



WEST VALLEY

Solid Waste Management Authority

CAMPBELL • LOS GATOS • MONTE SERENO • SARATOGA

REGULAR BOARD MEETING AGENDA

Teleconference/Public Participation Information

Meeting Location, Date, and Time

This meeting will be held via teleconference and in-person at:

Monte Sereno City Hall
18041 Saratoga-Los Gatos Road
Monte Sereno, CA 95030

February 1, 2024

5:00 p.m.

General Information

This meeting will be held via teleconference and in-person at the City of Monte Sereno's City Hall located at 18041 Saratoga-Los Gatos Road, Monte Sereno, CA 95030.

For this meeting, members of the public may observe using either the meeting link below or by attending physically at the above-mentioned location. For those attending in person, please refer to the last bullet for instructions on making public comments. For those attending virtually, please refer to the following set of bullets for attendance and instructions on making public comment:

- Submit any written comments via email to the West Valley Solid Waste Management Authority (Authority) at WVSWMA@hfh-consultants.com. Comments must be submitted prior to or during the public comment time slot provided at the meeting. Authority staff will share all comments with the Authority Board of Directors (Board) at the meeting and the comments will become part of the public record.
- Observe and address the Board telephonically by waiting for the appropriate public comment time slot and then connecting to Zoom™ using the following credentials:

Link to join the Virtual Meeting: <https://us02web.zoom.us/j/88547679846>

Call in Phone Number: +1 (669) 444-9171

Meeting ID: 885 4767 9846

- Wait for the Chairperson to call for public comment. At this time, if you wish to address the Board, please use the "raise hand" feature and the Chairperson will call on you when it is your turn.

Note: In order for you to begin speaking, Authority Staff will need to temporarily promote you to a panelist and unmute you to speak.

- Observe and address the Board in person by listening for the Chairperson to call for public comment. Once the public comment period has opened, please either stand or raise your



hand and the Board will call on you to speak and make your comment.

In accordance with the Americans with Disabilities Act, California Law, and the Governor's Executive Orders, it is the policy of the Authority to offer its public meetings in a manner that is readily accessible to everyone, including those with disabilities. An individual may request reasonable modifications or accommodations so that they may observe and address the Board. If you are disabled and require accommodations to participate, please contact the Authority at least 48 hours in advance of the meeting at wvswma@hfh-consultants.com with the following information: name, phone number, email, and type of assistance required.

Agenda Items

Call to Order

Pledge of Allegiance

Roll Call

Orders of the Day

The Board Chair, or a majority of the Board by vote, may change the order of business, except for public hearings on the agenda for a set time.

Oral Communications from the Public

Written Communications

None

Convene to Closed Session

Public Employee Evaluation	
Legal Authority	Govt Code section 54957(b)(1)
Position	Executive Director
Staff Present	Executive Director

Reconvene to Open Session

Consent Calendar

1. Receive a report on recent regulatory and legislative changes.

ADDRESSING THE BOARD

Any person shall have the right to address the Board during consideration of any item on the Board's agenda or during the time for oral communication if not on the agenda but pertaining to subject matter within the jurisdiction of the Board. Any person wishing to address the Board should stand or raise the hand and wait to be recognized by the Chairperson. Please stand at the podium, if able, state your name and address for the record, and proceed to address the Board. All remarks and questions should be addressed to the Board through the Chairperson and not to any member thereof or to the public. No question should be asked a Board Member or a member of Authority staff without first obtaining permission of the Chairperson.



2. Receive a report on the Authority's solid waste programs and customer service.
3. Approve Minutes of the November 2, 2023 Board Meeting.
4. Receive and file the Executive Director Year-to-Date Financial Report for the year ending June 30, 2024.

Presentations and Informational Items

5. Receive a budget and rates workshop presentation on the Authority's Fiscal Year (FY) 24-25 role and function and planned changes to customer rate structure under the new collection contract with West Valley Collection & Recycling (WVC&R).

New Business

6. Consider a report on WVC&R's liquidated damages (LDs) and performance deficiencies and assess appropriate LDs.
7. Approve Resolution 2024-01 adopting a revised FY 23-24 budget.
8. Approve Resolution 2024-02 of the Board of Directors of the West Valley Solid Waste Management Authority Authorizing the Authority's Executive Director to Execute Agreements with the Approved Construction and Demolition (C&D) Collection Contractors.
9. Elect Chairperson and Vice Chairperson for 2024.

Executive Director Report

Future Agenda Items

Board Member Reports

Adjournment

Next Special Meeting: April 2024 (Specific meeting date to be determined)

ADDRESSING THE BOARD

Any person shall have the right to address the Board during consideration of any item on the Board's agenda or during the time for oral communication if not on the agenda but pertaining to subject matter within the jurisdiction of the Board. Any person wishing to address the Board should stand or raise the hand and wait to be recognized by the Chairperson. Please stand at the podium, if able, state your name and address for the record, and proceed to address the Board. All remarks and questions should be addressed to the Board through the Chairperson and not to any member thereof or to the public. No question should be asked a Board Member or a member of Authority staff without first obtaining permission of the Chairperson.

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Agenda Item No. 1

Meeting Date: February 1, 2024

To: West Valley Solid Waste Management Authority Board

From: Executive Director

Subject: Recent Regulatory and Legislative Changes

AGENDA ITEM REPORT

Recommended Action

Receive a report on recent regulatory and legislative changes.

Discussion

California Legislative Updates

The second year of the 2023-2024 State of California (State) legislative session has commenced. The "2024 Legislative Session" section below highlights current bills that have been identified as being of interest to the West Valley Solid Waste Management Authority (Authority). The deadline for each house to pass two-year bills introduced in 2023 is January 31, 2024, and the deadline to introduce new bills for 2024 is February 16, 2024. The "Existing Legislation" section below identifies key updates to rulemaking processes and implementation of certain existing legislation. The Authority Executive Director will continue to monitor and update the Board on new bills or modifications to existing bills that may be of particular interest to the Board, as the legislative session progresses.

2024 Legislative Session

Two-Year Bills

AB 2: This bill would expand the scope of the Electronic Waste Recycling Act of 2003 to include covered solar photovoltaic (PV) module products and require, on or before October 1, 2026, and on or before October 1 each year thereafter, CalRecycle to establish a covered solar PV recycling fee based on the reasonable regulatory costs to administer covered electronic waste recycling.

AB 234: This bill would express the intent of the Legislature to enact subsequent legislation that would prohibit the sale in this State of rinse-off cosmetics, detergents, waxes, and polishes that contain intentionally added synthetic polymer microparticles.



AB 660: This bill would require manufacturers, processors, or retailers responsible for food labeling with quality or safety dates, on or after January 1, 2025, to use standardized terms on such labels. It would prohibit a person from selling a food item on or after this date that does not comply with the labeling requirements. This bill would additionally modify some of the reporting procedures for producers subject to The California Beverage Container Recycling and Litter Reduction Act.

AB 863: This bill would punish carpet stewardship organizations that violate a provision of the carpet stewardship law three times ineligible to act as an agent on behalf of manufacturers to design, submit, and administer a carpet stewardship plan and increase penalties for violating the program. This bill would also increase the penalty amounts for violations of the carpet stewardship laws. This bill additionally requires the approved carpet stewardship organization to make up to 10% of assessments received for carpets sold in the State available for grants and apprenticeship programs.

AB 1238: This bill would require CalRecycle to develop alternate management standards for recycling PV modules that would, to the extent possible, reduce the regulatory burden of managing certain resources used for recycling the modules while not compromising worker safety or environmental protection.

AB 1290: Beginning January 1, 2026, this bill would prohibit a person from manufacturing, selling, offering for sale, or distributing in the State plastic packaging that contains certain chemicals, pigments, or additives and impose a civil penalty for a violation of this prohibition.

SB 615: This bill would require all battery manufacturers to recover, reuse, repurpose, and recycle vehicle traction batteries to ensure responsible end of life management of these products.

SB 378: This bill would make it an infraction punishable by a fine of up to \$25 for a person to bring an expanded polystyrene, as defined, food container or cooler on a State beach, as defined, or in a unit of a State park system, as defined, and for improper disposal.

SB 707: This bill would enact the Responsible Textile Recovery Act of 2023, which would require producers to establish a stewardship program for the collection and recycling of any postconsumer apparel or postconsumer textile article that is unwanted by a consumer.

SB 854: This bill would require a carpet stewardship organization to make available up to 10% percent of the assessments collected for the sale of carpet for use in California for grants to apprenticeship programs.



Bills Introduced in 2024

SB 903: This bill would state the intent of the Legislature to enact subsequent legislation to phase out the sale of products with avoidable perfluoroalkyl and polyfluoroalkyl substances (PFAs).

Other: Based on preliminary tracking, potential topics for additional bills that may be introduced in 2024 include: extended producer responsibility for household hazardous waste, marine flare product stewardship, and restrictions on certain plastics and additives. The deadline for new bills to be introduced is February 16, 2024.

Local

The Technical Advisory Committee (TAC) of the Santa Clara County Recycling and Waste Reduction Commission (RWRC) meets monthly. In addition, multiple local subcommittees attend TAC including, but not limited to, those related to SB 1383 and public education and outreach. Representatives from the cities of Campbell, Monte Sereno, Saratoga; the Town of Los Gatos (Member Agencies); and, the Authority are also attending the meetings. Most recently, TAC has procured a consultant, Tripepi, to develop a "Why Recycle Food Scraps" education and outreach campaign.

Existing Legislation

SB 54: SB 54 (Plastic Pollution Prevention and Packaging Producer Responsibility Act) was signed into law on June 30, 2022. The bill requires producers to ensure that single-use plastic packaging and food service ware are recyclable or compostable by 2032 and achieve 25% source reduction and a 65% recycling rate of covered materials, on specified timeframes. The bill requires producers of covered materials to join a Producer Responsibility Organization (PRO), which shall be responsible for implementing programs, submitting plans and reports, meeting established targets, and making jurisdictions and recycling service providers whole for the costs of managing recycling programs and systems.

CalRecycle is required to finalize regulations to implement SB 54 By January 1, 2025. Some recent developments in the SB 54 rulemaking and implementation process include:

- Throughout 2023, CalRecycle hosted a number of informal public workshops to solicit stakeholder feedback on regulatory and non-regulatory concepts.
- On December 28, 2023, CalRecycle released the first draft of the SB 54 regulations. CalRecycle will hold an informal question and answer session on February 1, 2024 to answer clarifying questions. CalRecycle will then commence the formal rulemaking process through a public workshop in early 2024, followed by a 45-day public comment period.
- In December 2023, CalRecycle published a list of covered material categories, including a determination of whether each material type is potentially recyclable and compostable in the



State, and an accompanying report to the legislature. Per SB 54, jurisdictions will be required to accept materials deemed compostable or recyclable on that list in their curbside program.

Certain exemptions to these collection requirements may be available; however, the proposed list will need careful review and local agencies are encouraged to engage in the regulatory process to ensure accuracy and minimize unintended consequences for collection systems.

- On January 8, 2024, CalRecycle selected the Circular Action Alliance as the first PRO responsible for carrying out SB 54.

Engagement from local jurisdictions will be critical in shaping the regulations and ensuring the intent of the statute to relieve the burden from local jurisdictions and their ratepayers is realized. The Authority and its Member Agencies can engage in a variety of ways, such as: attending informational webinars, joining working groups, attending CalRecycle public workshops, submitting individual or coalition comment letters, and discussing early preparation for potential program impacts.

The Authority's Executive Director will continue to participate in the rulemaking process and other stakeholder collaboration opportunities and will update the Board with any developments in the regulations that will impact Member Agencies.

AB 1201 and SB 343: AB 1201 (compostability labeling) and SB 343 (recyclability labeling), are both currently in the CalRecycle rulemaking process. There will be intersections between AB 1201, SB 343, and SB 54, and the Authority's Executive Director will be tracking these developments.

Advanced Clean Fleet (ACF) Regulations: The California Air Resources Board (CARB) developed regulatory language to transition all medium and heavy-duty diesel trucks to zero emissions vehicles (ZEVs) by 2045. State and local government fleets, including city, county, special district, and State agency fleets, are required to ensure 50% of vehicle purchases are ZEVs beginning in 2024 and 100% of vehicles purchased are zero-emission by 2027. "Specialty vehicles," including solid waste collection fleets, have more time to comply, if selecting the "ZEV milestones" options which specifies the following years by which specified percentages of solid waste fleet vehicle purchases that must be ZEVs: 10% by 2030, 25% by 2033, 50% by 2036, 75% by 2039, and 100% by 2042. Certain exemptions may be available related to infrastructure construction delays, delivery delays, availability, daily usage amounts, back-up vehicles, and emergency conditions. Additionally, CARB's final resolution acknowledged the importance of biomethane derived from organic waste to implement SB 1383. CARB will require staff to coordinate across State agencies and provide a report by 2025 regarding how implementation of ACF regulations, SB 1383, and SB 1440 will be harmonized.



Documents Attached

None

Fiscal Impact

None

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Agenda Item No. 2

Meeting Date: February 1, 2024

To: West Valley Solid Waste Management Authority Board
From: Executive Director
Subject: Recent Solid Waste Program and Customer Service Updates

AGENDA ITEM REPORT

Recommended Action

Receive a report on the West Valley Solid Waste Management Authority's (Authority) solid waste programs and customer service.

Discussion

Summary

The Authority contracts with West Valley Collection & Recycling (WVC&R) to provide solid waste and recycling collection services. In addition to providing quality collection service, WVC&R is responsible for providing various forms of education and outreach and customer service to customers and ensure successful recycling programs to reach State requirements. The Authority monitors WVC&R's programs and performance to determine if WVC&R's performance is meeting the requirements of their contract with the Authority. The figures in this agenda report summarize the status of each program and indicate the following program trends.

- Customer Participation in Recycling Programs. During the implementation of organics collection programs in 2022, there was an increase in the total volume of service provided to customers as organics collection containers were provided to customers without the service. There has been a steady increase in the total amount of organics waste collected throughout 2022 and the beginning of 2023, which has begun to slow and level off during the later months of 2023. The Authority expects to see an increase in the amount of recycled and organic materials diverted from the landfill in 2024 as the Authority and WVC&R launch a new brand and enhance the Authority's education and outreach program.
- Missed Collections. Starting in September, WVC&R showed a decrease in the number of missed collections in 2023. Looking back at 2022, there appears to be a trend in which missed collections happen less frequently in the fall; however, the number of missed collections calculated year-over-year continue to increase.



- Customer Service. The number of calls received by WVC&R's customer service team follows the same trendline as missed collections, due to the increased number of customers calling in to report such service issues. As a result, hold times as well as total number of customer service calls have also decreased during the most-recently-reported months of 2023. Call volumes and hold times are expected to increase in 2024 during the implementation of new solid waste programs, such as multi-family bulky-item collection.

Collected Tonnage

Figures 1 through 4 represent WVC&R's reported tonnage data by material type for December 2022 through November 2023 in the Cities of Campbell, Monte Sereno, Saratoga; and, the Town of Los Gatos (Member Agencies).

