

AGREEMENT FOR THE OPERATION
OF THE
SUNNYVALE MATERIALS RECOVERY AND TRANSFER STATION
BETWEEN
THE CITY OF SUNNYVALE
AND
BAY COUNTIES WASTE SERVICES, INC.

June 30, 2014

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

THIS AGREEMENT is made as of this 30th day of June, 2014, 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.*, as amended (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. In addition, the three Participating Agencies have conducted various zero waste planning efforts, and have planned and/or implemented various programs towards achieving zero waste.

4. Acting on its own behalf, and on behalf of the Neighboring Cities, City issued on November 21, 2013, 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 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 non-recycled 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

2.1 Effective Date

The effective date of this Agreement shall be July 24, 2014 ("Effective Date").

2.2 Term

The Term of the Agreement shall commence on the Effective Date and shall end at midnight on December 31, 2021, unless extended as provided in Section 2.3. Contractor's obligation to operate the Station shall commence January 1, 2015

2.3 Option to Extend Term

No later than two (2) years prior to the end of the Term, the City and Contractor will meet and confer to identify and discuss mutual interests for an extension of the Agreement. The City may extend the Term of this Agreement for one (1) or more periods of six (6) months or longer, up to a maximum of three (3) years, 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, 2021), and at least three (3) months before the expiration of any extension, specifying the period of time by which it wishes to extend the Term.

2.4 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 7.3.

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 2.4 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 2.4, 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

3.1 Receipt of Municipal Solid Waste and Recyclable Materials

Commencing on January 1, 2015 and continuing throughout the Term, Contractor shall receive and accept (1) all Municipal Solid Waste ("MSW") Source-Separated Recyclable Materials, and Yard Trimmings 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 and Yard Trimmings 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.

3.2 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 3.4, Municipal Solid Waste, or Recyclable Materials or Yard Trimmings 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 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 or when vehicles of Designated Haulers from any of the Participating Agencies are delayed entry beyond the times allowed in Section 3.12.

3.3 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, Recyclable Materials, and Yard Trimmings 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 and Yard Trimmings 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, Recyclable Materials and Yard Trimmings 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, Recyclable Materials and Yard Trimmings, and for delivery of Residual Materials and unprocessed 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.

3.4 Receipt and Processing of Other Tons Outside Primary Service Area

City may at any time, and from time to time, require Contractor to receive and process Municipal Solid Waste, Recyclable Materials and/or Yard Trimmings ("Other Tons") that originate from outside of the Primary Service Area.

Contractor may also propose delivery of Other Tons from outside the Primary Service Area for City review and approval, which the City may provide in its sole discretion. Such approval shall not be unreasonably withheld.

In approving receipt of Other Tons, City may require such reasonable conditions as are necessary to ensure priority is given to receipt, processing, and transfer of materials from the Participating Agencies, as provided in Section 3.2. In approving receipt of Other Tons, City may require Contractor to collection of, and remittance of Outside User Fees.

City review and approval of receipt of Other Tons from outside of the Extended Service Area (e.g., from outside of Santa Clara County) may require compliance with provisions of the California Environmental Quality Act. The cost of determining whether any such compliance is required, and of ensuring compliance, shall be borne by the party proposing to delivery of the Other Tons.

If City directs Contractor to receive and process Other Tons from the Extended Service Area or from outside of Santa Clara County, 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 or from outside of Santa Clara County, 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.

3.5 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

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, but not limited to paper and other fibers, metals, wood, glass, plastic. In addition, mechanized sorting produces a 2" minus fraction which is high in organic content. Marketing of this material for Compost feedstock has been limited due to contamination, primarily by glass. The City is engaged in a project to remove the glass contamination from this material to meet Compost market specifications. This is referred to herein as the "MRF Fines issue".

Despite the MRF Fines issue, Contractor shall use good faith efforts to market the MRF Fines for diversion from land disposal, including working diligently and promptly with City to resolve the MRF Fines issue. City may request evidence of good faith efforts to market the MRF Fines from third parties and Contractor shall assist the City to provide this evidence.

Until there is satisfactory resolution of the MRF Fines issue, should this occur after the commencement of this Agreement on January 1, 2015, Contractor shall Recycle not less than fifteen percent (15%) 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." At such time as there is satisfactory resolution of the MRF Fines issue, 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 and commercial 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, oil filters and household batteries collected with curbside recyclables. 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 Scraps, Contractor will process such materials 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 by other Participating Agencies. So long as Participating Agencies continue 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 5.2.

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/Drop-off Center

Contractor shall establish and operate a buyback/drop-off center within the Station. The purpose of the Buyback/Drop-off 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 drop-off center:

- Glass bottles, jars and other beverage containers
- Aluminum
- Metals
- Corrugated cardboard and Kraft paper
- Mixed paper
- Plastics (HDPE, PET)
- Clothing and shoes
- Used motor oil*
- Used automobile oil filters*
- Anti-freeze*
- Automobile batteries*
- Cooking oil*
- Household batteries*
- Fluorescent light bulbs and tubes*
- Household items containing mercury (e.g., thermometers, thermostats)*
- Universal waste covered electronic devices and consumer electronic devices.*
- Home-generated sharps**
- 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 provide separate bins designed with a chute, such that materials deposited in the chute cannot thereafter be removed by public.

For distribution at buyback/drop-off:

- Wood Chips (wood fines)
- Compost (purchased by City or as provided under agreement with compost facility)

Contractor shall establish prices to be paid for materials accepted at the Buyback/Drop-off 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 2015.

City shall reimburse Contractor for a portion of the prices paid to users of the Buyback/Drop-off Center, the percentage to be equivalent to the City's percentage share of revenues from Recycled Materials sales, determined in accordance with Section 6.5 and Exhibit P. The reimbursement shall be effected by a credit against the amount due City from Contractor under Section 6.5. City shall reimburse Contractor for proper recycling of universal waste materials accepted from residential generators at the drop off center (e.g. fluorescent bulbs and tubes, batteries, antifreeze, etc....).

