AGREEMENT FOR THE OPERATION

OF THE

SUNNYVALE MATERIALS RECOVERY AND TRANSFER STATION

BETWEEN

THE CITY OF SUNNYVALE

AND

BAY COUNTIES WASTE SERVICES, INC.

February 2007

(16)

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AGREEMENT FOR THE OPERATION OF THE SUNNYVALE MATERIALS RECOVERY AND TRANSFER STATION

THIS AGREEMENT is made as of this 13th day of February, 2007, by and between the CITY OF SUNNYVALE, a municipal corporation (hereinafter referred to as the "City") and BAY COUNTIES WASTE SERVICES, INC., a California corporation (hereinafter referred to as "Contractor").

RECITALS

1. The State of California has found and declared that the amount of solid waste generated in California, coupled with diminishing landfill space and potential adverse environmental impacts from landfilling, have created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program. The State has, through enactment of the California Integrated Waste Management Act of 1989, now codified at Public Resources Code Section 40000, *et seq.* (hereinafter referred to as the "Act"), directed the responsible state agency, and all local agencies, to promote recycling and to maximize the use of feasible source reduction, recycling and composting options in order to reduce the amount of solid waste that must be disposed of by land disposal.

2. The City concurs in the aforementioned findings and declarations of the State of California.

3. City entered into an agreement with Waste Management of California, Inc., dated as of September 10, 1991 for long term disposal of solid waste (hereinafter referred to as "Disposal Contract"). The City of Mountain View and the City of Palo Alto (hereinafter collectively referred to as the "Neighboring Cities") also entered into companion agreements with Waste Management of California, Inc. (hereinafter referred to as the "Neighboring Cities' Disposal Contracts"). The Disposal Contract and the Neighboring Cities' Disposal Contracts all contemplate the initial delivery of Municipal Solid Waste from the City and the Neighboring Cities to a materials recovery and transfer station (hereinafter referred to as "Station") for processing, with only the residue which is not recycled then to be compacted and thereafter transported to and

disposed of at the Kirby Canyon Sanitary Landfill in San Jose, which is operated by Waste Management of California, Inc. The recycling operations conducted at the Station, which was constructed by the City, are integral and important components of the City's and the Neighboring Cities' strategies for implementing the Act and are incorporated into each city's Source Reduction and Recycling Element which elements, in turn, have been incorporated into the Santa Clara County Integrated Waste Management Plan.

4. Acting on its own behalf, and on behalf of the Neighboring Cities, City issued on July 5, 2006, a Request for Proposals (hereinafter referred to as "RFP") seeking proposals from qualified firms to operate the Station and to receive and process Municipal Solid Waste and Recyclable Materials from the City and Neighboring Cities (which three (3) cities are hereinafter sometimes collectively referred to as the "Participating Agencies"). City has evaluated all proposals submitted and has determined that the Contractor has proposed to provide operation of the Station (which entails processing materials for reuse and recycling, the marketing of such materials and the transport of nonrecycled waste materials for disposal) in a manner and on terms which are in the best interests of the Participating Agencies and their residents, taking into account the qualifications and experience of Contractor, the level of recycling to which the Contractor is committed, and the cost of providing such services.

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

ARTICLE 1. DEFINITIONS

Unless the context otherwise requires, capitalized terms used in this Agreement will have the meanings specified in Exhibit A to this Agreement, which is attached hereto and incorporated herein by this reference.

ARTICLE 2. TERM OF AGREEMENT

2.01 Effective Date. The effective date of this Agreement shall be March 20, 2007 ("Effective Date").

2.02 Term. The Term of the Agreement shall commence on the Effective Date and shall end at midnight on December 31, 2014, unless extended as provided in Section 2.03. Contractor's obligation to operate the Station shall commence January 1, 2008.

2.03 Option to Extend Term. The City may extend the Term of this Agreement for one (1) or more periods of three (3) months, up to a maximum of one (1) year, on the same terms and conditions. If City wishes to extend the Term it shall deliver a written notice to Contractor at least six (6) months before the expiration of the Term (i.e. on or before June 30, 2014) specifying the number of additional months by which it wishes to extend the Term. If the City initially elects to extend the term for less than twelve (12) months, it may subsequently elect to further extend the term in increments of three (3) months, up to a total of twelve (12) months, i.e. until December 31, 2015. If the City wishes to further extend the term in this fashion it shall deliver a written notice to contractor at least thirty (30) days prior to the expiration of the extended term.

2.04 Conditions to Effectiveness of Agreement. The obligation of the City to perform under this Agreement is subject to satisfaction, on or before the Effective Date, of each and every one (1) of the conditions set out below, which may be waived in whole or in part by City:

A. Accuracy of Representations. The representations and warranties made by Contractor in Article 8 of this Agreement shall be true and correct on and as of the Effective Date, and a certification to that effect dated as of the Effective Date shall be delivered by Contractor to City on the Effective Date.

B. Absence of Litigation. There shall be no litigation pending on the Effective Date in any court challenging the execution of this Agreement or seeking to restrain or enjoin its performance.

C. **Furnishing of Bond**. Contractor has furnished the Performance Bond required by Section 7.03.

D. **Effectiveness of City's Approval**. The City's approval of this Agreement shall have become effective, pursuant to California law, on or before the Effective Date.

In the event that any condition set forth in this Section 2.04 is not satisfied or waived, by the Effective Date, by the City, this Agreement shall be void and shall have no further force or effect. City may waive the satisfaction of conditions described in Section 2.04, allow this Agreement to become effective, and exercise its rights and remedies under this Agreement for Contractor's failure to deliver the bond. Each party is obligated to perform in good faith the actions, if any, which this Agreement requires it to perform before the Effective Date and to cooperate towards the satisfaction of the conditions set forth above.

ARTICLE 3. OPERATION OF TRANSFER STATION

3.01 Receipt of Municipal Solid Waste and Recyclable Materials. Commencing on January 1, 2008 and continuing throughout the Term, Contractor shall receive and accept (1) all Municipal Solid Waste ("MSW") and Source-Separated Recyclable Materials delivered to the Station by or on behalf of City, the other Participating Agencies and its or their Designated Haulers; (2) Publicly Hauled Waste generated within the City or within the jurisdiction of the other Participating Agencies; and (3) Source-Separated Recyclable Materials delivered by residents of or businesses operating within the City or within the other Participating Agencies.

Contractor shall process such materials for either Recycling or Disposal in accordance with this Agreement.

3.02 Priority. The basic and primary purpose of the Station is to process Municipal Solid Waste and Recyclable Materials delivered by the Participating Agencies and their respective Designated Haulers, who shall have first priority in use of the Station. A secondary purpose is to process Publicly Hauled Waste and Recyclable Materials delivered by residents and/or businesses of the Participating Agencies, who shall have second priority in use of the Station. If City allows, pursuant to Section 3.04, Municipal Solid Waste or Recyclable Materials generated outside the Participating Agencies to be delivered to and accepted for processing at the Station, such material shall be assigned third priority and Contractor shall operate the Station in order to give effect to the above stated priorities.

Processing of material from outside the Participating Agencies shall, if allowed, never be permitted to interfere with processing of Municipal Solid Waste or Recyclable Materials delivered by or on behalf of the Participating Agencies or their Designated Haulers. To that end, and by way of example and not limitation, City may direct that materials from outside the Participating Agencies not be accepted during peak hours (10 a.m. to 2 p.m.) or when vehicles of Designated Haulers from any of the Participating Agencies are delayed entry beyond the times allowed in Section 3.12. Vehicles carrying materials from outside the Participating Agencies shall be refused entry during such periods.

3.03 Days and Hours of Operation. Contractor shall operate the Station, as specified in this Section, every day of the year except January 1, the fourth (4th) Thursday of November, and December 25 ("the holidays").

Contractor shall operate the Station for the receipt and processing of Municipal Solid Waste and Recyclable Materials from City, the other Participating Agencies and their respective Designated Haulers at least twelve (12) hours per day, Monday through Friday and on Saturdays which occur in weeks containing a holiday which falls on a weekday. These minimum hours of full-scale operations shall be 5 a.m. to 5 p.m. On all other Saturdays the Contractor shall operate the Station for the receipt and processing of Municipal Solid Waste and Recyclable Materials from City, other Participating Agencies and their respective Designated Haulers between the hours of 8 a.m. and 3 p.m.

Contractor shall operate the Station for the receipt and processing of Publicly Hauled Waste, and shall operate the buyback/drop-off center, from 8 a.m. to 5 p.m. every day, including Saturday and Sunday, except for the three (3) holidays. With forty-eight (48) hours' prior notice, Contractor shall operate the Station for the receipt and processing of Municipal Solid Waste and Recyclable Materials from the City between 8 a.m. and 5 p.m. on Saturday and/or Sunday.

Contractor may operate the Station for processing of Municipal Solid Waste and Recyclable Materials and for delivery of Municipal Solid Waste to the Disposal Facility and of Recyclable Materials to market beyond the hours set forth above, provided that it complies with the limits on operation of equipment specified in the Conditional Use Permit (Exhibit E), including:

- trucks delivering refuse: 5 a.m. - 5 p.m.
- wood chipping equipment: 5 a.m. - 8 p.m.
- compactors: 5 a.m. - 10 p.m.

3.04 Receipt and Processing of Material from Extended Service Area. City may at any time, and from time to time, require Contractor to receive and process Municipal Solid Waste and/or Recyclable Materials which originate in the Extended Service Area. Unless and until City does so, Contractor shall not receive any Municipal Solid Waste or Recyclable Material from outside the Primary Service Area.

City has no obligation to Contractor to allow materials from outside the Primary Service Area to be delivered to the Station.

If City directs Contractor to receive and process Municipal Solid Waste from the Extended Service Area, either party may request that a waste characterization study of the Municipal Solid Waste from this area be conducted in accordance with the procedure described in Exhibit T, and City will arrange for such study to be conducted, with the expenses thereof paid equally by City and Contractor.

Promptly upon completion of the study, the parties will meet to consider: (1) whether the study shows a significant difference in composition of the Municipal Solid Waste from the Extended Service Area, as compared to that from within the Primary Service Area, and (2) if so, whether and to what extent there should be a change in the Minimum Recycling Level. If the parties are unable to agree on an appropriate change in the Minimum Recycling Level, the dispute may be submitted to binding arbitration pursuant to the procedures set out in Exhibit R.

3.05 Material Recovery Operations.

A. General. Contractor recognizes that City and the other Participating Agencies are committed to recycling waste materials which have in the past been disposed of in landfills. To that end, the Station has been designed and shall be operated to accomplish materials recovery in four (4) distinct operations which are summarized below in Subsections B, C, D, and E, described in Exhibit B-1, and illustrated in the material flow diagram attached as Exhibit B-2.

B. Processing of Municipal Solid Waste; Minimum Recycling Level

1. Municipal Solid Waste delivered by the Participating Agencies and their Designated Haulers, and Publicly Hauled Waste, shall be sorted to recover materials for Recycling including paper and other fibers, metals, wood, glass and plastic. Contractor shall Recycle not less than seventeen and one-half percent (17.5%) by weight of Municipal Solid Waste (including Publicly Hauled Waste) delivered to the Station, which percentage is hereinafter referred to as the "Minimum Recycling Level." In addition, Contractor shall use all reasonable efforts to Recycle the maximum economically feasible amount. Contractor's performance in achieving the

Minimum Recycling Level will be measured on a fiscal year basis. The Recycling Level achieved by Contractor will be calculated as shown on Exhibit S.

If Contractor fails to achieve the Minimum Recycling Level in any fiscal year, it shall pay City the sum obtained by multiplying the Disposal Fee per Ton in effect during such fiscal year by the difference, in Tons, between the number of Tons which, if Recycled, would have achieved the Minimum Recycling Level and the number of Tons actually Recycled.

The foregoing amounts shall be paid to City within thirty (30) days after the Recycling Level for the fiscal year has been calculated by City pursuant to Exhibit S. If not so paid, City may deduct the amount due from future payments to Contractor. Payment of the foregoing amounts does not cure the breach of contract represented by failure to achieve the Minimum Recycling Level and City retains its rights under Article 9.