Figure 1. City of Campbell Tonnage

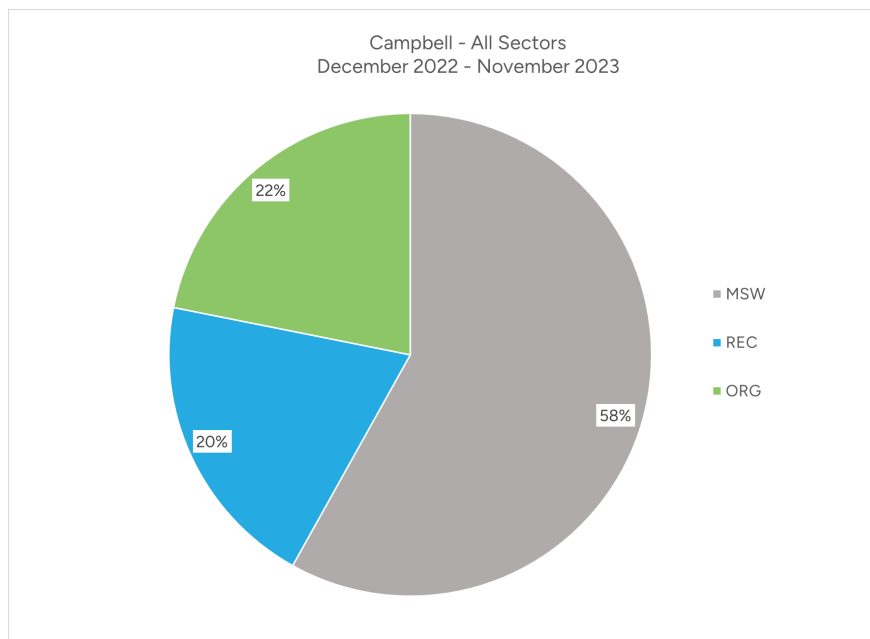




Figure 2. Town of Los Gatos Tonnage

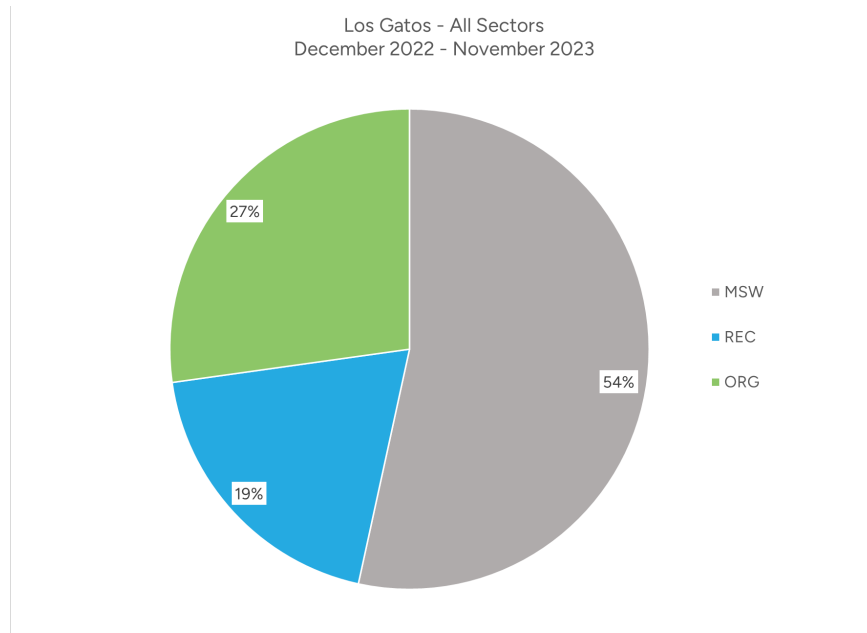


Figure 3. City of Monte Sereno Tonnage

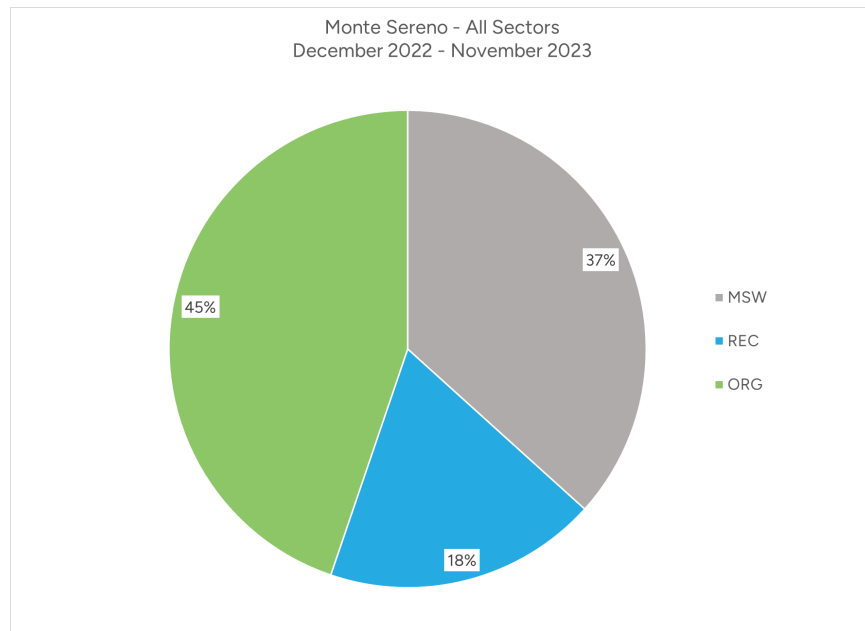
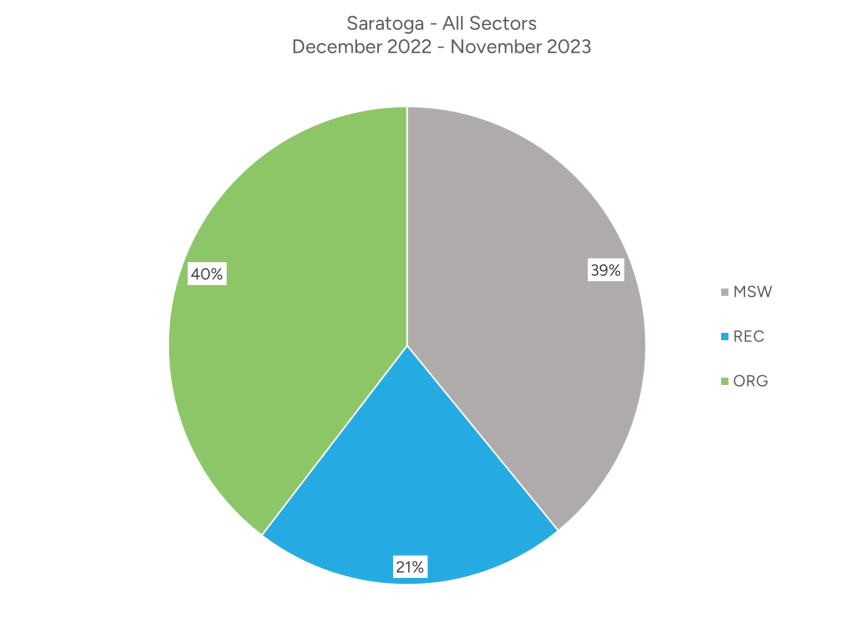




Figure 4. City of Saratoga Tonnage



Figures 5 through 13 represent WVC&R's reported tonnage and diversion rate for single family (Figure 5), multi-family (Figure 8), and commercial (Figure 11) customers over the past 24 months. Figures 6, 7, 9, 10, 12, and 13 compare the total volume of recycling or organic service levels to the average density (pounds per cubic yard) of customers' carts and/or bins. These measures are used by the Authority to monitor recycling participation levels within the Member Agencies.