Recycling of materials accepted at the Buyback/Drop-off 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/Drop-off Center. The text of the signage shall be approved by City prior to its being installed.

F. Pilot Programs, and Potential New and Modified Collection Programs

The individual Participating Agencies may at their sole discretion initiate any of the programs identified in Exhibit X without modification to the Agreement, as provided in Section 10.17. The City shall provide the Contractor ninety (90) days' notice regarding implementation of any programs identified in Exhibit X that shall commence more than ninety (90) days after the Effective Date. The Contractor shall coordinate within a timely manner, and shall fully cooperate with Participating Agency staff during planning and implementation of any of the programs identified in Exhibit X, and at any point prior to or during implementation.

The Contractor shall fully accommodate and be fully compensated, as provided in Article 5 Sections 5.2, 5.3 and 5.6, for any variation in delivered Tonnages and for all related operational changes resulting from such program implementation, except that the Contractor shall receive an adjustment in compensation for programs identified in Exhibit X as entailing "Potential Compensation", limited to: payment of a City-approved per-ton gate fee at a City-approved Processing facility or other City-approved facility; and, the net difference in direct per-ton costs of material transport to a City-approved Processing facility or other City-approved facility relative to the per-ton cost for transport of Residue to the Disposal Facility.

G. Optional Equipment and Services

At the City's sole discretion, Contractor shall, upon written notice by the City, provide one or more of the optional equipment and services ("Option(s)") set forth below in this Section 3.5.G. The purpose of the Options is to improve the Station's Recyclable Materials Processing system capabilities and efficiencies and increase the Recycling Level by adding new operating procedures and facilities and modifying existing recovery and Processing equipment and/or installing new recovery and Processing equipment.

Contractor shall implement the Options in accordance with Exhibits AA-1, AA-2 and AA-3. Compensation to Contractor for all Options shall be inclusive of all equipment, labor, materials and supplies and any and all design, permitting, equipment removal and installation, performance testing of the equipment, maintenance and all other costs required to implement and operate each Option.

In the event that the City elects to exercise one or more of the Options, Contractor's Basic Annual Payment will be adjusted in accordance with Section 5.2.B., Impact of Optional Equipment and Services on Basic Annual Payment and Exhibit AA-2. Each Basic Annual Payment adjustment will take effect on the date upon which City's Director of Environmental Services issues a written notice of Final Acceptance (as defined below in this Section 3.5.G.). After each Option is successfully implemented, Exhibit H-2 shall be updated to incorporate the new Contractor-provided equipment.

All costs for Optional equipment shall be amortized on a straight line basis over a seven (7) year period and shall be reimbursed through the Basic Annual Payment, regardless of the date that the City exercises the Option. The City shall reimburse Contractor for any unamortized amounts due at the expiration or early termination of the Term. For each Option exercised by the City, Basic Annual Payment adjustments will be prorated by dividing the annual amount of change by 365 days, then multiplying the daily amount by the number of days remaining in the City's fiscal year.

City reserves the right to compensate Contractor in a manner other than the Basic Annual Payment, provided that Contractor is fully compensated by the expiration or early termination of the Term.

Additional provisions are applicable to the installation of the Optional equipment described herein. These provisions are set forth in Exhibit AA-3. These provisions are solely applicable to the Contractor's installation services and are not applicable to Contractor's ongoing operation and maintenance of such equipment.

Contractor is solely responsible for the adequacy, safety, and performance requirements of each Option. All Optional equipment furnished by Contractor shall be new and unused as of its installation date, and suitable in design and construction for arduous, heavy-duty service in a Municipal Solid Waste facility.

Title to all Optional equipment shall transfer to the City, at no additional cost and free of any liens, mortgages and encumbrances, financing statements, claims, and demands of any character, upon expiration or termination of this Agreement. With the exception of damages caused by the City's sole negligence, Contractor shall bear the risk of any loss or damage to the Optional equipment until the expiration or termination of this Agreement.

The City shall compensate Contractor for replacement parts for the Optional equipment in accordance with Exhibit J, Section 14.D.2 after the expiration of the equipment warranty period(s). The City shall also provide any repairs or upgrades to the Station which are necessary, in the City's opinion after

consultation with the Contractor, for the main electrical delivery system to accommodate the power requirements for the Option(s).

For each Option, the parties will adhere to the following process:

1. City will provide written notice to the Contractor of City's intent to exercise an Option, which notice will memorialize the exercise of the Option and impact on Contractor compensation, including any adjustment to the Basic Annual Payment.
2. Within fifteen (15) days of receipt of the City's notice, Contractor shall provide to the City a milestone schedule, which is subject to the City's review and approval.
3. In accordance with the City-approved milestone schedule, Contractor shall order equipment and take all other necessary actions to complete the project in accordance with the deadlines set forth in the milestone schedule.
4. Performance/acceptance testing protocol and schedule shall be performed in accordance with the milestone schedule. This will include at a minimum: delivery of project schedule and system design; completion of equipment installation; acceptance testing; delivery of all equipment documentation; City Final Acceptance and resolution of all deficiencies.
5. City will issue Final Acceptance of new installed equipment.

Option 1. MRF Fines cleanup system: Organics Separation (Vincent Screw Press) to Anaerobic Digestion (EBMUD)

This Option consists of the Contractor purchasing, installing, operating and maintaining a MRF Fines cleanup system, consisting of organics bio-separation through use of a Vincent Corporation Screw Press (Vincent Screw Press) to anaerobic digestion at the East Bay Municipal Utility District (EBMUD) Waste Water Treatment Plant in Oakland, California.