C. Processing of Source-Separated Recyclable Materials. City and the other Participating Agencies operate various recycling programs including "curbside" recycling. Materials collected through these programs currently include glass, metal cans, scrap metals, plastic containers, corrugated cardboard, mixed paper, newsprint, household batteries, residential used motor oil, and used oil filters. The Participating Agencies may change from time to time the type of materials collected.

Contractor shall process all Source Separated Recyclable Materials collected by City, by other Participating Agencies, by their respective Designated Haulers or by other persons under contract, which are delivered to the Station for marketing in accordance with Section 3.16. Recycling of these materials does not count towards Contractor's achievement of the Minimum Recycling Level.

Contractor shall be responsible for handling, storage and marketing of used motor oil. Contractor shall drain oil containers used by the Participating Agencies' curbside collection programs of all free-flowing residue and shall make reusable emptied containers available to the operators of the curbside collection programs for reuse.

If City initiates collection of Source-Separated Food Waste, Contractor will process such materials for composting in the manner and for the price described in Exhibit B-3, which includes both transport from the Station to the end user/processor's facility and payment to the end user/processor.

D. Processing of Source-Separated Yard Trimmings. Yard Trimmings are collected separately from residential customers by the City and the City of Mountain View. So long as either city continues to collect Yard Trimmings separately, they will continue to be delivered to the Station pursuant to Section 10.17.

Contractor will direct vehicles delivering Source-Separated Yard Trimmings to a specific processing area for removal of contaminants (such as large metal objects, dirt and rock), shredding, magnetic removal of small pieces of ferrous metal and separate bulk storage. Yard Trimmings and untreated wood (but not construction and demolition debris) removed from mixed loads through sorting on the MSW tipping floor will also be processed in the same manner.

Source-Separated Yard Trimmings may not be disposed of at a landfill nor may they be used for alternative daily cover or for any other "beneficial use" at a landfill without City's prior written approval. Source-Separated Yard Trimmings may be (1) composted at a permitted compost facility identified in Contractor's proposal or subsequently approved by City, and (2) with the City's prior written approval, used as fuel in a conventional biomass electrical generating facility.

Source Separated Yard Trimmings are included in the 280,000 Tons processing of which is covered by the Basic Annual Payment provided in Section 5.02.

Composting, Transformation or Recycling of Source-Separated Yard Trimmings does not count toward Contractor's achievement of the Minimum Recycling Level.

City has no obligation to approve use of Source-Separated Yard Trimmings either as alternative daily cover or as fuel for a biomass facility.

E. Buyback/Dropoff Center. Contractor shall establish and operate a buyback/dropoff center within the Station. The purpose of the Buyback/Dropoff

Center is to receive Source-Separated Recyclable Materials that are delivered to the Station by members of the public to process and then to market such materials.

The following materials will be accepted at the dropoff center:

- Newsprint
- Glass bottles, jars and other beverage containers
- Aluminum
- Metals
- Corrugated cardboard and Kraft paper
- High grade office papers
- Mixed paper
- Plastics (HDPE, PET)
- Used motor oil*
- Used automobile oil filters*
- Anti-freeze*
- Automobile batteries*
- Household batteries*
- Fluorescent light bulbs and tubes*
- Household items containing mercury (e.g., thermometers, thermostats)*
- Universal waste, electronic devices and consumer electronic devices.*
- All containers for which a California Redemption Value ("CRV") is established now or during the Term.
- As directed by City, other materials that are accepted at other facilities similar to the Station and located in Alameda, San Mateo and Santa Clara Counties.

** From residential generators only.*

Contractor shall establish prices to be paid for materials accepted at the Buyback/Dropoff Center and shall maintain complete and accurate records of purchase transactions. Such prices shall be within ten percent (10%), plus or minus, of the average prices paid for similar materials purchased in retail quantities from individual customers in similar facilities in Alameda, San Mateo and Santa Clara counties. These average prices will be verified by a survey of these facilities conducted

once a year by Contractor in July, with the results provided in a written report to City on or before July 31 of each year commencing July 2008.

City shall reimburse Contractor for a portion of the prices paid to users of the Buyback/Dropoff Center, the percentage to be equivalent to the City's percentage share of revenues from Recycled Materials sales, determined in accordance with Section 6.05 and Exhibit P. The reimbursement shall be effected by a credit against the amount due City from Contractor under Section 6.05.

Contractor shall provide, in the vicinity of the Buyback/Dropoff Center, a separate bin in which members of the public may deposit, without charge, Sharps. The bin shall be designed with a chute, such that materials deposited in the chute cannot thereafter be removed. Contractor shall arrange for disposal of Sharps at an appropriately permitted facility and shall inform City of the name and location of the facility to be used. City shall reimburse Contractor for the cost of proper disposal of Sharps.

Recycling of materials accepted at the Buyback/Dropoff Center does not count towards Contractor's achievement of the Minimum Recycling Level.

Contractor shall install and maintain signage at the Station giving members of the public appropriate information about the location and operation of the Buyback/Dropoff Center. The text of the signage shall be approved by City prior to its being installed.

3.06 **Permits**. City will obtain renewals of all operating permits and approvals from governmental agencies listed on Exhibit D.

If new operating permits and approvals (or amendments to the permits and approvals obtained by City) become necessary during the Term, by virtue of Contractor's operations, it will be the responsibility of Contractor to obtain them. City will assist the Contractor in obtaining them provided that the operations which give rise to the need for them are in compliance with this Agreement. Contractor shall submit a draft of all applications for operating permits (and for subsequent renewals or modifications thereof) to the City for its review and approval prior to filing an application with the permitting agency. Contractor shall keep the City fully informed

at all times on the status of all permit applications, including meetings with agency staff and hearings on permit applications before the agency's governing board. Contractor shall apply for permits in its own name or in the name of the City, as directed by the City. Contractor shall not agree to permit terms and conditions on any permit which is to be issued in the name of the City without the prior written consent of the City. Copies of all permits issued in Contractor's name and originals of all permits issued in the City's name (and any renewals or amendments) shall be delivered to the City promptly, and in any case within five (5) working days of their receipt by Contractor.

Contractor shall keep all licenses, permits and approvals governing the Station in force and shall comply with their terms, including any which may require improvements or modifications in operating procedures. Without limiting the generality of the foregoing, Contractor will comply with the terms and conditions contained in the Use Permit issued by the City for the Station, a copy of which is attached as Exhibit E.

Contractor shall be solely responsible for paying any fines or penalties imposed by governmental agencies for Contractor's noncompliance with permit terms or its failure to obtain necessary permits.

3.07 Mitigation Measures. Contractor shall comply with and perform all of the mitigation measures identified in the FEIR which relate to the operation and maintenance by Contractor of the Station and transportation by Contractor of Municipal Solid Waste to the Disposal Facility, which were adopted by the City Council when the FEIR was certified and which are listed on Exhibit F.

3.08 Hazardous Waste. Contractor shall, upon commencement of operations at the Station, implement a Hazardous Waste Exclusion Program ("HWEP"), the minimum requirements for which are set out in Exhibit G, in a diligent, reasonable and non-discriminatory manner. If the California Integrated Waste Management Board or the California EPA require additional measures to be incorporated into the HWEP, Contractor shall comply with such additional measures. Contractor shall temporarily store materials discovered through the HWEP (or otherwise) that cannot be processed at the Station or accepted at the Disposal Facility in the appropriate

storage areas provided at the Station for this purpose. Contractor shall arrange and pay for the safe and lawful disposal of such waste, subject to reimbursement as provided in Section 5.05.

The operator of the Disposal Facility is required to conduct its own independent HWEP which will entail checking of loads delivered from the Station by Contractor. If the operator of the Disposal Facility rejects material delivered to the Disposal Facility under Section 3.06 of the Disposal Contract, Contractor shall remove and dispose of it in a safe and lawful manner, at its sole expense. Contractor shall also be solely responsible for reimbursing the Disposal Facility operator for costs of testing and disposal of waste which the Disposal Facility operator initially accepts but subsequently discovers may not be legally disposed of at the Disposal Facility, to the extent that such reimbursement is required by Section 3.06 of the Disposal Contract. To the extent Contractor must pay the Disposal Facility for the costs of disposing of such hazardous material due to the failure of transporters of Municipal Solid Waste to eliminate such materials prior to their delivery to the Station, Contractor shall be entitled to pursue whatever remedies, if any, it may have against such transporters, but shall not be entitled to reimbursement from City or the Participating Agencies.

Contractor shall remove and arrange for proper disposal of CFCs and compressor oils from appliances delivered to the Station, as well as switches containing mercury. The cost of removal and disposal is included in the Basic Annual Payment.

3.09 **Equipment**. City will provide the equipment listed on Exhibit H-1. If the City proceeds with the installation of planned new equipment, as described in Section 3.21, that equipment will consist of items listed on Exhibit H-3. Contractor shall provide all other equipment, sufficient in number and capacity to perform safely and efficiently the work required by this Agreement including but not limited to the equipment listed on Exhibit H-2. All equipment furnished by Contractor shall be new and unused as of January 2008, and suitable in design and construction for arduous, heavy-duty service in a solid waste transfer station operation. All equipment shall comply with all applicable laws and regulations.

The number of Transfer Vehicles and other equipment shown on Exhibit H-2 is based on throughput of Municipal Solid Waste at the level anticipated at the commencement of the Term. The parties recognize that volume may increase over time and that additional Transfer Vehicles and/or other equipment would be needed if and when it does. Contractor will acquire and operate such additional Transfer Vehicles and/or other equipment as needed to receive, process and transfer up to 1500 Tons per day, while continuing to meet performance standards required by this Agreement, and there shall be no increase in the Contractor's compensation provided in Article 5 as a result. All Transfer Vehicles must be capable of being loaded from either top or rear.

The City shall have the right, but not the duty, to purchase any or all equipment owned by Contractor at the expiration or earlier termination of this Agreement, at its net book value as shown on Contractor's financial statements, which shall be no greater than the purchase price less accumulated depreciation claimed by Contractor on its federal income tax returns. Contractor shall, prior to February 1, 2008, deliver to the City properly signed UCC-1 Financing Statements and all other documents necessary or appropriate for the City to secure its purchase options and shall record, or allow the City to record, such Statements and other documentation. As new or replacement equipment is purchased, similar documentation covering it shall be provided by Contractor.

Upon the City's exercise of its option to purchase, Contractor will sign and deliver bills of sale or other documents reasonably requested by City to evidence the transfer of title to all equipment purchased.

If Contractor wishes to lease (rather than purchase) the equipment which it is to furnish, it shall request City's permission to do so and provide to City, for its approval, complete and accurate copies of all equipment leases which it proposes to enter into. The leases must provide that the lessor will, if requested, consent to their assignment to City without charge upon the expiration or earlier termination of this Agreement and must provide adequate mechanisms for the City to acquire title to equipment if desired.

3.10 **Personnel**.

A. Contractor shall furnish qualified competent drivers and maintenance, supervisory, clerical, laborers and other personnel in sufficient numbers to perform the work required by this Agreement (including the continued and uninterrupted operation and maintenance of the Station and the transfer of Municipal Solid Waste to the Disposal Facility and Recyclable Materials to market) in a safe and efficient manner. The minimum complement of personnel staffing the Station shall be as shown on Exhibit I-1. The parties recognize that throughput rates may increase over time and that this increased volume could require additional personnel. The Contractor will add personnel as needed to operate the Station and achieve the Minimum Recycling Level, without any increase in the Contractor's compensation provided for in Article 5, provided that the annual amount of MSW and Yard Trimmings is not in excess of 280,000 Tons.

B. Contractor shall fill the positions required to perform the work required by this Agreement, in the job classifications listed in subsection D below, by first offering employment to those employees of the predecessor company operating the Station (1) who have been working continuously at the Station from July 1, 2007 in one or more of the listed job classifications, (2) who are eligible for employment under federal and state law, (3) who have not been convicted of a crime that is related to the job or job performance, and (4) who do not present a demonstrable danger to customers, co-workers or City employees.

C. If Contractor does not have enough positions available in the listed job classifications to offer employment to all of the predecessor contractor's employees who are eligible for employment under subparagraph B, the Contractor shall maintain a list of the predecessor contractor's employees who were not offered employment. If any positions become available during the first six (6) months of operation (i.e., from January 1, 2008 through June 30, 2008), Contractor shall offer employment to persons on the list by seniority within each job classification.

