

**AGREEMENT**  
**BETWEEN**  
**WEST VALLEY SOLID WASTE MANAGEMENT AUTHORITY**  
**AND**  
**USA WASTE OF CALIFORNIA, INC. D/B/A WASTE MANAGEMENT OF**  
**SOUTH BAY**  
**FOR**  
**DISPOSAL OF SOLID WASTE, AND TRANSPORT AND PROCESSING**  
**OF MIXED ORGANIC WASTE, SOURCE-SEPARATED YARD**  
**TRIMMINGS, AND CONSTRUCTION AND DEMOLITION DEBRIS**

**January 14, 2021**

RECEIVED

DEPT. OF

STATE OF CALIFORNIA

AND

COUNTY OF

SAN JOSE

FOR

RECORD OF

DEEDS

BOOK

January 14, 2021

## TABLE OF CONTENTS

<b>ARTICLE 1. GRANT AND ACCEPTANCE OF AGREEMENT</b>	<b>3</b>
1.1 Grant and Acceptance of Agreement .....	3
1.2 Definitions .....	3
1.3 Obligations of Both Parties .....	3
1.4 Authority Obligations .....	4
<b>ARTICLE 2. TERM OF AGREEMENT</b>	<b>5</b>
2.1 Term and Option to Extend .....	5
2.2 Conditions to Effectiveness of Agreement .....	5
<b>ARTICLE 3. SCOPE OF AGREEMENT</b>	<b>6</b>
3.1 Summary Scope of Services .....	6
3.2 Limitations to Scope .....	8
3.3 Use of Approved Disposal Facility .....	8
3.4 Capacity Assurance .....	8
3.5 No Limitation on Authority Diversion Programs .....	8
3.6 No Tonnage Obligation; Only Compensation .....	9
3.7 Subcontracting .....	9
3.8 Transfer of Ownership and Responsibility for Delivered Material .....	10
3.9 Authority Contract Manager .....	10
3.10 Cooperation with the Authority .....	10
3.11 Reserved .....	11
3.12 Authority-Directed Changes to Scope .....	11
3.13 SB 1383 Requirements .....	11
<b>ARTICLE 4. DIRECT SERVICES</b>	<b>12</b>
4.1 General .....	12
4.2 Processing .....	12
4.3 Disposal Operations .....	15
4.4 Vehicle Weighing .....	17
<b>ARTICLE 5. STANDARD OF PERFORMANCE</b>	<b>18</b>
5.1 Days and Hours of Operation .....	18
5.2 Facility Turnaround Time Guaranty .....	18
5.3 Rejection of Excluded Waste .....	18
5.4 Personnel .....	19
5.5 Permits .....	20
5.6 Safety .....	20
5.7 Right to Enter Facility and Observe Operations .....	20
5.8 Closure and Post-Closure of Approved Disposal Facility .....	21
5.9 Alternate Facilities .....	21
5.10 Delivery to Non-Approved Facilities Prohibited .....	22
<b>ARTICLE 6. RECORD KEEPING AND REPORTING</b>	<b>23</b>
6.1 Record Keeping and Audit of Records .....	23



## West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement

## Table of Contents

6.2	Report Submittal Requirements .....	24
6.3	Monthly Reports .....	24
6.4	Annual Reports .....	24
<b>ARTICLE 7. FEES</b>		<b>26</b>
7.1	Authority Right to Establish Fees .....	26
7.2	Reserved.....	26
7.3	Payment Schedule and Late Fees .....	26
<b>ARTICLE 8. CONTRACTOR'S COMPENSATION AND RATE SETTING</b>		<b>27</b>
8.1	General .....	27
8.2	Remittances to Contractor.....	27
8.3	Per-Ton Rates.....	27
8.4	Per-Ton Rate Adjustments .....	28
8.5	Extraordinary Rate Adjustments.....	30
<b>ARTICLE 9. INDEMNITY, INSURANCE, AND PERFORMANCE BOND</b>		<b>31</b>
9.1	Indemnification .....	31
9.2	Insurance .....	32
9.3	Performance Bond .....	35
9.4	Corporate Guaranty .....	35
<b>ARTICLE 10. DEFAULT AND REMEDIES</b>		<b>36</b>
10.1	Events of Default.....	36
10.2	Right to Terminate Upon Event of Default.....	37
10.3	Authority's Remedies in the Event of Default .....	38
10.4	Possession of Records upon Termination.....	38
10.5	Authority's Remedies Cumulative; Specific Performance.....	38
10.6	Performance Standards and Liquidated Damages.....	39
10.7	Excuse from Performance.....	42
10.8	Right to Demand Assurances of Performance .....	42
<b>ARTICLE 11. REPRESENTATIONS AND WARRANTIES OF THE PARTIES</b>		<b>44</b>
11.1	Contractor's Corporate Status.....	44
11.2	Contractor's Corporate Authorization .....	44
11.3	Agreement Will Not Cause Breach.....	44
11.4	No Litigation .....	44
11.5	No Adverse Judicial Decisions .....	45
11.6	No Legal Prohibition.....	45
11.7	Contractor's Ability to Perform.....	45
<b>ARTICLE 12. OTHER AGREEMENTS OF THE PARTIES</b>		<b>46</b>
12.1	Relationship of Parties .....	46
12.2	Compliance with Law .....	46
12.3	Governing Law .....	46
12.4	Jurisdiction .....	46
12.5	Binding on Successors.....	46



West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement

Table of Contents

12.6	Assignment .....	46
12.7	No Third Party Beneficiaries.....	48
12.8	Waiver .....	48
12.9	Notice Procedures.....	48
12.10	Representatives of the Parties .....	49
<b>ARTICLE 13. MISCELLANEOUS AGREEMENTS</b>		<b>50</b>
13.1	Entire Agreement .....	50
13.2	Section Headings .....	50
13.3	References to Laws .....	50
13.4	Amendments .....	50
13.5	Severability.....	50
13.6	Counterparts .....	50
13.7	Exhibits.....	50

LIST OF EXHIBITS

- A. Definitions
- B. Labor Agreement(s)
- C. Guaranty Agreement
- D. SB 1383 April 2020 Draft Regulations
- E. Performance Bond
- F. Schedule of Required Reports
- G. Per-Ton Rates Approved by the Authority for Rate Period One
- H. Approved Subcontractors

*This page intentionally left blank*



## RECITALS

THIS AGREEMENT is made and entered into as of January 14, 2021, by and between the West Valley Solid Waste Management Authority (hereinafter "Authority") of Santa Clara County, California, a Joint Powers Authority organized under the laws of the State of California, and USA Waste of California, Inc. d/b/a Waste Management of South Bay, (hereinafter referred to as the "Contractor"). Authority and Contractor shall be referred to collectively as the "Parties".

