreement cannot be implemented for any reason,
782 Contractor shall be granted the option to negotiate with City, in good faith, a reduction of
783 services equal to the value of the Rate adjustment that cannot be implemented. If City and
784 Contractor are unable to reach agreement about such a reduction in services, then Contractor
785 may terminate this Agreement upon one hundred eighty (180) calendar days prior written
786 notice to City, in which case the Contractor and City shall each be entitled to payment of
787 amounts due for contract performance through the date of termination but otherwise will have
788 no further obligation to one another pursuant to this Agreement after the date of such
789 termination. Should a court of competent jurisdiction determine that the Contractor cannot
790 charge and/or increase its Rates for charges related to Franchise Fees, other City fees or
791 payments to City, and governmental fees and charges, Contractor shall reduce the Rates by a
792 corresponding amount, providing said fees, Rates and/or charges disallowed by the court are
793 not related to the cost of providing service hereunder and had been incorporated in the Rates
794 charged by Contractor.

795 Nothing herein is intended to imply that California Constitution, Articles XIIC or XIID, apply to
796 the Rates established for services provided under this Agreement. Moreover, at its election in its
797 sole discretion, City may conduct a majority protest proceeding under California Constitution,
798 Article XIID prior to granting any Rate adjustment. Any successful protest to a Rate adjustment
799 shall be considered a Change in Law and will be addressed by the provisions of this Section.

800 This provision (i.e., Section 9.1) shall survive the expiration or earlier termination of this
801 Agreement and shall not be construed as a waiver of rights by City to contribution or indemnity
802 from third parties.

803 **F. Survival of Provisions.** Section 9.1 will survive the expiration or earlier termination of this
804 Agreement and shall not be construed as a waiver of rights by City to contribution or indemnity
805 from third parties.

806 **9.2 Insurance**

807 **A. General Requirements.** Contractor/Subcontractor shall, at its sole cost and expense, maintain in
808 effect at all times during the Term of this Agreement not less than the following coverage and
809 limits of insurance:

810 **B. Coverages and Requirements.** During the Term of this Agreement, Contractor/Subcontractor
811 shall at all times maintain, at its expense, the following coverages and requirements. The
812 comprehensive general liability insurance shall include broad form property damage insurance.

813 1. Minimum Coverages. Insurance coverage shall be with limits not less than the following:

814 **Commercial General Liability** – \$10,000,000 combined single limit per occurrence for
815 bodily injury, personal injury, and property damage.

816 **Automobile Liability** – \$10,000,000 combined single limit per accident for bodily injury and
817 property damage (include coverage for hired and non-owned vehicles).

818 **Workers’ Compensation** – Statutory Limits/Employers’ Liability - \$1,000,000/accident for
819 bodily injury or disease.

820 **Blanket Fidelity/Crime Policy** – \$500,000 per event covering the City for any and all acts
821 including, but not limited to, dishonesty, forgery, alteration, theft, disappearance, and
822 destruction (inside or outside).

823 General Liability and Auto Liability Limits of Insurance may be satisfied by a combination of
824 primary and umbrella or excess insurance.

825 2. Additional Insured. City, its officers, agents, employees, and volunteers shall be named as
826 additional insured on all but the workers’ compensation and Blanket Fidelity/Crime Policy
827 coverages.

828 3. Said policies shall remain in force through the life of this Agreement and, with the
829 exception of professional liability coverage, shall be payable on a “per occurrence” basis
830 unless City’s Risk Manager specifically consents in writing to a “claims made” basis. For all
831 “claims made” coverage, in the event that the Contractor/Subcontractor changes insurance
832 carriers Contractor/Subcontractor shall purchase “tail” coverage or otherwise provide for
833 continuous coverage covering the Term of this Agreement and not less than three (3) years
834 thereafter. Proof of such “tail” or other continuous coverage shall be required at any time
835 that the Contractor/Subcontractor changes to a new carrier prior to receipt of any
836 payments due.

837 4. The Contractor/Subcontractor shall declare all aggregate limits on the required coverage
838 are in place before commencing performance of this Agreement and are available
839 throughout the performance of this Agreement.

840 Each insurance policy required by this clause shall be endorsed to state that coverage shall
841 not be canceled by either party, except after thirty (30) days’ prior written notice (10 days
842 for non-payment) by certified mail, return receipt requested, has been given to the City. If
843 Contractor’s insurer refuses to provide this endorsement, Contractor shall be responsible
844 for providing written notice to the City that coverage will be canceled thirty (30) days after
845 the date of the notice or ten (10) days for non-payment.

846 5. The deductibles or self-insured retentions are for the account of Contractor/Subcontractor
847 and shall be the sole responsibility of the Contractor/Subcontractor.

848 6. Contractor shall furnish the City with original certificates and amendatory endorsements
849 effecting coverage required by this clause. The endorsements should be on insurance
850 industry forms, provided those endorsements or policies conform to the contract
851 requirements. All certificates and endorsements are to be received and approved by the
852 City before work commences. “The City reserves the right to require complete copies of all
853 required insurance policies, including endorsements evidencing the coverage required by
854 these specifications. The Contractor shall be allowed to redact information that it
855 considers confidential”.

856 The Certificate with endorsements and notices shall be mailed to: City of Milpitas,
857 Attention: Purchasing, 455 East Calaveras Boulevard, Milpitas California, 95035-5411.7.

858 Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-
859 VII, unless otherwise approved by City Risk Manager.

860 8. The policies shall cover all activities of Contractor/Subcontractor, its officers, employees,
861 agents and volunteers arising out of or in connection with this Agreement.

862 9. For any claims relating to this Agreement, the Contractor/Subcontractor's insurance
863 coverage shall be primary, including as respects City, its officers, agents, employees, and
864 volunteers. Any insurance maintained by City shall apply in excess of, and not contribute
865 to, coverage provided by Contractor/Subcontractor's liability insurance policy.

866 10. The Contractor/Subcontractor shall waive, by evidenced endorsement to the policy, all
867 rights of subrogation against City, its officers, employees, agents, and volunteers.

868 **C. Endorsements.** Prior to the Effective Date pursuant to this Agreement,
869 Contractor/Subcontractor shall furnish City Contract Manager with certificates or original
870 endorsements reflecting coverage required by this Agreement. The certificates or endorsements
871 are to be signed by a Person authorized by that insurer to bind coverage on its behalf. All
872 certificates or endorsements are to be received by, and are subject to the approval of, City Risk
873 Manager before work commences.

874 **D. Renewals.** During the Term of this Agreement, Contractor/Subcontractor shall furnish City
875 Contract Manager with certificates or original endorsements reflecting renewals, changes in
876 insurance companies, and any other documents reflecting the maintenance of the required
877 coverage throughout the entire Term of this Agreement. The certificates or endorsements are to
878 be signed by a Person authorized by that insurer to bind coverage on its behalf.

879 **E. Workers' Compensation.** Contractor/Subcontractor shall provide workers' compensation
880 coverage as required by State law, and prior to the Effective Date pursuant to this Agreement,
881 Contractor/Subcontractor shall file the following statement with City.

882 "I am aware of the provisions of Paragraph 3700 of the Labor Code that require every employer
883 to be insured against liability for workers' compensation or to undertake self-insurance in
884 accordance with the provisions of that code, and I will comply with such provisions before
885 commencing any services required by this Agreement."

886 *"Contractor agrees to include in their subcontract the same requirements and provisions of this*
887 *agreement including the indemnity and insurance requirements to the extent they apply to the scope of*
888 *the Subcontractor's work. Subcontractors hired by Contractor agree to be bound to Contractor and City*
889 *in the same manner and to the same extent as Contractor is bound to City under the Contract*
890 *Documents. Subcontractor further agrees to include these same provisions with any Sub-subcontractor. A*
891 *copy of the Contract/Agreement and Insurance Provisions will be furnished to the Subcontractor. The*
892 *Contractor shall require all Subcontractor's to provide a valid certificate of insurance and the required*
893 *endorsements included in the agreement prior to commencement of any work and will provide proof of*
894 *compliance to the City."*

895 "The Person executing this Certificate on behalf of Contractor/Subcontractor affirmatively represents
896 that she/he has the requisite legal authority to do so on behalf of Contractor/Subcontractor, and both
897 the Person executing this Agreement on behalf of Contractor/Subcontractor and

898 Contractor/Subcontractor understand that City is relying on this representation in entering into this
899 Agreement.”

900 **9.3 Performance Bond**

901 Within seven (7) calendar days of the City’s notification to Contractor that the City has executed this
902 Agreement, Contractor shall file with the City a bond, payable to the City, securing the Contractor's
903 performance of its obligations under this Agreement and such bond shall be renewed annually if
904 necessary so that the performance bond is maintained at all times during the Term. The principal sum of
905 the bond shall be Two and One-Half Million Dollars (\$2,500,000), which shall be adjusted every three (3)
906 years, commencing with Rate Period Three, to equal three (3) months of the prior Rate Period’s annual
907 Gross Receipts. The bond shall be executed as surety by a corporation authorized to issue surety bonds
908 in the State of California that has a rating of A or better in the most recent edition of Best’s Key Rating
909 Guide, and that has a record of service and financial condition satisfactory to the City. The bond shall be
910 in the form attached as Exhibit E.

911 As an alternative to the performance bond required above, at City's option, Contractor may deposit with
912 City a fully prepaid irrevocable letter of credit for at least the duration of the Contract Year for which the
913 letter of credit is deposited. Such letter of credit shall be in the amount of Two and One-Half Million
914 Dollars (\$2,500,000). The form of the letter of credit and the issuer of the letter of credit are subject to
915 the approval of City's Risk Manager and the City Attorney. Nothing in this Section 9.3 shall in any way
916 obligate City to accept a letter of credit in lieu of the performance bond.

917 City shall have the right to draw against the faithful performance bond or the letter of credit in the event
918 of a breach or default of Contractor or the failure of Contractor to perform fully any obligation under
919 this Agreement. Within five (5) calendar days of receipt of notice from City, Contractor shall renew or
920 replace such sums of money as needed to bring the faithful performance bond or letter of credit
921 current.

922 **9.4 Guaranty**

923 Concurrently with execution of this Agreement, Contractor shall furnish a Guaranty of its performance
924 under this Agreement, in the form of Exhibit C, properly executed by Waste Management Holdings, Inc.,
925 a Delaware corporation which owns all of the issued and outstanding common stock of Contractor.

926 **ARTICLE 10. DEFAULT AND REMEDIES**

927 **10.1 Events of Default**

928 All provisions of the Agreement are considered material. Each of the following shall constitute an event
929 of default.

- 930 **A. Fraud or Deceit.** Contractor practices, or attempts to practice, any fraud or deceit upon the
931 City.
- 932 **B. Insolvency or Bankruptcy.** Contractor becomes insolvent, unable, or unwilling to pay its debts,
933 or upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding.
- 934 **C. Failure to Maintain Coverage.** Contractor fails to provide or maintain in full force and affect the
935 Workers' Compensation, liability, or indemnification coverage as required by this Agreement.

- 936 **D. Violations of Regulation.** Contractor violates any orders or filings of any regulatory body having
937 authority over Contractor relative to this Agreement, provided that Contractor may contest any
938 such orders or filings by appropriate proceedings conducted in good faith, in which case no
939 breach or default of this Agreement shall be deemed to have occurred.
- 940 **E. Violations of Applicable Law.** Contractor violates Applicable Law relative to this Agreement.
- 941 **F. Failure to Perform Direct Services.** Contractor ceases to provide Disposal services as required
942 under this Agreement for a period of two (2) consecutive calendar days or more, for any reason
943 within the control of Contractor.
- 944 **G. Failure to Pay or Report.** Contractor fails to make any payments to City required under this
945 Agreement or fails to provide City required information, reports, and/or records in a timely
946 manner as provided for in the Agreement.
- 947 **H. Acts or Omissions.** Any other act or omission by Contractor which violates the terms,
948 conditions, or requirements of this Agreement, AB 939 as it may be amended from time to time,
949 or any law, statute, ordinance, order, directive, rule, or regulation issued there under and which
950 is not corrected or remedied within the time set in the written notice of the violation or, if
951 Contractor cannot reasonably correct or remedy the breach within the time set forth in such
952 notice, if Contractor should fail to commence to correct or remedy such violation within the
953 time set forth in such notice and diligently effect such correction or remedy thereafter.
- 954 **I. False, Misleading, or Inaccurate Statements.** Any representation or disclosure made to the City
955 by Contractor in connection with or as an inducement to entering into this Agreement, or any
956 future amendment to this Agreement, which proves to be false or misleading in any material
957 respect as of the time such representation or disclosure is made, whether or not any such
958 representation or disclosure appears as part of this Agreement; and, any Contractor-provided
959 report containing a misstatement, misrepresentation, data manipulation, or an omission of fact
960 or content explicitly defined by the Agreement, excepting non-numerical typographical and
961 grammatical errors.
- 962 **J. Seizure or Attachment.** There is a seizure of, attachment of, or levy on, some or all of
963 Contractor's operating equipment, including without limits its equipment, maintenance or office
964 facilities, Approved Disposal Facility, or any part thereof.
- 965 **K. Suspension or Termination of Service.** There is any termination or suspension of the
966 transaction of business by Contractor related to this Agreement, including without limit, due to
967 labor unrest including strike, work stoppage or slowdown, sick-out, picketing, or other
968 concerted job action lasting more than two (2) calendar days.
- 969 **L. Criminal Activity.** Contractor, its officers, managers, or employees are found guilty of criminal
970 activity related directly or indirectly to performance of this Agreement or any other agreement
971 held with the City.
- 972 **M. Assignment without Approval.** Contractor transfers or assigns this Agreement without the
973 expressed written approval of the City as provided in Section 12.6.
- 974 **N. Failure to Provide Proposal or Implement Change in Service.** Contractor fails to provide a
975 proposal for new services or changes to services or fails to implement a change in service as
976 requested by the City as specified in Section 3.12.
- 977 **O. Failure to Perform Any Obligation.** Contractor fails to perform any obligation established under
978 this Agreement.

979 City shall provide Contractor written notice of default within seven (7) calendar days of the occurrence
980 of default or within seven (7) calendar days of the City's first knowledge of the Contractor's default,
981 whichever occurs first.

982 **10.2 Right to Terminate Upon Event of Default**

983 Contractor shall be given ten (10) Business Days from written notification by City to cure any default
984 which, in the City Contract Manager's sole opinion, creates a potential public health and safety threat.

985 Contractor shall be given ten (10) Business Days from written notification by City to cure any default
986 arising under subsections C, E, F, I, J, and K in Section 10.1 provided, however, that the City shall not be
987 obligated to provide Contractor with a notice and cure opportunity if the Contractor has committed the
988 same or a directly related type of breach/default within a twenty-four (24) month period and has failed
989 to demonstrate that it implemented and maintained operational changes necessary to address the
990 issue. With regard to defaults arising under subsection E, more than one NOV, or similar regulatory
991 violation, within a 24 month period will not qualify as type of breach/default for which City may
992 terminate without notice and cure opportunity, unless Contractor has failed to implement any remedial
993 measures regarding such violations.

994 Contractor shall be given thirty (30) calendar days from written notification by City to cure any other
995 default (which is not required to be cured within ten (10) Business Days).

996 Notwithstanding the above, City may suspend, and if necessary terminate the Agreement immediately
997 upon awareness of serious public health or safety concerns; or if for any reason the Contractor is unable
998 to use the Approved Disposal Facility for an extended period of time, the City may, at its sole discretion,
999 terminate this Agreement.

1000 **10.3 City's Remedies in the Event of Default**

1001 In the event of Contractor's default, City maintains following remedies:

1002 **A. Waiver of Default.** City may waive any event of default or may waive Contractor's requirement
1003 to cure a default event if City determines that such waiver would be in the best interest of the
1004 City. City's waiver of an event of default is not a waiver of future events of default that may have
1005 the same or similar conditions.

1006 **B. Suspension of Contractor's Obligation.** City may suspend Contractor's performance of its
1007 obligations if Contractor fails to cure default in the time frame specified in Section 10.2 until
1008 such time the Contractor can provide assurance of performance in accordance with Section
1009 10.8.

1010 **C. Liquidated Damages.** City may assess Liquidated Damages for Contractor's failure to meet
1011 specific performance standards pursuant to Section 10.6.

1012 **D. Termination.** In the event that Contractor should default and subject to the right of the
1013 Contractor to cure, in the performance of any provisions of this contract, and the default is not
1014 cured for any default within in ten (10) calendar days if the default creates a potential public
1015 health and safety threat or arises under Section 10.1.C., E, F, I, J, or K, or otherwise thirty (30)
1016 calendar days after receipt of written notice of default from the City, then the City may, at its
1017 option, terminate this Agreement and/or hold a hearing at its City Council meeting to determine
1018 whether this Agreement should be terminated. In the event City decides to terminate this

1019 Agreement, the City shall serve twenty (20) calendar days written notice of its intention to
1020 terminate upon Contractor. In the event City exercises its right to terminate this Agreement, the
1021 City may, at its option, upon such termination, either directly undertake performance of the
1022 services or arrange with other Persons to perform the services with or without a written
1023 agreement. This right of termination is in addition to any other rights of City upon a failure of
1024 Contractor to perform its obligations under this Agreement.

1025 Contractor shall not be entitled to any Per-Ton compensation for services authorized hereunder
1026 from and after the date of termination.

1027 **E. Other Available Remedies.** City's election of one (1) or more remedies described herein shall
1028 not limit the City from any and all other remedies at law and in equity including injunctive relief,
1029 etc.

1030 **10.4 Possession of Records upon Termination**

1031 In the event of termination for an event of default, the Contractor shall furnish City Contract Manager
1032 with immediate access to all of its business records, including without limitation, proprietary Contractor
1033 computer systems, related to its Disposal operations.

1034 **10.5 City's Remedies Cumulative; Specific Performance**

1035 City's rights to terminate the Agreement under Section 10.2 and to take possession of the Contractor's
1036 records under Section 10.4 are not exclusive, and City's termination of the Agreement and/or the
1037 imposition of Liquidated Damages shall not constitute an election of remedies. Instead, these rights shall
1038 be in addition to any and all other legal and equitable rights and remedies which City may have.

1039 By virtue of the nature of this Agreement, the urgency of timely, continuous, and high quality service;
1040 the lead time required to effect alternative service; and, the rights granted by City to the Contractor, the
1041 remedy of damages for a breach hereof by Contractor is inadequate and City shall be entitled to
1042 injunctive relief (including but not limited to specific performance).

1043 **10.6 Performance Standards and Liquidated Damages**

1044 **A. General.** The Parties find that as of the time of the execution of this Agreement, it is
1045 impractical, if not impossible, to reasonably ascertain the extent of damages which shall be
1046 incurred by City as a result of a breach by Contractor of its obligations under this Agreement.
1047 The factors relating to the impracticability of ascertaining damages include, but are not limited
1048 to, the fact that: (i) substantial damage results to members of the public who are denied
1049 services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety,
1050 frustration, and deprivation of the benefits of the Agreement to individual members of the
1051 general public for whose benefit this Agreement exists, in subjective ways and in varying
1052 degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that
1053 exclusive services might be available at substantially lower costs than alternative services and
1054 the monetary loss resulting from denial of services or denial of quality or reliable services is
1055 impossible to calculate in precise monetary terms; and, (iv) the termination of this Agreement
1056 for such breaches, and other remedies are, at best, a means of future correction and not
1057 remedies which make the public whole for past breaches.

1058 **B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The
1059 Parties further acknowledge that consistent, reliable Disposal services are of utmost importance

1060 to City and that City has considered and relied on Contractor's representations as to its quality
1061 of service commitment in awarding the Agreement to it. The Parties recognize that some
1062 quantified standards of performance are necessary and appropriate to ensure consistent and
1063 reliable service and performance. The Parties further recognize that if Contractor fails to achieve
1064 the performance standards, or fails to submit required documents in a timely manner, City and
1065 its residents and businesses will suffer damages, and that it is, and will be, impractical and
1066 extremely difficult to ascertain and determine the exact amount of damages which City will
1067 suffer. Therefore, without prejudice to City's right to treat such non-performance as an event of
1068 default under this Section, the Parties agree that the Liquidated Damages amounts established
1069 below in Section 10.6.C of this Agreement and the Liquidated Damage amounts therein
1070 represent a reasonable estimate of the amount of such damages considering all of the
1071 circumstances existing on the Effective Date of this Agreement, including the relationship of the
1072 sums to the range of harm to City that reasonably could be anticipated and the anticipation that
1073 proof of actual damages would be costly or impractical.

1074 Contractor agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth in
1075 Section 10.6.C.

1076 Before assessing Liquidated Damages, City shall give Contractor notice of its intention to do so.
1077 The notice will include a brief description of the incident(s) and non-performance. City may
1078 review (and make copies at its own expense) all information in the possession of Contractor
1079 relating to incident(s) and/or non-performance. City or Contractor may, within ten (10) Business
1080 Days after issuing the notice, request a meeting with the other party. The parties may present
1081 evidence of performance or non-performance in writing and through testimony of its employees
1082 and others relevant to the incident(s).. City Contract Manager will provide Contractor with a
1083 written explanation of their determination on each incident(s) and non-performance prior to
1084 authorizing the assessment of Liquidated Damages under this Section 10.6. The decision of City
1085 Contract Manager shall be final and Contractor shall not be subject to, or required to exhaust,
1086 any further administrative remedies.

1087 **C. Two-Phase Performance Management.** The Parties desire to minimize the time and cost
1088 involved in monitoring Contractor's performance under this Agreement, particularly with regard
1089 to the assessment of Liquidated Damages. This Section 10.6.C identifies each "Performance
1090 Area" for which the City desires to establish performance standards for this Agreement.
1091 Contractor's performance within each "Performance Area" shall be primarily monitored using
1092 the "Performance Indicator" described for each. The City shall not assess Liquidated Damages
1093 for the "Specific Performance Measures" identified below unless Contractor fails to meet the
1094 minimum standard for the "Performance Indicator" within the same "Performance Area".

1095 **1. Performance Area No. 1: Reporting**

1096 Overall Performance Indicator: Contractor's reporting shall be considered acceptable if Reports
1097 required under Section 6.3.C. and record requests allowed under Article 6 to this Agreement are
1098 received, complete, and accurate within seven (7) calendar days after the date due or date of
1099 requested. If Contractor fails to meet this level of performance, City may assess Liquidated
1100 Damages for the specific performance measures identified in the following table.

| Specific Performance Measure | Definition | Acceptable Performance Level | Liquidated Damage Amount |
|--|---|---|--------------------------|
| Late Report | Each occurrence of a report, as required under Section 6.3 to this Agreement, being submitted after the due date. Reports shall be considered late until they are submitted in a complete and accurate format. | Less than seven (7) calendar days after report due date | \$250/Day |
| Failure to Maintain or Provide Access to Records | Each occurrence of City Contract Manager requesting information required to be maintained by Contractor where Contractor fails to provide such information. | Less than seven (7) calendar days after report due date | \$500/Event |
| Misleading/ Inaccurate Reporting | Each occurrence of Contractor providing misleading or otherwise inaccurate information or reporting to City under or in regard to this Agreement. Typographical, cell reference, mathematical, and/or logic errors shall not be considered legitimate excuses from this requirement, nor shall ignorance. | No acceptable failure level | \$500/Event |

1101

1102

2. Performance Area No. 2: Facilities

1103

Overall Performance Indicator: Contractor’s performance relative to facilities shall be considered acceptable when one hundred percent (100%) of Delivered Solid Waste is Accepted, or rejected for reasonable cause. If Contractor fails to meet this level of performance, City may assess Liquidated Damages for the specific performance measures identified in the following table.

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| Specific Performance Measure | Definition | Acceptable Performance Level | Liquidated Damage Amount |
|---|--|------------------------------|--------------------------|
| Contractor Failure to Accept Solid Waste Delivered by Franchise Collector | Inability of Contractor to Accept Solid Waste at the Approved Disposal Facility for any reason other than an event of force majeure, and without prior arrangement for use of an Alternative Facility. | No acceptable failure level | \$500/ton |

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D. Amount. City 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 this Section 10.6, subject to annual adjustment described below.

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E. Timing of Payment. Contractor shall pay any Liquidated Damages assessed by City within ten (10) Business Days of the date the Liquidated Damages are assessed, or within 10 days after the decision of the City Contract Manager following the meeting described in Section 10.6(B), whichever is later. However, such payment shall be made no later than ninety (90) days following City assessment. If they are not paid within the ten (10) Business Day period, City may proceed against the performance bond required by the Agreement, order the termination of the rights granted by this Agreement, or all of the above.

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1119 **10.7 Excuse from Performance**

1120 The Parties shall be excused from performing their respective obligations hereunder and from any
1121 obligation to pay Liquidated Damages if they are prevented from so performing by reason of floods,
1122 earthquakes, other acts of nature, war, civil insurrection, riots, acts of any government (including judicial
1123 action), and other similar catastrophic events which are beyond the control of and not the fault of the
1124 Party claiming excuse from performance hereunder. In the case of labor unrest or job action directed at
1125 a third party over whom Contractor has no control, the inability of Contractor to provide services in
1126 accordance with this Agreement due to the unwillingness or failure of the third party to: (i) provide
1127 reasonable assurance of the safety of Contractor's employees while providing such services; or, (ii) make
1128 reasonable accommodations with respect to point of Delivery, time of Acceptance, or other operating
1129 circumstances to minimize any confrontation with pickets or the number of Persons necessary to
1130 perform Disposal services shall, to that limited extent, excuse performance. The foregoing excuse shall
1131 be conditioned on Contractor's cooperation in performing Disposal services at different times and in
1132 different locations. Further, in the event of labor unrest, including but not limited to strike, work
1133 stoppage or slowdown, sickout, picketing, or other concerted job action conducted by the Contractor's
1134 employees or directed at the Contractor, or a subsidiary, the Contractor shall not be excused from
1135 performance, but may with City approval direct Solid Waste to an Alternative Facility as provided in
1136 Section 5.9.

1137 The Party claiming excuse from performance shall, within two (2) calendar days after such Party has
1138 notice of such cause, give the other Party notice of the facts constituting such cause and asserting its
1139 claim to excuse under this Section.

1140 If either Party validly exercises its rights under this Section, the Parties hereby waive any claim against
1141 each other for any damages sustained thereby.

1142 The partial or complete interruption or discontinuance of Contractor's services caused by one (1) or
1143 more of the events described in this Article shall not constitute a default by Contractor under this
1144 Agreement. Notwithstanding the foregoing, however, if Contractor is excused from performing its
1145 obligations hereunder for any of the causes listed in this Section for a period of thirty (30) calendar days
1146 or more, City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by
1147 giving ten (10) Business Days' notice to Contractor, in which case the provisions of Section 10.4 shall
1148 apply.

1149 **10.8 Right to Demand Assurances of Performance**

1150 The Parties acknowledge that it is of the utmost importance to City and the health and safety of all those
1151 members of the public residing or doing business within City who will be adversely affected by
1152 interrupted waste management service, that there be no material interruption in services provided
1153 under this Agreement.

1154 If Contractor: (i) is the subject of any labor unrest including work stoppage or slowdown, sick-out,
1155 picketing or other concerted job action (except to the extent excused under Section 10.7) ; (ii) appears in
1156 the reasonable judgment of City to be unable to regularly pay its bills as they become due; or, (iii) is the
1157 subject of a civil or criminal judgment or order entered by a Federal, State, regional or local agency for
1158 violation of an Applicable Law, and City believes in good faith that Contractor's ability to perform under
1159 the Agreement has thereby been placed in substantial jeopardy, City may, at its sole option and in
1160 addition to all other remedies it may have, demand from Contractor reasonable assurances of timely

1161 and proper performance of this Agreement, in such form and substance as City believes in good faith is
1162 reasonably necessary in the circumstances to evidence continued ability to perform under the
1163 Agreement. If Contractor fails or refuses to provide satisfactory assurances of timely and proper
1164 performance in the form and by the date required by City, such failure or refusal shall be an event of
1165 default for purposes of Section 10.1.

1166 **ARTICLE 11. REPRESENTATIONS AND WARRANTIES OF THE** 1167 **PARTIES**

1168 The Parties, by acceptance of this Agreement, represent and warrant the conditions presented in this
1169 Article.

1170 **11.1 Contractor's Corporate Status**

1171 Contractor is a corporation duly organized, validly existing and in good standing under the laws of the
1172 State. It is qualified to transact business in the State and has the power to own its properties and to
1173 carry on its business as now owned and operated and as required by this Agreement.

1174 **11.2 Contractor's Corporate Authorization**

1175 Contractor has the authority to enter this Agreement and perform its obligations under this Agreement.
1176 The Board of Directors of Contractor (or the shareholders, if necessary) has taken all actions required by
1177 law, its articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement.
1178 The Person signing this Agreement on behalf of Contractor represents and warrants that they have
1179 authority to do so. This Agreement constitutes the legal, valid, and binding obligation of the Contractor.

1180 **11.3 Agreement Will Not Cause Breach**

1181 To the best of Contractor's and City's knowledge after reasonable investigation, the execution or
1182 delivery of this Agreement or the performance by either Party of their obligations hereunder does not
1183 conflict with, violate, or result in a breach: (i) of any Applicable Law; or, (ii) any term or condition of any
1184 judgment, order, or decree of any court, administrative agency or other governmental authority, or any
1185 agreement or instrument to which Contractor or City is a party or by which Contractor or any of its
1186 properties or assets are bound, or constitutes a default hereunder.

1187 **11.4 No Litigation**

1188 To the best of Contractor's and City's knowledge after reasonable investigation, there is no action, suit,
1189 proceeding or investigation, at law or in equity, before or by any court or governmental authority,
1190 commission, board, agency or instrumentality decided, pending or threatened against either Party
1191 wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would:

- 1192 A. Materially adversely affect the performance by Party of its obligations hereunder;
- 1193 B. Adversely affect the validity or enforceability of this Agreement; or,
- 1194 C. Have a material adverse effect on the financial condition of Contractor, or any surety or entity
1195 guaranteeing Contractor's performance under this Agreement.

1196 **11.5 No Adverse Judicial Decisions**

1197 To the best of Contractor’s and City’s knowledge after reasonable investigation, there is no judicial
1198 decision that would prohibit this Agreement or subject this Agreement to legal challenge.

1199 **11.6 No Legal Prohibition**

1200 To the best of each Party’s knowledge, after reasonable investigation, there is no Applicable Law in
1201 effect on the date that Party signed this Agreement that would prohibit the performance of either their
1202 obligations under this Agreement and the transactions contemplated hereby.

1203 **11.7 Contractor’s Ability to Perform**

1204 Contractor possesses the business, professional, and technical expertise to perform all services,
1205 obligations, and duties as described in and required by this Agreement including all Exhibits thereto.
1206 Contractor possesses the ability to secure equipment, facility, and employee resources required to
1207 perform its obligations under this Agreement.

1208 **ARTICLE 12. OTHER AGREEMENTS OF THE PARTIES**

1209 **12.1 Relationship of Parties**

1210 The Parties intend that Contractor shall perform the services required by this Agreement as an
1211 independent Contractor engaged by City and neither as an officer nor employee of City, nor as a partner
1212 or agent of, or joint venturer with, City. No employee or agent of Contractor shall be, or shall be deemed
1213 to be, an employee or agent of City. Contractor shall have the exclusive control over the manner and
1214 means of performing services under this Agreement, except as expressly provided herein. Contractor
1215 shall be solely responsible for the acts and omissions of its officers, employees, Subcontractors and
1216 agents. Neither Contractor nor its officers, employees, Subcontractors, or agents shall obtain any rights
1217 to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City
1218 employees by virtue of their employment with City.

1219 **12.2 Compliance with Law**

1220 Contractor shall at all times, at its sole cost, comply with all Applicable Laws, permits and licenses of the
1221 United States, the State, County of Santa Clara, and City and with all applicable regulations promulgated
1222 by Federal, State, regional or local administrative and regulatory agencies, now in force and as they may
1223 be enacted, issued or amended during the Term.

1224 **12.3 Governing Law**

1225 This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the
1226 State of California.

1227 **12.4 Jurisdiction**

1228 Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the
1229 courts of Santa Clara County in the State of California, which shall have exclusive jurisdiction over such
1230 lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be performed
1231 in Santa Clara County.

1232 **12.5 Binding on Successors**

1233 The provisions of this Agreement shall inure to the benefit to and be binding on the successors and
1234 permitted assigns of the Parties.

1235 **12.6 Assignment**

1236 Contractor acknowledges that this Agreement involves rendering a vital service to City’s residents and
1237 businesses, and that City has selected Contractor to perform the services specified herein based on (i)
1238 Contractor’s experience, skill and reputation for conducting its operations in a safe, effective and
1239 responsible fashion, and (ii) Contractor’s and the Guarantor’s financial resources to maintain the
1240 required equipment and to support its indemnity obligations to City under this Agreement. City has
1241 relied on each of these factors, among others, in choosing Contractor to perform the services to be
1242 rendered by Contractor under this Agreement.

1243 **A. City Consent Required.** Contractor shall not assign its rights or delegate or otherwise transfer
1244 any or all of its obligations under this Agreement to any other Person without the prior written
1245 consent of City which may be withheld with or without cause at City’s sole discretion. City may
1246 refuse to consent to a proposed assignment unless it is satisfied that the proposed assignee is
1247 ready, willing and able to provide services in a manner equal to or better than Contractor. Any
1248 assignment made in violation of this Section 12.6.A shall be void and the attempted assignment
1249 shall constitute a Contractor default.

1250 **B. Assignment Defined.** For the purpose of this Section, “assignment” shall include, but not be
1251 limited to, (i) a documentary assignment of Contractor’s interest in, and obligations under, this
1252 Agreement; (ii) a sale, exchange or other transfer to a third Party of substantially all of
1253 Contractor’s assets dedicated to service under this Agreement; (iii) a sale, exchange or other
1254 transfer of over thirty percent (30%) of outstanding common stock of Contractor to a Person
1255 who is not a shareholder as of the Effective Date; (iv) any dissolution, reorganization,
1256 consolidation, merger, re-capitalization, stock issuance or reissuance, voting trust, pooling
1257 agreement, escrow arrangement, liquidation or other transaction which results in a change of
1258 ownership or control of Contractor; (v) any assignment by operation of law, including insolvency
1259 or bankruptcy, an assignment for the benefit of creditors, a writ of attachment for an execution
1260 being levied against this Agreement, appointment of a receiver taking possession of Contractor’s
1261 property, or transfer occurring in the event of a probate proceeding; and (vi) any combination of
1262 the foregoing (whether or not in related or contemporaneous transactions) which has the effect
1263 of any such transfer or change of ownership, or change of control of Contractor.

1264 **C. Consent Requirements.** No request by Contractor for consent to an assignment need be
1265 considered by City unless and until Contractor has met the following requirements:

1266 1. Contractor shall pay City its reasonable expenses for attorneys’ fees, consultants’ fees and
1267 other costs of investigation necessary to investigate the suitability of any proposed
1268 assignee, and to review and finalize any documentation required as a condition for
1269 approving any such assignment. With its written request for consideration of assignment,
1270 Contractor shall submit a non-refundable deposit to City in the amount of \$150,000 to
1271 provide City funding for its review of the assignment;

1272 2. Contractor shall be granted no opportunity to review or approve proposed agents of the
1273 City associated with assignment process;

- 1274 3. Contractor shall furnish City with audited financial statements of the proposed assignee's
 1275 operations for the immediately preceding three (3) operating years. City, following review
 1276 of financial health of the assignee, may require provision of additional performance surety,
 1277 insurance, or secured Closure/Post-Closure funding;
- 1278 4. Contractor shall furnish City with satisfactory proof: (i) that the proposed assignee has at
 1279 least ten (10) years of Solid Waste Disposal management experience on a scale equal to or
 1280 exceeding the scale of operations conducted by Contractor under this Agreement; (ii) that
 1281 in the last five (5) years, the proposed assignee has not been the subject of any
 1282 administrative or judicial proceedings initiated by a federal, State or local agency having
 1283 jurisdiction over its operations due to an alleged failure to comply with federal, State or
 1284 local laws or that the proposed assignee has provided City with a complete list of such
 1285 proceedings and their status; (iii) that the proposed assignee conducts its operations in a
 1286 safe and environmentally conscientious manner; (iv) that the proposed assignee conducts
 1287 its operations in accordance with sound Solid Waste management practices in full
 1288 compliance with all federal, State and local laws regulating the Disposal of Solid Waste and
 1289 all Environmental Laws; (v) of any other information required by City to ensure the
 1290 proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective
 1291 manner; and
- 1292 5. Any permitted assignee must assume Contractor's responsibilities under this Agreement.
- 1293 6. Should City consent to the assignment, Contractor shall make an assignment payment to
 1294 the City in the amount of 2% of the annual Gross Receipts for the services provided under
 1295 this Agreement for the most recently completed calendar year.
- 1296
- 1297 **D. No Obligation to Consider.** City will not be obligated to consider a proposed assignment if
 1298 Contractor is in default.
- 1299 **E. Retention of Records.** Assignment of the Agreement in no way relieves Contractor of its record
 1300 retention responsibilities under Section 6.1, nor of any and all other Contractor obligations that
 1301 survive the Agreement.

1302 **12.7 No Third Party Beneficiaries**

1303 This Agreement is not intended to, and will not be construed to, create any right on the part of any third
 1304 party to bring an action to enforce any of its terms.

1305 **12.8 Waiver**

1306 The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be
 1307 deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach
 1308 of violation of the same or any other provision. The subsequent acceptance by either Party of any
 1309 monies which become due hereunder shall not be deemed to be a waiver of any pre-existing or
 1310 concurrent breach or violation by the other Party of any provision of this Agreement.

1311 **12.9 Notice Procedures**

1312 All notices, demands, requests, proposals, approvals, consents, and other communications, which this
 1313 Agreement requires, authorizes or contemplates, shall be in writing and shall either be personally

1314 delivered to a representative of the Parties at the address below or deposited in the United States mail,
1315 first class postage prepaid, addressed as follows:

1316 A. If communications to the City are notices of legal action or request for public information, such
1317 communication shall be directed to:

1318 City Clerk
1319 City of Milpitas
1320 City Hall
1321 455 E. Calaveras Blvd.
1322 Milpitas, CA 95035
1323
1324

1325 With a copy to the Director of Engineering/City Engineer at the address below.
1326

1327 All other communications shall be directed to:

1328 Director of Engineering/City Engineer
1329 City of Milpitas
1330 City Hall
1331 455 E. Calaveras Blvd.
1332 Milpitas, CA 95035
1333

1334 If to Contractor:

1335 District Manager
1336 Guadalupe Landfill and C & D Recovery Facility
1337 15999 Guadalupe Mines Road
1338 San Jose, CA 95120

1339 B. The address to which communications may be delivered may be changed from time to time by a
1340 notice given in accordance with this Section. Notice shall be deemed given on the day it is
1341 personally delivered or, if mailed, three (3) calendar days from the date it is deposited in the
1342 mail.

1343 **12.10 Representatives of the Parties**

1344 References in this Agreement to the "City" shall mean the City's elected body and all actions to be taken
1345 by City except as provided below. The City may delegate, in writing, authority to the City Contract
1346 Manager and/or to other City officials and may permit such officials, in turn, to delegate in writing some
1347 or all of such authority to subordinate officers. The Contractor may rely upon actions taken by such
1348 delegates if they are within the scope of the authority properly delegated to them.

1349 The Contractor shall, by the Effective Date, designate in writing a responsible officer who shall serve as
1350 the representative of the Contractor in all matters related to the Agreement and shall inform City in
1351 writing of such designation and of any limitations upon his or her authority to bind the Contractor. City
1352 may rely upon action taken by such designated representative as actions of the Contractor unless they
1353 are outside the scope of the authority delegated to him/her by the Contractor as communicated to City.

ARTICLE 13. MISCELLANEOUS AGREEMENTS

1354

1355 **13.1 Entire Agreement**

1356 This Agreement is the entire agreement between the Parties with respect to the subject matter hereof
1357 and supersedes all prior and contemporaneous oral and written agreements and discussions. Each Party
1358 has cooperated in the drafting and preparation of this Agreement and this Agreement shall not be
1359 construed against any Party on the basis of drafting. This Agreement may be amended only by an
1360 agreement in writing, signed by each of the Parties hereto.

1361 **13.2 Section Headings**

1362 The article headings and section headings in this Agreement are for convenience of reference only and
1363 are not intended to be used in the construction of this Agreement nor to alter or affect any of its
1364 provisions.

1365 **13.3 References to Laws**

1366 All references in this Agreement to laws and regulations shall be understood to include such laws as
1367 they may be subsequently amended or recodified, unless otherwise specifically provided herein.

1368 **13.4 Amendments**

1369 This Agreement may not be modified or amended in any respect except in writing signed by the Parties.

1370 **13.5 Severability**

1371 If any non-material provision of this Agreement is for any reason deemed to be invalid and
1372 unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining
1373 provisions of this Agreement, which shall be enforced as if such invalid or unenforceable provision had
1374 not been contained herein.

1375 **13.6 Counterparts**

1376 This Agreement may be executed in counterparts, each of which shall be considered an original.

1377 **13.7 Exhibits**

1378 Each of the Exhibits identified as Exhibit "A" through "H" is attached hereto and incorporated herein and
1379 made a part hereof by this reference. In the event of a conflict between the terms of this Agreement
1380 and the terms of an Exhibit, the terms of this Agreement shall control.

1381 IN WITNESS WHEREOF, City and Contractor have executed this Agreement as of the day and year first
1382 above written.

1383
1384
1385

1386 ATTEST:

1387

1388 City CLERK City of Milpitas ("City")

1389

1390

1391 By _____ By _____
1392 City Clerk City Manager

1393

1394 Date: _____ Date: _____

1395

1396

1397 APPROVED AS TO FORM:

1398

1399

1400 _____

1401 City Attorney

1402

1403 Date: _____

1404

1405

1406

1407

1408 APPROVED AS TO FORM:

1409

1410

1411 _____

Waste Management of South Bay

1412

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1414 _____

Contractor Attorney

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1421

Date: 3-4-16

By: 
Barry Skolnick {Name}
President {Title}

Date: 3-4-2016

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EXHIBIT A: DEFINITIONS

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

4 **"AB 341"** means the California Jobs and Recycling Act of 2011 (Chapter 476, Statutes of 2011 [Chesbro,
5 AB 341]), also commonly referred to as "AB 341", as amended, supplemented, superseded, and replaced
6 from time to time.

7 **"AB 939"** means the California Integrated Waste Management Act of 1989 (Division 30 of the California
8 Public Resources Code), also commonly referred to as "AB 939," as amended, supplemented,
9 superseded, and replaced from time to time.

10 **"AB 1594"** means the 2014 act to amend Sections 40507 and 41781.3 of the Public Resources Code,
11 relating to solid waste (Chapter 719, Statutes of 2014 [Williams, AB 1594], also commonly referred to as
12 "AB 1594", as amended, supplemented, superseded, and replaced from time to time.

13 **"AB 1826"** means the Organic Waste Recycling Act of 2014 (Chapter 727, Statutes of 2014 [Chesbro, AB
14 1826]), also commonly referred to as "AB 1826", as amended, supplemented, superseded, and replaced
15 from time to time.

16 **"Accept"** or **"Acceptance"** (or other variations thereof) means the transfer of ownership of Solid Waste
17 from the Franchise Collector to the Contractor upon Delivery to the Approved Disposal Facility.

18 **"Affiliate"** means all businesses (including corporations, limited and general partnerships and sole
19 proprietorships) which are directly or indirectly related to Contractor by virtue of direct or indirect
20 Ownership interest or common management. They shall be deemed to be "Affiliated with" Contractor
21 and included within the term "Affiliates" as used herein. An Affiliate shall include: (i) a business in which
22 Contractor has a direct or indirect Ownership interest, (ii) a business, which has a direct or indirect
23 Ownership interest in Contractor and/or (iii) a business, which is also Owned, controlled or managed by
24 any business or individual which has a direct or indirect Ownership interest in Contractor. For the
25 purposes of this definition, "Ownership" means ownership as defined in the constructive ownership
26 provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date here,
27 provided that ten percent (10%) shall be substituted for fifty percent (50%) in Section 318(a)(2)(C) and in
28 Section 318(a)(3)(C) thereof; and Section 318(a)(5)(C) shall be disregarded. For purposes of determining
29 ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership
30 interest of less than ten percent (10%) shall be disregarded and percentage interests shall be
31 determined on the basis of the percentage of voting interest of value which the ownership interest
32 represents.

33 **"Agreement"** means this Agreement between City and Contractor, including all exhibits, and any future
34 amendments hereto.

35 **"Alternative Daily Cover (ADC)"** means CalRecycle-approved materials other than soil used as a
36 temporary overlay on an exposed landfill face. Generally, these materials must be processed so that
37 they do not allow gaps in the face surface, which would provide breeding grounds for insects and
38 vermin.

EXHIBIT A: DEFINITIONS

39 **“Alternative Facility(ies)”** means the Disposal facility proposed by Contractor and approved by City for
40 use in the event that the Approved Disposal Facility is unavailable for use. As of the Effective Date, the
41 Alternative Facility is the Kirby Canyon Landfill, located at 910 Coyote Creek Golf Drive, Morgan Hill, CA
42 95037.

43 **“Alternative Intermediate Cover (AIC)”** means CalRecycle-approved materials other than soil used at a
44 landfill on all surfaces of the fill where no additional Solid Waste will be deposited within one hundred
45 eighty (180) days. Generally, these materials must be processed so that they do not allow gaps in the
46 face surface, which would provide breeding grounds for insects and vermin.

47 **“Applicable Law”** means all Federal, State, County, and local laws, regulations, rules, orders, judgments,
48 degrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over
49 the Disposal of Solid Waste that are in force on the Effective Date and as may be enacted, issued or
50 amended during the Term of this Agreement.

51 **“Approved Disposal Facility”** means the Guadalupe Landfill and C&D Recovery Facility at 15999
52 Guadalupe Mines Road, San Jose, CA 95120, which is owned and operated by the USA Waste of
53 California, Inc.

54 **“Beneficial Reuse”** means use of material for beneficial reuse which shall include, but not be limited to,
55 the following: Alternative Daily Cover, Alternative Intermediate Cover, final cover foundation layer, liner
56 operations layer, leachate and landfill gas collection system, construction fill, road base, wet weather
57 operations pads and access roads, and soil amendments for erosion control and landscaping.

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

59 **“Change in Law”** means any of the following events or conditions that has a material and adverse effect
60 on the performance by the Parties of their respective obligations under this Agreement (except for
61 payment obligations, or City Diversion decisions or obligations that have the effect of reducing the
62 relative tonnages of Solid Waste available for Disposal):

63 a. The enactment, adoption, promulgation, issuance, modification, or written change in
64 administrative or judicial interpretation of any Applicable Law on or after the Effective Date that
65 Contractor can demonstrate, through the process described in Section 8.5, increases Contractor’s cost of
66 performing under this Agreement; or,

67 b. The order or judgment of any governmental body, on or after the Effective Date, to the extent
68 such order or judgment is not the result of willful or negligent action, error or omission or lack of
69 reasonable diligence of City or of the Contractor, whichever is asserting the occurrence of a Change in
70 Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such
71 order or judgment shall not constitute or be construed as such a willful or negligent action, error or
72 omission or lack of reasonable diligence.

73 **“City”** means the City of Milpitas, a municipal corporation, and all the territory lying within the
74 municipal boundaries of the City as presently existing or as such boundaries may be modified during the
75 Term.

EXHIBIT A: DEFINITIONS

76 **“City Contract Manager”** means the City representative specified in Section 3.9, who is the main point
77 of contact for this Agreement.

78 **“Closure”** means the mandated activities stipulated in Applicable Law and required to be conducted
79 following conclusion of Disposal activities at the Approved Disposal Facility or any portion of the
80 Approved Disposal Facility such that Post-Closure activities can commence, including but not limited to
81 all planning, design, regulatory approvals, plan implementation, construction and monitoring.

82 **“Collect or Collection (or any variation thereof)”** means the action of the Franchise Collector in
83 collecting Solid Waste from within the Service Area for Delivery to the Approved Disposal Facility.

84 **“Commencement Date”** means the date specified in Section 2.1 on which Contractor shall begin to
85 provide the Disposal services required by this Agreement.

86 **“Composting or Compost (or any variation thereof)”** includes a controlled biological decomposition of
87 organic materials yielding a safe and nuisance free compost product.

88 **“Construction and Demolition Debris (C&D)”** includes discarded building materials, packaging, debris,
89 and rubble resulting from construction, alteration, remodeling, repair or demolition operations on any
90 pavements, excavation projects, houses, commercial buildings, or other structures, excluding Excluded
91 Waste.

92 **“Container(s)”** mean Bins, Carts, Compactors, and Drop Boxes.

93 **“Contractor”** means Waste Management of South Bay organized and operating under the laws of the
94 State and its officers, directors, employees, agents, companies, related-parties, affiliates, subsidiaries,
95 and Subcontractors.

96 **“Contractor’s Compensation”** means the monetary compensation received by Contractor in return for
97 providing services in accordance with this Agreement as described in Article 8.

98 **“Contractor’s Proposal”** means the proposal submitted to City by Contractor on **October 27, 2015** for
99 provision of Solid Waste Disposal services and certain supplemental written materials, which are
100 included as Exhibit I to this Agreement and are incorporated by reference.

101 **“County”** means the County of Santa Clara.

102

103 **“Delivered” or “Delivery”** (or other variations thereof) means the action of the Franchise Collector in
104 bringing Solid Waste to the Approved Disposal Facility for Disposal.

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

EXHIBIT A: DEFINITIONS

110 **“Disposal or Dispose** (or any variation thereof)” means the final disposition of Solid Waste intended for
111 placement in a Disposal Facility.

112 **“Disposal Facility”** means a facility for ultimate Disposal of Solid Waste.

113 **“Diversion** (or any variation thereof)” means activities which reduce or eliminate the amount of Solid
114 Waste to be Disposed including, but not limited to, Recycling and Composting of Source Separated
115 Materials and Processing of Solid Waste.

116 **“Effective Date”** means the date on which the latter of the two Parties signs this Agreement.

117 **“Excluded Waste”** means Hazardous Substance, Hazardous Waste, Infectious Waste, Designated Waste,
118 volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, waste that
119 Contractor reasonably believes would, as a result of or upon Disposal, be a violation of local, State or
120 Federal law, regulation or ordinance, including land use restrictions or conditions, waste that cannot be
121 Disposed of in Class III landfills, waste that in Contractor’s reasonable opinion would present a
122 significant risk to human health or the environment, cause a nuisance or otherwise create or expose
123 Contractor or City to potential liability; but not including de minimis volumes or concentrations of waste
124 of a type and amount normally found in residential Solid Waste after implementation of programs for
125 the safe Collection, Recycling, treatment, and Disposal of batteries and paint in compliance with
126 Sections 41500 and 41802 of the California Public Resources Code.

127 **“E-Waste”** means discarded electronic equipment including, but not limited to, televisions, computer
128 monitors, central processing units (CPUs), laptop computers, computer peripherals (including external
129 hard drives, keyboards, scanners, and mice), printers, copiers, facsimile machines, radios, stereos, stereo
130 speakers, VCRs, DVDs, camcorders, microwaves, telephones, cellular telephones, and other electronic
131 devices. Some E-Waste or components thereof may be Hazardous Waste or include Hazardous
132 Substances and thus require special handling, Processing, or Disposal.

133 **“Federal”** means belonging to or pertaining to the Federal government of the United States.

134 **“Food Scraps”** means those food-related discarded materials that will decompose and/or putrefy
135 including: (i) all kitchen and table food waste; (ii) animal or vegetable waste that is generated during or
136 results from the storage, preparation, cooking or handling of food stuffs; (iii) discarded paper that is
137 contaminated with Food Scraps; and, (iv) fruit waste, grain waste, dairy waste, meat, and fish waste.
138 Food Scraps are a subset of Organic Materials.

139 **“Franchised Collector”** means { } that entered into an exclusive franchise agreement
140 with the City, entitled “Franchise Agreement between the City of Milpitas and { } for Collection
141 and Processing of Discarded Materials,” dated { }.

142 **“Generator”** means any Person whose act or process produces Solid Waste as defined in the Public
143 Resources Code, or whose act first causes Solid Waste to become subject to regulation.

144 **“Gross Receipts”** shall mean total cash receipts collected from Customers by the Contractor for the
145 provision of services pursuant to this Agreement, without any deductions.

EXHIBIT A: DEFINITIONS

146 **“Hazardous Substance”** means any of the following: (a) any substances defined, regulated or listed
147 (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic
148 waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the
149 environment, in or pursuant to: (i) the Comprehensive Environmental Response, Compensation and
150 Liability Act (CERCLA) of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials
151 Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC
152 §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code
153 §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and, (vii)
154 California Water Code §13050; (b) any amendments, rules or regulations promulgated there under to
155 such enumerated statutes or acts currently existing or hereafter enacted; and, (c) any other hazardous
156 or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated
157 under any other Applicable Law currently existing or hereinafter enacted, including, without limitation,
158 friable asbestos, polychlorinated biphenyl's (PCBs), petroleum, natural gas, and synthetic fuel products,
159 and by-products.

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

166 **“Holidays”** are defined as New Year's Day, Thanksgiving Day, and Christmas Day.

167 **“Household Hazardous Waste”** or **“HHW”** means Hazardous Waste generated at residential Premises
168 within the City. HHW includes, but is not limited to: paint, stain, varnish, thinner, adhesives, auto
169 products such as old fuel, used motor oil, used oil filter, batteries, household batteries, fluorescent
170 bulbs, tubes, cleaners and sprays, pesticides, fertilizers and other garden products, needles, syringes,
171 and lancets.