D. The job classifications covered by this section are drivers, sorters, mechanics, and operators. It does not apply to management, supervisory, administrative or clerical employees.

E. Upon commencement of operation of the Station on January 1, 2008, Contractor shall pay employees working at the Station wages and benefits no less than those specified in this section, as follows:

1. sorters: $18.52 per hour;

2. drivers, mechanics and operators: no less than the total hourly wage shown on Exhibit I-2, increased in each case by the same percentage that the Consumer Price Index, All Urban Consumers for the San Francisco-Oakland-San Jose Metropolitan Area ("Index") has increased between April 2004 (198.3) and April 2007. The total hourly wage in each job classification shall be increased on July 1, 2008 and on July 1 of each year thereafter by the same percentage that the Index has increased between April 2007 and April 2008, in the case of the adjustment to be made on July 1, 2008, and between the corresponding Aprils in succeeding years.

F. Contractor must provide a health benefit program for employees in the job classifications listed in subsection D, substantially as the program described in its Proposal.

G. The hourly cash equivalent of benefits such as sick leave, vacation/holiday, and health insurance will be determined as shown on Exhibit I-3. Subject to the requirement in subsection F for a health insurance program, Contractor may provide any combination of wages and benefits so long as the hourly cash equivalent of such combination equals the "total hourly wage" shown on Exhibit I-2, as adjusted.

H. City may conduct a survey of wages and benefits paid to workers in similar job classifications at similar solid waste recycling and transfer facilities operating in Santa Clara County during calendar year 2012. The results of this survey, if conducted, will be presented to the City Council. If the City Council thereafter directs Contractor to increase the total hourly wage paid to workers at the Station beyond that otherwise applicable under this Agreement, the additional cost of this increase will be determined by the City and the Contractor's Basic Annual Payment will be increased by an equivalent amount.

I. Contractor has no obligation to pay wages higher than the total hourly wages specified in this Agreement irrespective of any determinations of prevailing wage subsequently made by the California Department of Industrial Relations.

J. If Contractor engages any workers through an independent contractor, such as an employment agency, it shall ensure that such contractor:

(a) Provides all such workers compensation equal to that which this Section would require Contractor to pay if the workers had been hired as its own employees;

(b) Complies with the nondiscrimination requirements imposed on Contractor by Section 10.14;

(c) Maintains workers compensation and employer's liability insurance covering such workers in the amount required by Section 7.02.A.1 and with policies meeting the other requirements of Section 7.02.A.

Contractor is responsible for providing qualified and competent workers, whether as direct employees or through workers furnished by an independent contractor. Contractor is also responsible for providing sufficient training to all workers so that they can perform the work in a safe and competent manner and are thoroughly familiar with the work which Contractor is required to perform and the standards it is required to meet under this Agreement.

If workers provided by a particular independent contractor prove persistently unsatisfactory, City may require that Contractor either secure workers through a different independent contractor or hire qualified and competent employees directly. Contractor shall defend and indemnify City from and against any claim or suit filed by any independent contractor furnishing workers to Contractor.

K. Contractor shall promptly furnish the City information that it requests, including certified payrolls, to verify Contractor's compliance with this section.

3.11 Other Operating Procedures and Standards. In addition to the foregoing, Contractor shall conduct its operations in accordance with the requirements of the California Integrated Waste Management Board currently in effect (as codified in Title 14 and Title 27 of the California Code of Regulations) and as they may be changed from time to time, and with the procedures and standards contained in Exhibit J.

3.12 Turnaround Time of Waste Collection Vehicles. Contractor shall operate the Station so that:

A. All vehicles of Participating Agencies and their Designated Haulers entering the Station are processed through the scale house weighing operation in no more than ninety (90) seconds per vehicle, measured from the vehicle's entry onto the scale;

B. All vehicles of Participating Agencies and their Designated Haulers are able to unload and depart from the Station in no more than fifteen (15) minutes from their leaving the scale house;

C. All vehicles carrying Publicly Hauled Waste do not wait an unreasonable amount of time at the scale house or for an assigned place to dump.

3.13 Weighing. Contractor shall operate and maintain the scale system at the Station. Weighing operations shall be conducted in accordance with standards and procedures set out on Exhibit J. City will provide four (4) scales at the Station with digital instrumentation. Contractor shall furnish all hardware (including computers, cabling and terminals) and software (including memory) and all other items necessary to generate, at a minimum, all the reports contained in Exhibits O-1 through O-13. The software shall have the capabilities described in Exhibit O-14. The Contractor shall be solely responsible for operation of the computers and software.

Contractor shall provide City with licenses and all other documentation necessary or useful for City to operate the computers and software upon expiration or earlier termination of the Agreement.

Radiation monitoring equipment is used at the entrance to the Station to identify loads containing radioactive waste. Contractor will arrange for its employees to be trained in its use (training to be provided by City), and will operate the equipment and respond to alerts as described in Exhibit L without additional cost to City.

3.14 Collection of Public Use Fees. Contractor shall collect Public Use Fees established by the City from all Persons who use the Station other than the Participating Agencies and their Designated Haulers. Contractor shall keep complete and accurate records of all Public Use Fees collected, shall be responsible for the safekeeping of monies and negotiable instruments collected, and shall remit to the City (and the other Participating Agencies) all of such Public Use Fees collected, except the Gate Fee, as provided in Section 5.04. The City shall have sole and exclusive authority to establish Public Use Fees and to modify them from time to time, provided that they will always be sufficient to generate at least the Gate Fee.

3.15 Cooperation Regarding Clean Up Campaign and Special Events. Contractor shall cooperate with all the Participating Agencies in providing extra dumping weekends during Cleanup Campaigns and in use of "free dumping" coupons by residents of the Participating Agencies. Extra dumping weekends are currently held at the Station four (4) times per year, and cleanup campaigns by the City's franchised hauler occur in the spring and fall. Other neighborhood cleanup activities by the City's franchised hauler are held at various times during the year. Neighborhood cleanups use roll-off boxes which are dumped at the Station typically on Saturdays. In addition, Contractor shall cooperate with City in other events, including periodic document shredding at the Station.

3.16 Marketing of Recyclable Materials.

A. Marketing Efforts. Contractor shall use its best efforts in marketing and promoting the sale of all Recyclable Materials. Contractor shall employ its best marketing strategy in effecting disposition of Recyclable Materials, and shall use its best efforts to obtain the best possible prices for Recyclable Materials consistent with prevailing conditions in the market, whether foreign or domestic. Contractor will exert at least the same effort in marketing the Recyclable Materials

from the Station as it does in marketing materials which it markets for its own account as Principal or as an agent/broker for any third party.

B. **Marketing Plan**. Contractor shall submit to City on or before January 1, 2008, and annually thereafter on or before January 1 of each following year, a plan for marketing of Recyclable Materials for the forthcoming year. The Marketing Plan shall include the following:

1. Quantities: estimated quantities of Recyclable Materials including but not limited to each of the following categories which Contractor expects to process for marketing during the year:

- Newsprint
- Glass bottles and jars
- Aluminum
- Metal cans
- White goods
- Corrugated cardboard and Kraft paper
- High grade office papers
- Mixed papers
- Tires
- Plastics
- Used motor oil and oil filters
- Anti-freeze

2. Prices: estimated unit market values and total sales revenue for each category.

3. Marketing: end markets and uses.

4. Review of quantities of materials marketed during the preceding year.

C. **Marketing Duties**. Contractor shall perform all of the following:

1. Storage. Contractor shall suitably store all Recyclable Materials to protect against fire, theft, deterioration, contamination or other damage.

As provided in Section 7.02.A.4, Contractor shall insure all Recyclable Materials while in its possession, and during shipment prior to transfer of title, against fire, theft and other casualty losses. Contractor shall ship all Recycled Materials offsite for Recycling within ninety (90) days of their delivery to the Station unless stockpiling of specific Recyclable Materials on site longer than ninety (90) days is approved by City in advance, and in writing.

2. Certificate of End Use. Contractor will obtain a certification of end use from the purchaser establishing that the materials sold have been, in fact, recycled.

3. No Warranties. Contractor shall not make any warranties or representations regarding the Recyclable Materials other than those, if any, specifically authorized by the City to be made and will include in all sales contracts a disclaimer of warranties by City, if required to do so by City.

4. Delivery. Contractor will be responsible for effecting delivery to purchasers unless the terms of sale require the purchaser to arrange for delivery. In addition, Contractor upon request shall load processed Yard Trimmings onto vehicles of residents of the Participating Agencies, or of all members of the public if so directed by City. Such assistance shall be provided in accordance with a schedule approved by City, which shall provide for coverage at least three (3) days each week for a total of at least twelve (12) hours per week.

5. Disposition Costs When No Markets Exist. Due to market cycles and fluctuations, some or all of the recovered Recyclable Materials may have no, or negative, market value (i.e., an end user will accept the material for recycling but will charge a fee for doing so). When market conditions are such that some or all of the Recyclable Materials cannot be sold, Contractor must pay all transportation costs of delivering recovered Recyclable Materials to users willing to accept them, up to three hundred (300) miles (one way) from the Station. In addition, if users are willing to accept them only on condition of payment, Contractor shall pay up to $44 per Ton to have such materials recycled. The $44 per Ton cost shall be adjusted annually at the same time and by the same percentage used to adjust the Basic Annual Payment in Section 5.02.B.

The costs of payment for acceptance (but not of transportation) incurred by Contractor shall be allocated between Contractor and City on the same percentages used to allocate revenues received from the sale of Recyclable Materials pursuant to Section 5.06 and Exhibit P. (In other words, costs of payment for acceptance shall be netted against gross revenues prior to allocation of such revenues but Contractor is to absorb the costs of transportation.) In order to implement this differing treatment, Contractor shall deliver recovered Recyclable Materials itself, hire a third party transport company, or (if the end user provides transport from the Station to its facility) require the cost of transport to be separately identified on its invoices. If costs of disposition or distances exceed the limits set forth above in this Section, Contractor may request City's approval, pursuant to Section 4.01, to dispose of unmarketable Recyclable Materials. If City grants such approval, Contractor shall transport to, and dispose of, the materials at the Disposal Facility. If during the three (3) immediately preceding calendar months taken in the aggregate, Contractor has achieved the Minimum Recycling Level, City shall pay the Disposal Fees, otherwise Contractor shall be responsible for, and shall pay, the Disposal Fees on such materials. If City instead directs Contractor to continue to arrange for the materials to be recycled, City shall reimburse Contractor for one hundred percent (100%) of the per ton cost incurred in their disposition that is in excess of the disposition cost limit set forth above.

D. **Title and Risk of Loss**. Title to, and risk of loss of, Recyclable Materials shall be with Contractor upon delivery to the Station. Contractor shall keep the Recyclable Materials free from liens and other claims of Contractor's creditors.

E. **Relationship of Parties**. The parties to this Agreement intend and hereby agree that their relationship shall be that of independent contractors with respect to the marketing of Recyclable Materials. Nothing contained herein shall be construed to create any employment, partnership, joint venture, co-ownership or agency relationship between the parties, and Contractor shall not by any action allow any presumption to arise that a relationship of partnership or agency exists between the parties.

3.17 **City's Right to Cure**. In the event that Contractor fails to perform any of its obligations under this Article 3, and fails to commence and diligently

prosecute such work within three (3) days after notice from City, City may (but shall not be obligated to) enter the Station Site with necessary workers and equipment and perform the required work, or engage a third party contractor to do so. In such event, Contractor shall immediately upon demand reimburse City for all costs thereof, including any payments to a third party contractor, with interest after thirty (30) days at prime rate (as established by the Bank of America "reference rate") plus two percent (2%) but not in excess of the maximum interest rate allowed by law. If Contractor fails to make such reimbursement City may deduct the amounts due from subsequent payments to Contractor under Article 5.

3.18 City Use of Offices/Visitor Center.

A. Offices. City shall have exclusive use of approximately six hundred seventy-five (675) square feet of the office space, as shown on Exhibit U. In addition ten (10) parking spaces will be reserved for the exclusive use of City staff and invitees. Contractor shall provide, at no charge to City, utilities to this portion of the Office/Visitor Center building, including water, sewer, electrical power, heat and light, as well as janitorial and building maintenance services. City will provide, at its expense, telephones and other communications equipment, furniture, computers, office supplies and moveable partitions.