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

**WHEREAS**, this Agreement supersedes all previous agreements and amendments related to Disposal, Processing, and Transport; including the Agreement entered into as of December 14, 2005 (hereinafter "Original Agreement"), by and between the West Valley Solid Waste Management Authority, a Joint Powers Authority organized under the laws of the State of California and Guadalupe Rubbish Disposal Company, Inc., a California corporation (hereinafter "Disposal Company");

**WHEREAS**, Authority desires to make adequate provision for the final Disposition of Solid Waste and the Diversion from landfill of Mixed Organic Waste and Construction and Demolition Debris Collected within its incorporated limits to protect the public health, safety, and welfare;

**WHEREAS**, Authority was established by the cities of Campbell, Monte Sereno, Saratoga, and the Town of Los Gatos, pursuant to the provisions of the Joint Exercise of Powers Act (Title 1, Division 7, Article 1, Section 6500 et seq. of the California Government Code) to arrange for and manage the waste reduction, Collection, reuse, Disposal, Recycling, and Diversion of Discarded Materials originating in the participating municipalities;

**WHEREAS**, Contractor owns and operates a waste Disposal facility known as the Guadalupe Landfill located in the City of San Jose, California;

**WHEREAS**, the Board of Directors of the Authority has found and determined that the public health, safety and welfare of the Authority will be preserved and protected by the execution of this Agreement, by ensuring the availability of a suitable site for the Disposal of Solid Waste and Residue on a long-term basis;

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

**WHEREAS**, the State of California has found and declared that the amount of refuse generated in California, coupled with diminishing Disposal capacity and potential adverse environmental impacts from landfilling and the need to conserve natural resources, have created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program. The State has, through enactment of AB 939, AB 341, AB 1826, AB 1594, SB 1016 and SB 1383, and other related legislation directed the responsible State agency, and all local agencies, to promote Diversion and to maximize the use of feasible waste reduction, re-use, Recycling, and Composting options in order to reduce the amount of refuse that must be Disposed;

West Valley Solid Waste Management Authority/Waste Management of South Bay Franchise Agreement

Recitals

**WHEREAS**, pursuant to California Public Resources Code Section 40059(a)(2), the Authority has determined that the public health, safety, and welfare require that an exclusive right be awarded to a qualified contractor to provide for the Processing of Solid Waste, Mixed Organic Waste, and Construction and Demolition Debris, and other services related to meeting the Authority's integrated waste management goals;

**WHEREAS**, the Authority further declares its intent to approve and maintain reasonable maximum Per-Ton Rates for the Processing, Composting, and/or Disposal of Solid Waste, Mixed Organic Waste, and Construction and Demolition Debris;

**WHEREAS**, the Authority has determined that Contractor, by demonstrated experience, reputation and capacity, and demonstrated ability to accept all governmentally-mandated responsibilities associated with operations, Closure and Post-Closure of such facilities, is qualified to provide for the Acceptance of Materials, Processing, Transport, and Disposal of such Material at Approved Facilities and Alternate Facilities; and, therefore, desires that Contractor be engaged to perform such services on the basis set forth in this Agreement;

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

**WHEREAS, AUTHORITY AND CONTRACTOR** desire to enter into this Agreement outlining the rights and obligations of the Parties.

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



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

### **1.1 Grant and Acceptance of Agreement**

Through this Agreement, the Authority grants to Contractor the right and privilege to Dispose of Solid Waste, and to Transport and Process Mixed Organic Waste that is Collected in the Service Area by the Franchised Collector and that is Delivered by the Franchised Collector with the Authority's intention of Disposal, Processing, and Transportation. This Agreement and scope shall be interpreted to be consistent with local, State and Federal laws, now and during the Term of this Agreement. If the ability of the Authority to lawfully contract for the scope of services in a manner consistent with all provisions as specifically set forth herein, is limited due to current and developing local, State, and Federal laws, regulations, or judicial interpretations, Contractor agrees that the scope of the Agreement will be limited to those services and Materials that may be lawfully provided for under this Agreement, and that the Authority shall not be responsible for any lost profits or losses claimed by Contractor that arise out of limitations to the scope or provisions of the Agreement set forth herein. In such an event, it shall be the responsibility of Contractor to minimize the financial impact to other services being provided as much as possible and the Contractor may meet and confer and may petition for a Per-Ton Rate adjustment pursuant to Section 8.5.

### **1.2 Definitions**

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

### **1.3 Obligations of Both Parties**

In addition to the specific performance required under the Agreement:

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

#### **1.4 Authority Obligations**

Authority obligations are limited to the following.

- A. Provide for Delivery of Solid Waste.** The Authority shall, at all times, direct all Solid Waste that is Collected in the Service Area by the Franchised Collector, and that is intended by the Authority for Disposal, to be Delivered to the Approved Disposal Facility or Approved Alternate Disposal Facility.
- B. Provide for Delivery of Organics (Mixed and Source-Separated).** The Authority shall, at all times, direct all Mixed Organic Waste that is Collected in the Service Area by the Franchised Collector, and that is intended by the Authority for Processing and/or Transport for Processing, to be Delivered to the Approved Organics Processing Facility.
- C. Provide for Delivery of Construction & Demolition Debris.** The Authority shall, at all times, direct all Construction and Demolition Debris that is Collected in the Service Area by the Franchised Collector, and that is intended by the Authority for Processing and/or Transport for Processing, to be Delivered to an Approved Facility.
- D. Excluded Waste.** The Authority shall direct its Franchised Collector to implement an Excluded Waste screening, identification, and prevention protocol. Authority shall prohibit its Franchised Collector from knowingly Delivering Excluded Waste to the Approved Disposal Facility.
- E. Adjustment of Per-Ton Rates.** The Authority shall ensure that Contractor's Per-Ton Rates are adjusted as provided in Article 8.



## ARTICLE 2. TERM OF AGREEMENT

### 2.1 Term and Option to Extend

The Term of this Agreement shall commence January 1, 2022 (Commencement Date) and continue in full force for a period of fifteen (15) years, through and including December 31, 2036, unless the Agreement is extended in accordance with this Section or terminated pursuant to Section 10.2. Beginning with the Effective Date, Contractor shall perform all activities necessary to ensure it can provide the full services required by this Agreement on the Commencement Date.

No less than eighteen (18) months prior to the end of the Term, the Parties shall meet and confer regarding mutual interest in extending the Term for one (1) five (5) year period. The Parties shall finalize execution of the extension no less than one (1) year prior to the end of the Term.

### 2.2 Conditions to Effectiveness of Agreement

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

- A. **Accuracy of Representations.** The Contractor's representations and warranties made in Article 11 of this Agreement are true and correct on and as of the Effective Date.
- B. **Furnishings of Insurance and Performance Bond.** Contractor has furnished evidence of the insurance and performance bond required by Article 9 that is satisfactory to the Authority.
- C. **Absence of Litigation.** To the best of Contractor's knowledge, after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality decided, pending or threatened against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would:
  - 1. Materially adversely affect the performance by Contractor of its obligations hereunder;
  - 2. Adversely affect the validity or enforceability of this Agreement; or,
  - 3. Have a material adverse effect on the financial condition of Contractor, or any surety or entity guaranteeing Contractor's performance under this Agreement.
- D. **Permits Furnished.** Contractor has provided Authority with copies of all Permits necessary for operation of the Approved Facility owned or operated by Contractor or Subcontractor for use under the terms of this Agreement.