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

176 **“Liquidated Damages”** means the amounts due by Contractor for failure to meet specific quantifiable
177 standards of performance as described in Section 10.6.

178 **“Organic Materials”** means those Yard Trimmings and Food Scraps which are placed by Generators for
179 Collection together or separately and that are specifically accepted at the Approved Organic Materials
180 Processing Facility. No Discarded Material shall be considered to be Organic Materials, however, unless
181 it is separated from Solid Waste, Recyclable Material, and C&D.

182 **“Owner”** means the Person(s) holding legal title to real property and/or any improvements thereon, and
183 shall include the Person(s) listed on the latest equalized assessment roll of the County Assessor.

184 **“Party or Parties”** refers to the City and Contractor, individually or together.

EXHIBIT A: DEFINITIONS

185 **“Permits”** means all federal, State, county, City, other local and any other governmental unit permits,
186 orders, licenses, approvals, authorizations, consents and entitlements that are required under
187 Applicable Law to be obtained or maintained by any Person with respect to services performed under
188 this Agreement, as renewed or amended from time to time.

189 **“Person(s)”** means any individual, firm, association, organization, partnership, corporation, trust, joint
190 venture, or public entity.

191 **“Per-Ton Rate”** means the per-unit compensation owed Contractor by City for each ton of Solid Waste
192 Delivered by the Franchise Collector as payment for all services provided under this Agreement, and as
193 adjusted annually as provided in Article 8.

194 **“Post-Closure”** means the mandated activities stipulated in Applicable Law requiring long-term
195 monitoring and maintenance of the Approved Disposal Facility, or of any portion of the Approved
196 Disposal Facility that has been fully Closed in compliance with Applicable Law.

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

198 **“Rate Period”** means a twelve (12) month period, commencing January 1 and concluding December 31,
199 except that Rate Period One begins September 6, 2017 and ends December 31, 2018.

200 **“Recyclable Materials”** means those discarded materials that: the Generators set out in Recyclables
201 Containers for Collection for the purpose of Recycling by the Franchise Collector.. No discarded
202 materials shall be considered Recyclable Materials unless such material is separated from Solid Waste,
203 Organic Materials, and C&D. Recyclable Materials shall include, but not be limited to: newspaper
204 (including inserts, coupons, and store advertisements); mixed paper (including office paper, computer
205 paper, magazines, junk mail, catalogs, brown paper bags, brown paper, paperboard, paper egg cartons,
206 telephone books, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe
207 boxes, cereal, and other similar food boxes yet excluding paper tissues, paper towels, paper with plastic
208 coating, paper contaminated with food, wax paper, foil-line paper, Tyvex non-tearing paper envelopes);
209 chipboard; corrugated cardboard; glass containers of any color (including brown, clear, and green glass
210 bottles and jars); aluminum (including beverage containers and small pieces of scrap metal); steel, tin or
211 bi-metal cans; mixed plastics such as plastic containers (no. 1 to 7); and, bottles including containers
212 made of HDPE, LDPE, or PET.

213 **“Recycle or Recycling”** means the process of sorting, cleansing, treating, and reconstituting at a
214 Processing Facility materials that would otherwise be Disposed of at a landfill for the purpose of
215 returning such materials to the economy in the form of raw materials for new, reused, or reconstituted
216 products.

217 **“Residue”** means those materials which, after Processing, are Disposed rather than Recycled due to
218 either the lack of markets for materials or the inability of the Processing Facility to capture and recover
219 the materials.

220 **“SB 1016”** means Chapter 343, Statutes of 2008, Wiggins, also commonly referred to as “SB 1016”, as
221 amended, supplemented, superseded, and replaced from time to time.

EXHIBIT A: DEFINITIONS

222 **“Service Area”** means the physical area encompassed by the jurisdiction of the City, in which the
223 Franchised Collector provides Collection service.

224 **“Solid Waste”** means solid waste as defined in California Public Resources Code, Division 30, Part 1,
225 Chapter 2, §40191 and regulations promulgated hereunder. Excluded from the definition of Solid Waste
226 are Excluded Waste, C&D, Source Separated Recyclable Materials, Source Separated Organic Materials,
227 and radioactive waste. Notwithstanding any provision to the contrary, Solid Waste may include de
228 minimis volumes or concentrations of waste of a type and amount normally found in residential Solid
229 Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of
230 Household Hazardous Waste in compliance with Section 41500 and 41802 of the California Public
231 Resources Code as may be amended from time to time. Solid Waste includes salvageable materials only
232 when such materials are included for Collection in a Solid Waste Container, or when Solid Waste is
233 directed by City for Processing. For the purposes of this Agreement, Solid Waste is inclusive of street
234 sweeping debris intended for Disposal.

235 **“Source Separated”** means the segregation, by the Generator, of materials designated for separate
236 Collection for some form of Recycling, Composting, recovery, or reuse.

237 **“State”** means the State of California.

238 **“Subcontractor”** means a Party, approved by the City who has entered into a contract, express or
239 implied, with the Contractor for the performance of an act that is necessary for the Contractor’s
240 fulfillment of its obligations for providing service under this Agreement. Vendors providing materials
241 and supplies to Contractor shall not be considered Subcontractors.

242 **“Term”** means the Term of this Agreement, including extension periods if granted, as provided for in
243 Article 2.

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

246 **“Universal Waste (U-Waste)”** means all wastes as defined by Title 22, Subsections 66273.1 through
247 66273.9 of the California Code of Regulations. These include, but are not limited to, batteries,
248 fluorescent light bulbs, mercury switches, and E-Waste.

249 **“Yard Trimmings”** means discarded materials excepting Food Scraps that will decompose and/or
250 putrefy, including, but not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead
251 plants, brush, tree trimmings, dead trees, small pieces of unpainted and untreated wood, and other
252 types of organic waste. Yard Trimmings are a subset of Organic Materials. Yard Trimmings placed for
253 Collection may not exceed six (6) inches in diameter and three (3) feet in length and must fit within the
254 Contractor-provided Container

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**EXHIBIT B:
RESERVED**

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EXHIBIT C: GUARANTY AGREEMENT

THIS GUARANTY (the "Guaranty") is given as of the 26 day of February, 2016, by Waste Management Holdings, Inc., ("Guarantor"), to the CITY OF MILPITAS, a California municipal corporation ("City").

THIS GUARANTY is made with reference to the following facts and circumstances:

A. USA Waste of California, Inc. ("Contractor") is a corporation organized under the laws of the State of Delaware, all of the issued and outstanding stock of which is owned by Guarantor.

B. Guarantor is a corporation organized under the laws of the State of Delaware.

C. Contractor and City have negotiated an Agreement for Transfer and Disposal of Solid Waste (such agreement, as it may be amended, modified or waived from time to time, the "Agreement"), under which Contractor is to provide specified services to City. A copy of this Agreement is attached hereto and incorporated herein by this reference.

D. It is a requirement of the Agreement, and a condition to City's entering into the Agreement, that Guarantor guaranty Contractor's performance of the Agreement.

E. Guarantor is providing this Guaranty to induce City to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. Guaranty of the Agreement. Guarantor hereby irrevocably and unconditionally guarantees to City the complete and timely performance, satisfaction and observation by Contractor of each and every term and condition of the Agreement which Contractor is required to perform, satisfy or observe. In the event that Contractor fails to perform, satisfy or observe any of the terms or conditions of the Agreement, Guarantor will promptly and fully perform or cause performance by a third party, satisfy or observe them in the place of the Contractor. Guarantor hereby guarantees prompt payment to City of each and every sum due from Contractor to City under the Agreement, as and when due from time to time, and the prompt performance of every other task and duty required to be performed by the Contractor under the Agreement.

2. Guarantor's Obligations Are Absolute. The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited and, with respect to any payment obligation of Contractor under the Agreement, shall constitute a guarantee of payment and not of collection, and are not conditioned upon the genuineness, validity, regularity or enforceability of the Agreement.

EXHIBIT C: GUARANTY AGREEMENT

3. Waivers and Subordination. The Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under Section 1 hereof for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of the Contractor; (2) any amendment, modification or waiver of any provision of the Agreement or the extension of its Term; (3) the actual or purported rejection of the Agreement by a trustee in bankruptcy, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (4) any waiver, extension, release or modification with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of City's rights or remedies against Contractor; or (5) any merger or consolidation of the Contractor with any other organization, or any sale, lease or transfer of any or all the assets of the Contractor.

The Guarantor hereby waives any and all rights, benefits and defenses under California Civil Code Sections 2809, 2815, 2819, 2845, 2849 and 2850, and all other rights permitted to be waived by Section 2856(a) including, without limitation, the right to require City to (a) proceed against Contractor, (b) proceed against or exhaust any security or collateral City may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agree that City may proceed against Guarantor for the obligations guaranteed herein without taking any action against Contractor or any other guarantor or pledgor and without proceeding against or exhausting any security or collateral City may hold now or hereafter hold. City may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against Contractor or any other guarantor or pledgor without impairing City's rights and remedies in enforcing this Guarantee.

The Guarantor hereby waives and agrees to waive at any future time at the request of City, to the extent now or then permitted by applicable law, any and all rights which the Guarantor may have or which at any time hereafter may be conferred upon it, by statute, regulation or otherwise, to avoid any of its obligations under, or to terminate, cancel, quit or surrender this Guaranty. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not affect the liability of the Guarantor hereunder: (a) at any time or from time to time, without notice to the Guarantor, the time for Contractor's performance of or compliance with any of its obligations under the Agreement is extended, or such performance or compliance is waived; (b) the Agreement is modified or amended in any respect; (c) any other indemnification with respect to Contractor's obligations under the Agreement or any security therefor is released or exchanged in whole or in part or otherwise dealt with; (d) any assignment of the Agreement is effected which does not require City's approval; or (e) any termination or suspension of the Agreement arising by reason of a default by Contractor.

EXHIBIT C: GUARANTY AGREEMENT

The Guarantor hereby expressly waives diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from City as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor or Contractor prior to such avoidance or recovery, or (b) payment in full of any obligations then outstanding.

The Guarantor expressly subordinates and waives its rights to subrogation, reimbursement, contribution or indemnity with respect to performance by Guarantor of the obligations of Contractor guaranteed hereby, until such time as City receives payment or performance in full of all such obligations.

4. Term. This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed by Contractor, and Guarantor shall remain fully responsible under this Guaranty without regard to the acceptance by City of any performance bond or other collateral to assure the performance of Contractor's obligations under the Agreement. Guarantor shall not be released of its obligations hereunder so long as there is any claim by City against Contractor arising out of the Agreement based on Contractor's failure to perform which has not been settled or discharged.

5. No Waivers by City. No delay on the part of City in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of City to take other or further action without notice or demand. No modification or waiver by City of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by City and by Guarantor, nor shall any waiver by City be effective except in the specific instance or matter for which it is given.

6. Attorney's Fees. In addition to the amounts guaranteed under this Guaranty, Guarantor agrees to pay actual attorney's fees and all other costs and expenses incurred by City in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder.

7. Governing Law; Jurisdiction. This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of laws rules for all purposes, including, but not limited to, matters of construction, validity and performance. Guarantor agrees that

City of Milpitas/ Waste Management of South Bay

EXHIBIT C: GUARANTY AGREEMENT

1001 Fannin Street, Houston, TX 77002
Attn: General Counsel
Facsimile: 713-209-9710

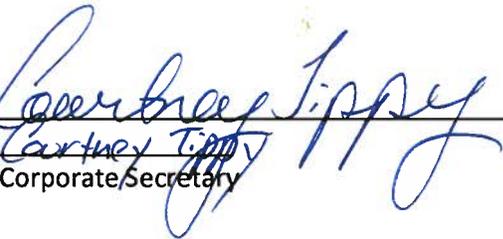
The parties may change the address to which notice is to be sent by giving the other party notice of the change as provided in this Section.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty on the day and year first above written.

Waste Management Holdings, Inc.

By: 

EDWARD A. FGL
ASSISTANT TREASURER

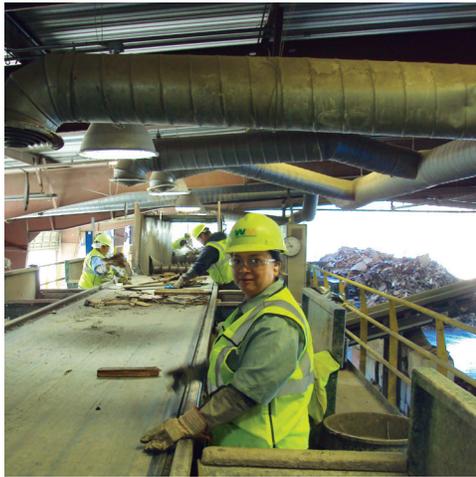
By: 

Courtney Tippy
Corporate Secretary

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**EXHIBIT D:
CONTRACTOR'S PROPOSAL**

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City of Milpitas

REQUEST FOR PROPOSALS FOR DISPOSAL SERVICES

27 OCTOBER 2015

Presented to
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035

Presented by
USA WASTE OF CALIFORNIA, INC.
dba Waste Management of South Bay
172 98th Avenue, Oakland CA 94603
(510) 613-2158 Phone



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October 27 2015

Mary Lavelle, City Clerk
City of Milpitas
City Hall
455 East Calaveras Boulevard
Milpitas, CA 95035

Dear Ms. Lavelle,

USA Waste of California, Inc., a Delaware Corporation doing business as Waste Management of South Bay, the proposing legal entity identified in Business Structure, Section 6.4.1, is pleased to submit this proposal for Disposal Services to the City of Milpitas.

Waste Management of South Bay brings more than 80 years of experience in Santa Clara County. Utilizing our Guadalupe Rubbish Disposal Company, DBA Guadalupe Recycling and Disposal Facility ("Guadalupe") located in San Jose, residents and businesses of the City of Milpitas can feel confident that their non-recyclable materials are handled in an environmentally safe and reliable manner.

Under this proposal, Waste Management of South Bay offers the City of Milpitas the opportunity to be associated with a Class III solid waste landfill with a permitted Construction and Demolition Material Recovery Facility (MRF), whose commitment to environmental stewardship extends to protecting the natural beauty and ecological diversity of our site. Guadalupe is an active participant in the national Wildlife Habitat Council's Habitat Management Certification program. By utilizing Guadalupe, the Milpitas Community will feel comfortable knowing their municipal solid waste will go to a facility that meets and exceeds all regulatory requirements and has good relationships with its surrounding community and neighbors.

Guadalupe has been serving the San Jose community since 1929.

The enclosed proposal represents our Disposal portion of an integrated sustainability solution program, which is designed to assist the City of Milpitas meet or exceed its diversion goals, by incorporating best practices and best available technology unmatched by any other waste company.

"With submittal of this Disposal Proposal, Waste Management of South Bay acknowledges and accepts all terms and conditions of the Disposal Agreement, except for any exceptions taken in Section 6 of our proposal."

We welcome the opportunity to discuss our proposal with you further and the important role we can play in helping the City reach its long-term diversion and sustainability goals.

Sincerely,



Barry Skolnick
Area Vice President
USA Waste of California, Inc.
dba Waste Management of South Bay



Disposal Services



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1 EXECUTIVE SUMMARY

USA Waste of California, Inc., (Delaware Corp) dba Waste Management of South Bay, is pleased to submit this proposal for Disposal Services to the City of Milpitas.



As the leading provider of recycling and comprehensive waste management services in North America, Waste Management serves nearly 20 million municipal, commercial, industrial, and residential customers through a network of 367 collection operations, 355 transfer stations, 134 recycling plants/MRFs, 273 active landfill disposal sites, 137 landfills under post-closure care, 16 waste-to-energy plants, 111 landfill gas to energy facilities, and the largest fleet of alternative-fuel vehicles in the industry. Waste Management's national experience and expertise directly benefit the Bay Area and the City of Milpitas.

Building upon this vast knowledge and experience, Waste Management of South Bay brings more than 80 years of experience in Santa Clara County. Utilizing our Guadalupe Rubbish Disposal Company, DBA Guadalupe Recycling and Disposal Facility ("Guadalupe") located in San Jose, residents and businesses of the City of Milpitas can feel confident that their non-recyclable materials are handled in an environmentally safe and reliable manner.

The Guadalupe Recycling and Disposal Facility has the capacity and permitting to meet the City of Milpitas' disposal needs. Within the 411-acre site, 115 acres support the facility's recycling and landfill operations. Guadalupe is permitted to accept 3,650 tons of material daily and holds all the necessary permits for a Class III disposal facility for non-hazardous materials.

It meets or exceeds all federal, state, and local requirements for landfill management and is regulated by the California Regional Water Quality Control Board, Bay Area Air Quality Management District, CalRecycle and the City of San Jose Department of Planning and Code Enforcement.

Our pledge to the residents and businesses of the City of Milpitas is to be your environmental services solution provider, ensuring safe, effective and efficient Disposal operations. With Waste Management of South Bay, our Milpitas customers will have an engaged community partner. We take pride in our community and civic involvement and are committed to outreach and media efforts to keep residents informed about what is taking place at Guadalupe.. The Guadalupe Recycling and Disposal Facility enjoys good relationships with our community neighbors and adheres to regulatory mandates to mitigate odors and control vectors.

Environmental Protection

Waste Management is dedicated to the proper handling and increased diversion of waste. Each of our Bay Area landfills is engineered to protect the environment and meets or exceeds all federal, state and local regulations. Every Class III landfill features an extensive network of wells and vacuum extraction systems to capture and control landfill gas emissions. Protection of ground water is also a priority and all of our landfills have superior and proven leachate collection and control systems in place.

We are confident that our response will provide you with a behind-the-scenes view into why Waste Management of South Bay, through strategic planning and partnerships with the City of Milpitas, is the only company that can deliver superior service to Milpitas residents and businesses.

Wildlife Habitat Protection

At Guadalupe, nearly 300 acres of the 411-acre site is home to wildlife including a creek featuring an 800-foot fish ladder for native Steelhead Trout and Chinook Salmon.



Waste Management has more than 25,000 acres nationwide dedicated to wildlife habitats. Locally, we have more than 1,500 acres preserved for wildlife, including 250 acres at Kirby Canyon through a Conservation Plan with the U.S. Fish & Wildlife Plan as well as a Wildlife Habitat Easement Plan at the Altamont Landfill for another 1,000 acres. The Redwood Landfill, home to waterfowl, wildlife and a visiting Golden Eagle, transferred 180 acres to the Marin Audubon Society for restoration to wetland status in 2003. Through the national non-profit Wildlife Habitat Council, three of the landfills have been certified Wildlife at Work sites for their restoration and education programs.

Carbon Footprint Reduction

Guadalupe features a WM EarthCare Landscape Center, which is stocked with landscape products made by Waste Management from Bay Area-sourced, 100% recycled materials. We are closing the loop on materials once destined for landfills and helping businesses and homeowners access locally produced compost and mulch thereby reducing the carbon footprint associated with virgin landscape materials.

For more than 10 years, Guadalupe hosted a landfill gas to energy facility. In 2013, the plant was decommissioned so it could be relocated and is expected to be operational in 2016. Waste Management installed the first landfill gas-to-energy generators in 1989 at the Altamont Landfill in Livermore, CA. Today, the company operates 111 landfill gas to electricity facilities across the country.

Resource Recovery

Waste Management actively promotes waste diversion at its Material Recovery Facilities (MRFs) and landfills. It employs state-of-the-art technology to separate like materials at its single stream recycling and construction and demolition (C&D) MRFs. The Guadalupe C&D MRF has the potential to divert 200 tons of construction debris per day along with 175 tons of green waste. Guadalupe also separates concrete to be reused as aggregate base for landfill roadways.

In Conclusion

We believe the combined services of Waste Management of South Bay and the Guadalupe Recycling and Disposal Facility is unmatched by any other potential provider.

Waste Management of South Bay's Disposal proposal is field tested and ready for implementation on day one of the new contract.

Our integrated infrastructure offers peace of mind, years of experience and proven environmental leadership.

Working together, we can change how residents and customers view the act of waste diversion and recycling for a cleaner, safer and more sustainable environment.

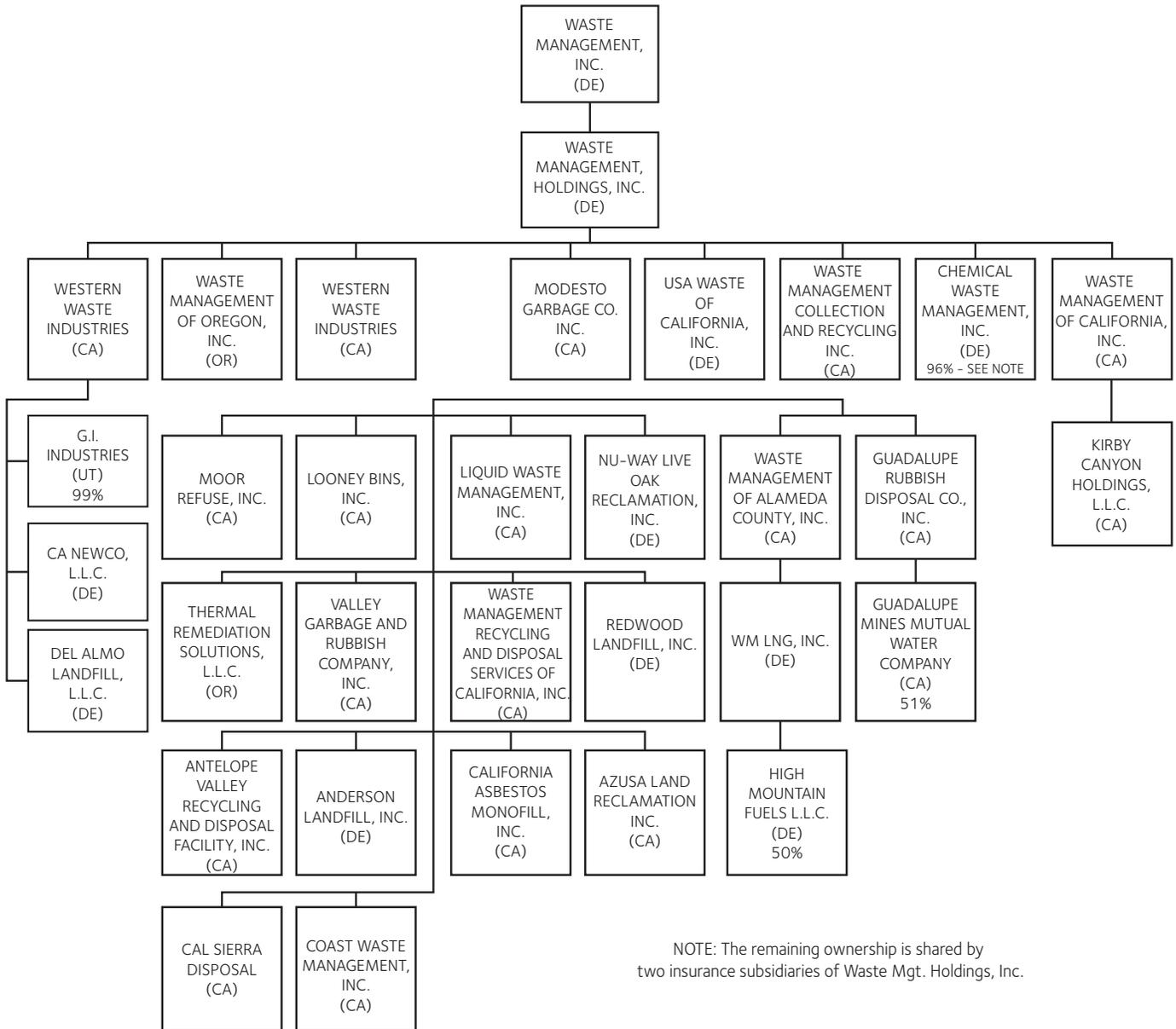
Awarding Waste Management of South Bay the privilege to serve the City of Milpitas not only means reliable, cost-effective, and sustainably-minded environmental services, but a long-term partnership that can drive diversion and improve quality of life for residents and the business community over the next 10-plus years.

2. COMPANY DESCRIPTION

Business Structure

USA Waste of California, Inc. (“Proposer” for purposes of this Section 5.4.1) is a Delaware corporation authorized to do business in California. Proposer is a corporation. Proposer is the executing entity. Proposer was incorporated in 1993 and acquired by a subsidiary of Waste Management, Inc. in 1999 (20 years). Proposer’s sole shareholder is Waste Management Holdings, Inc. (“WMHI”). There are no creditors owed debt greater than 10 percent.

The following entities are [] subsidiaries of USA Waste of California, Inc.:



Disposal Experience

As the leading provider of recycling and comprehensive waste management services in North America, Waste Management serves nearly 20 million municipal, commercial, industrial, and residential customers through a network of 367 collection operations, 355 transfer stations, 134 recycling plants/MRFs, 273 active landfill disposal sites, 137 landfills under post-closure care, 16 waste-to-energy plants, 111 landfill gas to energy facilities, and the largest fleet of alternative-fuel vehicles in the industry. Waste Management's national experience and expertise directly benefit the Bay Area.

Environmental Protection

Waste Management is dedicated to the proper handling and increased diversion of waste. Each of our Bay Area landfills is engineered to protect the environment and meets or exceeds all federal, state and local regulations. Every Class III landfill features an extensive network of wells and vacuum extraction systems to capture and control landfill gas emissions. Protection of ground water is also a priority and all of our landfills have superior and proven leachate collection and control systems in place.

Greenhouse Gas Capture Rate



Landfill gas, comprised of half methane and half carbon dioxide is a greenhouse gas created from the naturally occurring decay of organic materials in the landfill. Waste Management has one of the highest capture rates in the industry – in excess of 90% at each of its Bay Area landfills. Waste Management utilizes US Environmental Protection Agency-approved Tunable Diode Laser (TDL) technology to document Bay Area landfill gas capture rates. The U.S. EPA generally considers a 75% capture rate as typical in the industry.

Community Involvement

As a publicly traded company, Waste Management operates with transparency. We work closely with our Local Enforcement Agencies as well as surrounding communities to ensure we are good neighbors and stewards of the environment. In Santa Clara County, we established the Kirby Canyon Land Conservation Trust to preserve one of the Bay Area's few remaining serpentine-soil ecosystems. At the Redwood Landfill in Marin County, we privately funded and constructed an overcrossing above Highway 101 in 2006. The Altamont Landfill supports Alameda County recycling programs along with east County area open space and Livermore community arts programs.

Wildlife Habitat Protection



Waste Management has more than 25,000 acres nationwide dedicated to wildlife habitats. Locally, we have more than 1,500 acres preserved for wildlife. At Guadalupe, nearly 300 acres of the 411-acre site is home to wildlife including a creek featuring an 800-foot fish ladder for native Steelhead Trout and Chinook Salmon. Another 250 acres at Kirby Canyon

are dedicated through a Conservation Plan with the U.S. Fish & Wildlife Plan as well as a Wildlife Habitat Easement Plan at the Altamont Landfill for another 1,000 acres. The Redwood Landfill, home to waterfowl, wildlife and a visiting Golden Eagle, transferred 180 acres to the Marin Audubon Society for restoration to wetland status in 2003. Through the national non-profit Wildlife Habitat Council, three of the landfills have been certified Wildlife at Work sites for their restoration and education programs

Waste Management MRFs & Landfills in the Bay Area

Facilities:

Altamont Landfill & Resource Recovery Facility

10840 Altamont Pass Road, Livermore, CA 94550
925-455-7300
Hours: M – F, 6 am – 4 pm

Accepted Materials: Asbestos-Friable, Asbestos-Non-Friable, Auto Shredder Fluff, Biosolids, Construction & Demolition Debris, Drum Management-Liquids, Drum Management-Solids, Industrial & Special Waste, Liquifix (Solidification Services), Municipal Solid Waste, Yard Waste

Davis Street MRF, Recycling & Transfer Station

2615 Davis Street, San Leandro, CA 94577
510-563-4200
Hours: M – F, 7 am – 5 pm, Sat., 8 am – 4 pm

Accepted Materials: Appliances, Carpets, Construction & Demolition Debris, Dirt & Concrete, Electronics, Mattresses, Municipal Solid Waste, Recyclables, Tires, Yard Waste

Guadalupe Landfill and C&D Recovery Facility

15999 Guadalupe Mines Road, San Jose, CA 95120
408-268-1670
Hours: M – F, 8am – 4pm

Accepted Materials: Construction & Demolition Debris, Municipal Solid Waste

Kirby Canyon Recycling & Disposal Facility

910 Coyote Creek Golf Drive, Morgan Hill, CA 95037
408-779-2206
Hours: M – F, 5am – 4pm & Sat, 6am – 1 pm

Accepted Materials: Construction & Demolition Debris, Municipal Redwood Landfill & Recycling Center

Tri-Cities Recycling & Disposal Facility (closed in 2015)

Service Area:

Alameda, Contra Costa, Marin, San Francisco, Santa Clara & Sonoma Counties.

Diversions Services:

Construction & Demolition Recycling, E-Waste Recycling, Food Scraps Composting, Single-Stream Recycling, White Goods Recycling, Dry Waste Recycling, Wood Scraps to Mulch, Green Waste Composting





Landfill Gas to LNG

Altamont has the world's largest landfill gas to liquefied natural gas (LNG) plant, producing 13,000 gallons a day of bio-fuel for our collection vehicles. This fuel will power the collection fleet Waste Management of South Bay will use to serve the City of Milpitas residents and businesses.

Environmental Awards:



**2014 StopWaste Business Efficiency Award
(WM EarthCare Homegrown Compost)**



2010 Clean Air Award, Breathe California (Altamont)



2010 Governor's Environmental and Economic Leadership Award (Altamont)



**2009 Project of the Year, US EPA Landfill Methane Outreach Program
(Altamont)**



**2009 Clean Air Champion US Department of Energy Clean Cities Coalition
East Bay Chapter (Altamont)**

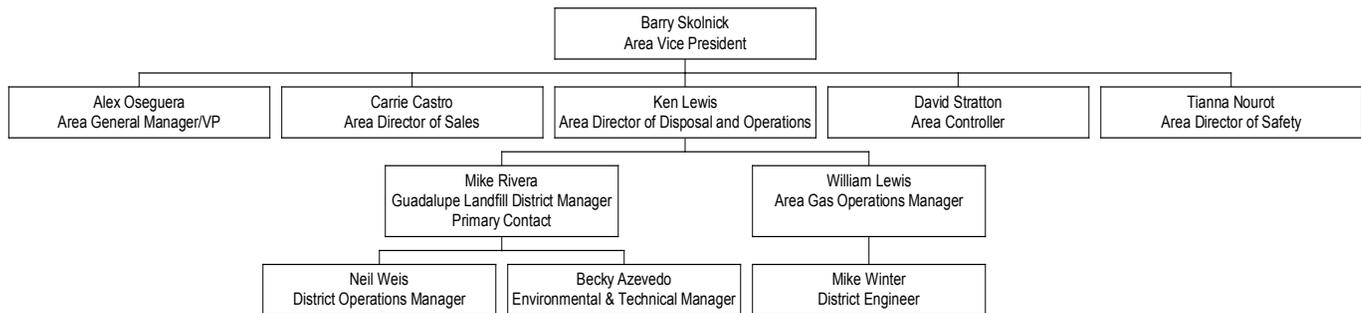
Wildlife Habitat Certification:

- Guadalupe Recycling & Disposal Facility
- Altamont Landfill & Resource Recovery
- Kirby Canyon Recycling & Disposal Facility



Key Personnel

Waste Management of South Bay Guadalupe Landfill and Recycling Center



Ken Lewis, Director Landfill Operations

510-613-2158
klewis@wm.com

Ken Lewis is the Director of landfill facility operations in the California Bay Area. His oversight includes all landfill, recycling, composting, and mulch operations, which occur at these facilities. He has over 20 years of experience in the industry, including civil and geotechnical engineering. He first joined Waste Management 15 years ago as an engineer before transitioning to management of operations. Prior to joining Waste Management, Mr. Lewis was a design and engineer consultant with EMCOM and other consulting companies.



Mike Rivera, Landfill District Manager

408-323-6311
MRivera2@wm.com

Mike joined Waste Management in 2002 as a Laboratory Receiving Manager at the Kettleman Hills Facility. During his tenure at Waste Management, he has worked as a District Manager at the McKittrick Facility, Anderson Landfill, a BPL Coach and since 2013 as the District Manager of Guadalupe and Kirby Landfill. A native of Chicago, IL, Mike has been a community leader in Shasta and Kern County for the past 20 years.



Bill Louis, Gas Operations Manager, Northern California / Nevada Area

925-525-8611
WLouis@wm.com

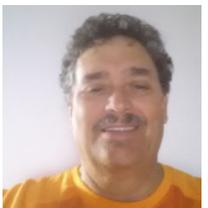
Bill Louis is Gas Operations Manager in the Northern California / Nevada Area. He has over 25 years of experience in landfill gas, geology, hydrogeology and environmental remediation. His team of technicians and gas plant operators collect and control landfill gas at six landfill sites. They are dedicated to protecting the environment while utilizing the energy value of the gas to produce LNG truck fuel and enough electricity to supply 11,000 homes. By applying a multidisciplinary approach to landfill gas control, his team has achieved a stellar environmental record, and the respect and appreciation of regulatory inspectors.



Becky Azevedo – Environmental Protection Manager

408-960-0769
Razevedo@wm.com

Becky Azevedo has worked at Waste Management for over 9 years as an Environmental Protection Manager at multiple sites in the South San Francisco Bay Area. Becky is responsible for managing environmental compliance Guadalupe and Kirby Canyon landfills and regularly interacts with regulators and inspectors onsite to ensure compliance with the sites' operating permits. Becky enjoys training employees on compliance and environmental sustainability.



Neil Wise – District Operations Manager

408-323-6364
Nwise@wm.com

Neil Wise has been with Waste Management since 2001 as a District Operations Manager. He manages the operations and employees that included heavy equipment operators, utility operators, and site maintenance. In 2010 he became the District Operations Manager at Guadalupe. In addition to his regular duties, he enjoys giving tours to school and community groups interested in the inner workings of a landfill.



Mike Winter – District Engineer

408-960-0770
Mwinter@wm.com

Michael Winter joined Waste Management in 2013 as the District Engineer for Guadalupe Landfill. Since 2013 his roles and responsibilities have increased to include supporting Kirby Canyon Landfill as well as, several transfer stations and material recycling facilities(MRF) in Monterey County.



Barry Skolnick, Area Vice President (AVP), Northern California/Nevada Area

510-613-2112
bskolnic@wm.com

Barry Skolnick moved to WMAC’s Oakland Office to become the Area Vice President in 2009. He joined Waste Management in 2002, bringing more than 10 years of industry experience as a former owner and operator of several waste and recycling companies. Barry oversees the fiscal operations of a market area that spans from Fort Bragg to Monterrey and east to the Nevada High Sierras. The region is home to several small, medium and large hauling companies, transfer stations and landfills with an employee base of approximately 2,200.

Barry’s responsibilities include:

- Review and approval of all Northern California/Nevada Area contracts
- Oversees performance of operations, maintenance, customer service, and all transfer stations and landfills serving the Area
- Manages strategic planning and capital improvements for all Area locations



Alex Oseguera, Vice President and General Manager, Northern California/Nevada Area

209-333-5613
aoseguer@wm.com

Alex Oseguera brings 21 years of progressive experience with Waste Management to the Monterey Regional Waste Management District. He joined the company in 1991, serving in several capacities and locales, including Area Vice President for the Sacramento/Nevada Area, Director of Operations for the Sacramento Area, District Manager for the Lodi and Santa Clara facilities, Director of Operations for Waste Management’s Mexican operations based in Mexico City, and Assistant Division Manager in Santa Ana, California. Alex and his team have received several coveted Waste Management honors, including “Best Market Area in the West” for 2006, 2007, and 2010.

Alex’s responsibilities include:

- Manages government relations and public affairs
- Provides strategic guidance for contract service offerings
- Assists in managing strategic planning and capital allocation for all Area locations



Labor Arrangements

Guadalupe Landfill and Recycling Facility is a Non-Union facility.

Past Performance Record

Litigation and Regulatory Actions.

The attached Schedule includes civil/legal actions¹, regulatory actions², and criminal actions occurring in the Greater Bay Area and involving USA Waste of California, Inc. (proposer), Waste Management Holdings, Inc. (parent of proposer), and subsidiaries of proposer operating in the Greater Bay Area.

Payment of Fines, Penalties, Settlements, or Damages.

The attached Schedule includes fines, penalties and damages based on events in the Greater Bay Area and involving USA Waste of California, Inc. (proposer)³, Waste Management Holdings, Inc. (parent of proposer), and subsidiaries of proposer operating in the Greater Bay Area.

Regarding settlements, we have the following additional matters to report:

City of Livermore Franchise Matter. The City of Livermore claimed WMAC breached its collection franchise agreement with the City by failing to provide an audited financial statement for the final year of the agreement and to pay additional franchise fees related to the handling of certain materials. WMAC claimed the City undercompensated the Company for its handling of certain materials and failed to pay increased costs associated with government fees and to reimburse the Company for an overpayment in franchise fees. Settled in 2012.

North Port of Oakland Matter. WMAC and the Port of Oakland reached a settlement in 2010 regarding alleged contamination emanating from a closed inert materials landfill operated by WMAC's predecessor company in the 1950s.

There are numerous additional subsidiaries of proposer that have no business operations in our Bay Area market area and, therefore, have therefore been excluded.

Table 1 includes a list of matters requested above for proposer's operations in its "Bay Area" market area. Copies of such violations, notices, etc. are not maintained in a centralized fashion and, therefore, have not been included. If the Participating Agencies require actual copies, proposer will make every reasonable effort to provide them. Further, proposer does not maintain a centralized database of warning notices or vehicle tickets, so such information has not been included.

1 The Company's legal database does not track civil matters unless the underlying disputes are being or have been litigated, so our response is limited as such. Further, (a) we interpret "legal actions" to be matters involving litigation; (b) some types of cases are excluded as a standard matter from our review process, including third party personal injury and property claims less than \$10,000, debt collection matters and worker's compensation cases, as well as litigation relating to sites that have been sold or closed; and (c) we omitted plaintiff names and settlement details regarding cases brought by individuals due to confidentiality requirements in most settlement agreements.

2 Because "regulatory actions" could include numerous categories of matters not pertinent to the RFP, and because NOV-type matters are localized in nature, we have focused our disclosures on those we believe most relevant to the City's assessment of our ability to perform the proposed services (i.e., environmental and safety-related violations and/or penalties received by the business unit(s) which will oversee services to the City).

3 We have focused our disclosures on those we believe most relevant to the City's assessment of our ability to perform the proposed services (i.e., environmental and safety-related violations and/or penalties received by the business unit(s) which will oversee services to the City).

Table 2 Past Performance Record

| WM CLOSE DATE | DESCRIPTION |
|---------------|---|
| 2014 | Litigation as it relates to the City of Oakland, and others, regarding the RFP process. |
| 02/01/06 | Challenge to the City of American Canyon's grant of exclusive franchise to WM for collection of C&D waste. WM's demurrer was sustained, case dismissed. |
| 11/01/06 | Allegation that Sonoma Marin Hauling breached certain contractual obligations to deliver waste to the West Marin Landfill. Plaintiffs also allege that WM Marin County, the cities of Stinson Beach and Bolinas and the former owner of WM's company may have liability for the environmental remediation and closure/post closure costs at the landfill. The case was bifurcated. One case was brought by the State asserting that the Martinelli's were obligated to develop and fund a closure plan for the landfill. The second case, which was stayed pending the resolution of the State's case, involved the Martinellis' cross claims for indemnity for closure costs and declaratory relief. |
| 04/30/07 | Petition for writ of mandate and complaint filed against the Salinas Valley Solid Waste Authority to require the SVSWA to perform closure and post closure requirements of the Jolon Road Landfill. SVSWA filed a cross-complaint for declaratory relief, indemnity and contribution. SVSWA leased the landfill property from USA Waste and operated the landfill for closure and post closure. |
| 07/15/07 | Plaintiff was terminated for his involvement in a preventable fatality. Young alleges his termination was unlawful age and race discrimination. |
| 11/06/07 | Redwood LF asserted that as a result of negligence by DKS in the design of a highway overpass, Redwood incurred additional design costs and increased costs to acquire additional easement property for access. |
| 12/03/08 | Employment discrimination matter. |
| 12/08/08 | Lawsuit brought by customer alleging breach of contract arising out of lock-out in Oakland. |
| 12/08/08 | Action alleging breach of contract and seeking injunctive relief in connection with WM's labor negotiations with Local 70. Settlement stipulated WM will provide the City with Services valued over \$4.8M and compensatory damages in the amount of \$337,221. |
| 01/14/09 | Violations relating to condition of facility, proper guarding and electrical. Penalty \$5,730.00 |
| 04/08/09 | Alleged stormwater violations at the Davis Street Transfer Station. |
| 12/21/09 | Complaint alleging unpaid contributions to the ILWU Warehousemen's Welfare Trust. |
| 12/21/09 | Complaint for damages alleging violation of the no strike/no lock out provisions of collective bargaining agreements entered into between WMAC and Local 6. |
| 12/22/09 | Condemnation action by the state to condemn part of the Altamont Landfill for expanding the South Bay Aqueduct facility. |
| 03/25/10 | Condemnation action brought to take property at the Company's landfill. |
| 01/27/11 | Clean Water Act citizen suit alleging violations of federal Clean Water Act from stormwater and non-stormwater discharges. |
| 10/27/11 | Former employees allegedly received bribes from a vendor to allow landfill loads to enter Kirby Canyon landfill without payment or at a reduced payment. The county filed a claim against WM to recover fees on those disposal tons that were either not counted or misclassified. Settled for \$10.3M. |

| WM CLOSE DATE | DESCRIPTION |
|---------------|---|
| 02/20/12 | Petition for writ of mandate seeking to set aside San Francisco Regional Water Quality Control Board's July 8, 2009 issuance of Waste Discharge Requirements to Redwood Landfill. |
| 03/29/12 | Wrongful termination matter |
| 07/31/12 | Citation for failure to have fall protection that resulted in employee injury. Penalty \$18,750 |
| 07/31/12 | As the result of a routine inspection on September 23, 2011, it was alleged that several piles of the MRF fines had unacceptable levels of MSW. This material was used at the solidification pad to be commingled with treated auto shredded waste for alternate daily cover application. Improper use of contaminated MRF fines were also noted on during the June 15, 2011, July 21, 2011 and August 26, 2011 inspections. \$750 penalty. |
| 08/15/12 | Clean Water Act citizen suit alleging failure to comply with stormwater discharge. |
| 09/26/12 | Claim against engineering firm relating to flaws in design of perimeter levee at Redwood Landfill. |
| 11/13/12 | Complaint alleged race discrimination, race harassment and retaliation in violation of the Fair Employment and Housing Act; failure to prevent discrimination/harassment; and failure to pay wages (meal period penalties). |
| 12/05/12 | Complaint in Eminent Domain. |
| 01/03/13 | It was alleged that between December 20, 2010 and December 23, 2010 the facility discharged 86,220 gallons of storm water at outfall SW-2 contaminated with condensate to an unnamed tributary of McAbee Creek. \$167,285 fine paid. |
| 04/09/13 | Action by former employee alleging sexual harassment, discrimination, and wrongful termination. |
| 08/02/13 | Complaint alleging race discrimination, failure to prevent discrimination and harassment, wrongful termination and defamation. |
| 05/06/14 | Citizen suit under federal clean water act and RCRA based on alleged violations of NPDES permit requirements. Voluntarily dismissed by Plaintiff without prejudice. |
| 07/31/14 | Group complaint by fourteen plaintiffs alleging various FMLA claims, retaliation, sex discrimination/harassment, and intentional infliction of emotional distress |
| 08/08/14 | Citizen suit alleging violations of federal Clean Water Act and California general permit for stormwater discharges. |
| 09/22/14 | Apartment building owners alleged they were charged for services they did not receive. |
| 10/08/14 | On 5/4/15 the ALJ issued an order approving our settlement with Cal OSHA after WM employee run over by L90 loader while working as a spotter/traffic director. Penalty \$25,750. |
| 10/13/14 | Cal-OSHA citation alleging failure to record a recordable injury in OSHA Form 300 log within seven days of injury. Citation was vacated based on additional information provided by Waste Management showing no violation. |
| 05/11/15 | Complaint in Eminent Domain. |
| 06/08/15 | Complaint alleging discrimination. This action was severed from related federal FMLA matter and remanded to state court. 8 plaintiffs in the state action, 5 in federal. |

| WM CLOSE DATE | DESCRIPTION |
|--------------------------------|---|
| 06/24/15 | On June 18, 2012, an employee working at Davis Street Transfer in San Leandro she was struck from behind by a front-end loader travelling in same direction. Bucket of loader was elevated and raised and this obstructed operator's visibility of pedestrian traffic. Right-hand corner of the bucket snagged her shirt and she lifted into the air. She fell to ground and was run over by both the front and rear right hand wheels. \$50,750 initial penalty + \$25,750 settlement 6/24/15 |
| Open | Challenge to the City and County of San Francisco's disposal contract award to Recology. |
| Open | Employee class action lawsuit alleging meal/rest break violations. |
| Open | Citation and Notification of Penalty for alleged violations of California safety regulations for failing to equip rear-end loading vehicles with shielding to prevent flying particles or substances. Penalty \$935. |
| Open | Former employee alleging discrimination and wrongful termination. |
| Open | Site cleanup requirements issued by the Regional Water Quality Control Board regarding cleanup of historic mercury mining areas at Guadalupe Landfill. |
| Open | Condemnation action by the State to condemn part of the Altamont Landfill for expanding the South Bay Aqueduct facility. Case settled with WM agreeing to accept a condemnation award of \$975,000 in cash , plus annual rental payments of \$11,000 per acre for any temporary construction easements continuing after May 2012. Payment received. |
| Open | It was alleged that on February 27, 2014 7,200 gallons of water containing 280 micrograms per liter of dinoseb a Resource Conservation and Recovery Act P020 listed hazardous waste was disposed of at the facility. \$0.00 fine. |
| Open due to ongoing monitoring | <p>Clean Water Act citizen suit alleging failure by Carmel Marina Corporation to comply with its General Permit for storm water discharges. Settlement entered as a consent decree, \$70,000</p> <p>As the result of an inspections on November 15, 2013, it was alleged that the facility failed to submit for review and approval for Fill Area 2 prior to the large scale earth moving operation getting underway preparing the initial fill modules within Area 2 to accept waste. \$0.00 fine.</p> <p>As the result of a report review, it was alleged that on April 24, 2012 an uncontrolled release of approximately 1,500 gallons of landfill leachate occurred while filling a water truck. \$0.00 fine.</p> |

The above list is current as of September 25, 2015

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders of Waste Management, Inc.

We have audited the accompanying consolidated balance sheets of Waste Management, Inc. (the “Company”) as of December 31, 2014 and 2013, and the related consolidated statements of operations, comprehensive income, cash flows, and changes in equity for each of the three years in the period ended December 31, 2014. These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Waste Management, Inc. at December 31, 2014 and 2013, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2014, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Waste Management, Inc.’s internal control over financial reporting as of December 31, 2014, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) and our report dated February 17, 2015 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

Houston, Texas
February 17, 2015

WASTE MANAGEMENT, INC.
CONSOLIDATED BALANCE SHEETS
(In Millions, Except Share and Par Value Amounts)

| | December 31, | |
|---|--------------|----------|
| | 2014 | 2013 |
| ASSETS | | |
| Current assets: | | |
| Cash and cash equivalents | \$ 1,307 | \$ 58 |
| Accounts receivable, net of allowance for doubtful accounts of \$30 and \$33, respectively | 1,587 | 1,699 |
| Other receivables | 350 | 111 |
| Investment in unconsolidated entity | — | 177 |
| Parts and supplies | 106 | 178 |
| Deferred income taxes | 115 | 113 |
| Other assets | 176 | 163 |
| Total current assets | 3,641 | 2,499 |
| Property and equipment, net of accumulated depreciation and amortization of \$15,968 and \$16,723, respectively | 10,657 | 12,344 |
| Goodwill | 5,740 | 6,070 |
| Other intangible assets, net | 440 | 529 |
| Investments in unconsolidated entities | 408 | 414 |
| Other assets | 526 | 747 |
| Total assets | \$21,412 | \$22,603 |
| LIABILITIES AND EQUITY | | |
| Current liabilities: | | |
| Accounts payable | \$ 740 | \$ 744 |
| Accrued liabilities | 1,180 | 1,069 |
| Deferred revenues | 475 | 475 |
| Current portion of long-term debt | 1,090 | 726 |
| Total current liabilities | 3,485 | 3,014 |
| Long-term debt, less current portion | 8,345 | 9,500 |
| Deferred income taxes | 1,453 | 1,842 |
| Landfill and environmental remediation liabilities | 1,531 | 1,518 |
| Other liabilities | 709 | 727 |
| Total liabilities | 15,523 | 16,601 |
| Commitments and contingencies | | |
| Equity: | | |
| Waste Management, Inc. stockholders' equity: | | |
| Common stock, \$0.01 par value; 1,500,000,000 shares authorized; 630,282,461 shares issued | 6 | 6 |
| Additional paid-in capital | 4,585 | 4,596 |
| Retained earnings | 6,888 | 6,289 |
| Accumulated other comprehensive income | 23 | 154 |
| Treasury stock at cost, 171,745,077 and 165,961,646 shares, respectively | (5,636) | (5,338) |
| Total Waste Management, Inc. stockholders' equity | 5,866 | 5,707 |
| Noncontrolling interests | 23 | 295 |
| Total equity | 5,889 | 6,002 |
| Total liabilities and equity | \$21,412 | \$22,603 |

See notes to Consolidated Financial statements.



WASTE MANAGEMENT, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(In Millions, Except per Share Amounts)

| | Years Ended December 31, | | |
|---|--------------------------|----------------|----------------|
| | 2014 | 2013 | 2012 |
| Operating revenues: | | | |
| Service revenues | \$12,646 | \$12,566 | \$12,327 |
| Tangible product revenues | 1,350 | 1,417 | 1,322 |
| Total operating revenues | <u>13,996</u> | <u>13,983</u> | <u>13,649</u> |
| Costs and expenses: | | | |
| Operating costs: | | | |
| Cost of services | 7,856 | 7,880 | 7,765 |
| Cost of tangible products | 1,146 | 1,232 | 1,114 |
| Total operating costs | <u>9,002</u> | <u>9,112</u> | <u>8,879</u> |
| Selling, general and administrative | 1,481 | 1,468 | 1,472 |
| Depreciation and amortization | 1,292 | 1,333 | 1,297 |
| Restructuring | 82 | 18 | 67 |
| Goodwill impairments | 10 | 509 | 4 |
| (Income) expense from divestitures, asset impairments (other than goodwill) and unusual items | (170) | 464 | 79 |
| | <u>11,697</u> | <u>12,904</u> | <u>11,798</u> |
| Income from operations | <u>2,299</u> | <u>1,079</u> | <u>1,851</u> |
| Other income (expense): | | | |
| Interest expense, net | (466) | (477) | (484) |
| Equity in net losses of unconsolidated entities | (53) | (34) | (46) |
| Other, net | (29) | (74) | (18) |
| | <u>(548)</u> | <u>(585)</u> | <u>(548)</u> |
| Income before income taxes | 1,751 | 494 | 1,303 |
| Provision for income taxes | 413 | 364 | 443 |
| Consolidated net income | <u>1,338</u> | <u>130</u> | <u>860</u> |
| Less: Net income attributable to noncontrolling interests | 40 | 32 | 43 |
| Net income attributable to Waste Management, Inc. | <u>\$ 1,298</u> | <u>\$ 98</u> | <u>\$ 817</u> |
| Basic earnings per common share | <u>\$ 2.80</u> | <u>\$ 0.21</u> | <u>\$ 1.76</u> |
| Diluted earnings per common share | <u>\$ 2.79</u> | <u>\$ 0.21</u> | <u>\$ 1.76</u> |
| Cash dividends declared per common share | <u>\$ 1.50</u> | <u>\$ 1.46</u> | <u>\$ 1.42</u> |

CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(In Millions)

| | Years Ended December 31, | | |
|---|--------------------------|--------------|---------------|
| | 2014 | 2013 | 2012 |
| Consolidated net income | \$ 1,338 | \$ 130 | \$ 860 |
| Other comprehensive income (loss), net of taxes: | | | |
| Derivative instruments, net | 1 | 12 | (12) |
| Available-for-sale securities, net | 4 | 2 | 2 |
| Foreign currency translation adjustments | (124) | (68) | 33 |
| Post-retirement benefit obligation, net | (12) | 15 | (2) |
| Other comprehensive income (loss), net of taxes | <u>(131)</u> | <u>(39)</u> | <u>21</u> |
| Comprehensive income | 1,207 | 91 | 881 |
| Less: Comprehensive income attributable to noncontrolling interests | 40 | 32 | 43 |
| Comprehensive income attributable to Waste Management, Inc. | <u>\$ 1,167</u> | <u>\$ 59</u> | <u>\$ 838</u> |

See notes to Consolidated Financial statements.