B. Other Areas. City shall have the right to make reasonable use of the common areas in the remainder of the building (e.g., the lobby, orientation room, lunch room, lockers/showers, and restrooms). City's use of these areas shall not interfere with Contractor's use, and the parties shall cooperate with each other in the scheduling of the use of the conference room and orientation room.

3.19 Source-Separated Recyclables Composition Survey. Contractor shall conduct, or assist City in the conduct of, a survey of the composition of Source-Separated Recyclable Materials delivered to the Station by the Designated Hauler of City and of Mountain View. The purpose of the survey is to determine the relative amounts of various types and grades of Source-Separated Recyclable Materials delivered from each jurisdiction for purposes of the MOU. Surveys will be conducted at the City's request no more frequently than once every six (6) months. The procedure for the survey, and the content of the report to be furnished within six (6)

weeks after completion of the survey, are described in the "Final Report: Waste Characterization Methodology for Determining Allocation of Curbside Recycling Revenues" dated May 2003, a portion of which is attached as Exhibit K and the entire text of which was included in the Request for Proposals issued by City.

3.20 Cost Allocation Reports. No later than thirty (30) days after the end of each fiscal year, i.e., by July 30 of each year, Contractor shall deliver to City a report showing the distribution of all payments received from the City among the following operations:

- transfer
- materials recovery
- yard trimmings processing
- curbside recyclables
- public buyback/drop off

Contractor shall set forth the cost allocation method it used to calculate the distribution. In addition, if requested by City, it shall submit up to two (2) additional revenue distributions using alternative allocation assumptions provided by the City.

3.21 Modifications to MSW Processing Line - Delays or Deferrals.

A. The City plans to replace the MSW processing equipment installed at the Station as of the date of this Agreement with new equipment, as shown on the design drawings attached as Exhibit C and listed on Exhibit H-3. The City plans to award a construction contract for this work which will require the new equipment to be installed and operable prior to January 1, 2008. The Basic Annual Payment set forth in Section 5.02.A is based on, and assumes, that the City will have arranged for the new equipment to be installed by that date.

B. It is possible that the City will decide not to proceed with this work, but rather to allow the equipment currently installed at the Station to remain in place. If the City decides not to proceed with the work, such that the currently-installed equipment is in place and operating as of January 1, 2008, then the Basic Annual Payment shown in Section 5.02.A will be changed to Ten Million Eight Hundred Forty Seven Thousand Eight Hundred Sixty Four Dollars ($10,847,864.00)

as of the Effective Date and all references in this Agreement to the "Basic Annual Payment" shall be understood to refer to this amount ($10,847,864.00).

C. If the City does award a contract for installation of the new equipment but the construction contractor does not complete installation by December 31, 2007 and no MSW processing line is operable on January 1, 2008, then Contractor shall operate the Station and the Basic Annual Payment set forth in Section 5.02.A shall be adjusted as follows:

- It will be reduced by $104,897.00 per month to reflect the reduction in labor costs due to the MSW processing lines being out of service;
- It will be increased by $18,966.00 per month to offset the expected loss in recycling revenue from the sale of materials which would otherwise be recovered from the MSW processing line;
- It will be increased by $17,963.00 per month to reflect the Contractor's increased costs in deliveries of MSW to the Disposal Site;

for a net monthly reduction of $67,968.00.

If the new equipment is completed and becomes operable during a month, the monthly reduction of $67,968.00 will be prorated based on a daily reduction of $2,266.00 and a 30 calendar day month.

The Minimum Recycling Level specified in Section 3.05.B shall not apply during the period that MSW processing equipment necessary to accomplish recycling is not operable.

3.22 **Clean Air Fuels Plan**. Contractor will utilize the following fuels or sources of power for the following types of equipment:

Forklifts	Propane
Scissor Lift	Electric
Loaders (4)	Biofuel (20% soybean base and 80% diesel)
Transfer Trucks	Diesel

Contractor will use its best efforts to make use of biodiesel fuel for transfer trucks as soon as practicable.

There will be no additional cost to the City for furnishing or utilizing these items of equipment.

ARTICLE 4. TRANSPORTATION OF MUNICIPAL SOLID WASTE FOR DISPOSAL; RECYCLABLE MATERIALS TO MARKET

4.01 Transportation. Contractor shall transport and deliver to the Disposal Facility all Municipal Solid Waste that is not recycled. Contractor shall transport and deliver (or arrange for the transportation and delivery of) all Recyclable Materials, including Source-Separated Recyclable Materials and Recyclable Materials recovered from MSW, to a purchaser, a permitted recycling facility, or a person who will use the materials in a process or product and will not dispose of them. Contractor shall arrange for the Transportation and delivery of all Source-Separated Yard Trimmings to a permitted off-site composting facility or biomass-fuel electrical generating station. Contractor shall transport and deliver (or arrange for the transportation and delivery of) Hazardous Waste, Designated Waste and other materials which are encountered at the Station and which cannot be accepted at the Disposal Facility to an appropriately permitted disposal facility. Routes within City over which vehicles travel to effect this transport and delivery shall be selected to minimize inconvenience and disturbance to the public and shall be subject to the approval of City.

Contractor shall use due care to prevent Municipal Solid Waste or Recyclable Materials from being spilled or scattered during transport. All vehicles hauling materials from the Station shall be enclosed or have other appropriate covering as approved by City. If any Municipal Solid Waste or Recyclable Materials are spilled within the City, Contractor shall immediately clean up all spilled materials, whether on private or public property.

No Recyclable Materials which have been delivered to the Station already separated and no materials which have been processed at the Station for Recycling may be disposed of (1) on land, or (2) with the sole exception of wood, through Transformation, without the prior written consent of City.

No materials of any kind may be disposed of on land at any location other than the Disposal Facility. No materials of any kind may be disposed of in water or in the

atmosphere. Notwithstanding the foregoing, Contractor may, and shall, dispose (or arrange for the disposal) of Hazardous Waste which it identifies among the materials delivered to the Station at permitted hazardous waste disposal facilities, subject to City reimbursement under Section 5.05.A.

Transfer Vehicles shall not depart the Station to deliver Municipal Solid Waste to Kirby Canyon between the hours of 4:30 p.m. and 5:30 p.m., Monday through Friday, except California State holidays. Transfer Vehicles shall not depart Kirby Canyon to return to the Station between the hours of 7:15 a.m. and 8:30 a.m., Monday through Friday, except California State holidays.

4.02 **Parking and Maintenance of Transfer Vehicles**. Contractor may park empty Transfer Vehicles in the fenced and paved operational area of the Station Site, which does not include the office parking lot. Transfer Vehicles may not be fueled, maintained or repaired in this area. Contractor must make arrangements, at its sole costs and expense, for an off site location at which fueling, maintenance and repair of Transfer Vehicles will be carried out. Transfer Vehicles containing Municipal Solid Waste must be parked on the tipping floor, so that liquids from the Municipal Solid Waste drain only to the tipping floor.

ARTICLE 5. COMPENSATION TO CONTRACTOR

5.01 General. The payments provided for in Sections 5.02 through 5.05 and the share of revenues provided in Section 5.06 are the full, entire and complete compensation due to Contractor for furnishing all labor, equipment, materials and supplies and all other things necessary to perform all of the services required by this Agreement in the manner and at the time prescribed, and for fulfilling all of its obligations under this Agreement, including but not limited to the operation of the Station in accordance with Article 3, and the transportation of materials in accordance with Article 4. The compensation provided for in this Article includes all costs for the items mentioned above and also for all taxes, insurance, bonds, overhead, profit and all other costs necessary or appropriate to perform the services in accordance with this Agreement. Notwithstanding the foregoing, if a possessory interest tax is assessed against Contractor pursuant to California Revenue and Taxation Code Section 107, Contractor shall pay such tax but City shall reimburse Contractor for the amount of tax paid upon receipt of evidence of the tax assessment and payment. Contractor shall cooperate with City, if requested, in City's effort to seek a reduction in or removal of such tax, including filing a protest of the tax. Expenses incurred by Contractor in so doing will also be reimbursed by City.

5.02 Basic Annual Payment.

A. 1. Contractor will be paid a Basic Annual Payment for receipt, processing and transfer of up to two hundred eighty thousand (280,000) Tons per year of MSW and Yard Trimmings delivered to the Station by the Participating Agencies, their Designated Haulers, and the Designated Haulers of communities in the Extended Service Area. The Basic Annual Payment in effect as of the Effective Date is Ten Million One Hundred Ninety One Thousand and Seventy Two Dollars ($10,191,072.00). If new equipment is not installed at January 1, 2008, the Basic Annual Payment shall be as stated in Section 3.21.B.

2. If the City of Palo Alto elects to deliver its curbside-collected Recyclable Materials to the Station, the Basic Annual Payment in effect as of the Effective Date will be Ten Million Four Hundred Thirty Two Thousand Six Hundred and Seventy Six Dollars ($10,432,676.00). If Palo Alto does not deliver its curbside-collected Recyclable Materials to the Station upon Contractor's commencement of

operations, but elects to do so thereafter during the Term, then the Basic Annual Payment set forth in this Subsection 5.02.A.2 shall be adjusted as described in Section 5.02.B for the appropriate number of years. If Palo Alto elects to begin deliveries of its curbside-collected Recyclable Materials during a fiscal year, rather than on July 1 of a year, then the Basic Annual Payment to the Contractor for that fiscal year will be adjusted as of the month that such deliveries begin.

Palo Alto currently collects curbside Recyclable Materials in a "single stream" method, in which all such materials are commingled. If Palo Alto elects to deliver its curbside collected Recyclable Materials to the Station, the City will install, at its expense, any additional equipment necessary to accommodate the processing of those materials using the equipment then in place at the Station.

B. The Basic Annual Payment set forth in Section 5.02.A shall be adjusted as of July 1, 2007 and as of July 1 annually thereafter to reflect changes in the San Francisco/Oakland/San Jose Metropolitan Area Consumer Price Index (All Urban Consumers: 1982-84 = 100) compiled and published by the United States Department of Labor, Bureau of Labor Statistics ("the Index"). The Index level as of December, 2005 (i.e., 203.4) shall be the Base Index and shall be compared with the Index as of December in subsequent years. For example, the Basic Annual Payment shall be adjusted on July 1, 2007 by multiplying Ten Million One Hundred Ninety One Thousand and Seventy Two Dollars ($10,191,072.00) by one (1) plus the percentage change from the Base Index to the Index level as of December 2006. The parties recognize that the amount of the monthly installment payment will change each August to reflect the change to the Basic Annual Payment taking effect each July.

C. The Basic Annual Payment will be paid as provided in Section 6.01.

5.03 Tipping Fee for Excess Tonnage.

A. If the combined tonnage of MSW and Yard Trimmings delivered to the Station by Participating Agencies, their Designated Haulers or by Designated Haulers from communities in the Extended Service Area during (i) the period January 1, 2008 through June 30, 2008 or (ii) the period July 1, 2014 through December 31,

2014 exceeds One Hundred Forty Thousand (140,000) Tons, the Contractor shall be paid a Tipping Fee for each Ton in excess of 140,000 Tons.

B. If the combined tonnage of MSW and Yard Trimmings delivered to the Station by Participating Agencies, their Designated Haulers or by Designated Haulers from communities in the Extended Service Area exceeds Two Hundred Eighty Thousand (280,000) Tons in any fiscal year commencing July 1, 2008, Contractor shall be paid a Tipping Fee for each Ton in excess of 280,000 Tons as provided in Section 5.03.C.

C. 1. The Tipping Fees earned for Excess Tonnage in effect as of the Effective Date shall be:

	New MSW Equipment	Existing MSW Equipment
For MSW:	$21.52 per Ton	$21.95 per Ton
For Yard Trimmings:	$ 21.52 per Ton	$21.95 per Ton.

2. If the City of Palo Alto elects to deliver its curbside-collected Recyclable Materials to the Station, the Tipping Fees earned for Excess Transfers in effect as of the Effective Date shall be

	New MSW Equipment	Existing MSW Equipment
For MSW:	$17.83	N/A
For Yard Trimmings:	$17.83	N/A.