Figure 5. Single Family Tonnage and Diversion

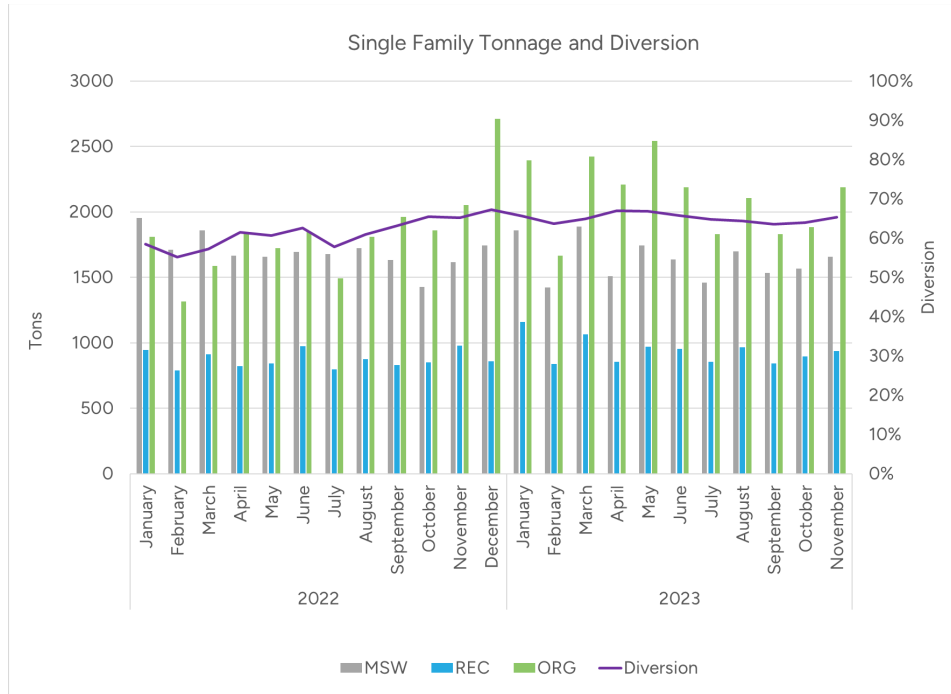


Figure 6. Single Family Recycling

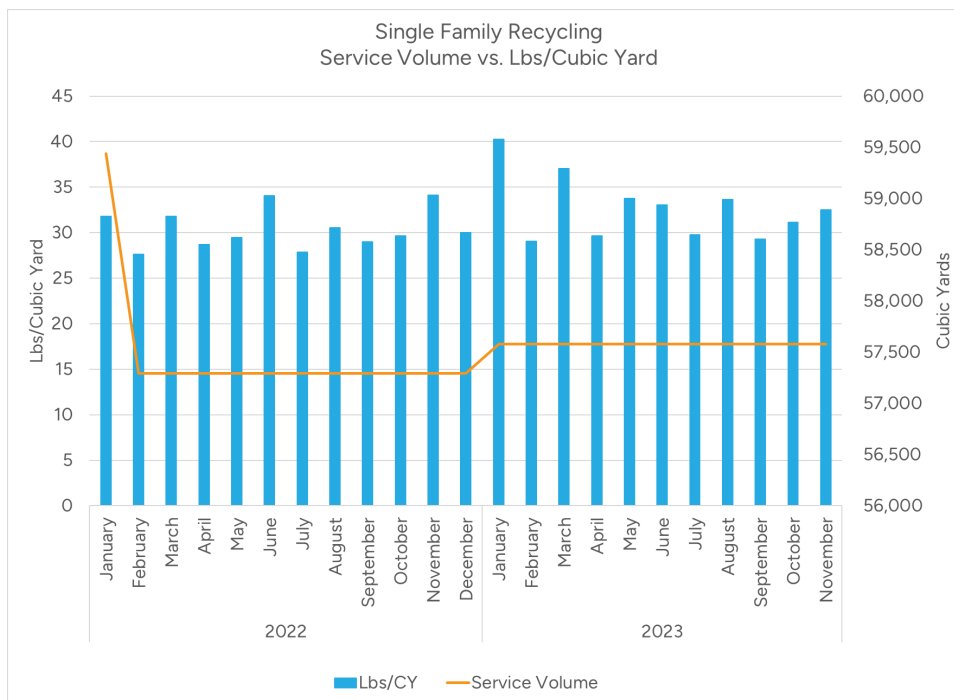




Figure 7. Single Family Organics

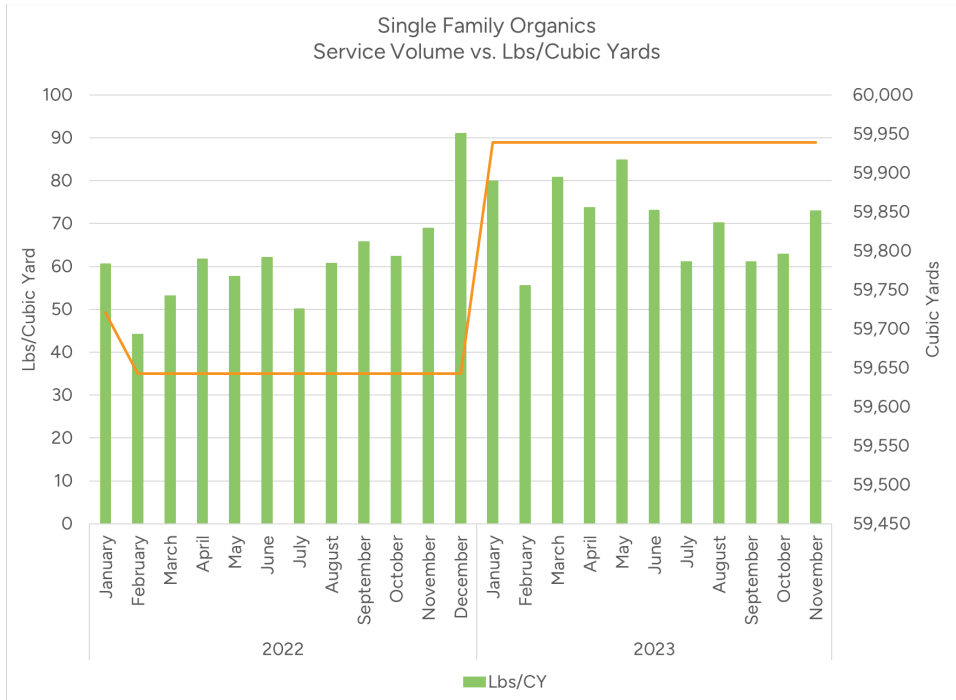


Figure 8. Multi-Family Tonnage and Diversion

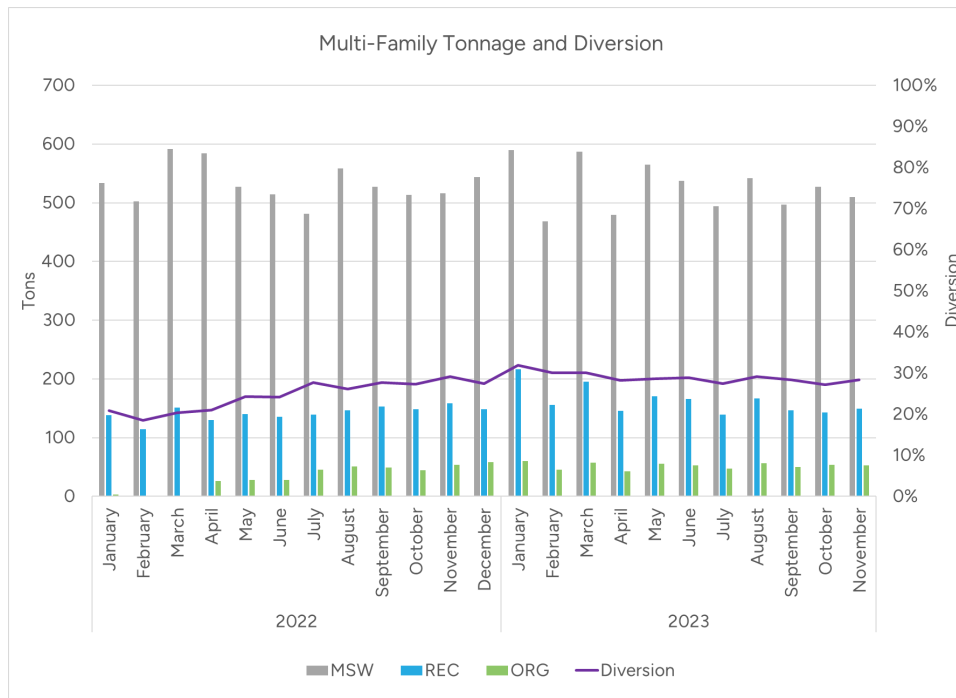




Figure 9. Multi-Family Recycling

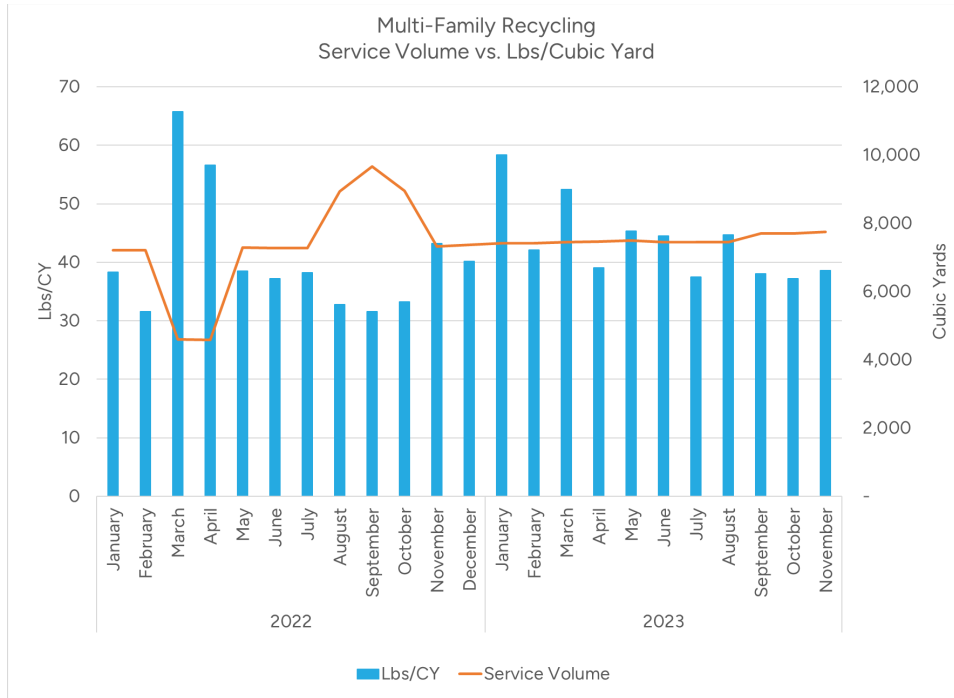


Figure 10. Multi-Family Organics

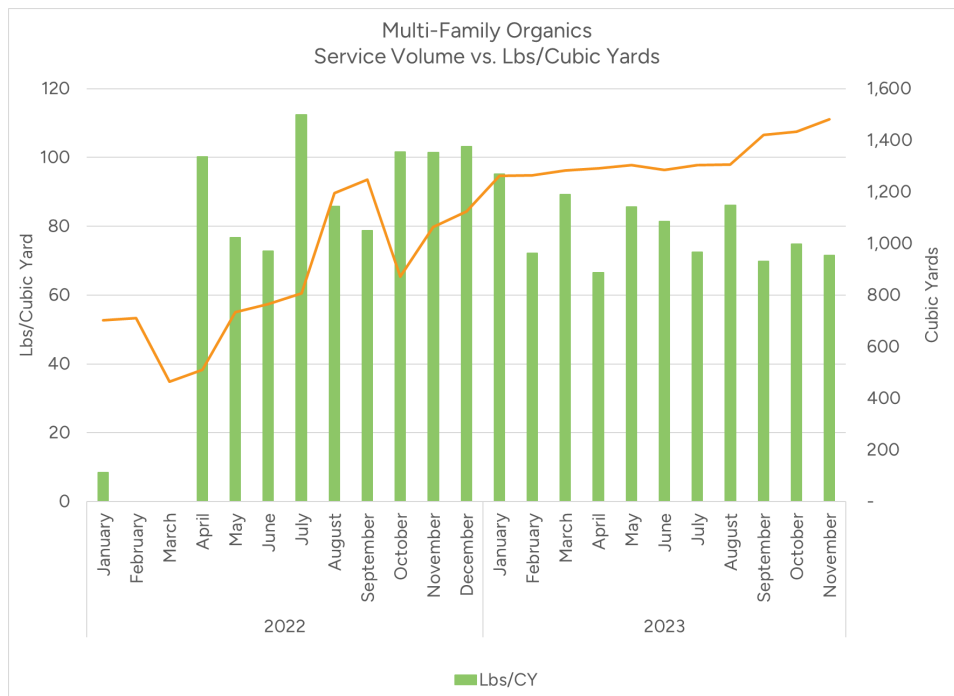




Figure 11. Commercial Tonnage and Diversion

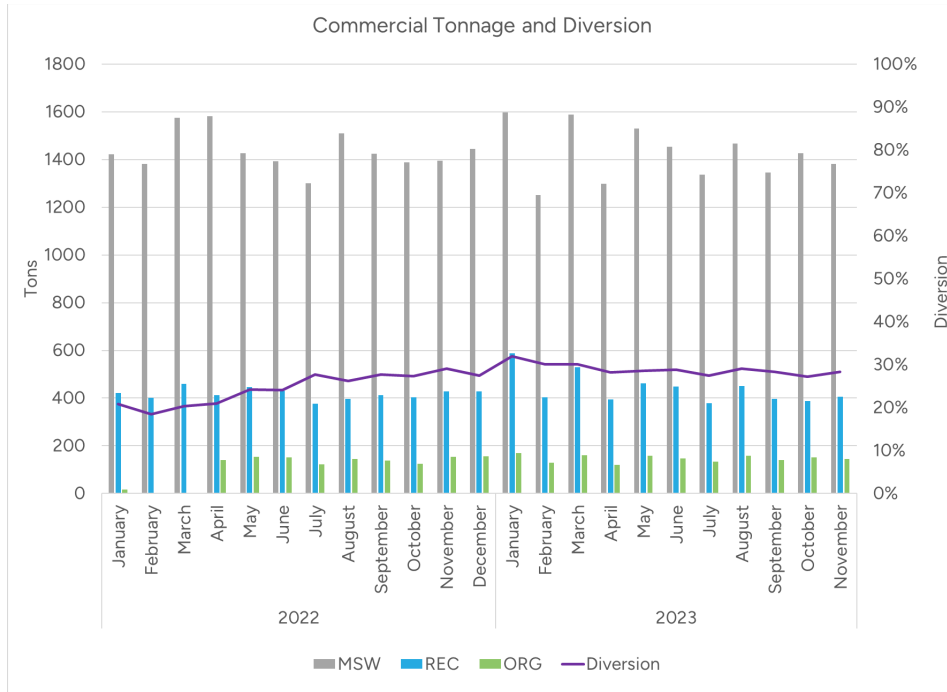


Figure 12. Commercial Recycling

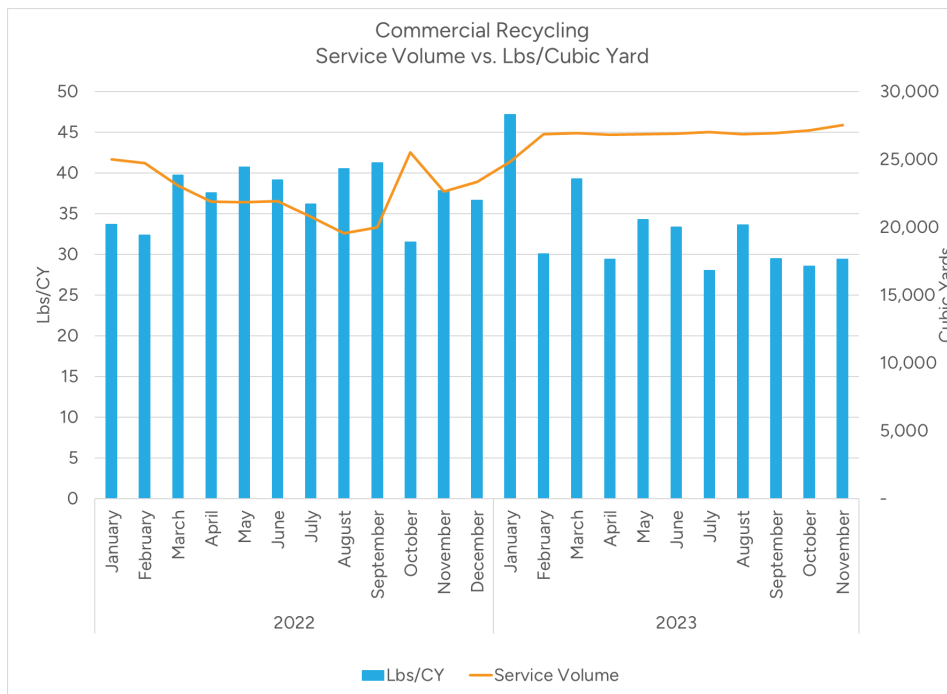
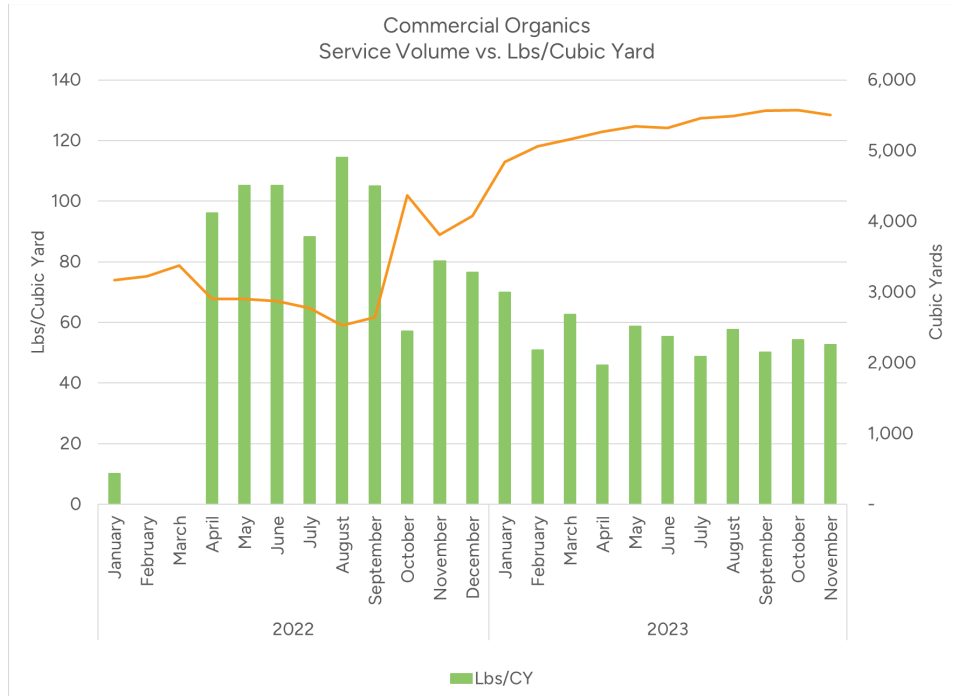




Figure 13. Commercial Organics

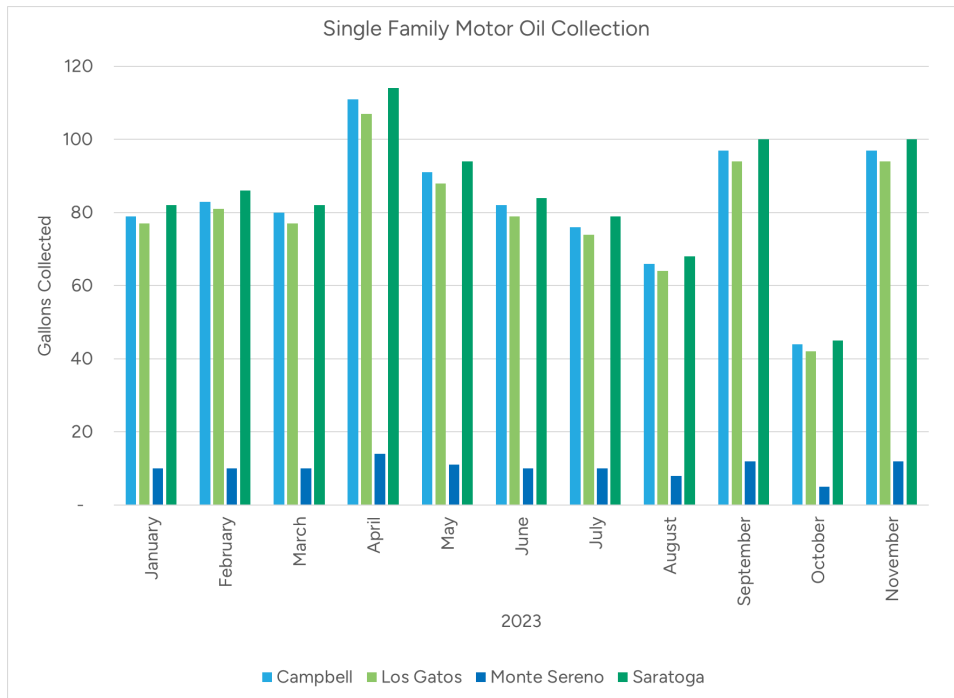




Used Motor Oil Collection

Figure 14 shows that WVC&R collected 2,829 gallons of used motor oil from Authority customers between January and November of 2023.

Figure 14. Single Family Motor Oil Collection

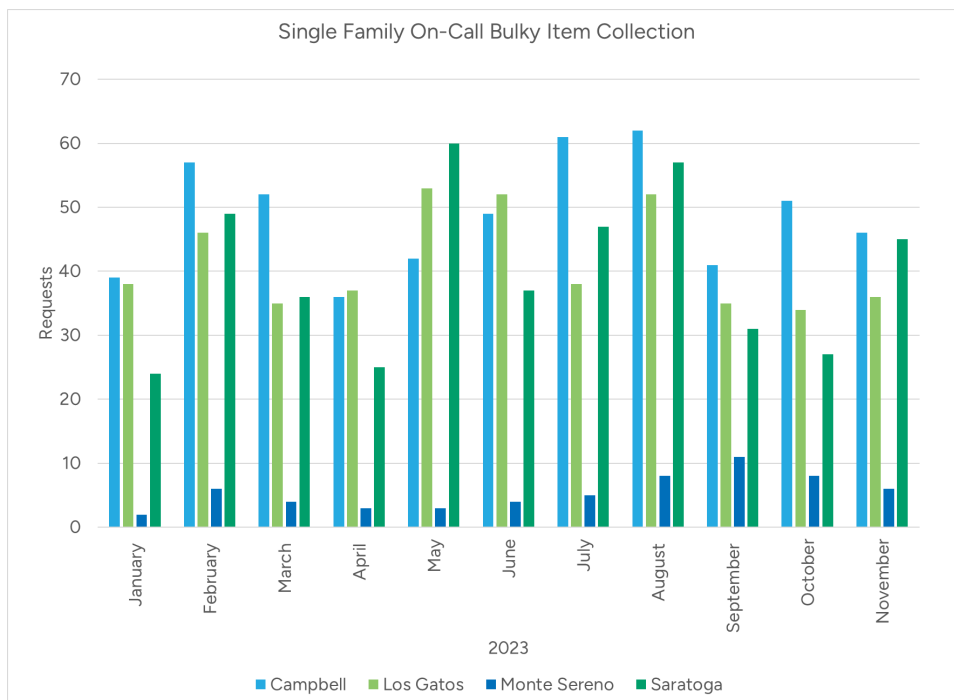




Bulky Item Collection

Figure 15 shows demand within the Authority for single-family, on-call bulky item collection in addition to the scheduled bulky item collection provided by WVC&R throughout the year. Between January and November 2023, WVC&R reported 1,490 single family on-call bulky item collections initiated by Member Agency customers.