City and Contractor acknowledge that uncertainties exist regarding the feasibility of various technical solutions to cleaning up MRF Fines to meet the needs of end user markets for MRF Fines, and the parties agree to exercise good faith efforts to identify and implement a solution(s), beginning with the process set forth below.

In the event the City elects to exercise this Option, it will be implemented in the following three phases:

- 1) The Contractor shall provide, temporarily install and test one Vincent Screw Press to test whether its output of cleaned MRF Fines meets the wet anaerobic digestion feedstock quality requirements of EBMUD.
- 2) No later than the date set forth in the City-approved project schedule, Contractor shall provide City with a report documenting the test, its results and Contractor's recommendations.
- 3) If Contractor reports that the Vincent Screw Press output meets EBMUD quality requirements and recommends full implementation of the Vincent Screw Press and shipment of MRF Fines to EBMUD for anaerobic digestion, the City shall determine, in its sole discretion, whether to direct Contractor to proceed with implementation of this Option. City may request verification from EBMUD. If City elects to move forward with this Option, Contractor shall design, install, operate and maintain a MRF Fines Cleanup System at the Station as described more fully in Exhibit AA-1.

Costs to implement this Option are provided in Exhibit AA-2. Capital and financing costs for this Option shall not be subject to an annual adjustment pursuant to Section 5.2.C. below. However, operational costs shall be adjusted pursuant to the process set forth in Section 5.2.C, Adjustment of Basic Annual Payment. Exhibit AA-2 also provides in detail the impact of the exercise of this Option on the Basic Annual Payment.

The design of the MRF Fines cleanup system will include a reinforced concrete pad, roof and drainage features that meet requirements of the 2014 Industrial General Stormwater Permit and the provisions of the October 9, 2013 Settlement Agreement between City and San Francisco Baykeeper set forth in Exhibit J, Operating Procedures and Standards. Contractor shall be solely liable for any loss or damages resulting from Contractor's failure to comply with the provisions of Settlement Agreement, Stormwater Pollution Prevention Plan, and 2014 Industrial General Stormwater Permit.

Contractor will complete installation and begin operation of the MRF Fines cleanup system in accordance with the date set forth in the City-approved project schedule. The City will promptly issue notice of Final Acceptance upon satisfactory completion and operation of the MRF Fines cleanup system. Contingent upon the issuance of Final Acceptance, the completion and operation of the MRF Fines cleanup system shall constitute "satisfactory resolution of the MRF fines issue," as discussed in Section 3.5.B, and the new Minimum Recycling Level shall be 17.5%.

If Contractor reports that the Vincent Screw Press output fails to meet EBMUD quality requirements and recommends another course of action, City and Contractor agree to meet and discuss Contractor's recommendations. After these discussions, City may, in its sole discretion, direct Contractor to investigate, test, and/or install other equipment options. The Basic Annual Payment due to Contractor will be adjusted to account for any additional capital expenditures, expenses and revenues of Contractor that arise from such City direction, in accordance with Section 10.20, Changes in Scope.

Option 2. Two Additional MRF Screens, Optical Sorter and Related Services

This Option consists of the Contractor purchasing, installing, operating and maintaining two additional MRF disc screens to achieve better mechanical separation. In addition, the Contractor will purchase, install and operate an optical sorter and move an existing piece of equipment in conjunction with the purchase and installation of the two additional MRF screens described above.

In the event that the City exercises this Option, Contractor shall:

- 1) Purchase, install, operate and maintain two additional Materials Recovery Screens,
- 2) Remove Eddy Current Separator (G-301) from Materials Recovery Facility and move G-301 to Curbside Container Sort Line, and
- 3) Purchase, install, operate and maintain Optical Sorter.

This Option is described more fully in Exhibit AA-1. Costs to implement this Option are provided in Exhibit AA-2. Capital and financing costs for this Option shall not be subject to an annual adjustment pursuant to Section 5.2.C. below. However, operational costs shall be adjusted pursuant to the process set forth in Section 5.2.C, Adjustment of Basic Annual Payment. Exhibit AA-2 also provides in detail the impact of the exercise of this Option on the Basic Annual Payment. Such adjustment will be made upon City issuance of notice of Final Acceptance, which the City will promptly issue upon satisfactory

completion and operation of the new equipment described in this Option 2. The City reserves the right to provide for an alternative means of compensation to the Contractor for this Option, provided that Contractor is fully compensated by the expiration or early termination of the Term.

Option 3. Wood Grinder Infeed Conveyor

This Option consists of the Contractor purchasing, installing, operating and maintaining an additional wood grinder infeed conveyor, which will feed the new wood grinder provided by Contractor.

In the event that the City exercises this Option, Contractor shall:

Purchase and install new Wood Grinder Infeed Conveyor, and remove and dispose equipment being replaced. In addition, Contractor shall purchase and install a new Jeffrey Rader 47WBH Hog and infeed hood in accordance with its proposal. Prior to the operation of the new grinder, Contractor shall restore the dust collection system in accordance with the facility's BAAQMD permit. This Option is described more fully in Exhibit AA-1. Costs to implement this Option are provided in Exhibit AA-2. Capital and financing costs for this Option shall not be subject to an annual adjustment pursuant to Section 5.2.C. below. However, operational costs shall be adjusted pursuant to the process set forth in Section 5.2.C, Adjustment of Basic Annual Payment. Exhibit AA-2 also provides in detail the impact of the exercise of this Option on the Basic Annual Payment. Such adjustment will be made upon City issuance of notice of Final Acceptance, which the City will promptly issue upon satisfactory completion and operation of the new equipment described in this Option 3. The City reserves the right to provide for an alternative means of compensation to the Contractor for this Option, provided that Contractor is fully compensated by the expiration or early termination of the Term.