If Palo Alto elects to begin deliveries of its curbside-collected Recyclable Materials during a fiscal year rather than on July 1 of a year, then the amount of the Tipping Fee for Excess Tonnage for that year shall be determined by the weighted average of Tons of MSW and Yard Trimmings delivered during the months that Palo Alto was not delivering its Recyclable Materials and during the months that it was delivering its Recyclable Materials.

D. The Tipping Fees set forth in Section 5.03.C.1 and 2 shall be adjusted as of July 1, 2007 and as of each July 1 thereafter by the same percentage as the Basic Annual Payment in Section 5.02 is adjusted.

E. Tipping Fees earned, if any, will be paid as provided in Section 6.02.

5.04 Gate Fees for Publicly Hauled Waste.

A. Contractor will be paid a Gate Fee for receipt, processing and transfer of Publicly Hauled Waste delivered to the Station whether from within the Primary Service Area or, if allowed by City, from within the Extended Service Area. This Gate Fee will be, as of the Effective Date, Five Dollars and Fifty Cents ($5.50) per Cubic Yard.

B. The Gate Fee for Publicly Hauled Waste set forth in Section 5.04.A shall be adjusted as of July 1, 2007 and as of July 1 annually thereafter by the same percentage as the Basic Annual Payment in Section 5.02 is adjusted.

C. Gate Fees for Publicly Hauled Waste will be paid as provided in Section 6.03.

5.05 Reimbursement of Certain Costs.

A. The Basic Annual Payment provided in Section 5.02 is intended to cover all costs of operating the Station other than those incurred by Contractor

1. to arrange for transport and legal disposal of Hazardous Waste and Sharps identified through the Hazardous Waste Exclusion Program or during subsequent processing at the Station, radioactive wastes detected at the scales, and Sharps delivered to the Drop Off Facility; and

2. to purchase replacement parts for stationery equipment listed on Exhibit H-1.

Contractor will not receive reimbursement for costs of disposal of compressor oils, switches containing mercury, or CFCs removed from appliances

delivered to the Station or for Hazardous Waste generated by the Contractor's own operations, all of which are included in the Basic Annual Payment.

B. Reimbursement of actual and reasonable costs incurred will be made as provided in Section 6.04.

5.06 Contractor's Share of Recycling Revenues. As an incentive to Contractor to maximize both the quantity and quality of materials recovered and successfully marketed for recycling, Contractor will be entitled to retain a percentage of gross revenues from the sale of

(i) Materials recovered from MSW;

(ii) Source Separated Recyclable Materials delivered by the Participating Agencies' Designated Haulers;

(iii) Source Separated Yard Trimmings delivered by the Participating Agencies' Designated Haulers;

(iv) Materials delivered to the Drop-Off Center.

The percentage of gross revenue to be retained by Contractor is dependent on the level of recovery achieved, as set forth on Exhibit P.

The method by which Contractor will share revenues as provided above is specified in Section 6.05.

ARTICLE 6. PAYMENT AND REVENUE SHARING PROCEDURES

6.01 Basic Annual Payment. The Basic Annual Payment provided for in Section 5.02 shall be paid in arrears in 12 equal monthly installments, with the first payment earned as of January 31, 2008. City will pay each installment within fifteen (15) business days after receipt of the monthly statement from Contractor required by Section 6.06.

6.02 Tipping Fee for Excess Tonnage. If Contractor earns a Tipping Fee provided for in Section 5.03 for processing more than 280,000 Tons of MSW and Yard Trimmings during a fiscal year, City will pay the amount due within fifteen (15) business days after receipt of the monthly statement from Contractor required by Section 6.06 showing that a Tipping Fee was earned during the preceding month.

6.03 Publicly Hauled Waste. Contractor will pay to City (by deposit to a City bank account or otherwise as City may direct) by the fifteenth (15th) day of each month, the amount of all public use fees collected, billed or billable during the immediately preceding month from persons delivering Publicly Hauled Waste, less the amount of the Gate Fee for processing Publicly Hauled Waste then in effect under Section 5.04. These payments will be reflected in the statement from Contractor required by Section 6.06. If Contractor extends credit to Persons delivering Publicly Hauled Waste, it does so at its risk and is solely responsible for inability to collect sums due.

6.04 Cost Reimbursements. If Contractor incurs costs which are reimbursable under Section 5.05, it shall include those costs, together with information sufficient to substantiate the amount and purpose of each expense, in the statement from Contractor required by Section 6.06. City will pay the cost reimbursements due within fifteen (15) business days after its receipt of a timely and complete monthly statement.

6.05 Revenues Received from Sale of Recyclable Materials.

A. Contractor shall remit to City the applicable percentage of the gross sales price of all materials delivered to the Station which are not disposed of at the Disposal Facility, including, but not limited to (1) materials recovered by

Contractor from Municipal Solid Waste, (2) Source-Separated Recyclable Materials delivered by Designated Haulers, and (3) Recyclable Materials delivered to the dropoff center.

B. Contractor shall pay to City (by deposit into a City bank account or otherwise as City may direct) by the fifteenth (15th) day of each month the percentage of the gross sales price earned during the preceding month from the sale of material described in Section 6.05.A to which City is entitled under Section 5.06 and Exhibit P, based on the Recycling Level achieved during that month as shown on the monthly statement from Contractor required by Section 6.06. The amount to be paid to City will be all revenues earned that Contractor is not entitled to retain under Section 5.06.

6.06 Monthly Contractor's Statement.

A. On or before the fifteenth (15th) day of each month, Contractor shall submit to City a statement showing amounts due to Contractor and City under Sections 6.01 through 6.05. With respect to amounts due under Section 6.05, the statement shall include at least the following information:

1. the amount (in Tons) of Source-Separated Recyclable Materials delivered to the Station during each day of the preceding month by each of the Participating Agencies and/or their Designated Haulers;

2. the amount (in Tons or cubic yards, whichever is applicable) of Recyclable Materials delivered to the Buyback/Dropoff Center during each day of the preceding month;

3. the amount (in Tons) of Recyclable Materials recovered by Contractor from Municipal Solid Waste delivered to the Tipping Floor;

4. the amount (in Tons) of Recyclable Materials sold by type and grade, and the total sales price;

5. a daily accounting showing the following information for each sales transaction:

- date of sale;
- type of material sold and grade, if applicable;
- quantity of material sold;
- unit price;
- total revenue due from sale;
- name and address of purchaser; and
- a copy of the sales invoice, sales contract or other document evidencing transfer of title.

Contractor shall utilize the appropriate reporting forms in Exhibit O.

City will consider adopting reporting systems and procedures which will protect the confidentiality of parties to brokered transactions, if Contractor advises that doing so would enhance the marketability or market price of Recyclable Materials. City has no obligation to adopt or implement any such system and its decision on this matter will be in its sole discretion.

B. City may request additional information regarding a report within thirty (30) days from receipt. Such request shall be in writing and shall describe the information requested with reasonable specificity. Contractor shall furnish the requested information to City within thirty (30) days from the date of the request. City shall notify Contractor within thirty (30) days after receipt of the initial report and payment, or within thirty (30) days after receipt of the additional information if such information is requested, of any dispute as to the accuracy of the report and the amount of the payment. City may withhold payment on disputed items or on charges to City that are not properly documented.

6.07 Adjustments to, and Annual Reconciliation of, Revenues from Sale of Recyclables.

A. If Contractor and purchasers adjust the sales price for materials after the initial sales transaction to account for agreed-upon differences in quantities (due to moisture loss, for example) or quality (due to grade determinations), Contractor shall notify City within one hundred twenty (120) days after the close of the month in which the sale was initially made and an adjustment shall be made (up or down) in the amount of revenue due to City to reflect the ultimate sales price. This adjustment

procedure does not allow Contractor to reduce amounts owed City due to purchaser default; credit sales are at the sole risk of Contractor.

B. The parties shall, during July of each year, perform an annual reconciliation of the allocation of recycling revenues by calculating the annual recycling level for the preceding fiscal year per Exhibit S, determining the corresponding revenue allocations per Exhibit P, and applying those percentages to the total amount of revenue earned during that fiscal year. (In July 2008, the reconciliation will cover the previous six months.) The resulting dollar amounts will be compared with the sum of the monthly payments to the City and any adjustment (which is not expected to be large) made by means of a separate payment from Contractor to the City or from the City to Contractor made within thirty (30) days after the amount of the adjustment is determined.

6.08 Host Fee Reports. In order to assist City in separately collecting the Host Fee from the other Participating Agencies, on or before the fifteenth (15th) day of each month, Contractor shall submit to City a report showing: (1) the amount (in Tons or yards, whichever is applicable) of Municipal Solid Waste delivered to the Station on each day of the preceding month; (2) the total amount of Municipal Solid Waste (in Tons or yards) delivered to the Station during the preceding month; and (3) a breakdown showing how many Tons or yards of Municipal Solid Waste were received from (i) each of the Participating Agencies, (ii) from cities that are not Participating Agencies, if any, and (iii) from all other sources during the preceding month.

City may request additional information regarding a report within thirty (30) days from its receipt. Such request shall be in writing and shall describe the information requested with reasonable specificity. Contractor shall furnish the requested information to City within thirty (30) days from the date of the request. City shall notify Contractor within thirty (30) days after receipt of the initial report, or within thirty (30) days after receipt of the additional information, if such information was requested, of any dispute as to the accuracy of the report.

ARTICLE 7. INDEMNITY, INSURANCE, BOND

7.01 Indemnification. Contractor shall indemnify, defend and hold harmless City, its officers, employees and agents, from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit, of any and every kind and description, whether judicial, quasi-judicial or administrative in nature including, but not limited to, injury to and death of any person and damage to property or for contribution or indemnity claimed by third parties (collectively, the "Claims"), arising out of or occasioned in any way by, directly or indirectly, Contractor's performance of, or its failure to perform, its obligations under this Agreement. The foregoing indemnity shall not apply to the extent that the Claim is caused solely by the negligence or intentional misconduct of City, its officers, employees or agents, but shall apply if the Claim is caused by the joint negligence of Contractor or other persons. Upon the occurrence of any Claim, Contractor, at Contractor's sole cost and expense, shall defend (with attorneys reasonably acceptable to City) City, its officers, employees, and agents. Contractor's duty to indemnify and defend shall survive the expiration or earlier termination of this Agreement.

7.02 Insurance.

A. Types and Amounts of Coverage. Contractor, at Contractor's sole cost and expense, shall procure from an insurance company or companies licensed to do business in the State of California and maintain in force at all times during the Term the following types and amounts of insurance:

1. Workers' Compensation and Employer's Liability. Contractor shall maintain workers' compensation insurance covering its employees in statutory amounts and otherwise in compliance with the laws of the State of California. Contractor shall maintain Employer's Liability insurance in an amount not less than Ten Million Dollars ($10,000,000) per accident or disease. Provided, however, that Contractor shall not be obligated to carry workers' compensation insurance if (i) it qualifies under California law and continuously complies with all statutory obligations to self-insure against such risks; (ii) provides a Certificate of Permission to Self Insure issued by the Department of Industrial Relations; and (iii) provides a certified copy of the permit renewing authorization for such self-insurance at least ten (10) days before expiration of the old permit.

2. Comprehensive General Liability (and Automobile Liability). Contractor shall maintain Comprehensive General Liability insurance with a combined single limit of not less than Ten Million Dollars ($10,000,000) per occurrence and Ten Million Dollars ($10,000,000) aggregate covering all claims and all legal liability for personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out of, or occasioned in any way by, directly or indirectly, Contractor's performance of, or its failure to perform, services under this Agreement.

The insurance required by this Subsection shall include:

(a) Premises Operations, including use of owned and non-owned equipment;

(b) Independent Contractor's Protective;

(c) Products and Completed Operations, protecting against possible liability resulting from use of Recyclable Materials by another person;

(d) Personal Injury Liability with Employment Exclusion deleted;

(e) Broad Form Blanket Contractual, including Contractor's Obligation under Section 7.01, with no exclusions for bodily injury, personal injury or property damage;

(f) Owned, Non-Owned, and Hired Motor Vehicles;

(g) Broad Form Property Damage, including Completed Operations.