Figure 15. Single Family On-Call Bulky Item Collection

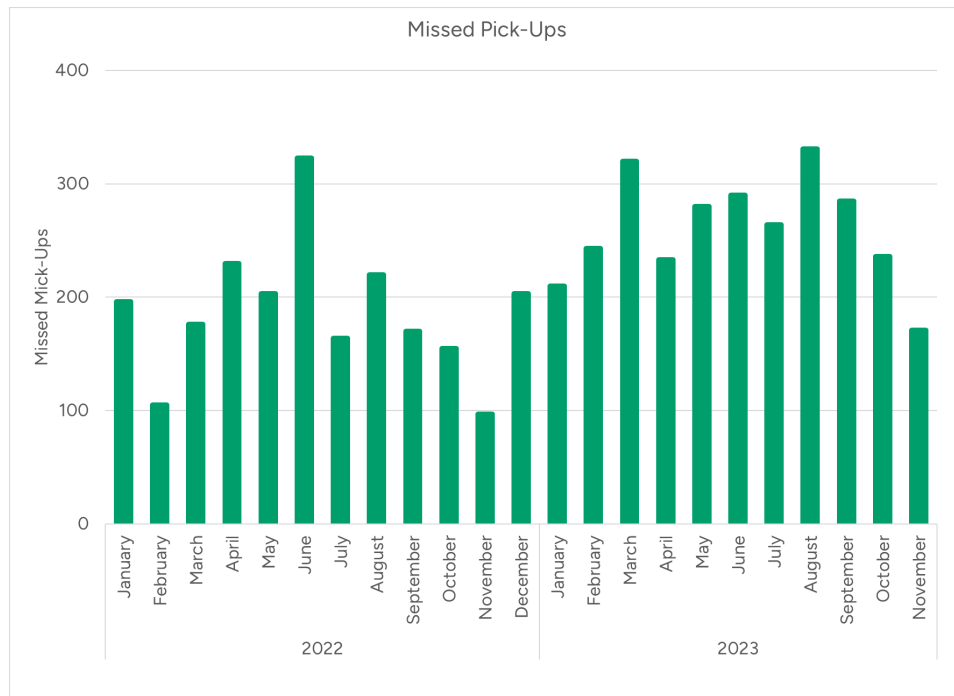




Missed Collections

Figure 16 shows the number of missed pick-ups between January 2022 and November 2023. The Authority has closely monitored the number of missed pick-ups within the Member Agencies during the term of the collection agreement with WVC&R; and, the Authority meets monthly with WVC&R to discuss the high number of missed pick-ups as well as potential causes and solutions. During these discussions, WVC&R attributed the most recent spike in missed pick-ups to the turnover of experienced drivers who are familiar with the collection routes in each Member Agency, as well as unexpected leaves of absence.

Figure 16. Missed Pick-Ups





Customer Service

Figures 17 and 18 represent the number of inquiries and complaints WVC&R received related to collection service within the Authority between January and November of 2023. These tables are inclusive of any requests or complaints sent by the Member Agencies directly to WVC&R.

Figure 17. Inquiries and Complaints by Month

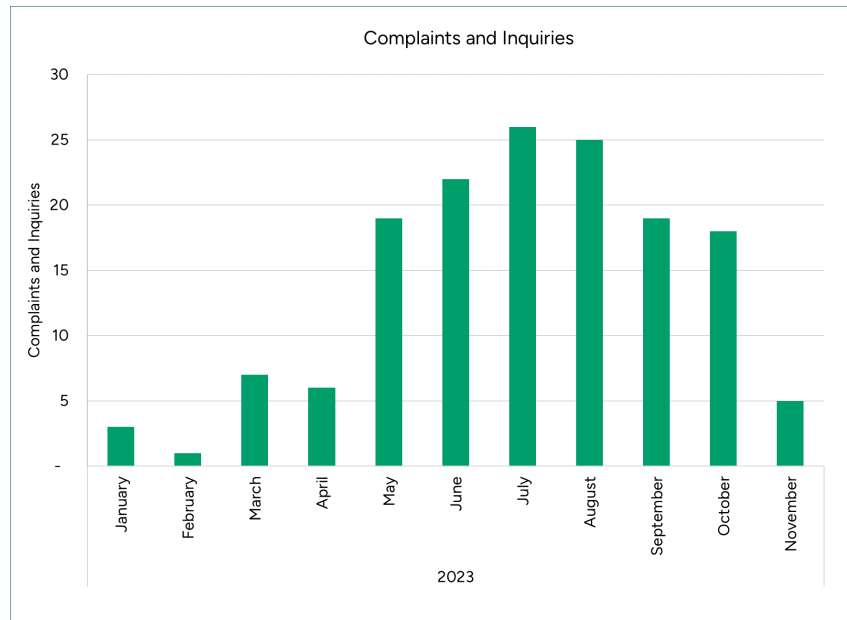


Figure 18. Inquiries and Complaints by Subject Matter

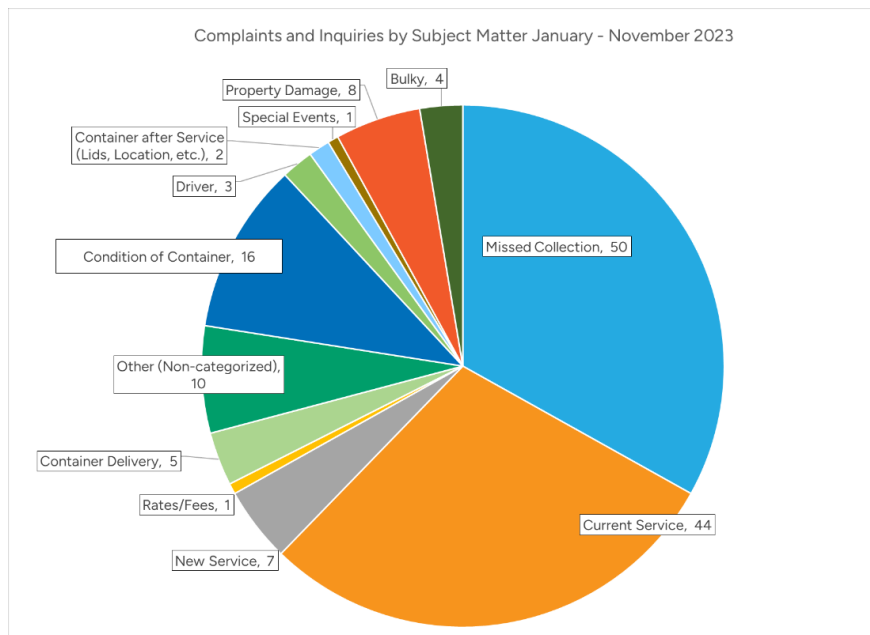




Figure 19 represents the amount of time a customer waits on hold when calling into WVC&R's customer service center. These average hold times reflect the total time a customer waits on hold, including the time it takes the customer service representative (CSR) to answer the call, any additional customer hold time, and time spent by the customer listening to WVC&R's outgoing message.

Figure 19. Call Center Performance

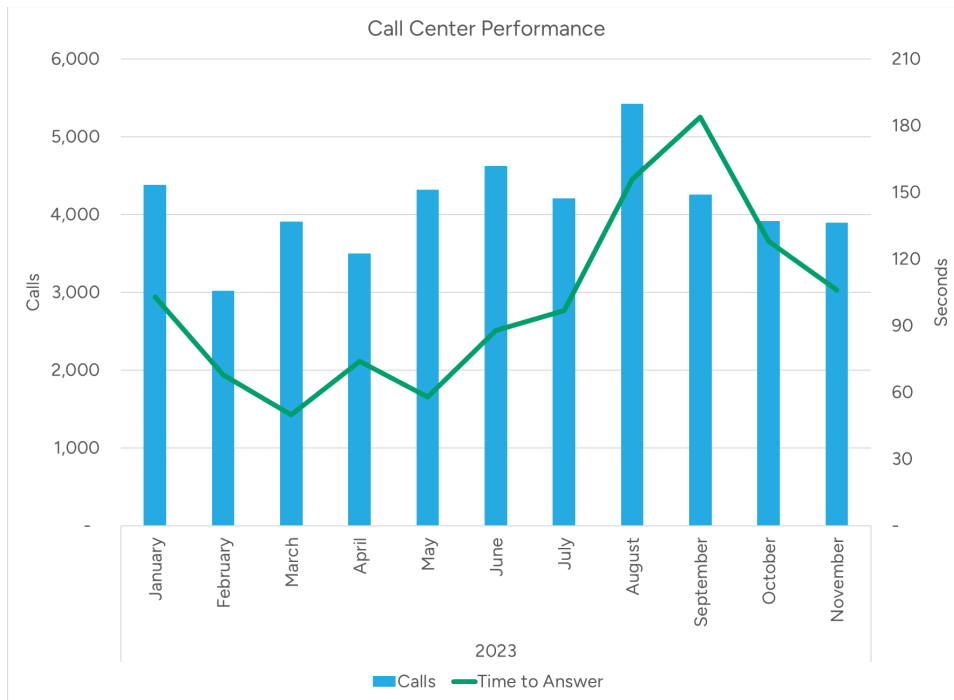
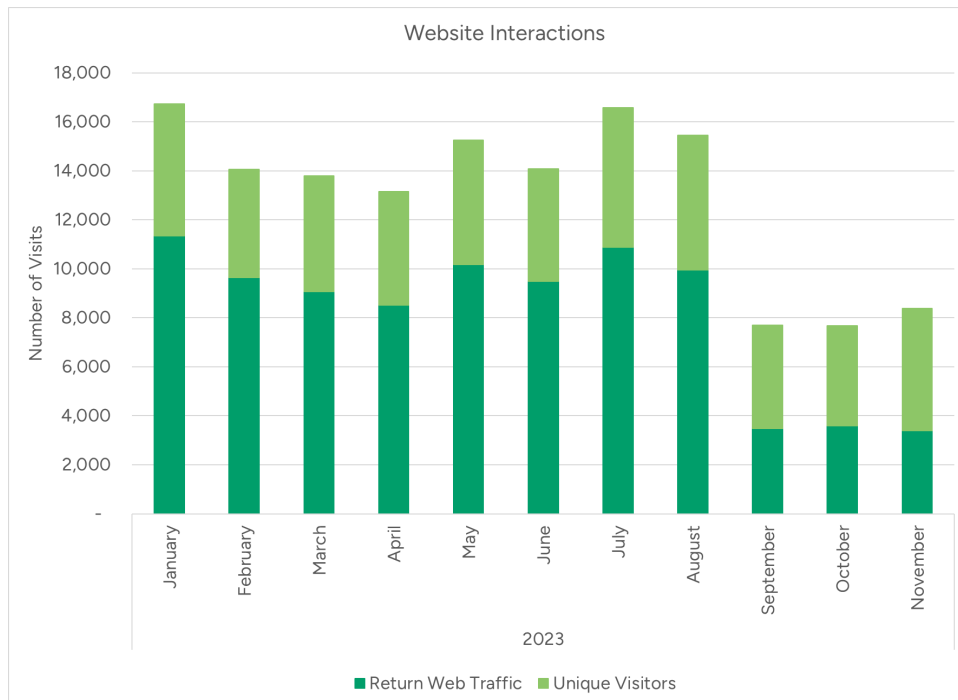




Figure 20 represents the number of new and repeat interactions with WVC&R's website that provides information about collection services in the Authority. Website interactions greatly declined in September through November 2023. This data is obtained from Google's analytics service. In recent months, Google modified the way they report this data. WVC&R is reviewing the data to determine if modifications need to be made in the way WVC&R reports data to the Authority. Figure 20 will be updated to account for any applicable modifications from September through November 2023 and during future reporting.

Figure 20. Website Interactions



Documents Attached

None

Fiscal Impact

None

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PRIOR MEETING MINUTES

Date of Meeting: November 2, 2023

General Information

Meeting held via teleconference, in accordance with California Governor Executive Order N-29-20, and in-person at the City of Monte Sereno's City Hall located at 18041 Saratoga-Los Gatos Road, Monte Sereno, CA 95030.

Call to Order

At 5:24 p.m., Chair Mekechuk called the meeting to order.

Pledge of Allegiance

Roll Call

Chair Bryan Mekechuk, representing Monte Sereno, Vice Chair Chuck Page, representing Saratoga, Member Mary Badame, representing Los Gatos, and Member Dan Furtado, representing Campbell, were present. Also present were Executive Director Rob Hilton, Deputy Director Hailey Gordon, and Authority Counsel Kirsten Powell.

Oral Communications from the Public

None

Written Communications

None

Old Business

None

Presentations and Informational Items

1. The Board received a presentation on SB 1383 enforcement programs as they relate to the West Valley Solid Waste Management Authority (Authority); the Cities of Campbell, Monte Sereno, Saratoga; and, the Town of Los Gatos (Member Agencies).
2. The Board received a presentation and provided input to staff related to SB 1383 grant funding options.



New Business

3. Upon a motion by Vice Chair Page and a second by Member Badame, the Board voted unanimously to approve Resolution 2023-10 of the Board of Directors of the West Valley Solid Waste Management Authority Authorizing Execution of Agreements with Approved Construction and Demolition (C&D) Collection Contractors and Terms and Conditions for Certified C&D Facilities by the West Valley Solid Waste Management Authority's Executive Director.
4. Upon a motion by Member Badame and a second by Vice Chair Page, the Board voted unanimously to impose LDs on WVC&R for missed pick-ups of \$17,160.65 and for double missed pick-ups of \$10,700.17, totaling \$27,860.82.

Public Hearings

None

Consent Calendar

5. Upon a motion by Chair Mekechuk and a second by Vice Chair Page, the Board voted unanimously to approve consent items 5 through 9.

Executive Director Report

The Authority Executive Director presented the Authority's new program brand guide and logo for "West Valley Recycles" and updated the Board on the completion of the franchise fee studies.

Future Agenda Items

None

Board Member Reports

None

Convene to Closed Session

Chair Mekechuk convened to closed session at 6:40 p.m. for the purpose of conducting staff evaluations.

Reconvene to Open Session

Chair Mekechuk reconvened to open session at 7:32 p.m.

Report on Action Taken During Closed Session

None



Adjournment

Chair Mekechuk adjourned the meeting at 7:32 p.m. until the next regular meeting, which will be held on February 1, 2024.

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Agenda Item No. 4

Meeting Date: February 1, 2024

Date: February 1, 2024

To: West Valley Solid Waste Management Authority Board

From: Executive Director

Subject: Year-To-Date Financial Report

AGENDA ITEM REPORT

Recommended Action

Receive a report on the West Valley Solid Waste Management Authority's (Authority) fiscal year (FY) 23-24 financial status.

Discussion

The report titled "Statement of Revenues, Expenditures, and Changes in Fund Balance – Budget and Actual" shows the approved budget, the year-to-date actual amounts, and the preliminary fund balance through December 31, 2023 for FY 23-24. With 50% of the fiscal year passed, the report shows that the Authority received \$707,373 or 19% of revenues and expended \$594,286 or 38% of expenses for the approved FY 23-24 budget.

There are several large, budgeted expenditures that have been billed as of December 2023. SB) 1383 Grant Administration expenses were greater than anticipated due the Authority's Executive Director applying for additional grant funding available through CalRecycle. Additionally, the Authority's Accounting and Bookkeeping cost were greater than budgeted because expenses for prior year's booking services were not billed in the prior budgeted fiscal year. The FY 23-24 expenses are expenditures for FY 22-23 and FY 23-24 bookkeeping services. The Authority's liability insurance through the Special District Risk Management Authority (SDRMA) is greater than budgeted due to market conditions over the past five years, specifically market disruptions caused by natural disasters across the world, which caused the SDRMA to increase rates. The Authority identified a County billing error in which the County overcharged the Authority related to the Authority's participation in the County-wide SB 1383 Edible Food Recovery Program. As a result of the billing error, the County will remit a credit to the Authority in the amount of \$8,504.

The Authority's budget included WVC&R's Solid Waste Distribution payment which was additional potential revenues anticipated by the Board in the amount of \$2,172,636 as additional potential revenue. This revenue, which resulted from decisions made by Cities of Campbell, Monte Sereno, Saratoga; and, the Town of Los Gatos (Member Agencies) in the franchise fee



valuation study, will be provided by WVC&R to the Member Agencies between March and June 2024 and will not be materialized as a revenue to the Authority's FY 23-24 budget.