WASTE MANAGEMENT, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In Millions)

| | Years Ended December 31, | | |
|---|--------------------------|----------------|----------------|
| | 2014 | 2013 | 2012 |
| Cash flows from operating activities: | | | |
| Consolidated net income | \$ 1,338 | \$ 130 | \$ 860 |
| Adjustments to reconcile consolidated net income to net cash provided by operating activities: | | | |
| Depreciation and amortization | 1,292 | 1,333 | 1,297 |
| Deferred income tax (benefit) provision | (118) | (149) | 67 |
| Interest accretion on landfill liabilities | 88 | 87 | 84 |
| Interest accretion on and discount rate adjustments to environmental remediation liabilities and recovery assets | 14 | (10) | 6 |
| Provision for bad debts | 42 | 39 | 57 |
| Equity-based compensation expense | 65 | 58 | 29 |
| Excess tax benefits associated with equity-based transactions | (5) | (10) | (11) |
| Net gain on disposal of assets | (35) | (21) | (21) |
| Effect of goodwill impairments | 10 | 509 | 4 |
| Effect of (income) expense from divestitures, asset impairments (other than goodwill) and unusual items and other | (137) | 535 | 95 |
| Equity in net losses of unconsolidated entities, net of dividends | 42 | 34 | 46 |
| Change in operating assets and liabilities, net of effects of acquisitions and divestitures: | | | |
| Receivables | (268) | 44 | (131) |
| Other current assets | (19) | (7) | (50) |
| Other assets | 22 | 4 | 105 |
| Accounts payable and accrued liabilities | 117 | (27) | (57) |
| Deferred revenues and other liabilities | (117) | (94) | (85) |
| Net cash provided by operating activities | <u>2,331</u> | <u>2,455</u> | <u>2,295</u> |
| Cash flows from investing activities: | | | |
| Acquisitions of businesses, net of cash acquired | (35) | (724) | (250) |
| Capital expenditures | (1,151) | (1,271) | (1,510) |
| Proceeds from divestitures of businesses and other assets (net of cash divested) | 2,253 | 138 | 44 |
| Net receipts from restricted trust and escrow accounts | 19 | 71 | 14 |
| Investments in unconsolidated entities | (33) | (33) | (77) |
| Other | (58) | (81) | (51) |
| Net cash provided by (used in) investing activities | <u>995</u> | <u>(1,900)</u> | <u>(1,830)</u> |
| Cash flows from financing activities: | | | |
| New borrowings | 2,817 | 2,232 | 1,620 |
| Debt repayments | (3,568) | (2,077) | (1,498) |
| Common stock repurchases | (600) | (239) | — |
| Cash dividends | (693) | (683) | (658) |
| Exercise of common stock options | 93 | 132 | 43 |
| Excess tax benefits associated with equity-based transactions | 5 | 10 | 11 |
| Acquisitions of and distributions paid to noncontrolling interests | (125) | (59) | (46) |
| Other | (1) | (3) | (2) |
| Net cash used in financing activities | <u>(2,072)</u> | <u>(687)</u> | <u>(530)</u> |
| Effect of exchange rate changes on cash and cash equivalents | (5) | (4) | 1 |
| Increase (decrease) in cash and cash equivalents | 1,249 | (136) | (64) |
| Cash and cash equivalents at beginning of year | 58 | 194 | 258 |
| Cash and cash equivalents at end of year | <u>\$ 1,307</u> | <u>\$ 58</u> | <u>\$ 194</u> |

See notes to Consolidated Financial statements.



WASTE MANAGEMENT, INC.

CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY
(In Millions, Except Shares in Thousands)

| | Waste Management, Inc. Stockholders' Equity | | | | | | | | |
|--|---|--------------|---------|----------------------------------|----------------------|--|----------------|-----------|-----------------------------|
| | Total | Common Stock | | Additional Paid-In Capital | Retained Earnings | Accumulated Other Comprehensive Income (Loss) | Treasury Stock | | Noncontrolling Interests |
| | | Shares | Amounts | | | | Shares | Amounts | |
| Balance, December 31, 2011 | \$6,390 | 630,282 | \$ 6 | \$4,561 | \$6,721 | \$ 172 | (169,750) | \$(5,390) | \$ 320 |
| Consolidated net income | 860 | — | — | — | 817 | — | — | — | 43 |
| Other comprehensive income (loss), net of taxes | 21 | — | — | — | — | 21 | — | — | — |
| Cash dividends declared | (658) | — | — | — | (658) | — | — | — | — |
| Equity-based compensation transactions, including dividend equivalents, net of taxes | 101 | — | — | (15) | (1) | — | 3,680 | 117 | — |
| Distributions paid to noncontrolling interests | (46) | — | — | — | — | — | — | — | (46) |
| Other | 7 | — | — | 3 | — | — | 8 | — | 4 |
| Balance, December 31, 2012 | \$6,675 | 630,282 | \$ 6 | \$4,549 | \$6,879 | \$ 193 | (166,062) | \$(5,273) | \$ 321 |
| Consolidated net income | 130 | — | — | — | 98 | — | — | — | 32 |
| Other comprehensive income (loss), net of taxes | (39) | — | — | — | — | (39) | — | — | — |
| Cash dividends declared | (683) | — | — | — | (683) | — | — | — | — |
| Equity-based compensation transactions, including dividend equivalents, net of taxes | 216 | — | — | 47 | (5) | — | 5,461 | 174 | — |
| Common stock repurchases | (239) | — | — | — | — | — | (5,368) | (239) | — |
| Distributions paid to noncontrolling interests | (59) | — | — | — | — | — | — | — | (59) |
| Other | 1 | — | — | — | — | — | 7 | — | 1 |
| Balance, December 31, 2013 | \$6,002 | 630,282 | \$ 6 | \$4,596 | \$6,289 | \$ 154 | (165,962) | \$(5,338) | \$ 295 |
| Consolidated net income | 1,338 | — | — | — | 1,298 | — | — | — | 40 |
| Other comprehensive income (loss), net of taxes | (131) | — | — | — | — | (131) | — | — | — |
| Cash dividends declared | (693) | — | — | — | (693) | — | — | — | — |
| Equity-based compensation transactions, including dividend equivalents, net of taxes | 195 | — | — | 79 | (6) | — | 3,779 | 122 | — |
| Common stock repurchases | (600) | — | — | (180) | — | — | (9,569) | (420) | — |
| Distributions paid to noncontrolling interests | (34) | — | — | — | — | — | — | — | (34) |
| Acquisitions of noncontrolling interests and divestiture of Wheelabrator business | (188) | — | — | 90 | — | — | — | — | (278) |
| Other | — | — | — | — | — | — | 7 | — | — |
| Balance, December 31, 2014 | \$5,889 | 630,282 | \$ 6 | \$4,585 | \$6,888 | \$ 23 | (171,745) | \$(5,636) | \$ 23 |

See notes to Consolidated Financial statements.

October 7, 2015

City of Milpitas
City Hall
455 East Calaveras Blvd.
Milpitas, CA 95035

Re: RFP for Solid Waste, Recyclables and Organics Collection, Processing and Disposal Services

We have been advised that Waste Management, Inc., is submitting a response to an RFP for Solid Waste, Recyclables and Organics Collection, Processing and Disposal Services. They have asked us to provide you with a letter which addresses the Company's financial capability for this process.

Bank of America, N.A. has had the pleasure of doing business with Waste Management Inc. and its subsidiaries for approximately 20 years. Not only do we enjoy a comprehensive treasury management relationship, but we also have a very significant credit relationship. We are the Administrative Agent for and a participant in, the company's five-year \$2.25 billion Revolving Credit Facility, of which approximately \$1.43 billion is available, as of this date, to be utilized for direct borrowings and issuance of standby letters of credit subject to certain conditions. The facility has been handled as agreed.

Waste Management, Inc. has adequate financial resources and all of their accounts are in good standing. Should you have additional questions about our relationship with Waste Management, please do not hesitate to contact me by phone at: 312-992-3882 or by email at: michael.contreras@baml.com.

Please note that the information set forth in this letter is subject to change without notice, and is provided in strict confidence, without any responsibility or liability on the part of Bank of America, N.A. Bank of America, N.A. undertakes no responsibility to update the information set forth in this letter.

Very truly yours,

BANK OF AMERICA, N.A.



Michael Contreras
Vice President



WASTE MANAGEMENT INC.

1001 Fannin Street
Houston, TX 77002
(713) 512-6200

October 7, 2015

City of Milpitas
City Hall
455 East Calaveras Blvd.
Milpitas, CA 95035

To the City of Milpitas:

There have been no material adverse changes in such condition or operations, as reflected in the submitted balance sheet and income statements, since the date on which they were prepared.

Sincerely,

A handwritten signature in blue ink, appearing to read 'James C. Fish, Jr.', enclosed in a large, loopy blue circle.

James C. Fish, Jr.
EVP and Chief Financial Officer
Waste Management, Inc.

3. TRANSFER AND TRANSPORT (OPTIONAL)

Waste Management of South Bay will direct Haul all MSW, yard waste and C&D to Guadalupe Recycling & Disposal Facility, and bring all mixed organics to Mission Trail Waste System Facility in Santa Clara.

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4. DISPOSAL – GUADALUPE RECYCLING & DISPOSAL FACILITY

Guadalupe Recycling and Disposal Facility



The Guadalupe Rubbish Disposal Company, DBA Guadalupe Recycling and Disposal Facility (“Guadalupe”) is a Class III solid waste landfill with a permitted Construction and Demolition Material Recovery Facility (MRF). Guadalupe and Guadalupe MRF are located approximately four miles east of Highway 17 and 9.5 miles south of the City Center of the City of San Jose California. The physical address of the facility is 15999 Guadalupe Mines Road, San Jose California. The mailing address is PO Box 20957 San Jose CA, 95160. It is located in the South Eastern portion of Santa Clara County, in the City of San Jose.

Site specific requirements

Guadalupe is permitted to accept 3,650 tons per day (tpd) of non-hazardous, non-designated municipal solid waste with no restrictions on a daily vehicle count. This includes 672 tpd of permitted peak tons of yard waste per operating day. There are restrictions on green waste from leaving the county due to sudden oak death disease, and restrictions of waste coming in to the county from Alameda County by means of a tax. Permitted hours of operation do not restrict the site’s current operations.

The maximum permitted hours of operation are as follows:

- Landfill Operations – 7am to 8pm seven days per week.
- Commercial Collection Operations – 6am to 6pm M-F, 8am to 5pm Sat & Sun.
- Public Disposal Operations – 8am to 5pm five days per week.

The types of wastes accepted includes all non-hazardous solid and semi solid wastes, which include Class III wastes, C&D wastes, non-friable asbestos, contaminated soil, sludges, ashes from household burning, and various special wastes.

Guadalupe accepts and or processes the following waste streams:

Landfilled Waste

- Putrescible and non-putrescible solid, semi-solid, and liquid wastes which include:
 - Garbage, trash, refuse, paper, rubbish, and ashes
 - Industrial wastes, construction and demolition wastes
 - Select discarded home and industrial appliances
 - Manure, vegetable or animal solid and semi-solid wastes
 - Treated Medical Waste
 - Triple rinsed containers in accordance with Title 22, CCR, Section 66261.7
 - Waste containing less than 50% solids, which have been approved by the LEA and RWQCB
 - Ashes from household burning

Accepted with approval from the WM Waste Approval Manager are:

- Treated Wood Waste
- Contaminated soils and other Industrial Waste Non-friable asbestos
- Treated non-liquid sewage treatment residue such as solids from screens, settling tanks and grit chambers, and sludge containing at least 15-20% solids

The following are accepted at the Guadalupe for drop-off and processing (not for disposal):

- Tires
- Electronic waste (e.g. televisions, computer monitors, etc.)
- Chlorofluorocarbon (CFC) [Freon]-containing appliances (white goods such as refrigerators, freezers, and air conditioners)

Types of Processing Offered

- Class III solid waste land filling
- Non-friable asbestos disposal
- Management of petroleum contaminated soils for re-use as cover or disposal
- C&D processing and recovery under the City of San Jose's Construction & Demolition Diversion Deposit (CDDD) program
- Free ewaste acceptance for customers

Current hours of operation for disposal are 6:00 AM to 4:00 PM Monday through Friday, and Saturday 8:00 AM to 4:00 PM. The MRF is open to receive material 7:00 am to 4:00 pm Monday through Friday and Saturday from 8:00am until 1:00 pm. The WM EarthCare Materials Yard is open the same hours as the MRF.

Guadalupe is typically closed for the Thanksgiving, Christmas, and New Year's Day holidays, but holiday schedules may vary based on contractual obligations. Administrative holidays are generally New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the Day after Thanksgiving, and Christmas Day.

Operational History:

Guadalupe resides on approximately 411 acres of land located in the Santa Cruz Mountains' foothills. The landfill's permitted waste disposal area is 115 acres. Design modifications have required construction of a toe berm on the

western side of the landfill and will require a toe berm on the eastern side of the Module 3 containment. These modifications have reduced the current proposed disposal area to approximately 107 acres. Guadalupe began accepting waste in 1929 under private ownership. The landfill is divided into several areas referred to as Parcels 1, 2 and 3. As the site started disposal operations in 1929, waste disposal in the older portions of the landfill (Parcel 1 and most of Parcel 2), preceded Subtitle D regulations. Years of operation and waste disposal dictated a need for permit expansions and subsequent needs for utilization of the additional parcels of land for new disposal area. In 1991 the facility was permitted for the final expansion from 65 to 115 acres. Waste Management purchased the site from the private owners in 1998 and operated the site under the name Guadalupe Rubbish Disposal Company Inc. until 2010 when a DBA, Guadalupe Recycling and Disposal Facility, was adopted. In 2001 a permitted and dedicated Construction and Demolition Waste sort line was constructed and began operation at the site.

The site is situated in a narrow northwest trending canyon within the foothill ridges. The natural topography of the site and surrounding properties is moderately steep. The landfill was designed and has been developed as a canyon fill using the area fill method. Development has progressed in three areas referred to as Parcels or Modules 1, 2, and 3. Landfill development began in the western part of Module 1 and over the years has progressed into all three modules that now comprise the 115 acre disposal area.

Parcel 1 is a 26-acre unlined disposal area that is underlain by low permeability geologic strata. Parcel 2 is a 39-acre disposal area which is lined primarily with a low-permeability soil layer (clay liner) with a leachate control and recovery system (LCRS). An 8-acre area within Parcel 2 was lined with a prescriptive standard composite (geo-membrane/low permeability soil) liner system. Parcels 1 and 2 of the landfill are not constructed with a prescriptive leachate control and removal system (LCRS), however, alternative engineered leachate controls are in place within and adjacent to these parcels. Parcel 3 comprises the remaining 50 acres of the permitted landfill that has been or will be constructed and is designed to meet Subtitle D and Title 27 standards for waste containment and leachate collection, i.e., a composite liner system and LCRS. The composite liner system incorporates several alternate engineering design components that have been approved, and meet or exceed the prescriptive design.

Leachate disposal from the modules is a combination of gravity flow to an onsite city sewer connection for the north side waste modules, and gravity flow to on site storage tanks for the south side waste modules. The storage tanks are then pumped into a truck and disposed of at the on site city sewer connection.

Landfill gas (LFG) is extracted and collected via a comprehensive gas collection and control system (GCCS). Until 2013, the collected LFG was conveyed and sold to a power plant located on site owned by Fortistar Methane Group LLC (FMG), and operated by Guadalupe Energy Holdings LLC (GEH) a wholly owned subsidiary of FMG. In 2013, Waste Management purchased the power plant and began the permitting process to relocate it outside of the landfill disposal footprint. When approved, the new plant will be on line in 2016. It is anticipated to generate 3.2 MW of power. Currently LFG is destroyed in an onsite flare that operates 24/7 to keep the site in compliance with air emission regulations.

Description of Regulatory Agencies

CalRecycle (formerly California Integrated Waste Management Board)

Class III solid waste facilities are required to have a Solid Waste Facility Permit (SWFP) issued by the Local Enforcement Agency (LEA) and concurred on by CalRecycle. The permit lists conditions under which the facility must operate. The LEA for Guadalupe is the City of San Jose Department of Planning, Building, and Code Enforcement. This permit was last approved on March 23, 2014 and will be reviewed next by March 23, 2019.

Regional Water Quality Control Board (RWQCB)

Waste Discharge Requirements

The State Water Resources Control Board ("SWRCB") requires that landfills obtain Waste Discharge Requirements (WDRs) that address the facility's potential to impact groundwater. The San Francisco Bay Region (RWQCB) is the local

agency under the SWRCB that has the jurisdiction and authority to issue site-specific WDRs for the Guadalupe.

Guadalupe is classified and permitted as a Class III disposal facility and is regulated in part by the WDRs for the facility as approved and issued by the RWQCB. Monitoring is conducted in accordance with the Monitoring and Reporting Program (MRP) element of the WDRs. The San Francisco Bay Region RWQCB issued order No. R2-2011-037, the Guadalupe's current WDRs, on June 2011.

General Industrial Storm Water Discharge Permit

The RWQCB also regulates municipal and industrial storm water discharge requirements for landfills under the National Pollutant Discharge Elimination System (NPDES) program. To obtain authorization for industrial storm water discharge, a Notice of Intent for a General Permit to Discharge Storm Water Associated with Industrial Activity was filed with the RWQCB by Guadalupe on July 7, 1992. The RWQCB issued a General Industrial Activities Storm Water Discharge Permit and Guadalupe maintains a current Storm Water Pollution Prevention Plan (SWPPP) that describes how the site complies with this permit.

Bay Area Air Quality Management District (BAAQMD)

Guadalupe falls under the jurisdiction of the Bay Area Air Quality Management District (BAAQMD). It operates under a BAAQMD Permit to Operate that lists all sources at the facility that are regulated by the BAAQMD and sets source-specific conditions as applicable. The BAAQMD Permit to Operate conditions are also incorporated into the Federal Title V Permit for Guadalupe as issued by BAAQMD under delegated authority from the Environmental Protection Agency (EPA).

Permitted sources include, but are not limited to, the landfill and its associated abatement devices such as the flare and future WMRE gas-to-energy plants, the C&D MRF, the wood grinding operation and the portable diesel powered air compressor. The BAAQMD permit to operate is re-issued annually in July. Permit additions or revisions are made during the year as needed to address new sources or changes to currently permitted sources. These additions or revisions made during the year are eventually incorporated in the 5 year renewal of the site-wide Title V permit. The BAAQMD issued a Federal Title V Permit for the Guadalupe on December 20, 2013 and the current five year Title V permit expires December 20, 2018. (A renewal application will be submitted by June 19, 2018.)

City of San Jose Code Enforcement Division-LEA

LEA

The City of San Jose Department of Planning, Building, and Code Enforcement is the Local Enforcement Agency (LEA) that has jurisdiction over the Guadalupe. The LEA issues and enforces the terms and conditions of the SWFP issued by the CIWMB and other applicable regulations, and conducts regular inspections of the landfill.

CUPA

The Santa Clara County Department of Environmental Health (SCCDEH) acting as the Certified Unified Program Agency (CUPA) along with the local San Jose Fire Department Inspector, coordinate and enforce numerous local, state, and federal hazardous materials management and environmental protection programs in the county. The CUPA administers the following programs at Guadalupe:

- Hazardous Materials Business Plan Program (HMBP)
- Hazardous Waste Generator Program
- Underground Store Tank Certifications

Planning Department Planned Development Permit

The City of San Jose Planning Department is the local planning agency that has jurisdiction Guadalupe and issued a Planned Development Permit (PD # 93-05-018) to the facility February 12, 1997. The permit is good for the life of the facility.

Current Regulatory Environment

Guadalupe has a dedicated Environmental Protection (EP) Manager that works closely with the Local Enforcement Agency (LEA) to discuss changes in regulations and ensure overall site integrity. This successful working relationship has been advantageous in resolving issues before they become a reportable finding.

There are a variety of agencies (local, state, and federal) that govern landfill and gas collection activities at Guadalupe and each has its own considerations and concerns.

- Solid Waste Facility Permit # 43-AN-0015
- City of San Jose Planned Development Permit Resolution # 97-8, 93-05-018
- Bay Area Air Quality Management District (BAAQMD) Title V Permit Facility # A3294
- California Regional Water Quality Control Board (CRWQCB) Waste Discharge Requirements (WDR's) Order # R2-2011-0037
- CRWQCB NPDES General Industrial Activities Storm water Discharge Permit No. CAS 000001
- San Jose/Santa Clara Water Pollution Control Plant Industrial Wastewater Discharge Permit # SJ-300B
- San Jose Fire Department Underground Storage Tank Operating Permit # 43-060-403506-000-8&9
- State of California Department of Industrial Relations Division of Occupational Safety and Health – Permit to Operate Air Pressure Tank –State # A001737-07, A033130-77, A000227-90, A003343-87 N.B.#/SER.# 75585, 2757, 476082, 463323
- Santa Clara County Weights and Measures Division Registration Certificate # 2509
- City of San Jose / County of Santa Clara Unified Program Hazardous Material Permit # 403506

Regulatory Inspections and Records

Local, Regional, and State inspections for environmental and permit compliance occur on a frequent basis pursuant to permit and regulatory requirements. Typically this is about once per month for the City of San Jose and 18-months for the CIWMB (Cal Recycle). Records of inspections are maintained and are available for review on-site. Consistently positive comments on compliance with applicable regulations have been received by the facility from regulators and customers alike.

Regulatory Contacts

City of San Jose

Solid Waste Local Enforcement Agency
200 E. Santa Clara Street
San Jose, CA 95113
Sharon Clute, Environmental Inspector

City of San Jose

Department of Planning, Building and Code Enforcement
200 E. Santa Clara Street
San Jose, CA 95113
Joe Horwedel, Director

Bay Area Air Quality Management District (BAAQMD)

939 Ellis Street
San Francisco, CA 94109
415-771-6000

California Environmental Protection Agency Department of Toxic Substances Control

1001 I Street, 25th Floor
Sacramento, CA 95812
916-324-1826

Cal Recycle

8800 Cal Center Drive
Sacramento, CA 95826
Reinhard Hohlwein
916-341-6344
Nancy Jesterby (Financial Assurances)
916-341-6345

California Regional Water Quality Control Board (CRWQCB)

1515 Clay Street, Suite 1400
Oakland, CA 94612
Loretta K. Barsamian, Executive Officer
510-622-2300

California Department of Fish & Game, Region 3

P.O. Box 47
Yountville, CA 94599
Janice Gan
209-835-6910

California Division of Occupational Safety & Health/ Cal OSHA

1515 Clay Street Room 1301
Oakland, CA 94612
510-622-2916

U.S. Fish & Wildlife Service

Sacramento Endangered Species Office
2800 Cottage Way, Room, W-2605
Sacramento, CA 95825-1846
Jim Browning
916-414-6685

Army Corps of Engineers

U.S. Army Corps of Engineers, Sacramento District
1325 J. Street
Sacramento, CA 95814-2922
916-557-5250

Facility Violations

One AIV, and one NOV were received for Guadalupe in 2011. California Regional Water Quality Control Board issued a Notice of Violation on 5/23/11 for the discharge of landfill gas condensate to the ground and waters of the state and

the US in December 2010. One AIV was issued in 7/2011 by Santa Clara County when the inspector identified a failure with the positive shutdown during the annual UST inspection.

Description of current annual tonnage received at the landfill (past 3 years minimum), in-place densities, permitted capacity (cubic yards, tonnage, and calculation detail), and remaining landfill life (including assumptions and calculations).

The current annual tonnage received at Guadalupe:

- 2014: 266,272 tons
- 2013: 194,258 tons
- 2012: 187,129 tons

As of January 1, 2014, 18,265,951 bcy of waste is in-place at Guadalupe. 9,573,588 cy or 9,394,974 tons (based on 0.899 AUF) remain to be placed. With an assumption of 200,000 tons/yr, this calculates to 45.8 yrs of life remaining or year 2062 as closure of Guadalupe.

Discussion of any planned or future site expansions.

No planned site expansion

Describe any MSW landfill diversion activities which would be applied to the MSW this proposal would deliver.

Current processing operations are focused on sustainability and maximum diversion from disposal. Also, the site team is dedicated to revisiting current operations with a view of increasing recovery and diversion. The site constantly explores alternative reuse opportunities and improved technology and processes to further our sustainability targets. Any recoverable resource material will be removed from appropriate MSW for diversion.

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5. MATERIAL DROP-OFF (OPTIONAL)

Waste Management of South Bay will offer a Residential “Dollar Dump Day” for all residential customers of Milpitas.

Dollar Dump Day will be available once per year on a date mutually agreed upon with the City at the Fremont Recycling and Transfer Station, located at 41149 Boyce Rd, Fremont, CA 94538. Suggested operating hours will be from 8:00 am to 3:00 pm. For \$1 per car, truck or trailer load not to exceed 2-cubic yards, residents showing proof of residency in the City of Milpitas can drop off material at the \$1 rate. Loads in excess of 2-cubic yards will be charged regular gate rates. No commercial vehicles or universal waste will be allowed or collected. E-Waste and Universal Waste drop off events will be conducted separately. Tires, televisions, computers and monitors will be charged regular rates. Refrigerators, freezers and air conditioners must have a Freon removal certificate or these items will be charged regular rates. Used motor and cooking oil will also be accepted.

Based on our experience with similar events in other communities and the use of publicity and community engagement, we anticipate Dollar Dump Day will produce approximately 500 tons of material to be sorted and diverted.

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6. ACCEPTANCE OF DISPOSAL AGREEMENT

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7. COST FORMS

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8. OTHER PROPOSAL FORMS

Secretary's Certificate

ASSISTANT SECRETARY'S CERTIFICATE

USA WASTE OF CALIFORNIA, INC. dba WASTE MANAGEMENT OF SOUTH BAY

The undersigned, being the Assistant Secretary of USA Waste of California, Inc. dba Waste Management of South Bay, a Delaware 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 Barry S. Skolnick (President), or any officer of the Company, be and hereby are authorized, following compliance with appropriate corporate policies and procedures, to 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 City of Milpitas, Request for Proposals for Solid Waste, Recyclables and Organics Collection, Processing and Disposal Services, and that any such action taken to date is hereby ratified and approved.

Dated: October 8th, 2015



David Stratton
Assistant Secretary

**ATTACHMENT 6:
ANTI-COLLUSION AFFIDAVIT**

Proposer's Name USA Waste of California, Inc., dba
Waste Management of South Bay

**FOR: CITY OF MILPITAS SOLID WASTE, RECYCLABLES AND ORGANICS COLLECTION, PROCESSING AND
DISPOSAL SERVICES**

Proposer declares under penalty of perjury under the laws of the State of California that this proposal is not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation; that such proposal is genuine and not collusive or sham; that said Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham proposal and has not directly or indirectly colluded, conspired, connived, or agreed with any Proposer or anyone else to put in a sham proposal, or that anyone shall refrain from submitting a proposal; that said Proposer has not in any manner directly or indirectly sought by agreement, communication, or conference with anyone to fix the proposal price of said Proposer or of any other Proposer, or to fix any overhead, profit, or cost element of such proposal price, or of that of any other Proposer, or to secure any advantage against the public body awarding the Contract of anyone interested in the proposed Contract; that all statements contained in such proposal are true, and further, that said Proposer has not directly or indirectly submitted his proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid and will not pay any fee in connection therewith, to any corporation, partnership, company, association, organization, proposal depository, or to any member or agent thereof, or to any other individual except to any person or persons as have a partnership or other financial interest with said Proposer in this general business.

The above Non-Collusion Declaration is part of the proposal. Signing this proposal on the signature page thereof shall also constitute signature of this Non-Collusion Declaration.

Proposers are cautioned that making a false certification may subject the certifier to criminal prosecution.

**ATTACHMENT 7:
IRAN CONTRACTING CERTIFICATION**

Pursuant to Public Contract Code Section 2200 et seq., ("Iran Contracting Act of 2010"), Contractor certifies that:

- (1) Contractor is not identified on the list created by the California Department of General Services ("DGS") pursuant to California Public Contract Code Section 2203(b) as a Person engaging in investment activities in Iran; and
- (2) Contractor is not a financial institution that extends twenty million dollars (\$20,000,000) or more in credit to another Person, for forty-five (45) Days or more, if that Person will use the credit to provide goods or services in the energy sector in Iran and is identified on the DGS list made pursuant to Section 2203(b).

As used herein, "Person" shall mean a "Person" as defined in Public Contract Code Section 2202(e).

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY, that I am duly authorized to legally bind the Contractor to this Certification, which is made under the laws of the State of California.

USA Waste of California, Inc. ("Contractor") dba Waste Management of South Bay

By:  (Signature)

Name: Barry Skolnick (Printed Name)

Title: President

Date: 10/9/2015



EXHIBIT E: PERFORMANCE BOND

1 To be inserted prior to final award

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EXHIBIT F: LABOR AGREEMENT(S)

- 1 Placeholder - not applicable as of Effective Date.

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**EXHIBIT G:
PER-TON RATES APPROVED BY CITY
FOR RATE PERIOD ONE**

1
2

| | Rate Period 1 September 6, 2017 through December 31, 2018 |
|--|---|
| Total Contractor Component (\$/ton) | \$22.42 |
| Governmental Fee Component | |
| CA AB939 (AB1220) | \$1.40 |
| San José Business Tax | \$13.00 |
| County Planning Fee | \$0.78 |
| Household Hazardous Waste Fee | \$1.50 |
| County AB\939 | \$2.60 |
| City of San José LEA | \$1.08 |
| Total Governmental Component (\$/ton) | \$20.36 |
| Total Per-Ton Rate | \$42.78 |

3

* Transfer station fee includes all transfer facility-related costs and the long-haul transportation costs from the transfer station to the disposal facility.

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EXHIBIT H: APPROVED SUBCONTRACTORS

1 PLACEHOLDER – NO SUBCONTRACTORS AS OF EFFECTIVE DATE

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**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS
AUTHORIZING THE CITY MANAGER TO EXECUTE AN EXCLUSIVE FRANCHISE AGREEMENT WITH
GREENWASTE RECOVERY, INC. FOR SOLID WASTE DISPOSAL SERVICES AND NEGOTIATE AND
EXECUTE AN OPTION AGREEMENT WITH THE MONTEREY REGIONAL WASTE MANAGEMENT
DISTRICT FOR CONTINUED DISPOSAL**

WHEREAS, the City of Milpitas had previously awarded an exclusive franchise to Republic Services, Inc. for the disposal and collection of solid waste in the City that will expire on September 5, 2017.

WHEREAS, in anticipation of the expiration of the existing franchise agreement, the City put out a Request for Proposals (RFP) seeking proposals for disposal services only, and proposals for collection services only.

WHEREAS, the City received two proposals for disposal services, including from GreenWaste Recovery, Inc. (with the Monterey Regional Waste Management District) and Waste Management, Inc. A third entity, Republic Services, Inc., sought to be considered for the disposal contract, but failed to submit a disposal proposal as defined under the terms of the RFP.

WHEREAS, at the January 12, 2016 City Council study session, the two proposers presented their qualifications and approach for managing Milpitas' disposal services beginning in September 2017.

WHEREAS, as part of the RFP process, a City Evaluation Committee was formed to review and evaluate the disposal proposals, with the Committee recommending the selection of Waste Management, Inc.

WHEREAS, Public Resources Code Section 40059 and Milpitas Municipal Code Section V-200-5.10 authorizes the City to award an exclusive franchise for the disposal of solid waste, and to determine the procedure by which such franchises will be awarded.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. Notwithstanding the City Evaluation Committee's recommendation to select Waste Management, Inc., the City Council hereby approves and authorizes the City Manager to execute an exclusive franchise agreement with GreenWaste Recovery, Inc. for solid waste disposal services.
3. The City Council also approves, authorizes and directs the City Manager to negotiate and execute an Option Agreement with the Monterey Regional Waste Management District, as the underlying disposal site owner, for continued disposal of the City's solid waste.

PASSED AND ADOPTED this ____ day of _____, 2016, by the City Council by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Christopher J. Diaz, City Attorney

**AGREEMENT
BETWEEN
THE CITY OF MILPITAS
AND
GREENWASTE RECOVERY, INC.
FOR
TRANSFER AND DISPOSAL OF SOLID WASTE**

_____, 2016

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- B. Disposal Subcontracting Arrangements
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- D. Contractor’s Proposal
- E. Performance Bond
- F. Labor Agreement(s)
- G. Per-Ton Rates Approved by City for Rate Period One
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**AGREEMENT
BETWEEN
CITY OF MILPITAS
AND
GREENWASTE RECOVERY, INC.
FOR
TRANSFER AND DISPOSAL OF SOLID WASTE**

8 THIS AGREEMENT is made and entered into as of _____, 2016, between the City of Milpitas,
9 California, a political subdivision of the State of California (hereinafter "City"), and GreenWaste Recovery,
10 Inc., (hereinafter referred to as the "Contractor").

11

RECITALS

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

13 **WHEREAS;** the Legislature of the State of California, by enactment of the California Integrated Waste
14 Management Act of 1989 (AB 939) (California Public Resources Code Section 40000 et seq.), and various
15 ensuing legislation, has declared that it is in the public interest to authorize and require local agencies to
16 make adequate provisions for Solid Waste Collection within their jurisdiction;

17 **WHEREAS;** the State of California has found and declared that the amount of refuse generated in
18 California, coupled with diminishing Disposal capacity and potential adverse environmental impacts from
19 landfilling and the need to conserve natural resources, have created an urgent need for State and local
20 agencies to enact and implement an aggressive integrated waste management program. The State has,
21 through enactment of the AB 939, AB 341, AB 1826, AB 1594, SB 1016 and other related legislation
22 directed the responsible State agency, and all local agencies, to promote Diversion and to maximize the
23 use of feasible waste reduction, re-use, Recycling, and Composting options in order to reduce the amount
24 of refuse that must be Disposed;

25 **WHEREAS;** pursuant to California Public Resources Code Section 40059(a)(2), the City has determined that
26 the public health, safety, and well-being require that an exclusive right be awarded to a qualified
27 Contractor to provide for the Collection of Solid Waste, Recyclable Materials, Organic Materials, and C&D,
28 and other services related to meeting the City's integrated waste management goals;

29 **WHEREAS;** the City further declares its intent to approve and maintain reasonable Maximum Rates for
30 the Collection, Recycling, Processing, Composting, and/or Disposal of Solid Waste, Recyclable Materials,
31 Organic Materials, and C&D; and,

32 **WHEREAS;** the City has determined that Contractor, by demonstrated experience, reputation and
33 capacity, and demonstrated ability to accept all governmentally-mandated responsibilities associated
34 with operations, Closure and Post-Closure of such facilities, is qualified to provide for the Acceptance,
35 Transfer and Disposal of such material at appropriate places of Transfer and Disposal; and, therefore,
36 desires that Contractor be engaged to perform such services on the basis set forth in this Agreement.

City of Milpitas/GreenWaste Recovery, Inc.

37 **WHEREAS;** the City and Contractor have attempted to address conditions affecting their performance of
38 services under this Agreement but recognize that reasonably unanticipated conditions may occur during
39 the Term of this Agreement that will require the Parties to meet and confer to reasonably respond to such
40 changed conditions;

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

43 **ARTICLE 1. GRANT AND ACCEPTANCE OF AGREEMENT**

44 **1.1 Grant and Acceptance of Agreement**

45 Through this Agreement, the City grants to Contractor the right and privilege to Transfer, Transport, and
46 Dispose of all Solid Waste Collected in the Service Area by the Franchised Collector including street
47 sweeping debris, and that is Delivered by the Franchised Collector with the City intention of Disposal. This
48 Agreement and scope of this franchise shall be interpreted to be consistent with Applicable Law, now and
49 during the Term of the Agreement. If future judicial interpretations of current law or new laws,
50 regulations, or judicial interpretations limit the ability of the City to lawfully contract for the scope of
51 services in the manner and consistent with all provisions as specifically set forth herein, Contractor agrees
52 that the scope of the Agreement will be limited to those services and materials which may be lawfully
53 included herein and that the City shall not be responsible for any lost profits or losses claimed by
54 Contractor to arise out of limitations to the scope or provisions of the Agreement set forth herein. In such
55 an event, it shall be the responsibility of Contractor to minimize the financial impact of such future judicial
56 interpretations or new laws and the Contractor may meet and confer with City and may petition for a Rate
57 adjustment pursuant to Section 8.5.

58 **1.2 Reserved**

59 **1.3 Obligations of Both Parties**

60 In addition to the specific performance required under the Agreement:

- 61 A. Contractor shall use its reasonable commercial efforts to enforce its rights under this Agreement
62 by the Contractor's identification and documentation of violations of the Agreement by third
63 parties.
- 64 B. Contractor and City shall provide timely notice to the other Party of a failure or perceived failure
65 to perform any obligations under this Agreement, and each shall have access to information
66 demonstrating the Party's failure or perceived failure to perform.
- 67 C. Contractor and City shall provide timely access to the City Contract Manager and the Contractor's
68 designated representative as applicable, and complete and timely responses to requests of the
69 other Party.
- 70 D. Contractor and City shall provide timely notice of matters which may affect either Party's ability
71 to perform under the Agreement.

72 **1.4 City Obligations**

73 City obligations are limited to the following.

- 74 **A. Provide for Delivery of Solid Waste.** The City shall, at all times, direct all Solid Waste that is
75 Collected in the Service Area by the Franchised Collector, and that is intended by the City for
76 Disposal to be Delivered to the appropriate Approved Facility(ies).
- 77 **B. Excluded Waste.** The City shall direct its Franchised Collector to implement an Excluded Waste
78 screening, identification, and prevention protocol. City shall prohibit its Franchised Collector from
79 knowingly delivering Excluded Waste to an Approved Facility.
- 80 **C. Adjustment of Per-Ton Rates.** The City shall ensure that Contractor’s Per-Ton Rates are adjusted
81 as provided in Article 8.

82 **ARTICLE 2. TERM OF AGREEMENT**

83 **2.1 Term and Option to Extend**

84 The Term of this Agreement shall commence September 6, 2017 (Commencement Date) and continue in
85 full force for a period of twenty (20) years, through and including December 30, 2037, unless the
86 Agreement is extended in accordance with this Section or terminated pursuant to Section 10.2. Beginning
87 with the Effective Date, Contractor shall perform all activities necessary to ensure it can provide the full
88 services required by this Agreement on the Commencement Date.

89 Except as provided below in this Section 2.1, the Term of this Agreement shall only be extended with the
90 prior consent of both Parties. Should the Parties choose to extend this Agreement, both Parties shall meet
91 and confer no later than one (1) year prior to the expiration of this Agreement to determine and specify
92 the duration and terms of such extension.

93 Notwithstanding the above, City may at its sole discretion and with a six (6) month notice, require
94 Contractor to enter into a one (1) year extension of the Agreement without changes to its material
95 provisions.

96 **2.2 Conditions to Effectiveness of Agreement**

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

- 100 **A. Accuracy of Representations.** The Contractor’s representations and warranties made in
101 Contractor’s Proposal and Article 11 of this Agreement are true and correct on and as of the
102 Effective Date.
- 103 **B. Furnishings of Insurance and Performance Bond.** Contractor has furnished evidence of the
104 insurance and performance bond required by Article 9 that is satisfactory to the City.
- 105 **C. Absence of Litigation.** To the best of Contractor's knowledge, after reasonable investigation,
106 there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or
107 governmental authority, commission, board, agency or instrumentality decided, pending or

- 108 threatened against Contractor wherein an unfavorable decision, ruling or finding, in any single
109 case or in the aggregate, would:
- 110 1. Materially adversely affect the performance by Contractor of its obligations hereunder;
 - 111 2. Adversely affect the validity or enforceability of this Agreement; or,
 - 112 3. Have a material adverse effect on the financial condition of Contractor, or any surety or
113 entity guaranteeing Contractor's performance under this Agreement.
- 114 D. **Permits Furnished.** Contractor has provided City with copies of all permits necessary for operation
115 of all Approved Facilities owned or operated by Contractor or Subcontractor for use under the
116 terms of this Agreement.

117 **ARTICLE 3. SCOPE OF AGREEMENT**

118 **3.1. Summary Scope of Services**

119 The Contractor shall be responsible for the following:

- 120 A. Acceptance at the Approved Transfer Facility of Solid Waste Delivered for Disposal by the
121 Franchised Collector;
- 122 B. Transport of Solid Waste to the Approved Disposal Facility;
- 123 C. Disposal of Solid Waste at the Approved Disposal Facility;
- 124 D. Performing all other services required by this Agreement including, but not limited to, record
125 keeping and reporting pursuant to Article 6;
- 126 E. Furnishing all labor, supervision, equipment, materials, supplies, and all other items and services
127 necessary to perform its obligations under this Agreement;
- 128 F. Obtaining and maintaining all permits and regulatory approvals necessary to perform the services
129 specified in the Agreement;
- 130 G. Paying all expenses related to provision of services required by this Agreement including, but not
131 limited to, taxes, regulatory fees, City fees, and utilities, and closure and post-closure of the
132 Approved Disposal Facility;
- 133 H. Receiving proceeds from the Per-Ton Rates as the only compensation for provision of services
134 under this Agreement;
- 135 I. Performing or providing all services specified in this Agreement at all times in accordance with
136 Applicable Laws and the specified requirements of this Agreement; and,
- 137 J. Performing or providing all services specified in this Agreement at all times in accordance with
138 best industry practices with due diligence.

139 The enumeration and specification of particular aspects of service, labor, or equipment requirements shall
140 not relieve Contractor of the duty to perform all other tasks and activities necessary to fulfill its obligations
141 under this Agreement, regardless of whether such requirements are enumerated elsewhere in the
142 Agreement, unless excused in accordance with Section 10.7.

143 **3.2 Limitations to Scope**

144 The scope of this Agreement does not include Acceptance, Transfer or Disposal of the following:

- 145 A. Solid Waste generated in the City which is not Collected by the City or its Franchised Collector.
- 146 B. Solid Waste generated outside of the City.
- 147 C. E-Waste, Universal Waste, Hazardous Waste and sharps Collected by the Franchised Collector
148 under the terms of its agreement with the City.
- 149 D. Other material Collected by the Franchised Collector but excluded from the definition of Solid
150 Waste.
- 151 E. Residue resulting from Processing of materials generated in the Service Area.

152 **3.3 Use of Approved Facilities**

153 The Contractor, without constraint and as a free-market business decision in accepting this Agreement,
154 agrees to use the Approved Facilities for the purposes of Transfer and Disposal of all Solid Waste Delivered
155 by the Franchise Collector under the terms of this Agreement. Such decision by Contractor in no way
156 constitutes a restraint of trade notwithstanding any Change in Law regarding flow control limitations or
157 any definition thereof.

158 Contractor shall maintain accurate records of the quantities of Solid Waste Delivered to and Accepted at
159 the Approved Facilities and will cooperate with City and any regulatory authority in any audits or
160 investigations of such quantities.

161 Contractor shall observe and comply with all regulations in effect at the Approved Facilities, and shall
162 cooperate with and take direction from the operators thereof with respect to delivery of Solid
163 Waste Collected in the City. Contractor shall actively coordinate and cooperate with the Franchised
164 Collector throughout the Term of this Agreement as necessary to avoid delivery of Excluded Waste to the
165 Approved Facilities.

166 **3.4 Capacity Assurance**

167 Contractor warrants that as of the Commencement Date it has sufficient Transfer capacity at the
168 Approved Transfer Facility to receive, Transfer and transport all Solid Waste Delivered by the Franchised
169 Collector as intended for Disposal throughout the Term, and that it shall maintain that Transfer capacity
170 through the Term.

171 Contractor warrants that as of the Commencement Date it has sufficient capacity at the Approved
172 Disposal Facility to Dispose of all Solid Waste Delivered by the Franchised Collector as intended for
173 Disposal throughout the Term, and that it shall maintain that capacity through the Term.

174 If at any time during the Term or an extension Contractor fails to provide the capacity needed to fulfill its
175 obligations under this Agreement, the City may assess Liquidated Damages for each Ton of the City's Solid
176 Waste that the Contractor does not Accept in accordance with Section 10.6.B.

177 **3.5 No Limitation on City Diversion Programs**

178 A. The City maintains programs to reduce the amount of waste intended for Disposal. It is the City's intent
179 to continue to improve, develop, and enhance existing programs as well as to implement new programs

180 and services throughout the Term as it deems necessary to meet or exceed mandated Diversion program
181 requirements and goals established by AB 939 and subsequent federal, State, County or local legislation
182 including, but not limited to the State 75 percent recycling goal established in AB 341 and the
183 programmatic requirements of AB 1826. Contractor acknowledges that the characterization and quantity
184 of materials Delivered to the Approved Facilities will change over the Term and may over time be
185 significantly different than that as of the Commencement Date of the Agreement.

186 Nothing in this Agreement shall prevent, penalize, or impede, in any manner, the City from continuing
187 programs, altering programs, or developing new programs that have the effect of reducing or increasing
188 the amount of Solid Waste Collected and Delivered to the Approved Facilities by the Franchised Collector,
189 including Processing of Collected Solid Waste in lieu of Delivery for Disposal.

190 B. However, in the event City directs Processing of Solid Waste by a third party instead of Delivery for
191 Disposal, City shall cause the third party to Deliver to the Approved Disposal Facility a tonnage of material
192 ("Residue") for Disposal equivalent to the non-recovered fraction of the Processed Solid Waste.

193 C. If Solid Waste is Diverted for Processing and commingled with other Solid Waste not originating in the
194 City, the amount of Residue attributable to the City and subject to the terms of Section 3.5 B, shall be
195 determined as follows:

196 No less than twice annually, Processing contractor shall perform an audit of no less than 50 tons of City
197 material by Processing the audit material separately through its normal Processing procedure at its
198 Approved Processing Facilities. The Residue shall be weighed and the percentage of Residue shall be
199 determined by dividing the Residue tons at both the primary and secondary processing facilities by the
200 total tons Processed.

201 (1) If the Processing contractor utilizes more than one (1) processing facility, the Residue resulting
202 from primary processing shall be weighed prior to transport to any secondary Approved
203 Processing Facility and shall be processed at the facility separately through its normal processing
204 procedure. The Residue remaining after secondary processing shall be weighed and the
205 percentage of Residue shall be determined by dividing the Residue tons at the secondary
206 processing facility by the total tons Processed.

207 The percentage of Residue determined shall be a rolling-average of the most recent two (2) semi-annual
208 audits and shall be applied each calendar month to the total inbound tonnage of City Solid Waste
209 Processed to determine the amount of Residue due Contractor each calendar year or portion thereof
210 under this Agreement. The results of the average percentage Residue shall be applied each calendar
211 month until the next audit is conducted and the new average percentage Residue is determined.
212 Adjustments to the average percentage Residue shall be applied to the total inbound tonnage of City Solid
213 Waste Processed beginning on the first date of the calendar month following the completion of the most
214 recent audit. During the first year and until the second semi-annual audit is conducted, the Residue
215 percentage from the first semi-annual audit shall be applied directly.

216 Example:

217 Residue percentage determined by audit #1: 50%

218 Residue percentage determined by audit #2: 55%

219 Average Residue Percentage: 52.5%

220 Total Tons Processed by Processing Contractor: 1,000

221 Residue tons due to Contractor for Transport and Disposal: 525

222 **3.6 No Tonnage Obligation; Only Compensation**

223 **A. No Tonnage Obligation.** This Agreement neither expresses nor implies City commitment to cause
224 Delivery of any minimum tonnage of Solid Waste to Approved Facilities or Alternative Facilities,
225 or corresponding compensation for undelivered minimum tonnages in the form of “put-or-pay”
226 payments.

227 **B. Only Compensation.** The then-current Per-Ton Rate as provided in Article 8, as adjusted, shall be
228 the only form of compensation due Contractor for services provided under this Agreement. Per-
229 Ton Rates shall not be adjusted for any changes in the characterization of, quantity of, or other
230 changes to Solid Waste it receives. Nor shall any action, or lack of action by City regarding the
231 availability of Solid Waste for Transfer and Disposal provide Contractor the opportunity for an
232 adjustment to the Maximum Rates.

233 **3.7 Subcontracting**

234 Contractor shall not engage any Subcontractors without the prior written consent of City Contract
235 Manager. As of the Effective Date of this Agreement, City has approved Contractor’s use of those
236 subcontractors identified in Contractor’s Proposal (Exhibit D), included herein as Exhibit H. If the
237 Contractor plans to engage other Affiliate or related party entities in the provision of services, Contractor
238 shall obtain written approval from City Contract Manager thirty (30) days prior to its plans to use party.
239 Contractor shall submit written request to the City seeking approval of other Affiliate or related party
240 entities. Such request shall include a description of its plans, name and qualifications of party, and an
241 explanation of any potential impacts related to the quality, timeliness, or cost of providing services under
242 this Agreement.

243 **3.8 Transfer of Ownership and Responsibility for Delivered Material**

244 Once Solid Waste is Delivered by the Franchised Collector and Accepted by Contractor at an Approved
245 Facility, full ownership and the right to possession of the Solid Waste shall transfer to the Contractor. All
246 benefits and liabilities resulting from ownership and possession of the Solid Waste shall accrue to
247 Contractor except as provided in Section 3.11.

248 Responsibility for Excluded Waste that has been Accepted by the Contractor shall remain with the
249 Contractor as provided in Section 5.3.

250 **3.9 City Contract Manager**

251 City has designated the City Contract Manager, to be responsible for monitoring and administration of
252 this Agreement. Contractor shall meet and confer with the City Contract Manager to resolve differences
253 of interpretation and implement and execute the requirements of this Agreement in an efficient, effective,
254 manner that is consistent with the stated objectives of this Agreement.

255 From time to time the City Contract Manager may designate other agents of City to work with Contractor
256 on specific matters. In such cases, those individuals should be considered designates of the City Contract
257 Manager for those matters to which they have been engaged. Such designates shall be afforded all of the
258 rights and access granted thereto. In the event of a dispute between the City Contract Manager’s
259 designate and Contractor, the City Contract Manager’s determination shall be conclusive.

260 In the event of dispute between the City Contract Manager and the Contractor regarding the
261 interpretation of or the performance of services under this Agreement, the City Contract Manager’s

262 determination shall be conclusive except where such determination results in a material impact to the
263 Contractor’s revenue and/or cost of operations. In the event of such material impact to the Contractor,
264 Contractor may appeal the determination of the City Contract Manager to the City Council, whose
265 determination shall be conclusive. For the purposes of this Section, “material impact” is an amount equal
266 to or greater than one-quarter (1/4) of one (1) percent of Contractor’s annual Gross Receipts under this
267 Agreement.

268 **3.10 Cooperation with City or County**

269 The Contractor shall with no added compensation cooperate with the City, its agent, and/or Santa Clara
270 County and/or its agent, or any State regulatory authority and/or its agent if the City or County or State
271 regulatory authority seek to collect data, perform field work, and/or evaluate and monitor Diversion
272 program results through characterization of Solid Waste, including providing reasonably requested data,
273 allowing visits to Approved Facilities, and allowing use of Contractor-designated areas of Approved
274 Facilities as needed to perform Solid Waste characterizations.

275 Contractor shall also cooperate with City and/or County or State regulatory authority by providing
276 requested data and review and otherwise assisting with any Disposal Reporting System Investigations or
277 Origin Report Studies by providing documentation deemed reasonably necessary by the City Contract
278 Manager, the County or State regulatory authority.

279 **3.11 Carbon Offset Credits**

280 The City reserves the right to revenues or other benefits from carbon offset credits or other environmental
281 credits obtained by Contractor related to services performed under this Agreement.

282 **3.12 City-Directed Changes to Scope**

283 City may meet and confer with Contractor to establish the scope of any additional services or modification
284 to existing services (which may include use of Approved Facilities) to be provided under this Agreement.
285 In such case, Contractor shall present, within thirty (30) calendar days of City’s request, a written proposal
286 to provide such modified or additional services.

287 City shall review the Contractor’s proposal for the change in scope of services. City and Contractor may
288 meet and confer to negotiate Contractor’s proposed revisions and costs and shall amend this Agreement,
289 as appropriate, to reflect the mutually agreed-upon changes in scope.

290 **ARTICLE 4. TRANSFER AND DISPOSAL SERVICES**

291 **4.1 General**

292 Contractor shall perform the services described in this Article 4. Failure of Agreement to specifically
293 require an act necessary to perform the service does not relieve Contractor of its obligation to perform
294 such act. To the extent any of the services specified in Article 4 are provided by a City-approved
295 Subcontractor, the requirements of Article 4 shall pertain.

296 **4.2. Transfer and Transport Operations**

297 Contractor shall provide Transfer services at the Approved Transfer Facility and provide Transport to the
298 Approved Disposal Facility in accordance with Applicable Laws and regulations, best industry practice, due

299 diligence and specification, and other requirements of this Agreement. In addition, Contractor shall
300 comply with the following service specifications:

- 301 A. Operating, managing, and maintaining the Approved Transfer Facility including all buildings,
302 scales, roads, and utilities.
- 303 B. Providing and maintaining staffing levels and expertise as necessary or required to ensure safe
304 and lawful operation at all times, and as provided in Section 5.4.
- 305 C. Providing, operating and maintaining all equipment, rolling stock, and supplies necessary for
306 operations and maintenance, including providing redundancy in case of equipment failure, power
307 outage, etc.
- 308 D. Operating and maintaining the scale house and scale system and weighing Solid Waste Delivered
309 to the Approved Facilities by the Franchised Collector in accordance with Section 4.4 of the
310 Agreement.
- 311 E. Directing on-site traffic to appropriate unloading areas and providing a safe working environment
312 for Approved Transfer Facility users, visitors, and employees.
- 313 F. Accepting Solid Waste Delivered by the Franchised Collector from the Service Area.
- 314 G. Providing residents of, and businesses located within the Service Area an opportunity to drop-off
315 material at the Approved Transfer Facility, or at another location if approved by the City as
316 provided in Section 4.5.
- 317 H. Ensuring that Franchised Collector vehicles can enter and leave the Approved Facility property
318 within the turnaround times specified in Section 5.2.
- 319 I. Safely managing the Solid Waste Accepted at the Approved Transfer Facility.
- 320 J. Implementing an Excluded Waste screening, identification, and prevention protocol as provided
321 in Section 5.3. Contractor shall not knowingly Accept Excluded Waste at the Approved Transfer
322 Facility.
- 323 K. Loading materials into Transfer Vehicles and using its reasonable efforts and best industry practice
324 to ensure that Transfer Vehicles do not exceed legal road limits.
- 325 L. Transporting Accepted Solid Waste to the Approved Disposal Facility in Contractor-provided
326 Transfer Vehicles.