The Comprehensive General Liability insurance required by Section 7.02.A.2 shall be written on an "occurrence" (not an "accident"), rather than a "claims made" basis, in a form at least as broad as the most current version of the Insurance Service Office commercial general liability occurrence policy form (CG 0001). If coverage is not obtainable, Contractor must arrange for "tail coverage" on a claims made policy to protect City from claims filed within four years after the expiration or termination of this Agreement relating to incidents that occurred prior to such expiration or termination. Any excess or umbrella policies shall be on a "following form" basis. The policy limit shall be adjusted at five (5) year intervals to reflect changes in the

Consumer Price Index utilizing the same indices and procedures provided in Section 5.02, rounded to the nearest One Hundred Thousand Dollars ($100,000).

3. Hazardous Waste Storage and Transport. Contractor shall maintain insurance coverage of not less than Five Million Dollars ($5,000,000) per location for personal injury, bodily injury and property damage arising out of the sudden and accidental release of any Hazardous Waste during storage at the Station and transport of such materials by vehicles owned, operated or controlled by Contractor in the performance of the services required under this Agreement. This insurance shall also cover costs associated with remediation of the released Hazardous Waste. The policy limit for such coverage shall be adjusted at five (5) year intervals to reflect changes in the Consumer Price Index utilizing the same indices and procedures provided in Section 5.02, rounded to the nearest One Hundred Thousand Dollars ($100,000).

4. Physical Damage. Contractor shall maintain comprehensive (fire, theft and collision) physical damage insurance covering (a) the vehicles and equipment used in providing service to City under this Agreement, with a deductible or self-insured retention not greater than Fifty Thousand Dollars ($50,000), and (b) Recyclable Materials at the Station Site or in transit to a purchaser, with no deductible or self-insured retention. Regardless of the foregoing, for the tractors and trailers used in providing services under this Agreement Contractor shall be allowed to self-insure for physical damage provided Contractor provides adequate audited financial information to City and City is reasonably satisfied that Contractor has the financial net worth to cover any losses. Contractor must also carry comprehensive physical damage insurance with a deductible of not more than One Hundred Thousand Dollars ($100,000), applicable to a casualty occurring while such vehicles are parked.

5. Pollution Liability. Contractor shall maintain Contractor's pollution liability insurance with limits in an amount of not less than One Million Dollars ($1,000,000) per occurrence and annual aggregate covering claims for on-site, under-site, or off-site bodily injury and property damage and remediation as a result of pollution conditions arising out of its operations under this Agreement.

The insurance policies required by this Section 7.02 shall be issued by an insurance company or companies admitted to do business in the State of California, and with a rating in the most recent edition of Best's Insurance Reports of size category XV or larger and a rating classification of A+ or better. However, if Contractor demonstrates that such insurance is unavailable on commercially reasonable terms from insurers with such ratings, it may request approval of insurers with a rating of not less than A+ VI in the then most recent edition of Best's Insurance Reports and City shall not unreasonably refuse such a request. Under no circumstances shall the insurer be rated less than "A+."

B. Required Endorsements.

1. The Worker's Compensation and Employers' Liability policy shall contain endorsements in substantially the following form:

> "Thirty (30) days prior written notice shall be given to the City of Sunnyvale in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:
>
> Risk and Insurance Manager
>
> CITY OF SUNNYVALE
> P.O. Box 3707
> 456 West Olive Avenue
> Sunnyvale, CA 94086
>
> "Insurer waives all right of subrogation against City and its officers and employees arising from work performed for City."

2. The Comprehensive General Liability, Hazardous Materials and Pollution Liability policies shall contain endorsements in substantially the following form:

> (a) "Thirty (30) days' prior written notice shall be given to the City of Sunnyvale in the event of cancellation or non-renewal of this policy, reduction in coverage, or reduction in aggregate limits due to payment of claims. Such notice shall be sent to:
>
> Risk and Insurance Manager
> CITY OF SUNNYVALE
> P.O. Box 3707

456 West Olive Avenue
Sunnyvale, CA 94086

(b) "The City of Sunnyvale, its officers, employees, and agents, the City of Palo Alto, and the City of Mountain View are additional insureds on this policy."

(c) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the City of Sunnyvale, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."

(d) "Inclusion of the City of Sunnyvale, Palo Alto and Mountain View as an insured shall not affect the Participating Agencies' rights as respects any claim, demand, suit or judgment brought or recovered against the Contractor. This policy shall protect Contractor and the Participating Agencies in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the company's liability as set forth in the policy beyond the amount shown or to which the company would have been liable if only one party had been named as an insured."

3. The physical damage policy shall contain the following endorsements:

(a) Notice of cancellation, reduction in coverage or non-renewal, as provided in Subsection B.2(a).

(b) Cross liability endorsement, as provided in Subsection B.2(d).

(c) Waiver of subrogation against City.

(d) Proceeds to be paid to City, to the extent of loss of or damage to Recyclable Materials.

C. Delivery of Proof of Coverage. No later than thirty (30) days before the commencement of operations (i.e., on or before November 30, 2007), Contractor shall furnish City certificates of each policy of insurance on a Standard ACORD form substantiating that each of the coverages required hereunder, in form and substance satisfactory to City. Such certificates shall show the type and amount

of coverage, effective dates and dates of expiration of policies and shall have all required endorsements. If City requests, copies of each policy, together with all endorsements, shall also be promptly delivered to City.

Contractor shall furnish renewal certificates to City to demonstrate maintenance of the required coverages throughout the Term.

D. Other Insurance Requirements

1. In the event any services are delegated to a subcontractor, Contractor shall require such subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the subcontractor's employees engaged in the work. The liability insurance required by Subsection 7.02.A.2 shall cover all subcontractors or the subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section 7.02.

2. Contractor shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement, including those imposed by Section 7.01. If any claim is made by any third person against Contractor or any subcontractor on account of any occurrence related to this Agreement, Contractor shall promptly report the facts in writing to the insurance carrier and to the City. If Contractor fails to procure and maintain any insurance required by this Agreement, City may take out and maintain, at Contractor's expense, such insurance as it may deem proper and deduct the cost thereof from any monies due Contractor.

3. City is not responsible for payment of premiums for or deductibles under any required insurance coverages.

7.03 Faithful Performance Bond. Not later than ten (10) days before the Effective Date (i.e., on or before March 13, 2007), Contractor shall file with City a bond securing the Contractor's faithful performance of its obligations under this Agreement. The principal sum of the bond shall be Two Million Dollars ($2,000,000). The form of the bond shall be as set out in Exhibit Q. The bond shall be executed as surety by a corporation admitted to issue surety bonds in the State of California, regulated by the

California Insurance Commissioner and with a financial condition and record of service satisfactory to City.

The term of the bond shall be not less than twenty-four (24) months, or until March 13, 2009, whichever occurs first. The bond shall be extended, or replaced by a new bond in the same principal sum, for the same term (i.e., twenty-four (24) months) and in the same form, bi-annually thereafter, except that the term of the bond furnished to be effective in March 2013 may be limited to the balance of the term of the Agreement i.e., until December 31, 2014. Not less than ninety (90) days before the expiration of the [initial] bond, the Contractor shall furnish either a replacement bond or a continuation certificate substantially in the form attached as Exhibit Q-1, executed by the surety. If the City extends the term of the Agreement, Contractor shall arrange for the term of the bond to be correspondingly extended.

The principal amount of the bond shall be increased in 2011 by the same percentage that the Basic Annual Payment provided in Section 5.02 has been cumulatively increased, rounded to the nearest Twenty Five Thousand Dollars ($25,000).

It is the intention of this Section that there be in full force and effect at all times a bond securing the Contractor's faithful performance of the Agreement, throughout its Term.

7.04 **Alternative Security**. City may, in its sole discretion, allow Contractor to provide alternative security in the amount set forth in Section 7.03, in the form of (a) a prepaid irrevocable standby letter of credit in form and substance satisfactory to City and approved by the City Attorney and issued by a financial institution acceptable to City, or (b) a certificate of deposit in the name of the City with a term satisfactory to City and with a financial institution acceptable to City.

7.05 **Hazardous Waste Indemnification**. Contractor shall indemnify, defend with Counsel approved by the City, protect and hold harmless the City against all claims, of any kind whatsoever paid, incurred or suffered by, or asserted against City arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any

Hazardous Waste at any place where Contractor stores or disposes of Hazardous Waste pursuant to this Agreement except to the extent that Contractor can demonstrate that such claim arises solely from Hazardous Waste collected and deposited by City employees acting within the ordinary course and scope of their employment. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, ("CERCLA"), 42 U.S.C. Section 9607(e), and California Health and Safety Code Section 25364, to defend, protect, hold harmless and indemnify City from liability.

7.06 **Integrated Waste Management Act Indemnification**. Contractor agrees to indemnify and hold harmless the City against all fines and/or penalties imposed by the California Integrated Waste Management Board (CIWMB) or the Local Enforcement Agency (LEA): a) based on Contractor's failure to comply with laws, regulations or permits issued or enforced by the CIWMB or the LEA; b) caused or contributed to by the Contractor's failure to perform obligations under this Agreement. This indemnity obligation is subject to the limitations and conditions in Public Resource Code Section 40059.1 but is enforceable to the maximum extent allowable by that Section.

ARTICLE 8. REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

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

8.02 Corporate Authorization. Contractor has the authority to enter into and perform its obligations under this Agreement. The Board of Directors of Contractor (or the shareholders, if necessary) have taken all actions required by law, its Articles of Incorporation, its Bylaws or otherwise to authorize the execution of this Agreement. The person signing this Agreement on behalf of Contractor has authority to do so.

8.03 Statements and Information in Proposal. The Proposal submitted to City by Contractor and information submitted to City supplementary thereto, on which City has relied in entering into this Agreement does not contain any untrue statement of a material fact nor omit to state a material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading.

8.04 No Conflict with Applicable Law or Other Documents. Neither the execution and delivery by Contractor of this Agreement, nor the performance by Contractor of its obligations hereunder (i) conflicts with, violates or will result in a violation of any existing applicable law; or (ii) conflicts with, violates or will result in a breach or default under any term or condition of any existing judgment, order or decree of any court, administrative agency or other governmental authority, or of any existing contract or instrument to which Contractor is a party, or by which Contractor is bound.

8.05 No Litigation. There is no action, suit, proceeding, or investigation at law or in equity, before or by any court or governmental entity, pending or threatened against Contractor, or otherwise affecting Contractor, wherein an unfavorable decision, ruling, or finding, in any single case or in the aggregate, would materially adversely affect Contractor's performance hereunder, or which, in any way,

would adversely affect the validity or enforceability of this Agreement, or which would have a material adverse effect on the financial condition of Contractor.

8.06 **Financial Condition**. Contractor has made available to City information on its financial condition. Contractor recognizes that City has relied on this information in evaluating the sufficiency of Contractor's financial resources to perform this Agreement. To the best of Contractor's knowledge, this information is complete and accurate, does not contain any material misstatement of fact and does not omit any fact necessary to prevent the information provided from being materially misleading.

8.07 **Expertise**. Contractor has the expertise and professional and technical capability to perform all of its obligations under this Agreement.

ARTICLE 9. DEFAULT AND REMEDIES

9.01 Events of Default. Each of the following shall constitute an event of default ("Contractor Default") hereunder:

A. Contractor fails to perform any of its obligations under this Agreement, or any present or future supplement to this Agreement and fails to cure such breach (1) within thirty (30) days of receiving notice from City specifying the breach, provided that if the nature of the breach is such that it will reasonably require more than thirty (30) days to cure, Contractor shall not be in default so long as Contractor promptly commences the cure and diligently proceeds to completion of the cure; or (2) immediately, if the breach is such that the health, welfare or safety of the public is endangered thereby.

B. There is a seizure or attachment of, or levy on, the operating equipment of Contractor used at the Station, including without limitation, its vehicles, maintenance or office facilities, of such proportion as to substantially impair Contractor's ability to perform under this Agreement, and which is not released, bonded or otherwise lifted within two (2) business days.

C. There is any termination or suspension from any cause, including without limit, labor unrest including strike, work stoppage or slowdown, sickout, picketing, or other concerted job action of (a) the Contractor's ability to accept Solid Waste at the Station for more than two (2) days, or (b) its ability to conduct recycling operations as described in Section 3.05 for more than fourteen (14) days.