In February 2011, the Board adopted a policy that requires maintaining an operating reserve of \$100,000 and a rate stabilization reserve of \$100,000. The preliminary fund balance of \$532,138 is \$113,087 more than the July 1, 2023 starting balance of \$419,051, and well above the required \$200,000 reserve.

Note that these numbers are preliminary and subject to audit.

Documents Attached

Statement of Revenues, Expenditures, and Changes in Fund Balance – Budget and Actual

Fiscal Impact

None



WEST VALLEY

Solid Waste Management Authority

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ATTACHMENT TO AGENDA ITEM NO. 4

Fiscal Year 2023-24 Year To Date Budget

West Valley Solid Waste Management Authority Statement of Revenues, Expenditures, and Changes in Fund Balance - Budget and Actual December 31, 2023					
Acct #	Description	Authority Budget FY 2023-24	Year to Date Actual	Balance	YTD %
<u>Revenues</u>					
4410	Interest	\$ -	\$ 6,308	\$ (6,308)	N/A
4431	Unrealized Gains/Losses	-	8,656	(8,656)	N/A
4523	SB 1383 Local Assistance Grant	-	-	-	N/A
4968	Expense Abatement	-	-	-	N/A
4970	City of Campbell	345,018	172,509	172,509	50%
4970	Town of Los Gatos	266,313	133,157	133,156	50%
4970	City of Monte Sereno	28,096	14,048	14,048	50%
4970	City of Saratoga	247,022	123,511	123,511	50%
4975	Franchise Agreement WVC&R	300,000	225,000	75,000	75%
4975	Other Revenue (Reimbursement of Education & Outreach)	335,000	21,184	313,816	6%
4965	Other Revenue (Contribution to Reserve)	2,172,636	-	2,172,636	0%
4965	Other Revenue (Non-Exclusive C&D Program)	60,201	3,000	57,201	5%
	Total Revenues	<u>\$ 3,754,286</u>	<u>\$ 707,373</u>	<u>\$ 3,046,913</u>	<u>19%</u>
<u>Expenditures:</u>					
Services and Supplies:					
7424	Office Expense	\$ -	\$ -	\$ -	N/A
7424	SB 1383 Member Agency Organics Procurement	127,397	-	127,397	0%
7427	Special Departmental Exp. (Legal Services)	36,622	8,465	28,157	23%
7427	Special Departmental Exp. (Legal Services - Collection Agreement)	8,583	-	8,583	0%
7427	Special Departmental Exp. (Legal Services - Franchise Fee Study)	11,444	-	11,444	0%
7428	Special Departmental Exp. (Legal Services - Non-Exclusive C&D Program)	5,722	-	5,722	0%
7430	Prof. & Special Services (Executive Director)	631,705	285,315	346,390	45%
7430	Prof. & Special Services (Other)	5,000	-	5,000	0%
7430	Grant Administration	2,500	7,076	(4,576)	283%
7430	Education and Outreach	335,000	23,363	311,637	7%
7432	Other Contractual Services (Countywide Support)	-	-	-	N/A
7432	Other Contractual Services (Website Administration)	1,274	-	1,274	0%
7432	Other Contractual Services (Audit Services)	3,500	-	3,500	0%
7433	Insurance (Liability)	2,957	6,010	(3,053)	203%
7435	Travel/Conf. & Meetings	2,000	3,445	(1,445)	172%
7438	Other Charges (Accounting & Bookkeeping)	10,139	19,983	(9,844)	197%
7438	Record Keeping and Reporting - Recyclist	50,845	-	50,845	0%
7443	SB 1383 Edible Food Recovery Countywide Program	30,029	38,533	(8,504)	128%
7675	Authority Solid Waste Distribution	300,000	202,096	97,904	67%
	Total Expenditures	<u>\$ 1,564,717</u>	<u>\$ 594,286</u>	<u>\$ 970,431</u>	<u>38%</u>
	Excess (deficiency) of revenues over (under) expenditures	\$ 2,189,569	\$ 113,087	\$ 2,076,482	
	Beginning Fund Balance 7/1/23 (Preliminary)	183,068	419,051		
	Ending Fund Balance	<u>\$ 2,372,637</u>	<u>\$ 532,138</u>		

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Agenda Item No. 6

Meeting Date: February 1, 2024

To: West Valley Solid Waste Management Authority Board

From: Executive Director

Subject: WVC&R Liquidated Damages and Performance Deficiencies

AGENDA ITEM REPORT

Recommended Action

Consider the report on West Valley Collection and Recycling's (WVC&R) liquidated damages (LDs) and performance deficiencies and assess appropriate LDs.

Discussion

Background

The West Valley Solid Waste Management Authority (Authority) has an exclusive collection agreement with WVC&R for the collection and transport of recyclable and organic materials, solid waste, and construction and demolition debris (C&D), as well as processing of recyclable and organic materials (Agreement). The Agreement is set to expire in February of 2024 and the Authority has entered a new agreement with WVC&R for collection service to begin in March of 2024. Under each of these agreements, WVC&R is held to performance standards through mechanisms such as the assessment of LDs, corrective action processes, and ultimately processes for breach and default. The Board is aware of and has assessed LDs for prior performance issues related to missed collection issues at the November 2023 meeting. In addition, the Authority has become aware of additional performance issues that have impacted services to customers and created additional costs for the Authority. Figure 1 below details WVC&R's history of liquidated damages under the Agreement.



Figure 1. History of WVC&R LD Assessments

Time Period	Calculated LDs	Amount Assessed by Board	Amount Paid by WVC&R	Comments
Fiscal Year (FY) 16-17	\$22,480	\$22,480 Waived at November 2018 Board Meeting	\$0	Deferred collection pending performance improvement in FY 17-18
FY 17-18	\$17,313	\$10,975 Approved at November 2019 Board Meeting	\$15,975 Included \$5,000 for Public Outreach	Deferred collection pending performance improvement in FY 18-19; Board waived \$1,338
FY 18-19	\$8,966	\$8,966 Approved at February 2021 Board Meeting	\$8,966	Deferred collection pending performance improvement in FY 19-20
FY 19-20	\$12,410	\$12,410 Approved at February 2021 Board Meeting	\$12,410	Deferred collection pending performance improvement in July – December 2020
FY 20-21	\$21,139	\$21,139 Approved at November 2021 Board Meeting	\$21,139	LDs imposed for missed pick-ups and double missed pickups
FY 21-22	\$84,057	\$81,548 Approved at September 2022 Board Meeting	\$81,548	LDs imposed for double missed pick-ups and for materials being delivered to incorrect facilities
FY 22-23	\$27,861	\$27,861 Approved at November 2023 Board Meeting	To Be Paid by WVC&R	LDs imposed for missed pick-ups and double missed pickups

Over the past several months, residents, business owners, the Authority, the Board, and staff at the Cities of Campbell, Monte Sereno, Saratoga; and, the Town of Los Gatos (Member Agencies) have identified performance shortfalls affecting numerous aspects of the contract's requirements. In response to this concern, Authority staff have increased their level of monitoring of the transition as WVC&R prepares to provide new services at higher costs under



the new collection agreement. The Authority meets with WVC&R during scheduled monthly (including all Authority, Member Agency, and WVC&R staff) and bi-weekly meetings (including a focused implementation group of Authority and WVC&R staff) to discuss the current status of implementation, identify issues and work towards resolution of such issues, and identify areas in which the Authority can provide support to WVC&R. The Authority created a contract compliance checklist summarizing the various requirements under the new collection agreement. This checklist was provided to WVC&R understood all of the key requirements that Authority staff would be tracking in an effort to ensure all requirements were met.

Issuance of Notice of Default and Meet and Confer with WVC&R

On January 17, 2024, the Authority's Executive Director and Deputy Director met with WVC&R to discuss continued and recent performance deficiencies and events of default under both the current and new collection agreements. At the meeting, the Authority presented two letters to WVC&R detailing the deficiencies in performance, which have been attached to this report and summarized below. WVC&R and the Authority are scheduled to meet and confer to discuss the outlined failures on January 30, 2024, after the posting of this agenda report. The Authority's Executive Director will provide updates from this conversation and any other conversations or developments related to WVC&R performance during the Board Meeting.

Current Agreement Performance Failures

There are two performance failures related to the Agreement for which Authority Staff are recommending assessment of LDs, specifically:

1. WVC&R has failed to complete the required technical assistance visits to multi-family and commercial customers, per section 13.6.B.6.b of the Agreement, for which the Authority calculated LDs in the amount of \$109,626.27. These technical assistance visits were critical to ensure training for and support of the customers who experienced "container drops" at the end of 2022 to ensure compliance with SB 1383. These visits are intended to provided the required training, tools, and support to businesses who are obliged to participate under SB 1383, but who have challenging material streams for the program. The Executive Director requests that the Board provide discretion to the Executive Director to negotiate a combination of a cash payment and in-kind services of equivalent value that would replace performance.
2. WVC&R misdelivered construction and demolition (C&D) materials to a non-approved facility, without requesting prior approval from the Authority, which affected the construction project's ability to comply with CalGreen diversion requirements. For this, the Authority identified five instances results in LDs in the amount of \$5,612.57. This is a repeated instance of a similar failure that the Board assessed LDs for in 2022 when organic materials were misdelivered to the landfill.



New Agreement Implementation Performance Failures

Under the new agreement, commencing March 1, 2024, the Authority identified several instances of performance failures related to pre-commencement obligations. The instances that trigger assessment of LDs include:

1. WVC&R's failure to submit a Transition Outreach Plan within 90 days of the new agreement's effective date. This Transition Outreach Plan is a critical document that identifies all of the pre-contract communications with the public related to the new services and rates. This plan also involves decisions related to the implementation of operational programs like the new on-call bulky program and the new MFD service level minimums and rate structure. Failure to effectively plan for and communicate these changes will result in confusion, frustration, and underutilization of the new programs and services that have been bargained for under the new contract.
2. WVC&R's failure to hire and maintain the number of required outreach coordinators. WVC&R offered an early hiring of this team as an inducement into the contract in November 2023, but has failed to hire and maintain the required positions. The contract specifically requires that this position NOT be an entry level or internship position and requires that the Executive Director approve the hires. While three acceptable candidates have been presented, others have been offered that do not meet the basic requirement of having prior experience in the role. This position is critical to ensuring a successful transition of services for multi-family and commercial customers. The lack of these positions has created a backlog of outreach that needs to happen before March. One position has been hired and will start soon, leaving one position remaining for which the LDs will continue to accrue at a rate of \$7,000 per month.

These specific deficiencies warrant assessment of LDs in the amount of \$80,000 (\$66,000 through January 16, 2024 for Item#1 and \$14,000 through December 2023 for #2. Under the new agreement, the Authority's Executive Director is authorized to assess LDs against WVC&R and has done so for both of these issues.

The Authority also identified events of default that would be subject to other remedies to be agreed upon by the Authority and WVC&R. These instances include failure to order and deliver 1,500 commercial SB 1383 compliant containers and a concern of pending default related to a failure to request Authority approval to change to the approved recyclable materials facility and failure to provide subcontract documents and insurance for the approved commercial organic materials facility.

Summary

The following Figure 2 summarizes WVC&R most recent performance deficiencies under both the Agreement and the new agreement and any associated LDs.



Figure 2. Recent WVC&R Performance Deficiencies

Time Period	Calculated LDs	Amount Assessed	Amount Paid by WVC&R	Comments
Calendar Year (CY) 2023	\$109,626.27	To Be Determined by Board	To Be Determined by Board	For failure to complete annual technical assistance visits to multi-family and commercial customers
FY 23-24	\$5,612.57	To Be Determined by Board	To Be Determined by Board	For failure to deliver C&D material to the correct facility
FY 22-23 and FY 23-24	\$66,000.00	\$66,000 as of January 16, 2024 Assessed by Executive Director	To Be Paid by WVC&R	Imposed for failure to submit a Transition Outreach Plan; Total assessment amount still accruing
FY 23-24	\$14,000.00	\$14,000.00 as of December 2023 Assessed by Executive Director	To Be Paid by WVC&R	Imposed for failure to maintain outreach coordinator staff
Total	\$195,238.84			

Recommended Action

The Authority’s Executive Director recommends the Board assess the full amount of LDs totaling \$115,238.84 against WVC&R, subject to the Executive Director’s discretion to negotiate some portion of the LDs for the technical assistance as in-kind services in order to replace the deficient performance.

Documents Attached

Notice of LDs to WVC&R

Notice of Defaults to WVC&R

Fiscal Impact

The Authority is to receive any LDs assessed by the Board under the Agreement and any LDs assess by the Executive Director under the new agreement. Funds may be used at the Board’s discretion.

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January 25, 2024

Paul Nelson and Weslie McConkey
Waste Connections of California, Inc., d/b/a West Valley Collection & Recycling
1333 Oakland Rd.
San Jose, CA 95112

Subject: Intent to Assess Liquidated Damages

On April 30, 2021, the West Valley Solid Waste Management Authority (Authority) executed an Amendment #1 (Amendment) to the current franchise agreement (Agreement) with Waste Connections of California, Inc. doing business as West Valley Collection & Recycling (WVC&R). This Amendment implemented new and revised programs to reach compliance with Senate Bill (SB) 1383. The Authority finds that WVC&R has failed to meet certain obligations described in detail below and such failures are subject to liquidated damages (LDs) pursuant to Section 13.6 of the Amendment. The purpose of this letter is to outline the failures subject to LDs, as they will be presented at the February 1, 2024 Authority Board Meeting, for the Board's consideration for assessment, totaling \$115,238.84.

This includes LDs for the following two items:

1. For WVC&R's failure to complete technical assistance visits to all multi-family and commercial customers in 2023, assessment of LDs in the amount of \$109,626.27 are warranted.
2. For WVC&R's failure to deliver construction and demolition debris (C&D) materials to the correct facility, as requested by the customer, assessment of LDs in the amount of amount of \$5,612.57 are warranted.

An explanation of each failure and the contract requirements are provided below.

EVENTS OF DEFAULT SUBJECT TO LIQUIDATED DAMAGES

Technical Assistance Visits

The failure to complete required technical assistance visits to multi-family and commercial customers may result in the assessment of LDs, as described in Section 13.6.B.6.b below.



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January 25, 2024
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“For each failure to provided targeted technical assistance to all Commercial and Multi-Family Customers annually: \$179.85 per Customer”

On December 8, 2023, WVC&R reported they completed 675 technical assistance site visits in 2023, of 1,218 multi-family and commercial planned technical assistance visits. Subsequently, LDs are calculated based on 543 technical assistance visits that were not completed in 2023 at the Fiscal Year (FY) 22-23 rate of \$201.89 per customer in the amount of \$109,626.27.

Delivery of Materials to Incorrect Facilities

Amendment Section 6.4.1 states:

“Company shall Transport all Construction and Demolition Debris to the Designated Construction and Demolition Debris Processing Site or an Approved Construction and Demolition Debris Processing Site, as agreed upon by the Customer and the Company in order to achieve higher levels of Diversion than the Designated Construction and Demolition Debris Processing Site and at the Rates ratified by the Authority. Company shall work with the Customer to determine the best approach to reach CalGreen compliance.”

Amendment Section 6.7.1.C states:

“If Company elects to use a Construction and Demolition Debris Processing Site that is different than the Approved Construction and Demolition Debris Processing Site, it shall request written approval from the Authority Executive Director sixty (60) days prior to use of the site and obtain the Authority's written approval, which approval shall not be unreasonable withheld conditioned or delayed, no later than ten (10) days prior to use of the site. Company shall not be compensated for paying any increased Transportation and Processing costs associated with the use of Processing Site(s) different from the Approved Construction and Demolition Debris Processing Site.”

The above language in Section 6.4.1 and 6.7.1.C of the Amendment provides customers with alternative processing facility options for C&D materials to ensure compliance with CALGreen diversion requirements or other diversion goals desired by the customer.