## ARTICLE 3. SCOPE OF AGREEMENT

### 3.1 Summary Scope of Services

The Contractor shall be responsible for the following:

- A. Acceptance and Disposal of Solid Waste generated in the Authority Service Area and placed by Generator for Collection.
- B. Acceptance and Processing of Mixed Organic Waste and Source-Separated Yard Trimmings generated in the Authority Service Area and placed by Generator for Collection.
- C. Marketing the products resulting from Processing of Mixed Organic Waste, Source-Separated Yard Trimmings, and Construction and Demolition Debris (to the extent Construction and Demolition Debris is Processed).
- D. Transport to an Approved Facility owned by Contractor or Subcontractors.
- E. Performing all other services required by this Agreement including, but not limited to, record keeping and reporting pursuant to Article 6.
- F. Furnishing all labor, supervision, equipment, materials, supplies, and all other items and services necessary to perform its obligations under this Agreement.
- G. Obtaining and maintaining all Permits and regulatory approvals necessary to perform the services specified in this Agreement.
- H. Paying all expenses related to provision of services required by this Agreement including, but not limited to, taxes, regulatory fees, Authority fees, utilities, Closure, and Post-Closure of the Approved Disposal Facility.
- I. Receiving proceeds from the Per-Ton Rates as the only compensation for provision of services under this Agreement.
- J. Performing or providing all services necessary to fulfil obligations specified in this Agreement at all times in accordance with Applicable Laws and the specified requirements of this Agreement.
- K. Performing or providing all services specified in this Agreement at all times in accordance with best industry practices with due diligence.
- L. Processing and marketing of the following Materials Collected in the Authority by Franchised Collector:
  - 1. Mixed Organic Waste
  - 2. Source-Separated Yard Trimmings
- M. On-Call Contamination Monitoring Waste Evaluations:



---

West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement

---

## Article 3. Scope of Agreement

1. General. Authority may upon thirty (30) days' notice require Contractor to conduct Contamination monitoring waste evaluations as described in this Section 3.1.M. If the Authority directs Contractor to conduct SB 1383-compliant Contamination monitoring waste evaluations, Contractor and Contract Manager shall meet and confer to determine waste evaluation methodologies and procedures as described in 14 CCR Section 18984.5 of the April 2020 draft SB 1383 regulations, and unit price compensation pursuant to Article 8 and Exhibit G. Waste evaluation methodologies and procedures shall be approved by the Authority prior to implementation by Contractor.

If the Authority directs Contractor to conduct SB 1383-compliant Contamination monitoring waste evaluations, Contractor shall assess the presence of Prohibited Container Contaminants in Solid Waste and Mixed Organic Waste received at the Approved Disposal Facility as described in 14 CCR Section 18984.5 of the April 2020 draft SB 1383 regulations. Contractor may, upon Authority approval, engage a third-party Subcontractor to conduct Contamination monitoring waste evaluations. In such case(s), Contractor shall be solely responsible for managing such third-party Subcontractors, overseeing analysis, and providing reports to the Authority that include results from the Contamination monitoring waste evaluations.

Alternatively, the Authority may engage a third-party designee to conduct Contamination monitoring waste evaluations at the Approved Disposal Facility. In the event the Authority directs Contractor or a third-party designee to conduct Contamination monitoring waste evaluations, Contractor shall, at a minimum, (i) provide a physical area on the landfill working face to be used by Contractor, Contractor's designee, and/or the Authority's designee; (ii) provide at least one piece of heavy equipment, such as front-end loader vehicle, and a vehicle operator; (iii) provide necessary traffic controls to ensure safety of crews conducting waste evaluations; and (iv) Dispose of samples and remaining waste. Contamination monitoring waste evaluations shall not occur on Holidays or weekends. Contractor will be compensated for the above pursuant to Article 8 and Exhibit G.

2. Recordkeeping and Reporting. Upon Authority's request, Contractor shall provide any and all records and/or reports related specifically to the use of facilities relied upon by Contractor for performance under this Agreement that have been provided to other governmental agencies, including but not necessarily limited to: the City of San Jose, County of Santa Clara, County of Alameda, Regional Water Quality Board, Air Quality Management District, or CalRecycle, unless such records are the subject of litigation disclosure or confidentiality agreements, or where disclosure is limited or prohibited in accordance with State or local privacy laws.
3. Notice of Evaluations. Contractor shall schedule such waste evaluations during normal working hours. Contractor shall provide Authority notice of its intent to conduct evaluations at the Approved Facility(ies) at least thirty (30) days in advance of the evaluations.
4. Right to Observe. Contractor acknowledges that, upon request, a representative of the Authority and/or CalRecycle may oversee its next scheduled sampling and evaluation of any of the evaluations conducted at the Approved Disposal Facility as described in this Section.

The enumeration and specification of particular aspects of service, labor, or equipment requirements shall not relieve Contractor of the duty to perform all other tasks and activities



---

**West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement****Article 3. Scope of Agreement**

necessary to fulfill its obligations under this Agreement, regardless of whether such requirements are enumerated elsewhere in the Agreement, unless excused in accordance with Section 10.7.

**3.2 Limitations to Scope**

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

- A. Solid Waste generated in the Authority that is not Collected by the Authority or its Franchised Collector.
- B. Solid Waste generated outside of the Authority.
- C. E-Waste, Universal Waste, Hazardous Waste and sharps Collected by the Franchised Collector under the terms of its agreement with the Authority.
- D. Other material Collected by the Franchised Collector but excluded from the definition of Solid Waste, Mixed Organic Waste, Source-Separated Yard Trimmings, or C&D.
- E. Construction and Demolition Debris that is removed from any Premises by employees of the Construction or Demolition Company or the Franchise Collector so long as the material is taken to a Processing facility that guarantees a higher Diversion rate than the designated "Approved Disposal Facility".

**3.3 Use of Approved Disposal Facility**

The Contractor, without constraint and as a free-market business decision in accepting this Agreement, agrees to use an Approved Facility for the purposes of Disposing of all Solid Waste Collected in the Authority and an Approved Facility for purposes of Processing of all Mixed Organic Waste Collected in the Authority. Such decision by Contractor in no way constitutes a restraint of trade notwithstanding any Change in Law regarding flow control limitations or any definition thereof. Contractor shall maintain accurate records of the quantities of all Materials Delivered to and Accepted at an Approved Facility and will cooperate with the Authority and any regulatory authority in any audits or investigations of such quantities.

**3.4 Capacity Assurance**

Contractor warrants that as of the Commencement Date, it has sufficient capacity at the Approved Disposal Facility to Dispose of all Materials Delivered by the Franchised Collector as intended for Disposal throughout the Term, and that it shall maintain that capacity throughout the Term and any extension.

If at any time during the Term or an extension, Contractor fails to provide the capacity needed to fulfill its obligations under this Agreement at either the Approved Disposal Facility and/or at the Approved Alternate Disposal Facility, the Authority may assess Liquidated Damages for each Ton of the Authority's Solid Waste that the Contractor does not accept in accordance with Section 10.6.B.

**3.5 No Limitation on Authority Diversion Programs**

The Authority maintains programs to reduce the amount of waste intended for Disposal. It is the Authority's intent to continue to improve, develop, and enhance existing programs as well as to implement new programs and services throughout the Term as it deems necessary to meet or exceed



---

**West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement****Article 3. Scope of Agreement**

mandated Diversion program requirements and goals established by AB 939 and subsequent Federal, State, County or local legislation including, but not limited to, the State's seventy-five percent (75%) Recycling goal established in AB 341, the programmatic requirements of AB 1826, and the requirements of SB 1383. Contractor acknowledges that the characterization and quantity of Materials Delivered to the Approved Disposal Facility will change over the Term and may, over time, be significantly different than that as of the Commencement Date of the Agreement, but the obligation of Contractor to accept the Material will continue for the Term of the Agreement so long as it conforms to the definitions and requirements of this Agreement.

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

However, in the event Authority directs Processing of Solid Waste by a third party for purposes of Diverting recoverable elements thereof, instead of Delivery for Disposal, Authority shall cause the third party to Deliver to the Approved Disposal Facility a Tonnage of material ("Residue") for Disposal equivalent to the non-recovered fraction of the Processed Solid Waste. The Authority will provide documentation to Contractor to evidence that equivalent tons of all Residue from the Processed Solid Waste are Delivered to an Approved Facility.