D. Contractor files a voluntary case for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of Contractor for any part of Contractor's operating assets or any substantial part of Contractor's operating assets or any substantial part of Contractor's property, or shall make any general assignment for the benefit of Contractor's creditors, or shall fail generally to pay Contractor's debts as they become due or shall take any action in furtherance of any of the foregoing.

E. A court having jurisdiction enters a decree or order for relief in respect of the Agreement, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Contractor consents to or fails to oppose any such proceeding, and such proceeding shall remain undismissed or unstayed for a period of ninety (90) days or any such court enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Contractor or for any part of the Contractor's operating equipment or assets, or orders the winding up or liquidation of the affairs of the Contractor.

F. Contractor fails to furnish a replacement bond or a continuation certificate of the existing bond not less than sixty (60) days before expiration of the performance bond, as required by Section 7.03 of the Agreement or fails to maintain all required insurance coverages in force. The default shall occur immediately upon such failure without any necessity for notice from City of the breach and there shall be no opportunity to cure such breach. City shall have the right to give notice of termination under Section 9.02 immediately upon such default.

G. Contractor fails to provide reasonable assurance of performance required under Section 10.19.

H. A representation or warranty contained in Article 8 proves to be false or misleading in a material respect as of the date such representation or warranty was made.

9.02 Right to Suspend or Terminate Upon Default.

A. Upon any Contractor Default, City shall have the right to suspend or terminate this Agreement, in whole or in part. Such suspension or termination shall be effective thirty (30) days after City has given notice of suspension or termination to Contractor, except that such notice may be effective immediately if the Contractor Default is one which endangers the health, welfare or safety of the public. Notice may be given orally in person or by telephone to the representative of Contractor designated in or under Section 10.12 (or, if he/she is unavailable, to a responsible employee of Contractor) and shall be effective immediately. Written confirmation of such oral notice of suspension or termination shall be sent by

personal delivery, facsimile, or other expedited means of delivery to Contractor within twenty-four (24) hours of the oral notification. Contractor shall continue to perform the portion of the Agreement not suspended, in full conformity with its terms.

B. City will also have the right to suspend or terminate this Agreement, upon the same notice provisions, if Contractor's ability to perform is prevented or materially interfered with by a change in permit or law with which, under Sections 3.06 and 10.02 Contractor must comply, or by a cause which excuses nonperformance under Section 10.21, despite the fact that nonperformance in any of such cases is neither a breach nor default by Contractor.

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

9.04 Right to Perform. If this Agreement is suspended and/or terminated due to a Contractor Default, City shall have the right to perform and complete, by contract or otherwise, the work herein or such part thereof as it may deem necessary and to procure labor, equipment, and materials and incur all other expenses necessary for completion of the work, including, but not limited to, transportation of Municipal Solid Waste to the Disposal Facility. If such expenses exceed the amounts which would have been payable to Contractor under this Agreement if it had been fully performed by Contractor, then Contractor shall pay the amount of such excess to City.

9.05 City's Remedies Cumulative. City's right to cure under Section 3.17, to suspend or terminate the Agreement under Section 9.02, to obtain specific performance under Section 9.03, and to perform under Section 9.04 are not exclusive, and City's exercise of one (1) such right shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies that the City may have, and including a legal action for damages, including incidental, consequential and/or special damages.

9.06 Liquidated Damages. The parties acknowledge (1) that consistent, efficient operation of the Station is of utmost importance, (2) that delays in operations

which increase the costs of Participating Agencies' Designated Haulers will affect the payments that Participating Agencies must make to the Designated Hauler, and (3) that City has considered and relied on Contractor's representations as to its quality of service commitment in entering into this Agreement. The parties further recognize that quantified standards of performance are necessary and appropriate to ensure consistent and reliable service. The parties further recognize that if Contractor fails to achieve the performance standards, Participating Agencies and their residents will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of damages that Participating Agencies will suffer. Therefore, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to Participating Agencies that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Agreement was made.

Contractor Initial Here: JM City Initial Here: _____

Contractor agrees to pay (as liquidated damages and not as a penalty) the amount set forth below and further agrees that these amounts may be deducted by City from payments to Contractor by City:

- For each vehicle of Participating Agencies, and their Designated Haulers which is unable to depart from the Station within the fifteen (15) minute maximum turnaround time due to queuing within the Station. (Section 3.12) $200

- For each vehicle of Participating Agencies and their Designated Haulers that is not processed through the scale house weighing operation in less than ninety (90) seconds. (Section 3.12) $200

- For each failure to clean the Transfer Station floor, as required in Exhibit J, Section 14. ..... $1,000

- For each notice of violation received from the Local Enforcement Agency or the California Integrated Waste Management Board. $1,000

Each of the above amounts will apply, for purposes of this Agreement, only to vehicles hauling Municipal Solid Waste from within a Participating Agency, including all vehicles of City, the other Participating Agencies, its or their Designated Haulers.

Each of the above amounts will be adjusted as of July 1, 2007 and as of July 1 annually thereafter by the same percentage that the Basic Annual Payment in Section 5.02 is adjusted.

Neither the time limits nor the liquidated damages set forth in this Section shall apply to vehicles selected for load check procedures pursuant to the HWEP or which are otherwise delayed because of the Contractor's investigations of their contents for Hazardous Waste nor to vehicles delayed by driver negligence, mechanical breakdown or other such cause which is beyond the control of, and not the fault of, the Contractor.

City's right to recover liquidated damages for Contractor's failure to meet the service performance standards shall not preclude City from obtaining equitable relief for persistent failures to meet such standards nor from terminating the Agreement for such persistent failures.

9.07 **City Default**. City shall be in default under this Agreement ("City Default") in the event City commits a material breach of the Agreement and fails to cure such breach within thirty (30) days after receiving notice from the Contractor specifying the breach, provided that if the nature of the breach is such that it will reasonably require more than thirty (30) days to cure, City shall not be in default so long as City promptly commences the cure and diligently proceeds to completion of the cure. City shall not be in default if a dispute arising under any Section for which arbitration is specified as the method of dispute resolution has been referred to arbitration until thirty (30) days after the arbitrator's final decision has been rendered.

In the event of a City Default, Contractor shall have all remedies available under California law for breach of contract; provided, however, that Contractor will continue to perform all of its obligations hereunder until a court of competent jurisdiction has issued a final judgment declaring that Contractor has the right to terminate this Agreement as a result of a City Default.

9.08 City's Right to Cure. In the event that Contractor fails to perform any of its obligations under Articles 3, 4, 5 or 6 and fails to perform such work within three (3) business days after notice from City, City may (but shall not be obligated to) enter the Station Site with necessary workers and equipment and perform the required work, or engage a third party contractor to do so. In such event, Contractor shall immediately upon demand reimburse City for all costs thereof, including any payments to a third party contractor, with interest after thirty (30) days at prime rate (as established by the Bank of America "reference rate") plus two percent (2%) but not in excess of the maximum interest rate allowed by law. If Contractor fails to make such reimbursement City may deduct the amounts due from subsequent payments to Contractor under Article 5.

9.09 Use of Property Upon Default. In the event of Contractor's Default, the City shall have the right to use any of Contractor's equipment, facilities and other property reasonably necessary for the provision of services hereunder. The City shall have the right to continue use of such property until other suitable arrangements can be made for the provision of such services, which may include the award of a contract to another service provider. If the City continues use thereof after the period of time for which Contractor has already been paid, Contractor shall be entitled to the reasonable rental value of such property, which payments (i) shall be used by Contractor to pay rent or debt service on the equipment as it becomes due, and (ii) may be treated as part of damages due the City as a result of Contractor's Default. Contractor agrees that it will fully cooperate with the City to effect the City's use of such property, including, if requested by City, arranging for an assignment of its leases of such equipment to City. The City may immediately engage all or any personnel necessary for the provision of services, including, if the City so desires, employees previously employed by Contractor. Contractor further agrees, if the City so requests, to assist the City in securing the services of any or all management or

office personnel employed by Contractor whose skills are reasonably necessary for the continuation of services. Contractor agrees that the City's exercise of its rights under this section: (i) does not constitute a taking of private property for which compensation must be paid; (ii) will not create any liability on the part of the City to Contractor other than the payment of reasonable rental value as provided for in this subsection; (iii) does not exempt Contractor from the indemnity provisions of Article 7 which are meant to extend to circumstances arising under this Section.

9.10 **Damages**. Contractor shall be liable to City for all direct and consequential damages arising out of Contractor's Default. This section is intended to be declarative of existing California law. The City may offset such damages against sums which would otherwise be due to Contractor.

ARTICLE 10. OTHER AGREEMENTS OF THE PARTIES

10.01 Relationship of Parties. The parties intend that Contractor shall perform the services required by this Agreement as an independent contractor engaged by City and not as an officer or employee of City nor as a partner of or joint venturer with City. No employee or agent of Contractor shall be deemed to be an employee of City, nor an agent of City except to the extent contemplated by Section 3.16. Except as expressly provided herein, Contractor shall have the exclusive control over the manner and means of conducting the services performed under this Agreement, and all persons performing such services. Contractor shall be solely responsible for the acts and omissions of its officers, employees, subcontractors and agents. Neither Contractor nor its officers, employees, subcontractors and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City employees by virtue of their employment with City.

10.02 Compliance with Law. In providing the services required under this Agreement, Contractor shall at all times comply with all applicable laws of the United States, the State of California and City, and with all applicable regulations promulgated by federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term and all permits affecting the services to be provided, including but not limited to the Environmental Laws and the Americans with Disabilities Act, 42 U.S.C. 12101, et seq.

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

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

10.05 Assignment. Contractor acknowledges that this Agreement involves rendering a vital service to the City's residents and businesses, and that the City has selected Contractor to perform the services specified herein based on (i) Contractor's experience, skill and reputation for conducting its operations in a safe, effective and

responsible fashion, and (ii) Contractor's financial resources to maintain the required equipment and to support its indemnity obligations to the City under this Agreement. The City has relied on each of these factors, among others, in choosing Contractor to perform the services to be rendered by Contractor under this Agreement.

A. City Consent Required. Contractor shall not assign its rights or delegate or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of City. Any such assignment made without the consent of City shall be void and the attempted assignment shall constitute a breach of this Agreement.

B. Assignment Defined. For the purpose of this Section, "assignment" shall include, but not be limited to, (1) a sale, exchange or other transfer to a third party of substantially all of Contractor's assets dedicated to service under this Agreement; (ii) the issuance of new stock to or the sale, exchange or other transfer of thirty percent (30%) or more of the then-outstanding common stock of Contractor to a Person other than the 14 shareholders owning said stock at the date of this Agreement, who are listed on Exhibit W.

C. Consent Requirements. If Contractor requests City's consideration of and consent to an assignment, City may deny or approve such request in its complete discretion. No request by Contractor for consent to an assignment need be considered by City unless and until Contractor has met the following requirements:

1. Contractor shall undertake to pay City its reasonable expenses for attorneys' fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment;

2. Contractor shall furnish City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years;

3. Contractor shall furnish City with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Municipal Solid Waste/Recycling

management experience on a scale equal to or exceeding the scale of operations conducted by Contractor; (ii) that in the last five (5) years, the proposed assignee has not been subject to any administrative or judicial proceedings initiated by any federal, state or local agency having jurisdiction over its Municipal Solid Waste/Recycling operations due to any significant failure to comply with state, federal or local laws and that the assignee has provided City with a complete list of such proceedings and their status; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its Municipal Solid Waste management practices in accordance with sound waste management practices in full compliance with all federal, state and local laws regulating the collection and disposal of waste, including all Environmental Laws; (v) of any other information required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

10.06 **Subcontracting**. Contractor shall not engage any subcontractors without the prior written consent of City. Contractor shall notify the City at least thirty (30) days prior to the date on which it proposes to enter into a subcontract. City may approve or deny any such request in its sole discretion.

Contractor may, in cases of emergency, engage subcontractors for up to seven (7) consecutive days. Contractor shall give prompt notice to City of any such emergency subcontracting and any such engagement must be approved by City in writing if it is to extend beyond seven (7) days, or if Contractor wishes to renew after an interval of less than thirty (30) days.

10.07 **Binding on Successors**. The provisions of this Agreement shall inure to the benefit of and be binding on the successors and permitted assigns of the parties.

10.08 **Parties in Interest**. Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons other than the parties to it and their representatives, successors and permitted assigns, with the express exception of the Participating Agencies, which are third party beneficiaries of City's rights hereunder.