Approved C&D debris processing sites used to process C&D debris were selected by the WVC&R and approved by the Authority. These sites include Zanker Materials Processing Facility, Newby Island Resource Recovery Park, and Premier Recycling Materials



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Recovery Facility. In a recent Member Agency review of permitted projects' CALGreen compliance, it has come to the Authority's attention that WVC&R has failed to deliver C&D debris to an approved C&D debris processing site, per customer request. Five instances were identified in the City of Campbell where a work order clearly states discarded materials were intended to be transported to Zanker Materials Processing Facility, yet the weight ticket for the C&D debris load confirms delivery to Guadalupe Landfill. In all instances this failure resulted in the permitted project's non-compliance with CALGreen diversion requirements.

Failure to promptly resolve this failure may result in the assessment of LDs, as described in Section 13.6.B.6.c below.

"For each failure to deliver Discarded Materials to the appropriate Approved Organic Materials Processing Site, Approved Recyclable Materials Processing Site, or Approved Construction and Demolition Debris Processing Site: \$0 for first five (5) failure; \$1,000 per subsequent failure"

At the September 1, 2022 Board Meeting, WVC&R was assessed LDs in the amount of \$75,769.57 for failure to deliver materials to the correct facility. WVC&R failed to deliver materials to the correct facility on 64 occasions, and LDs were calculated on 59 such failures to account for the first five allowed failures. Subsequently, LDs for the failure to deliver C&D materials to the correct facility in 2023 are calculated based on five (5) instances at the FY 22-23 rate of \$1,122.51 per customer in the amount of \$5,612.57.

Acknowledging the critical role of WVC&R in facilitating permit holders meeting compliance obligations of CALGreen, the City of Campbell reached out to WVC&R directly to collaboratively resolve challenges resulting in this failure, with no improvement. It is imperative that WVC&R has a process and plan in place to effectively direct C&D debris to the appropriate and approved C&D debris processing site to support the permit holder's CALGreen diversion requirements. The Authority expects WVC&R to promptly cure the above noted performance deficiency.

* * * * *



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The Authority looks forward to working collaboratively with WVC&R to successfully resolve this issue. If you have any questions, please contact me directly at (925) 977-6959 or rchilton@hfh-consultants.com.

WEST VALLEY SOLID WASTE MANAGEMENT AUTHORITY

A handwritten signature in black ink, appearing to read 'Rob Hilton', is written over a horizontal line.

Rob Hilton
Executive Director



January 16, 2024

Adam Gooderham
Waste Connections of California, Inc., d/b/a West Valley Collection & Recycling
1333 Oakland Rd.
San Jose, CA 95112

Subject: Notice of Breach of Contract, Intent to Assess Liquidated Damages, and Intent to Require Reimbursement

On January 27, 2023, the West Valley Solid Waste Management Authority (Authority) executed a new franchise agreement (Agreement) with Waste Connections of California, Inc. doing business as West Valley Collection & Recycling (WVC&R), with the new term commencing March 1, 2024. This Agreement implements new and revised programs requiring special attention to pre-commencement transition plans and required activities. As an inducement to that Agreement, WVC&R presented the Authority with a commitment letter dated November 7, 2022, offering an early implementation of certain tasks (Commitment Letter). Some of these pre-commencement obligations and commitments include, but were not limited to, providing a transition outreach plan, hiring additional outreach coordinators, and developing a container deployment plan along with successfully replacing 1,500 bins. The Authority finds that WVC&R has failed to meet certain pre-commencement obligations described in detail below and such failures constitute Events of Default pursuant to Sections 10.1.B, D, E, G, and M of the Agreement. The remedies for Events of Default include the assessment of liquidated damages (LDs) and termination. The purpose of this letter is to outline the Events of Default and provide notice as required by the Agreement.

EVENTS OF BREACH SUBJECT TO LIQUIDATED DAMAGES

The Authority reviewed such failures to determine associated LDs and reimbursements under the Agreement. In total, the Authority intends to assess LDs and require reimbursement totaling \$80,000 through November 2023 pursuant to Section 10.6.B. The Authority notes that these amounts continue to accrue until such time as a complete transition outreach plan has been developed and approved and the required staffing is in place. This includes LDs for the following two items:

1. For WVC&R's failure to submit a transition outreach plan by April 27, 2023 and continuing through at least January 16, 2024, assessment of LDs in the amount of

Adam Gooderham
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\$66,000 are warranted. The failure to produce such transition outreach plan has not only deprived the ratepayers and Authority of the value bargained for, but the failure has also resulted in other deficiencies, noted below, related to the outreach team and container painting, labeling, and deployment. These problems could have been anticipated and proactively resolved if such a plan had been prepared and discussed with Authority staff.

2. For WVC&R's failure to hire and maintain the number of required outreach coordinators as promised in the Commitment Letter and required by Section 5.8.F.2, assessment of LDs in the amount of \$14,000 are warranted.

An explanation of each failure and the contract requirements are provided below. In addition to the failures resulting in LDs, the Authority notes several other deficiencies of concern to the Authority that result in damages to the Authority for which no LDs have been assessed. The Authority expects WVC&R to promptly cure each noted performance deficiency. Failure to promptly resolve the various Events of Default may result in additional LDs, imposition of corrective action plan(s) consistent with Exhibit F of the Agreement, a finding that WVC&R is in default of the Agreement, or any other remedy available to the Authority under the Agreement or in law. This letter shall serve as the notice required pursuant to Section 10.6.B.

Transition Outreach Plan

Franchise Agreement, Exhibit C, Section 1.B states:

"Within thirty (30) days of the Effective Date, Contractor shall host a meeting with the Authority Contract Manager to discuss and present options for a transition outreach plan. Such transition outreach plan options shall indicate strategies for providing targeted Customer education and outreach and highlight any changes from the services provided under the previous franchise agreement. Such transition outreach plan shall also ensure that Contractor makes contact with each and every Multi-Family Customer and Commercial Customer in advance of the Commencement Date to determine appropriate Container sizes and service frequency. Within ninety (90) days of the Effective Date, Contractor shall provide a finalized transition outreach plan for Authority Contract Manager review and approval. Contractor shall distribute instructional information, public education, and promotion materials in advance of, and following, commencement of services in accordance with the transition outreach plan approved by the Authority Contract Manager."

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A transition outreach plan was due to the Authority within 90 days of the effective date of the Agreement, dated January 27, 2023. Receipt of this plan was required no later than April 27, 2023. WVC&R has not provided the Authority with a transition outreach plan for approval. The Authority's Executive Director inquired about the transition outreach plan at a meeting as recently as November 2, 2023 and WVC&R indicated that they were working instead on the Year 1 Public Education and Outreach Plan. This failure to produce the plan results in LDs to be assessed in the amount of \$250.00 per day. With no acceptable failure level, calculation started on April 28, 2023 and is calculated here through January 16, 2024, in the amount of \$66,000. LDs will continue to accrue and may be assessed periodically until a plan is submitted and approved by the Authority. Please note that pursuant to Exhibit C Section 1.B of the Agreement, a plan may be considered incomplete until the plan is approved by the Authority's Executive Director. Since the transition plan is so far delayed and the Authority has been deprived of the value of that time, such plan shall not rely on staffing resources that should otherwise be committed to performing activities under the Year 1 Public Education and Outreach Plan.

Hire Additional Outreach Coordinators

WVCR Commitment Letter states:

"WVC&R currently has one outreach coordinator servicing West Valley in addition to the Contract Manager Weslie McConkey. If awarded the contract extension we will hire a second outreach coordinator during the first quarter of 2023 and will hire the third coordinator by July 1, 2023."

Under Section 5.8.F.2 of the Agreement, WVC&R is required to have four full time outreach staff including a contract manager and three outreach coordinators. At the date of receipt of the Commitment Letter, WVC&R staff included one Contract Manager and one outreach coordinator. WVC&R committed to hiring additional outreach coordinators prior to commencement of the Agreement, as described above. While an attempt to hire has been made, WVC&R has been unsuccessful in fulfilling this commitment and the level of staffing has not increased. As described in Section 5.8.3 of the Agreement, if WVC&R fails to provide the required number of key personnel, WVC&R shall remit to the Authority \$7,000 per un-provided personnel for every month (in excess of four months) such employee is not provided.

As of June 2023, the required number of outreach coordinators were not fulfilled, resulting in a reimbursement to be assessed starting November 2023. At the point of



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this letter, the total amount owed in LDs for failure to hire additional outreach quaters is \$14,000 for the months of November 2023 and December 2023. Personnel reimbursement costs will continue to accrue and may be assessed as stipulated in the Agreement until the employment of outreach coordinators is fulfilled.

Section 5.8.F.2 of the Agreement further specifies that these positions shall not be intern or entry level positions. These positions are critical to program success and a high level of skill and experience will be required, especially given the confusion caused in the commercial and multi-family sector by the improper ordering and delivery of unlabeled, incorrectly colored containers, described below.

EVENT OF BREACH SUBJECT TO OTHER REMEDIES

Order and Delivery of 1,500 Commercial Containers

WVCR Commitment Letter states:

“WVC&R will replace approximately half of the existing commercial metal bins by September 30th, 2023.”

Franchise Agreement, Section 5.7.A

“Contractor shall adhere to the Authority-approved provisions for Container assembly, delivery, and swap-out as specific in a Container deployment plan to be submitted and approved by the Authority at least sixty (60) days prior to the date of the first Container purchase scheduled, as indicated in Exhibit G3 Implementation Plan.”

Under the Agreement and through the Commitment Letter, WVC&R committed to developing a container deployment plan and successfully replacing half of the existing commercial metal bins prior to September 30, 2023. The Authority has yet to receive a complete container deployment plan. In absence of the plan or approval, WVC&R proceeded with ordering and delivery and notable errors have occurred while completing the replacement of existing commercial metal bins. This causes significant concern related to WVC&R’s ability to understand the contract requirements, cooperate with the Authority on required approvals, and generally abide by the terms of the Agreement, WVC&R’s inducements into the Agreement, and state law.

Without Authority approval, which is required by several contract sections including Section 5.7.A above, WVC&R purchased and began to deploy bins throughout the



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Authority service area that did not match requirements under the Agreement. In addition, WVC&R is in violation of state law prohibiting haulers from providing incorrectly colored or labeled containers to their customers after January 1, 2022.

When the Authority was notified of these errors by WVC&R, Authority staff inspected several containers throughout the Authority service area and identified numerous non-compliant containers, containers without any indication of the correct material type, which has caused confusion and increased contamination in the program, and containers belonging to the City of San Jose that were incorrectly delivered to our customers, misappropriating public resources provided by the City of San Jose and causing confusion for Authority customers.

In an attempt to remedy the situation and without having first provided the required plan, WVC&R hired a subcontractor to paint bins, in the field, in an attempt to achieve color compliance. After the fact, the Authority was provided a copy of the scope of work for the vendor, which failed to include critical steps like degreasing, cleaning, and scuffing the existing painted surface to ensure high quality adhesion of the new paint. The Authority made numerous requests to communicate the necessity of getting an approved container deployment plan prior to taking any actions in order to prevent re-work. As of the date of this letter, the Authority has not received an updated container deployment plan for approval. The Authority hereby notifies WVC&R of this apparent event of default related to this obligation. WVC&R is required by Section 10.1.B to cure such a default within 30 days in order to avoid potential termination of the Agreement or the payment of any damages sustained by the Authority, Member Agencies, and/or WVC&R's customers.

POTENTIAL EVENT OF BREACH

Approved Recyclable Materials Facility Change Request

On November 6, 2023, the Authority's Executive Director was verbally notified by a representative from WVC&R of WVC&R's intent to redirect recyclable materials under this Agreement from the pre-approved material recovery facility owned by Waste Connections and located in Ukiah to one owned by GreenWaste Recovery in San Jose. While the Authority is open to consideration of such a change, it is absolutely critical that prior to any such change, WVC&R complies with all of the relevant contractual requirements associated with such approval. This includes, but is not limited to, the Authority ensuring that the subcontract with the new facility includes all of the relevant



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provisions of the Agreement that must be included for all subcontractors. Should WVC&R change facilities without prior approval, the Authority reserves its rights to all remedies under the Agreement and in law related.

MEET AND CONFER REQUEST

With the nature and breadth of the above deficiencies and in the event the Authority Contract Manager determines WVC&R has failed to meet performance standards established in the Agreement, the Authority Contract Manager may initiate further LDs and/or the corrective action process. In accordance with Section 10.6.B, the Authority requests a meet and confer with WVC&R within 10 business days of this letter to discuss the performance shortfalls discussed above in order to understand the factors causing such events and work towards implementing solutions. As provided in Section 10.6.B of the Agreement, “[i]f Contractor does not agree to meet within ten (10) Business Days of Authority Contractor Manager’s request for a meeting with Contractor, the Authority Contract Manager may, at their sole discretion, impose such Liquidated Damages without any further opportunity for the Contractor to cure.”

The Authority looks forward to working collaboratively with WVC&R to successfully transition into the new agreement and services therein. If you have any questions, please contact me directly at (925) 977-6959 or rchilton@hfh-consultants.com.

WEST VALLEY SOLID WASTE MANAGEMENT AUTHORITY

A handwritten signature in black ink, appearing to read 'Rob Hilton', is written over a horizontal line.

Rob Hilton
Executive Director



Agenda Item No. 7

Meeting Date: February 1, 2024

To: West Valley Solid Waste Management Authority Board

From: Executive Director

Subject: Fiscal Year 23-24 Authority Budget Amendment

AGENDA ITEM REPORT

Recommended Action

Approve Resolution 2024-01 adopting a revised fiscal year (FY) 23-24 budget.

Discussion

Background

Article 5 of the Joint Exercise of Powers Agreement (Agreement) outlines how the West Valley Solid Waste Management Authority's (Authority) activities are to be funded. Per Paragraph B, the Authority must adopt a budget for each FY beginning on July 1 and ending on June 30 of the following calendar year. Should additional funding be needed to cover unforeseen expenses that were not included in the original budget approved by the Board, the Board is required to approve a revised budget, and if funding is needed to cover costs for work performed by the Executive Director, an amendment to the Executive Director's scope of work is necessary. Pursuant to the Amendment to West Valley Solid Waste Management Authority Agreement for Executive Director Services entered into by the Authority and HF&H Consultants (HF&H) on May 6, 2021, the scope of work for the Executive Director is specifically defined in each yearly budget. Therefore, a budget amendment will authorize the expenditure of funds for the task and authorize Rob Hilton and HF&H to perform the work during this FY.

At the May 4, 2023 Board Meeting, the Board approved the FY 23-24 Authority budget. Since then, the Authority and the Cities of Campbell, Monte Sereno, Saratoga; and, the Town of Los Gatos (Member Agencies) have identified the need for additional funding due to unanticipated activities and/or additional level of effort that was not originally planned for during the budgeting process for FY 23-24. This request for additional budget is for services provided by the Executive Director to manage the Authority's solid waste program contracts and compliance with State regulations.



FY 23-24 Revised Proposed Expenses and Revenues

The attached budget includes the approved FY 23-24 budget and the revised FY 23-24 budget that has been amended to account for the expenses and revenues outlined below.