**3.6 No Tonnage Obligation; Only Compensation**

- A. No Tonnage Obligation.** This Agreement neither expresses nor implies Authority's commitment to cause Delivery of any minimum tonnage of Solid Waste, Mixed Organic Waste, or Construction & Demolition Debris to the Approved Facilities or Alternative Facilities, or corresponding compensation for undelivered minimum Tonnages in the form of "put-or-pay" payments.
- B. Only Compensation.** The then-current Per-Ton Rates as provided in Article 8 and as applicable to each Material type, as adjusted, shall be the only form of compensation due Contractor for services provided under this Agreement. Per-Ton Rates shall not be adjusted for any changes in the characterization of, quantity of, or other changes to any and all Material it receives. Nor shall any action, or lack of action by the Authority regarding the availability of Material provide Contractor the opportunity for an adjustment to the Per-Ton Rates.

**3.7 Subcontracting**

Contractor shall not engage any Subcontractors without the prior written consent of the Authority's Contract Manager, which can be withheld in the reasonable discretion of the Authority's Contract Manager. As of the Effective Date of this Agreement, Authority has approved the Approved Facilities and Alternate Facilities identified in Exhibit H. If the Contractor plans to engage other Affiliate or related party entities in the provision of services, Contractor shall obtain written approval from the Authority's Contract Manager thirty (30) days prior to its plans to use party. Contractor shall submit written request to the Authority seeking approval of other Affiliate or related party entities. Such request shall include a description of its plans, name and qualifications of party, and an explanation of any potential impacts related to the quality, timeliness, or cost of providing services under this Agreement. All requests will be considered by the Authority's Contract Manager and can be granted or denied in the reasonable discretion of the Authority's Contract Manager.



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

Once the Solid Waste, Mixed Organic Waste, or Construction & Demolition Debris is Delivered by the Franchised Collector and Accepted by Contractor at the Approved Facility, full ownership and the right to possession of the Material shall transfer to the Contractor. All benefits and liabilities resulting from ownership and possession of the Material shall accrue to Contractor except as provided in Section 3.11.

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

### **3.9 Authority Contract Manager**

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

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

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

### **3.10 Cooperation with the Authority**

The Contractor shall, with no added compensation, cooperate with the Authority, its agent, and/or Santa Clara County and/or its agent, or any State regulatory authority and/or its agent if the Authority or County or State regulatory authority seek to collect data, perform field work, and/or evaluate and monitor Diversion program results through Material characterizations, providing reasonably requested data, allowing visits to the Approved Facility, and allowing use of Contractor-designated areas of the Approved Facility as needed to perform Material characterizations. To the extent such cooperation requires additional temporary or permanent Contractor employee positions or equipment or is otherwise contemplated in the rate schedule in Exhibit G, Contractor will be reimbursed by Authority

Contractor shall also cooperate with the Authority and/or County or State regulatory authority by providing requested data and review and otherwise assisting with any Recycling and Disposal Reporting

---

**West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement****Article 3. Scope of Agreement**

System (AB 901) Investigations or Origin Report Studies by providing documentation deemed reasonably necessary by the Authority Contract Manager, the County or State regulatory authority.

**3.11 Reserved****3.12 Authority-Directed Changes to Scope**

Authority may meet and confer with Contractor to establish the scope of any additional services or modification to existing services provided under this Agreement, which may include a change in an Approved Facility, and/or use of affiliated or third-party facilities upon Authority direction. In such case, Contractor shall present, within thirty (30) calendar days of Authority's request, a written proposal to provide such modified or additional services.

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

**3.13 SB 1383 Requirements**

Contractor's performance of services described in this Agreement shall be performed in accordance with those provisions of the April 2020 draft SB 1383 regulations, a copy of which are attached hereto as Exhibit D and incorporated herein by reference, which specifically pertain to Contractor's Disposal and Processing services under this Agreement and which does not pertain solely to services provided by the Franchised Collector or programs operated by the Authority. Any changes to Contractor's obligations resulting from changes to the April 2020 draft of SB 1383 regulations will be considered a Change in Law, for which the provisions of Section 8.5 would apply.



## ARTICLE 4. DIRECT SERVICES

### 4.1 General

Contractor shall perform the services described in this Article 4. Failure of Agreement to specifically require an act necessary to perform the service does not relieve Contractor of its obligation to perform such act. To the extent any of the services specified in Article 4 are provided by Authority-approved Subcontractor or Affiliate, the requirements of Article 4 shall pertain. The work to be done by Contractor pursuant to this Agreement shall include, but not be limited to, the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. The enumeration of, and specification of requirements for, particular items of labor or equipment shall not relieve Contractor of the duty to furnish all others, as may be required, whether enumerated elsewhere in the Agreement or not.

### 4.2 Processing

Contractor shall accept, weigh, Process, and/or Transport the following Materials which shall be Collected and Delivered to Contractor from Franchised Collector, whether in a truck with a single compartment and single type of Material, or in a truck with multiple compartments containing multiple types of Materials.

**A. Mixed Organic Waste Processing.** Contractor shall accept Mixed Organic Waste Delivered by Franchised Collector. Contractor shall Process, and/or Transport all Mixed Organic Waste to an Approved Organics Processing Facility. Contractor shall at all times Process Mixed Organic Waste in a manner consistent with the requirements of CCR 14 including, but not limited to, the Compost product quality standards. Contractor shall be responsible for marketing Compost, mulch, or other materials produced from Mixed Organic Waste.

**B. Reserved**

**C. Construction & Demolition:** Contractor shall accept and Process Construction and Demolition Debris Delivered by Franchised Collector to an Approved Facility. The Parties understand that Contractor's Processing approach for Construction and Demolition Debris involves recovering Materials of value (e.g., metals) via manual and light mechanical means and then shredding or screening the remainder of the Materials to be used for Beneficial Reuse or Residue for Disposal.

At any time during the Term, the Authority may at its sole discretion direct the Franchised Collector to Deliver Construction and Demolition Debris to facility(ies) other than the Approved Disposal Facility and such redirection shall not constitute a breach of contract by the Authority nor entitle Contractor to any additional compensation.

**D. SB 1383 Processing Requirements.** The requirements of SB 1383 that pertain to Contractor's services, and the requirements below in this subsection D, shall only apply if and when such regulations are approved by the State and become effective.

1. Separate Handling Requirements.

As described in 14 CCR Section 17409.5.6, Contractor shall keep Mixed Organic Waste and Construction and Demolition Debris separate from each other and separate from other Solid Waste streams. Contractor shall Process the Material types separately from each other and



---

West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement

---

## Article 4. Direct Services

separately from other streams. The same Material type from multiple routes or jurisdictions may be Processed together.

2. Mixed Organic Waste Processing Facilities.

The Approved Organics Processing Facility(ies) and the Approved Alternate Processing Facility(ies) shall be responsible for preparing Materials for Processing, which shall include but is not necessarily limited to, attempted manual removal of visible physical Contaminants such as plastic, glass, metal, and chemicals that are within some container prior to size reduction. The parties assume that Contractor's activities at the Guadalupe Landfill will be considered Transferring and not Processing for purposes of this Agreement or Applicable Law.

In Processing Mixed Organic Waste, Contractor shall meet or exceed an annual average recovery rate of fifty percent (50%) between January 1, 2022 and December 31, 2024 and seventy-five percent (75%) on and after January 1, 2025, assuming Annual Inbound Contamination percentage (defined in Section 4.2.E) is equal to or lower than three percent (3%) (if not, the recovery rate requirements in this paragraph shall not apply). Contractor shall determine the annual average content recovery rate pursuant to 14 CCR Section 18815.5(f) of the April 2020 draft SB 1383 regulations and shall provide results to the Authority in accordance with Exhibit D.