327 **4.3 Disposal Operations**

328 Contractor shall provide Disposal services at the Approved Disposal Facility in accordance with Applicable
329 Laws and regulations, best industry practice, due diligence and specification, and other requirements of
330 this Agreement. In addition, Contractor shall comply with the following service specifications:

- 331 A. Operating, managing, and maintaining the Approved Disposal Facility including all buildings,
332 scales, roads, and utilities.
- 333 B. Operating, managing and maintaining the Solid Waste fill areas, including the placement, burying,
334 and compaction of Solid Waste in the refuse fill areas; stockpiling, placement and compaction of
335 daily cover, intermediate cover, and final cover; management of fill operations with regard to fill
336 sequencing, side slopes configuration, and working face location and configuration.

- 337 C. Providing and maintaining staffing levels and expertise as necessary or required to ensure safe
338 and lawful operation at all times, and as provided in Section 5.4.
- 339 D. Providing, operating, and maintaining all equipment, rolling stock, and supplies necessary for
340 operations, Closure, Post-Closure, and environmental monitoring.
- 341 E. Operating and maintaining the scale house and scale system and weighing Solid Waste Delivered
342 from the Approved Transfer Facility in accordance with Section 4.4 of the Agreement.
- 343 F. Accepting Delivery of Solid Waste from the Approved Transfer Facility.
- 344 G. Ensuring that Franchised Collector vehicles can enter and leave the Approved Facility property
345 within the turnaround times specified in Section 5.2.
- 346 H. Directing on-site traffic to appropriate unloading areas and providing a safe working environment
347 for Approved Disposal Facility users, visitors, and employees.
- 348 I. Safely managing the Solid Waste Delivered to or Transported to the Approved Disposal Facility.
- 349 J. Implementing an Excluded Waste screening, identification, and prevention protocol as provided
350 in Section 5.3. Contractor shall not knowingly place Excluded Waste in the fill area of the Approved
351 Disposal Facility.
- 352 K. Operating, maintaining, and managing liquids (“leachate”) and landfill gas management systems,
353 groundwater monitoring and management systems, storm water drainage and control systems,
354 treatment facilities, buildings, on-site roadways, utilities, and any other required Facility
355 elements.
- 356 L. Conducting required or prudent Closure and Post-Closure activities as provided in Section 5.8.
- 357 M. Arranging for Alternative Facilities.
- 358 Contractor may at its sole discretion use Solid Waste for Beneficial Reuse in compliance with Applicable
359 Law.

360 **4.4 Vehicle Weighing**

361 Contractor is solely responsible for ensuring accurate weighing of all materials entering and leaving
362 Approved Facilities.

363 **A. Facility Scales.** Contractor shall maintain State certified motor vehicle scales in accordance with
364 Applicable Law. All scales shall be linked to a centralized computer recording system at each
365 Approved Facility to record weights for all incoming and outgoing materials. Contractor shall
366 provide back-up generator(s) capable of supplying power to the scales in the event of a power
367 outage. Contractor shall promptly arrange for use of substitute portable scales should its usual
368 scales not be available for whatever reason. Pending substitution of portable scales, Contractor
369 shall as necessary estimate the tonnages of Solid Waste Delivered to and Transported from the
370 Approved Facilities, on the basis of Delivery vehicle and Transfer trailer volumes, tare weights,
371 and/or other available facility weight records. These estimates shall take the place of actual
372 weights while scales are inoperable, and shall be identified as estimates in electronic records and
373 reporting. Contractor shall upon City request, weigh and provide tare weights for City vehicles
374 should City directly Deliver Solid Waste for Disposal.

375 **B. Tare Weights for Franchise Collector Vehicles.** Within thirty (30) Days prior to the
376 Commencement Date, Contractor shall coordinate with the Franchise Collector to ensure that all

377 Collection vehicles used by Franchise Collector to Deliver Solid Waste to Approved Facilities are
378 weighed to determine unloaded (“tare”) weights. Contractor and Franchise Collector shall
379 electronically record the tare weight, identify vehicle as Franchise Collector owned, and provide
380 a distinct vehicle identification number for each vehicle. Contractor shall provide City with a
381 report listing the vehicle tare weight information upon request. Contractor shall promptly
382 coordinate with Franchise Collector to weigh additional or replacement Collection vehicles prior
383 to Franchise Collector placing them into service. Contractor shall check tare weights at least
384 annually, or within fourteen (14) Days of a City request, and shall retare vehicles immediately
385 after any major maintenance service.

386 **C. Tare Weights for Contractor Vehicles.** Within thirty (30) Days prior to the Commencement Date,
387 Contractor shall ensure that all Transfer vehicles used by Contractor to Deliver Solid Waste the
388 Approved Disposal Facility are weighed to determine unloaded (“tare”) weights. Contractor shall
389 electronically record the tare weight, identify vehicle as Contractor owned, and provide a distinct
390 vehicle identification number for each vehicle. Contractor shall provide City with a report listing
391 the vehicle tare weight information upon request. Contractor shall promptly weigh additional or
392 replacement Transfer vehicles prior to placing them into service. Contractor shall check tare
393 weights at least annually, or within fourteen (14) Days of a City request, and shall retare vehicles
394 immediately after any major maintenance service.

395 **D. Testing.** Contractor shall test and calibrate all scales in accordance with Applicable Law, but at
396 least every twelve (12) months or upon City request.

397 **E. Records.** Contractor shall maintain computerized scale records and reports that provide
398 information including date of receipt, inbound time, inbound and outbound weights of vehicles,
399 vehicle identification number, as further provided in Section 6.1. Contractor shall also maintain
400 computerized scale records and reports providing historical vehicle tare weights for each vehicle
401 and the date and location for each tare weight recorded.

402 **F. Upon-Request Reporting.** If vehicle receiving and unloading operations are recorded on video
403 cameras at the Approved Facilities, Contractor shall make those videos available for City review
404 during the Facility’s operating hours, upon request of the City, and shall provide the name of the
405 driver of any particular load if available.

406 **4.5 Drop-Off Services**

407 Contractor has proposed an optional approach to and pricing for public drop-off services. The City may,
408 in its sole discretion, include that service and associated cost in the scope of work for this Agreement
409 any time prior to the commencement of services under this Agreement. If City decides to include that
410 scope of work, the City and Contractor shall meet and confer to develop appropriate language and
411 pricing and will include that language in an amendment to this Agreement.

412 **ARTICLE 5. STANDARD OF PERFORMANCE**

413 **5.1 Days and Hours of Operation**

414 **A. Approved Transfer Facility.** Contractor shall operate the Approved Transfer Facility for the
415 receipt of the City’s Solid Waste in accordance with the days and hours of operation set forth
416 below, except for Holidays. At a minimum, Contractor shall provide for Delivery of Solid Waste
417 Monday through Friday from 4:00 a.m. to 9:00 p.m. and 5:00 a.m. to 5:00 p.m. on Saturdays.

418 Contractor may not reduce the hours or total number of hours for Delivery of City's Solid Waste
419 without prior written approval of the City, except for reductions required by a change in a Permit
420 subsequent to the Commencement Date in which case Contractor shall maximum every effort to
421 provide the City a minimum of sixty (60) Days written notice of such an anticipated modification.

422 **B. Approved Disposal Facility.** Contractor shall operate the Approved Disposal Facility for the
423 receipt of the City's Solid Waste in accordance with the days and hours of operation set forth
424 below. At a minimum, Contractor shall provide for Delivery of Solid Waste Monday through Friday
425 from 5:30 a.m. to 4:00 p.m. and 5:30 a.m. to 4:00 p.m. on Saturdays. Contractor may not reduce
426 the hours or total number of hours for Delivery of City's Solid Waste without prior written
427 approval of the City, except for reductions required by a change in a Permit subsequent to the
428 Commencement Date in which case Contractor shall make every effort to provide the City a
429 minimum of sixty (60) Days written Notice of such an anticipated modification.

430 **5.2 Facility Turnaround Times**

431 Contractor shall maintain a maximum average vehicle turnaround time of twenty (20) minutes for
432 Franchise Collector Delivery of Solid Waste to Approved Facilities. Maximum average vehicle turnaround
433 time shall be the elapsed time from entering to leaving the Approved Facility property. Delays due to
434 malfunction of the Franchise Collector's vehicles or delays caused by the Franchise Collector's drivers shall
435 not be counted toward the maximum turnaround time.

436 If Franchise Collector alleges that Contractor has not met the obligations of this section, Contractor will
437 provide surveillance camera footage for the most recent two (2) week period to determine the cause of
438 the delays.

439 **5.3 Rejection of Excluded Waste**

440 **A. Inspection Program and Training.** Contractor shall develop a load inspection program that
441 includes the following components:

442 (i) personnel and training; (ii) load checking activities; (iii) management of wastes; and, (iv) record
443 keeping and emergency procedures. Contractor's load checking personnel shall be trained in: (i)
444 the effects of Hazardous Substances on human health and the environment; (ii) identification of
445 prohibited materials; and, (iii) emergency notification and response procedures.

446 **B. Inspection.** Contractor shall use best industry practices to detect and reject Excluded Waste in a
447 uniform manner and shall not knowingly Accept Excluded Waste at the Approved Facilities.
448 Contractor shall comply with the inspection procedure contained in its Permit requirements.
449 Contractor shall promptly modify that procedure to reflect any changes in Permits or Applicable
450 Law.

451 **C. Excluded Waste Handling and Costs.** Contractor shall arrange for or provide handling,
452 transportation, and delivery to a facility permitted in accordance with Applicable Law of all
453 Excluded Wastes detected at an Approved Facility. Contractor is solely responsible for making
454 those arrangements or provisions and for all costs thereof, subject to the remedies available
455 under Section 5.D below.

456 **D. Detection Prior to Acceptance.** If Contractor identifies Excluded Waste Delivered from the
457 Service Area to an Approved Facility by the Franchised Collector during the initial load inspection,
458 and prior to handling or comingling the load with any other waste, Contractor shall notify the
459 Franchised Collector who shall collect, transport and recycle or dispose of that Excluded Waste

460 and/or remediate any contamination resulting at the Approved Facility from it at Franchised
461 Collector's expense.

462 **E. Detection Following Acceptance.** If Contractor identifies Excluded Waste Delivered from the
463 Service Area to an Approved Facility by the Franchised Collector following Acceptance, Contractor
464 shall collect, transport and recycle or dispose of that Excluded Waste and/or remediate any
465 contamination resulting at the Approved Facility at Contractor's expense. Acceptance is not
466 deemed to have occurred until after initial load inspection.

467 **5.4 Personnel**

468 **A. General.** Contractor shall furnish such qualified personnel as may be necessary to provide the
469 services required by this Agreement in a safe and efficient manner. Contractor shall designate at
470 least one (1) qualified employee as City's primary point of contact with Contractor who is
471 principally responsible for Transfer and Disposal operations and resolution of service requests and
472 complaints who shall be available telephonically at all times Transfer and Disposal operations are
473 taking place.

474 **B. Driver Qualifications.** All drivers must have in effect a valid license, of the appropriate class,
475 issued by the California Department of Motor Vehicles. Contractor shall use the Class II California
476 Department of Motor Vehicles employer "Pull Notice Program" to monitor its drivers for safety.

477 **C. Safety Training.** Contractor shall provide suitable operational and safety training consistent with
478 Applicable Law for all of its employees who operate vehicles or equipment at, or in conjunction
479 with an Approved Facility. Contractor shall train its employees to identify, and to not Accept
480 Excluded Waste. Upon the City Contract Manager's request, Contractor shall provide a copy of its
481 safety policy and safety training program, the name of its safety officer, and the frequency of its
482 trainings.

483 **D. Labor Agreements.** Contractor shall be solely responsible for its labor arrangements. The
484 Contractor shall provide full copies of the labor agreements including any and all amendments,
485 extensions, renewals, or other forms of modification.

486 **E. Subcontractor Obligations.** Subcontractors shall be required to comply with the obligations
487 stated in this Section 5.4.

488 **5.5 Permits**

489 **A. Securing Permits.** Contractor is solely responsible for obtaining and maintaining, at Contractor's
490 sole cost, all Permits required under Applicable Law to perform the services required by this
491 Agreement. Contractor shall provide City copies of Permits and all documents submitted in
492 application for said Permits for the Approved Facilities within ten (10) Days of City request. In its
493 monthly report or more frequently, as necessary, Contractor shall inform City of Contractor's
494 status of securing the issuance, revision, modification, extension or renewal of Permits including
495 those at its or an Affiliate's Approved Facilities. Contractor shall inform City at least 15 days prior
496 to application, of its intent to apply for any Permit authorized or required under Applicable Law
497 regarding services performed under this Agreement. Within ten (10) Days following City's request,
498 Contractor shall provide the City with copies of any applications or other correspondence that the
499 Contractor submits in connection with securing Permits.

500 **B. Compliance with Permits.** Contractor shall comply with all Permits or environmental documents,
501 including any mitigation measures related to the operation and maintenance of the Approved

502 Facilities at no additional cost to the City. Contractor shall demonstrate compliance with the
503 terms and conditions of Permits within ten (10) Days of City request. Contractor shall provide City
504 with all documentation verifying compliance with Permit conditions that is provided to the
505 permitting authority at the same time such is provided to the permitting authority. Contractor is
506 solely responsible for paying any fines or penalties imposed for noncompliance with or violation
507 of Permits or failure to obtain Permits.

508 **5.6 Safety**

509 The Contractor shall conduct the operations of the Approved Facilities in a safe manner, in accordance
510 with Applicable Law and the insurance requirements of Section 9.2. In particular, Contractor shall
511 construct and maintain all roads at the Approved Facility to which Franchise Collector Delivers Solid Waste
512 as necessary and required for such vehicles to safely and efficiently access and use the Approved Facilities.
513 Contractor shall direct on-site traffic to appropriate unloading areas and provide a safe working
514 environment for Approved Facility users, visitors, and employees. Contractor shall provide necessary signs
515 and personnel to assist drivers to proper unloading areas. Contractor shall maintain all signs at the
516 Approved Facilities in a clean and readable condition. The Contractor shall provide and maintain signs for
517 the convenience of Persons using the Approved Facilities and to facilitate safe and efficient traffic flow at
518 the Approved Facilities.

519 **5.7 Right to Enter Facility and Observe Operations**

520 The City and its designated representative(s) reserve the right to enter, observe, and inspect and
521 compliance test any Approved Facility during operations; meet with Approved Facility manager(s) or his
522 or her representatives at any time, provided that the City and its representatives comply with Contractor's
523 reasonable safety and security rules and do not interfere with operations at the Approved Facility.
524 Contractor is obligated to allow entry of City staff or their designated representative(s) to Approved
525 Facilities, and to allow for representatives to conduct observations, inspections, studies, or surveys.

526 Upon City direction, Contractor shall make Approved Facility personnel available to accompany City
527 employees or representatives on inspections. Contractor shall ensure that its employees cooperate with
528 the City and respond to the City's reasonable inquiries. Contractor shall facilitate observation and
529 inspection at Approved Facilities upon three (3) Business Days of receiving a City request.

530 If the Approved Facility manager or his or her representative is not at the Approved Facility when the City
531 or its designated representative(s) visit without prior announcement, staff of the Approved Facility may
532 limit the visit of the City or its designated representative to a portion of the Approved Facility property. In
533 that event, Contractor shall arrange for City or its designated representative(s) to return for a visit of the
534 complete facility within twenty four (24) hours of the City's visit.

535 **5.8 Closure and Post-Closure of Approved Disposal Facility**

536 Contractor's existing Disposal agreement with the Approved Disposal Facility mandates that the Approved
537 Disposal Facility operator shall safely operate, maintain, and manage (including fulfillment of State
538 funding requirements) the Approved Disposal Facility in compliance with Applicable Law not only during
539 the Term but also thereafter until and during the Approved Disposal Facility Closure and Post-Closure
540 period(s). Under that agreement, Approved Disposal Facility operator is solely responsible, operationally
541 and financially, for: (i) The appropriate Closure and Post-Closure activities of the Approved Disposal
542 Facility; and, (ii) The establishment and funding of any reserve funds required by Applicable Law for the
543 purposes of providing funds for the payment of costs of Closure of the Approved Disposal Facility (or any

544 cell within the Approved Disposal Facility) or Post-Closure activities relating to the Approved Disposal
545 Facility. City shall be in no way responsible for paying any deficiencies in necessary or required reserves.
546 In addition, City shall be in no way responsible should Approved Disposal Facility costs for Closure and
547 Post-Closure relating to the Approved Disposal Facility exceed the amounts reserved by Approved
548 Disposal Facility for that purpose. This obligation survives expiration or termination of this Agreement.

549 **5.9 Alternative Facilities**

550 **A. Purpose.** Contractor shall identify, and enter into arrangements with Alternative Transfer and
551 Disposal Facilities, whether an Affiliate or owned by a third-party prior to the Effective Date, and
552 subject to review by the City upon City request in order to ensure uninterrupted service should
553 Contractor for any reason be unable to provide services at one or more Approved Facilities.

554 **B. Alternative Facility Arrangements.** Alternative Transfer and Disposal Facilities arrangements
555 must ensure that Franchise Collector or Contractor, as applicable, can Deliver or Transport Solid
556 Waste to an Alternative Facility within two (2) Business Days of Contractor or City notice of need
557 to use such Alternative Facility. Contractor shall ensure that Alternative Facilities are able to
558 accept Solid Waste on a continuous basis for no less than thirty (30) Days. Should Contractor use
559 of the Alternative Facility exceed thirty (30) Days, City may require Contractor provide additional
560 reasonable assurances of the Alternative Facility's ability to accept Solid Waste on an ongoing
561 basis under the terms of this Agreement. Contractor may request, and City may at its discretion
562 grant a change in an Alternative Facility owned and operated by Contractor or an Affiliate, or
563 owned and/or operated by a third party with the third party's prior written consent.

564 **C. Contractor Responsibility for Additional Cost.** If Contractor is unable to, or chooses not to provide
565 for Delivery of Solid Waste, or transport of Solid Waste to an Approved Facility for reasons other
566 than those specified in Section 10.7, Contractor shall provide immediate notice to City and
567 Franchised Collector of its need to use an Alternative Facility, and shall be solely responsible for
568 incremental differences in cost due to per-ton fees charged at the Alternative Facility and any
569 additional transportation costs incurred in Delivering or Transport of Solid Waste to the Approved
570 Facility. Such added expense is not subject to adjustment as provided in Section 8.5.

571 **D. City Responsibility for Additional Cost.** If Contractor is unable to provide for Delivery of Solid
572 Waste, or transport of Solid Waste to an Approved Facility for a reason specified in Section 10.7,
573 Contractor shall provide immediate notice to City and Franchised Collector of its need to use an
574 Alternative Facility. City shall be responsible for incremental differences in cost due to per-ton
575 fees charged at the Alternative Facility and any additional transportation costs incurred in
576 Delivering or Transport of Solid Waste to the Approved Facility, or for any added transport cost
577 incurred by the Franchised Collector. as provided in Article 8. Such added expense shall be subject
578 to adjustment as provided in Section 8.5. .

579 **E. City Right to Terminate.** If, for any reason, the Contractor is unable to use an Approved Facility
580 for an extended period of time, the City may, at its sole discretion, terminate this Agreement as
581 provided in accordance with Section 10.2.

582 **5. 10 Delivery to Non-Approved Facilities Prohibited**

583 Should Contractor Transport Solid Waste to a facility other than an Approved Facility or an Alternative
584 Facility as provided in Section 5.9 without prior City approval, Contractor shall be subject to the penalty
585 identified in Section 10.6.C for "Delivery to a Non-Approved Facility".

ARTICLE 6. RECORD KEEPING AND REPORTING

6.1 Record Keeping and Audit of Records

- 587 **A. Tons Delivered by Franchise Collector.** Contractor shall maintain daily electronic accounting of
 588 tons of Solid Waste Delivered to each Approved Facility by each incoming Franchise Collector
 589 vehicle at each then-current per-ton Rate.
 590
- 591 **B. Tons Transported by Contractor.** Contractor shall also maintain daily electronic records for all
 592 Solid Waste Transported from one Approved Facility to another, by vehicle and time. Upon
 593 demand, the Contractor shall permit the City Contract Manager to examine and audit the books
 594 of account of the Contractor at any and all reasonable times for the purpose of verifying
 595 Contractor's performance under this Agreement.
- 596 **C. Other Records.** Contractor shall maintain accounting, statistical, operational, and other records
 597 related to its performance as necessary to provide reporting demonstrating compliance with this
 598 Agreement. The Contractor shall maintain complete financial statements and accounting records
 599 for operations under this Agreement sufficient to allow for independent verification of
 600 Contractor's ability to continue providing service through the Term.
- 601 **D. City Right to Examine.** Upon request, the Contractor shall allow the City Contract Manager to
 602 examine all data supporting Contractor's invoices for services provided under this Agreement.
 603 Such request shall be made at reasonable times and with reasonable notice. City reserves the
 604 right to produce any such documents examined to any State or local regulatory or permitting
 605 authority upon request.
- 606 **E. Extraordinary Adjustment.** In the event that an extraordinary Rate adjustment pursuant to
 607 Section 8.5, such records shall be subject to review in accordance with appropriate professional
 608 standards, and inspection, for the primary purpose of reviewing changes in costs to the Contractor
 609 attributable to the extraordinary Rate adjustment request, at any reasonable time by an
 610 independent third party. The selection of the independent third party as well as the scope of work
 611 for such review shall be approved in advance by the City Contract Manager. The independent
 612 reviewer shall provide any and all drafts of its review to the City and the Contractor. The Party
 613 requesting the extraordinary Rate adjustment review shall bear the cost of the review.
- 614 **F. Retention of Records.** Unless otherwise required in this Article, and as expressly provided in
 615 subsection G. below, Contractor shall retain all records and data required to be maintained by this
 616 Agreement for the Term of this Agreement plus three (3) years after its expiration or earlier
 617 termination. Records and data shall be in chronological and organized form and readily and easily
 618 interpreted. Upon request, any such records shall be retrieved in a timely manner by Contractor
 619 and made available to the City Contract Manager. Contractor shall maintain adequate record
 620 security to preserve records from events that can be reasonably anticipated such as a fire, theft,
 621 and an earthquake. Electronically-maintained data and records shall be protected and backed-up.
 622 The Contractor shall obtain, within one hundred twenty (120) days of a request by the City
 623 Contract Manager, complete independently audited financial statements for the prior calendar
 624 year, including its balance sheet, statement of revenues and expenses, and statement of changes
 625 in cash position, and provide such financial statements to the City Contract Manager.
- 626 **G. CERCLA Data.** City's ability to defend itself against Comprehensive Environmental Response,
 627 Compensation and Liability Act (CERCLA), and related litigation is a matter of great importance.
 628 For this reason, City regards as paramount its ability to prove where Collected Solid Waste is taken

629 for Transfer or Disposal. Contractor shall maintain records regarding quantities, on-site location,
630 and timing of Disposal at the Approved Disposal Facility. This provision shall survive the expiration
631 or earlier termination of this Agreement. Contractor shall maintain these records for a minimum
632 of ten (10) years beyond expiration or earlier termination of the Agreement. Contractor shall
633 provide these records to City (upon request or at the end of the record retention period) in an
634 organized and indexed manner rather than destroying or disposing of them.

635 **6.2 Report Submittal Requirements**

636 Contractor shall submit monthly and quarterly reports within thirty (30) calendar days after the end of
637 the calendar month or quarter, as applicable. Contractor shall submit annual reports no later than forty-
638 five (45) calendar days after the end of each calendar year. Monthly, quarterly, and annual reports shall,
639 at a minimum, include all data and information as described in Section 6.3, and shall be provided in Word
640 and Excel.

641 Contractor may propose report formats. The format of each report shall be approved by the City Contract
642 Manager and such approval shall not be unreasonably withheld. City Contract Manager may, from time
643 to time during the Term, review and request changes to Contractor's report formats and content and
644 Contractor shall not unreasonably deny such requests.

645 Contractor shall submit (via mail and e-mail) all reports to the City Contract Manager.

646 City reserves the right to require Contractor to provide additional reports or documents as City Contract
647 Manager reasonably determines to be required for the administration of this Agreement or compliance
648 with Applicable Law.

649 **6.3 Report**

650 Reports shall be submitted monthly and shall include, at a minimum the following:

- 651 A. Total number of vehicle loads Delivered by Franchise Collector to an Approved Facility
- 652 B. Totals tons for all vehicle loads Delivered by Franchise Collector to an Approved Facility
- 653 C. Average tons per vehicle load Delivered by Franchise Collector to an Approved Facility
- 654 D. Date, time, route number, Franchise Collector truck number, and reason for Contractor rejection
655 of any Delivered vehicle loads

656 Each monthly report shall be formatted to show the previous months for the year-to-date with quarterly
657 totals. The December report shall also discuss any issues, plans, and concerns related to the use of each
658 Approved Facility during the past year and anticipated for the following year, including but not limited to,
659 additional services provided or available, actual or anticipated need for use of Alternative Facilities,
660 regulatory issue or concerns, permit and regulatory violations, etc.

661

ARTICLE 7. FEES

7.1 City Right to Establish Fees

663 City retains the right to establish fees on Disposal activities, and to adjust such fees during the Term of
664 this Agreement. Such fees shall be established and adjusted as part of the governmental component of
665 the then-applicable Per-Ton Rate as provided in Section 8.4 C.

7.2 Reserved

7.3 Payment Schedule and Late Fees

668 At the end of each month, during the Term of this Agreement, Contractor shall remit to City all fees for
669 the previously completed month as described in this Article. Such fees shall be remitted to City and sent
670 or delivered to the City Contract Manager. If such remittance is not paid to City on or before the last day
671 of the month, all fees due shall be subject to a delinquency penalty of two percent (2%), which attaches
672 on the first day of delinquency. The delinquency penalty shall be increased an additional two percent (2%)
673 for each additional month the payment remains delinquent.

674 Each monthly remittance to City shall be accompanied by a statement listing the amount of each fee paid;
675 calculation of each fee; and, statement of Gross Receipts, by Customer Type for the period collected from
676 all operations conducted or permitted by this Agreement. City Contract Manager may, at any time during
677 the Term, request a detailed calculation of Gross Receipts which may include, but is not necessarily limited
678 to, the number of Customers charged at each Service Level and Rate for each billing period.

679 City Contract Manager may, at any time during the Term, perform an audit of Contractor’s payment of
680 fees. Contractor shall cooperate with the City Contract Manager in any such audit. Should City or its agent
681 perform this review and identify errors in payment of fees valued at one (1) percent or more of Gross
682 Receipts, Contractor shall, in addition to compensating City for lost fees, reimburse the City’s cost of the
683 review.

ARTICLE 8. CONTRACTOR'S COMPENSATION AND RATE SETTING

8.1 General

686 Contractor’s Compensation for performance of all its obligations under this Agreement shall be Per-Ton
687 Rates, paid to the Contractor by the Franchised Collector in exchange for Transfer and Disposal services
688 provided. Contractor's Compensation provided for in this Article shall be the full, entire and complete
689 compensation due to Contractor pursuant to this Agreement for all labor, equipment, materials and
690 supplies, taxes, insurance, bonds, overhead, operations, profit, government fees and all expenses
691 Contractor deems necessary to perform all the services required by this Agreement in the manner and at
692 the times prescribed. Nothing herein shall obligate City or Franchised Collector to provide any
693 compensation to Contractor beyond Per-Ton Rates, and there shall be no obligation is placed on the City
694 General Fund.

695 If Contractor’s actual costs, including any fees or payments due to City, are more than the Per-Ton Rates,
696 Contractor shall not be compensated for the difference in actual costs and actual Per-Ton Rates. If

697 Contractor's actual costs are less than the actual Per-Ton Rates, Contractor shall retain the difference
698 provided that Contractor has paid City fees pursuant to Article 7.

699 Under this Agreement, Contractor shall have the right and obligation to charge and collect from the
700 Franchised Collector, Per-Ton Rates approved by the City, for Tonnage Delivered to the Approved Facilities
701 by the Franchised Collector. The Per-Ton Rates for Rate Period One are based on the Contractor's
702 Proposal. Contractor's proposed Per-Ton Rates and operating assumptions for Rate Period One are
703 presented in Exhibit G.

704 **8.2 Remittances to Contractor**

705 Each month, within five (5) working days after the last day of the preceding month, Contractor shall
706 provide to the Franchised Collector an invoice detailing the total Tons Delivered to the Approved Facilities
707 from the City service area by the Franchised Collector, and the resulting moneys owed to Contractor,
708 based on the then-current Per-Ton Rates. Within fifteen (15) working days after the last day of the
709 preceding month, the Franchised Collector shall remit to Contractor payment each month equaling actual
710 Tons of Solid Waste Delivered to the Approved Facilities by the Franchised Collector, multiplied by the
711 then-current Per-Ton Rate. Contractor shall cooperate with the Franchised Collector as needed to
712 calculate and/or reconcile remittance amounts.

713 In the event that the Per Ton Rates due hereunder are not paid within 15 days after the last day of the
714 preceding month, a late charge of one and one-half (1.5) percent may be charged to the Franchise
715 Collector by Contractor for each month or partial month that said rates or charges remain unpaid.

716 Notwithstanding any other provision herein, the City shall cause the Franchise Collector to pay Contractor
717 directly pursuant to the terms of this Agreement.

718 Notwithstanding the above, Contractor shall annually provide up to 500 cubic yards of free disposal for
719 City special events and clean-ups.

720 **8.3 Per-Ton Rates**

721 **A. General.** The City shall be responsible for approving Per-Ton Rates as described in this Article.
722 Each Per-Ton Rate shall have two components: (i) the Contractor component; and (ii) the
723 governmental component; the sum of which shall equal the total Per-Ton Rate. The "Contractor
724 component" of the rates reflects the Contractor's compensation for the service provided under
725 this Agreement, and the "government component" reflects government fees assessed for
726 materials handled at the Approved Facility.

727 **B. Rates for Rate Period One.** Per-Ton Rates for Rate Period One were determined by Contractor
728 and City and were approved by City resolution on or before the execution of the Agreement. The
729 Per-Ton Rates for Rate Period One shall be effective from the Commencement Date of this
730 Agreement through December 31, 2018. Per-Ton Rates for Rate Period One, and are as follows:

731 Contractor Component for Rate Period One: \$56.85 +
732 Governmental Component for Rate Period One: \$8.11 =
733 **Total Per-Ton Rate for Rate Period One: \$64.96**

734 **8.4 Per-Ton Rate Adjustments**

735 Per-Ton Rates for Rate Periods Two through Twenty shall be adjusted annually by CPI commencing January
 736 1, 2019, in accordance with this Section 8.4.

737 **A. Definitions.** For the purposes of this Section 8.4, the following terms shall be defined as follows:

738 **“Annual Percentage Change”** means the Average Index Value of an index for the 12-month period
 739 ending June of the then-current Rate Period minus the Average Index Value for the 12-month
 740 period ending June of the most-recently completed Rate Period, divided by the Average Index
 741 Value for the 12-month period ending June of the most-recently completed Rate Period. The
 742 Annual Percentage Change shall be rounded to the nearest thousandth (1,000th).

743 **“Average Index Value”** means the sum of the monthly index values during the 12-month period
 744 ending in June divided by 12 (in the case of indices published monthly) or the sum of the bi-
 745 monthly index values divided by 6 (in the case of indices published bi-monthly).

746 For example, if the Contractor is preparing its Rate application for Rates to be effective for Rate
 747 Period 2, the Annual Percentage Change in CPI shall be calculated as follows: [(Average CPI for
 748 July 2017 through June 2018) – (Average CPI for July 2016 through June 2017)] / (Average CPI for
 749 July 2016 through June 2017)].

750 **B. Contractor Component.** The Contractor component of each Approved Facility Per-Ton Rate shall
 751 be adjusted on: (i) the basis of one hundred percent (100%) of the Annual Percentage Change in
 752 the Consumer Price Index, All Urban Consumers (All Items), for the San Francisco/Oakland
 753 Metropolitan Area as published by the U.S. Department of Labor, Bureau of Labor Statistics
 754 ("Index"), Series ID: CUURA422SA0, or (ii) five percent (5%), whichever is less. In the event that
 755 the Percentage Change in the Consumer Price Index exceeds five percent (5%), the Contractor
 756 shall be allowed to carryover the amount that exceeds five percent (5%) to the following Per-Ton
 757 Rate adjustment, provided that doing so does not cause the Rate adjustment for that following
 758 Rate Year to exceed five percent (5%). The minimum adjustment due to changes in the Consumer
 759 Price Index shall be zero percent (0%); however, in the event that the Percentage Change in the
 760 Consumer Price Index results in a negative value, the City shall be allowed to carryover the
 761 negative amount to subsequent Per-Ton Rate Adjustments, provided that doing so does not cause
 762 the Rate adjustment for that subsequent year to be less than zero percent (0%). The maximum
 763 carryover period for any amount above five percent (5%) or below zero percent (0%) shall be
 764 three Rate Years.

765 If said CPI is discontinued, it shall be replaced by the CPI which most closely approximates the
 766 original category as determined by the U.S. Bureau of Labor Statistics.

767 **C. Governmental Component.** The governmental component of each Approved Facility Per-Ton
 768 Rate shall be adjusted upward or downward to reflect the actual changes in governmental fees
 769 and/or other elements of the governmental component, which are outside the control of
 770 Contractor. Governmental fees for Rate Period One are as follows:

771

| Fee Title | Fee Amount | Fee Basis | Governing Body | Tons Eligible for Fee in RP1 |
|---------------------|------------|-----------|------------------|------------------------------|
| LEA Enforcement Fee | \$1.08 | Per ton | City of San Jose | 100% of Delivered Tons |

| Fee Title | Fee Amount | Fee Basis | Governing Body | Tons Eligible for Fee in RP1 |
|----------------------------------|---------------|-----------|-----------------------|-------------------------------|
| County of Santa Clara Export Tax | \$4.88 | Per ton | County of Santa Clara | 100% of Delivered Tons |
| Integrated Waste Management Fee | \$1.40 | Per ton | CalRecycle | 100% of Delivered Tons |
| Monterey County LEA | \$0.75 | Per ton | County of Monterey | 100% of Delivered Tons |
| Total | \$8.11 | N/A | N/A | 100% of Delivered Tons |

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D. Total Adjusted Per-Ton Rates. The Total Adjusted Per-Ton Rate shall be calculated as the sum of the adjusted Contractor component, as calculated in subsection (A) above, and the adjusted governmental component, as calculated in subsection (B) above.

E. Per-Ton Rate Application. On September 1, prior to the commencement of the Rate Period for which Per-Ton Rates are to be determined (coming Rate Period), Contractor shall submit to the City Contract Manager an application requesting the adjustment of Per-Ton Rates for the coming Rate Year via mail and an electronic copy in Microsoft Excel format with all supporting schedules, formulas, and calculations via email. For example, on September 1, 2019, the Contractor shall submit its application for the adjustment of Maximum Rates to be effective January 1, 2020 (i.e., Rate Period Three).

Such Application shall include the rate adjustment calculation in accordance with Section 8.4.A-8.4.C; and a copy of the Per-Ton Rate schedule currently in effect.

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City shall evaluate Contractor’s application for mathematical accuracy and consistency with the requirements of the Agreement, and shall have the ability to require changes to the application prior to approval on the basis of the application’s mathematical inaccuracy or failure to comply with the procedures defined in the Agreement.

789 **8.5 Extraordinary Rate Adjustments**

790 It is understood that the Contractor accepts the risk for changes in cost of providing services and/or
791 quantities and composition of materials Delivered to the Approved Facilities, and therefore the
792 extraordinary adjustments to Per-Ton Rates shall be limited to a Change in Law, a City-directed change in
793 scope, or City failure to ensure Delivery pursuant to Section 5.9.D. If a Change in Law or City-directed
794 change in scope (pursuant to Section 3.12) occurs, the Contractor may petition City for an adjustment to
795 the Per-Ton Rates in excess of the annual adjustment described in Section 8.2.

796 Contractor shall prepare an application for the extraordinary Per-Ton Rate adjustment calculating the net
797 financial effect on its operations (both increases and decreases of costs) resulting from the Change in Law
798 or City Directed Change in Scope, clearly identifying all assumptions related to such calculations and
799 providing the underlying documentation supporting the assumptions. The application shall provide all
800 information requested by City Contract Manager specific to the nature of the request being made. City
801 Contract Manager shall evaluate the application for reasonableness. As part of that review, the City
802 Contract Manager may request access to the financial statements and accounting records required to be
803 maintained by the Contractor (pursuant to Article 6) in order to determine the reasonableness of the
804 Contractor’s application. Should the Contractor not grant such access, then the City may rely on the
805 Contractor’s Proposal and other information available to it as the basis for making reasonable

806 assumptions regarding what those accounting and financial records would have shown and therefore the
807 reasonableness of the Contractor’s application. Contractor shall pay all reasonable costs incurred by the
808 City, including the costs of outside accountants, attorneys, and/or consultants, in order to make a
809 determination of the reasonableness of the requested Rate adjustment.

810 In the event of such an application for extraordinary Per-Ton Rate adjustment, it is understood that the
811 City or Contractor, as the case may be, shall have the burden of demonstrating the reasonableness of the
812 requested adjustment

813 The Contractor may appeal the decision of the City Contract Manager to the City Council, which shall then
814 make the final determination as to whether an adjustment to the Per-Ton Rates will be made, and if a
815 Per-Ton Rate adjustment is permitted, the amount of the adjustment. With respect to an extraordinary
816 Per-Ton Rate adjustment requested by the City Contract Manager, the City Council shall then make the
817 final determination as to whether an adjustment to the Per-Ton Rates will be made, and if an adjustment
818 is permitted, the amount of the adjustment.

819 **ARTICLE 9. INDEMNITY, INSURANCE, AND PERFORMANCE BOND**

820 **9.1 Indemnification**

821 **A. General.** Contractor shall indemnify, defend with counsel acceptable to City, and hold harmless
822 (to the full extent permitted by law) City and its officers, officials, employees, volunteers, and
823 agents from and against any and all claims, liability, loss, injuries, damage, expense, and costs
824 (including without limitation costs and fees of litigation, including attorneys’ and expert witness
825 fees) (collectively, “Damages”) of every nature arising out of or in connection with Contractor’s
826 performance under this Agreement, or its failure to comply with any of its obligations contained
827 in the Agreement, except to the extent such loss or damage was caused by the sole negligence or
828 willful misconduct of City.

829 **B. Excluded Waste.** Contractor acknowledges that it is responsible for compliance during the entire
830 Term of this Agreement with all Applicable Laws. Contractor shall not store, transport, use, or
831 Dispose of any Excluded Waste except in strict compliance with all Applicable Laws.

832 In the event that Contractor negligently or willfully mishandles Excluded Waste in the course of
833 carrying out its activities under this Agreement, Contractor shall at its sole expense promptly take
834 all investigatory and/or remedial action reasonably required for the remediation of such
835 environmental contamination. Prior to undertaking any investigatory or remedial action,
836 however, Contractor shall first obtain City’s approval of any proposed investigatory or remedial
837 action. Should Contractor fail at any time to promptly take such action, City may undertake such
838 action at Contractor’s sole cost and expense, and Contractor shall reimburse City for all such
839 expenses within thirty (30) calendar days of being billed for those expenses, and any amount not
840 paid within that thirty (30) calendar day period shall thereafter be deemed delinquent and subject
841 to the delinquent fee payment provision of Section 7.3. These obligations are in addition to any
842 defense and indemnity obligations that Contractor may have under this Agreement. The
843 provisions of this Section shall survive the termination or expiration of this Agreement.
844 Contractor’s duties under this subsection extend to any claims arising from Solid Waste Disposal
845 and all other services provided under the terms of this Agreement at all Approved Facilities
846 including, but not limited to, claims arising under Comprehensive Environmental Response,
847 Compensation and Liability Act (CERCLA).

848 **C. Environmental Indemnity.** Contractor shall defend, indemnify, and hold City harmless against
849 and from any and all claims, suits, losses, penalties, damages, and liability for damages of every
850 name, kind and description, including attorneys' fees and costs incurred, attributable to the
851 negligence or willful misconduct of Contractor in handling Excluded Waste.

852 **D. Related to AB 939, AB 341, AB 1826, AB 1594 and SB 1016.** Contractor's duty to defend and
853 indemnify herein includes all fines and/or penalties imposed by CalRecycle if the requirements of
854 AB 939, AB 341, AB 1826, AB 1594 or SB 1016 are not met by the City due to Contractor failure to
855 submit scheduled reports or City-requested information in a timely manner.

856 **E. Related to Proposition 218.** Should there be a Change in Law or a new judicial interpretation of
857 Applicable Law, including, but not limited to, Article XIII C and D of the California Constitution
858 (Commonly Proposition 218), which impacts the Rates for the Collection services established in
859 accordance with this Agreement, Contractor agrees to meet and confer with City to discuss the
860 impact of such Change in Law on either Party's ability to perform under this Agreement.

861 If, at any time, a Rate adjustment determined to be appropriate by both City (which determination
862 shall not be unreasonably withheld) and Contractor to compensate Contractor for increases in
863 costs as described in this Agreement cannot be implemented for any reason, Contractor shall be
864 granted the option to negotiate with City, in good faith, a reduction of services equal to the value
865 of the Rate adjustment that cannot be implemented. If City and Contractor are unable to reach
866 agreement about such a reduction in services, then Contractor may terminate this Agreement
867 upon one hundred eighty (180) calendar days prior written notice to City, in which case the
868 Contractor and City shall each be entitled to payment of amounts due for contract performance
869 through the date of termination but otherwise will have no further obligation to one another
870 pursuant to this Agreement after the date of such termination. Should a court of competent
871 jurisdiction determine that the Contractor cannot charge and/or increase its Rates for charges
872 related to Franchise Fees, other City fees or payments to City, and governmental fees and charges,
873 Contractor shall reduce the Rates it charges Customers a corresponding amount, providing said
874 fees, Rates and/or charges disallowed by the court are not related to the cost of providing service
875 hereunder and had been incorporated in the Rates charged by Contractor to its Customers.

876 Nothing herein is intended to imply that California Constitution, Articles XIIC or XIID, apply to the
877 Rates established for services provided under this Agreement. Moreover, at its election in its sole
878 discretion, City may conduct a majority protest proceeding under California Constitution, Article
879 XIID prior to granting any Rate adjustment. Any successful protest to a Rate adjustment shall be
880 considered a Change in Law.

881 This provision (i.e., Section 9.1) shall survive the expiration or earlier termination of this
882 Agreement and shall not be construed as a waiver of rights by City to contribution or indemnity
883 from third parties.

884 **F. Survival of Provisions.** Section 9.1 will survive the expiration or earlier termination of this
885 Agreement and shall not be construed as a waiver of rights by City to contribution or indemnity
886 from third parties.

887 **9.2 Insurance**

888 **A. General Requirements.** Contractor shall, at its sole cost and expense, maintain in effect at all
889 times during the Term of this Agreement not less than the following coverage and limits of
890 insurance:

891 **B. Coverages and Requirements.** During the Term of this Agreement, Contractor shall at all times
892 maintain, at its expense, the following coverages and requirements. The comprehensive general
893 liability insurance shall include broad form property damage insurance.

894 1. Minimum Coverages. Insurance coverage shall be with limits not less than the following:

895 **Comprehensive/Commercial General Liability** – \$10,000,000 combined single limit per
896 occurrence for bodily injury, personal injury, and property damage.

897 **Automobile Liability** – \$10,000,000 combined single limit per accident for bodily injury and
898 property damage (include coverage for hired and non-owned vehicles).

899 **Workers’ Compensation** – Statutory Limits/Employers’ Liability - \$1,000,000/accident for
900 bodily injury or disease.

901 **Employee Blanket Fidelity Bond/Commercial Crime Insurance** – \$500,000 per employee
902 and/or event covering dishonesty, forgery, alteration, theft, disappearance, and destruction
903 (inside or outside).

904 2. Additional Insured. City, its officers, agents, employees, and volunteers shall be named as
905 additional insured on all but the workers’ compensation and employee blanket
906 fidelity/commercial crime coverages.

907 3. Said policies shall remain in force through the life of this Agreement and, with the exception
908 of professional liability coverage, shall be payable on a “per occurrence” basis unless City’s
909 Risk Manager specifically consents in writing to a “claims made” basis. For all “claims made”
910 coverage, in the event that the Contractor changes insurance carriers Contractor shall
911 purchase “tail” coverage or otherwise provide for continuous coverage covering the Term of
912 this Agreement and not less than three (3) years thereafter. Proof of such “tail” or other
913 continuous coverage shall be required at any time that the Contractor changes to a new
914 carrier prior to receipt of any payments due.

915 4. The Contractor shall declare all aggregate limits on the required coverage are in place before
916 commencing performance of this Agreement and are available throughout the performance
917 of this Agreement.

918 5. The deductibles or self-insured retentions are for the account of Contractor and shall be the
919 sole responsibility of the Contractor.

920 6. Each insurance policy required by this clause shall be endorsed to state that coverage shall
921 not be canceled by either party, except after thirty (30) days’ prior written notice (10 days
922 for non-payment) by certified mail, return receipt requested, has been given to the City. If
923 Contractor’s insurer refuses to provide this endorsement, Contractor shall be responsible for
924 providing written notice to the City that coverage will be canceled thirty (30) days after the
925 date of the notice or ten (10) days for non-payment.

926 Contractor shall furnish the City with original certificates and amendatory endorsements
927 effecting coverage required by this clause. The endorsements should be on insurance
928 industry forms, provided those endorsements or policies conform to the contract
929 requirements. All certificates and endorsements are to be received and approved by the City
930 before work commences. The City reserves the right to require, at any time, complete,
931 certified copies of all required insurance policies, including endorsements evidencing the
932 coverage required by these specifications.

933 The Certificate with endorsements and notices shall be mailed to: City of Milpitas, Attention:
934 Purchasing, 455 East Calaveras Boulevard, Milpitas California, 95035-5411.

935 7. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII,
936 unless otherwise approved by City Risk Manager.

937 8. The policies shall cover all activities of Contractor, its officers, employees, agents and
938 volunteers arising out of or in connection with this Agreement.

939 9. For any claims relating to this Agreement, the Contractor's insurance coverage shall be
940 primary, including as respects City, its officers, agents, employees, and volunteers. Any
941 insurance maintained by City shall apply in excess of, and not contribute to, coverage
942 provided by Contractor's liability insurance policy.

943 10. The Contractor shall waive all rights of subrogation against City, its officers, employees,
944 agents, and volunteers.

945 **C. Endorsements.** Prior to the Effective Date pursuant to this Agreement, Contractor shall furnish
946 City Contract Manager with certificates or original endorsements reflecting coverage required by
947 this Agreement. The certificates or endorsements are to be signed by a Person authorized by that
948 insurer to bind coverage on its behalf. All certificates or endorsements are to be received by, and
949 are subject to the approval of, City Risk Manager before work commences.

950 **D. Renewals.** During the Term of this Agreement, Contractor shall furnish City Contract Manager
951 with certificates or original endorsements reflecting renewals, changes in insurance companies,
952 and any other documents reflecting the maintenance of the required coverage throughout the
953 entire Term of this Agreement. The certificates or endorsements are to be signed by a Person
954 authorized by that insurer to bind coverage on its behalf.

955 **E. Workers' Compensation.** Contractor shall provide workers' compensation coverage as required
956 by State law, and prior to the Effective Date pursuant to this Agreement, Contractor shall file the
957 following statement with City.

958 "I am aware of the provisions of Paragraph 3700 of the Labor Code that require every employer
959 to be insured against liability for workers' compensation or to undertake self-insurance in
960 accordance with the provisions of that code, and I will comply with such provisions before
961 commencing any services required by this Agreement.

962 Contractor agrees to include in their subcontract the same requirements and provisions of this agreement
963 including the indemnity and insurance requirements to the extent they apply to the scope of the
964 Subcontractor's work. Subcontractors hired by Contractor agree to be bound to Contractor and City in the
965 same manner and to the same extent as Contractor is bound to City under the Contract Documents to the
966 extent they apply to the scope of the Subcontractor's work. Subcontractor further agrees to include these
967 same provisions with any Sub-subcontractor. A copy of the Contract/Agreement and Insurance Provisions
968 will be furnished to the Subcontractor. The Contractor shall require all Subcontractors to provide a valid
969 certificate of insurance and the required endorsements included in the agreement prior to
970 commencement of any work and will provide proof of compliance to the City.

971 The Person executing this Certificate on behalf of Contractor affirmatively represents that she/he has the
972 requisite legal authority to do so on behalf of Contractor, and both the Person executing this Agreement
973 on behalf of Contractor and Contractor understand that City is relying on this representation in entering
974 into this Agreement.

975 **9.3 Performance Bond**

976 Within seven (7) calendar days of the City’s notification to Contractor that the City has executed this
977 Agreement, Contractor shall file with the City a bond, payable to the City, securing the Contractor’s
978 performance of its obligations under this Agreement and such bond shall be renewed annually if necessary
979 so that the performance bond is maintained at all times during the Term. The principal sum of the bond
980 shall be \$1,024,467.90 Dollars, which shall be adjusted every three (3) years, commencing with Rate
981 Period Three, to equal three (3) months of the prior Rate Period’s annual Gross Receipts. The bond shall
982 be executed as surety by a corporation authorized to issue surety bonds in the State of California that has
983 a rating of A or better in the most recent edition of Best’s Key Rating Guide, and that has a record of
984 service and financial condition satisfactory to the City. The bond shall be in the form attached as Exhibit
985 E.

986 As an alternative to the performance bond required above, at City's option, Contractor may deposit with
987 City a fully prepaid irrevocable letter of credit for at least the duration of the Contract Year for which the
988 letter of credit is deposited. Such letter of credit shall be in the amount of one million twenty four
989 thousand four hundred sixty-seven dollars and ninety cents (\$1,024,467.90). The form of the letter of
990 credit and the issuer of the letter of credit are subject to the approval of City's Risk Manager and the City
991 Attorney. Nothing in this Section 9.3 shall in any way obligate City to accept a letter of credit in lieu of the
992 performance bond.

993 City shall have the right to draw against the faithful performance bond or the letter of credit in the event
994 of a breach or default of Contractor or the failure of Contractor to perform fully any obligation under this
995 Agreement. Within five (5) calendar days of receipt of notice from City, Contractor shall renew or replace
996 such sums of money as needed to bring the faithful performance bond or letter of credit current.

997 **ARTICLE 10. DEFAULT AND REMEDIES**

998 **10.1 Events of Default**

999 All provisions of the Agreement are considered material. Each of the following shall constitute an event
1000 of default.

- 1001 **A. Fraud or Deceit.** Contractor practices, or attempts to practice, any fraud or deceit upon the City.
- 1002 **B. Insolvency or Bankruptcy.** Contractor becomes insolvent, unable, or unwilling to pay its debts,
1003 or upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding.
- 1004 **C. Failure to Maintain Coverage.** Contractor fails to provide or maintain in full force and affect the
1005 Workers' Compensation, liability, or indemnification coverage as required by this Agreement.
- 1006 **D. Violations of Regulation.** Contractor violates any orders or filings of any regulatory body having
1007 authority over Contractor relative to this Agreement, provided that Contractor may contest any
1008 such orders or filings by appropriate proceedings conducted in good faith, in which case no breach
1009 or default of this Agreement shall be deemed to have occurred.
- 1010 **E. Violations of Applicable Law.** Contractor violates Applicable Law relative to this Agreement.
- 1011 **F. Failure to Perform Direct Services.** Contractor ceases to provide Transfer or Disposal services as
1012 required under this Agreement for a period of two (2) consecutive calendar days or more, for any
1013 reason within the control of Contractor.

- 1014 **G. Failure to Pay or Report.** Contractor fails to make any payments to City required under this
 1015 Agreement or fails to provide City required information, reports, and/or records in a timely
 1016 manner as provided for in the Agreement.
- 1017 **H. Acts or Omissions.** Any other act or omission by Contractor which violates the terms, conditions,
 1018 or requirements of this Agreement, AB 939 as it may be amended from time to time, or any law,
 1019 statute, ordinance, order, directive, rule, or regulation issued there under and which is not
 1020 corrected or remedied within the time set in the written notice of the violation or, if Contractor
 1021 cannot reasonably correct or remedy the breach within the time set forth in such notice, if
 1022 Contractor should fail to commence to correct or remedy such violation within the time set forth
 1023 in such notice and diligently effect such correction or remedy thereafter.
- 1024 **I. False, Misleading, or Inaccurate Statements.** Any representation or disclosure made to the City
 1025 by Contractor in connection with or as an inducement to entering into this Agreement, or any
 1026 future amendment to this Agreement, which proves to be false or misleading in any material
 1027 respect as of the time such representation or disclosure is made, whether or not any such
 1028 representation or disclosure appears as part of this Agreement; and, any Contractor-provided
 1029 report containing a misstatement, misrepresentation, data manipulation, or an omission of fact
 1030 or content explicitly defined by the Agreement, excepting non-numerical typographical and
 1031 grammatical errors.
- 1032 **J. Seizure or Attachment.** There is a seizure of, attachment of, or levy on, some or all of Contractor's
 1033 operating equipment, including without limits its equipment, maintenance or office facilities,
 1034 Approved Facility(ies), or any part thereof.
- 1035 **K. Suspension or Termination of Service.** Except as set forth in Paragraph 10.7 hereof, there is any
 1036 termination or suspension of the transaction of business by Contractor related to this Agreement,
 1037 including without limit, due to labor unrest including strike, work stoppage or slowdown, sick-out,
 1038 picketing, or other concerted job action lasting more than two (2) calendar days.
- 1039 **L. Criminal Activity.** Contractor, its officers, managers, or employees are found guilty of criminal
 1040 activity related directly or indirectly to performance of this Agreement or any other agreement
 1041 held with the City.
- 1042 **M. Assignment without Approval.** Contractor transfers or assigns this Agreement without the
 1043 expressed written approval of the City as provided in Section 12.6.
- 1044 **N. Failure to Provide Proposal or Implement Change in Service.** Contractor fails to provide a
 1045 proposal for new services or changes to services or fails to implement a change in service as
 1046 mutually agreed upon as specified in Section 3.12.
- 1047 **O. Failure to Perform Any Obligation.** Contractor fails to perform any obligation established under
 1048 this Agreement.