Executive Director Expenses

- **Customer Service:** This proposed budget adjustment of \$10,000 is for the Executive Director to increase customer service efforts to ensure all customer complaints and inquiries that are submitted to the Member Agencies and the Authority are resolved to the customer's satisfaction. This additional effort and oversight by the Authority is intended to reduce the level of involvement needed by Member Agency staff in following up to confirm that escalated complaints have been adequately addressed.
- **Collection and Disposal Contract Management:** This proposed budget adjustment of \$5,000 is for the Authority to monitor WVC&R's reimplementation of Saturday solid waste collection service and provide additional summaries of WVC&R's monthly, quarterly, and annual reports. During COVID-19, Saturday collection service was suspended due to the reduction of in-person interactions, resulting in reduced solid waste material generation and decreased subscription levels. As businesses began to reopen, many with extended service areas from parklets and other outdoor service locations, the Member Agencies identified the need for additional service collection days due to overfilled collection containers in the downtown and business areas on the weekends.
- **Education and Outreach:** This proposed budget adjustment of \$45,000 is for an unplanned and significant effort that was and will continue to be incurred to facilitate the critical public education and outreach needed for a smooth transition to the new Agreement. This increased effort is primarily resulting from WVC&R's failure to adequately plan for and perform the required activities which are the subject of assessment of liquidated damages in another item on this Board of Director's Agenda. Additional resources are required for developing the transition outreach plan and 2024 annual public education and outreach plan. Both of these are required of WVC&R under the new Agreement but have not been performed satisfactorily and Authority staff will have to invest considerable effort in order to develop and execute all of the education required for the new contract.
- **Contract Implementation:** This proposed budget adjustment of \$32,000 is for the unanticipated increased levels of effort needed by the Authority to monitor and ensure implementation of the provisions of the new collection contact with WVC&R. Due to the lack of a comprehensive and timely implementation plan from WVC&R, Authority staff has frequently identified areas where WVC&R has either failed to plan for the new programs and services or has begun implementing them incorrectly. In each case, Authority staff must spend significant time identifying the deficiency, coordinating with WVC&R, and monitoring the execution of those activities. Significant additional time and effort has been expended in the errant distribution of containers, the conversion of MFD services, operational issues



related to the new on-call bulky program and dealing with proposed changes in processing facilities. Under the new contract, the Authority has rights to review customer service scripts and participate in customer service training with WVC&R staff. Through our initial work on these tasks, we have identified numerous and significant areas of the new contract where WVC&R has not prepared customer service scripts or adequate training and Authority staff are having to take a more active role in that development.

- SB 1383 Grant Administration: This proposed budget adjustment of \$8,000 is to fund the work of the Executive Director and Authority staff to apply for the 2024 round of SB 1383 Local Assistance Grant funds, including researching and proposing uses to Member Agency staff and the Board. This grant funding will provide at least \$314,622 in funding for the Authority for FY 24-25.

Liquidated Damages Revenues

This revenue of \$27,861 is from liquidated damages assessed against WVC&R for FY 22-23, for missed pickups and double missed pickups. Missed pickups are the result of WVC&R's failure to collect materials within 1 business day of the customer's regularly scheduled collection day and double missed pickups are the result of WVC&R's failure to collect materials from a customer for more than one consecutive week.

Contribution to Reserve

This reduction of revenues in the amount of \$2,172,636 was considered as a potential outcome by the Board when the budget was adopted. This revenue will be provided to the Member Agencies by WVC&R during March 2024 through June 2024 as a result of the decisions made by each Member Agency in the franchise fee valuation study.

Documents Attached

HF&H FY 23-24 Revised Scope of Services

Resolution No. 2024-01

Amendment To West Valley Solid Waste Management Authority Agreement For Executive Director Services Dated May 6, 2021

Fiscal Impact

This results in an increase in budgeted FY 23-24 expenditures of \$100,000 and a reduction in budgeted FY 23-24 revenues of \$2,144,775. The projected ending fund balance is decreased from \$2,372,636 to \$127,861. There is no financial impact on the Member Agencies.

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WEST VALLEY SOLID WASTE MANAGEMENT AUTHORITY

FISCAL YEAR 2023-24 REVISED SCOPE OF SERVICES

New Task Designation

SCOPE OF SERVICES

The tasks that HF&H Consultants, LLC (HF&H) will perform include, but are not limited to, the following:

Task 1: Authority Administration

- 1a Manage the procurement of legal services, liability insurance, and other services and supplies required for the conduct of the West Valley Solid Waste Management Authority's (Authority) business.
- 1b Prepare and provide orientation materials (including copies of the collection and disposal agreements, Rules of Conduct, and Joint Powers Authority agreement) to new Board members, as needed.
- 1c Work with the City of Campbell auditors to complete the annual financial audit of the Authority's financial statements. This includes preparing the financial statements, reviewing the footnotes, preparing the management letter, and responding to inquiries from the auditors.
- 1d Manage the submission of Fair Political Practices Commission forms (Form 700) by the Executive Director, Legal Counsel, and Board Members.

Task 2: Authority Budget

- 2a Prepare the annual Authority budget for approval by the Board.
- 2b Monitor the Authority's annual budget including tracking invoices for services rendered to the Authority, submitting invoices to the Authority's fiscal agent (the City of Campbell), reviewing and approving purchase orders created by the City of Campbell, and reviewing and providing necessary revisions to budget progress summaries provided by the City of Campbell.

Task 3: Facilitate Board Meetings

- 3a Prepare for and conduct quarterly Board Meetings. This task includes preparing the public notices, agendas, agenda reports, resolutions, Board Member agenda packets, public meeting binders, and meeting minutes. In addition, prepare for and conduct "agency review" meetings with the City of Campbell's, the City of Monte Sereno's, the City of Saratoga's, and the Town of Los Gatos' (Member Agencies) staff prior to regularly scheduled Board Meetings and two special Board Meetings, as needed.
- 3b Prepare a financial report of the Authority's activities for each quarter, showing actual expenditures against the approved budget. These reports are presented at the next regularly scheduled Board Meeting following the close of each quarter.
- 3c Present status reports on each of the Authority projects or activities at regularly scheduled Board Meetings, as needed.

WEST VALLEY SOLID WASTE MANAGEMENT AUTHORITY

FISCAL YEAR 2023-24 REVISED SCOPE OF SERVICES

New Task Designation

- 3d Follow-up on action items from the Board Meeting, including maintaining a record of all Authority actions.

Task 4: Member Agency Support

- 4a Prepare for and attend monthly in-person meetings with Member Agencies' staff and report on issues and receive direction from staff between Board Meetings, including special Board Meetings. This task includes preparing the agenda and agenda materials.
- 4b Respond to inquiries from Member Agencies' staff on issues including, but not limited to, SB 1383 compliance and West Valley Collection and Recycling (WVC&R) service.

Task 5: Customer Service

- 5a Work with WVC&R and WM (collectively referred to as Companies) to respond to all phone and website complaints and inquiries from Member Agencies' residents and businesses regarding services provided under the agreements.
- 5b Document all phone and website inquiries in a summary tracking file by Member Agency, topic, and date received.
- 5c Monitor and review inquiry trends for potential public education and outreach topics and efforts.
- 5d Provide additional follow-up and review (in coordination with WVC&R) complaints and inquiries received by the Authority and Member Agencies until each complaint/inquiry reaches a resolution satisfactory to the customer.
- 5e Provide solutions and direction to WVC&R for unresolved and escalated complaints.
- 5f Prepare training materials and attend multiple customer service training sessions with WVC&R to provide employees with updated industry standards and customer-centric approaches to promote ongoing service improvement.

Task 6: Collection and Disposal Contract Management

- 6a Ensure that the Companies comply with requirements to furnish certificates of insurance and performance bonds in accordance with the agreements.
- 6b Review the Companies' operational performance and calculate the amount of liquidated damages, if any, under the agreements.
- 6c Manage the revision of these contracts for implementation of new programs, changes to recyclable materials, or other changes as directed by the Board.
- 6d Verify WVC&R rate adjustment calculations for collection service and WM rate adjustment calculations for disposal and processing.

WEST VALLEY SOLID WASTE MANAGEMENT AUTHORITY

FISCAL YEAR 2023-24 REVISED SCOPE OF SERVICES

New Task Designation

- 6e Review and summarize WVC&R and WM monthly, quarterly, and annual reporting to monitor solid waste programs.
- 6f Design and discuss additional reporting summaries for Member Agencies to receive progress updates on WVC&R's solid waste program and customer service performance.
- 6g Facilitate discussions and coordinate efforts with Member Agencies, customers, and WVC&R to reimplement Saturday commercial solid waste collection service .

Task 7: SB 1383 Implementation and Monitoring

- 7a Maintain an Implementation Record on behalf of each Member Agency and coordinate recordkeeping with Recyclist.
- 7b Respond to any questions from CalRecycle regarding SB 1383 compliance.
- 7c Facilitate conversations between Member Agencies and Agromin for compost and mulch usage.
- 7d Investigate generator waiver applications and verify expiring waivers, in coordination with WVC&R.
- 7e Develop and establish enforcement program to inspect non-subscribed generators starting 2024.
- 7f Conduct the annual compliance review of multi-family and commercial generators.
- 7g Investigate SB 1383 related complaints reported to the Authority or its Member Agencies.

Task 8: Other Regulatory Compliance Monitoring

- 8a Provide periodic reports on the status of federal and state legislation impacting the Member Agencies' refuse and recycling programs at regularly scheduled Board Meetings and report out on industry trends.
- 8b Represent the Authority at County Technical Advisory Committee (TAC) meetings, IC meetings, SB 1383 subcommittee meetings, operations subcommittee meetings, and public education and outreach subcommittee meetings, as well as other relevant regional and statewide meetings, as needed and as directed by the Member Agencies' staff and/or the Board and communicate relevant information to Member Agencies.
- 8c Prepare and submit miscellaneous reports requested by local agencies related to the Authority's solid waste and recycling collection and disposal programs. These include, for example, the County's recycling hotline and Household Hazardous Waste (HHW) program and collection rate surveys.
- 8d Prepare and submit the Member Agencies' Annual Reports to CalRecycle on behalf of each Member Agency. This includes accompanying the CalRecycle representative on site visits in the

WEST VALLEY SOLID WASTE MANAGEMENT AUTHORITY

FISCAL YEAR 2023-24 REVISED SCOPE OF SERVICES

New Task Designation

Authority jurisdictions. Additionally, HF&H will respond to CalRecycle questions related to the annual reports and site visits.

Task 9: Rate Setting

- 9a Conduct a rate survey for neighboring jurisdictions within Santa Clara County.
- 9b Design initial solid waste collection rates to be charged under the new collection agreement with WVC&R.
- 9c Meet with Member Agencies to review proposed solid waste collection rate structure with Member Agency staff.
- 9d Revise the solid waste collection rate structure based on the new franchise agreement and issues agreed-upon by WVC&R and Authority staff.

Task 10: Education and Outreach

- 10a Devise and prepare annual public education and outreach plan, in coordination with WVC&R, to ensure campaigns are strategic, well thought out, and consistent throughout the year.
- 10b Implement a tracking system to monitor the development progress of campaigns as promised in the public education and outreach plan, ensuring effective monitoring and management throughout the year.
- 10c Manage the entire spectrum of the updated outreach system including strategy development, design implementation, and thorough performance monitoring. This involves active engagement with both WVC&R and Member Agencies to ensure a collaborative and effective process.
- 10d Lead the development in content creation and distribution planning content for educational collateral and the website.
- 10e Review public education material provided by WVC&R prior to final publication and ensure WVC&R's website is updated with accurate information.
- 10f Conduct interviews with prospective candidates seeking the position of Diversion Coordinator at WVC&R.
- 10g Participate in the WVC&R training program for Diversion Coordinators, which includes ride-alongs, to certify a well-rounded understanding and proficiency in their roles at WVC&R.
- 10h Lead in the maintenance and updating of the Authority's website to ensure information is accurate and effective.
- 10i Collaborate with WVC&R to ensure the upkeep of a collective West Valley Recycles website, housing all up-to-date publications and information.

WEST VALLEY SOLID WASTE MANAGEMENT AUTHORITY

FISCAL YEAR 2023-24 REVISED SCOPE OF SERVICES

New Task Designation

- 10j Update fact sheets for vendor providing educational support on disposal and recycling programs in the County.

Task 11: Contract Implementation

- 11a Monitor WVC&R's hiring and training practices. This includes review of training manuals and scripts, phone system requirements, and staffing requirements and procedures for each department, as well as employee on-boarding and safety trainings, hiring and training schedule, and compliance with contract requirements.
- 11b Monitor WVC&R's equipment acquisition and roll-out. This includes equipment order tracking, expected delivery dates, deployment logistics and permit scheduling for facilities.
- 11c Monitor WVC&R's residential and commercial collection routing changes.
- 11d Audit WVC&R's billing system and customer service performance.
- 11e Assist with development of new datasets and provide assistance for new program implementation (e.g., multi-family bulky item collection, used cooking oil).
- 11f Update Member Agencies' ordinances to comply with new programs, as needed.
- 11g Monitor all WVC&R responsibilities under the collection contract commencing March 1, 2024.
- 11h Prepare a contract compliance checklist summarizing all of WVC&R's obligations under the new collection agreement.
- 11i Attend bi-weekly and ad hoc meetings with WVC&R to discuss collection contract implementation.
- 11j Review, revise, and draft implementation plans for various programs provided for under the new collection agreement.
- 11k Evaluate and determine liquidated damages owed by WVC&R, providing a detailed assessment and calculation for each month liquidated damages are assessed.

Task 12: Franchise Fee Justification Study

- 12a Develop methodology to perform a franchise fee justification study for each Member Agency.
- 12b Prepare and distribute a Request for Information (RFI) to each Member Agency and WVC&R to gather data necessary to build an analytical model.
- 12c Perform data analysis, using the collected data, to determine a cost nexus for the franchise fee valuation.
- 12d Prepare a report for Member Agency Staff and Authority Board Members detailing the final valuation of franchise fees.

WEST VALLEY SOLID WASTE MANAGEMENT AUTHORITY

FISCAL YEAR 2023-24 REVISED SCOPE OF SERVICES

New Task Designation

Task 13: SB 1383 Grant Administration

- 13a Monitor and manage CalRecycle SB 1383 Local Assistance Grant Program Funds.
- 13b Prepare and submit an Expenditure Itemization Summary.
- 13c Identify potential uses of additional SB 1383 Local Assistance Grant Program Funds.
- 13d Present and discuss potential uses of additional SB 1383 Local Assistance Grant Program Fund opportunities with Member Agencies.
- 13e Apply for additional SB 1383 Local Assistance Grant Program Funds for FY 24-26.

Task 14: Non-Exclusive Construction and Demolition (C&D) Program Development

- 14a Review non-exclusive C&D program case studies and options.
- 14b Engage in stakeholder meetings.
- 14c Confirm program approach with Member Agencies and Authority Board Members.
- 14d Draft nonexclusive agreement(s) and/or facility certification process, as determined by Authority Board Members.
- 14e Finalize and present permitted and/or certification processes for collection contractors and/or facilities to board for approval.

Task 15: Develop Street Sweeping Program

- 15a Prepare draft street sweeping agreement and review with Member Agency and WVC&R staff.
- 15b Address and incorporate changes made by staff into a final draft.



RESOLUTION NO. 2024-01

RESOLUTION OF THE BOARD OF DIRECTORS OF THE WEST VALLEY SOLID WASTE MANAGEMENT AUTHORITY APPROVING A REVISED BUDGET FOR FISCAL YEAR 2023-24

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE WEST VALLEY SOLID WASTE MANAGEMENT AUTHORITY (Authority) that the document entitled "WVSWMA Fiscal Year 2023-24 Revised Budget," a copy of which is attached hereto and incorporated herein by reference, is hereby approved.