In Processing Mixed Organic Waste, Contractor shall only send offsite that Material recovered after Processing from the Mixed Organic Waste stream that meets the following requirements: (1) On and after January 1, 2022, Materials with no more than twenty percent (20%) of Incompatible Materials by weight; and, (2) On and after January 1, 2024, Materials with no more than ten percent (10%) of Incompatible Materials by weight to the destination, assuming the Annual Inbound Contamination percentage is equal to or lower than three percent (3%) (if not, the Incompatible Materials limit in the paragraph shall not apply). Contractor shall provide results to the Authority in accordance with Exhibit D.

As described in 14 CCR Section 17867.a.16, Section 17869.e, and Section 18815.7.f of the April 2020 draft SB 1383 regulations, Contractor's Approved Organics Processing Facility(ies) and Approved Alternate Processing Facility(ies) shall determine and report to the State the percentage of Mixed Organic Waste contained in Materials Disposed. In accordance with Section 6.4, Contractor shall submit a copy of such reports to the Authority within fifteen (15) days of submittal to the State.

If Contractor is unable to achieve performance levels as described in this Section 4.2.D.2, due to no fault of Contractor, its Subcontractors or Affiliates, Contractor shall provide written notice to the Authority, documenting the factors that are under the Contractor's control that result in Contractor's inability to achieve these performance levels, and suggested steps to improve performance. Contractor shall provide such notice to the Authority within two (2) Business Days of determining such performance standards are not achievable. The Parties shall meet and confer to discuss Contractor submittal. However, the request to meet and confer does not relieve Contractor of the obligation to continue to comply with all applicable provisions of this Agreement in taking all necessary steps to meet the performance levels, subject to an adjustment in compensation should Contractor demonstrate the need to incur significant added cost due to modification of existing equipment, purchase of new



---

West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement

---

## Article 4. Direct Services

equipment, or the addition of one or more full-time equivalent staff positions, as provided in Article 8. It is the Authority's expectation that Contractor will meet increased labor needs equal to less than a full-time equivalent position using existing staff, with overtime as necessary. In reviewing Contractor's submittal, Authority may, among other actions, require that, at no cost to the Authority, Contractor conduct and provide Authority-specific Mixed Organic Waste Processing composition data.

In the event that "overs" include appreciable quantities of Mixed Organic Waste, as determined by a visual assessment conducted by the Authority's staff or agents, the Approved Organics Processing Facility or Approved Alternate Processing Facility(ies) shall revise their process to ensure that overs will be re-Processed. The only exception to this is if the "overs" contain appreciable quantities of Contaminants that make it technically infeasible to re-Process. Contractor shall not be required to re-Process "overs" more than one additional time.

3. Mixed Organic Waste as ADC or AIC

Contractor's Approved Organics Processing Facility(ies) and Approved Alternate Processing Facility(ies) shall recover Mixed Organic Waste for Diversion in a manner that does not result in the use of such Materials or their resultant products being used as Alternative Daily Cover (ADC), Alternative Intermediate Cover (AIC), or landfill Disposal, except regarding Residue and overs.

4. Compostable Plastics and Plastic Bags.

Compostable Plastics. Pursuant to 14 CCR Section 18994.2 of the April 2020 draft SB 1383 regulations, Contractor shall submit to the Authority annually written notification of whether the Approved Facility(ies) has and will continue to have the capabilities to Process and recover Compostable Plastics.

Plastic Bags. Pursuant to 14 CCR, Section 18994.2 of the pursuant to the April 2020 draft SB 1383 regulations, Contractor shall submit to the Authority annually written notification of whether the Approved Organics Processing Facility has and will continue to have the capabilities to Process and recover plastic bags when it recovers Mixed Organic Waste.

5. Quarantined Organic Waste

If approved by the Authority, the Contractor may Dispose of specific types of Mixed Organic Waste that are subject to quarantine and meet the requirements described in 14 CCR Section 18984.13(d) of the April 2020 draft SB 1383 regulations for a period of time specified by the Authority or until Authority provides notice that the quarantine has been removed and directs Contractor to Transport the Mixed Organic Waste to the Approved Disposal Facility or Approved Alternate Disposal Facility for Disposal.

In accordance with Section 6.4, the Contractor shall maintain records and submit reports regarding compliance agreements for Disposed quarantined Mixed Organic Waste, pursuant to this subsection.



---

West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement

---

## Article 4. Direct Services

**E. Contaminated Delivered Materials.**

1. **Contaminated Loads.** Deliveries of Mixed Organic Waste may contain no more than three percent (3%) non-Mixed Organic Waste or any amount of Excluded Waste. Deliveries which exceed such limits may be considered "Contaminated Loads" by the Approved Organics Transfer Facility. Contractor may determine whether specific Deliveries are Contaminated Loads based on visual inspection, and in such event will photograph the Material, notify the Authority by email within one (1) Business Day (including digital photo, vehicle number, and time of Delivery), and separate such Material for inspection by the Authority. Within one (1) Business Day of Contractor's email notice, Authority may notify Contractor by email that it wishes to inspect a claimed Contaminated Load. In such event, Contractor will keep such Materials separate for the Authority to inspect. Contractor may Dispose claimed Contaminated Loads at the appropriate Per-Ton Rate for landfill Disposal rather than the Per-Ton Rate for Mixed Organic Waste Processing if: (i) the Authority does not notify Contractor within one (1) Business Day of Contractor's email notice that it wishes to inspect the Materials at issue, (ii) the Authority does not inspect Contaminated Loads within one (1) Business Day of its email to Contractor that it wishes to inspect, or (iii) the Authority agrees it is a Contaminated Load.
2. **Problematic Routes.** Contractor may reject Deliveries from a Franchised Collector vehicle prior to tipping if such vehicle or route consistently has Contaminated Loads. Before doing so, the Contractor must: (1) identify the vehicle or route number and day of the week that includes consistently Contaminated Loads; (2) document at least five (5) incidents of Contaminated Loads in the most recent ten (10) weeks; (3) provide digital photos of each such Contaminated Load; (4) provide a brief description of the Contaminant materials and estimated amounts in such loads; and, (5) have set aside the rejected loads and provided notice to the Authority as described in Section 4.2.E.1. In such cases, the Contractor and Authority agree to meet and confer with the Franchised Collector to resolve the physical Contamination levels in the route at issue.
3. **Chronic Contamination and Recovery Guarantees.** In the event that the number of Contaminated Loads of Mixed Organic Waste in a given calendar month exceeds thirty percent (30%) of the total loads of Mixed Organic Waste received at the Approved Organics Transfer Facility, the Contractor's obligations related to the recovery rates and Incompatible Materials limits under this Agreement shall be suspended until such time as the percentage of Contaminated Loads to total loads is less than thirty percent (30%) for one full calendar month. In the event that the thirty percent (30%) limit is exceeded at any time during the Term of this Agreement, the Contractor, Authority, and Franchise Collector shall meet and confer to develop a plan to remedy the Contamination problems which may include, but are not necessarily limited to, identifying the sources of Contamination and utilizing education, non-Collection, and/or penalties to affect behavior change.