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

10.10 **Contractor's Investigation; No Warranties by City**. Contractor has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed by it, including the nature and amount of the Municipal Solid Waste generated within the City and the Participating Agencies and the recycling and source reduction programs now in effect in the City and other Participating Agencies. The Agreement accurately and fairly represents the intentions of Contractor, and Contractor enters into the Agreement on the basis of that independent investigation and analysis.

Contractor has carefully reviewed the information in the Request for Proposals and Addenda, if any. Contractor has had the opportunity to inspect the Station Site; the Station; the equipment installed in the Station; the environmental review documents (including the FEIR and the addendum thereto adopted in August 1992), as well as the permits governing its operation; the Source Reduction and Recycling Elements adopted by each of the Participating Agencies under the Act; the Disposal Agreement with Waste Management, Inc.; the collection agreements between each of the Participating Agencies and their respective Designated Haulers; and the plans for reconstructing the Municipal Solid Waste line.

While City believes that the information contained in the Request for Proposals is substantially correct, City makes no warranties in connection with this Agreement, including but not limited to the information contained in the Request for Proposals. The City expressly disclaims any warranties, either express or implied, as to the merchantability or fitness for any particular purpose of Municipal Solid Waste and Source-Separated Recyclable Materials delivered to the Station.

10.11 **Condemnation**. City reserves the rights to acquire the Contractor's property utilized in the performance of this Agreement through the exercise of the

right of eminent domain, in accordance with the procedure described in Section 1605 of the City Charter.

10.12 Notice. All notices, demands, requests, proposals, approvals, consents and other communications which this Agreement requires, authorizes or contemplates shall, except as provided in Section 9.02, be in writing and shall either be personally delivered to a representative of the parties at the address below or be deposited in the United States mail, first class postage prepaid (certified mail, return receipt requested), addressed as follows:

If to City:
City Manager
456 West Olive Avenue
P.O. Box 3707
Sunnyvale, CA 94088-3707

with a copy to the Director of Public Works.

If to Contractor: BAY Counties Waste Services Inc.
3355 Thomas Road
Santa Clara Ca 95054
Attention: Jerry Nabhan

Copies shall be sent to the other Participating Agencies, at addresses to be furnished by them from time to time. The address to which communications may be delivered may be changed from time to time by a notice given in accordance with this Section.

10.13 Representatives of the Parties.

A. Representatives of City. References in this Agreement to "City" shall mean the Sunnyvale City Council and all actions to be taken by City shall be taken by the City Council except as provided below. The City Council may delegate, in writing, authority to the City Manager, the Director of the Department of Public Works and/or to other City officials and may permit such officials, in turn, to delegate in writing some or all of such authority to subordinate officers. Contractor may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

B. Representatives of Contractor. Contractor shall, by the Effective Date, designate in writing a responsible officer who shall serve as the

representative of Contractor in all matters related to the Agreement and shall inform City in writing of such designation and of any limitations upon his or her authority to bind Contractor. City may rely upon action taken by such designated representative as actions of Contractor unless they are outside the scope of the authority delegated to him/her by Contractor as communicated to City.

10.14 Duty of Contractor Not to Discriminate. Contractor shall not discriminate, nor permit any subcontractor to discriminate, in the employment of persons engaged in the performance of this Agreement or in the use of the Station on account of race, color, national origin, ancestry, religion, sex, age, physical handicap, medical condition, sexual orientation or marital status, in violation of any applicable federal or state law.

10.15 City Environmental Policies. Contractor and its subcontractors shall comply with City's Environmental Procurement Policy, the requirements of which are described in Exhibit V-1 and City's Integrated Pest Management Policy described in Exhibit V-2.

10.16 Right to Enter and Inspect Station. City shall have the right, but not the obligation, to observe and inspect all of the Contractor's operations under this Agreement. In connection therewith, City shall have the right to enter the Station during operating hours, speak to any of Contractor's employees and receive cooperation from such employees in response to inquiries. In addition, upon reasonable notice and without interference with Contractor's operations, City may review and copy any of Contractor's operational and business records related to this Agreement, including but not limited to utility bills and records of employee training. If City so requests, Contractor shall make specified personnel available to accompany City employees on inspections and shall provide electronic copies of records stored in electronic media.

10.17 Recycling Programs Not Restricted. Nothing in this Agreement shall restrict City or the other Participating Agencies, or any of them, as to their participation or non-participation, or the nature or extent of their participation in, any Recycling program, developed or operated by City, the other Participating Agencies, or

by one (1) or more residents, businesses, commercial, industrial or retail operators, or other persons, within their respective jurisdictions.

Notwithstanding the foregoing, the City agrees to deliver, or arrange for the delivery, to the Station of all Source-Separated Recyclable Materials which are collected from residences within the City and the City of Mountain View by employees of either city, by their respective Designated Haulers, or by other Persons operating a program of collecting Source-Separated Recyclable Materials from residences under a contract with the City or the City of Mountain View. The City does not, however, guarantee that it or the City of Mountain View will continue to operate such a program, nor does it guarantee that privately-sponsored residential recycling programs will not operate within either city or both cities.

10.18 Maintenance and Review of Records, Submission of Reports. Contractor shall compile, on a daily basis, accurate records of its operations at the Station in sufficient detail to allow for accurate determinations of all matters that require periodic determination under this Agreement, including, but not limited to, Articles 3 through 6 hereof. City shall have the right during regular business hours to review and make copies of (at City's expense) any documents relevant to this Agreement, including, but not limited to, Contractor's payroll records, cash register records, scale records, videotape recordings of transactions at the scale house, and records maintained in electronic, magnetic and other media.

Contractor shall prepare and submit complete, accurate and timely reports on forms provided or approved by City, including those reporting forms attached as Exhibit O-1 through O-13 of this Agreement.

10.19 Right to Demand Assurances of Performance. If Contractor (1) "persistently" suffers the imposition of liquidated damages under Section 9.06; (2) is the subject of any labor unrest including work stoppage or slowdown, sickout, picketing or other concerted job action; (3) appears in the reasonable judgment of City to be unable to regularly pay its bills as they become due; or (4) is the subject of a civil or criminal proceeding brought by a federal, state, regional or local agency for violation of an Environmental Law, City may, at its option and in addition to all other remedies

it may have, demand from Contractor reasonable assurances of timely and proper performance of this Agreement, in such form and substance as the City may require.

10.20 Right of City to Make Changes. City may, without amending this Agreement, direct Contractor to cease performing one (1) or more types of service described in Articles 3 and 4, may direct Contractor to modify the scope of one (1) or more such services, may direct Contractor to perform additional solid waste processing services, or may otherwise direct Contractor to modify its performance under any other Section of this Agreement, including, by way of example, directing Contractor to deliver Municipal Solid Waste to a different disposal facility, to install (or arrange for installation of) new or additional equipment at the Station, or to utilize new or additional equipment installed by or on behalf of City. Contractor shall promptly and cooperatively comply with such direction.

If such changes cause an increase or decrease in the cost of performing the services, an equitable adjustment in the Contractor's compensation shall be made. Contractor will continue to perform the new or changed service while the appropriate adjustment in the Contractor's compensation is being determined.

If City has directed a change in the scope of work under this Section and either party believes that such change will increase or decrease the costs of providing service, the party which believes the Contractor's compensation should be adjusted shall within thirty (30) calendar days submit to the other party a proposed adjustment and the parties shall thereafter meet and discuss the matter. Contractor shall promptly provide all relevant schedules, supporting documentation and other financial information requested by City to evaluate the necessity for an adjustment and the amount thereof. City's Director of Public Works shall participate in key meetings regarding those adjustments. Within ninety (90) days of the submission of the proposed adjustment, City will determine the amount of the adjustment, if any, and shall thereafter adjust the Contractor's compensation accordingly. Any adjustments will be made effective as of the date the change in service is implemented.

If the Contractor is dissatisfied with the decision of the City, any dispute shall be referred to and resolved by binding arbitration conducted pursuant to the procedures set forth in Exhibit R.

10.21 Force Majeure. Neither party shall be in default of its obligations under this Agreement in the event, and for so long as, it is impossible or extremely impracticable for it to perform its obligations due to an "act of God" (including, but not limited to, flood, earthquake or other catastrophic events), war, insurrection, riot, labor unrest of other than the party's employees (including strike, work stoppage, slowdown, sick out, picketing, or other concerted job action), or other similar cause not the fault of, and beyond the reasonable control of, the party claiming excuse. A party claiming excuse under this Section must have taken reasonable precautions, if possible, to avoid being affected by the cause.

A. No Excuse from Performance. Neither Contractor nor the City shall be excused from the performance of its obligations under this Agreement except where a party's failure to perform is due to an event of Force Majeure, as defined in this Agreement.

B. Obligation to Restore Ability to Perform. Any suspension of performance by a party pursuant to this Section shall be only to the extent, and for a period of no longer duration than, required by the nature of the event. and the party claiming excuse from obligation shall use its best efforts in an expeditious manner to remedy its inability to perform, and mitigate damages that may occur as result of the event.

C. Notice. The party claiming excuse shall deliver to the other party a written notice of intent to claim excuse from performance under this Agreement by reason of an event of Force Majeure. Notice required by this Section shall be given promptly in light of the circumstances, but in any event not later than five (5) days after the occurrence of the event of Force Majeure. Such notice shall describe in detail the event of Force Majeure claimed, the services impacted by the claimed event of Force Majeure, the expected length of time that the party expects to be prevented from performing, the steps which the party intends to take to restore its ability to perform, and such other information as the other party reasonably requests.

D. City's Rights in the Event of Force Majeure. The partial or complete interruption or discontinuance of Contractor's services caused by an event of Force Majeure shall not constitute an event of default under this Agreement.

Notwithstanding the foregoing: (i) the City shall have the right to make use of Contractor's facilities and equipment in the same manner as described in Section 9.09 of this Agreement in the event of non-performance excused by Force Majeure; (ii) if Contractor's excuse from performance for reason of Force Majeure continues for a period of thirty (30) days or more, the City shall have the right, in its sole discretion, to immediately terminate this Contract; (iii) if Contractor is unable to collect and dispose of Municipal Solid Waste as required by this Contract for a period of three (3) or more consecutive days or for any (3) days in a seven (7)-day period as a result of Force Majeure, the City shall have the right to make use of Contractor's property in the same manner as described in Section 9.09, and (iv) if Contractor's inability to collect and dispose of Municipal Solid Waste continues for fourteen (14) days or more from the date by which Contractor gave or should have given notice under Subsection C above, the City may terminate this Contract.

10.22 Cooperation During Transition. At the expiration or earlier termination of the Term, Contractor, at its own expense, shall cooperate fully with the City, as necessary, to ensure an orderly transition to any and all new service providers. In addition, during the last twelve months of the Term, Contractor shall allow prospective operators to observe operations at the Station.

10.23 Reports as Public Records. The reports, records and other information submitted (or required to be submitted) by Contractor to City are public records within the meaning of that term in the California Public Records Act, Government Code Section 6250 *et seq.* Unless a particular record is exempted from disclosure by the California Public Records Act, it must be disclosed to the public by the City upon request.

ARTICLE 11. MISCELLANEOUS AGREEMENTS

11.01 Exhibits. Each of the Exhibits, identified as Exhibits "A" through "W," is attached hereto and incorporated herein and made a part hereof by this reference.

11.02 Entire Agreement. This Agreement, including the Exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein and supersedes all prior negotiations and agreements, either written or oral.

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

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

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

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

11.07 Attorneys' Fees. The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with such an action from the other party.

11.08 References to Laws. All references in this Agreement to laws and regulations shall be understood to include such laws and regulations as they may be subsequently amended or recodified. In addition, references to specific governmental

agencies shall be understood to include agencies that succeed to or assume the functions they are currently performing.

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

ATTEST:

CITY CLERK

By: _____
~~Deputy~~ City Clerk

By: _____
APPROVED AS TO FORM
City Attny

CITY OF SUNNYVALE ("City")

By: _____
City Manager

BAY COUNTIES WASTE SERVICES, INC.
("Contractor")

By: _____
Name: Robert T. McIntyre
Title: President

By: _____
Name: JERRY NABHAN
Title: Secretary

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