1049 City shall provide Contractor written notice of default within seven (7) calendar days of the occurrence of
 1050 default or within seven (7) calendar days of the City's first knowledge of the Contractor's default,
 1051 whichever occurs first.

1052 **10.2 Right to Terminate Upon Event of Default**

1053 Contractor shall be given ten (10) Business Days from written notification by City to cure any default
 1054 which, in the City Contract Manager's sole opinion, creates a potential public health and safety threat.

1055 Contractor shall be given ten (10) Business Days from written notification by City to cure any default
1056 arising under subsections C, E, F, I, J, and K in Section 10.1 provided, however, that the City shall not be
1057 obligated to provide Contractor with a notice and cure opportunity if the Contractor has committed the
1058 same or similar breach/default within a twenty-four (24) month period.

1059 Contractor shall be given thirty (30) calendar days from written notification by City to cure any other
1060 default (which is not required to be cured within ten (10) Business Days); however, that the City shall not
1061 be obligated to provide Contractor with a notice and cure opportunity if the Contractor has committed
1062 the same or similar breach/default within a twenty-four (24) month period.

1063 Notwithstanding the above, City may suspend, and if necessary terminate the Agreement immediately
1064 upon awareness of serious public health or safety concerns; or if for any reason the Contractor is unable
1065 to use an Approved Facility for an extended period of time, the City may, at its sole discretion, terminate
1066 this Agreement.

1067 **10.3 City's Remedies in the Event of Default**

1068 In the event of Contractor's default, City maintains following remedies:

1069 **A. Waiver of Default.** City may waive any event of default or may waive Contractor's requirement
1070 to cure a default event if City determines that such waiver would be in the best interest of the
1071 City. City's waiver of an event of default is not a waiver of future events of default that may have
1072 the same or similar conditions.

1073 **B. Suspension of Contractor's Obligation.** City may suspend Contractor's performance of its
1074 obligations if Contractor fails to cure default in the time frame specified in Section 10.2 until such
1075 time the Contractor can provide assurance of performance in accordance with Section 10.8.

1076 **C. Liquidated Damages.** City may assess Liquidated Damages for Contractor's failure to meet
1077 specific performance standards pursuant to Section 10.6.

1078 **D. Termination.** In the event that Contractor should default and subject to the right of the
1079 Contractor to cure, in the performance of any provisions of this contract, and the default is not
1080 cured for any default within in ten (10) calendar days if the default creates a potential public
1081 health and safety threat or arises under Section 10.1.C., E, F, I, J, or K, or otherwise thirty (30)
1082 calendar days after receipt of written notice of default from the City, then the City may, at its
1083 option, terminate this Agreement and/or hold a hearing at its City Council meeting to determine
1084 whether this Agreement should be terminated. In the event City decides to terminate this
1085 Agreement, the City shall serve twenty (20) calendar days written notice of its intention to
1086 terminate upon Contractor. In the event City exercises its right to terminate this Agreement, the
1087 City may, at its option, upon such termination, either directly undertake performance of the
1088 services or arrange with other Persons to perform the services with or without a written
1089 agreement. This right of termination is in addition to any other rights of City upon a failure of
1090 Contractor to perform its obligations under this Agreement.

1091 Contractor shall not be entitled to any Per-Ton compensation for services authorized hereunder
1092 from and after the date of termination.

1093 **E. Other Available Remedies.** City's election of one (1) or more remedies described herein shall not
1094 limit the City from any and all other remedies at law and in equity including injunctive relief, etc.

1095 **F. City Retention of Subcontractor Services.** In the event of termination, City shall have the right to
1096 retain the services of the Monterey Regional Waste Management District (District) under the
1097 same terms and conditions as provided in this Agreement. City and District shall promptly meet
1098 and confer to define how City will cause Solid Waste to be Delivered to the Monterey Peninsula
1099 Landfill, the mechanism by which District will be compensated, and other issues as necessary to
1100 facilitate continuation of service under the terms and conditions of this Agreement including
1101 entering into a direct agreement between the parties.

1102 **10.4 Possession of Records upon Termination**

1103 In the event of termination for an event of default, the Contractor shall furnish City Contract Manager
1104 with immediate access to all of its business records, including without limitation, proprietary Contractor
1105 computer records, related to its Transfer and Disposal operations. Contractor shall allow City to observe
1106 and process queries of all computer systems.

1107 **10.5 City's Remedies Cumulative; Specific Performance**

1108 City's rights to terminate the Agreement under Section 10.2 and to take possession of the Contractor's
1109 records under Section 10.4 are not exclusive, and City's termination of the Agreement and/or the
1110 imposition of Liquidated Damages shall not constitute an election of remedies. Instead, these rights shall
1111 be in addition to any and all other legal and equitable rights and remedies which City may have.

1112 By virtue of the nature of this Agreement, the urgency of timely, continuous, and high quality service; the
1113 lead time required to effect alternative service; and, the rights granted by City to the Contractor, the
1114 remedy of damages for a breach hereof by Contractor is inadequate and City shall be entitled to injunctive
1115 relief (including but not limited to specific performance).

1116 **10.6 Performance Standards and Liquidated Damages**

1117 **A. General.** The Parties find that as of the time of the execution of this Agreement, it is impractical,
1118 if not impossible, to reasonably ascertain the extent of damages which shall be incurred by City
1119 as a result of a breach by Contractor of its obligations under this Agreement. The factors relating
1120 to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i)
1121 substantial damage results to members of the public who are denied services or denied quality or
1122 reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of
1123 the benefits of the Agreement to individual members of the general public for whose benefit this
1124 Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of
1125 measurement in precise monetary terms; (iii) that exclusive services might be available at
1126 substantially lower costs than alternative services and the monetary loss resulting from denial of
1127 services or denial of quality or reliable services is impossible to calculate in precise monetary
1128 terms; and, (iv) the termination of this Agreement for such breaches, and other remedies are, at
1129 best, a means of future correction and not remedies which make the public whole for past
1130 breaches.

1131 **B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The Parties
1132 further acknowledge that consistent, reliable Transfer and Disposal services are of utmost
1133 importance to City and that City has considered and relied on Contractor's representations as to
1134 its quality of service commitment in awarding the Agreement to it. The Parties recognize that
1135 some quantified standards of performance are necessary and appropriate to ensure consistent
1136 and reliable service and performance. The Parties further recognize that if Contractor fails to

1137 achieve the performance standards, or fails to submit required documents in a timely manner,
1138 City and its residents and businesses will suffer damages, and that it is, and will be, impractical
1139 and extremely difficult to ascertain and determine the exact amount of damages which City will
1140 suffer. Therefore, without prejudice to City's right to treat such non-performance as an event of
1141 default under this Section, the Parties agree that the Liquidated Damages amounts established
1142 below in Section 10.6.C of this Agreement and the Liquidated Damage amounts therein represent
1143 a reasonable estimate of the amount of such damages considering all of the circumstances
1144 existing on the Effective Date of this Agreement, including the relationship of the sums to the
1145 range of harm to City that reasonably could be anticipated and the anticipation that proof of
1146 actual damages would be costly or impractical.

1147 Contractor agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth in
1148 Section 10.6.C.

1149 Before assessing Liquidated Damages, City shall give Contractor notice of its intention to do so.
1150 The notice will include a brief description of the incident(s) and non-performance. City may review
1151 (and make copies at its own expense) all information in the possession of Contractor relating to
1152 incident(s) and/or non-performance. City or Contractor may, within ten (10) Business Days after
1153 issuing the notice, request a meeting with the other party. The parties may present evidence of
1154 performance or non-performance in writing and through testimony of its employees and others
1155 relevant to the incident(s). City Contract Manager will provide Contractor with a written
1156 explanation of their determination on each incident(s) and non-performance prior to authorizing
1157 the assessment of Liquidated Damages under this Section 10.6. The decision of City Contract
1158 Manager shall be final and Contractor shall not be subject to, or required to exhaust, any further
1159 administrative remedies.

1160 **C. Two-Phase Performance Management.** The Parties desire to minimize the time and cost involved
1161 in monitoring Contractor's performance under this Agreement, particularly with regard to the
1162 assessment of Liquidated Damages. This Section 10.6.C identifies each "Performance Area" for
1163 which the City desires to establish performance standards for this Agreement. Contractor's
1164 performance within each "Performance Area" shall be primarily monitored using the
1165 "Performance Indicator" described for each. The City shall not assess Liquidated Damages for the
1166 "Specific Performance Measures" identified below unless Contractor fails to meet the minimum
1167 standard for the "Performance Indicator" within the same "Performance Area".

1168 **1. Performance Area No. 1: Reporting**

1169 Overall Performance Indicator: Contractor's reporting shall be considered acceptable if Reports
1170 required under Section 6.3.C. and record requests allowed under Article 6 to this Agreement are
1171 received, complete, and accurate within seven (7) calendar days after the date due or date of
1172 requested. If Contractor fails to meet this level of performance, City may assess Liquidated
1173 Damages for the specific performance measures identified in the following table.

| Specific Performance Measure | Definition | Acceptable Performance Level | Liquidated Damage Amount |
|--|---|---|--------------------------|
| Late Report | Each occurrence of a report, as required under Section 6.3 to this Agreement, being submitted after the due date. Reports shall be considered late until they are submitted in a complete and accurate format. | Less than seven (7) calendar days after report due date | \$250/Day |
| Failure to Maintain or Provide Access to Records | Each occurrence of City Contract Manager requesting information required to be maintained by Contractor where Contractor fails to provide such information. | Less than seven (7) calendar days after report due date | \$500/Event |
| Misleading/ Inaccurate Reporting | Each occurrence of Contractor providing misleading or otherwise inaccurate information or reporting to City under or in regard to this Agreement. Typographical, cell reference, mathematical, and/or logic errors shall not be considered legitimate excuses from this requirement, nor shall ignorance. | No acceptable failure level | \$500/Event |

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2. Performance Area No. 2: Facilities

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Overall Performance Indicator: Contractor’s performance relative to facilities shall be considered acceptable when one hundred percent (100%) of Delivered Solid Waste is Accepted, or rejected for reasonable cause. If Contractor fails to meet this level of performance, City may assess Liquidated Damages for the specific performance measures identified in the following table.

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| Specific Performance Measure | Definition | Acceptable Performance Level | Liquidated Damage Amount |
|---|--|------------------------------|--------------------------|
| Contractor Failure to Accept Solid Waste Delivered by Franchise Collector | Inability of Contractor to Accept Solid Waste at an Approved Facility for any reason other than an event of force majeure, and without prior arrangement for use of an Alternative Facility. | No acceptable failure level | \$500/ton |

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D. Amount. City 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 this Section 10.6, subject to annual adjustment described below.

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E. Timing of Payment. Contractor shall pay any Liquidated Damages assessed by City within ten (10) Business Days of the date the Liquidated Damages are assessed. If they are not paid within the ten (10) Business Day period, City may proceed against the performance bond required by the Agreement, order the termination of the rights granted by this Agreement, or all of the above.

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10.7 Excuse from Performance

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The Parties shall be excused from performing their respective obligations hereunder and from any obligation to pay Liquidated Damages if they are prevented from so performing by reason of floods, earthquakes, other acts of nature, war, civil insurrection, riots, acts of any government (including judicial

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1192 action), and other similar catastrophic events which are beyond the control of and not the fault of the
1193 Party claiming excuse from performance hereunder. In the case of labor unrest or job action directed at a
1194 third party over whom Contractor has no control, the inability of Contractor to provide services in
1195 accordance with this Agreement due to the unwillingness or failure of the third party to: (i) provide
1196 reasonable assurance of the safety of Contractor's employees while providing such services; or, (ii) make
1197 reasonable accommodations with respect to point of Delivery, time of Acceptance, or other operating
1198 circumstances to minimize any confrontation with pickets or the number of Persons necessary to perform
1199 Transfer and Disposal services shall, to that limited extent, excuse performance. The foregoing excuse
1200 shall be conditioned on Contractor's cooperation in performing Transfer and Disposal services at different
1201 times and in different locations. Further, in the event of labor unrest, including but not limited to strike,
1202 work stoppage or slowdown, sickout, picketing, or other concerted job action conducted by the
1203 Contractor's employees or directed at the Contractor, or a subsidiary, the Contractor shall not be excused
1204 from performance, but may with City approval direct Solid Waste to an Alternative Facility as provided in
1205 Section 5.9.

1206 The Party claiming excuse from performance shall, within two (2) calendar days after such Party has notice
1207 of such cause, give the other Party notice of the facts constituting such cause and asserting its claim to
1208 excuse under this Section.

1209 If either Party validly exercises its rights under this Section, the Parties hereby waive any claim against
1210 each other for any damages sustained thereby.

1211 The partial or complete interruption or discontinuance of Contractor's services caused by one (1) or more
1212 of the events described in this Article shall not constitute a default by Contractor under this Agreement.
1213 Notwithstanding the foregoing, however, if Contractor is excused from performing its obligations
1214 hereunder for any of the causes listed in this Section for a period of thirty (30) calendar days or more, City
1215 shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10)
1216 Business Days' notice to Contractor, in which case the provisions of Section 10.4 shall apply.

1217 **10.8 Right to Demand Assurances of Performance**

1218 The Parties acknowledge that it is of the utmost importance to City and the health and safety of all those
1219 members of the public residing or doing business within City who will be adversely affected by interrupted
1220 waste management service, that there be no material interruption in services provided under this
1221 Agreement.

1222 If Contractor: (i) is the subject of any labor unrest including work stoppage or slowdown, sick-out,
1223 picketing or other concerted job action; (ii) appears in the reasonable judgment of City to be unable to
1224 regularly pay its bills as they become due; or, (iii) is the subject of a civil or criminal judgment or order
1225 entered by a Federal, State, regional or local agency for violation of an Applicable Law, and City believes
1226 in good faith that Contractor's ability to perform under the Agreement has thereby been placed in
1227 substantial jeopardy, City may, at its sole option and in addition to all other remedies it may have, demand
1228 from Contractor reasonable assurances of timely and proper performance of this Agreement, in such form
1229 and substance as City believes in good faith is reasonably necessary in the circumstances to evidence
1230 continued ability to perform under the Agreement. If Contractor fails or refuses to provide satisfactory
1231 assurances of timely and proper performance in the form and by the date required by City, such failure or
1232 refusal shall be an event of default for purposes of Section 10.1.

1233 **ARTICLE 11. REPRESENTATIONS AND WARRANTIES OF THE**
1234 **PARTIES**

1235 The Parties, by acceptance of this Agreement, represent and warrant the conditions presented in this
1236 Article.

1237 **11.1 Contractor's Corporate Status**

1238 Contractor is a corporation duly organized, validly existing and in good standing under the laws of the
1239 State. It is qualified to transact business in the State and has the power to own its properties and to carry
1240 on its business as now owned and operated and as required by this Agreement.

1241 **11.2 Contractor's Corporate Authorization**

1242 Contractor has the authority to enter this Agreement and perform its obligations under this Agreement.
1243 The Board of Directors of Contractor (or the shareholders, if necessary) has taken all actions required by
1244 law, its articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement.
1245 The Person signing this Agreement on behalf of Contractor represents and warrants that they have
1246 authority to do so. This Agreement constitutes the legal, valid, and binding obligation of the Contractor.

1247 **11.3 Agreement Will Not Cause Breach**

1248 To the best of Contractor's and City's knowledge after reasonable investigation, the execution or delivery
1249 of this Agreement or the performance by either Party of their obligations hereunder does not conflict
1250 with, violate, or result in a breach: (i) of any Applicable Law; or, (ii) any term or condition of any judgment,
1251 order, or decree of any court, administrative agency or other governmental authority, or any agreement
1252 or instrument to which Contractor or City is a party or by which Contractor or any of its properties or
1253 assets are bound, or constitutes a default hereunder.

1254 **11.4 No Litigation**

1255 To the best of Contractor's and City's knowledge after reasonable investigation, there is no action, suit,
1256 proceeding or investigation, at law or in equity, before or by any court or governmental authority,
1257 commission, board, agency or instrumentality decided, pending or threatened against either Party
1258 wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would:

- 1259 A. Materially adversely affect the performance by Party of its obligations hereunder;
1260 B. Adversely affect the validity or enforceability of this Agreement; or,
1261 C. Have a material adverse effect on the financial condition of Contractor, or any surety or entity
1262 guaranteeing Contractor's performance under this Agreement.

1263 **11.5 No Adverse Judicial Decisions**

1264 To the best of Contractor's and City's knowledge after reasonable investigation, there is no judicial
1265 decision that would prohibit this Agreement or subject this Agreement to legal challenge.

1266 **11.6 No Legal Prohibition**

1267 To the best of each Party’s knowledge, after reasonable investigation, there is no Applicable Law in effect
1268 on the date that Party signed this Agreement that would prohibit the performance of either their
1269 obligations under this Agreement and the transactions contemplated hereby.

1270 **11.7 Contractor’s Ability to Perform**

1271 Contractor possesses the business, professional, and technical expertise to perform all services,
1272 obligations, and duties as described in and required by this Agreement including all Exhibits thereto.
1273 Contractor possesses the ability to secure equipment, facility, and employee resources required to
1274 perform its obligations under this Agreement.

1275 **ARTICLE 12. OTHER AGREEMENTS OF THE PARTIES**

1276 **12.1 Relationship of Parties**

1277 The Parties intend that Contractor shall perform the services required by this Agreement as an
1278 independent Contractor engaged by City and neither as an officer nor employee of City, nor as a partner
1279 or agent of, or joint venturer with, City. No employee or agent of Contractor shall be, or shall be deemed
1280 to be, an employee or agent of City. Contractor shall have the exclusive control over the manner and
1281 means of performing services under this Agreement, except as expressly provided herein. Contractor shall
1282 be solely responsible for the acts and omissions of its officers, employees, Subcontractors and agents.
1283 Neither Contractor nor its officers, employees, Subcontractors, or agents shall obtain any rights to
1284 retirement benefits, workers' compensation benefits, or any other benefits which accrue to City
1285 employees by virtue of their employment with City.

1286 **12.2 Compliance with Law**

1287 Contractor shall at all times, at its sole cost, comply with all Applicable Laws, permits and licenses of the
1288 United States, the State, County of Santa Clara, and City and with all applicable regulations promulgated
1289 by Federal, State, regional or local administrative and regulatory agencies, now in force and as they may
1290 be enacted, issued or amended during the Term.

1291 **12.3 Governing Law**

1292 This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the
1293 State of California.

1294 **12.4 Jurisdiction**

1295 Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the
1296 courts of Santa Clara County in the State of California, which shall have exclusive jurisdiction over such
1297 lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be performed
1298 in Santa Clara County.

1299 **12.5 Binding on Successors**

1300 The provisions of this Agreement shall inure to the benefit to and be binding on the successors and
1301 permitted assigns of the Parties.

1302 **12.6 Assignment**

1303 Contractor acknowledges that this Agreement involves rendering a vital service to City’s residents and
1304 businesses, and that City has selected Contractor to perform the services specified herein based on (i)
1305 Contractor’s experience, skill and reputation for conducting its operations in a safe, effective and
1306 responsible fashion, and (ii) Contractor’s financial resources to maintain the required equipment and to
1307 support its indemnity obligations to City under this Agreement. City has relied on each of these factors,
1308 among others, in choosing Contractor to perform the services to be rendered by Contractor under this
1309 Agreement.

1310 **A. City Consent Required.** Contractor shall not assign its rights or delegate or otherwise transfer any
1311 or all of its obligations under this Agreement to any other Person without the prior written
1312 consent of City which may be withheld with or without cause at City’s sole discretion. City may
1313 refuse to consent to a proposed assignment unless it is satisfied that the proposed assignee is
1314 ready, willing and able to provide services in a manner equal to or better than Contractor. Any
1315 assignment made in violation of this Section 12.6.A shall be void and the attempted assignment
1316 shall constitute a Contractor default.

1317 **B. Assignment Defined.** For the purpose of this Section, “assignment” shall include, but not be
1318 limited to, (i) a documentary assignment of Contractor’s interest in, and obligations under, this
1319 Agreement; (ii) a sale, exchange or other transfer to a third Party of substantially all of
1320 Contractor’s assets dedicated to service under this Agreement; (iii) a sale, exchange or other
1321 transfer of over thirty percent (30%) of outstanding common stock of Contractor to a Person who
1322 is not a shareholder as of the Effective Date; (iv) any dissolution, reorganization, consolidation,
1323 merger, re-capitalization, stock issuance or reissuance, voting trust, pooling agreement, escrow
1324 arrangement, liquidation or other transaction which results in a change of ownership or control
1325 of Contractor; (v) any assignment by operation of law, including insolvency or bankruptcy, an
1326 assignment for the benefit of creditors, a writ of attachment for an execution being levied against
1327 this Agreement, appointment of a receiver taking possession of Contractor’s property, or transfer
1328 occurring in the event of a probate proceeding; and (vi) any combination of the foregoing
1329 (whether or not in related or contemporaneous transactions) which has the effect of any such
1330 transfer or change of ownership, or change of control of Contractor.

1331 **C. Consent Requirements.** No request by Contractor for consent to an assignment need be
1332 considered by City unless and until Contractor has met the following requirements:

- 1333 1. Contractor shall pay City its reasonable expenses for attorneys’ fees, consultants’ fees and
1334 other costs of investigation necessary to investigate the suitability of any proposed assignee,
1335 and to review and finalize any documentation required as a condition for approving any such
1336 assignment. With its written request for consideration of assignment, Contractor shall
1337 submit a non-refundable deposit to City in the amount of \$150,000 to provide City funding
1338 for its review of the assignment;
- 1339 2. Contractor shall be granted no opportunity to review or approve proposed agents of the City
1340 associated with assignment process;
- 1341 3. Contractor shall furnish City with audited financial statements of the proposed assignee’s
1342 operations for the immediately preceding three (3) operating years. City, following review of
1343 financial health of the assignee, may require provision of additional performance surety,
1344 insurance, or secured Closure/Post-Closure funding;

- 1345 4. Contractor shall furnish City with satisfactory proof: (i) that the proposed assignee has at
1346 least ten (10) years of Solid Waste Transfer and Disposal management experience on a scale
1347 equal to or exceeding the scale of operations conducted by Contractor under this
1348 Agreement; (ii) that in the last five (5) years, the proposed assignee has not been the subject
1349 of any administrative or judicial proceedings initiated by a federal, State or local agency
1350 having jurisdiction over its operations due to an alleged failure to comply with federal, State
1351 or local laws or that the proposed assignee has provided City with a complete list of such
1352 proceedings and their status; (iii) that the proposed assignee conducts its operations in a
1353 safe and environmentally conscientious manner; (iv) that the proposed assignee conducts its
1354 operations in accordance with sound Solid Waste management practices in full compliance
1355 with all federal, State and local laws regulating the Transfer and Disposal of Solid Waste and
1356 all Environmental Laws; (v) of any other information required by City to ensure the proposed
1357 assignee can fulfill the terms of this Agreement in a timely, safe and effective manner; and
- 1358 5. Any permitted assignee must assume Contractor’s responsibilities under this Agreement.
- 1359 6. Should City consent to the assignment, Contractor shall make an assignment payment to the
1360 City in the amount of 2% of the annual Gross Receipts for the services provided under this
1361 Agreement for the most recently completed calendar year.

1362

1363 **D. No Obligation to Consider.** City will not be obligated to consider a proposed assignment if
1364 Contractor is in default.

1365 **E. Retention of Records.** Assignment of the Agreement in no way relieves Contractor of its record
1366 retention responsibilities under Section 6.1, nor of any and all other Contractor obligations that
1367 survive the Agreement.

1368 **12.7 No Third Party Beneficiaries**

1369 This Agreement is not intended to, and will not be construed to, create any right on the part of any third
1370 party to bring an action to enforce any of its terms.

1371 **12.8 Waiver**

1372 The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be
1373 deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach of
1374 violation of the same or any other provision. The subsequent acceptance by either Party of any monies
1375 which become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach
1376 or violation by the other Party of any provision of this Agreement.

1377 **12.9 Notice Procedures**

1378 All notices, demands, requests, proposals, approvals, consents, and other communications, which this
1379 Agreement requires, authorizes or contemplates, shall be in writing and shall either be personally
1380 delivered to a representative of the Parties at the address below or deposited in the United States mail,
1381 first class postage prepaid, addressed as follows:

- 1382 A. If communications to the City are notices of legal action or request for public information, such
1383 communication shall be directed to:

1384 City Clerk
1385 City of Milpitas
1386 City Hall
1387 455 E. Calaveras Blvd.
1388 Milpitas, CA 95035
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1390

1391 With a copy to the Director of Engineering/City Engineer at the address below.
1392

1393 All other communications shall be directed to:

1394 Director of Engineering/City Engineer
1395 City of Milpitas
1396 City Hall
1397 455 E. Calaveras Blvd.
1398 Milpitas, CA 95035
1399

1400 If to Contractor:

1401 Mr. Frank Weigel
1402 Chief Operating Officer and Secretary
1403 1500 Berger Drive
1404 San Jose, CA 95112

1405 B. The address to which communications may be delivered may be changed from time to time by a
1406 notice given in accordance with this Section. Notice shall be deemed given on the day it is
1407 personally delivered or, if mailed, three (3) calendar days from the date it is deposited in the mail.

1408 **12.10 Representatives of the Parties**

1409 References in this Agreement to the "City" shall mean the City's elected body and all actions to be taken
1410 by City except as provided below. The City may delegate, in writing, authority to the City Contract Manager
1411 and/or to other City officials and may permit such officials, in turn, to delegate in writing some or all of
1412 such authority to subordinate officers. The Contractor may rely upon actions taken by such delegates if
1413 they are within the scope of the authority properly delegated to them.

1414 The Contractor shall, by the Effective Date, designate in writing a responsible officer who shall serve as
1415 the representative of the Contractor in all matters related to the Agreement and shall inform City in
1416 writing of such designation and of any limitations upon his or her authority to bind the Contractor. City
1417 may rely upon action taken by such designated representative as actions of the Contractor unless they
1418 are outside the scope of the authority delegated to him/her by the Contractor as communicated to City.

1419 **ARTICLE 13. MISCELLANEOUS AGREEMENTS**

1420 **13.1 Entire Agreement**

1421 This Agreement is the entire agreement between the Parties with respect to the subject matter hereof
1422 and supersedes all prior and contemporaneous oral and written agreements and discussions. Each Party

1423 has cooperated in the drafting and preparation of this Agreement and this Agreement shall not be
1424 construed against any Party on the basis of drafting. This Agreement may be amended only by an
1425 agreement in writing, signed by each of the Parties hereto.

1426 **13.2 Section Headings**

1427 The article headings and section headings in this Agreement are for convenience of reference only and
1428 are not intended to be used in the construction of this Agreement nor to alter or affect any of its
1429 provisions.

1430 **13.3 References to Laws**

1431 All references in this Agreement to laws and regulations shall be understood to include such laws as they
1432 may be subsequently amended or recodified, unless otherwise specifically provided herein.

1433 **13.4 Amendments**

1434 This Agreement may not be modified or amended in any respect except in writing signed by the Parties.

1435 **13.5 Severability**

1436 If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable,
1437 the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this
1438 Agreement, which shall be enforced as if such invalid or unenforceable provision had not been contained
1439 herein.

1440 **13.6 Counterparts**

1441 This Agreement may be executed in counterparts, each of which shall be considered an original.

1442 **13.7 Exhibits**

1443 Each of the Exhibits identified as Exhibit "A" through "H" is attached hereto and incorporated herein and
1444 made a part hereof by this reference. In the event of a conflict between the terms of this Agreement and
1445 the terms of an Exhibit, the terms of this Agreement shall control.

1446 IN WITNESS WHEREOF, City and Contractor have executed this Agreement as of the day and year first
1447 above written.

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1451 ATTEST:

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1455

City CLERK

City of Milpitas ("City")

1456 By _____
1457 City Clerk

By _____
City Manager

1458
1459

1460 Date: _____

Date: _____

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1463 APPROVED AS TO FORM:

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City Attorney

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1470 Date: _____

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1475 APPROVED AS TO FORM:

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GreenWaste Recovery, Inc.

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1480 By: 
1481 Frank Weigel

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Title: Chief Operating Officer

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1485

1486 Date: March 7, 2016

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EXHIBIT A: DEFINITIONS

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

4 **"AB 341"** means the California Jobs and Recycling Act of 2011 (Chapter 476, Statutes of 2011 [Chesbro, AB
5 341]), also commonly referred to as "AB 341", as amended, supplemented, superseded, and replaced
6 from time to time.

7 **"AB 939"** means the California Integrated Waste Management Act of 1989 (Division 30 of the California
8 Public Resources Code), also commonly referred to as "AB 939," as amended, supplemented, superseded,
9 and replaced from time to time.

10 **"AB 1594"** means the 2014 act to amend Sections 40507 and 41781.3 of the Public Resources Code,
11 relating to solid waste (Chapter 719, Statutes of 2014 [Williams, AB 1594], also commonly referred to as
12 "AB 1594", as amended, supplemented, superseded, and replaced from time to time.

13 **"AB 1826"** means the Organic Waste Recycling Act of 2014 (Chapter 727, Statutes of 2014 [Chesbro, AB
14 1826]), also commonly referred to as "AB 1826", as amended, supplemented, superseded, and replaced
15 from time to time.

16 **"Accept"** or **"Acceptance"** (or other variations thereof) means the transfer of ownership of Solid Waste
17 from the Franchise Collector to the Contractor upon Delivery to an Approved Facility.

18 **"Affiliate"** means all businesses (including corporations, limited and general partnerships and sole
19 proprietorships) which are directly or indirectly related to Contractor by virtue of direct or indirect
20 Ownership interest or common management. They shall be deemed to be "Affiliated with" Contractor
21 and included within the term "Affiliates" as used herein. An Affiliate shall include: (i) a business in which
22 Contractor has a direct or indirect Ownership interest, (ii) a business, which has a direct or indirect
23 Ownership interest in Contractor and/or (iii) a business, which is also Owned, controlled or managed by
24 any business or individual which has a direct or indirect Ownership interest in Contractor. For the
25 purposes of this definition, "Ownership" means ownership as defined in the constructive ownership
26 provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date here, provided
27 that ten percent (10%) shall be substituted for fifty percent (50%) in Section 318(a)(2)(C) and in Section
28 318(a)(3)(C) thereof; and Section 318(a)(5)(C) shall be disregarded. For purposes of determining
29 ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership
30 interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined
31 on the basis of the percentage of voting interest of value which the ownership interest represents.

32 **"Agreement"** means this Agreement between City and Contractor, including all exhibits, and any future
33 amendments hereto.

34 **"Alternative Daily Cover (ADC)"** means CalRecycle-approved materials other than soil used as a
35 temporary overlay on an exposed landfill face. Generally, these materials must be processed so that they
36 do not allow gaps in the face surface, which would provide breeding grounds for insects and vermin.

EXHIBIT A: DEFINITIONS

37 **“Alternative Facility(ies)”** means the Transfer and/or Disposal facility(ies) proposed by Contractor and
38 approved by City for use in the event that an Approved Facility is unavailable for use. Alternative Facilities
39 are identified in Exhibit H.

40 **“Alternative Intermediate Cover (AIC)”** means CalRecycle-approved materials other than soil used at a
41 landfill on all surfaces of the fill where no additional Solid Waste will be deposited within one hundred
42 eighty (180) days. Generally, these materials must be processed so that they do not allow gaps in the face
43 surface, which would provide breeding grounds for insects and vermin.

44 **“Applicable Law”** means all Federal, State, County, and local laws, regulations, rules, orders, judgments,
45 degrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over
46 the Transfer, Transport and Disposal of Solid Waste that are in force on the Effective Date and as may be
47 enacted, issued or amended during the Term of this Agreement.

48 **“Approved Disposal Facility”** means the Monterey Peninsula Landfill at 14201 Del Monte Boulevard,
49 Marina, County of Monterey, CA 93933, which is owned and operated by the Monterey Regional Waste
50 Management District.

51 **“Approved Facility(ies)”** means or both of the Approved Transfer Facility and the Approved Disposal
52 Facility.

53 **“Approved Transfer Facility”** means the GreenWaste Material Recovery Facility at 625 Charles Street, San
54 Jose, CA 95112, which is owned and operated by GreenWaste Recovery, Inc.

55 **“Beneficial Reuse”** means use of material for beneficial reuse which shall include, but not be limited to,
56 the following: Alternative Daily Cover, Alternative Intermediate Cover, final cover foundation layer, liner
57 operations layer, leachate and landfill gas collection system, construction fill, road base, wet weather
58 operations pads and access roads, and soil amendments for erosion control and landscaping.

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

60 **“Change in Law”** means any of the following events or conditions that has a material and adverse effect
61 on the performance by the Parties of their respective obligations under this Agreement (except for
62 payment obligations, or City Diversion decisions or obligations that have the effect of reducing the relative
63 tonnages of Solid Waste available for Disposal):

64 a. The enactment, adoption, promulgation, issuance, modification, or written change in
65 administrative or judicial interpretation of any Applicable Law on or after the Effective Date that has the
66 effect of increasing Contractor’s direct cost of operations; or,

67 b. The order or judgment of any governmental body, on or after the Effective Date, to the extent
68 such order or judgment is not the result of willful or negligent action, error or omission or lack of
69 reasonable diligence of City or of the Contractor, whichever is asserting the occurrence of a Change in
70 Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such
71 order or judgment shall not constitute or be construed as such a willful or negligent action, error or
72 omission or lack of reasonable diligence.

EXHIBIT A: DEFINITIONS

73 **“City”** means the City of Milpitas, a municipal corporation, and all the territory lying within the municipal
74 boundaries of the City as presently existing or as such boundaries may be modified during the Term.

75 **“City Contract Manager”** means the City representative specified in Section 3.9, who is the main point of
76 contact for this Agreement.

77 **“Closure”** means the mandated activities stipulated in Applicable Law and required to be conducted
78 following conclusion of Disposal activities at the Approved Disposal Facility or any portion of the Approved
79 Disposal Facility such that Post-Closure activities can commence, including but not limited to all planning,
80 design, regulatory approvals, plan implementation, construction and monitoring.

81 **“Collect or Collection (or any variation thereof)”** means the action of the Franchise Collector in collecting
82 Solid Waste from within the Service Area for Delivery to an Approved Facility.

83 **“Commencement Date”** means the date specified in Section 2.1 on which Contractor shall begin to
84 provide the Transfer and Disposal services required by this Agreement.

85 **“Composting or Compost (or any variation thereof)”** includes a controlled biological decomposition of
86 organic materials yielding a safe and nuisance free compost product.

87 **“Construction and Demolition Debris (C&D)”** includes discarded building materials, packaging, debris,
88 and rubble resulting from construction, alteration, remodeling, repair or demolition operations on any
89 pavements, excavation projects, houses, commercial buildings, or other structures, excluding Excluded
90 Waste.

91 **“Container(s)”** mean Bins, Carts, Compactors, and Drop Boxes.

92 **“Contractor”** means GreenWaste Recovery, Inc. organized and operating under the laws of the State and
93 its officers, directors, employees, agents, companies, related-parties, affiliates, subsidiaries, and
94 Subcontractors.

95 **“Contractor’s Compensation”** means the monetary compensation received by Contractor in return for
96 providing services in accordance with this Agreement as described in Article 8.

97 **“Contractor’s Proposal”** means the proposal submitted to City by Contractor on October 27, 2015 for
98 provision of Solid Waste Transfer and Disposal services and certain supplemental written materials, which
99 are included as Exhibit I to this Agreement and are incorporated by reference.

100 **“County”** means the County of Santa Clara.

101 **“County of Monterey”** means County in which Approved Disposal Facility is located.

102 **“Delivered”** or **“Delivery”** (or other variations thereof) means the action of the Franchise Collector in
103 bringing Solid Waste to an Approved Facility for Disposal.

104 **“Designated Waste”** means non-Hazardous Waste which may pose special Disposal problems because of
105 its potential to contaminate the environment and which may be Disposed of only in Class II Disposal

EXHIBIT A: DEFINITIONS

106 Facilities or Class III Disposal Facilities pursuant to a variance issued by the California Department of Health
107 Services. Designated Waste consists of those substances classified as Designated Waste by the State, in
108 California Code of Regulations Title 23, Section 2522 as may be amended from time to time.

109 **“Disposal or Dispose** (or any variation thereof)” means the final disposition of Solid Waste intended for
110 placement in a Disposal Facility.

111 **“Disposal Facility”** means a facility for ultimate Disposal of Solid Waste.

112 **“Diversion** (or any variation thereof)” means activities which reduce or eliminate the amount of Solid
113 Waste to be Disposed including, but not limited to, Recycling and Composting of Source Separated
114 Materials and Processing of Solid Waste.

115 **“Effective Date”** means the date on which the latter of the two Parties signs this Agreement.

116 **“Excluded Waste”** means Hazardous Substance, Hazardous Waste, Infectious Waste, Designated Waste,
117 volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, waste that
118 Contractor reasonably believes would, as a result of or upon Disposal, be a violation of local, State or
119 Federal law, regulation or ordinance, including land use restrictions or conditions, waste that cannot be
120 Disposed of in Class III landfills, waste that in Contractor’s reasonable opinion would present a significant
121 risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or
122 City to potential liability; but not including de minimis volumes or concentrations of waste of a type and
123 amount normally found in residential Solid Waste after implementation of programs for the safe
124 Collection, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500
125 and 41802 of the California Public Resources Code.

126 **“E-Waste”** means discarded electronic equipment including, but not limited to, televisions, computer
127 monitors, central processing units (CPUs), laptop computers, computer peripherals (including external
128 hard drives, keyboards, scanners, and mice), printers, copiers, facsimile machines, radios, stereos, stereo
129 speakers, VCRs, DVDs, camcorders, microwaves, telephones, cellular telephones, and other electronic
130 devices. Some E-Waste or components thereof may be Hazardous Waste or include Hazardous Substances
131 and thus require special handling, Processing, or Disposal.

132 **“Federal”** means belonging to or pertaining to the Federal government of the United States.

133 **“Food Scraps”** means those food-related discarded materials that will decompose and/or putrefy
134 including: (i) all kitchen and table food waste; (ii) animal or vegetable waste that is generated during or
135 results from the storage, preparation, cooking or handling of food stuffs; (iii) discarded paper that is
136 contaminated with Food Scraps; (iv) fruit waste, grain waste, dairy waste, meat, and fish waste; and, (v)
137 non-Recyclable paper or contaminated paper. Food Scraps are a subset of Organic Materials.

138 **“Franchised Collector”** means { } that entered into an exclusive franchise agreement with
139 the City, entitled “Franchise Agreement between the City of Milpitas and [redacted] for Collection and
140 Processing of Discarded Materials,” dated [redacted].

141 **“Generator”** means any Person whose act or process produces Solid Waste as defined in the Public
142 Resources Code, or whose act first causes Solid Waste to become subject to regulation.

EXHIBIT A: DEFINITIONS

143 **“Gross Receipts”** shall mean total cash receipts collected from Customers by the Contractor for the
144 provision of services pursuant to this Agreement, without any deductions.

145 **“Hazardous Substance”** means any of the following: (a) any substances defined, regulated or listed
146 (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic
147 waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the
148 environment, in or pursuant to: (i) the Comprehensive Environmental Response, Compensation and
149 Liability Act (CERCLA) of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation
150 Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv)
151 the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8,
152 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and, (vii) California Water Code §13050;
153 (b) any amendments, rules or regulations promulgated there under to such enumerated statutes or acts
154 currently existing or hereafter enacted; and, (c) any other hazardous or toxic substance, material,
155 chemical, waste or pollutant identified as hazardous or toxic or regulated under any other Applicable Law
156 currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated
157 biphenyl's (PCBs), petroleum, natural gas, and synthetic fuel products, and by-products.

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

164 **“Holidays”** are defined as New Year's Day, Thanksgiving Day, and Christmas Day.

165 **“Household Hazardous Waste”** or **“HHW”** means Hazardous Waste generated at residential Premises
166 within the City. HHW includes, but is not limited to: paint, stain, varnish, thinner, adhesives, auto products
167 such as old fuel, used motor oil, used oil filter, batteries, household batteries, fluorescent bulbs, tubes,
168 cleaners and sprays, pesticides, fertilizers and other garden products, needles, syringes, and lancets.

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

173 **“Liquidated Damages”** means the amounts due by Contractor for failure to meet specific quantifiable
174 standards of performance as described in Section 10.6.

175 **“Organic Materials”** means those Yard Trimmings and Food Scraps which are placed by Generators for
176 Collection together or separately and that are specifically accepted at the Approved Organic Materials
177 Processing Facility. No Discarded Material shall be considered to be Organic Materials, however, unless
178 it is separated from Solid Waste, Recyclable Material, and C&D.

179 **“Owner”** means the Person(s) holding legal title to real property and/or any improvements thereon, and
180 shall include the Person(s) listed on the latest equalized assessment roll of the County Assessor.

EXHIBIT A: DEFINITIONS

- 181 **“Party or Parties”** refers to the City and Contractor, individually or together.
- 182 **“Permits”** means all federal, State, county, City, other local and any other governmental unit permits,
183 orders, licenses, approvals, authorizations, consents and entitlements that are required under Applicable
184 Law to be obtained or maintained by any Person with respect to services performed under this
185 Agreement, as renewed or amended from time to time.
- 186 **“Person(s)”** means any individual, firm, association, organization, partnership, corporation, trust, joint
187 venture, or public entity.
- 188 **“Per-Ton Rate”** means the per-unit compensation owed Contractor by City for each ton of Solid Waste
189 Delivered by the Franchise Collector as payment for all services provided under this Agreement, and as
190 adjusted annually as provided in Article 8.
- 191 **“Post-Closure”** means the mandated activities stipulated in Applicable Law requiring long-term
192 monitoring and maintenance of the Approved Disposal Facility, or of any portion of the Approved Disposal
193 Facility that has been fully Closed in compliance with Applicable Law.
- 194 **“Processing”** means to prepare, treat, or convert through some special method.
- 195 **“Rate Period”** means a twelve (12) month period, commencing January 1 and concluding December 31,
196 except that Rate Period One begins September 6, 2017 and ends December 31, 2018.
- 197 **“Recyclable Materials”** means those discarded materials that: the Generators set out in Recyclables
198 Containers for Collection for the purpose of Recycling by the Franchise Collector. No discarded materials
199 shall be considered Recyclable Materials unless such material is separated from Solid Waste, Organic
200 Materials, and C&D. Recyclable Materials shall include, but not be limited to: newspaper (including inserts,
201 coupons, and store advertisements); mixed paper (including office paper, computer paper, magazines,
202 junk mail, catalogs, brown paper bags, brown paper, paperboard, paper egg cartons, telephone books,
203 grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, cereal, and
204 other similar food boxes yet excluding paper tissues, paper towels, paper with plastic coating, paper
205 contaminated with food, wax paper, foil-line paper, Tyvex non-tearing paper envelopes); chipboard;
206 corrugated cardboard; glass containers of any color (including brown, clear, and green glass bottles and
207 jars); aluminum (including beverage containers and small pieces of scrap metal); steel, tin or bi-metal
208 cans; mixed plastics such as plastic containers (no. 1 to 7); and, bottles including containers made of HDPE,
209 LDPE, or PET.
- 210 **“Recycle or Recycling”** means the process of sorting, cleansing, treating, and reconstituting at a Processing
211 Facility materials that would otherwise be Disposed of at a landfill for the purpose of returning such
212 materials to the economy in the form of raw materials for new, reused, or reconstituted products.
- 213 **“Residue”** means those materials which, after Processing, are Disposed rather than Recycled due to either
214 the lack of markets for materials or the inability of the Processing Facility to capture and recover the
215 materials.
- 216 **“SB 1016”** means Chapter 343, Statutes of 2008, Wiggins, also commonly referred to as “SB 1016”, as
217 amended, supplemented, superseded, and replaced from time to time.

EXHIBIT A: DEFINITIONS

218 **“Service Area”** means the physical area encompassed by the jurisdiction of the City, in which the
219 Franchised Collector provides Collection service.

220 **“Solid Waste”** means solid waste as defined in California Public Resources Code, Division 30, Part 1,
221 Chapter 2, §40191 and regulations promulgated hereunder. Excluded from the definition of Solid Waste
222 are Excluded Waste, C&D, Source Separated Recyclable Materials, Source Separated Organic Materials,
223 and radioactive waste. Notwithstanding any provision to the contrary, Solid Waste may include de minimis
224 volumes or concentrations of waste of a type and amount normally found in residential Solid Waste after
225 implementation of programs for the safe Collection, Recycling, treatment, and Disposal of Household
226 Hazardous Waste in compliance with Section 41500 and 41802 of the California Public Resources Code as
227 may be amended from time to time. Solid Waste includes salvageable materials only when such materials
228 are included for Collection in a Solid Waste Container, or when Solid Waste is directed by City for
229 Processing. For the purposes of this Agreement, Solid Waste is inclusive of street sweeping debris
230 intended for Disposal.

231 **“Source Separated”** means the segregation, by the Generator, of materials designated for separate
232 Collection for some form of Recycling, Composting, recovery, or reuse.

233 **“State”** means the State of California.

234 **“Subcontractor”** means a Party, approved by the City who has entered into a contract, express or implied,
235 with the Contractor for the performance of an act that is necessary for the Contractor’s fulfillment of its
236 obligations for providing service under this Agreement. Vendors providing materials and supplies to
237 Contractor shall not be considered Subcontractors.

238 **“Term”** means the Term of this Agreement, including extension periods if granted, as provided for in
239 Article 2.

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

242 **“Transfer(ring)”** (or other variations thereof) means receiving and Accepting Solid Waste at the Approved
243 Transfer Facility from Franchised Collection Contractor’s vehicles and loading the material into Transfer
244 Vehicles.

245 **“Transfer Facility”** means a Facility that receives and temporarily stores materials, and then places the
246 materials into larger trailers for Transport to a Processing Facility or Disposal Site.

247 **“Transfer Vehicle”** means a tractor and trailer designed to haul Solid Waste from the Approved Transfer
248 Facility to the Approved Disposal Facility.

249 **“Transport”, “Transportation”** means use of a Transfer Vehicle to haul Solid Waste by road from the
250 Approved Transfer Facility to the Approved Disposal Facility.

251 **“Universal Waste (U-Waste)”** means all wastes as defined by Title 22, Subsections 66273.1 through
252 66273.9 of the California Code of Regulations. These include, but are not limited to, batteries, fluorescent
253 light bulbs, mercury switches, and E-Waste.

EXHIBIT A: DEFINITIONS

254 **“Yard Trimmings”** means those discarded materials that will decompose and/or putrefy, including, but
255 not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree
256 trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of organic waste.
257 Yard Trimmings are a subset of Organic Materials. Yard Trimmings placed for Collection may not exceed
258 six (6) inches in diameter and three (3) feet in length and must fit within the Contractor-provided
259 Container.

**EXHIBIT B:
DISPOSAL SUBCONTRACTING ARRANGEMENTS**

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WASTE DISPOSAL AGREEMENT

**BY AND BETWEEN THE
MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT
AND**

GREENWASTE RECOVERY, INC. & ZANKER ROAD RESOURCE MANAGEMENT, LTD.

THIS WASTE DISPOSAL AGREEMENT (hereinafter “Agreement”) is made and entered into on, September 9th, 2010, by and between the Monterey Regional Waste Management District, a public entity duly organized pursuant to the provisions of California Health and Safety Code sections 4170 *et seq.* (the “District”), and GreenWaste Recovery, Inc., a California corporation, and Zanker Road Resource Management, Ltd., a California Limited Partnership (collectively, “GWR”) (collectively, the “Parties”), as follows:

RECITALS

A. The District owns, manages, and operates a Class III sanitary landfill, known as the Monterey Peninsula Landfill (“MPL”), for the disposal of municipal solid waste and other acceptable waste streams. The jurisdictional boundaries of the District include the cities of Carmel-by-the-Sea, Del Rey Oaks, Marina, Monterey, Pacific Grove, Sand City, and Seaside and the unincorporated areas of Big Sur, Carmel Highlands, Carmel Valley, Castroville, Corral de Tierra, Laguna Seca, Moss Landing, Pebble Beach, San Benancio and Toro Park. Municipal solid waste generated within the District historically has been and currently is delivered by commercial waste haulers and by self-haulers on behalf of the residents of the District for disposal in the MPL.

B. GreenWaste Recovery, Inc., a California corporation, and Zanker Road Resource Management, Ltd., a California Limited Partnership (collectively, GWR), are entities engaged in the business of waste and recyclable collection, processing and transfer, and resource recovery. Owned or partially owned entities and affiliates are: Zanker Road Landfill, Greenwaste Recovery, Green City Recovery, GreenWaste of Palo Alto, West Valley Collection and Recycling, Zero Waste Energy Development and Zero Waste Energy.

C. In constructing, operating, and managing the MPL, the District is under regulatory obligations from the State of California pertaining to landfill closure, and post closure monitoring and maintenance, and long term debt obligations with related covenants which obligate the District to properly maintain and preserve the system and operate it in an efficient, economical and business-like manner.

D. Monterey County's Integrated Waste Management Plan ("CIWMP") provides for the continued use of the MPL by the cities and unincorporated areas within the County of Monterey for the disposal of municipal solid waste which is not reused, recycled, or otherwise diverted from landfills pursuant to the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code) (the "Act").

E. The waste diversion requirements of the Act, together with changes in Applicable Law and other factors have significantly reduced the tonnage of municipal solid waste delivered to the MPL on behalf of residents within the District. The result of the shortfall in the volume of waste received is under-utilization of the MPL, which is designed and permitted to accept approximately 3,500 tons per day and presently realizes less than 1,000 tons per day.

F. The District Board has determined that by accepting municipal solid waste generated outside of the District ("Non-District Waste" as defined in Section 1.10) the unused capacity in the MPL can be utilized to generate revenue to assist in rate stabilization for the member entities, and develop alternative waste diversion technologies and practices. Acceptance of Non-District Waste can be accommodated by the existing MPL without negatively impacting the commercial refuse haulers and self-haulers within the District who deliver waste to the MPL.

G. GWR desires to deliver Non-District Waste to the MPL. Parties intend that only Non-District Waste collected shall be disposed of under the provisions of this Agreement.

H. The District Board has determined that the acceptance for disposal of Non-District Waste would have a minimal impact on the cost of operating the MPL, and would also have a minimal impact on the service life of the MPL.

I. The District Board has determined that the execution by the District of this Agreement will serve the public health, safety, and welfare of the District by providing a stable, predictable, and reliable supply of municipal solid waste to optimize the MPL; and that the resulting revenue will assist in the District's rate stabilization efforts and waste diversion programs.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises hereinafter set forth, District and GWR agree to the following Terms and Conditions:

TERMS AND CONDITIONS

1. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below.

1.1 "Acceptable Waste" means all solid waste and other materials and substances discarded or

rejected as being spent, useless, worthless, or in excess to the owners at the time of such discard or rejection and which is normally disposed of or collected from residential (single family or multi-family), commercial, industrial, governmental, and institutional establishments, and which is acceptable at Class III landfills under Applicable Law. "Acceptable Waste" means residual municipal solid waste that has been inspected and a) comes from a jurisdiction that is AB 939 compliant, or b) which comes from a jurisdiction where the solid waste has been substantially subjected to source separation recycling opportunities and/or processing, or c) is a residual waste stream from a processing, sorting or recycling operation of GWR, and d) which with reasonable due diligence removes the following: Unacceptable Waste; Hazardous Substances or Hazardous Materials; Universal Waste (as defined by State law); and Hazardous Waste.

1.2 "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.

1.3 "Applicable Law" means the Act, the Monterey County Code, CERCLA, RCRA, CEQA, any legal entitlement and any other rule, regulation, requirement, guideline, permit, action, determination, or order of any governmental body having jurisdiction, applicable from time to time, relating to the siting, design, permitting, acquisition, construction, equipping, financing, ownership, possession, management, operation, or maintenance of the MPL or the transfer, handling, transportation, and disposal of Acceptable Waste, Unacceptable Waste, or any other transaction or matter contemplated hereby (including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, non-discrimination and the payment of minimum wages).

1.4 "CEQA" means the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.) as amended or superseded, and the regulations promulgated under the statute.

1.5 "CERCLA" means the Comprehensive Environmental Responsibility Compensation and Liability Act (42 U.S.C. Section 9601 *et seq.*) as amended or superseded, and the regulations promulgated under the statute.

1.6 "Disposal Services" means the solid waste disposal services to be provided to GWR by the District under this Waste Disposal Agreement.

1.7 "Hazardous Material" or "Hazardous Substance" has the meaning given such terms in CERCLA, the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code Section 25300 et seq.), and Titles 22 and 26 of the California Code of Regulations, as well as other regulations promulgated under these statutes, as they exist now and as they may be amended from time to

time.