Option 4. Film Plastics Vacuum Removal and Compactor System

This Option consists of the Contractor purchasing, installing, operating and maintaining a vacuum system in order to improve the sorting capability in the sort rooms and recover film plastic materials for additional diversion in the event that markets exist.

In the event that the City exercises this Option, Contractor shall:

Purchase, install and operate a Film Plastics Vacuum Removal and Compactor System in the Pre-Sort Room and Sort Room. This Option is described more fully in Exhibit AA-1. Costs to implement this Option are provided in Exhibit AA-2. Capital and financing costs for this Option shall not be subject to an annual adjustment pursuant to Section 5.2.C. below. However, operational costs shall be adjusted pursuant to the process set forth in Section 5.2.C, Adjustment of Basic Annual Payment. Exhibit AA-2 also provides in detail the impact of the exercise of this Option on the Basic Annual Payment. Such adjustment will be made upon City issuance of notice of Final Acceptance, which the City will promptly issue upon satisfactory completion and operation of the new equipment described in this Option 4. The City reserves the right to provide for an alternative means of compensation to the Contractor for this Option, provided that Contractor is fully compensated by the expiration or early termination of the Term.

3.6 Permits

City will obtain renewals of all operating permits and approvals listed on Exhibit D as "City". Contractor shall assist City in the renewal of these permits and approvals as requested by City. Contractor shall obtain all permits and renewals listed on Exhibit D as "Contractor".

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 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.

3.7 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.

3.8 Hazardous Waste

Contractor shall, upon commencement of operations at the Station, implement a Hazardous Waste Exclusion Program ("HWEPP"), the minimum requirements for which are set out in Exhibit G, in a diligent, reasonable and non-discriminatory manner. Contractor shall obtain all required permits and approvals and provide its staff with required training. If the California Department of Resources Recycling and Recovery (CalRecycle), the Local Enforcement Agency, or the California EPA require additional measures to be incorporated into the HWEPP, Contractor shall comply with such additional measures. Contractor shall temporarily store materials discovered through the HWEPP (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 5.5.

The operator of the Disposal Facility is required to conduct its own independent HWEPP 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 comply with all regulations concerning the recycling of appliances, and shall maintain all required trainings and certifications therefore. Contractor shall remove and arrange for proper disposition of CFCs and compressor oils from appliances delivered to the Station, as well as switches containing mercury, and other materials requiring special handling. The cost of removal and disposal is included in the Basic Annual Payment.

3.9 Equipment

City will provide the equipment listed on Exhibit H-1. 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. Except as specifically noted on Exhibit H-2, all equipment furnished by Contractor shall be new and unused as of January 2015. All equipment furnished by Contractor will be 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 with the existing equipment including the compactor unit and top load conveyor.

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, 2015, 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. General

Contractor shall furnish qualified competent drivers and maintenance, supervisory, compliance, 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. Hiring Previous Employees

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, 2014 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. Keeping Files of Previous Employees

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, 2015 through June 30, 2015), Contractor shall offer employment to persons on the list by seniority within each job classification.

D. Covered Classifications

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. Wages

Upon commencement of operation of the Station on January 1, 2015, Contractor shall pay employees working at the Station wages and benefits not 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 2013 (244.7) and April 2014. The total hourly wage in each job classification shall be increased on July 1, 2015 and on July 1 of each year thereafter by the same percentage that the Index has increased between April 2014 and April 2015, in the case of the adjustment to be made on July 1, 2015, and between the corresponding Aprils in succeeding years.

F. Health Benefits

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. Cash Equivalent

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. Reserved**I. Reserved****J. Use of Employment Agency**

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

1. 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;
2. Complies with the nondiscrimination requirements imposed on Contractor by Section 10.14;

3. Maintains workers compensation and employer's liability insurance covering such workers in the amount required by Section 7.2.A.1 and with policies meeting the other requirements of Section 7.2.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. Employment Records

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 CalRecycle 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 and Exhibit X (Transfer Processing Report).

3.12 Turnaround Time for Incoming 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 storage) 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, and will maintain, repair and 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 5.4. 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 Extra Dumping Weekends and Neighborhood Clean Up Events

Contractor shall cooperate with all the Participating Agencies in providing extra dumping weekends and in the 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. 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. Contractor shall cooperate with City to accept MSW and source separated materials (such as carpet, mattresses, tires and wood) from these events. In addition, Contractor shall cooperate with City in other events, including periodic document shredding at the Station by providing traffic management assistance, signage, recycling bins and other support as needed.

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, 2015, and annually thereafter on or before March 1 of each following year, a plan for marketing of Recyclable Materials for the forthcoming year. The Marketing Plan shall include the following at a minimum (City may request additional information from Contractor):

- An overall summary of the prior year's marketing efforts including tonnage by material type and a description of the markets to which materials were sold, including information regarding end-market use of materials.
- Summary of current year plan for marketing including tons to be marketed by material type, description of markets and end use, projected market price.

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 7.2.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 deliver recovered Recyclable Materials to users willing to accept them. In addition, if users are willing to accept them only on condition of payment, Contractor shall pay up to \$70 per Ton to have such materials delivered and recycled. The \$70 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 5.2.B.

The costs of payment for delivery and acceptance 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 5.6 and Exhibit P. If costs of delivery and disposition exceed the limits set forth above in this Section, Contractor may request City's approval, pursuant to Section 4.1, 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 seven hundred (700) square feet of the office space, as shown on Exhibit U. In addition four (4) 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 and, 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.

Contractor shall provide janitorial and building maintenance services to keep the facility in excellent condition and at a high level of cleanliness.

B. Green Business Certification

The SMaRT Station administration building was certified as a Green Business in 2010 and as a result, City and Contractor staffs are required to meet general environmental practices and targeted resource conservation and pollution prevention measures. Exhibit V-3 provides a list of practices Contractor must meet to maintain certification. Every three years a re-certification process will be conducted by the City

and Contractor will cooperate in that effort. City and current contractor are in the process of re-certification which should be completed by June 2014.