**4.3 Disposal Operations**

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



West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement

## Article 4. Direct Services

- A. Operating, managing, and maintaining the Approved Facility including all buildings, scales, roads, and utilities.
- B. Operating, managing, and maintaining the Solid Waste fill areas, including the placement, burying, and compaction of Solid Waste in the refuse fill areas; stockpiling, placement and compaction of daily cover, intermediate cover, and final cover; management of fill operations with regard to fill sequencing, side slopes configuration; and, working face location and configuration.
- C. Providing and maintaining staffing levels and expertise as necessary or required to ensure safe and lawful operation at all times, and as provided in Section 5.4.
- D. Providing, operating, and maintaining all equipment, rolling stock, and supplies necessary for operations, Closure, Post-Closure, and environmental monitoring.
- E. Operating and maintaining the scale house and scale system and weighing Solid Waste Delivered by Franchised Collector as specified in Section 4.4 of this Agreement.
- F. Ensuring that Franchised Collector vehicles can enter and leave the Approved Disposal Facility property within the turnaround times specified in Section 5.2.
- G. Directing on-site traffic to appropriate unloading areas and providing a safe working environment for Approved Disposal Facility users, visitors, and employees.
- H. Safely managing the Solid Waste Delivered to or Transported to the Approved Facility.
- I. Implementing an Excluded Waste screening, identification, and prevention protocol as provided in Section 5.3. Contractor shall not knowingly place Excluded Waste in the fill area of the Approved Disposal Facility.
- J. Operating, maintaining, and managing liquids ("leachate") and landfill gas management systems, groundwater monitoring and management systems, stormwater drainage and control systems, treatment facilities, buildings, on-site roadways, utilities, and any other required Facility elements.
- K. Conducting required or prudent Closure and Post-Closure activities as provided in Section 5.8. Arranging for Alternate Facilities in accordance with Section 5.9.
- L. Contractor may use Solid Waste for Beneficial Reuse in compliance with Applicable Law.
- M. Disposal of Mixed Organic Waste is prohibited, except regarding Material contained in Residue and for loads which exceed the permitted Contamination level (i.e., 3% for Mixed Organic Waste). Mixed Organic Waste may not be Disposed of in lieu of Recycling the Material, except as provided herein. If Contractor believes that it cannot Divert the Mixed Organic Waste from Disposal, then it shall prepare a written request for approval to Dispose of such Material. Such request shall contain the basis for its belief, describe the Contractor's efforts to arrange for the Diversion from Disposal of such Material, the period required for such Disposal, the incremental costs or cost savings resulting from such Disposal, and any additional information supporting the Contractor's request. The Authority shall consider the Contractor's request and inform Contractor in writing of its decision within thirty (30) calendar days of the date of its written request for approval; Authority will not unreasonably withhold approval. If the Authority approves such request, any difference in the cost



---

West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement

## Article 4. Direct Services

of such Disposal compared to Diversion shall be adjusted in accordance with Article 7. Residue from Processing and Contaminated material is exempt from this provision and may be Disposed of under the limited events specifically described in this Agreement and subject to noticing, where applicable.

#### 4.4 Vehicle Weighing

Contractor is solely responsible for ensuring accurate weighing of all Materials entering and leaving the Approved Facilities and Alternate Facilities as described herein.

- A. **Facility Scales.** Contractor shall maintain State certified motor vehicle scales in accordance with Applicable Law. All scales shall be linked to a centralized computer recording system at the Approved Disposal Facility to record weights for all incoming and outgoing Materials. Contractor shall provide back-up generator(s) capable of supplying power to the scales in the event of a power outage. Contractor shall promptly arrange for use of substitute portable scales should its usual scales not be available for whatever reason. Pending substitution of portable scales, Contractor shall, as necessary, estimate the tonnages of Material Delivered to the Approved Facility, on the basis of Delivery vehicle volumes, tare weights, and/or other available facility weight records. These estimates shall take the place of actual weights while scales are inoperable, and shall be identified as estimates in electronic records and reporting. Contractor shall upon Authority request, weigh and provide tare weights for Authority vehicles should Authority directly Deliver Material.
- B. **Tare Weights for Franchise Collector Vehicles.** Within thirty (30) Days prior to the Commencement Date, Contractor shall coordinate with the Franchise Collector to ensure that all Collection vehicles used by Franchise Collector to Deliver Material to the Approved Disposal Facility are weighed to determine unloaded ("tare") weights. Contractor and Franchise Collector shall electronically record the tare weight, identify vehicle as Franchise Collector owned, and provide a distinct vehicle identification number for each vehicle. Contractor shall provide Authority with a report listing the vehicle tare weight information upon request. Contractor shall promptly coordinate with Franchise Collector to weigh additional or replacement Collection vehicles prior to Franchise Collector placing them into service. Contractor shall check tare weights at least annually, or within fourteen (14) Days of an Authority request, and shall re-tare vehicles immediately after any major maintenance service.
- C. **Testing.** Contractor shall test and calibrate all scales in accordance with Applicable Law, but at least every twelve (12) months or upon Authority request.
- D. **Records.** Contractor shall maintain computerized scale records and reports that provide information including date of receipt, inbound time, inbound and outbound weights of vehicles, vehicle identification number, as further provided in Section 6.1. Contractor shall also maintain computerized scale records and reports providing historical vehicle tare weights for each vehicle and the date and location for each tare weight recorded.
- E. **Upon-Request Reporting.** If vehicle receiving and unloading operations are recorded on video cameras at the Approved Facility, Contractor shall make those videos available for Authority review during the Facility's operating hours, upon request of the Authority, and shall provide the name of the driver of any particular load if available.



## ARTICLE 5. STANDARD OF PERFORMANCE

### 5.1 Days and Hours of Operation

Contractor shall operate the Approved Facilities for the receipt of the Authority's Material in accordance with the days and hours of operation set forth below. At a minimum, Contractor shall provide for Material Delivery Monday through Friday from 6 a.m. to 4 p.m. and 8 a.m. to 4 p.m. on Saturdays. Approved Facilities are permitted from 6 a.m. to 6 p.m. Should the Authority or Contractor request the facility to be open additional hours than current operating hours, Contractor shall accommodate the request provided it is within the parameters of the permitted hours. Contractor may not reduce the hours or total number of hours for Delivery of Authority's Material without prior written approval of the Authority, except for reductions required by a change in a Permit subsequent to the Commencement Date in which case Contractor shall make every effort to provide the Authority a minimum of sixty (60) Days' written Notice of such an anticipated modification.

### 5.2 Facility Turnaround Time Guaranty

Contractor shall maintain a maximum monthly average vehicle turnaround time of thirty (30) minutes for Franchised Collector Delivery of Material to the Approved Facility. Maximum average vehicle turnaround time shall be the elapsed time from vehicle entering a scale to leaving the Approved Facility property. Delays caused by events beyond Contractor's reasonable control will be excluded. Failure to meet this Guaranty equates to default of Contractor's performance obligations under this Agreement. Contractor shall have a twenty-four (24) hour period to cure this breach before Liquidated Damages will be assessed in accordance with Section 10.6. Each violation thereafter will be \$100 per incident.

### 5.3 Rejection of Excluded Waste

- A. Inspection Program and Training.** Contractor shall develop a load inspection program that includes the following components:
- (i) Personnel and training;
  - (ii) Load checking activities;
  - (iii) Management of Materials; and,
  - (iv) Record keeping and emergency procedures. Contractor's load checking personnel shall be trained in:
    - a. Effects of Hazardous Substances on human health and the environment;
    - b. Identification of Excluded Waste; and,
    - c. Emergency notification and response procedures.
- B. Inspection.** Contractor shall use best industry practices to detect and reject Excluded Waste in a uniform manner and shall not knowingly Accept Excluded Waste at the Approved Facility. Contractor shall comply with the inspection procedure contained in its Permit requirements. Contractor shall promptly modify that procedure to reflect any changes in Permits or Applicable Law.