1.8 “Hazardous Waste” means (a) any waste which by reason of its quality, concentration, composition or physical, chemical, or infectious characteristic may do any of the following: cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness, or pose a substantial threat or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise mismanaged; or any waste which is defined or regulated as a hazardous waste, toxic substance, hazardous chemical substance or mixture, or asbestos under Applicable Law, as amended from time to time including, but not limited to: (1) the Resource Conservation and Recovery Act (RCRA) and the regulations contained in 40 CFR Parts 260-281; (2) the Toxic Substances Control Act (15 U.S.C. Sections 2601 et seq.) and the regulations contained in 40 CFR Parts 761-766; (3) the California Health and Safety Code, Section 25117; (4) the California Public Resources Code, Section 40141; and (5) future additional or substitute Applicable Law pertaining to the indemnification, treatment, storage, or disposal of toxic substances or hazardous wastes; or (b) radioactive materials which are source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 et seq.) and the regulations contained in 10 CFR Part 40.

1.9 “Household Hazardous Waste Element” or “HHWE” means a solid waste planning document prepared by each city and unincorporated county pursuant to Division 30, Section 41000 et seq. of the Act.

1.10 “Non-District Waste” means solid waste originating from outside Monterey and Santa Cruz Counties.

1.11 “RCRA” means the Resource Conservation and Recovery Act, 42 USC Section 6901 *et seq.*, as amended and superseded.

1.12 “Source Reduction and Recycling Element” or “SRRE” means a solid waste planning document prepared by each city and unincorporated county pursuant to Division 30, Section 41000 et seq. of the Act.

1.13 “Unacceptable Waste” means Hazardous Waste; Hazardous Substances; Hazardous Materials; untreated medical waste; Household Hazardous Waste that has been separated from Acceptable Waste; explosives; bombs; ordnance, such as guns and ammunition; highly flammable substances; noxious materials; drums and closed containers; liquid waste, including liquid concrete; oil; human wastes and sewage sludge; machinery and equipment from commercial or industrial sources, such as hardened gears, shafts; motor vehicles or major components thereof; agricultural equipment; trailers; marine vessels and

steel cable; hot loads, including hot asphalt, and hot liquid sulfur; loads of whole tires; friable asbestos; and any waste which the MPL is prohibited from receiving under Applicable Law.

2. TERM OF AGREEMENT

2.1 Term of Agreement

The term of this Agreement shall continue for 15 years, unless extended by mutually agreed upon written extensions or terminated earlier as provided herein. This original term shall commence on September 1, 2010 (the "Commencement Date") and terminate on August 31, 2025.

3. DELIVERY OF WASTE

3.1 Guaranteed Commitment to Deliver Non-District Acceptable Waste ("Put or Pay")

GWR agrees that it shall only deliver to the MPL Non-District Acceptable Waste collected or generated by any business or operation owned, or partially owned, by GWR, unless otherwise approved in writing by the District as specified in Section 8.4. At no time shall the delivered Non-District Acceptable Waste exceed 1,700 tons per day, or 200,000 tons per year, without the prior written approval of the General Manager, or his/her designee.

GWR further agrees that it will deliver at least 75,000 tons of Non-District Acceptable Waste to the MPL in each year (i.e., 12 month period) of the term of this Agreement. Both Parties hereto agree that GWR's obligation under this Section is an absolute "Put or Pay" commitment by GWR to the District whereunder GWR is obligated to pay the District the disposal fee per ton set forth in Section 4.2 hereafter on 75,000 tons of Non-District Acceptable Waste each year whether or not GWR has actually delivered 75,000 tons to the MPL within that period.

Except for the minimum "Put-or-Pay" tonnage requirement set forth above, nothing in this Agreement prohibits GWR from disposing of any of its waste at another disposal site or sites.

3.2 Additional Terms of Delivery

The Parties agree that GWR may deliver additional tonnage of Non-District Acceptable Waste during the term of this Agreement. The Parties have agreed to a separate rate per ton for all such Non-District Acceptable Waste so delivered by GWR in excess of 75,000 tons per year. The Parties agree that the 75,000 ton "Put or Pay" standard may be modified on an annual basis in accordance with the terms for amendment of this Agreement.

The Parties may, by April 1, of any year, mutually agree to a higher "Put-or-Pay" tonnage of Non-District Acceptable Waste for the next 12 month period commencing on July 1.

3.3 GWR's Authority to Deliver Non-District Acceptable Waste

GWR warrants that it has and shall maintain during the term of this Agreement the lawful right, power, and authority to collect and deliver the Non-District Acceptable Waste to the District through its Non-District franchises, contracts, or permits under which it operates.

3.4 Subcontractors

The Non-District Acceptable Waste to be delivered to the MPL pursuant to this Agreement may be delivered to the MPL by GWR or by GWR's third-party haulers or subcontractors for transportation purposes only.

4. **PROVISION OF DISPOSAL SERVICES**

4.1 Commitment to Provide Disposal Services

The District agrees to provide Disposal Services to GWR for the term of the Agreement under the conditions specified in this Agreement. The District warrants that it can lawfully receive all of GWR's Non-District Acceptable Waste at the MPL, under a valid Solid Waste Facility Permit for the entire term of this Agreement. The District shall accept Non-District Acceptable Waste, subject to the limitations set in Section 3.1, delivered by GWR to the MPL. The District shall make available and reserve sufficient fully permitted landfill capacity to accept GWR's Non-District Acceptable Waste delivered pursuant to this Agreement.

4.2 Fee for Disposal Services

The District shall charge and GWR shall pay the fee of \$21.50 per ton for the first 75,000 tons of Non-District Acceptable Waste delivered by GWR to the MPL in each 12 month period during the term of this Agreement. All Non-District Acceptable Waste delivered by GWR to the MPL during any such 12 month period in excess of the 75,000 tons, for which it has a "Put or Pay" obligation, shall be charged and paid for at the rate of \$21.00 per ton.

4.3 Payment for Disposal Services

GWR shall pay for Disposal Services and all other fees or charges under this Agreement within 30 calendar days after the billing by the District to GWR, unless otherwise agreed upon in writing by the Parties. The payment terms contained in this Paragraph 4.3 may be suspended for delinquent accounts.

4.3.1 Security for Financial Obligations of GWR. The minimum financial obligations of GWR set forth under Sections 3.1 and 4.2 hereinabove whereunder it has agreed to deliver at least 75,000 tons of Acceptable Waste each year and to pay at the initial rate of \$21.50 per ton (i.e., \$1,612,500 for the first 12 months), shall be secured by a performance bond in a form reasonably acceptable to the District. This

initial rate per ton shall be modified annually in accordance with Section 4.4 below, and may be modified in accordance with Section 4.5 below. This performance bond must be maintained in good standing and effect at all times during the term of this Agreement and may not be revoked except upon written authorization from the District. The performance bond may be increased from time to time to reflect any annual increase in the “Put or Pay” obligations of GWR under this Agreement.

4.4 Annual Consumer Price Index Adjustment for Provision of Disposal Services

The rate or rates to be charged and paid in accordance with Section 4.2 above shall be automatically increased annually by 80% of the annual percentage increase in the Consumer Price Index (“CPI”) for All Urban Consumers for the San Francisco-Oakland-San Jose Area (All Consumers-All Items - 1982-1984 Base Year) promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor for the adjustment period of the preceding May 1 through April 30. All such rate increases will be effective on July 1 of each year and will be calculated by means of the following formula:

$$A = \$(\text{initial rate}) * ((B-C)/C) * 0.8 = \text{Adjusted Rate}$$

B = Monthly index for the month of April of the current year

C = Monthly index for the month of April of the previous year (The index is for the period ending April 30 published in May)

Notwithstanding the foregoing, in no event shall any rate per ton be reduced by reason of any such adjustment, or increased by more than 6% by reason of any such adjustment. In the event that the CPI is not issued or published for the period for which the annual disposal fee is to be adjusted and computed hereunder, or in the event that the Bureau of Labor Statistics of the U.S. Department of Labor should cease to publish said index figures, then any similar index published by any other branch or department of the U.S. Government shall be used, and if none is so published, then another index generally recognized and authoritative shall be substituted by mutual agreement.

4.5 Increase in Governmental Fees

If any fees or charges are imposed or increased, directly or indirectly, on the District which are beyond the control of the District, by any local, state and/or federal law, rule or regulation after the Commencement Date of this Agreement, the District shall have the right, upon 30 days’ prior written notice to GWR, to automatically increase the then current rates per ton charged to GWR in an amount necessary to recover such increases in local, state and/or federal fees or charges. Any such increase in local, state and/or federal fees or charges shall be allocated based on the percentage of tons of waste delivered to the MPL by GWR compared to all other tons delivered to the MPL. Notwithstanding the foregoing, however, if, in any consecutive three calendar year period during the Term of this Agreement,

the per ton amount of all the increases in such local, state and/or federal fees and/or charges, cumulatively exceed 10% of the current per ton rate then being charged by MPL, GWR shall have the option to terminate this Agreement, provided, however, that the foregoing option to terminate by GWR shall not be operative if the subject increases in local, state and/or federal fees and/or charges are applicable to all landfills (of the same class as MPL) operating in the State of California, and the option to terminate may not be invoked if the District does not increase the rate to GWR beyond the 10% cap. GWR may only terminate this Agreement after giving 365 days' prior written notice to District, during which termination period GWR shall only be liable for a maximum ten percent (10%) increase in its then effective rate per ton by reason of all such new local, state and/or federal levies. This Option to Terminate shall be measured separately for each three calendar year period during the Term of this Agreement. None of the government fees or charges referred to in this Section 4.5 shall be attributable to post closure costs or fees.

5. DELIVERY AND ACCEPTANCE OF NON-DISTRICT WASTE

5.1 Delivery and Acceptance of Non-District Waste

The Parties agree that all Non-District Acceptable Waste shall be delivered by GWR to the MPL between the hours of 5:30 A.M. to 4:00 P.M. on Monday through Friday and 8:00 A.M. to 4:00 P.M. on Saturdays. The MPL is closed on Sundays and on all recognized holidays, which are published by the District. Non-District Acceptable Waste shall generally be delivered by transfer trucks or waste collection vehicles.

GWR shall bear all costs of collection, processing, transfer, transportation, taxes, permits, or impositions assessed or imposed, directly or indirectly, by any governmental entity related to the collection of Non-District Acceptable Waste. The District assumes all disposal costs incurred after its acceptance of GWR's Non-District Acceptable Waste.

5.2 Unacceptable Waste

GWR shall act with reasonable due diligence to prevent the delivery of any waste to the MPL that is defined as Unacceptable Waste under this Agreement.

5.3 Hazardous Materials, Substances or Waste

GWR shall act with reasonable due diligence to prevent the delivery of Hazardous Materials, Hazardous Substances, or Hazardous Waste to the MPL. GWR will submit its Hazardous Waste Exclusion Plan to the District in writing, prior to delivery of waste.

GWR shall notify the General Manager of the District, in writing, at least 30 days prior to making any significant modifications in GWR's Hazardous Waste Exclusion Plan. The District may object to any such modification in writing within 15 days of receipt. GWR shall give reasonable consideration to any District objections. The intentional or negligent delivery of any quantity of residential, industrial or commercial Hazardous Waste shall constitute a material breach of this Agreement.

5.4 Emergency at the Facility

The District shall have the right to suspend acceptance of Non-District Acceptable Waste to the MPL at any time for up to a maximum of 45 days or more upon the occurrence of a natural disaster or other Uncontrollable Circumstances which affect the ability of the District to accept, under Applicable Law, GWR's otherwise Acceptable Waste at the MPL.

The District will make every reasonable effort to provide advance notice of any Uncontrollable Circumstances; however, exigent circumstances may not allow advanced notice. During the time the District is unable to accept Waste, GWR shall be excused from Put & Pay obligations for such period of time.

5.5 Mutual Aid

In the event of an emergency, the Parties may provide mutual aid to one another through the sharing of resources.

5.6 Weights for Payment

Payment shall be based upon weight provided by the District's² regular vehicle weighing scale system, or any other methodology acceptable to the District and GWR.

6. REGULATORY COMPLIANCE

6.1 Applicable Law

Both Parties shall comply with Applicable Law at all times, throughout the term of this Agreement; and shall obtain and maintain any permits, licenses, or approvals which are required for the performance of the party's respective obligations under this Agreement.

6.2 Compatibility with The Act

The actions of GWR in entering into this Agreement shall be compatible with the goals, policies, and agreements of the Source Reduction and Recycling Element(s) (SRREs) of the jurisdiction(s) generating the waste which is accepted at the MPL.

6.3 Disposal Reporting

GWR shall supply all information necessary to comply with the District's Disposal Reporting

System and any other information required by the District to comply with the Act, or any other local, state and/or federal law. District's Disposal Reporting System means the process for gathering quantities, types, and sources for waste accepted at the MPL for internal and external purposes.

7. TERMINATION, DEFAULT AND REMEDIES

7.1 Termination

At any time after the expiration of three (3) years from the date of this Agreement, GWR shall have the right to terminate this Agreement, for any reason whatsoever, by giving the District two years' prior written notice of termination and paying the District a termination fee of \$50,000. Said termination fee shall be payable in full on the date this Agreement then terminates.

7.2 Termination for Cause

Either party may terminate this Agreement for cause for the reasons set forth below. In the case of termination for cause, the terminating party shall not be liable to the non-terminating party for any damages incurred due to early termination, including, but not limited to, consequential damages.

A. Termination for Cause by District

The District may terminate for cause if:

i. Except as set forth in Paragraph 8.5 hereof, GWR assigns capacity under this Agreement, in whole or in part, or directly or indirectly, to any person or outside entity which is not owned by GWR in whole or in part.

ii. GWR intentionally delivers or attempts to intentionally deliver Unacceptable Waste; Hazardous Waste, Hazardous Substances or Hazardous Materials or Universal Waste (as defined by State law) (paragraphs 1.7 and 1.8); or

iii. GWR fails to comply with a Hazardous Waste Exclusion Plan that complies with state law (paragraph 5.3).

B. Termination for Cause by GWR

GWR may terminate for cause if the District is unable to accept Non-District Acceptable Waste for more than the 45 day period set forth in Paragraph 5.4 hereof and the Parties are unable to reach a mutually acceptable resolution through modification of this Agreement.

C. Termination for Cause by Either Party

Either party may terminate for cause if:

i. The District is ordered by court of competent jurisdiction to cease providing Disposal Services under the terms and conditions of this Agreement; provided, however, that the District

may not terminate this Agreement if the District, through its own fault, is ordered by a court of competent jurisdiction to cease providing disposal services under this Agreement. In such event District will not be liable for actual or consequential damages due to the inability to provide Disposal Services.

ii The other party is determined to be in violation of Applicable Law, despite reasonable due diligence.

D. Opportunity for Cure

If either party fails to perform any of its obligations hereunder, that party shall have 30 business days from receipt of written notice of default from the other party within which to cure such default. However, GWR's intentional delivery of any quantity of Hazardous Waste or failure to maintain a Hazardous Waste Exclusion Plan that complies with state law (pursuant to paragraph 5.3) may be grounds for termination in the District's discretion. Such default may be subject to termination pursuant to paragraph 7.2, A. In the case of a default involving Hazardous Materials, Substances or Waste under paragraph 5.3 by GWR, GWR must cure the default within 24 hours of written notice of the default in compliance with applicable laws and regulations, including District ordinances and established procedures.

7.3 Alternative Dispute Resolution

The Parties agree to the following mechanism in order to obtain prompt and expeditious resolution of all disputes between the Parties hereto under or related to this Agreement:

(a) any dispute seeking damages, possession and/or any dispute seeking specific enforcement of any provision herein shall be heard and determined by a Referee pursuant to California Civil Procedure Section 638 in effect as of the date hereof. The venue of any proceeding hereunder shall be in Monterey County, California (unless changed by order of the Referee).

(i) The party seeking to resolve the dispute shall serve a complaint or statement of claim on the other party, describing the matters in dispute in the manner prescribed for giving of notice hereunder. Within five business days after the service of the complaint or statement of claim, the party seeking relief shall make a written request for the specific designation of a Referee to try the dispute. If the party seeking relief does not act within that 5-day time period to make that request for a Referee, the party upon which the complaint or statement of claim has been served may act to make that request. The Referee shall be chosen from the panel of retired jurists maintained by the San Jose office of Judicial Arbitration and Mediation Service ("JAMS"). Thereafter the Parties shall use their best efforts to agree upon the selection of a Referee. If the Parties are unable to agree upon a Referee within 10 business days after a written request to do so by any party, then either party may petition the Presiding Judge of the

Monterey County Superior Court to appoint a Referee from the panel maintained by the San Jose office of JAMS.

(ii) The provisions of California Code of Civil Procedure Sections 640, 642, 643, 644, and 645 shall be applicable to dispute resolution by a Referee hereunder. In an effort to clarify and amplify the provisions of California Code of Civil Procedure Sections 644 and 645, the Parties agree that the Referee shall decide the dispute submitted by the Parties for decision in the same manner as required for a trial by court as set forth in California Code of Civil Procedure Sections 631.8 and 632, and Rule 3.1590 of the California Rules of Court. The Referee shall try and decide the dispute according to and based on all of the substantive and procedural statutory and decisional law of the State of California, unless the Parties stipulate to the contrary. When the Referee has decided the dispute, the Referee shall also cause the preparation of a judgment based on said decision. The Judgment (or other order) to be entered by the Superior Court, based upon the decision of the Referee, shall be appealable in the same manner as if the Judge signing the Judgment (or other order) had tried the case.

(b) The Parties shall diligently cooperate with one another and the person appointed to resolve the dispute, and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of the dispute. If any party refuses to diligently cooperate, and any other party, after first giving notice of its intent to rely on the provisions of this Section 7, incurs additional expenses or attorneys' fees solely as a result of such failure to diligently cooperate, the Referee may award such additional expenses and attorneys' fees to the party giving such notice, even if such party is not the prevailing party in the dispute.

(c) The cost of the proceeding shall initially be borne equally by the Parties to the dispute, but the prevailing party in such proceeding shall be entitled to recover, in addition to reasonable attorneys' fees and all other costs, its contribution for the cost of the Referee as an item of recoverable costs. If either party refuses to pay his share of the costs of the proceeding, at the time(s) required, the other party may do so, in which event that party will be entitled to recover (or offset) the amount advanced, with interest, even if that party is not the prevailing party.

8. GENERAL CONDITIONS

8.1 Uncontrollable Circumstances

Neither party hereunder shall be in default under this Agreement in the event that the respective delivery and/or disposal obligations of the parties hereunder are temporarily interrupted by Uncontrollable Circumstances. "Uncontrollable Circumstances" means only the following acts, events or conditions,

whether affecting GWR, or the District, to the extent that it materially and adversely affects the ability of either party to perform any obligation under the Agreement, if such act, event or condition is beyond the reasonable control and is not also the result of the willful or negligent act, error or omission or failure to exercise reasonable diligence on the part of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under this Agreement:

1. an act of nature, hurricane, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence; epidemics; extortion; act of a public enemy, war, blockade or insurrection, riot or civil disturbance or other catastrophic events including strike, lockout, embargo and other labor disturbances;

2. a change in law, regulation or government order affecting either party's ability to perform an obligation or complying with any condition required of such party under this Agreement;

3. preemption of materials or services by a public entity with regulatory authority in connection with a public emergency or any condemnation or other taking by eminent domain. Provided, however, that the contesting in good faith or the failure in good faith to contest such action or inaction shall not be construed as willful or negligent action or a lack of reasonable diligence of either party.

4. The financial inability of either party to perform shall not be excusable as an "Uncontrollable Circumstance."

8.2 Indemnification and Hold Harmless

A. Indemnification by GWR. GWR and District agree that District, its Board of Directors, officers, employees and agents, should to the extent permitted by law, be fully protected from any loss, injury, damage, claim, lawsuit, cost, expense, attorney's fees, litigation cost, defense cost, court cost or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the fullest protection possible under the law to the District. GWR acknowledges that District would not enter into this Agreement in the absence of this commitment to indemnify and protect District as set forth herein.

To the full extent permitted by law, GWR shall defend, indemnify and hold harmless District, its Board of Directors, officers, employees and agents from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, actual attorneys' fees incurred by District, court costs, interest, defense costs, including expert witness fees, and any other costs or expenses of any kind whatsoever without restriction or limitation which arise from or are connected with or are caused or

claimed to be caused by the active or passive negligence or willful misconduct of GWR, either solely or jointly. All obligations under this provision are to be paid by GWR as they are incurred by the District.

Without affecting the rights of the District under any provision of this Agreement or this section, GWR shall not be required to indemnify and hold harmless District as set forth above for liability attributable to the active negligence of the District, its officers, employees or agents, provided such active negligence is determined by agreement between the parties or the findings of a court of competent jurisdiction. This exception will apply only in instances where the District is shown to have been actively negligent and not in instances where GWR is solely or partially at fault or in instances where the District's active negligence accounts for only a percentage of the liability involved. In those instances, the obligation of GWR will be for that portion or percentage of liability not attributable to the active negligence of the District, as determined by written agreement between the parties or the findings of a court of competent jurisdiction pursuant to Section 7.3 hereinabove.

GWR agrees to obtain executed indemnity agreements from its sub-contractors and any contractor or any other person or entity involved by, for, with or on behalf of GWR in the performance of the subject matter of this Agreement. In the event GWR fails to obtain such indemnity obligations from others as required herein, GWR agrees to be fully responsible according to the terms of this section.

Failure of the District to monitor compliance with these requirements imposes no additional obligations on District and will in no way act as a waiver of any rights hereunder and shall survive the termination of this Agreement or this section.

B. Indemnification by District. To the full extent permitted by law, the District shall defend, indemnify and hold harmless GWR, its boards of directors, partners, officers, employees and agents from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, actual attorneys' fees incurred by GWR, court costs, interest, defense costs, including expert witness fees, and any other costs or expenses of any kind whatsoever without restriction or limitation which arise from or are connected with or are caused or claimed to be caused by the active or passive negligence or the willful misconduct of the District. All obligations under this provision are to be paid by the District as they are incurred by GWR.

Without affecting the rights of GWR under any provision of this Agreement or this section, the District shall not be required to indemnify and hold harmless GWR as set forth above for liability attributable to the active negligence of GWR, its officers, employees, contractors or agents, provided such active negligence is determined by agreement between the parties or the findings of a court of competent

jurisdiction, pursuant to Section 7.3 herein above. This exception will apply only in instances where GWR or contractor(s), are shown to have been actively negligent and not in instances where the District is solely or partially at fault or in instances where GWR's active negligence accounts for only a percentage of the liability involved. In those instances, the obligation of the District will be for that portion or percentage of liability not attributable to the active negligence of GWR, as determined by written agreement between the parties or the findings of a court of competent jurisdiction pursuant to Section 7.3 herein above. District agrees to obtain executed Indemnity Agreements from its subcontractors and any other contractor or person or entity involved by, for, with or on behalf of District in the performance of the subject matter of this Agreement. In the event District fails to obtain such indemnity obligations from others as required herein, District agrees to be fully responsible according to the terms of this Section.

Failure of GWR to monitor compliance with these requirements imposes no additional obligations on GWR and will in no way act as a waiver of any rights hereunder and shall survive the termination of this Agreement or this Section.

C. Notice of Claims

A party seeking indemnification shall promptly notify the other party of the assertion of any claim against it for which it seeks to be indemnified, shall give the other party the opportunity to defend such claim, and shall not settle the claim without the approval of the other party. These indemnification provisions are for the protection of the Parties only and shall not establish, of themselves, any liability to third parties. The provisions of this subsection shall survive termination of this Agreement. All such claims shall be resolved pursuant to Section 7.3 above.

8.3 Insurance

GWR shall require any of its subcontractors, or others hired for this Agreement, to maintain insurance coverage as described hereunder effective the date first written above and such insurance shall remain in full force at all times throughout the full term of this Agreement. Insurers providing coverage as required by this Agreement shall be rated at least A:VII by BEST, and must be authorized to do business in the State of California.

Certificates of insurance or other evidence satisfactory to the District shall be furnished in duplicate, evidencing GWR's coverage of Workers' Compensation Insurance, Commercial General Liability, and Comprehensive Auto Liability; such certificates shall show the insurer's name, policy number, limit of coverage, and the period of the policy and cancellation conditions of these specifications. Such certificates shall state that coverage thereunder shall not be terminated or reduced in coverage until 30 days' written notice is given to General Manager of the District of cancellation or reduction in

coverage; allow for severability of interest of District; and be primary and non-contributing with insurance maintained or self-insured by the District. GWR agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word “endeavor” with regard to any notice provisions.

The District shall be added, by endorsement to the policy for Commercial General Liability, Auto Liability and Employer's Liability coverage, as an additional insured on the above-described policies, as they pertain to the operations of the named insured performed under this Agreement for the District. Entire limits of liability maintained must be certified but in no event shall limits be less than specified herein below:

| <u>Coverage</u> | <u>Minimum Limit</u> |
|--|--|
| Workers' Compensation | Statutory |
| Employer's Liability | \$2,500,000 per accident or disease |
| Comprehensive General Liability | \$5,000,000 Combined |
| General Aggregate | \$10,000,000 Single limit each occurrence |
| Comprehensive Auto Liability (Including owned, non-owned and hired vehicles) | \$5,000,000 Combined Single limit each occurrence |

Workers' Compensation Insurance Policy shall include a waiver of all rights of subrogation against the District.

8.4 Origin of Non-District Acceptable Waste

GWR may not deliver Non-District Acceptable Waste collected by any entity not owned or partially owned by GWR, subject to provisions set forth in Section 3.1. Notwithstanding the foregoing, the District agrees that up to 5% of GWR’s Non-District Acceptable Waste “Put or Pay” tonnage obligation under this Agreement may be from sources not owned by GWR if the express prior written consent of the District has been secured. All such non-GWR Acceptable Waste so delivered must originate from a municipality or public entity which has implemented an approved Hazardous Waste Exclusion Plan and has fully implemented its SRRE under an approved California Integrated Waste Management Plan.

8.5 Non-Assignment of Agreement

GWR may not assign this Agreement or any of the rights or obligations under this Agreement, in whole or in part, without the prior written consent of the District, which consent may not be unreasonably withheld or delayed. Any person or entity to whom this Agreement is assigned with such consent shall

expressly agree to be bound by all provisions of this Agreement. Despite any such approved assignment, GWR will remain liable to District for all obligations under this Agreement unless released in writing by District from such obligations.

Notwithstanding the foregoing, GreenWaste Recovery, Inc. and/or Zanker Road Resource Management, Ltd. shall have the right to assign this Agreement, without the prior consent of District, upon the sale by GreenWaste Recovery, Inc. and/or Zanker Road Resource Management, Ltd. of all or substantially all of their respective assets to a third party, or upon the sale of a majority interest in GreenWaste Recovery, Inc. and/or Zanker Road Resource Management, Ltd. to a third party.

In the event of an assignment, the third party will agree, as part of the assignment, to provide a performance bond under the same terms and conditions as required in Section 4.3.1.

8.6 Notices

Any notice required or permitted by this Agreement shall be in writing and sufficiently given if delivered in person or sent by certified or registered mail, postage prepaid, to the notice address of the respective parties set forth in this Agreement. Any changes to the respective addresses to which notices may be directed, may be made from time to time by any party by notice to the other party. The present addresses of the parties are:

District Monterey Regional Waste Management District
 Attn: General Manager
 Location for Direct Deliveries and Certified Mail:
 14201 Del Monte Blvd.
 P.O. Box 1670
 Marina, CA 93933-1670

GWR GreenWaste Recovery Inc. and Zanker Road Resource Management, Ltd.
 Attn: General Manager
 1500 Berger Drive
 San Jose, CA 95112

8.7 Indemnification for Taxes and Contributions

Each party shall exonerate, indemnify, defend, and hold harmless the other (which for the purpose of this paragraph shall include, without limitation, its officers, agents, employees, and volunteers) from and against:

Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect each party's officers, employees and agents engaged in the performance of this Agreement (including, without limitation, unemployment insurance, social security, and payroll tax withholding).

8.8 Non-Discrimination

During and in relation to the performance of this Agreement, both parties agree as follows:

A. Neither party shall discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy, or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. Both parties agree to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

8.9 Independent Contractor Status

The District and GWR have reviewed and considered the principal test and secondary factors for determining independent contractor status and agree that this is an independent contractor arrangement and that neither party is an employee of the other. Each party is responsible for its own insurance (workers' compensation, unemployment, etc.) and all payroll-related taxes. Neither party is entitled to any employee benefits from the other. Each party shall have the right to control the manner and means of accomplishing the result contracted for herein.

8.10. Amendment or Modification

This Agreement may be amended, altered or modified only by a writing, specifying such amendment, alteration or modification, executed by authorized representatives of both of the parties hereto.

8.11. Further Actions

Each of the parties agrees to execute and deliver to the other such documents and instruments, and to take such actions, as may reasonably be required to give effect to the terms and conditions of this Agreement.

8.12. Interpretation

This Agreement has been negotiated by and between the general managers and engineers or principals of both parties, all persons knowledgeable in the subject matter of this Agreement, which was then reviewed and drafted by attorneys representing both parties, in joint consultation with both general managers and engineers or principals. Accordingly, any rule of law (including Civil Code §1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purpose of the parties and this Agreement.

8.13 Captions

Titles or captions of sections and paragraphs contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision of it.

8.14 Severability

If any of the provisions of this Agreement are determined to be invalid or unenforceable, those provisions shall be deemed severable from the remainder of this Agreement and shall not cause the invalidity or unenforceability of the remainder of this Agreement, unless this Agreement without the severed provision would frustrate a material purpose of either party in entering into this Agreement.

8.15 Attorneys' Fees and Costs

In the event it should become necessary for either party to enforce any of the terms and conditions of this Agreement pursuant to Section 7.3, the Referee shall determine the award of reasonable costs and reasonable attorneys' fees as provided for in said Section.

8.16 Relationship of Parties

Nothing in this Agreement shall create a joint venture, partnership or principal-agent relationship between the parties.

8.17 Waiver

No waiver of any right or obligation of either party hereto shall be effective unless made in writing, specifying such waiver, executed by the party against whom such waiver is sought to be enforced. A waiver by either party of any of its rights under this Agreement or any other right at any time shall not be a bar to exercise of the same right on any subsequent or any other right at any time.

8.18. Counterparts

This Agreement may be executed in two counterparts, each of which shall be deemed an original, but both of which shall be deemed to constitute one and the same instrument.

8.19. Entire Agreement

This Agreement constitutes the entire and complete agreement between the parties regarding the subject matter hereof, and supersedes all prior or contemporaneous negotiations, understandings or agreements of the parties, whether written or oral, with respect to such subject matter.

8.20. Recitals

The Recitals are agreed to be true and correct and are incorporated by reference as though fully set forth herein.

8.21. Closure, Post-Closure and Financial Assurance

The following provisions govern the rights of the parties regarding Closure, Post-Closure and Financial Assurance in compliance with applicable federal, state and local laws and regulations that are required as part of MPL's permitting requirements:

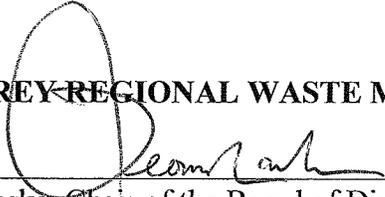
A. **Costs Included in Rates.** District acknowledges that the rates paid by GWR under this Agreement for disposal at MPL compensates District for District's best estimate of the costs of closure and post-closure obligations with respect to MPL allocable to GWR's Waste, and the District releases GWR from any obligation to provide for closure or post-closure funding and care of the MPL, regardless of the accuracy or adequacy of such estimates. District assumes full financial responsibility for MPL closure and post-closure obligations with respect to GWR and shall defend, indemnify and hold harmless GWR therefrom.

B. **Closure and Post-Closure Plan.** District will close MPL substantially in accordance with federal, state and local laws, including with respect to closure, the grade, cap, revegetation, surface water drainage systems, environmental control systems (leachate and gas collection and treatment), and with respect to post-closure, leachate and gas migration monitoring, inspection protocol, and leachate or gas extraction and treatment.

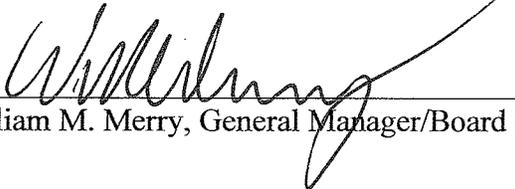
C. **Financial Assurance.** District agrees to provide GWR with financial assurance compliance documentation of full and timely closure and post-closure maintenance in accordance with its plan with suitable qualification as required by law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates opposite their respective signatures:

MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT

By:  _____
Leo Laska, Chair of the Board of Directors

Date: 9 Sept 2010

By:  _____
William M. Merry, General Manager/Board Secretary

Date: Sept 9, 2010

GREENWASTE RECOVERY, INC.

By: _____

Date: _____

GREENWASTE RECOVERY, INC.

By: 
Richard A. Cristina, President

Date: 9/8/10

By: 
Frank Weigel, Secretary

Date: 9/8/10

ZANKER ROAD RESOURCE MANAGEMENT, LTD.

By: Zanker Road Resource Recovery, Inc., A General Partner

By: 
Richard A. Cristina, President

Date: 9/8/10

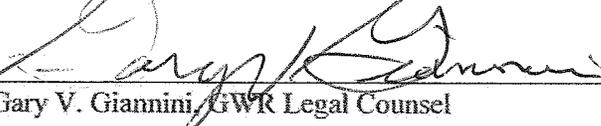
By: 
Murray B. Hall, Secretary

Date: 9/7/10

APPROVED AS TO FORM:

for By: 
Robert Wellington, District Legal Counsel

Date: 9/9/10

By: 
Gary V. Giannini, GWR Legal Counsel

Date: 9/8/10

**AMENDMENT NO.1 TO WASTE DISPOSAL AGREEMENT
BETWEEN MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT
AND GREEN WASTE RECOVERY, INC. &
ZANKER ROAD RESOURCE MANAGEMENT LTD.**

THIS AMENDMENT is made and entered into on October 10, 2011, by and between the Monterey Regional Waste Management District, a California public entity duly organized pursuant to provisions of California Health and Safety Code sec. 4170 *et seq.* (hereinafter "District") and Green Waste Recovery, Inc., a California corporation, and Zanker Road Resource Management, Ltd., a California Limited Partnership (hereinafter collectively "GWR"). District and GWR are sometimes individually referred to as "party" and collectively as "parties" in this Amendment.

RECITALS

- A. On September 9, 2010, the parties entered into an Agreement ("Agreement") to provide for GWR'S delivery of Non-District Waste to the District's Monterey Peninsula Landfill ("the "MPL"). The Agreement may only be amended by a writing signed by the parties.
- B. GWR has now requested that the District amend the Agreement to: (1) increase the "Put or Pay" provision from 75,000 tons per twelve-month period to 125,000 tons per twelve-month period; (2) establish an initial "Put or Pay" rate of \$21.00 per ton for the tonnage in excess of 75,000 for the first twelve-month period under the Agreement; (3) extend the term of the Agreement by five years; (4) establish an initial rate of \$12.00 per ton for delivery of Alternate Daily Cover for the first twelve-month period under the Agreement; and (5) reduce the per ton rate for delivery of waste in excess of the new 125,000 ton "Put or Pay" obligation in the first twelve-month period from \$21.00 per ton to \$20.50 per ton.
- C. The parties now desire to amend the Agreement as follows.

AMENDED TERMS AND CONDITIONS

In consideration of the mutual promises contained herein, DISTRICT and GWR agree that the Agreement be amended effective May 1, 2011, as follows:

1. Section 1.14 Added.

Section 1.14 is added to read as follows:

"'Alternate Daily Cover' means California Integrated Waste Management Board-approved materials other than soil used as a temporary overlay on an exposed landfill face as approved by the County of Monterey Local Enforcement Agency ("LEA") or the LEA's successor agency. Alternate Daily Cover does not qualify as Non-District Waste and receipt of Alternate Daily Cover at the MPL does not constitute disposal services."

2. Section 1.15 Added.

Section 1.15 is added to read as follows:

“‘Put or Pay’ means a commitment by GWR to the District whereby GWR is obligated to pay the District a disposal fee per ton for Non-District Acceptable Waste each twelve-month period under the term of the Agreement whether or not GWR has actually delivered those tonnages to the MPL within those periods.”

3. Section 2.1 of the Agreement Replaced.

Section 2.1 is replaced in its entirety by the following:

“2.1(a) Term of Agreement

The term of this Agreement shall continue for 20 years, unless extended by mutually agreed upon written extensions or terminated earlier as provided herein. This term shall commence on September 1, 2010 (the “Commencement Date”) and terminate on August 31, 2030.”

4. Section 3.1 of the Agreement Replaced.

Section 3.1 is replaced in its entirety by the following:

“3.1(a) Guaranteed Commitment to Deliver Non-District Acceptable Waste (“Put or Pay”)

GWR agrees that it shall only deliver to the MPL Non-District Acceptable Waste collected or generated by any business or operation owned, or partially owned, by GWR, unless otherwise approved in writing by the District as specified in Section 8.4. At no time shall the delivered Non-District Acceptable Waste exceed 1,700 tons per day, or 200,000 per year, without the prior written approval of the General Manager or his/her designee.

GWR agrees during the first twelve months of the term of this Agreement that it will deliver at least 91,667 (eight months at 75,000 tons per twelve-month period “Put or Pay” and four months at 125,000 per twelve-month period “Put or Pay”) tons of Non-District Acceptable Waste to the MPL. GWR further agrees that thereafter it will deliver at least 125,000 tons of Non-District Acceptable Waste to the MPL in successive twelve-month period of the term of this Agreement. Both Parties hereto agree that GWR’s obligations under this Section are an absolute “Put or Pay” commitment by GWR to the District whereunder GWR is obligated to pay the District the disposal fee per ton set forth herein in Section 4.2(a) on 91,667 tons during the first twelve-month period of the term of this Agreement and, thereafter, on 125,000 tons of Non-District Acceptable Waste each successive twelve-month period, whether or not GWR has actually delivered those tonnages to the MPL within those periods.

Except for the minimum “Put-or-Pay” tonnage requirement set forth above, nothing in this Agreement prohibits GWR from disposing of any of its waste at another disposal site or sites.”

5. Section 3.2 of the Agreement Replaced.

Section 3.2 is replaced in its entirety by the following:

“3.2(a) Additional Terms of Delivery

The Parties agree that GWR may deliver additional tonnage of Non-District Acceptable Waste during the term of this Agreement. The Parties have agreed to a separate rate per ton for all such Non-District Acceptable Waste so delivered by GWR in excess of 91,667 tons during the first twelve months of the Agreement and in excess of 125,000 tons during each successive twelve-month period thereafter. The Parties agree that the 125,000 ton “Put or Pay” standard may be modified on an annual basis in accordance with the terms for amendment of this Agreement.

The Parties may, by April 1, of any year, mutually agree to a higher “Put-or-Pay” tonnage of Non-District Acceptable Waste for the next twelve-month period commencing on July 1.”

6. Section 3.3(a) Added.

Section 3.3(a) is added to the Agreement to read in its entirety as follows:

“3.3(a) Delivery of Alternate Daily Cover and Rate per Ton

The Parties agree that GWR may deliver additional tonnage of Alternate Daily Cover (“ADC”) during the term of this Agreement. ADC shall be delivered by GWR to the MPL in the same manner as Non-District Waste in accordance with Section 5.1. At no time shall delivered ADC exceed 200 tons per day, or 45,000 tons in any twelve-month period, without the prior written approval of the General Manager, or his/her designee. The amount of ADC that can be delivered may be limited due to future actions required by the LEA. The District shall charge and GWR shall pay the fee of \$12.00 per ton for all such Alternative Daily Cover. The rate to be charged and paid in accordance with this Section shall be automatically increased annually in accordance with the adjustment provisions and formula set forth in Section 4.4 as revised herein, and may be modified in accordance with Section 4.5. GWR shall bear all costs of collection, processing, transfer, transportation, taxes, permits or impositions assessed or imposed, directly or indirectly, by any governmental entity related to the collection and delivery of ADC. The District assumes all costs incurred after its acceptance of GWR’s ADC.”

7. Section 3.3 of the Agreement Replaced.

Section 3.3 of the Agreement is replaced in its entirety by the following:

“3.4(a) GWR's Authority to Deliver Non-District Acceptable Waste & ADC

GWR warrants that it has and shall maintain during the term of this Agreement the lawful right, power, and authority to collect and deliver the Non-District Acceptable Waste and ADC to the District through its Non-District franchises, contracts, or permits under which it operates.”

8. Section 3.4 of the Agreement Replaced.

Section 3.4 is replaced in its entirety by the following:

“3.5 Subcontractors

The Non-District Acceptable Waste and ADC to be delivered to the MPL pursuant to this Agreement may be delivered to the MPL by GWR or by GWR’s third-party haulers or subcontractors for transportation purposes only.”

9. Section 4.1 of the Agreement Replaced.

Section 4.1 is replaced in its entirety by the following

“4.1(a) Commitment to Provide Disposal Services

The District agrees to provide Disposal Services to GWR for the term of the Agreement under the conditions specified in this Agreement. The District warrants that it can lawfully receive all of GWR’s Non-District Acceptable Waste at the MPL, under a valid Solid Waste Facility Permit for the entire term of this Agreement. The District shall accept Non-District Acceptable Waste, subject to the limitations set forth in Section 3.1(a), delivered by GWR to the MPL. The District shall make available and reserve sufficient fully permitted landfill capacity to accept GWR’s Non-District Acceptable Waste delivered pursuant to this Agreement. The District shall accept ADC, subject to the limitations set forth in Section 3.3(a), delivered by GWR to the MPL.”

10. Section 4.2 of the Agreement Replaced.

Section 4.2 is replaced in its entirety by the following

“4.2(a) Fee for Disposal Services

The District shall charge and GWR shall pay fees of: (a) \$21.50 per ton for the first 75,000 tons, (b) \$21.00 per ton between 75,001 tons and 125,000 tons, and (c) \$20.50 per ton between 125,001 tons and 200,000 tons of Non-District Acceptable Waste delivered by GWR to the MPL during the first twelve-month period of the Agreement. Thereafter, during successive twelve-month periods of this Agreement those fees shall be as modified by Section 4.4 and as may be modified by Section 4.5.

11. Section 4.3.1 of the Agreement Replaced.

Section 4.3.1 is replaced in its entirety by the following:

“4.3.1(a) Security for Financial Obligations of GWR. The minimum financial obligations of GWR set forth under Sections 3.1(a) and 4.2(a), hereinabove whereunder it has agreed to deliver at least 91,667 tons of Acceptable Waste for the first twelve months of the Agreement and 125,000 tons of Acceptable Waste during each successive twelve-month period thereafter, and to pay at the initial rates of \$21.50 and \$21.00 per ton (i.e.,

\$1,962,500 (75,000 tons at \$21.50 and 16,667 tons at \$21.00) for the first twelve months of this Agreement, and as shall be modified by Sections 4.4 and as may be modified by 4.5 for each successive twelve-month period thereafter, shall be secured by a performance bond in a form reasonably acceptable to the District. This performance bond must be maintained in good standing and effect at all times during the term of this Agreement and may not be revoked except upon written authorization from the District. The performance bond may be increased from time to time to reflect any annual increase in the "Put or Pay" obligations of GWR under this Agreement."

12. Section 4.4 of the Agreement Revised.

The first sentence of Section 4.4 is replaced in its entirety by the following:

"The rate or rates to be charged and paid in accordance with Sections 3.3(a) and 4.2(a) above shall be automatically increased annually by 80% of the annual increases in the Consumer Price Index ("CPI") for All Urban Consumers for the San Francisco-Oakland-San Jose Area (All Consumers-All Items - 1982-1984 Base Year) promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor for the adjustment period of the preceding May 1 through April 30." The balance of Section 4.4 continues unaltered.

13. All other terms and conditions.

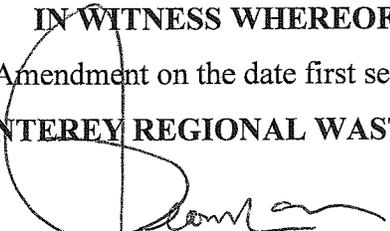
Except as herein amended, all other terms and conditions of the Agreement continue unchanged and the Agreement shall remain in full force and effect.

14. Counterparts.

This Amendment may be executed in counterparts, each of which is deemed to be an original.

IN WITNESS WHEREOF, District and GWR, by their duly authorized representatives, have executed this Amendment on the date first set forth above.

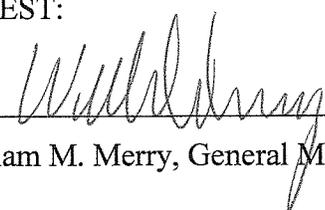
MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT

By:  _____

Date: 21 OCT 2011

Leo Laska, Chair of the Board of Directors

ATTEST:

By:  _____

Date: 10/24/11

William M. Merry, General Manager/Board Secretary

GREENWASTE RECOVERY, INC.

By: 
Richard A. Cristina, President

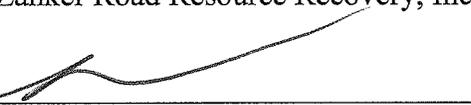
Date: 10/11/11

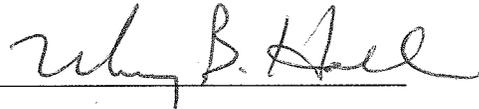
By: 
Frank Weigel, Secretary

Date: 10/11/11

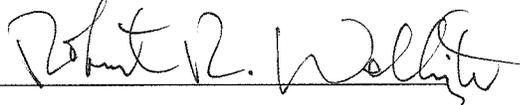
ZANKER ROAD RESOURCE MANAGEMENT, LTD.

By: Zanker Road Resource Recovery, Inc., a general partner

By: 
Richard A. Cristina, President

By: 
Murray B. Hall, Secretary

APPROVED AS TO FORM:

By: 
Robert Wellington, District Legal Counsel

Date: 12/16/11

By: _____
Gary V. Giannini, GWR Legal Counsel

Date: _____

**SECOND AMENDMENT TO WASTE DISPOSAL AGREEMENT
BETWEEN MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT
AND GREEN WASTE RECOVERY, INC. &
ZANKER ROAD RESOURCE MANAGEMENT LTD.**

THIS SECOND AMENDMENT ("Amendment No. 2") is made and entered into on October 22, 2012, by and between the Monterey Regional Waste Management District, a California public entity duly organized pursuant to provisions of California Health and Safety Code sec. 4170 *et seq.* (hereinafter "District") and Green Waste Recovery, Inc., a California corporation, and Zanker Road Resource Management, Ltd., a California Limited Partnership (hereinafter collectively "GWR"). District and GWR are sometimes individually referred to as "party" and collectively as "parties" in this Amendment.

RECITALS

A. On September 9, 2010, the parties entered into an Agreement ("Agreement") to provide for GWR'S delivery of Non-District Waste to the District's Monterey Peninsula Landfill ("the "MPL"). The Agreement may only be amended by a writing signed by the parties.

B. Effective on May 1, 2011,, the parties entered into Amendment No. 1 to the Agreement to provide for: (1) establish the "Put or Pay" requirements for the first twelve months of the term of the Agreement at 91,667 tons of Non-District Acceptable Waste and increase of the "Put or Pay" provision from 75,000 tons for successive twelve-month periods to 125,000 tons per twelve-month period; (2) establishment of an initial "Put or Pay" rate of \$21.00 per ton for the tonnage in excess of 75,000 for the first twelve-month period under the Agreement; (3) extension of the term of the Agreement by five years; (4) establishment of an initial rate of \$12.00 per ton for delivery of Alternate Daily Cover for the first twelve-month period under the Agreement; and (5) a reduction in the per ton rate for delivery of waste in excess of the new 125,000 ton "Put or Pay" obligation in the first twelve-month period from \$21.00 per ton to \$20.50 per ton.

C. GWR and the District now intend to further amend the Agreement to provide for: (1) establishing "Put or Pay" requirements for Non-District Acceptable Waste and for ADC for successive twelve month periods of the term of the Agreement; (2) guarantee deliveries to the District of Non-District Acceptable Waste and ADC by GWR for two years, through and inclusive

of September 1, 2017; and (3) a requirement that for the remaining term of the Agreement GWR will utilize the MPL for disposal of Non-District Acceptable Waste which is presently being generated from GWR's current operations and will not utilize any other disposal facility for disposal of Non-District Acceptable Waste which is presently being generated from GWR's current operations which is not already, as of the date of this Amendment No. 2, under contract with the City of San Jose, CA requiring GWR to delivery waste pursuant to another disposal facility, or for Non-District Acceptable Waste which is self-disposed by GWR at the landfills owned by GWR and located in San Jose, CA.

D. Therefore, parties now desire to further amend the Agreement as follows.

AMENDED TERMS AND CONDITIONS

In consideration of the mutual promises contained herein, DISTRICT and GWR agree that the Agreement be amended retroactively, effective as of September 1, 2011, as follows:

1. Section 1.15 Replaced.

Section 1.15 is replaced in its entirety by the following:

“1.15(a) ‘Put or Pay’ means a commitment by GWR to the District whereby GWR is obligated to pay the District a disposal fee per ton for Non-District Acceptable Waste and for ADC each twelve-month period under the term of the Agreement whether or not GWR has actually delivered those respective tonnages to the MPL within those periods.”

2. Section 3.1(a) of the Agreement Replaced.

Section 3.1(a) is replaced in its entirety by the following:

“3.1(b) Guaranteed Commitment to Deliver Non-District Acceptable Waste (“Put or Pay”)

GWR agrees that it shall only deliver to the MPL Non-District Acceptable Waste collected or generated by any business or operation owned, or partially owned, by GWR, unless otherwise approved in writing by the District as specified in Section 8.4(a) herein. At no time shall the delivered Non-District Acceptable Waste exceed 1,700 tons per day, or 200,000 per year, without the prior written approval of the General Manager or his/her designee.

GWR agrees during the following twelve month periods under the term of this Agreement that it will deliver a minimum of Non-District Acceptable Waste to the MPL as follows:

| | |
|---|--------------|
| September 1, 2011 through August 31, 2012 | 119,334 tons |
| September 1, 2012 through August 31, 2013 | 95,000 tons |
| September 1, 2013 through August 31, 2014 | 75,000 tons |
| September 1, 2014 through August 31, 2015 | 75,000 tons |
| September 1, 2015 through August 31, 2016 | 75,000 tons |
| September 1, 2016 through August 31, 2017 | 75,000 tons |

GWR further agrees that thereafter it will deliver at least 75,000 tons of Non-District Acceptable Waste to the MPL in successive twelve-month periods for the remaining term of this Agreement. Both Parties hereto agree that GWR's obligations under this Section are an absolute "Put or Pay" commitment by GWR to the District whereunder GWR is obligated to pay the District the disposal fee per ton set forth herein at Section 4.2(a) on the tonnages set forth herein during each successive twelve-month period, whether or not GWR has actually delivered those tonnages to the MPL within those periods.

GWR agrees that as of the date this Amendment No. 2 is executed by the last party to do so, subject to the termination provision set forth in Section 7 as amended, for the remaining term of the Agreement GWR will continue to use the MPL for disposal of Non-District Acceptable Waste which is presently being generated from GWR's current operations and in so disposing of Non-District Acceptable Waste GWR will not use another disposal facility for disposal of Non-District Acceptable Waste which is presently being generated from GWR's current operations other than: (1) a disposal facility which is, as of the date Amendment No. 2 is executed by the last party to do so, under contract with the City of San Jose, CA, requiring GWR to delivery waste to another disposal facility; or (2) for Non-District Acceptable Waste which is self-disposed by GWR at the landfills owned by GWR located in San Jose, CA. Nothing in this Agreement prohibits GWR from disposing of any of its waste generated from any Future Contracts or Franchise Agreements at another disposal site or sites. Future Contracts or Franchise Agreements mean any such contracts or agreements which are not in existence as of the date of this Agreement."

3. Section 3.2(a) of the Agreement Replaced.

Section 3.2(a) is replaced in its entirety by the following:

“3.2(b) Additional Terms of Delivery

The Parties agree that GWR may deliver additional tonnage of Non-District Acceptable Waste and ADC during the term of this Agreement. The Parties have agreed to a separate rate per ton for all such Non-District Acceptable Waste so delivered by GWR in excess of the tonnages set forth in Section 3.1(b). The Parties agree that the established “Put or Pay” tonnage requirements for Non-District Acceptable Waste and for ADC may be modified on an annual basis in accordance with the terms for amendment of this Agreement.

The Parties may, by April 1, of any year, mutually agree to a higher “Put-or-Pay” tonnage of Non-District Acceptable Waste and/or for ADC for the next twelve-month period commencing on July 1.”

4. Section 3.3(a) of the Agreement Replaced.

Section 3.3(a) is replaced in its entirety by the following:

“3.3(b) Guaranteed Commitment to Deliver Alternate Daily Cover (“Put or Pay”) and Rate per Ton.