C. 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 orientation room.

Contractor shall furnish the lobby with seating and the lunch room and conference room with the number and type of tables and chairs deemed reasonably adequate by the City. The existing furnishings shall be replaced with new or used furnishings in excellent condition when the contract term goes into effect as of the effective date. Furnishings shall be cleaned and maintained regularly during the term of the Agreement.

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 Facility – Delays or Deferrals

If at such time the MSW processing equipment is inoperable due to installation or retrofit of equipment, or inoperable due to other cause for a period of more than two operating days, then the Basic Annual Payment set forth in Section 5.2.A shall be adjusted as follows for each operating day the MRF processing lines are not operable:

\$9,106,582/261 minus [Basic Annual Payment in effect at time of shutdown]/261

The Minimum Recycling Level specified in Section 3.5.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.

ARTICLE 4. TRANSPORTATION OF MSW AND RECYCLABLES

4.1 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 Materials, including Source-Separated Recyclable Materials and, Yard Trimmings, MRF Fines 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) universal waste, 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 affect 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 any 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 5.5.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.

4.2 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, and fire lanes. 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

5.1 General

The payments provided for in Sections 5.2 through 5.5 and the share of revenues provided in Section 5.6 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.

5.2 Basic Annual Payment

A. Amount of Basic Annual Payment

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 Eleven Million Nine Hundred Fifty Eight Thousand and Thirty One Dollars (\$11,958,031.00). If implementation of any of the Optional equipment described in Section 3.5.G., Optional Equipment and Services, renders the MSW processing equipment inoperable for more than two operating days, then the Basic Annual Payment shall be adjusted pursuant to Section 3.21., Modifications to Facility – Delays or Deferrals. Once Optional equipment receives Final Acceptance from the City, the Basic Annual Payment shall be adjusted in accordance with Section 5.2.B. below.

B. Impact of Optional Equipment and Services on Basic Annual Payment

In the event that the City exercises one or more of the four Options set forth in Section 3.5.G., the Basic Annual Payment set forth in Section 5.2.A shall be adjusted in accordance with Exhibit AA-2. Capital and financing costs for the four Options will not be subject to an annual adjustment pursuant to Section 5.2.C. below. However, operational costs shall be adjusted pursuant to the process set forth in Section 5.2.C., Adjustment of Basic Annual Payment.

C. Adjustment of Basic Annual Payment

The Basic Annual Payment set forth in Section 5.2.A shall be adjusted as of July 1, 2014 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, 2012 (i.e., 239.5) 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, 2014 by

multiplying Eleven Million Nine Hundred Fifty Eight Thousand and Thirty One Dollars (\$11,958,031.00) by one (1) plus the percentage change from the Base Index to the Index level as of December 2013. 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.

D. Payment of Basic Annual Payment

The Basic Annual Payment will be paid as provided in Section 6.1.

5.3 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 (1) the period January 1, 2015 through June 30, 2015 or (2) the period July 1, 2021 through December 31, 2021 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, 2015, Contractor shall be paid a Tipping Fee for each Ton in excess of 280,000 Tons as provided in Section 5.3.C.

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

No Change in Fines – Minimum Recovery Level 15%:	\$31.80 per Ton
With MRF Fines Issue Resolution – Minimum Recovery Level 17.5%:	\$32.15 per Ton
MSW Transfer Only:	\$21.10 per Ton

- D. The Tipping Fees set forth in Section 5.3.C.1 and 2 shall be adjusted as of July 1, 2014 and as of each July 1 thereafter by the same percentage as the Basic Annual Payment in Section 5.2 is adjusted.
- E. Tipping Fees earned, if any, will be paid as provided in Section 6.2.

5.4 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, Six dollars and Sixty Cents (\$6.60) per Cubic Yard.
- B. The Gate Fee for Publicly Hauled Waste set forth in Section 5.4.A shall be adjusted as of July 1, 2015 and as of July 1 annually thereafter by the same percentage as the Basic Annual Payment in Section 5.2 is adjusted.
- C. Gate Fees for Publicly Hauled Waste will be paid as provided in Section 6.3.

5.5 Reimbursement of Certain Costs

- A. The Basic Annual Payment provided in Section 5.2 is intended to cover all costs of operating the Station other than those incurred by Contractor for the following:
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 and universal wastes 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 and capacitors 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 Reimbursement of actual and reasonable costs incurred will be made as provided in Section 6.4.

5.6 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:

- A. Materials recovered from MSW;
- B. Source Separated Recyclable Materials delivered by the Participating Agencies' Designated Haulers;
- C. Source Separated Yard Trimmings delivered by the Participating Agencies' Designated Haulers;
- D. Materials delivered to the Buy Back/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-1 or P-2, whichever applies at the time.

The method by which Contractor will share revenues as provided above is specified in Section 6.5.

ARTICLE 6. PAYMENT AND REVENUE SHARING PROCEDURES

6.1 Basic Annual Payment

The Basic Annual Payment provided for in Section 5.2 shall be paid in arrears in 12 equal monthly installments, with the first payment earned as of January 31, 2015. City will pay each installment within fifteen (15) business days after receipt of the monthly statement from Contractor required by Section 6.6.

6.2 Tipping Fee for Excess Tonnage

If Contractor earns a Tipping Fee provided for in Section 5.3 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 6.6 showing that a Tipping Fee was earned during the preceding month.

6.3 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 5.4. These payments will be reflected in the statement from Contractor required by Section 6.6. 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.

6.4 Cost Reimbursements

If Contractor incurs costs which are reimbursable under Section 5.5, 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 6.6. City will pay the cost reimbursements due within fifteen (15) business days after its receipt of a timely and complete monthly statement.