This resolution was passed and adopted by the Board of Directors of the Authority at a regularly scheduled Board meeting on February 1, 2024, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Approved:

Bryan Mekechuk, Chairperson

Attest:

Rob Hilton, Executive Director

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of doubled-sided printing.*



WEST VALLEY

Solid Waste Management Authority

CAMPBELL • LOS GATOS • MONTE SERENO • SARATOGA

ATTACHMENT TO RESOLUTION 2024-01

FY 2023-24 REVISED BUDGET

Expenditures	Budgeted Fiscal Year 2023-24	Proposed Revised Fiscal Year 2023-24
Expenditures		
Executive Director - General Services	\$ 318,774	\$ 378,774
Executive Director - Grant Administration	2,500	10,500
Executive Director - SB 1383 Regulatory Compliance	70,876	70,876
Executive Director - Contract Implementation (Collections Agreement)	51,876	83,876
Executive Director - Franchise Fee Justification Study	100,000	100,000
Executive Director - Non-Exclusive C&D Program Development	60,201	60,201
Executive Director - Develop Street Sweeping Program	29,978	29,978
Legal Services - General Services	36,622	36,622
Legal Services - Collections Agreement	8,583	8,583
Legal Services - Franchise Fee Justification Study	11,444	11,444
Legal Services - Non-Exclusive C&D Program	5,722	5,722
Education and Outreach	335,000	335,000
SB 1383 Edible Food Recovery County-Wide Program	30,029	30,029
SB 1383 Member Agency Organics Procurement	127,397	127,397
Record Keeping and Reporting - Recyclist	50,845	50,845
WVC&R Annual Payment to Authority	300,000	300,000
Accounting & Bookkeeping	10,139	10,139
Liability Insurance	2,957	2,957
Mileage & Meeting Expense	2,000	2,000
Website Administration	1,274	1,274
Professional Services	5,000	5,000
Audit Services	3,500	3,500
Total Expenditures	\$ 1,564,718	\$ 1,664,718
Revenues		
Campbell	\$ 345,018	\$ 345,018
Los Gatos	266,313	266,313
Monte Sereno	28,096	28,096
Saratoga	247,022	247,022
Reimbursement of Education and Outreach	335,000	335,000
Other Revenue from WVC&R	-	27,861
Annual Payment to Authority	300,000	300,000
Contribution to Reserve	2,172,636	-
Non-Exclusive C&D Program	60,201	60,201
Total Revenues	\$ 3,754,285	\$ 1,609,511
Excess (deficiency) of revenues over (under) expenditures	\$ 2,189,568	\$ (55,207)
Beginning Fund Balance	\$ 183,068	\$ 183,068
Ending Fund Balance	\$ 2,372,636	\$ 127,861

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of doubled-sided printing.*

AMENDMENT TO WEST VALLEY SOLID WASTE MANAGEMENT AUTHORITY AGREEMENT FOR EXECUTIVE DIRECTOR SERVICES

THIS AMENDMENT is dated this 6th day of May, 2021, and is made by and between the WEST VALLEY SOLID WASTE MANAGEMENT AUTHORITY, a California joint powers authority, ("Authority") and HF&H CONSULTANTS, LLC, a limited liability company, ("Consultant").

I. RECITALS

- 1.1 On September 5, 2013, the Authority and Consultant entered into that certain "West Valley Solid Waste Management Authority Agreement for Executive Director Services" (the "Agreement").
- 1.2 The parties desire to enter into this Amendment to update the scope of services to be performed by Consultant.

II. AMENDMENT

1.1 Section 2.1 Scope of Services is hereby amended to read as follows:

"Section 2.1 Scope of Services. Consultant shall act as the Executive Director of the Authority and provide all services necessary to assist the Authority in performing those services outlined in the formation documents of the Authority or required by law including, but not limited to, contract administration, implementation and monitoring of statutory requirements, regulatory compliance and monitoring, facilitation of board meetings, and administrative services for the Authority. Each year as part of the budget process, Consultant shall provide a scope of services and budget for the following fiscal year consistent with the duties of the Executive Director outlining the tasks to be performed that year and associated costs. For Fiscal Year 2021-2022, Consultant shall perform those services outlined in Exhibit A."

1.2 Section 2.6 is amended to provide an updated Compensation Schedule, a copy of which is attached hereto as Exhibit B and incorporated herein. In addition, the rates included in Exhibit B shall be adjusted annually by an amount equal to the percentage increase in the Consumer Price Index for all Urban Wage Earners and Clerical Workers, for the San Francisco-Oakland-Hayward, CA, Base Period 1952-1984 = 100, not seasonally adjusted ("CPI"), compiled and published by the United States Bureau of Labor Statistics, from the immediately preceding calendar year times the rates and charges in effect for the immediately preceding calendar year.

III. Except as expressly provided in this Amendment, all other terms and conditions of the Agreement shall remain unchanged and in effect during the term of the Agreement.

IN WITNESS WHEREOF, the Authority and Consultant have executed this Amendment.

AUTHORITY:
West Valley Solid Waste
Management Authority

CONSULTANT:
HF&H Consultants, LLC

BY: _____
Paul Resnikoff, Chair

BY: _____
Marva Sheehan, Vice President

EXHIBIT A

Scope of Services

SCOPE OF SERVICES

The tasks that HF&H will perform include, but are not limited to, the following:

Task 1: Contract Administration

- 1a Ensure that WVC&R and Guadalupe comply with requirements to furnish certificates of insurance and performance bonds in accordance with the agreements.
- 1b Review the companies' operational performance and calculate the amount of liquidated damages, if any, under the agreements.
- 1c Manage the revision of these contracts for implementation of new programs, changes to recyclable materials, or other changes as directed by the Board.
- 1d Work with the companies to respond to complaints and inquiries from Member Agencies' residents and businesses regarding services provided under the agreements.
- 1e Enforce the collection franchise agreement provisions and respond to violations (e.g., rogue dumpsters).
- 1f Support, either directly or through the management of a procurement consultant, any future solid waste collection and /or disposal procurement contract(s).

Task 2: SB 1383 Implementation and Monitoring

- 2a Ensure that WVC&R's container colors and labeling are compliant with SB 1383 through reviewing orders and conducting side visits.
- 2b Develop and implement the Authority's generator waiver verification procedures in cooperation with WVC&R and a third-party reporting system.
- 2c Support Member Agencies with ordinance adoptions, including attending Member Agency Council Meetings.
- 2d Provide assistance to Member Agencies with the development of individual procurement plans and use plans for organic materials.
- 2e Support Member Agencies with the development of new and ongoing outreach programs for single-family, multi-family, and commercial customers, edible food generators, and self-haulers.
- 2f Determine standards and protocols for annual inspections of edible food generators. Inspections for calendar year 2022 will occur in HF&H's FY 22-21 scope of work.
- 2g Determine approach and investigation procedures for SB 1383-related complaints and conduct investigations beginning January 1, 2022.

- 2h Determine approach and procedures for annual verification of self-hauler compliance with SB 133. Verification of self-haulers for calendar year 2022 will occur in HF&H's FY 22-21 scope of work.
- 2i Prepare and submit Member Agencies' Initial Compliance record to CalRecycle on behalf of each Member Agency. Additionally, we will respond to CalRecycle questions.
- 2j Provide assistance implementing a software program.
- 2k Develop and maintain an Implementation Record on behalf of each Member Agency.

Task 3: Other Regulatory Compliance Monitoring

- 3a Assist Member Agencies with compliance for other regulations.
- 3b Attend monthly meetings with Member Agency staff.
- 3c Provide periodic reports on the status of federal and state legislation impacting the Member Agencies' refuse and recycling programs at regularly scheduled Board Meetings. Provide information on industry trends.
- 3d Represent the Authority at County TAC meetings and other relevant regional and statewide meetings as needed and as directed by the Member Agencies' staff and/or Board and communicate relevant information to Member Agencies.
- 3e Prepare and submit miscellaneous reports requested by local agencies related to the Authority's solid waste and recycling collection and disposal programs. These include, for example, Santa Clara County's recycling hotline and HHW program and collection rate surveys.
- 3f Prepare and submit the Member Agencies' Annual Reports to CalRecycle on behalf of each Member Agency. This includes accompanying the CalRecycle representative on site visits in the Authority jurisdictions. Additionally, we will respond to CalRecycle questions related to the annual reports and site visits.

Task 4: Facilitate Board Meetings

- 4a Prepare for and conduct quarterly Board Meetings. This task includes preparing the public notices, agendas, agenda reports, resolutions, Board Member agenda packets, public meeting binders, and meeting minutes. In addition, prepare for and conduct "agency review" meetings with Member Agency staff prior to regularly scheduled Board Meetings or special Board Meetings.
- 4b Prepare a financial report of the Authority's activities for each quarter, showing actual expenditures against the approved budget. These reports are presented at the next regularly scheduled Board Meeting following the close of each quarter.
- 4c Present status reports on each of the Authority projects or activities at regularly scheduled Board Meetings, as needed.
- 4d Follow-up on action items from the Board Meeting, including maintaining a record of all Authority actions.

Task 5: Authority Administration

- 5a Conduct conference calls with Member Agencies' staff on an as needed basis (at least quarterly) to report on issues and receive direction from staff between Board Meetings, including special Board Meetings. This task includes preparing the agenda and agenda materials. There are times when topics require face-to-face meetings. We will discuss the options with the Member Agencies' staff and will schedule the appropriate time and place for the meeting(s).
- 5b Respond to inquiries from Member Agencies' residents and businesses regarding the Authority's solid waste and recycling services in a timely manner.
- 5c Manage the procurement of legal services, liability insurance and other services and supplies required for the conduct of the Authority's business.
- 5d Manage the submission of Fair Political Practices Commission forms (Form 700) by the Executive Director, Legal Counsel, and Board Members.
- 5e Prepare the annual Authority budget for approval by the Board.
- 5f Prepare and provide orientation materials (including copies of the collection and disposal agreements, Rules of Conduct, and Joint Powers Authority agreement) to new Board members as needed.
- 5g Meet with the Member Agencies' Councils as requested for Council workshops to review changes to solid waste and recycling collection programs.
- 5h Work with the City of Campbell auditors to complete the annual financial audit of the Authority's financial statements. This includes preparing the financial statements, reviewing the footnotes, preparing the management letter, and responding to inquiries from the auditors.
- 5i Lead in the maintenance of the Authority's website. We collaborate with WVC&R and the Member Agencies' staff to maintain the website.
- 5j Review public education material provided by WVC&R for proper content prior to final publication.

Task 6: Cost-Based Rate Adjustment

- 6a Prepare for and meet with WVC&R to receive its application and obtain an explanation for any changes in its compensation for Rate Year Sixteen, provide an initial request for documents and information that are necessary for our review, and, establish a schedule.
- 6b Review the application for mathematical accuracy and compliance with the Franchise Agreement, notify WVC&R and the Authority of any areas of non-compliance, and request additional information necessary to bring the applications into compliance.
- 6c Reconcile Rate Year Fourteen revenues and expenses reported in the applications to WVC&R's audited financial statements and its general ledger and review the reasonableness of any adjusted costs in accordance with Section 8.4.2 of the Franchise Agreement.

- 6d Review the calculation of, and support for, any adjusted Rate Year Fourteen labor, vehicle-related costs, and other costs, in accordance with Section 8.4.2.B of the Franchise Agreement, and summarize Rate Year Fourteen allowed costs.
- 6e Calculate allowed profit, based on the adjusted forecasted Rate Year Sixteen operating costs eligible for profit, in accordance with Section 8.4.2.C of the Franchise Agreement.
- 6f Review the calculation and support for the WVC&R's forecasted pass-through costs, including disposal and lease costs, in accordance with Section 8.4.2.D of the Franchise Agreement.
- 6g Review forecasted regulatory, franchise fees, and compensation review fees using Rate Year Sixteen values in accordance with Section 8.4.2.D.
- 6h Meet with WVC&R to review preliminary findings, receive comments and any additional information, and adjust our preliminary findings, as appropriate.
- 6i Prepare for and attend a conference call with WVC&R and the Authority to discuss preliminary findings.
- 6j Prepare a draft report of any findings from our review of WVC&R's Rate Year Sixteen proposed costs and present a final report to the Authority.

Task 7: Collection Procurement

- 7a Develop the Process Design Outline for all policy, business term, service, and regulatory compliance issues for the upcoming franchise, including documentation of current practices in the Franchise Agreement.
- 7b Facilitate meetings with Member Agency staff to discuss the key issues and alternatives and complete the Design Recommendation.
- 7c Document and present Proposed Process Design for Board Meeting (PowerPoint-style) and receive Board Member input. Revise Proposed Process Design based on Board Member input.
- 7d Develop a draft franchise agreement, a draft RFP, and draft proposal cost forms (Draft RFP Package) based on the Process Design Outline for all policy, business term, service, and regulatory compliance areas required for the upcoming franchise.
- 7e Prepare a Final RFP Package and present for Board Meeting to receive finalization of the RFP package from Board Members.

EXHIBIT B
Compensation Schedule

HF&H CONSULTANTS, LLC

STANDARD HOURLY RATES AND BILLING ARRANGEMENTS

(Effective January 1, 2021)¹

Professional Fees

Hourly rates for professional and administrative personnel are as follows:

<u>Position</u>	<u>Rate</u>
President	\$305
Senior Vice President & Vice President	\$280 - \$300
Senior Project Manager	\$260 - \$285
Senior Associate/Project Manager	\$199 - \$235
Associate Analyst	\$159 - \$165
Assistant Analyst	\$120 - \$160
Administrative Staff	\$100 - \$120

Direct Expenses

Standard charges for common direct expenses are as follows:

Automobile Travel	Prevailing IRS mileage rate
Airfare and Public Transit	Actual Cost

Billing Policies

Our policy is to bill for our services based on the standard hourly rates of the staff member assigned, multiplied by the time required to perform the client-related tasks, plus the direct expenses as described above. In implementing this policy we adhere to the following practices:

- It is our standard practice to e-mail invoices to our clients, although hard copies of invoices can be sent to clients on request.
- We round to the nearest one-quarter hour (e.g., if two hours and 55 minutes are spent on a task, it is recorded as three hours, if two hours and 5 minutes are spent on a task, it is recorded as two hours). A minimum charge of one-quarter hour is charged for any client work performed in a day.
- We do not markup out-of-pocket expenses, however, we may charge administrative or professional time related to the provision of the goods and services associated with these charges.
- If subcontractors are used, HF&H reserves the right to charge a 5% markup should the subcontractor's services require cumbersome administrative oversight (e.g., multiple subcontractors; engagement turns out to solely require services of subcontractor, but HF&H as the prime must prepare billings).

¹ Litigation Support and Expert Witness Services are not covered by this schedule of fees and expenses.

HF&H CONSULTANTS, LLC

STANDARD HOURLY RATES AND BILLING ARRANGEMENTS

- Mileage fees are based on the round-trip distance from the point of origin.
- If a client's change to a previously scheduled meeting results in penalties being assessed by a third party (e.g., airline cancellation fee), then the client will bear the cost of these penalties.

While no minimum fee for a consulting engagement has been established, it is unlikely (given the nature of our services) that we can gain an understanding of a client's particular requirement, identify alternatives, and recommend a solution in less than twenty-four consulting hours.

Insurance

We maintain the following policies of insurance with carriers doing business in California:

- Comprehensive General Liability Insurance (\$2,000,000 Occurrence/\$4,000,000 Aggregate)
- Workers' Compensation (\$1,000,000)
- Professional Liability Insurance (\$2,000,000 Occurrence/\$2,000,000 Aggregate)
- Hired and Non-Owned Auto Liability² (\$2,000,000)
- Umbrella Liability (\$3,000,000 Occurrence/\$3,000,000 Aggregate)

All costs incurred in complying with additional coverages or limits (excluding additional insured and waiver of subrogation endorsements) become the responsibility of the client and are not included in the fees for services or direct charges but are billed in addition to the contract at cost, plus any professional or administrative fees.

Invoices and Payment for Services

Our time reporting and billing system has certain standard formats that are designed to provide our clients with a detailed invoice of the time and charges associated with their engagement. (We typically discuss these with our clients at our kick-off meeting.) We are also pleased to provide our clients with a custom invoice format but we will have to bill the client for time spent conforming our invoices to their unique requirements.

Billings for professional services and charges are submitted every month, in order that our clients can more closely monitor our services.

² HF&H Consultants does not own any company automobiles.