GWR agrees that it shall deliver to the MPL on a “Put or Pay” basis Alternate Daily Cover (“ADC”) during the term of this Agreement. ADC shall be delivered by GWR to the MPL in the same manner as Non-District Waste in accordance with Section 5.1(a) herein. At no time shall delivered ADC exceed 200 tons per day, or 45,000 tons in any twelve-month period, without the prior written approval of the General Manager, or his/her designee. The amount of ADC that can be delivered may be limited due to future actions required by the LEA. GWR agrees during the following twelve month periods under the term of this Agreement that it will deliver ADC to the MPL as follows:

| | |
|---|-------------|
| September 1, 2011 through August 31, 2012 | 10,000 tons |
| September 1, 2012 through August 31, 2013 | 10,000 tons |
| September 1, 2013 through August 31, 2014 | 10,000 tons |
| September 1, 2014 through August 31, 2015 | 10,000 tons |
| September 1, 2015 through August 31, 2016 | 10,000 tons |
| September 1, 2016 through August 31, 2017 | 10,000 tons |

Subject to the termination provisions of Section 7 hereof, GWR further agrees that thereafter it will deliver at least 10,000 tons of ADC to the MPL in successive twelve-month periods for the

remaining term of this Agreement. Both Parties hereto agree that GWR's obligations under this Section are an absolute "Put or Pay" commitment by GWR to the District whereunder GWR is obligated to pay the District the disposal fee per ton set forth herein on the tonnages set forth herein during each successive twelve-month period, whether or not GWR has actually delivered those tonnages to the MPL within those periods.

The District shall charge and GWR shall pay the fee of \$12.00 per ton for all such Alternative Daily Cover. The rate to be charged and paid in accordance with this Section shall be automatically increased annually in accordance with the adjustment provisions and formula set forth in Section 4.4 as revised herein, and may be modified in accordance with Section 4.5. GWR shall bear all costs of collection, processing, transfer, transportation, taxes, permits or impositions assessed or imposed, directly or indirectly, by any governmental entity related to the collection and delivery of ADC. The District assumes all costs incurred after its acceptance of GWR's ADC."

5. Section 4.3.1(a) of the Agreement Replaced.

Section 4.3.1(a) is replaced in its entirety by the following:

"4.3.1(b) Security for Financial Obligations of GWR. The minimum financial obligations of GWR set forth under Sections 3.1(b) and 3.3(b) hereinabove and 4.2(a), whereunder it has agreed to deliver Non-District Acceptable Waste and ADC in accordance with the "Put or Pay" requirements of 3.1(b) and 3.3(b) during each successive twelve-month period during the term of the Agreement, and to pay at the initial rates of \$21.50 and \$21.00 per ton for Non-District Acceptable Waste during the first twelve months of this Agreement, and \$12.00 per ton for ADC from May 1, 2011, as shall be modified by Sections 4.4 and as may be modified by 4.5 for each successive twelve-month period thereafter, shall be secured by a performance bond in a form reasonably acceptable to the District. This performance bond must be maintained in good standing and effect at all times during the term of this Agreement and may not be revoked except upon written authorization from the District. The performance bond may be increased from time to time to reflect any annual increase in the "Put or Pay" obligations of GWR under this Agreement."

6. Section 4.4 of the Agreement Further Revised.

The first sentence of Section 4.4, as amended by section 12 of Amendment No.1, is replaced in its entirety by the following:

“The rate or rates to be charged and paid in accordance with Sections 3.3(b) and 4.2(a) shall be automatically increased annually by 80% of the annual increases in the Consumer Price Index (“CPI”) for All Urban Consumers for the San Francisco-Oakland-San Jose Area (All Consumers-All Items - 1982-1984 Base Year) promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor for the adjustment period of the preceding May 1 through April 30.” The balance of Section 4.4 continues unaltered.

7. Section 5.1 of the Agreement Replaced.

Section 5.1 is replaced in its entirety by the following:

“5.1(a) Delivery and Acceptance of Non-District Waste and ADC

The Parties agree that all Non-District Acceptable Waste and ADC shall be delivered by GWR to the MPL between the hours of 5:30 A.M. to 4:00 P.M. on Monday through Friday and 8:00 A.M. to 4:00 P.M. on Saturdays. The MPL is closed on Sundays and on all recognized holidays, which are published by the District. Non-District Acceptable Waste and ADC shall generally be delivered by transfer trucks or waste collection vehicles.

GWR shall bear all costs of collection, processing, transfer, transportation, taxes, permits, or impositions assessed or imposed, directly or indirectly, by any governmental entity related to the collection of Non-District Acceptable Waste and ADC. The District assumes all disposal costs incurred after its acceptance of GWR’s Non-District Acceptable Waste and ADC.

8. Section 5.4 of the Agreement Replaced.

Section 5.4 is replaced in its entirety by the following:

“5.4(a) Emergency at the Facility

The District shall have the right to suspend acceptance of Non-District Acceptable Waste and ADC to the MPL at any time for up to a maximum of 45 days or more upon the occurrence of a natural disaster or other Uncontrollable Circumstances which affect the ability of the District to accept, under Applicable Law, GWR’s otherwise Acceptable Waste or ADC at the MPL.

The District will make every reasonable effort to provide advance notice of any Uncontrollable Circumstances; however, exigent circumstances may not allow advanced notice. During the time the District is unable to accept Waste or ADC, GWR shall be excused from Put & Pay obligations for such period of time.”

9. Section 7.1 of the Agreement Replaced.

Section 7.1 is replaced in its entirety by the following:

“7.1(a) Termination

At any time after the expiration of five (5) years from the September 1, 2010 commencement date of the Agreement, that is not before September 1, 2015, GWR shall have the right to terminate this Agreement, for any reason whatsoever, by giving the District two years’ prior written notice of termination and paying the District a termination fee of \$50,000. Said termination fee shall be payable in full on the date this Agreement then terminates.”

10. Section 7.2B of the Agreement Replaced.

Section 7.2B is replaced in its entirety by the following:

“7.2B(a) Termination for Cause by GWR

GWR may terminate for cause if the District is unable to accept Non-District Acceptable Waste for more than the 45 day period set forth in Paragraph 5.4(a) hereof and the Parties are unable to reach a mutually acceptable resolution through modification of this Agreement.”

11. Section 8.4 of the Agreement Replaced.

Section 8.4 is replaced in its entirety by the following:

“8.4(a) Origin of Non-District Acceptable Waste

GWR may not deliver Non-District Acceptable Waste collected by any entity not owned or partially owned by GWR, subject to provisions set forth in Section 3.1(b). Notwithstanding the foregoing, the District agrees that up to 5% of GWR’s Non-District Acceptable Waste “Put or Pay” tonnage obligation under this Agreement may be from sources not owned by GWR if the express prior written consent of the District has been secured. All such non-GWR Acceptable Waste so delivered must originate from a municipality or public entity which has implemented an approved Hazardous Waste Exclusion Plan and has fully implemented its SRRE under an approved California Integrated Waste Management Plan.”

12. All other terms and conditions.

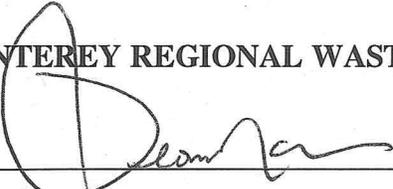
Except as amended by Amendment No.1 and as herein amended, all other terms and conditions of the Agreement continue unchanged and the Agreement shall remain in full force and effect.

13. Counterparts.

This Amendment No. 2 may be executed in counterparts, each of which is deemed to be an original.

IN WITNESS WHEREOF, District and GWR, by their duly authorized representatives, have executed this Amendment on the date first set forth above. [Signature page follows.]

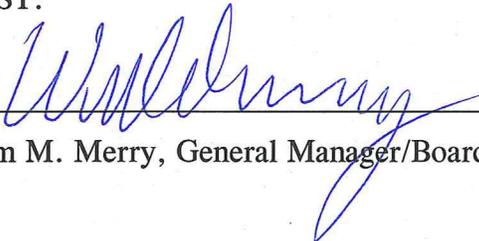
MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT

By: 

Date: 10/22/12

Leo Laska, Chair of the Board of Directors

ATTEST:

By: 

Date: 10/22/12

William M. Merry, General Manager/Board Secretary

GREENWASTE RECOVERY, INC.

By: _____

Date: _____

Richard A. Cristina, President

By: _____

Date: _____

Frank Weigel, Secretary

ZANKER ROAD RESOURCE MANAGEMENT, LTD.

By: Zanker Road Resource Recovery, Inc., a general partner

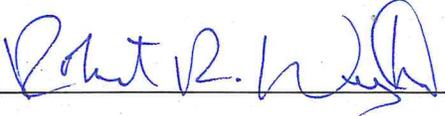
By: _____

Richard A. Cristina, President

By: _____

Murray B. Hall, Secretary

APPROVED AS TO FORM:

By: 

Date: 10/22/12

Robert Wellington, District Legal Counsel

By: _____

Date: _____

Gary V. Giannini, GWR Legal Counsel

**EXHIBIT C:
RESERVED**

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**EXHIBIT D:
CONTRACTOR'S PROPOSAL**

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The City of Milpitas

Request for Proposals for

**Transfer and
Disposal of
Solid Waste**



10.27.2015

HF&H Consultants, LLC
201 North Civic Drive, Suite 230
Walnut Creek, CA 94596

RE: Proposal to the City of Milpitas for the Transfer and Disposal of Solid Waste

To Whom It May Concern:

GreenWaste Recovery, Inc. is pleased to submit our response to the City of Milpitas Request for Proposals for the Transfer and Disposal of Solid Waste.

Since 1991, GreenWaste Recovery, Inc. (GreenWaste) has consistently delivered innovative and cost effective approaches to providing safe and environmentally acceptable disposal services to the jurisdictions it serves. GreenWaste is comprised of professionals who have dedicated their careers to offering collection, processing, transfer, transport, and disposal services to more than three hundred thousand (300,000) customers in more than a dozen jurisdictions throughout the Santa Clara, San Mateo, Santa Cruz, and Monterey Counties. GreenWaste is a locally owned and operated California corporation that was originally formed to provide yard trimmings collection and processing services to the City of San Jose. We have since successfully branched out into the collection and processing of Municipal Solid Waste (MSW), recyclable materials, yard trimmings, compostable materials, food scraps, and construction and demolition debris, and the transfer and transport of MSW. By expanding and upgrading our GreenWaste Material Recovery Facility (MRF) in San Jose, we have positioned ourselves as Northern California's premier MSW and recyclables processor.

In addition to operating our MRF in San Jose, GreenWaste is the current hauler for the City of San Jose; Town of Woodside; Town of Portola Valley; Town of Los Altos Hills; Burbank Sanitary District; County of Santa Clara South District; City of Palo Alto; County of Santa Cruz; City of Capitola; City of Scotts Valley; Santa Cruz County and San Mateo County State Parks and Beaches; California State University, Monterey Bay; City of Carmel-by-the-Sea; City of Del Rey Oaks; City of Marina; City of Pacific Grove; Pebble Beach Community Services District; City of Sand City; and City of Seaside. In addition to processing our own materials, we also process materials delivered by other local haulers in the Bay Area.

All materials processed at the GreenWaste MRF result in some amount of residue, which GreenWaste consolidates and transports to approved disposal facilities. For the City of Milpitas, GreenWaste proposes to build upon its existing relationship with the Monterey Regional Waste Management District (MRWMD), and utilize their Monterey Peninsula Landfill (MPL) for disposal of solid waste collected within the City.

GreenWaste has held an agreement with the MRWMD since 2010 to deliver solid waste for disposal. GreenWaste and MRWMD have recently amended their agreement to extend it through the year 2038 and increase annual tonnage capacity to 250,000 tons per year. Currently, GreenWaste delivers 180,000 tons per year to MPL for disposal, leaving an available capacity of 70,000 annual tons for the City of Milpitas. This is more than enough capacity for the City's solid waste tonnage and GreenWaste guarantees the City's tonnage for disposal.

GreenWaste also proposes the use of its sister facility, Zanker Materials Processing Facility in San Jose, to fulfill the City's optional request for "Material Drop-Off" services. The GreenWaste/Zanker family of companies offers a

comprehensive and local suite of services to meet the City's disposal goals and comply with local and State regulations.

Our company motto, "a brighter shade of green" is more than just a slogan to us. As a company, we have committed to transitioning our collections operations, our processing operations, and our corporate purchasing to live up to this value. Currently, all of our facilities are, or are in the process of being, certified as Green Businesses. Our successes in these endeavors can be seen by reviewing the reporting from The Climate Registry, where we voluntarily make public all of our efforts in going green. Much of this material can be found in our Sustainability Report, another voluntary project to show how we, as a company, continue the battle against climate change by growing our business sustainably.

GreenWaste has conducted all due diligence necessary to confirm material facts upon which this proposal is based, and has thoroughly reviewed and understands the requirements, terms, and conditions contained in the RFP, Franchise Agreement, the Attachments, Exhibits and the following addenda. These addenda were downloaded by and fully reviewed by GreenWaste:

- ✓ [Addendum No. 1](#) | Issued: August 13, 2015
- ✓ [Addendum No. 2](#) | Issued: September 21, 2015
- ✓ [Addendum No. 3](#) | Issued: September 29, 2015

GreenWaste is authorized to conduct business in the State of California and I am an authorized representative of GreenWaste to contractually bind GreenWaste. I shall be the key contact person during the proposal process and for the delivery of notices. This proposal, including proposed costs, shall be firm and valid for a period of one year from the submittal date of the proposal.

We are excited about this opportunity to build and foster a partnership with the City of Milpitas. We appreciate the time, effort, and funds that the City is putting into finding the most cost effective solution with the widest variety of service offerings for its residents and businesses. We are confident you will find this proposal meets all the criteria you expect from your next service provider.

With submittal of this Disposal Proposal, GreenWaste acknowledges and accepts all terms and conditions of the Disposal Agreement, except for any exceptions taken in [Section 6](#) of our proposal.

Sincerely,



Frank Weigel
Secretary | Chief Operating Officer
GreenWaste Recovery, Inc.
1500 Berger Drive
San Jose, CA 95112
office | 408.938.4902
fax | 408.287.3108
email | fweigel@greenwaste.com

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1 Executive Summary

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Executive Summary

GreenWaste Recovery, Inc. (GreenWaste) is pleased to submit this comprehensive proposal to the City of Milpitas (City) for the Transfer and Disposal of Solid Waste. GreenWaste proposes to utilize its Material Recovery Facility (MRF) in San Jose as a transfer station for the City's solid waste. Solid waste will then be consolidated and transported to Monterey Regional Waste Management District's (MRWMD) Monterey Peninsula Landfill (MPL) for disposal.

GreenWaste is confident it can assist the City in meeting its disposal goals. GreenWaste has extensive experience in the transfer of materials, and has an established and long-term relationship with MRWMD for disposal. Backed by years of experience, a dedication to safety, and prioritization of environmental responsibility, GreenWaste's proposal offers the City the best and most comprehensive disposal services.

Transfer Services

GreenWaste is a locally owned and operated California Corporation with more than 20 years of experience specializing in the collection, processing, and transfer of solid waste, recyclable materials, yard trimmings, food scraps, and construction and demolition debris. Since its inception in 1991, GreenWaste has continued to sustainably grow and expand its operations throughout Northern California, while continuing to deliver high-quality service to its customers, all at a competitive cost.

GreenWaste currently receives materials from seventeen (17) jurisdictions it also provides collection services for, and from two (2) Bay Area haulers who collect from jurisdictions in close proximity to the MRF. GreenWaste processes solid waste, recyclables, yard trimmings, and compostables for these jurisdictions and haulers, which creates non-recyclable, non-compostable residue. This residue is consolidated and transferred to MPL for disposal on a daily basis. GreenWaste subcontracts with various trucking companies to move materials between GreenWaste, MPL, and GreenWaste's sister companies' facilities in San Jose, Gilroy, and Watsonville.



The GreenWaste MRF is located at 625 Charles Street in San Jose, which is less than five (5) miles from the City's southern border, and less than eight (8) miles from the City's northern border. This close proximity allows the collection contractor to easily deliver solid waste to the GreenWaste MRF, where it can be consolidated and transferred to MPL. Additionally, the MRF currently has an available capacity of approximately 400 tons per day (tpd), and plans to increase permitted tonnage by 1,500 tpd by the end of 2015. GreenWaste's estimation for the City's solid waste tonnage is approximately 190 tpd, meaning that GreenWaste has ample capacity and is committed to accepting the City's solid waste tonnage.

Disposal Services



GreenWaste proposes to subcontract disposal services to the MRWMD Monterey Peninsula Landfill, located at 14201 Del Monte Blvd. in Marina. MRWMD was formed in 1951 and has over sixty (60) years of operational experience servicing jurisdictions spanning the Monterey, Santa Cruz, San Benito, and Santa Clara Counties.

MPL currently receives approximately 1,100 tpd of solid waste for disposal, and anticipates continued operations for the next 150 years. Since 2010, GreenWaste has held an agreement with MRWMD to deliver solid waste for disposal. This agreement was recently amended to extend through the year 2038, and increase annual tonnage capacity to 250,000 tons per year (tpy). Currently, GreenWaste delivers 180,000 tpy to MPL for disposal, leaving an available capacity of 70,000 annual tons for the City of Milpitas. A letter from MRWMD confirming this extended agreement and additional tonnage is included in [Section 9 | Attachments](#).

Material Drop-Off Services

GreenWaste understands the City's desire to offer its residents services that are similar to what they currently experience. Therefore, GreenWaste proposes to use its sister facility, Zanker Materials Processing Facility (ZMPF) in San Jose, for "Material Drop-Off" services. ZMPF is less than five (5) miles from Milpitas City Hall, and will accept up to two (2) cubic yards of acceptable materials from residents who present the voucher or vouchers that are distributed by GreenWaste annually via mail. This proposed service is comparable to a program GreenWaste offers in the Southern District of Unincorporated Santa Clara County. Residents appreciate the convenience of being able to utilize the vouchers at their leisure, rather than on specified days of the year. GreenWaste always prioritizes ease of use and convenience to customers.



Depth of Resources

The GreenWaste and Zanker family of companies offers ownership, management, and staff with extensive experience in facility operation, material transfer, and disposal services. GreenWaste and Zanker facilities collaborate on many ventures, and this support will extend to the City throughout the term of the Agreement. GreenWaste can offer the City a unique suite of services to efficiently manage the City's solid waste. Extending the services of the entire GreenWaste/Zanker family of companies and facilities to the City will offer distinctive opportunities for high quality and efficient services.

Ongoing Environmental Stewardship

Although this is a proposal for direct transfer and disposal of solid waste, it is important to express GreenWaste's sustainable practices. The City can take pride in selecting a disposal contractor who incorporates its mantra, "a brighter shade of green," into all areas of business and all aspects of operations.

GreenWaste has developed and implemented a company-wide Environmentally Preferable Purchasing Policy and has either received or is actively pursuing Green Business Certification at all eligible locations. GreenWaste is also certified as Climate Registered, having voluntarily and openly reported its carbon footprint through The Climate Registry for calendar years 2008 through 2013.

In Conclusion

GreenWaste is excited about the opportunity to partner with the City of Milpitas and provide disposal services that meet the City's goal of providing safe and environmentally acceptable services at reasonable rates. GreenWaste offers the utilization of its family of companies, as well as its established relationship with a prominent disposal facility, to meet the disposal needs of the City. GreenWaste guarantees capacity for the City's solid waste, offers Milpitas residents a convenient and customer-focused material drop-off program, is locally owned and operated, and values its jurisdictional relationships with nearby communities.

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2 Company Description

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2.A Business Structure

GreenWaste Recovery, Inc. (GreenWaste) is a California corporation that has been organized to conduct business in the State of California as recorded by the California Secretary of State on May 10, 1991.

GreenWaste is governed by the following individuals, each of whom has over ten percent (10%) ownership:

- ✓ Richard Cristina | [President](#)
- ✓ Murray Hall | [Vice President](#)
- ✓ Frank Weigel | [Secretary](#)

Currently, GreenWaste has a credit agreement in which Bank of the West is the lead agent, and additional agents include Union Bank and Wells Fargo. Each holds debt exceeding ten percent (10%) of the company's total assets.

[GreenWaste Recovery, Inc. Ownership](#)

[Richard Cristina \(President\)](#) | Mr. Cristina has over 45 years of experience in the solid waste industry and currently serves as President of GreenWaste Recovery, Inc. In the early 1970s, Mr. Cristina was a co-founder of the first transfer and recycling center in Santa Clara Valley and a partner in both San Jose Disposal, Inc. and the Foothill Sanitation Company. Mr. Cristina co-founded Zanker Road Resource Management, Ltd. in 1985, GreenWaste in 1991, and GreenTeam of San Jose in 1992. Mr. Cristina is involved in all aspects of business development and actively participates in various community, business, and non-profit organizations throughout the Bay Area.

[Murray Hall \(Vice President\)](#) | Mr. Hall has over 30 years of experience in the solid waste industry and currently serves as Vice President of GreenWaste Recovery, Inc. Along with Mr. Cristina, Mr. Hall was the co-founder of Zanker Road Resource Management, Ltd. in 1985, GreenWaste in 1991, and GreenTeam of San Jose in 1992. Mr. Hall is a Certified Public Accountant and has worked in the financial industry his entire career. Mr. Hall is involved in all aspects of GreenWaste's financial operations and reporting, with particular interest in the development and application of emerging zero waste technology.

[Frank Weigel \(Secretary/Chief Operating Officer\)](#) | Mr. Weigel has nearly 25 years of experience in the solid waste industry and currently serves as both Secretary and Chief Operating Officer of GreenWaste Recovery, Inc. Spending his entire career in the solid waste industry has led Mr. Weigel to gain hands-on experience in all facets of GreenWaste's collection and processing operations, which has proven invaluable in the optimization of operational efficiencies and in the reduction of GreenWaste's carbon footprint. Mr. Weigel currently oversees all of GreenWaste's collection and processing operations.

The owners of GreenWaste also share common ownership in GreenWaste's sister and joint-venture companies:

- ✓ [Zanker Road Resource Management, Ltd. \(Zanker\)](#)
- ✓ [GreenWaste of Palo Alto \(GWPA\)](#)
- ✓ [GW Debris Services \(GW Debris\)](#)
- ✓ [Zero Waste Energy Development Company \(ZWEDC\)](#)
- ✓ [West Valley Collection & Recycling](#)

Prior to forming GreenWaste, the owners of GreenWaste founded Zanker, which is a privately owned waste management company specializing in the processing and recycling of construction and demolition (C&D) debris, and

yardwaste and organics composting. Zanker owns and operates three landfills, two MRFs, two yardwaste composting facilities, and one MSW/food waste composting facility and has received national recognition for its recycling programs. In 2010 GreenWaste and Zanker joined forces to create Zero Waste Energy Development Company (ZWEDC), which developed a commercial scale dry fermentation anaerobic digestion (AD) facility in San Jose that processes all of the City of San Jose’s commercial food waste and organic materials, while creating electricity to use for onsite operations and sale to the PG&E power grid.

Subcontractors

Below are the proposed facilities and subcontractors, which GreenWaste will utilize for the listed services.

| Proposed Facility or Subcontractor | Services |
|---|---|
| GreenWaste Material Recovery Facility (MRF) | ✓ Solid Waste Transfer |
| Monterey Peninsula Landfill (MPL) | ✓ Solid Waste Disposal |
| O&S Trucking, Jim Friebel Trucking, Inc., Keith Day Company, or alternative | ✓ Transportation of Solid Waste from the GreenWaste MRF in San Jose to MPL in Monterey County |

Fostering Successful Working Relationships

GreenWaste has sustained a successful working relationship with MPL since 2007. GreenWaste transports solid waste and residuals from its MRF in San Jose, as well as from its collection operations out of its facility in Watsonville, to MPL for disposal.

GreenWaste has also developed long-standing relationships with various trucking companies. Since 2007, O&S Trucking has been transporting materials between GreenWaste and its affiliated companies’ facilities in San Jose, Gilroy, and Watsonville, and to the Monterey Regional Waste Management District (owner/operator of MPL). Materials are consolidated and transported between facilities on a daily basis.

2.B Transfer and Disposal Experience

GreenWaste services the following jurisdictions, and processes the accompanying material(s) at its MRF:

- City of San Jose | Yard Trimmings
- Town of Woodside | MSW, Recyclables, & Compostables
- Town of Portola Valley | MSW, Recyclables, & Compostables
- Town of Los Altos Hills | MSW, Recyclables, & Compostables
- County of Santa Clara | Recyclables
- City of Palo Alto | Recyclables
- County of Santa Cruz | Recyclables
- City of Capitola | Recyclables
- City of Scotts Valley | Recyclables
- Santa Cruz County and San Mateo County State Beaches | Recyclables
- California State University, Monterey Bay | Recyclables
- City of Carmel-by-the-Sea | Recyclables
- City of Del Rey Oaks | Recyclables
- City of Marina | Recyclables
- City of Pacific Grove | Recyclables
- Pebble Beach Community Services District | Recyclables
- City of Sand City | Recyclables
- City of Seaside | Recyclables
- GreenTeam of San Jose | SFD/MFD MSW & City Facilities
- Recology Silicon Valley | MSW & Recyclables

It is important to note that for all of the jurisdictions referenced in the above list, the GreenWaste MRF either processes or directly transfers various materials (including recyclables, organics, food waste, and solid waste). GreenWaste consolidates all unprocessed solid waste, as well as non-recyclable and non-compostable residuals, for transfer to the Monterey Peninsula Landfill (MPL) if other facilities are not contractually required. MPL is the proposed Disposal Facility under this Agreement.

Please note that only the jurisdictional references that the proposer, GreenWaste, has a direct relationship with are described below. These references are current, correct, and complete. The proposed Disposal Facility will act as a subcontractor to GreenWaste. References for the proposed Disposal Facility are available upon request.

| Jurisdiction | Relevant Experience | Description |
|---|--|---|
| <p>City of San Jose Laura McEwen IWM Contract Manager 200 East Santa Clara Street 10th Floor San Jose, CA 95113 408.975.7176 laura.mcewen@sanjoseca.gov Term of Agreement: 7/1/2002 to 6/30/2021 Served Since: 1991</p> | <p>Transfer of solid waste and non-recyclable / non-compostable residuals to Newby Island Landfill</p> | <p>The GreenWaste MRF sorts and processes multi-family solid waste and city-wide yard trimmings. All solid waste and residuals from processing are consolidated and transferred to Newby Island Landfill.</p> |

| | | |
|---|---|--|
| <p>Town of Woodside Kevin Bryant Assistant Town Manager 2955 Woodside Road Woodside, CA 94062 650.851.6790 kbryant@woodsidetown.org Term of Agreement: 7/1/2008 to 6/30/2018 Served Since: 1995</p> | <p>Transfer of solid waste and non-recyclable / non-compostable residuals to MPL (Proposed Disposal Facility)</p> | <p>The GreenWaste MRF sorts and processes solid waste, recyclables, and compostables. All solid waste and residuals from processing are consolidated and transferred to MPL.</p> |
| <p>Town of Portola Valley Brandi deGarmeaux Sustainability Manager 765 Portola Road Portola Valley, CA 94028 650.851.1700 Ext. 222 bdegarmeaux@portolavalley.net Term of Agreement: 7/1/2008 to 6/30/2018 Served Since: 2002</p> | <p>Transfer of solid waste and non-recyclable / non-compostable residuals to MPL (Proposed Disposal Facility)</p> | <p>The GreenWaste MRF sorts and processes solid waste, recyclables, and compostables. All solid waste and residuals from processing are consolidated and transferred to MPL.</p> |
| <p>Town of Los Altos Hills Carl Cahill, AICP Town Manager 26379 Fremont Road Los Altos Hills, CA 94022 650.941.7222 Ext. 225 ccahill@losaltoshills.ca.gov Term of Agreement: 7/1/2008 to 6/30/2016 Served Since: 2008</p> | <p>Transfer of solid waste and non-recyclable / non-compostable residuals to Newby Island Landfill</p> | <p>The GreenWaste MRF sorts and processes solid waste, recyclables, and compostables. All solid waste and residuals from processing are consolidated and transferred to Newby Island Landfill.</p> |
| <p>Burbank Sanitary District Steve Machida Mark Thomas & Company, Inc. Senior Project Engineer 20833 Stevens Creek Blvd., Suite 104 Cupertino, CA 95014 408.253.7863 smachida@markthomas.com Term of Agreement: 7/1/2007 to 6/30/2017 Served Since: 2007</p> | <p>Transfer of solid waste and non-recyclable / non-compostable residuals to MPL (Proposed Disposal Facility)</p> | <p>The GreenWaste MRF sorts and processes recyclables and compostables. Solid waste is delivered to the MRF, but is not processed. All solid waste and residuals from processing are consolidated and transferred to MPL.</p> |
| <p>County of Santa Clara – South District Lisa Rose Recycling and Waste Reduction Division 1555 Berger Drive, Bldg. #2, Suite 300 San José, CA 95112 408.282.3166 lisa.rose@aem.sccgov.org Term of Agreement: 7/1/2015 to 6/30/2020 Served Since: 2010</p> | <p>Transfer of recyclables from the GreenWaste Operations and Transfer Facility in Watsonville to the GreenWaste MRF in San Jose. Transfer of non-recyclable / non-compostable residuals to MPL (Proposed Disposal Facility)</p> | <p>Recyclables are either consolidated at the GreenWaste Operations and Transfer Facility in Watsonville and transferred to the GreenWaste MRF, or delivered directly to the MRF from collection vehicles. The MRF sorts and processes recyclables. Residuals from processing are consolidated and transferred to MPL.</p> |
| <p>Santa Cruz County Kasey Kolassa 701 Ocean Street Room 410 Santa Cruz, CA 95060 831.454.2377 dpw128@co.santa-cruz.ca.us Term of Agreement: 6/1/2007 to 12/31/2017 Served Since: 2007</p> | <p>Transfer of recyclables from the GreenWaste Operations and Transfer Facility in Watsonville to the GreenWaste MRF in San Jose. Transfer of non-recyclable / non-compostable residuals to MPL (Proposed Disposal Facility)</p> | <p>Recyclables are consolidated at the GreenWaste Operations and Transfer Facility in Watsonville and transferred to the GreenWaste MRF. The MRF sorts and processes recyclables. Residuals from processing are consolidated and transferred to MPL.</p> |

| | | |
|--|---|--|
| <p>City of Capitola Larry Laurent Assistant to the City Manager 420 Capitola Ave. Capitola, CA 95010 831.475.7300 llaurent@ci.capitola.ca.us Term of Agreement: 9/1/2008 to 12/31/2022 Served Since: 2008</p> | <p>Transfer of recyclables from the GreenWaste Operations and Transfer Facility in Watsonville to the GreenWaste MRF in San Jose.</p> <p>Transfer of non-recyclable / non-compostable residuals to MPL (Proposed Disposal Facility)</p> | <p>Recyclables are consolidated at the GreenWaste Operations and Transfer Facility in Watsonville and transferred to the GreenWaste MRF. The MRF sorts and processes recyclables. Residuals from processing are consolidated and transferred to MPL.</p> |
| <p>City of Scotts Valley Scott Hamby 700 Lundy Lane Scotts Valley, CA 95066 831.438.0732 shamby@scottsvally.org Term of Agreement: 2/1/2010 to 1/31/2022 Served Since: 2008</p> | <p>Transfer of recyclables from the GreenWaste Operations and Transfer Facility in Watsonville to the GreenWaste MRF in San Jose.</p> <p>Transfer of non-recyclable / non-compostable residuals to MPL (Proposed Disposal Facility)</p> | <p>Recyclables are consolidated at the GreenWaste Operations and Transfer Facility in Watsonville and transferred to the GreenWaste MRF. The MRF sorts and processes recyclables. Residuals from processing are consolidated and transferred to MPL.</p> |
| <p>Santa Cruz County and San Mateo County State Beaches & Parks Liz Cuevas Staff Services Analyst 303 Big Trees Park Road Felton, CA 95018 831.335.6388 Term of Agreement s: 1/1/2015 to 12/31/2017 Served Since: 2007</p> | <p>Transfer of recyclables from the GreenWaste Operations and Transfer Facility in Watsonville to the GreenWaste MRF in San Jose.</p> <p>Transfer of non-recyclable / non-compostable residuals to MPL (Proposed Disposal Facility)</p> | <p>Recyclables are consolidated at the GreenWaste Operations and Transfer Facility in Watsonville and transferred to the GreenWaste MRF. The MRF sorts and processes recyclables. Residuals from processing are consolidated and transferred to MPL.</p> |
| <p>California State University, Monterey Bay Alfredo Corona Facilities Services and Operations Contracts Manager 100 Campus Center Seaside, CA 93955 831.582.3706 acorona@csumb.edu Term of Agreement : 10/1/2012 to 9/30/2019 Served Since: 2012</p> | <p>Transfer of recyclables from the GreenWaste Operations and Transfer Facility in Watsonville to the GreenWaste MRF in San Jose.</p> <p>Transfer of non-recyclable / non-compostable residuals to MPL (Proposed Disposal Facility)</p> | <p>Recyclables are consolidated at the GreenWaste Operations and Transfer Facility in Watsonville and transferred to the GreenWaste MRF. The MRF sorts and processes recyclables. Residuals from processing are consolidated and transferred to MPL.</p> |
| <p>City of Carmel-by-the-Sea Sharon Friedrichsen Contract Manager PO Box CC Carmel-by-the-Sea, CA 93921 831.620.2009 Term of Agreement : 7/1/2015 to 6/30/2030 Served Since: 2015</p> | <p>Transfer of recyclables from the GreenWaste Operations and Transfer Facility in Watsonville to the GreenWaste MRF in San Jose.</p> <p>Transfer of non-recyclable / non-compostable residuals to MPL (Proposed Disposal Facility)</p> | <p>Recyclables are consolidated at the GreenWaste Operations and Transfer Facility in Watsonville and transferred to the GreenWaste MRF. The MRF sorts and processes recyclables. Residuals from processing are consolidated and transferred to MPL.</p> |

| | | |
|---|---|--|
| <p>City of Del Rey Oaks Daniel Dawson Contract Manager 650 Canyon Del Rey Rd. Del Rey Oaks, CA 93940 831.394.6421 Term of Agreement : 5/1/2015 to 4/30/2030 Served Since: 2015</p> | <p>Transfer of recyclables from the GreenWaste Operations and Transfer Facility in Watsonville to the GreenWaste MRF in San Jose.</p> <p>Transfer of non-recyclable / non-compostable residuals to MPL (Proposed Disposal Facility)</p> | <p>Recyclables are consolidated at the GreenWaste Operations and Transfer Facility in Watsonville and transferred to the GreenWaste MRF. The MRF sorts and processes recyclables. Residuals from processing are consolidated and transferred to MPL.</p> |
| <p>City of Marina Layne Long Contract Manager 211 Hillcrest Avenue Marina, CA 93933 831.884.1278 Term of Agreement : 5/1/2015 to 4/30/2030 Served Since: 2015</p> | <p>Transfer of recyclables from the GreenWaste Operations and Transfer Facility in Watsonville to the GreenWaste MRF in San Jose.</p> <p>Transfer of non-recyclable / non-compostable residuals to MPL (Proposed Disposal Facility)</p> | <p>Recyclables are consolidated at the GreenWaste Operations and Transfer Facility in Watsonville and transferred to the GreenWaste MRF. The MRF sorts and processes recyclables. Residuals from processing are consolidated and transferred to MPL.</p> |
| <p>City of Pacific Grove Thomas Frutchey Contract Manager 2100 Sunset Drive Pacific Grove, CA 93950 831.648.3106 Term of Agreement : 8/1/2015 to 7/31/2030 Served Since: 2015</p> | <p>Transfer of recyclables from the GreenWaste Operations and Transfer Facility in Watsonville to the GreenWaste MRF in San Jose.</p> <p>Transfer of non-recyclable / non-compostable residuals to MPL (Proposed Disposal Facility)</p> | <p>Recyclables are consolidated at the GreenWaste Operations and Transfer Facility in Watsonville and transferred to the GreenWaste MRF. The MRF sorts and processes recyclables. Residuals from processing are consolidated and transferred to MPL.</p> |
| <p>Pebble Beach Community Services District Mike Niccum Contract Manager 3101 Forest Lake Rd. Pebble Beach, CA 93953 831.737.1274 Term of Agreement : 7/1/2015 to 6/30/2030 Served Since: 2015</p> | <p>Transfer of recyclables from the GreenWaste Operations and Transfer Facility in Watsonville to the GreenWaste MRF in San Jose.</p> <p>Transfer of non-recyclable / non-compostable residuals to MPL (Proposed Disposal Facility)</p> | <p>Recyclables are consolidated at the GreenWaste Operations and Transfer Facility in Watsonville and transferred to the GreenWaste MRF. The MRF sorts and processes recyclables. Residuals from processing are consolidated and transferred to MPL.</p> |
| <p>City of Sand City Charles Pooler Contract Manager 1 Sylvan Park Sand City, CA 93955 831.394.3054 Term of Agreement : 4/1/2015 to 3/31/2030 Served Since: 2015</p> | <p>Transfer of recyclables from the GreenWaste Operations and Transfer Facility in Watsonville to the GreenWaste MRF in San Jose.</p> <p>Transfer of non-recyclable / non-compostable residuals to MPL (Proposed Disposal Facility)</p> | <p>Recyclables are consolidated at the GreenWaste Operations and Transfer Facility in Watsonville and transferred to the GreenWaste MRF. The MRF sorts and processes recyclables. Residuals from processing are consolidated and transferred to MPL.</p> |

| | | |
|--|---|--|
| <p>City of Seaside Daphne Hodgson Contract Manager 440 Harcourt Ave. Seaside, CA 93955 831.899.6715 Term of Agreement : 5/1/2015 to 4/30/2030 Served Since: 2015</p> | <p>Transfer of recyclables from the GreenWaste Operations and Transfer Facility in Watsonville to the GreenWaste MRF in San Jose.</p> <p>Transfer of non-recyclable / non-compostable residuals to MPL (Proposed Disposal Facility)</p> | <p>Recyclables are consolidated at the GreenWaste Operations and Transfer Facility in Watsonville and transferred to the GreenWaste MRF. The MRF sorts and processes recyclables. Residuals from processing are consolidated and transferred to MPL.</p> |
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2.C Key Personnel

The GreenWaste Ownership, Management Team, and Key Personnel will be instrumental in the initial and ongoing management of disposal services for the City.

The following section describes extensive and invaluable experience offered by the GreenWaste's Ownership, Management Team, and Key Personnel to facilitate ongoing services to the City.

Please refer to [Section 2.B | Disposal Experience](#) for municipal references from the jurisdictions GreenWaste serves.

GreenWaste Ownership

[Richard Cristina \(President\)](#) | Mr. Cristina has over 45 years of experience in the solid waste industry and currently serves as President of GreenWaste Recovery, Inc. In the early 1970s, Mr. Cristina was a co-founder of the first transfer and recycling center in Santa Clara Valley and a partner in both San Jose Disposal, Inc. and the Foothill Sanitation Company. Mr. Cristina co-founded Zanker Road Resource Management, Ltd. in 1985, GreenWaste in 1991, and GreenTeam of San Jose in 1992. Mr. Cristina is involved in all aspects of business development and actively participates in various community, business, and non-profit organizations throughout the Bay Area. In support of ongoing management of the services provided to the City, Mr. Cristina will support all operations during the term of the Agreement.

[Murray Hall \(Vice President\)](#) | Mr. Hall has over 30 years of experience in the solid waste industry and currently serves as Vice President of GreenWaste Recovery, Inc. Along with Mr. Cristina, Mr. Hall was the co-founder of Zanker Road Resource Management, Ltd. in 1985, GreenWaste in 1991, and GreenTeam of San Jose in 1992. Mr. Hall is a Certified Public Accountant and has worked in the financial industry his entire career. Mr. Hall is involved in all aspects of GreenWaste's financial operations and reporting, with particular interest in the development and application of emerging zero waste technology. In support of ongoing management of the services provided to the City, Mr. Hall will assist all operations during the term of the Agreement.

[Frank Weigel \(Chief Operating Officer\)](#) | Mr. Weigel has nearly 25 years of experience in the solid waste industry and currently serves as both Secretary and Chief Operating Officer of GreenWaste Recovery, Inc. Spending his entire career in the solid waste industry has led Mr. Weigel to gain hands-on experience in all facets of GreenWaste's collection and processing operations, which has proven invaluable in the optimization of operational efficiencies and reduction of GreenWaste's carbon footprint. Mr. Weigel currently oversees all GreenWaste's collection, processing, and transfer operations. In support of ongoing management of the services provided to the City, Mr. Weigel will oversee all collection and transfer operations during the term of the Agreement.

GreenWaste Management Team

[Greg Ryan \(General Manager\)](#) | Mr. Ryan has been with GreenWaste's sister company, Zanker Road Resource Management, Ltd., for over 20 years and has worked in all aspects of the business over that time. He started at Zanker Road Landfill in 1993 with varied responsibilities including Health and Safety, Equipment Maintenance, Compliance, and Operations. In 1997, Mr. Ryan permitted and developed Z-Best Composting Facility (Z-Best) in

Gilroy to meet the growing demand for organics recycling in the Bay Area. Mr. Ryan is currently the General Manager of all Zanker Operations and of Zero Waste Energy Development Company (ZWEDC), a dry fermentation anaerobic digestion facility in San Jose. Mr. Ryan also oversees GreenWaste and Zanker's agreement with the Monterey Peninsula Landfill (MPL) for disposal of Solid Waste and has done so since 2010. In support of ongoing management of the services provided to the City, Mr. Ryan will serve as the primary contact for the City and will ensure contract compliance with regards to disposal of solid waste at MPL.

Tracy Adams (Chief Administrative Officer) | Mr. Adams has more than 17 years of combined experience in the administration and operation of service-related industries, including 10 years in hotel operations and more than 9 years in the solid waste industry. Mr. Adams is a graduate of Northwestern University with a B.S. in Education and Social Policy. Mr. Adams is responsible for the direct administration and oversight of telecommunication, Internet Technology (IT) and network support, and database management. In support of ongoing management of the services provided to the City, Mr. Adams will support the MRF database and scale system procedures and will also be involved in the integration of all of GreenWaste's accounting and operations activities.

Dave Tilton (Chief Financial Officer) | Mr. Tilton began working at GreenWaste in 2010 after years as a financial executive with diverse experience in the Theme Park, High Tech and Distribution industries. Mr. Tilton graduated from California State University at Los Angeles with a bachelor's degree in Business Administration. He began his professional career and became a CPA while working for Ernst and Young. Mr. Tilton is responsible for the accounting functions at GreenWaste including general accounting, accounts payable, payroll, billing, accounts receivable, collections and various governmental reports including franchise fees and compliance. In support of ongoing management of the services provided to the City, Mr. Tilton will work with Mr. Weigel regarding accounting needs.

Ricardo Lopez (GreenWaste MRF Operations Manager) | Mr. Lopez has been with GreenWaste for more than 15 years, working as a sorter, collection vehicle operator, MRF supervisor, and most recently as MRF Operations Manager beginning in 2008. Mr. Lopez is responsible for the direct oversight and management of all aspects of the GreenWaste MRF operations including the supervision of staff, commodity management, material hauling and transport, and safety reports. Mr. Lopez also oversees all contract compliance aspects of the MRF including transportation, allocation, and tracking of all recyclable materials and solid waste processed at the MRF. In support of ongoing management of the services provided to the City, Mr. Lopez will ensure efficient and effective management of the MRF, its valued employees, and materials. Mr. Lopez will also oversee all contract compliance aspects of the MRF, including transportation, allocation, and tracking of all materials processed at the GreenWaste MRF.

Joe Lovelace (Environmental Compliance Officer) | Mr. Lovelace joined GreenWaste after receiving a B.S. in Environmental Studies / Environmental Impact Assessment from San Jose State University in 2013. Mr. Lovelace served in the United States Marine Corps, worked in industrial construction, and has experience working with regulatory agencies, including the Federal Energy Regulatory Commission, OSHA, and Federal/State EPA. He possesses extensive knowledge of State and Federal storm water regulations, environmental policy and law, and environmental restoration. In support of ongoing management of the services provided to the City, Mr. Lovelace will maintain GreenWaste's excellent environmental record and will ensure that vehicles and facilities remain in compliance with environmental regulations.

The following table lists contact information for GreenWaste’s personnel who will be instrumental in implementing ongoing solid waste transfer and disposal services in the City:

| GreenWaste Management Team | | | |
|--------------------------------|--------------------|--------------|--------------------------|
| Name | Title | Telephone | E-mail |
| Frank Weigel | COO | 408.938.4902 | fweigel@greenwaste.com |
| Greg Ryan (Primary Contact) | General Manager | 408.938.8755 | greg@zankerrecycling.com |
| Tracy Adams | CAO | 408.938.4938 | tadams@greenwaste.com |
| Dave Tilton | CFO | 408.938.4943 | dtilton@greenwaste.com |
| Ricardo Lopez | MRF Manager | 408.938.4936 | rlopez@greenwaste.com |
| Joe Lovelace | Compliance Officer | 408.938.4911 | jlovelace@greenwaste.com |

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2.D Labor Arrangements

Transfer Station

The GreenWaste Material Recovery Facility (MRF) is the proposed Transfer Station for solid waste collected in the City of Milpitas. The GreenWaste MRF is currently a non-union operation.

GreenWaste MRF employees include:

- ✓ *Sorters;*
- ✓ *Mechanics;*
- ✓ *Loader / Heavy Equipment Operators;*
- ✓ *Scale Operators;*
- ✓ *Forklift Operators;*
- ✓ *MRF Software Operators; and,*
- ✓ *Administration (includes: Manager, Assistant Manager, Maintenance Manager, Supervisors, and Office Staff).*

Employee Retention

GreenWaste will retain all existing MRF employees. These employees are extremely qualified, and are valued for their outstanding performance. Additional personnel will be hired, as needed, to fulfill all the requirements of the new Agreement.

Disposal Facility

The Monterey Peninsula Landfill (MPL) is the proposed Disposal Facility for solid waste collected in the City of Milpitas. The Monterey Regional Waste Management District (MRWMD) owns and operates the MPL. MRWMD is represented by Operating Engineers Local Union No. 3 under three classifications: (1) Operations Unit, (2) Laborer and Sales Clerk Unit, and (3) Support Personnel Unit. MPL will act as a subcontractor for solid waste disposal with GreenWaste as the primary disposal contractor.

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2.E Past Performance Record

Litigation & Regulatory Actions

In 2013, San Francisco Baykeeper issued an Intent to File Suit to GreenWaste for allegations based on GreenWaste's self-reporting of storm water discharges to the Regional Water Quality Control Board. GreenWaste settled out of court and modified operations to incorporate the requirements and comply with Baykeeper.

Over the past five (5) years, no director, officer, or key personnel of GreenWaste has been involved in any civil, legal, regulatory, and/or criminal action.

Payment of Fines, Penalties, Settlements, or Damages

The following table lists the fines and administrative proceedings GreenWaste has received over the past five (5) years.

| Date | Issuing Entity | Violation & Fines (if applicable) | Explanation |
|-------------|--|---|--|
| 2010 | California Division of Occupational Safety & Health OSHA | Lack of fall protection when on roof \$1,000 | GreenWaste employees were on the roof installing a bird deflector device without the required fall restraint system. Employees are no longer allowed on the roof without proper safety equipment. |
| 2011 | California Air Resources Board CARB | Periodic Smoke Inspection Program \$6,000 | Some vehicles were relocated or sold and some trucks weren't smog tested – GreenWaste has enlisted their Environmental Compliance Officer to manage all on- and off-road fleet emissions compliance regulations. |
| 2012 - 2015 | No fines to report | | |

Safety Metric

GreenWaste enforces an established Health and Safety Program to ensure all workers operate in safe working environments. GreenWaste strives to remain in full compliance with all worker safety and California Occupational Safety and Health Administration (OSHA) requirements. In addition to the Health and Safety Program, qualified safety consultants provided by GreenWaste's insurance company are periodically retained to review procedures and provide detailed inspection of facilities and equipment. Recommendations from these inspections are implemented to reduce any potential threat of worker injury. GreenWaste's Operations Manager and Supervisors perform worker safety and compliance inspections regularly.

The safety metrics in the table below include GreenWaste's Experience Modification Factor (Mod Rate), total hours worked, total number of non-fatal work-related injury cases, total number of cases involving days away from work, GreenWaste's DART rate (days away from work, job transfer, or restriction), and the 2013 industry average DART rate, according to the Bureau of Labor Statistics.

GreenWaste Employee Safety Metrics

| Year | MOD Rate | Total Hours Worked | Total Number of Non-Fatal Work-Related Injury Cases | Total Number of Cases Involving Days Away From Work | DART Rate (Days Away From Work, Job Transfer, or Restriction) | 2013 Industry Average DART Rate (Bureau of Labor Statistics) |
|------|----------|--------------------|---|---|---|--|
| 2014 | 0.81 | 846,696 | 69 | 18 | 4.25 | 6.4 |

2.F Financial Information

Financial Statements | Included in an electronic version only and marked **CONFIDENTIAL** is a certified financial audit for the years ending August 31, 2013 and 2014 that was prepared in accordance with Generally Accepted Accounting Principles. Also included is a signed statement by GreenWaste's Chief Financial Officer (CFO) stating that there has been no material adverse change in such condition or operations as reflected in the submitted balance sheets and income statements since the date on which they were prepared.

Financing Plan | No financing is necessary for GreenWaste to fulfill the provision of services under the Disposal Agreement.

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October 27, 2015

City of Milpitas
City Hall
455 East Calaveras Boulevard
Milpitas, CA 95035

RE: GreenWaste Recovery, Inc. Financial Information

To Whom It May Concern:

Enclosed you will find a GreenWaste Recovery, Inc. Certified Financial Audit for the years ending August 31, 2013 and 2014 as required by Section 6.4.6 of the RFP.

There has been no material adverse change in such condition or operations as reflected in the submitted balance sheets and income statements since the date on which they were prepared.

Yours very truly,

David Tilton
Chief Financial Officer
GreenWaste Recovery, Inc.

3 Transfer and Transport

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3.A Transfer and Transport General Site Information

GreenWaste proposes to utilize its Material Recovery Facility (MRF) as a Transfer Station for all solid waste collected in the City of Milpitas. The GreenWaste MRF is located at 625 Charles Street in San Jose, California.

General Operating Parameters

| Solid Waste Transfer Facility | |
|---------------------------------|------------------------------|
| Owner & Operator | GreenWaste Recovery, Inc. |
| SWFP No. | 43-AN-0019 and 43-AN-0020 |
| Permitted Hours of Operation | 24 hours per day |
| CEQA | SCH # 2004112032 |
| Capacity | Up to 2,000 tpd |
| MRF Manager Contact Information | Ricardo Lopez 408.938.4936 |

The GreenWaste MRF is permitted to accept up to 2,000 tons per day (tpd) of material, and is currently accepting 1,600 tpd. GreenWaste is in the permitting process with the goal of [expanding the permitted tonnage to 3,500 tpd](#) by the end of 2015. Average turnaround time for trucks depositing waste at the MRF is under 20 minutes per truck. The MRF is permitted to operate twenty-four (24) hours per day, seven (7) days per week. The MRF is typically open from 4:00am - 9:00pm Monday through Friday, 5:00am - 5:00pm on Saturday, and on an as-needed basis for maintenance on Sunday, generally operates 309 days per year, and is closed on the following holidays:

- ✓ *New Year's Day;*
- ✓ *Easter Sunday;*
- ✓ *Thanksgiving Day; and,*
- ✓ *Christmas Day.*

In 2008 the GreenWaste MRF underwent a multi-million dollar expansion, installing a dual stream side-by-side MSW and single-stream recyclable materials processing system. While this version of the MRF was widely recognized as one of the most innovative processing facilities in the world, GreenWaste continued to search for methods of getting even cleaner materials from processing and determined an expansion was necessary in order to achieve this.

In July 2015, GreenWaste started operation of its new MRF, a multi-building processing operation where MSW is processed in a separate building than recyclable materials; however, materials are constantly moved between buildings to ensure as much material is diverted from landfill as possible. This includes the recovery of organic material from all streams processed, and this organic material is consolidated and transferred to GreenWaste's sister company, Z-Best Composting Facility, in Gilroy, California. Processing the streams separately, and with updated equipment and processes, along with the ability to move material between processing buildings and to a related organics processing facility, has resulted in cleaner, more marketable materials. GreenWaste transfers solid waste from its MRF to the Monterey Peninsula Landfill (MPL) located in Monterey County.

Personnel

As is detailed in [Section 2.C | Key Personnel](#), the City's primary point of contact will be Mr. Greg Ryan, who is the General Manager of Zanker Road Resource Management, GreenWaste's sister company. Mr. Ryan negotiates GreenWaste and Zanker contracts with the appropriate disposal facilities. Mr. Ryan will oversee transfer and transport operations, and will be available during such operations to resolve requests and complaints.

GreenWaste consistently remains in compliance with all applicable laws and ensures all drivers possess California drivers' licenses of the appropriate class. Drivers are also monitored according to the DMV's "Pull Notice Program." GreenWaste trains its drivers, and all employees who operate vehicles or equipment, according to applicable operational and safety laws. In addition, employees are trained to identify and reject excluded waste from the MRF. Upon the City's request, GreenWaste will provide information on its safety and training policies and programs, including their schedule and the officers who perform them.

Solid Waste Transfer Methods

Once collection vehicles containing solid waste arrive at the GreenWaste MRF, they are directed to the inbound scale where the gross weight of the vehicle and contents is recorded. The vehicles are then directed to dump their contents on the solid waste tipping floor. Here, solid waste is consolidated with other solid waste delivered to or processed at the MRF and loaded into transfer trailers for transport to MPL in Monterey County. The vehicles are weighed again on the outbound scale and the tare weight of the empty vehicle is recorded. The tonnage of solid waste is calculated and maintained in GreenWaste's database. Transfer trailers are also weighed every quarter to ensure the tare weights are accurate.

Tracking Jurisdictional Tonnage

Currently, the GreenWaste MRF receives and processes materials from multiple jurisdictions. All materials are weighed on the inbound scale prior to being commingled for processing or transfer. The scale system, database, and operational procedures in place allow GreenWaste to allocate material (*and residue percentages*) to the appropriate jurisdiction, which are based on the residue audits conducted prior to processing.