West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement

## Article 5. Standard Of Performance

- C. **Excluded Waste Handling and Costs.** Contractor shall arrange for or provide handling, Transportation, and delivery to a facility permitted in accordance with Applicable Law of all Excluded Wastes detected at the Approved Facility. Contractor is solely responsible for making those arrangements or provisions and for all costs thereof, subject to the remedies available under Section 5.3.D below.
- D. **Detection Prior to Acceptance.** If Contractor identifies Excluded Waste Delivered from the Service Area to the Approved Facility by the Franchised Collector prior to Acceptance, Contractor shall notify the Franchised Collector who shall Collect, Transport and Recycle or Dispose of that Excluded Waste and/or remediate any Contamination resulting at the Approved Facility from Excluded Waste at Franchised Collector's expense.
- E. **Detection Following Acceptance.** If Contractor identifies Excluded Waste Delivered from the Service Area to the Approved Facility by the Franchised Collector following Acceptance, and is able to verify such Excluded Waste was Delivered by the Franchise Collector, Franchise Collector shall Collect, Transport, and Recycle or Dispose of that Excluded Waste and/or remediate any Contamination resulting at the Approved Facility at Franchise Collector's expense.

#### 5.4 Personnel

- A. **General.** Contractor shall furnish such qualified personnel as may be necessary to provide the services required by this Agreement in a safe and efficient manner. Contractor shall designate at least one (1) qualified employee as Authority's primary point of contact with Contractor who is principally responsible for operations and resolution of service requests and complaints who shall be available telephonically at all times operations are taking place.
- B. **Driver Qualifications.** All drivers must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles. Contractor shall use the Class II California Department of Motor Vehicles employer "Pull Notice Program" to monitor its drivers for safety.
- C. **Safety Training.** Contractor shall provide suitable operational and safety training consistent with Applicable Law for all of its employees who operate vehicles or equipment at, or in conjunction with the Approved Facility. Contractor shall train its employees to identify, and to not Accept Excluded Waste. Upon the Authority Contract Manager's request, Contractor shall provide, within two (2) Business Days, a copy of its safety policy and safety training program, the name of its safety officer, and the frequency of its training.
- D. **Labor Agreements.** Contractor shall be solely responsible for its labor arrangements. Any labor agreements for staffing at the Approved Facility shall be included as Exhibit B and future modification shall be submitted to the Authority. The Contractor shall, as applicable provide full copies of the labor agreements including any and all amendments, extensions, renewals, or other forms of modification. Under no circumstances shall Authority be responsible for any costs associated with any labor agreements including any and all amendments, extensions, renewals or other forms of modification.
- E. **Subcontractor Obligations.** Subcontractors shall be required to comply with the obligations stated in this Section 5.4.



## 5.5 Permits

- A. **Securing Permits.** Contractor is solely responsible for obtaining and maintaining, at Contractor's sole cost, all Permits required under Applicable Law to perform the services required by this Agreement. Contractor shall provide Authority copies of Permits and all documents submitted in application for said Permits for the Approved Facilities and Alternate Facilities within ten (10) Days of Authority request. In its monthly report or more frequently, as necessary, Contractor shall inform Authority of Contractor's status of securing the issuance, revision, modification, extension or renewal of Permits, including those at its Alternate Facilities. Contractor shall inform Authority at least fifteen (15) days prior to application, of its intent to apply for any Permit authorized or required under Applicable Law regarding services performed under this Agreement. Within ten (10) Days following Authority's request, Contractor shall provide the Authority with copies of any applications or other correspondence that the Contractor submits in connection with securing Permits.
- B. **Compliance with Permits.** Contractor shall comply with all Permits or environmental documents, including any mitigation measures related to the operation and maintenance of the Approved Facility at no additional cost to the Authority. Contractor shall demonstrate compliance with the terms and conditions of Permits within ten (10) Days of Authority request. Contractor shall provide Authority with all documentation verifying compliance with Permit conditions that is provided to the permitting authority at the same time such is provided to the permitting authority. Contractor is solely responsible for paying any fines or penalties imposed for noncompliance with or violation of Permits or failure to obtain Permits.

## 5.6 Safety

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

## 5.7 Right to Enter Facility and Observe Operations

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

Upon Authority direction, Contractor shall make Approved Facility personnel available to accompany Authority employees or representatives on inspections. Contractor shall ensure that its employees cooperate with the Authority and respond to the Authority's reasonable inquiries. Contractor shall



---

**West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement****Article 5. Standard Of Performance**

facilitate observation and inspection at the Approved Facility upon three (3) Business Days of receiving an Authority request.

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

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

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

**5.9 Alternate Facilities**

- A. Purpose.** Contractor shall identify, and enter into arrangements with Alternate Facilities, whether an Affiliate or owned by a third-party prior to the Effective Date, and subject to review by the Authority upon Authority request in order to ensure uninterrupted service should Contractor for any reason be unable to provide services at the Approved Facility. Contractor shall ensure that Alternate Facilities comply with all provisions of this Agreement and Applicable Law. In the event that the Alternate Facility is an Affiliate of Contractor, a management letter assuring capacity and terms shall be adequate. For any third-party facilities, a written agreement may be required by the Authority.
- B. Alternate Facility Arrangements.** Contractor arrangements with Alternate Facilities must ensure that Franchised Collector or Contractor, as applicable, can Deliver or Transport Solid Waste, Mixed Organic Waste, and/or Construction and Demolition Debris to an Alternate Facility within two (2) Business Days of Contractor or Authority notice of need to use such Alternate Facility. Contractor shall ensure that Alternate Facilities are able to accept Solid Waste, Mixed Organic Waste, and/or Construction and Demolition Debris on a continuous basis for no less than thirty (30) Days. Should Contractor use of the Alternate Facility exceed thirty (30) Days, Authority may require Contractor to provide additional reasonable assurances of the Alternate Facility's ability to accept Solid Waste, Mixed Organic Waste, and/or Construction and Demolition Debris on an ongoing basis under the terms of this Agreement. Contractor may request, and Authority may at its discretion grant a change in an Alternate Facility owned and operated by Contractor or an Affiliate, or owned and/or operated by a third party with the third party's prior written consent.
- C. Use of Alternate Facilities.**



---

**West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement****Article 5. Standard Of Performance**

1. If Contractor is unable to, or chooses not to provide for Delivery of Solid Waste, Mixed Organic Waste and/or Construction and Demolition Debris at the Approved Disposal Facility or Approved Organics Processing Facility for a reason specified in Section 10.7, Contractor shall provide immediate notice to Authority and Franchised Collector of its need to use an Alternate Facility. Authority shall adjust Contractor's Compensation pursuant to Section 8.5 for incremental differences in cost, whether increased or decreased, due to per-Ton fees charged at the Alternate Facility and Transportation costs incurred in Contractor Delivering Solid Waste or Mixed Organic Waste to the Alternate Facility. In the case of Construction and Demolition Debris, the Authority shall direct the Franchised Collector to Deliver Material to other available facilities directly. In the event that such Alternate Facility is owned by Contractor or an Affiliate of Contractor, the only difference in per-Ton fees charged at the Alternate Facility shall be the governmental fees and/or taxes that are specific to that facility. The Authority shall make good faith efforts to promptly consider Contractor's request for an adjustment in compensation, however, Contractor acknowledges that the Authority's meeting schedule is infrequent and such an item would need to be considered at a regular meeting of the Authority following appropriate due diligence by the Authority Contract Manager.
  2. If Contractor is unable to accept Delivery of Solid Waste, Mixed Organic Waste and/or Construction and Demolition Debris for reasons other than those specified in Section 10.7, Contractor shall provide immediate notice to Authority and Franchised Collector of its need to use an Alternate Facility, and shall be solely responsible for incremental differences in cost due to per-Ton fees charged at the Alternate Facility and any additional Transportation costs incurred in Delivering Solid Waste, Mixed Organic Waste, and/or Construction and Demolition Debris to the Alternate Facility. Such added expense is not subject to adjustment as provided in Section 8.5.
- D. Authority Right to Terminate.** If, for any reason, the Contractor is unable to accept any Material from the Franchised Collector at an Approved Facility for longer than 180 days, the Authority may, at its sole discretion, terminate this Agreement for convenience. Notwithstanding this provision, if the Contractor's inability to accept Solid Waste or Mixed Organic Waste is a result of a Contractor breach or default under Section 10.1, the Authority may, in its sole discretion, terminate the Contract for convenience under this section or for cause under the provisions of Article 10.
- E. Use of Alternative Organics Processing Options.** The parties shall periodically confer regarding alternatives for Mixed Organic Waste Processing, including, but not limited to, Authority use of Contractor's planned Processing at the Kirby Canyon Landfill. Contractor may request use of Approved Alternate Processing Facility so long as such a change would maintain the same price or cost of service as the previous facility.