6.5 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 Buyback/Drop-off 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 6.5.A to which City is entitled under Section 5.6 and Exhibit P, based on the Recycling Level achieved during that month as shown on the monthly statement from Contractor required by Section 6.6. The amount to be paid to City will be all revenues earned that Contractor is not entitled to retain under Section 5.6.

6.6 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 6.1 through 6.5. With respect to amounts due under Section 6.5, 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) of Recyclable Materials delivered to the Buyback/Drop-off 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, purchase order 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.

6.7 Adjustments to and Reconciliation of Recyclable Sales Revenues

- 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 2015, 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.

6.8 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 a breakdown showing how many Tons or yards of Municipal Solid Waste were received from each of the Participating Agencies, from cities that are not Participating Agencies, if any, and 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, BONDS

7.1 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.

7.2 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 (1) it qualifies under California law and continuously complies with all statutory obligations to self-insure against such risks; (2) provides a Certificate of Permission to Self-Insure issued by the Department of Industrial Relations; and (3) 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. Commercial General Liability

Contractor shall maintain Commercial 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 7.1, with no exclusions for bodily injury, personal injury or property damage;
- f) Broad Form Property Damage, including Completed Operations.

The Commercial General Liability insurance required by Section 7.2.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 Services 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 5.2, rounded to the nearest One Hundred Thousand Dollars (\$100,000).

3. Automobile Liability

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles. ISO form CA 0001 or equivalent is required. Coverage shall include MCS-90 endorsement. 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.

4. Pollution Liability

Contractor shall maintain Contractor's pollution liability insurance with limits in an amount of not less than Five Million Dollars (\$5,000,000) 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 7.2 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- VII 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:

"Insurer waives all right of subrogation against City and its officers and employees arising from work performed for City."

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

- a) "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."
- b) "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."
- c) "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) Cross liability endorsement, as provided in Subsection B.2(c).
- b) Waiver of subrogation against City.
- c) 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, 2014), 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

4. 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 7.2.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 7.2.
5. 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 7.1. 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.
6. City is not responsible for payment of premiums for or deductibles under any required insurance coverages. All deductibles and self-insured retentions must be disclosed to and approved by the City.
7. Contractor shall provide no less than 30 days advance notice to the City in the event that any insurance required by this contract is cancelled or modified so that it no longer meets the requirements of the contract.
8. Any deviations from the insurance requirements in this Agreement must be reviewed and approved by the City's Risk Manager. The City's Risk Manager is authorized to approve such deviations.

7.3 Faithful Performance Bond

Not later than ten (10) days before the Effective Date (i.e., on or before July 14, 2014), 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 July 14, 2016, 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 July 2020 may be limited to the balance of the term of the Agreement i.e., until December 31, 2021. 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 2018 by the same percentage that the Basic Annual Payment provided in Section 5.2 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.

7.4 Alternative Security

City may, in its sole discretion, allow Contractor to provide alternative security in the amount set forth in Section 7.3, 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.

7.5 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.

7.6 Integrated Waste Management Act Indemnification

Contractor agrees to indemnify and hold harmless the City against all fines and/or penalties imposed by CalRecycle or the Local Enforcement Agency (LEA): a) based on Contractor's failure to comply with laws, regulations or permits issued or enforced by CalRecycle or the LEA; or, 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. CONTRACTOR REPRESENTATIONS AND WARRANTIES

8.1 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.

8.2 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.

8.3 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.

8.4 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 (1) conflicts with, violates or will result in a violation of any existing applicable law; or (2) 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.

8.5 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.

8.6 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.

8.7 Expertise

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

ARTICLE 9. DEFAULT AND REMEDIES

9.1 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 3.5 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 7.3 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 9.2 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.

9.2 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 3.6 and 10.2 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.

9.3 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.

9.4 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.

9.5 City's Remedies Cumulative

City's right to cure under Section 3.17, to suspend or terminate the Agreement under Section 9.2, to obtain specific performance under Section 9.3, and to perform under Section 9.4 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.

9.6 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: 

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 failure to clean the Station floor, as required in Exhibit J, Section 14..... \$1,000 per event
- For each notice of violation received from the Local Enforcement Agency or Cal Recycle..... \$1,000 per violation
- For each loaded transfer truck parked outside the tipping floor.....\$150
- For each load improperly tipped outside the designated tipping floor areas. \$150 per load
- For each failure to remove litter and/or conduct sweeping on a daily basis \$150 per day
- For each failure to properly and timely prepare for rain event as provided in Exhibit Z..... \$150 per event

Each of the above amounts will be adjusted as of July 1, 2014 and as of July 1 annually thereafter by the same percentage that the Basic Annual Payment in Section 5.2 is adjusted.

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.

9.7 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.

9.8 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.

9.9 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 (1) shall be used by Contractor to pay rent or debt service on the equipment as it becomes due, and (2) 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 affect 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: (1) 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

10.1 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 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 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 or 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.

10.2 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.

10.3 Governing Law

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

10.4 Jurisdiction

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

10.5 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 (1) Contractor's experience, skill and reputation for conducting its operations in a safe, effective and responsible fashion, and (2) 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: (1) 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; (2) 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; (3) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (4) 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; (5) 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.

10.6 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.

10.7 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.

10.8 Parties in Interest

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

10.9 Waiver

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

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.; and the collection agreements between each of the Participating Agencies and their respective Designated Haulers.

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, Source-Separated Recyclable Materials, or Source-Separated Yard Trimmings 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 9.2, 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 Environmental Services.

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, the City's Integrated Pest Management Policy described in Exhibit V-2 and the Green Business certification standards as described in Exhibit V-3.

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.

Contractor acknowledges in entering into the Agreement that it has had ample opportunity to review, and to request any clarification it deems necessary regarding the Participating Agency programs identified in Exhibit X, and that it received such clarification.