All data will be generated in a suitable Excel pivot table format that is both user-friendly and capable of managing recycling operations; the Excel pivot tables allow for virtually unlimited flexibility in viewing data. All scale employees are fully trained on daily operations in order to reduce potential data collection and management errors. All scales are registered with the Santa Clara County Department of Weights and Measures and are regularly maintained to ensure reliability and proper function. Listed below are the materials processed at the GreenWaste MRF, and where they originate from:

- [City of San Jose | Yard Trimmings](#)
- [Town of Woodside | MSW, Recyclables, & Compostables](#)
- [Town of Portola Valley | MSW, Recyclables, & Compostables](#)
- [Town of Los Altos Hills | MSW, Recyclables, & Compostables](#)
- [County of Santa Clara | Recyclables](#)
- [City of Palo Alto | Recyclables](#)
- [County of Santa Cruz | Recyclables](#)
- [City of Capitola | Recyclables](#)
- [City of Scotts Valley | Recyclables](#)

-
- Santa Cruz County and San Mateo County State Beaches | [Recyclables](#)
 - California State University, Monterey Bay | [Recyclables](#)
 - City of Carmel-by-the-Sea | [Recyclables](#)
 - City of Del Rey Oaks | [Recyclables](#)
 - City of Marina | [Recyclables](#)
 - City of Pacific Grove | [Recyclables](#)
 - Pebble Beach Community Services District | [Recyclables](#)
 - City of Sand City | [Recyclables](#)
 - City of Seaside | [Recyclables](#)
 - GreenTeam of San Jose | [SFD/MFD MSW & City Facilities](#)
 - Recology Silicon Valley | [MSW & Recyclables](#)

Any commingled material from jurisdictions other than the City that are processed at the GreenWaste MRF are accurately allocated and tracked through the GreenWaste scale system and database.

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3.B Transfer and Transport Permits and Regulatory Compliance

The GreenWaste MRF has complied with all permits and environmental documents since its inception. At its request, GreenWaste can provide the City with all documentation verifying compliance. Safety is of the utmost importance at the GreenWaste MRF, and following all applicable local, state, and federal laws and regulations allow for the GreenWaste MRF to boast its excellent safety and compliance record. Below is a list of the regulatory agencies that monitor the GreenWaste MRF:

| Agency | Contact |
|---|--|
| Department of Resources Recycling and Recovery (Cal Recycle) | Kevin Webb Used Oil Collection Address: PO Box 4025, Sacramento, CA Phone: (916) 341-6172 |
| California Department of Toxic Substances Control | Edward Doty Supervising Criminal Investigator Address: 700 Heinz Avenue, Berkeley, CA Phone: (510) 540-9380 |
| Air Resources Board (BAAQMD) | Sharon Gee Air Quality Inspector Address: 939 Ellis Street, San Francisco, CA Phone: (415) 771-6000 |
| City of San Jose Environmental Services Department Watershed Protection - Stormwater | Bahar Ghofraniha Address: 200 East Santa Clara Street, San Jose, CA Phone: (408) 793-5343 |
| City of San Jose Environmental Services Department Watershed Protection - Sanitary Sewer | Sharon Terwilliger Environmental Inspector Address: 200 East Santa Clara Street, San Jose, CA Phone: (408) 793-5376 |
| Santa Clara County Department of Environmental Health | Joanne Tracey Hazardous Materials Specialist II Address: 1555 Berger Drive, San Jose, CA Phone: (408) 918-3374 |
| City of San Jose Fire Department - Hazardous Materials Program | Michael Murtiff Hazardous Materials Program Manager Address: 170 W. San Carlos Street, San Jose, CA Phone: (408) 277-8774 |

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3.C Transfer and Transport Services

Capacity Guarantee

The GreenWaste MRF is permitted to accept up to 2,000 tons per day (tpd) of material, and is currently accepting 1,600 tpd. GreenWaste is in the permitting process with the goal of [expanding the permitted tonnage to 3,500 tpd](#) by the end of 2015. The GreenWaste MRF is ready to accept the City of Milpitas' tonnage under its current footprint, with no need for an expansion. GreenWaste guarantees throughput capacity for solid waste transfer at its MRF based on the following assumptions and considerations:

- ✓ *Cart solid waste tonnage to be collected ~ 13,950 tons annually;*
- ✓ *Bin solid waste tonnage to be collected ~ 23,348 tons annually;*
- ✓ *Debris box solid waste tonnage to be collected ~ 12,100 tons annually;*
- ✓ *Single-family, multi-family, and commercial on-call solid waste tonnage to be Collected ~ 99 tons annually; and,*
- ✓ *The City's General Plan indicates significant projected long-term infill growth that could increase the number of residential and small commercial solid waste accounts.*

Anticipated Throughput

GreenWaste has considered the City's historical tonnage, as well as customer counts provided through Republic Services' annual reports, and GreenWaste has taken into consideration the City's General Plan for significant infill growth. The following capacity needs have been determined as follows:

$$\frac{\text{Solid Waste tonnage across all sectors (49,497 tons)}}{\text{Total weekdays per year (260)}} = \mathbf{190 \text{ tpd capacity needed}}$$

With GreenWaste's current available capacity of approximately 400 tpd, and with the goal of increasing permitted tonnage to 3,500 tpd by the end of 2015, there exists more than enough capacity for the City's solid waste to be accepted at the GreenWaste MRF.

Diversion Services

GreenWaste plans to direct transfer solid waste collected within the City. There will be no sorting of solid waste. Solid waste will first be delivered by the collection contractor to the GreenWaste MRF, where it will be consolidated for transfer to Monterey Regional Waste Management District's Monterey Peninsula Landfill (MPL) in Monterey County.

Contingency Plan

The GreenWaste MRF has never experienced an unforeseen closure since its inception, so the need for an alternate facility is not anticipated. In fact, the GreenWaste MRF has 4 separate tipping floors where solid waste can be dumped and consolidated for transfer, so if one area of the MRF is closed, there are supplementary areas to

accommodate solid waste.

Regardless, in order to ensure uninterrupted service for the City and in the event that the GreenWaste MRF is closed on a temporary basis, GreenWaste can deliver Solid Waste for disposal to an alternate facility. GreenWaste will enter into an agreement with either Newby Island Landfill or Kirby Canyon Landfill to act as an alternate disposal facility if the need arises and only with City approval.

Please refer to [Section 4.C | Disposal Services](#) for details of the Disposal Facility contingency plan.

4 Disposal

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4.A Disposal General Site Information

Facility Overview

The Monterey Regional Waste Management District (MRWMD) was formed in 1951, under the California Health and Safety Code, and has become an award-winning integrated waste management facility spanning 460+ acres, representing seventeen communities across 853 square miles, and providing services to populations across the four counties of Monterey, Santa Cruz, San Benito and Santa Clara. MRWMD has over 60 years of operational success, and maintains a mission to provide high quality, cost-efficient, integrated waste management services, while preserving the environment and protecting the public health. In addition to operating the Monterey Peninsula Landfill (MPL) and a Materials Recovery Facility (MRF), the MRWMD's approach to integrated solid waste management has contributed to its track record as an industry leader and earned the agency such prestigious recognitions as:

- ✓ **Best Solid Waste System in North America** by Solid Waste Association of North America (SWANA), 1998
- ✓ **Best Reuse Program in California** by California Resource Recovery Association (CRRRA), 2007
- ✓ **Gold Excellence Award** in Landfill Gas Utilization by SWANA, 2007
- ✓ **Best Environmental Business** by the Monterey County Weekly Readers Poll, 2008

MRWMD's pioneering programs and projects include:

- ✓ MRWMD was one of the first in North America to install and operate a landfill gas to energy power plant, a system which has safely captured, managed and converted landfill methane into the beneficial use of renewable energy power production for over 30 years. The system generates 5 megawatts (MW) of electricity at capacity and is utilized to power all on-site operations as well as deliver sufficient energy to the grid to power 4,000 homes.
- ✓ MRWMD implemented the nation's first reuse store associated with disposal and recycling services, the Last Chance Mercantile, a facility that continues to serve as a community resource for the donation and reuse of an array of materials including furniture, clothing, building supplies, and household goods.
- ✓ The onsite Household Hazardous Waste Collection Facility (HHWCF) is considered one of the premier programs in the State, offering more convenient drop-off collection service of hazardous materials and electronic waste than virtually any other program in California.
- ✓ MRWMD installed the first SmartFerm Dry Anaerobic Digester in California in 2013, the second such facility in the US, a system that converts food waste into energy and compost, to both increase organics waste diversion and reduce greenhouse gas emissions. Biogas generated through the digestion process is captured and converted into electricity utilized by the neighboring wastewater treatment facility, while also yielding a valuable soil amendment.
- ✓ Additional facility programs include robust public drop-off and curv buy-back recycling centers, green waste diversion and on-site composted Greener Garden Landscape Products, and broad public education tours, workshops and resources comprising the Small Planet School Education Program.

MPL facilities have been owned and operated by the MRWMD since 1966. The site is approximately one mile east of U.S Highway 1, two miles north of the City of Marina, 12 miles north of the City of Monterey, and 60 miles south of Milpitas. Tim Flanagan, General Manager, serves as the agency’s primary contact under this proposal.

| Solid Waste Disposal Facility | |
|-------------------------------------|---|
| Owner and Operator | Monterey Regional Waste Management District |
| Physical Address | 14201 Del Monte Boulevard, Monterey County, CA |
| Mailing Address | P.O. Box 1670, Marina, CA 93933 |
| General Manager | Tim Flanagan |
| General Manager Contact Information | Phone: (831) 384-5313 Fax: (831) 384-3567 tflanagan@mrwmd.org |

General Operating Parameters

The MRWMD’s facility operates under Solid Waste Facility Permit #27-AA-0010 issued on behalf of CalRecycle by the Lead Enforcement Agency (LEA), which is the County of Monterey Department of Health’s Environmental Health Bureau. The site is permitted as a non-hazardous Class III solid waste disposal facility, a transfer/processing facility (MRF), and a composting facility (sludge). The operations and facilities which are ancillary to the landfill are permitted to operate 24 hours per day, seven (7) days per week. MPL is permitted to receive non-hazardous solid waste Monday thru Saturday from 5:30am to 5:00pm and limited to special events on Sundays. Average turnaround time for trucks depositing waste at MPL is under 20 minutes per truck. MPL currently utilizes the following operating hours for normal business days, excluding holidays:

| | |
|--------------------------------|--|
| Commercial Franchise Customers | Monday – Saturday 5:30 a.m. – 4:00 p.m. |
| Public Customers | Monday – Saturday 7:00 a.m. – 4:00 p.m. |

The 460+ acre MRWMD site includes the 315-acre MPL. MPL was designed and permitted and is operated in compliance with Class III landfill standards set forth in Title 27 CCR. The Solid Waste Facility Permit for the MRWMD operation states that the peak traffic volume for incoming waste materials shall not exceed 2,000 trips per day, and the peak tonnage of incoming waste shall not exceed 3,500 tons per day (except for a maximum of eight days per calendar year). The operator is required to provide prior notice to the LEA on days over 3,500 tons, and is limited to 4,500 tons per day and 21,000 tons per week (MON-SAT). MPL currently receives approximately 340,000 tons per year (1,100 tons per day) of municipal solid waste for disposal.

The MRWMD also operates numerous on-site programs and recycling facilities, in addition to waste disposal, to support its integrated waste management system. Operations conducted within the 460+ acre MRWMD site include the landfill, landfill gas-fueled electrical generation facility, MRF, wood and yard waste chipping and grinding, biosolids/food waste composting, and other separately permitted composting, concrete/asphalt recycling, and sand processing. The Household Hazardous Waste Collection Facility (HHWCF), Last Chance Mercantile, and public recycling drop-off facility are located onsite on a single parcel which is approximately 9 acres. Currently, Keith Day

Company conducts composting operations in compliance with SWFP No. 27-AA-0085 on approximately 60 acres of the MRWMD's site.

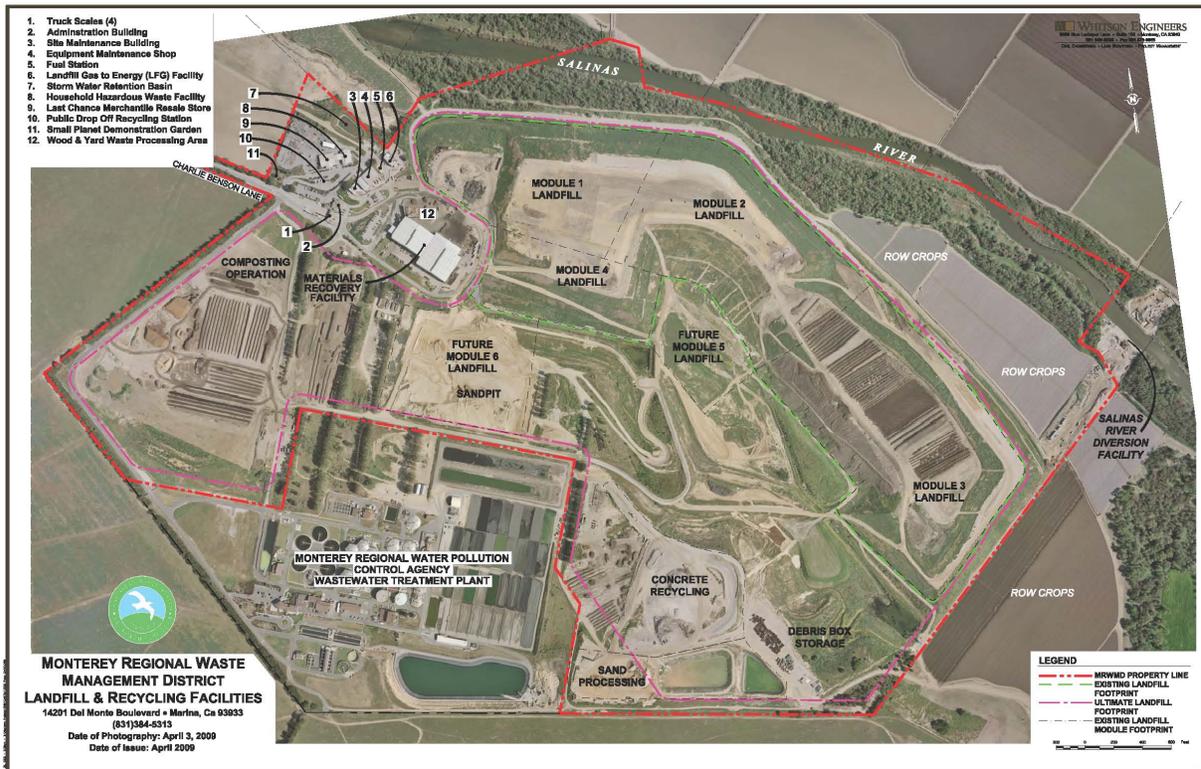
Solid Waste Transfer Methods

Please refer to prior [Section 3.A | Transfer and Transport Services General Site Information](#), for a description of solid waste transfer methods at the GreenWaste MRF.

Tracking Jurisdictional Tonnage

Please refer to prior [Section 3.A | Transfer and Transport General Site Information](#), for a description of how GreenWaste tracks jurisdictional tonnage.

MRWMD aerial view circa 2009:



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4.B Disposal Permits and Regulatory Compliance

Monterey Peninsula Landfill (MPL) has complied with all permits and environmental documents since its inception. Safety is of the utmost importance at MPL, and following all applicable local, state, and federal laws and regulations allow for MPL to boast its excellent safety and compliance record. Below is a list of the regulatory agencies that monitor MPL:

| Agency | Contact |
|--|---|
| County of Monterey, Department of Health Environmental Health Bureau Lead Enforcement Agency (LEA) Program for CalRecycle | John Ramirez, REHS, MPA Director of Environmental Health Address: 1270 Natividad Road, Salinas, CA Phone: (831) 755-4508 Fax: (831) 755-4880 |
| Central Coast Regional Water Quality Control Board | Kenneth A. Harris Executive Officer Address: 895 Aerovista Place, Suite 101, San Luis Obispo, CA. Phone: (805) 549-3147 Fax: (805) 543-0397 |
| Monterey Bay Unified Air Pollution Control District | Richard A. Stedman Air Pollution Control Officer Address: 3180 Imjin Road, Suite 148, Marina, CA Phone: (831) 647-9411 Fax: (831) 647-8501 |
| County of Monterey, Resource Management Agency Planning, Development Services Division | Michael Novo, Director of Planning Address: 168 West Alisal Street, 2 nd Floor, Salinas, CA Phone: (831) 755-5025 Fax: (831) 755-9516 |
| County of Monterey, Resource Management Agency Building Services, Development Services Division | Daniel Dobrilovic Acting Chief Building Official Address: 168 West Alisal Street, 2 nd Floor, Salinas, CA Phone: (831) 755-5027 Fax: (831) 755-9516 |
| Marina Fire Department | Doug McCoun Fire Chief Address: 211 Hillcrest Avenue, Marina, CA Phone: (831) 884-1210 Fax: (831) 384-5321 |

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4.C Disposal Services

Site Capacity

Currently, the Monterey Peninsula Landfill (MPL) SWFP sets the **maximum tonnage at 3,500 tons per day (tpd)**. The site may accept up to 4,500 tpd, a maximum of 8 days in one calendar year. At no time can the site exceed 21,000 tons for the week in which an exceedance occurred. However, at current levels MPL presently receives less than one-third of its permitted daily capacity (27% in 2012, **25% average over 2010 - 2012**).

- GreenWaste has held an agreement with the Monterey Regional Waste Management District (MRWMD) since 2010 to deliver solid waste for disposal. GreenWaste and MRWMD have recently amended their agreement to extend it through the year 2038 and increase annual tonnage capacity to 250,000 tons per year (tpy). Currently, GreenWaste delivers 180,000 tpy to MPL for disposal, leaving an **available capacity of 70,000 annual tons** for the City of Milpitas. A letter from MRWMD confirming this extended agreement and additional tonnage is included in [Section 9 | Attachments](#).

The area approved for waste disposal presented in the SWFP is approximately 315 acres. Based on a maximum elevation of 284 feet MSL, the total fill capacity (waste + soil) of the landfill is approximately 91 million cubic yards. The remaining air space was estimated by comparing the volume between the contours of the Final Grading Plan (Joint Technical Document (JTD)¹, Appendix C) and the April 2013 topographic map. MPL landfill design capacity totals 56,876,000 tons or 84,136,000 cubic yards. As of 2009, the remaining waste capacity was estimated as 48,882,000 tons or 72,311,000 cubic yards (JTD, Table 7). Based on tonnage data of materials landfilled from 1966 through May 2013, the remaining waste capacity of MPL is approximately 47,900,430 tons or 70,859,000 cubic yards. Based on projected waste disposal quantities, provided by the District, shown in JTD, Table 4 and Appendix K; a capacity utilization factor of 0.676 tons per cubic yard; and 309 operating days per year, the remaining capacity is estimated to provide service to approximately the year 2161.

MPL is comprised of one waste management unit (WMU) made up of 17 modules. To date, Modules 1 through 5 have been developed and have received waste for disposal. Commencing in July 2013, Module 5 is the currently active disposal module. The remainder of the MPL footprint will be developed sequentially with Modules 6 through 16. The airspace located on top of the existing and proposed Modules 1 through 16 has been designated as “Module 17,” but is actually a vertical expansion of the underlying modules. There is no liner construction associated with Module 17, but rather is proposed as a “cap” module to be placed over the completed Modules 1 through 16.

The actual landfill service life will be dependent on the actual waste received at the landfill as well as such factors as other regional landfill closing dates, waste generation rates, waste diversion rates, and development activity that are beyond the District’s control. Nonetheless, MPL is uniquely positioned among landfills with a remaining landfill life expectancy several times the average capacity in the nation. At current rates, MPL is estimated to have a life expectancy of 150 years ensuring that the region will have ample disposal capacity well into the future. With new developments in recycling and diversion in the coming years, it is anticipated that the facility will add additional life expectancy to MPL disposal site in the future.

The design for MPL and its construction and operation are conducted under the direction of a registered civil engineer and professionals in other disciplines as required, such as hydrology, geology, and chemistry. The landfill

¹ The Joint Technical Document (JTD) may be provided upon request.

design features and construction standards are based on state and federal regulatory requirements, including Title 27 of the CCR and RWQCB Order No. R3-2006-0017. Landfill modules constructed since 1988 have included a composite liner and leachate collection and removal system (LCRS). Future landfill modules will also be constructed with a composite liner and LCRS. Descriptions of how the site design accommodates specific features, such as facility service areas, climatological factors, physical setting, soils, drainage, and general public use, are described within the JTD.

MPL has been used for the disposal of non-hazardous waste since 1966 and consists of both unlined and lined areas. The Class III landfill is operated as a typical California landfill utilizing the area fill method of disposal. The landfill is being developed in phases. A disposal module is excavated, lined, and then filled to create an ever-widening deck area. The excavation provides soil necessary for liner construction, daily and intermediate cover, earth fills, and final cover. The proposed fill sequence plan and proposed excavation plan are presented in the JTD, Appendix B, *Updated Master Plan Report*.

Anticipated Throughput

Please refer to prior [Section 3.C | Transfer and Transport Services](#), for a description of the anticipated throughput of the City's solid waste at the GreenWaste MRF.

Expanded or New Facility

Based on the long remaining landfill 'site life' (remaining capacity), as well as current and projected operations, there are no planned or future site expansion(s) activities presently anticipated at MPL facility. The facility anticipates [continued operations for more than the next 150 years](#), with new and projected diversion activities likely increasing the expected life of the facility beyond this timeframe in the years and decades to come.

Import Restrictions

There are currently no explicit restrictions of "importing" solid waste for disposal from out-of-county sources to MPL. Similarly, there are also no taxes or fees specifically assigned to "imported" disposal tons.

Assurances

The District and GreenWaste Recovery, Inc. shall provide appropriate indemnification to Milpitas as requested under the guidelines of this RFP, should this proposal be selected for implementation. The District is in full compliance with State mandates for financial reserves required by the State of California for landfill closure, post-closure, and corrective action financial assurance funding. The District also has a credit rating of AA minus from Standard and Poor's. The District's sound management practices, capable and experienced staff, adherence to appropriate and standard principals, and documented long landfill capacity 'site life,' place the District in solid financial standing for the successful execution of the proposed project over and beyond the contract term.

Contingency Plan

In order to ensure uninterrupted service for the City and in the event that MPL is closed on a temporary basis, GreenWaste can deliver solid waste for disposal to an alternate facility. GreenWaste will enter into an agreement with either Newby Island Landfill or Kirby Canyon Landfill to act as an alternate disposal facility if the need arises and only with City approval.

5 Material Drop-Off

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5 Material Drop-Off

GreenWaste Voucher Program

GreenWaste proposes the use of vouchers to accommodate material drop-off services for City of Milpitas residents. GreenWaste has already developed and deployed a successful voucher program for many of the jurisdictions it serves. GreenWaste voucher programs vary and are tailored to the specific jurisdiction's needs and wants. A comparable program to what GreenWaste proposes for the City of Milpitas is currently in place in the Southern District of Unincorporated Santa Clara County, where residents are mailed vouchers annually that allow them to drop off up to 2.5 cubic yards of solid waste for disposal, free of charge, to Kirby Canyon Landfill (owned by Waste Management), or up to 2.5 cubic yards of clean yard trimmings for recycling to Z-Best Composting Facility. GreenWaste worked with Waste Management and developed a program that has worked well for both parties. The accounting departments for both GreenWaste and Waste Management have a successful tracking and payment program in place. The program has been successfully operational since 2009.

Proposed Multi-Purpose Voucher Program

On an annual basis, GreenWaste will distribute, by first class mail, four (4) multi-purpose vouchers to each residential customer in the City. Vouchers will have an expiration date of the year following the year of issuance. Vouchers must be redeemed at GreenWaste's sister facility, Zanker Materials Processing Facility (ZMPF), located at 675 Los Esteros Road in San Jose. ZMPF is owned and operated by Zanker Road Resource Management (Zanker). GreenWaste and Zanker share ownership and have partnered on many endeavors, offering a comprehensive suite of services. Below is an example of the Santa Clara County voucher:



- **Distribution** | Multi-purpose vouchers will be developed annually, will specify the parameters of the program, and include an expiration date. The residential customer's mailing information will be printed on each voucher to ensure the customer is the person redeeming the voucher. The multi-purpose vouchers will be printed on 8.5"x11"cardstock paper and will be designed as self-mailers, but may be inserted into bills.

- **Redemption Parameters** | Each multi-purpose voucher will allow a residential customer to drop off up to 2 cubic yards of yard trimmings, recyclables, and bulky items, and other non-putrescible items (excepting yard trimmings), free of charge, to ZMPF. Vouchers must be in their original and unaltered condition and may not be expired. The customer will be required to show proof of identification and the name on the form of identification must match the name on the voucher.
- **Combining Vouchers** | If a residential customer delivers material of an amount exceeding 2 cubic yards, multiple vouchers may be used. Alternatively, ZMPF retains the right to charge the posted gate rate for the amount of material that exceeds the limit specified on the voucher.
- **Bulky Items** | If a residential customer delivers a load containing a bulky item, the weight and volume of the bulky item will be included in the weight and/or volume limits. If the load containing the bulky item falls under the weight and/or volume limit specified on the multi-purpose voucher, or if multiple multi-purpose vouchers are redeemed to cover the bulky item, there will be no additional special item charge. However, if the volume and/or weight of materials delivered exceed the volume and/or weight limit specified on the multi-purpose voucher, the residential customer may either redeem additional multi-purpose vouchers or may be charged a blended gate rate for the excess materials.
- **Prohibited and Additional Charge Items** | If a residential customer tries to deliver a load containing hazardous material, the load will be rejected. If a customer drops off tires or items containing Freon, then the customer will be charged an additional fee per item.

Material Drop-Off Facility

The proposed Material Drop-Off Facility is Zanker Materials Processing Facility (ZMPF), located at 675 Los Esteros Road in San Jose. ZMPF has been operational since 1999 and is open for public use from 6:00 AM to 5:45 PM, Monday through Friday, and 8:00 AM to 3:45 PM on Saturdays. ZMPF has complied with all permits and environmental documents since its inception. ZMPF is governed through permits issued by the following agencies:

| Agency | Contact |
|---|---|
| State Water Resources Control Board | San Francisco RWCQB Address: 1515 Clay St., Suite 1400, Oakland, CA 94612 Phone: (510) 622-2300 |
| Bay Area Air Quality Management District (BAAQMD) | Jayendra Patel Air Quality Inspector Phone: (415) 749-4979 Email: jpatel@baaqmd.gov |
| Department of Food and Agriculture | Pierre Labossiere Special Investigator Address: 1220 N Street, Sacramento, CA |

| | |
|---|--|
| | Phone: (510) 715-6399 Email: plabossi@cdfa.ca.gov |
| Santa Clara County Department of Environmental Health | Jaji Murage Registered Environmental Health Specialist Solid Waste Programs Address: 1555 Berger Drive, Suite 300, San Jose, CA Phone: (408) 918-3405 |
| Santa Clara County Department of Environmental Health | Ray Maiden Hazardous Materials Specialist II Hazardous Materials Compliance Division Address: 1555 Berger Drive, Suite 300, San Jose, CA Phone: (408) 918-1980 |
| San Jose Fire Dept. Station 25 | Address: 1525 Wilson Way, Alviso, CA 95002 Phone: (408) 794-7000 |

The Zanker facilities are also the proposed facilities for disposal of material from City facilities and special events.

Estimated Participation

It is anticipated that approximately 4,156 tons annually will be delivered to ZMPF, based on details provided through the RFP process. Customers will be notified of this program through receipt of the vouchers and via the GreenWaste website.

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6 Acceptance of RFP Terms

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7 Cost Forms

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Form 1 Disposal Cost

Processing Cost Proposal

Proposer Name: _____

GreenWaste Recovery, Inc.

City of Milpitas Base Services

Note to proposer: Input data in yellow shaded areas only.

| | Solid Waste |
|--|---|
| | 12-Month Period From September 6, 2017 To September 5, 2018 |
| Transfer Cost, if any* | |
| Transfer Station Fee | \$22.50 |
| Transport proposed rate (\$/ton) | \$15.50 |
| Average Tons per Load (tons) | 22.00 |
| Average vehicle turnaround time at transfer station (minutes) | 20 |
| Stand-by rate (\$/hour) | |
| Disposal Costs | |
| Disposal proposed rate (\$/ton) | \$18.85 |
| Average vehicle turnaround time at transfer station (minutes) | 20 |
| Stand-by rate (\$/hour) | |
| Disposal and Transfer Facility Regulatory Fees & Taxes (list separately, note if applicable for processing or transfer facility) | |
| <u>Transfer Facility - LEA Enforcement Fee (\$/ton)</u> | \$1.08 |
| <u>Transfer Facility - County of Santa Clara Export Tax (\$/ton)</u> | \$4.88 |
| <u>Disposal Facility - Integrated Waste Management Fee (\$/ton)</u> | \$1.40 |
| <u>Disposal Facility - Monterey County LEA (\$/ton)</u> | \$0.75 |
| Total Disposal and Transfer Facility Regulatory Fees (\$/ton) | \$8.11 |
| Material Drop-Off (\$/redeemed voucher) | \$70.00 |

* Transfer station fee to include all transfer facility-related costs and the long-haul transportation costs from the transfer station to the disposal facility.

8 Other Proposal Forms

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**Attachment 5:
Secretary's Certificate**

I, Frank Weigel, certify that I am the secretary
Name
of the corporation named herein; that Frank Weigel who signed this
Name
Proposal on behalf of the corporation, was then Secretary of
Title
said corporation; that said Proposal is within the scope of its corporate powers and was duly signed for
and on behalf of said corporation by authority of its governing body, as evidenced by the attached true
and correct copy of the Articles of Incorporation
Name of Corporate Document

By: 

Name: Frank Weigel
Title: Secretary

Date October 27, 2015

1518631

ARTICLES OF INCORPORATION
OF
GREENWASTE RECOVERY, INC.

ENDORSED
FILED
in the office of the Secretary of State
of the State of California

MAY 10 1991

MARCH FONG EU, Secretary of State

I.

The name of this corporation is GREENWASTE RECOVERY, INC.

II.

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

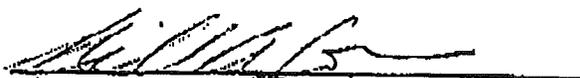
III.

The name and address in the State of California of this corporation's initial agent for service of process is Richard A. Cristina, 575 Charles Street, San Jose, California, 95112.

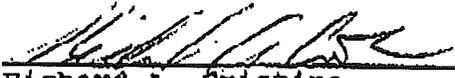
IV.

This corporation is authorized to issue only one class of shares of stock, and the total number of shares which this corporation is authorized to issue is one million (1,000,000).

Dated: May 7, 1991


Richard A. Cristina

I hereby declare that I am the person who executed the foregoing Articles of Incorporation, which execution is my act and deed.


Richard A. Cristina

**Attachment 6
Anti-Collusion Affidavit**

Proposer's Name GreenWaste Recovery, Inc.

**FOR: CITY OF MILPITAS SOLID WASTE, RECYCLABLES, ORGANICS COLLECTION, PROCESSING
AND DISPOSAL SERVICES**

Proposer declares under penalty of perjury under the laws of the State of California that this proposal is not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation; that such proposal is genuine and not collusive or sham; that said Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham proposal and has not directly or indirectly colluded, conspired, connived, or agreed with any Proposer or anyone else to put in a sham proposal, or that anyone shall refrain from submitting a proposal; that said Proposer has not in any manner directly or indirectly sought by agreement, communication, or conference with anyone to fix the proposal price of said Proposer or of any other Proposer, or to fix any overhead, profit, or cost element of such proposal price, or of that of any other Proposer, or to secure any advantage against the public body awarding the Contract of anyone interested in the proposed Contract; that all statements contained in such proposal are true, and further, that said Proposer has not directly or indirectly submitted his proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid and will not pay any fee in connection therewith, to any corporation, partnership, company, association, organization, proposal depository, or to any member or agent thereof, or to any other individual except to any person or persons as have a partnership or other financial interest with said Proposer in this general business.

The above Non-Collusion Declaration is part of the proposal. Signing this proposal on the signature page thereof shall also constitute signature of this Non-Collusion Declaration.

Proposers are cautioned that making a false certification may subject the certifier to criminal prosecution.

**Attachment 7:
Iran Contracting Certification**

Pursuant to Public Contract Code Section 2200 et seq., ("Iran Contracting Act of 2010"), Contractor certifies that:

- (1) Contractor is not identified on the list created by the California Department of General Services ("DGS") pursuant to California Public Contract Code Section 2203(b) as a Person engaging in investment activities in Iran; and
- (2) Contractor is not a financial institution that extends twenty million dollars (\$20,000,000) or more in credit to another Person, for forty-five (45) Days or more, if that Person will use the credit to provide goods or services in the energy sector in Iran and is identified on the DGS list made pursuant to Section 2203(b).

As used herein, "Person" shall mean a "Person" as defined in Public Contract Code Section 2202(e).

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY, that I am duly authorized to legally bind the Contractor to this Certification, which is made under the laws of the State of California.

_____ GreenWaste Recovery, Inc. ("Contractor")

By:  _____ (Signature)

Name: _____ Frank Weigel _____ (Printed Name)

Title: _____ Secretary _____

Date: _____ October 27, 2015 _____

9 Attachments

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BOARD OF DIRECTORS
DENNIS ALLION
CHAIR

IAN OGLESBY
VICE CHAIR

GARY BALES
DAVID PENDERGRASS
LEO LASKA
LIBBY DOWNEY
JANE PARKER
BRUCE DELGADO
CARRIE THEIS



TIMOTHY S. FLANAGAN
GENERAL MANAGER

GUY PETRABORG, P.E., G.E.
PRINCIPAL ENGINEER

RICHARD SHEDDEN, P.E.
SENIOR ENGINEER

ROBERT WELLINGTON
COUNSEL

MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT

Home of the Last Chance Mercantile

October 16, 2015

Via Email (greg@z-best.com) & Regular Mail

Greg Ryan
GreenWaste Recovery/Zanker Road
1500 Berger Drive
San Jose, CA 95112

Dear Greg:

Following discussion in closed session at the October 16, 2015 Monterey Regional Waste Management District (MRWMD) Board meeting, the MRWMD agrees to accept additional waste from GreenWaste Recovery/Zanker for a term of 20 years commencing on September 1, 2017 and ending on December 31, 2038. The MRWMD currently has over 38 million tons of existing capacity.

If you have additional questions, please contact me at 831-384-5313 or tflanagan@mrwmd.org.

Sincerely,

Timothy S. Flanagan
General Manager

EXHIBIT E: PERFORMANCE BOND

To be inserted prior to final award

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EXHIBIT F: LABOR AGREEMENT(S)

Placeholder - not applicable as of Effective Date.

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**EXHIBIT G:
PER-TON RATES APPROVED BY CITY
FOR RATE PERIOD ONE**

| | Rate Period 1 September 6, 2017 through December 31, 2018 |
|--|---|
| Contractor Compensation | |
| Transfer | |
| Transfer Station (\$/ton) | \$22.50 |
| Transport (\$/ton) | \$15.50 |
| Subtotal | \$38.00 |
| Disposal | |
| Disposal proposed rate (\$/ton) | \$18.85 |
| Total Contractor Component (\$/ton) | \$56.85 |
| Governmental Fee Component | |
| Transfer | |
| LEA Enforcement Fee (\$/ton) | \$1.08 |
| County of Santa Clara Export Tax (\$/ton) | \$4.88 |
| Subtotal | \$5.96 |
| Disposal | |
| Integrated Waste Management Fee (\$/ton) | \$1.40 |
| Monterey County LEA (\$/ton) | \$0.75 |
| Subtotal | \$2.15 |
| Total Governmental Component (\$/ton) | \$8.11 |
| Total Per-Ton Rate | \$64.96 |

* Transfer station fee includes all transfer facility-related costs and the long-haul transportation costs from the transfer station to the disposal facility.

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EXHIBIT H: APPROVED SUBCONTRACTORS

Below are the Approved Facilities and/or Subcontractors, which Contractor shall utilize for the listed services.

| Approved Facility or Subcontractor | Contact | Services |
|---|---|--|
| GreenWaste Material Recovery Facility (MRF) | Mr. Ricardo Lopez, MRF Manager GreenWaste Recovery, Inc. 625 Charles St., San Jose, CA 95112 408.938.4936 rlopez@greenwaste.com | Solid Waste Transfer |
| Monterey Peninsula Landfill (MPL) | Mr. Tim Flanagan, General Manager Monterey Regional Waste Management District 14201 Del Monte Blvd., Marina, CA 93933 831.264.6915 tflanagan@mrwmd.org | Solid Waste Disposal |
| Zanker Road Resource Management | Mr. Michael Gross, Sustainability Director Zanker Road Resource Management 675 Los Esteros Rd., San Jose, CA 95134 408.263.2384 michael@zankerrecycling.com | Material Drop-Off Services |
| MG Trucking LLC | Mr. Miguel Cardenas, Owner MG Trucking LLC 8555 Marcella Ave., Gilroy, CA 95020 408.261.0502 miguelgcardenas@yahoo.com | Transportation of Solid Waste from the GreenWaste MRF to MPL |
| O&S Trucking, Inc. | Ms. Hilda Andrade, President HCA Management Inc. P.O. Box 10, San Martin, CA 95046 408.639.4537 hca2009@att.net | Transportation of Solid Waste from the GreenWaste MRF to MPL |
| John Smith Road Landfill | Mr. Paul Nelson, Divisional Vice President Waste Connections, Inc. 2650 John Smith Rd., Hollister, CA 95023 408.283.8500 pauln@wasteconnections.com | Alternative Disposal Facility |
| Kirby Canyon Landfill | Mr. Omar Numair, Account Manager Waste Management, Inc. 910 Coyote Creek Golf Dr., Morgan Hill, CA 95037 510.459.8319 onumair@wm.com | Alternative Disposal Facility |

WASTE DISPOSAL OPTION AGREEMENT
BY AND BETWEEN THE MONTEREY REGIONAL WASTE
MANAGEMENT DISTRICT AND THE CITY OF MILPITAS

THIS WASTE DISPOSAL AGREEMENT (hereinafter "Agreement") is made and entered into on _____, 2016, by and between the Monterey Regional Waste Management District, a public entity duly organized pursuant to the provisions of California Health and Safety Code sections 4170 *et seq.* (the "District") and the City of Milpitas, a California general law city (the "City") (collectively, the "Parties"), as follows:

RECITALS

A. The District owns, manages, and operates a Class III sanitary landfill for the disposal of municipal solid waste and other acceptable waste streams (the "Monterey Peninsula Landfill"). District jurisdictional boundaries include the cities of Carmel-by-the-Sea, Del Rey Oaks, Marina, Monterey, Pacific Grove, Sand City, Seaside and the unincorporated areas of Big Sur, Carmel Highlands, Cannel Valley, Castroville, Corral de Tierra, Laguna Seca, Moss Landing, Pebble Beach, San Benancio and Toro Park. Municipal solid waste generated within the District historically has been and currently is delivered by commercial waste haulers and by self-haulers on behalf of the residents of the District for disposal in the Monterey Peninsula Landfill.

B. In constructing, operating, and managing the Monterey Peninsula Landfill, the District is under regulatory obligation with the State of California pertaining to landfill closure, and post closure monitoring and maintenance, and long term debt obligations with related covenants which obligate the District to properly maintain and preserve the system and operate it in an efficient, economical and business-like manner

C. Monterey County's Integrated Waste Management Plan ("CIWMP") provides for the continued use of the Monterey Peninsula Landfill by the cities and unincorporated areas within the County of Monterey for the disposal of municipal solid waste which is not reused, recycled, or otherwise diverted from landfills pursuant to the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code) (the "Act").

D. The waste diversion requirements of the Act, together with changes in Applicable Law and other factors, have significantly reduced the tonnage of municipal solid waste delivered to the Monterey Peninsula Landfill on behalf of residents within the District.

The result of the shortfall in the volume of waste received is under-utilization of the Monterey Peninsula Landfill, which is designed and permitted to accept approximately 3500 tons per day and presently realizes less than 1000 tons per day.

E. The District has determined that by accepting municipal solid waste generated outside of the District ("Non-District Waste" or "Out-of-District Waste") the unused capacity in the Monterey Peninsula Landfill can be utilized to generate revenue to assist in rate stabilization for the member entities, and develop alternative waste diversion technologies and practices. Acceptance of Non-District Waste can be accommodated by the existing Monterey Peninsula Landfill without negatively impacting the commercial refuse haulers and self-haulers within the District who deliver waste to the Monterey Peninsula Landfill.

F. The City has awarded a solid waste disposal franchise ("Franchise") to GreenWaste, Inc. ("Hauler"). The Hauler has contracted with District to deliver all of the Non-District Waste to the Monterey Peninsula Landfill ("Landfill Contract"). The Landfill Contract is not exclusive to the City and allows Hauler to deliver other Non-District Waste to the Monterey Peninsula Landfill.

G. The City and District wish to execute this Agreement to provide the City with the option to continue delivering all of the Non-District Waste previously disposed under the Franchise to the Monterey Peninsula Landfill if the Franchise is terminated by City and the other terms and conditions set forth below.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises hereinafter set forth, District and City agree to the following Terms and Conditions:

TERMS AND CONDITIONS

1. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below.

1.1 "Acceptable Waste" means all garbage, refuse, rubbish, and other materials and substances discarded or rejected as being spent, useless, worthless, or in excess to the owners at the time of such discard or rejection and which is normally disposed of or collected from residential (single family or multi-family), commercial, industrial, governmental, and institutional establishments by haulers, and which is acceptable at Class III landfills under Applicable Law. "Acceptable Waste" also means solid waste that has been source separated and/or processed with reasonable due diligence to remove the following: reusable and recyclable materials;

Unacceptable Waste; Hazardous Substances or Hazardous Materials; Universal Waste (as defined by State law); and Hazardous Waste.

1.2 "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.

1.3 "Applicable Law" means the Act, the Monterey County Code, CERCLA, RCRA, CEQA, any legal entitlement and any other rule, regulation, requirement, guideline, permit, action, determination, or order of any governmental body having jurisdiction, applicable from time to time, relating to the siting, design, permitting, acquisition, construction, equipping, financing, ownership, possession, management, operation, or maintenance of the Monterey Peninsula Landfill or the transfer, handling, transportation, and disposal of Acceptable Waste, Unacceptable Waste, or any other transaction or matter contemplated hereby (including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, nondiscrimination and the payment of minimum wages).

1.4 "CEQA" means the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.) as amended or superseded, and the regulations promulgated under the statute.

1.5 "CERCLA" means the Comprehensive Environmental Responsibility Compensation and Liability Act (42 U.S.C. Section 9601 *et seq.*) as amended or superseded, and the regulations promulgated under the statute.

1.6 "Hazardous Material" or "Hazardous Substance" has the meaning given such terms in CERCLA, the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code Section 25300 et seq.), and Titles 22 and 26 of the California Code of Regulations, as well as other regulations promulgated under these statutes, as they exist now and as they may be amended from time to time.

1.7 "Hazardous Waste" means (a) any waste which by reason of its quality, concentration, composition or physical, chemical, or infectious characteristic may do any of the following: cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness, or pose a substantial threat or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or

otherwise mismanaged; or any waste which is defined or regulated as a hazardous waste, toxic substance, hazardous chemical substance or mixture, or asbestos under Applicable Law, as amended from time to time including, but not limited to: (1) the Resource Conservation and Recovery Act (RCRA) and the regulations contained in 40 CFR Parts 260-281; (2) the Toxic Substances Control Act (15 U.S.C. Sections 2601 et seq.) and the regulations contained in 40 CFR Parts 761-766; (3) the California Health and Safety Code, Section 25117; (4) the California Public Resources Code, Section 40141; and (5) future additional or substitute Applicable Law pertaining to the indemnification, treatment, storage, or disposal of toxic substances or hazardous wastes; or (b) radioactive materials which are source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 et seq.) and the regulations contained in 10 CFR Part 40.

1.8 "Non-District Waste" also "Out-of- District Waste," means solid waste originating outside the jurisdictional boundaries of the District.

1.9 "RCRA" means the Resource Conservation and Recovery Act, 42 USC Section 6901 *et seq.*, as amended and superseded.

1.10 "Unacceptable Waste" means Hazardous Waste; Hazardous Substances; Hazardous Materials; untreated medical waste; Household Hazardous Waste that has been separated from Acceptable Waste; explosives; bombs; ordnance, such as guns and ammunition; highly flammable substances; noxious materials; drums and closed containers; liquid waste, including liquid concrete; oil; human wastes and sewage sludge; machinery and equipment from commercial or industrial sources, such as hardened gears, shafts; motor vehicles or major components thereof; agricultural equipment; trailers; marine vessels and steel cable; hot loads, including hot asphalt, and hot liquid sulfur; loads of whole tires; friable asbestos; and any waste which the Monterey Peninsula Landfill is prohibited from receiving under Applicable Law.

2. TERM OF AGREEMENT

2.1 Term of Agreement

The term of this Agreement shall commence on the date first written above and shall continue through and including December 30, 2037.

3. OPTIONAL DELIVERY OF WASTE

3.1 Commitment to Deliver Waste

In the event that the Franchise is terminated, the City shall have the option to continue delivering Acceptable Waste to the Monterey Peninsula Landfill on the same or better terms and conditions as those agreed to between the Hauler and District. City may exercise this option with written notice to District, and the Parties shall then meet and confer on applicable terms and conditions, which shall permit City or a new third party hauler to deliver the maximum daily tonnage of Acceptable Waste allowed under the Landfill Contract that represents Acceptable Waste delivered by Hauler under the Franchise.

4. REGULATORY COMPLIANCE

4.1 Applicable Law

Both parties shall comply with Applicable Law at all times, throughout the term of this Agreement; and shall obtain and maintain any permits, licenses, or approvals which are required for the performance of the party's respective obligations under this Agreement.

5. TERMINATION, DEFAULT AND REMEDIES

5.1 Termination for Breach

Either party may terminate this Agreement if the other party breaches this Agreement and fails to cure that breach within thirty (30) days of written notice from the non-breaching party.

6. GENERAL CONDITIONS

6.1 Indemnification and Hold Harmless

A. Indemnification by City. To the full extent permitted by law, the City shall defend, indemnify and hold harmless District, its Board of Directors, officers, employees and agents from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, actual attorneys' fees incurred by District, court costs, interest, defense costs, including expert witness fees, and any other costs or expenses of any kind whatsoever without restriction or limitation which arise from or are connected with or are caused or claimed to be caused by the sole or active negligence or willful misconduct of the City. All obligations under this provision are to be paid by the City as they are incurred by the District.

Without affecting the rights of the District under any provision of this Agreement or this section, the City shall not be required to indemnify and hold harmless District as set forth above for liability attributable to the active negligence of the District, its officers, employees

or agents, provided such active negligence is determined by agreement between the parties or the findings of a court of competent jurisdiction. This exception will apply only in instances where the District is shown to have been actively negligent and not in instances where the City is solely or partially at fault or in instances where the District's active negligence accounts for only a percentage of the liability involved. In those instances, the obligation of the City will be for that portion or percentage of liability not attributable to the active negligence of the District, as determined by written agreement between the parties or the findings of a court of competent jurisdiction.

B. Indemnification by District. To the full extent permitted by law, the District shall defend, indemnify and hold harmless the City, its City Council, officers, employees and agents from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, actual attorneys' fees incurred by City, court costs, interest, defense costs, including expert witness fees, and any other costs or expenses of any kind whatsoever without restriction or limitation which arise from or are connected with or are caused or claimed to be caused by the sole or active negligence or the willful misconduct of the District in performance of this Agreement or the Landfill Contract. All obligations under this provision are to be paid by the District as they are incurred by the City.

Without affecting the rights of the City under any provision of this Agreement or this section, the District shall not be required to indemnify and hold harmless City as set forth above for liability attributable to the active negligence of the City, its officers, employees, contractors or agents, provided such active negligence is determined by agreement between the parties or the findings of a court of competent jurisdiction. This exception will apply only in instances where the City is shown to have been actively negligent and not in instances where the District is solely or partially at fault or in instances where the City's active negligence accounts for only a percentage of the liability involved. In those instances, the obligation of the District will be for that portion or percentage of liability not attributable to the active negligence of the City, as determined by written agreement between the parties or the findings of a court of competent jurisdiction.

C. Notice of Claims

A party seeking indemnification shall promptly notify the other party of the assertion of any claim against it for which it seeks to be indemnified, shall give the other party the opportunity to defend such claim, and shall not settle the claim without the approval of the other party. These indemnification provisions are for the protection of the Parties only and shall not establish, of themselves, any liability to third parties. The provisions of this subsection shall survive termination of this Agreement.

6.2 Non-Assignment of Agreement

City may not assign this Agreement or any of the rights or obligations under this Agreement without the prior written consent of the District, which may be withheld at the District's sole discretion. Any person or entity to whom this Agreement is assigned shall expressly agree to be bound by all provisions of this Agreement. City will remain liable to District for all obligations under this Agreement notwithstanding any assignment made pursuant to this clause.

6.3 Notices

Any notice required or permitted by this Agreement shall be in writing and sufficiently given if delivered in person or sent by certified or registered mail, postage prepaid, to the notice address of the respective parties set forth in this Agreement. Any changes to the respective addresses to which notices may be directed, may be made from time to time by any party by notice to the other party. The present addresses of the parties are:

| | |
|----------|--|
| District | Monterey Regional Waste Management District Attn: General Manager Location for Direct Deliveries and Certified Mail: 14201 Del Monte Blvd. P.O. Box 1670 Marina, CA 93933-1670 |
| City | City of Milpitas Attn: City Manager 455 East Calaveras Boulevard Drive Milpitas, CA 95035 |

6.4 Indemnification for Taxes and Contributions

Each party shall exonerate, indemnify, defend, and hold harmless the other (which for the purpose of this paragraph shall include, without limitation, its officers, agents, employees, and volunteers) from and against:

Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect each party's officers, employees and agents engaged in the performance of this Agreement (including, without limitation, unemployment insurance, social security, and payroll tax withholding).

6.5 Non-Discrimination

During and in relation to the performance of this Agreement, neither party shall discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy, or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. Both parties agree to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

6.6 Independent Contractor Status

The District and City have reviewed and considered the principal test and secondary factors for determining independent contractor status and agree that this is an independent contractor arrangement and that neither party is an employee of the other. Each party is responsible for its own insurance (workers' compensation, unemployment, etc.) and all payroll-related taxes. Neither party is entitled to any employee benefits from the other. Each party shall have the right to control the manner and means of accomplishing the result contracted for herein.

6.7 Amendment or Modification

This Agreement may be amended, altered or modified only by a writing, specifying such amendment, alteration or modification, executed by authorized representatives of both of the parties hereto.

6.8 Further Actions

Each of the parties agrees to execute and deliver to the other such documents and instruments, and to take such actions, as may reasonably be required to give effect to the terms and conditions of this Agreement.

6.9 Interpretation

This Agreement has been negotiated by and between the general managers and engineers or principals of both parties, all persons knowledgeable in the subject matter of this Agreement, which was then reviewed and drafted by attorneys representing both parties, in joint consultation with both general managers and engineers or principals. Accordingly, any rule of law (including Civil Code §1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purpose of the parties and this Agreement.

6.10 Captions

Titles or captions of sections and paragraphs contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision of it.

6.11 Severability

If any of the provisions of this Agreement are determined to be invalid or unenforceable, those provisions shall be deemed severable from the remainder of this Agreement and shall not cause the invalidity or unenforceability of the remainder of this Agreement, unless this Agreement without the severed provision would frustrate a material purpose of either party in entering into this Agreement.

6.12 Attorneys' Fees and Costs

In the event it should become necessary for either party to enforce any of the terms and conditions of this Agreement by means of arbitration, court action or administrative enforcement, the prevailing party, in addition to any other remedy at law or in equity available to such party, shall be awarded all reasonable costs and reasonable attorney's fees in connection therewith, including the fees and costs of experts reasonably consulted by the attorneys for the prevailing party.

6.13 Relationship of Parties

Nothing in this Agreement shall create a joint venture, partnership or principal-agent relationship between the parties.

6.14 Waiver

No waiver of any right or obligation of either party hereto shall be effective unless made in writing, specifying such waiver, executed by the party against whom such waiver is sought to be enforced. A waiver by either party of any of its rights under this Agreement or any other right at any time shall not be a bar to exercise of the same right on any subsequent or any other right at any time.

6.15 Counterparts

This Agreement may be executed in two counterparts, each of which shall be deemed an original, but both of which shall be deemed to constitute one and the same instrument.

6.16 Entire Agreement

This Agreement constitutes the entire and complete agreement between the parties regarding the subject matter hereof, and supersedes all prior or contemporaneous negotiations, understandings or agreements of the parties, whether written or oral, with respect to such subject matter.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates
opposite their respective signatures:

| | |
|--|---|
| <p>MONTEREY REGIONAL WASTE MANAGEMENT DISTRICT</p> <p>By: _____</p> <p>Name:</p> <p>Its:</p> | <p>CITY OF MILPITAS</p> <p>By: _____</p> <p>Name:</p> <p>Its:</p> |
| <p>ATTEST:</p> <p>By: _____</p> <p>Name:</p> <p>Its:</p> | <p>ATTEST:</p> <p>By: _____</p> <p>Name:</p> <p>Its:</p> |
| <p>APPROVED AS TO FORM:</p> <p>By: _____</p> <p>Name:</p> <p>Its:</p> | <p>APPROVED AS TO FORM:</p> <p>By: _____</p> <p>Name:</p> <p>Its:</p> |