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. All records must be maintained in an electronic format, and backed-up in a manner that assures information can be retrieved quickly and reliably.

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. All reports are to be provided electronically, unless otherwise specified by City.

10.19 Right to Demand Assurances of Performance

If Contractor (1) "persistently" suffers the imposition of liquidated damages under Section 9.6; (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 Changes in Scope

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: (1) the City shall have the right to make use of Contractor's facilities and equipment in the same manner as described in Section 9.9 of this Agreement in the event of non-performance excused by Force Majeure; (2) 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 Agreement; (3) if Contractor is unable to collect and dispose of Municipal Solid Waste as required by this Agreement 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 9.9, and (4) 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 Agreement.

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

11.1 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.

11.2 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.

11.3 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.

11.4 Interpretation

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

11.5 Amendment

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

11.6 Severability

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

11.7 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.

11.8 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:

By [Signature]
City Clerk

CITY OF SUNNYVALE ("CITY")

By [Signature]
City Manager

APPROVED AS TO FORM:

By [Signature]
Asst. City Attorney

BAY COUNTIES WASTE SERVICES INC.
("CONTRACTOR")

By [Signature]

MOLINARO REBEKAH
Name and Title

By [Signature]

ERRY NASHAN SECRETARY
Name and Title

EXHIBIT A

DEFINITIONS

1. **Agreement.** "Agreement" means this Agreement between City and Contractor for the Operation of the Sunnyvale Materials Recovery and Transfer Station dated as of June 30, 2014, including all exhibits and attachments, and any amendments hereto.
2. **Ash.** "Ash" means the material remaining after incineration of Municipal Solid Waste, including bottom ash and fly ash. "Ash" does not include ashes from residential burning, such as fireplaces, barbecues, etc.
3. **Bulky Waste.** "Bulky Waste" means stoves, refrigerators, other white goods, furniture and other similar waste materials with weights or volumes greater than those allowed in waste collection cans.
4. **City.** "City" means the City of Sunnyvale, a municipal corporation, and all of the territory lying within its municipal boundaries as presently existing or as such boundaries may be modified during the Term, as well as unincorporated areas completely surrounded by City which are provided solid waste collection services by City or by a company or companies which from time to time is granted the exclusive right to franchise to collect Municipal Solid Waste for City.
5. **Composting.** "Composting" means the controlled or uncontrolled biological decomposition of organic constituents such that the resulting material meets the maximum acceptable metal concentration limits specified in Section 17868.2 and pathogen reduction requirements specified in Section 17868.3 of Title 14, California Code of Regulations Chapter 3.1.
6. **Construction Debris.** "Construction Debris" means waste building materials resulting from construction, remodeling, repair or demolition operations.
7. **Contractor.** "Contractor" means Bay Counties Waste Services, Inc., a California corporation.
8. **Designated Hauler.** "Designated Hauler" means the company or companies which from time to time are granted the exclusive right or franchise to collect Municipal Solid Waste within the Participating Agencies and deliver it to the Station.
9. **Designated Waste.** "Designated Waste" means those substances classified as designated waste by the State of California, presently in 23 California Code of Regulations Section 2522.
10. **Disposal Contract.** "Disposal Contract" means the Agreement for Long Term Disposal of Solid Waste between the City and Waste Management of California, Inc., dated as of September 10, 1991. For purposes of Section 3.8 of this Agreement, the term Disposal Contract also includes the Mountain View-Waste Management Disposal Contract dated as of September 24, 1991, and the Palo Alto-Waste Management Disposal Contract dated as of October 7, 1991 and as it may subsequently be amended.
11. **Disposal Facility.** "Disposal Facility" means the Kirby Canyon Recycling and Disposal Facility located east of U.S. Highway 101 in San Jose, California.
12. **Disposal Fee.** "Disposal Fee" means the amount payable by the Participating Agencies to Waste Management of California, Inc. (or whatever company owns and/or operates the Disposal Facility) for Municipal Solid Waste delivered to the Disposal Facility pursuant to the Disposal Contract and the Neighboring Cities' Disposal Contracts, including taxes and governmental fees.

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13. **Effective Date.** "Effective Date" has the meaning set forth in Section 2.1 of the Agreement.
14. **Environmental Laws.** "Environmental Laws" means all federal and state statutes, county and city ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; the Federal Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; the Federal Clean Water Act, 33 U.S.C. Section 1251 *et seq.*; the Emergency Planning and Community Right to Know Act, 42 U.S.C. Section 11001 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. Section 651 *et seq.*; the California Integrated Waste Management Act, California Public Resources Code Section 40000 *et seq.*; the California Hazardous Waste Control Act, California Health and Safety Code Section 25100 *et seq.*; the California Toxic Substances Account Act, California Health and Safety Code Section 25300 *et seq.*; the Porter-Cologne Water Quality Control Act, California Water Code Section 13000 *et seq.*; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code Section 25249.5 *et seq.*; the California Clean Air Act, Health and Safety Code Sections 39000 *et seq.*; the California Hazardous Materials Response Plan and Inventory Act, Health and Safety Code Sections 25500 *et seq.*, as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.
15. **Extended Service Area.** "Extended Service Area" means any area in Santa Clara County, outside the Primary Service Area, from which the City authorizes the Contractor to accept Municipal Solid Waste and/or Recyclable Materials at the Station.
16. **FEIR.** "FEIR" means the Final Environmental Impact Report entitled "Sunnyvale Materials Recovery and Transfer Station Environmental Impact Report" certified by the Sunnyvale City Council on September 25, 1990, including the Draft Environmental Impact Report dated June 18, 1990 and the Final Environmental Impact Report dated September 14, 1990.
17. **Final Acceptance.** "Final Acceptance" means the determination by the City that Contractor-provided Optional equipment meets all requirements and is in full operation, acceptance testing is complete and all equipment documentation/manuals have been delivered to the City.
18. **Food Scraps.** "Food Scraps" include: (1) all kitchen and table food waste scraps, and animal, or vegetable, fruit, grain, dairy or fish waste that attends or results from the storage, preparation, cooking or handling of foodstuffs, with the exception of animal excrement, (2) paper waste contaminated with putrescible material, and (3) biodegradable food service ware designed to disintegrate and biodegrade quickly.
19. **Garbage.** "Garbage" means putrescible animal, fish, food, fowl, fruit or vegetable matter, or any product thereof, resulting from the preparation, storage, handling or consumption of such substances.
20. **Gate Fee.** "Gate Fee" means the amount (initially \$6.75 per cubic yard) which Contractor is entitled to collect from users of the Station delivering Publicly Hauled Waste, and to retain. It is a component of the Public Use Fee.
21. **Hazardous Waste.** "Hazardous Waste" means:

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all substances defined or characterized as hazardous waste by the Federal Solid Waste Disposal Act (42 U.S.C. Section 3251 *et seq.*), as amended, including the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 *et seq.*) and all future amendments thereto or regulations promulgated thereunder;

all substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste by Health and Safety Code Sections 25110.02, 25115, and 25117, and future amendments to or recodifications of such statutes or regulations promulgated thereunder, including 23 California Code of Regulations Sections 2521 and 2522; and

radioactive wastes.

If two or more governmental agencies having concurrent or overlapping jurisdiction over hazardous waste adopt conflicting definitions of "hazardous waste," for purposes of processing and disposal to land, the broader, more restrictive definition shall be employed for purposes of this Agreement.

22. **Host Fee.** "Host Fee" means the amount which City is entitled to receive for Municipal Solid Waste delivered to the Station from the other Participating Agencies, for Publicly Hauled Waste, and for any materials from outside the Primary Service Area. Contractor is to collect the Host Fee, as a component of the Public Use Fee or Outside User Fee, and remit it to City.
23. **Maintenance Waste.** "Maintenance Waste" means the following materials collected by maintenance employees of a Participating Agency or by private contractors hired by a Participating Agency:
 - A. debris from street and sewer repairs;

debris from street sweepings unsuitable for composting;

grass clippings, leaves and tree trimmings mixed with other non-compostable wastes from maintenance of parks, streets, median strips and other city property;

rock and concrete;

concrete and asphalt pavement from streets; and

tree stumps.
24. **Medical Waste.** "Medical Waste" means those materials defined in Health and Safety Code Section 25023.2 and does not include waste identified as not being medical wastes in Section 25023.8.
25. **Memorandum of Understanding.** "Memorandum of Understanding" means the Second Memorandum of Understanding Among the Cities of Mountain View, Palo Alto and Sunnyvale Relating to the Construction and Operation of a Materials Recovery and Transfer Station and the Long Term Disposal of Municipal Solid Waste at Kirby Canyon made as of June 9, 1992.
26. **Minimum Recycling Level.** The then-applicable percentage shown in Section 3.5.B which Contractor is obligated to Recycle.

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27. **MRF Fines.** “MRF Fines” means the 2” minus material fraction (i.e., material equal to or less than 2 inches in diameter) that results from mechanized sorting, and which is high in organic content.
28. **Municipal Solid Waste, MSW.** “Municipal Solid Waste” or “MSW” means all substances or materials that are discarded or rejected as being spent, useless, worthless or in excess of the owner’s needs at the time of discard or rejection including, without limitation, all putrescible and non-putrescible solid and semi-solid waste including Garbage, Rubbish, Maintenance Waste, Yard Waste, Bulky Wastes, industrial wastes, Construction Debris, and grit and sweepings from a Water Pollution Control Plant, which are generated by residential, commercial, industrial, institutional, municipal, agricultural and other activities and which are not otherwise restricted in a Class III landfill by State or Federal regulations and which are delivered to the Station.
- Municipal Solid Waste does not include: (1) Hazardous Waste; (2) Designated Waste; (3) Medical Waste; (4) Ash; (5) Source-Separated Yard Trimmings; (6) Source-Separated Recyclable Materials; or (7) materials segregated for processing and recycling at the Station once they have been so segregated and processed.
29. **Neighboring Cities.** “Neighboring Cities” means the cities of Mountain View and Palo Alto.
30. **Neighboring Cities’ Disposal Contracts.** “Neighboring Cities’ Disposal Contracts” means the Agreements for Long Term Disposal of Solid Waste between Mountain View and Waste Management of California, Inc., dated as of September 24, 1991, and the Agreement for Long Term Disposal of Solid Waste between Palo Alto and Waste Management of California, Inc., dated as of October 7, 1991 and as they may subsequently be amended.
31. **Other Tons.** “Other Tons” means MSW, Source-Separated Recyclable Materials, Source-Separated Yard Trimmings, or other materials originating from outside of the Primary Service Area, and approved by City for delivery to the Station.
32. **Outside User Fees.** “Outside User Fees” means the amounts established by City which Contractor is to collect from users of the Station from outside the Primary Service Area, and to remit to City.
33. **Participating Agencies.** “Participating Agencies” means the three cities of Palo Alto, Mountain View and Sunnyvale, or any of them, as the context requires.
34. **Person.** “Person” includes any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Santa Clara, municipality or special purpose district or any other entity whatsoever.
35. **Primary Service Area.** “Primary Service Area” means the geographical area within the jurisdiction of the Participating Agencies and any contiguous areas which are served by the Designated Hauler(s) of one or more Participating Agencies.
36. **Processing.** “Processing” means the reduction, separation, recovery, conversion, Composting, or Recycling of MSW, Source-Separated Recyclable Materials, Source-Separated Yard Trimmings, Source-Separated Food Scraps or other materials as may be delivered to the Station.