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

Should Contractor Transport Solid Waste, Mixed Organic Waste, and/or Construction and Demolition Debris to a facility other than an Approved Facility or an Alternate Facility as provided in Section 5.9 without prior Authority approval, Contractor shall be subject to the penalty identified in Section 10.6.C.2 for "Delivery to a Non-Approved Facility".



## ARTICLE 6. RECORD KEEPING AND REPORTING

### 6.1 Record Keeping and Audit of Records

- A. **Tons Delivered by Franchise Collector.** Contractor shall maintain daily electronic accounting of tons of Solid Waste, Mixed Organic Waste, and Construction and Demolition Debris Delivered to the Approved Facilities by each incoming Franchise Collector vehicle at each then-current Per-Ton Rate.
- B. **Other Records.** Contractor shall maintain accounting, statistical, operational, and other records related to its performance as necessary to provide reporting demonstrating compliance with this Agreement. The Contractor shall maintain complete financial statements and accounting records for operations under this Agreement sufficient to allow for independent verification of Contractor's ability to continue providing service through the Term.
- C. **Authority Right to Examine.** Upon request, the Contractor shall allow the Authority Contract Manager to examine all data supporting Contractor's invoices for services provided under this Agreement. Such request shall be made at reasonable times and with reasonable notice. Authority reserves the right to produce any such documents examined to any State or local regulatory or permitting authority upon request.
- D. **Extraordinary Adjustment.** In the event of an extraordinary rate adjustment pursuant to Section 8.5, such records shall be subject to review in accordance with appropriate professional standards and inspection, for the primary purpose of reviewing changes in costs to the Contractor attributable to the extraordinary rate adjustment request, at any reasonable time by an independent third party. The selection of the independent third party as well as the scope of work for such review shall be approved in advance by the Authority Contract Manager. The independent reviewer shall provide any and all drafts of its review to the Authority and the Contractor. The Party requesting the extraordinary rate adjustment review shall bear the cost of the review.
- E. **Retention of Records.** Unless otherwise required in this Article, Contractor shall retain all records and data required to be maintained by this Agreement for the Term of this Agreement plus three (3) years after its expiration or earlier termination. Records and data shall be in chronological and organized form and readily and easily interpreted. Upon request, any such records shall be retrieved in a timely manner by Contractor and made available to the Authority Contract Manager. Contractor shall maintain adequate record security to preserve records from events that can be reasonably anticipated such as a fire, theft, and an earthquake. Electronically-maintained data and records shall be protected and backed-up. The Contractor shall provide, within thirty (30) days of a request by the Authority Contract Manager or within ten (10) days of filing the prior year's statement (whichever is longer), complete independently audited financial statements from the corporate parent (Waste Management Inc.) for the prior calendar year, including its balance sheet, statement of revenues and expenses, and statement of changes in cash position, and provide such financial statements to the Authority Contract Manager. In the event Authority receives a request for records pursuant to the California Public Records Act, Contractor shall cooperate with Authority and provide Authority with any documents in its possession that are responsive to a request for records.
- F. **CERCLA Data.** Authority's ability to defend itself against Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and related litigation is a matter of great importance. For this reason, Authority regards as paramount its ability to prove where Collected Solid Waste is taken



---

**West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement****Article 6. Record Keeping And Reporting**

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

**6.2 Report Submittal Requirements**

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

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

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

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

**6.3 Monthly Reports**

Reports shall be submitted monthly and shall include, at a minimum the following, separated by type of Material:

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

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

**6.4 Annual Reports**

- A. **State Reports.** For evaluations described in Sections 3.1.M and 4.2, Contractor shall maintain all records and submit reports to CalRecycle as described in 14 CCR Sections 18994.2, 17414.2, and



West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement

Article 6. Record Keeping And Reporting

17869 (pursuant to April 2020 draft SB 1383 regulations), as applicable. Contractor shall submit to the Authority annually any State facility reports Contractor submits to CalRecycle or to Contractor's Disposal Reporting System coordinator. Such State facility reports includes those submitted for the Approved Disposal Facility, Approved Alternate Disposal Facility, Approved Organics Processing Facility, and Approved Alternate Processing Facility. Such annual submittals shall be in accordance with Applicable Law, including amendments made to 14 CCR , Section 18815.5 , as described in the April 2020 draft of SB 1383, and AB 901 regulations.

- B. Quarantined Organic Waste Reports.** Contractor shall submit a record of all compliance agreements for Disposed quarantined Mixed Organic Waste, including the name of Generator, date issued, location of final Disposition, and the amount of quarantined Organic Waste that was required to be Disposed at a Landfill, pursuant to Section 4.2 of the Agreement.

## **ARTICLE 7. FEES**

### **7.1 Authority Right to Establish Fees**

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

### **7.2 Reserved**

### **7.3 Payment Schedule and Late Fees**

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

Each monthly remittance to Authority shall be accompanied by a statement listing the amount of each fee paid; calculation of each fee; and, statement of Gross Receipts for the period collected from all operations conducted or permitted by this Agreement. Authority Contract Manager may, at any time during the Term, request a detailed calculation of Gross Receipts.

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



## ARTICLE 8. CONTRACTOR'S COMPENSATION AND RATE SETTING

### 8.1 General

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

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

Under this Agreement, Contractor shall have the right and obligation to charge and collect from the Franchised Collector, Per-Ton Rates approved by the Authority, for Tonnage Delivered to the Approved Facility by the Franchised Collector. Contractor's proposed Per-Ton Rates and operating assumptions for Rate Period One are presented in Exhibit G.

### 8.2 Remittances to Contractor

Each month, within five (5) Business Days after the last day of the preceding month, Contractor shall provide to the Franchised Collector an invoice detailing the total Tons Delivered to the Approved Facility from the Authority Service Area by the Franchised Collector, and the resulting monies owed to Contractor, based on the then-current Per-Ton Rates. Within fifteen (15) Business Days after the last day of the preceding month, the Franchised Collector shall remit to Contractor payment each month equaling actual Tons of Material Delivered to the Approved Disposal Facility by the Franchised Collector, multiplied by the then-current Per-Ton Rate. Contractor shall cooperate with the Franchised Collector as needed to calculate and/or reconcile remittance amounts.

### 8.3 Per-Ton Rates

**A. General.** The Authority shall be responsible for approving Per-Ton Rates as described in this Article. Each Per-Ton Rate shall have two components:

1. The Contractor component; and
2. The governmental component; the sum of which shall equal the total Per-Ton Rate.

The "Contractor component" of the rates reflects the Contractor's Compensation for the service provided under this Agreement, and the "governmental component" reflects government fees assessed for Materials handled at the Approved Facilities or Alternate Facilities.

**B. Rates for Rate Period One.** Per-Ton Rates for Rate Period One (January 1, 2022 through June 30, 2023) were determined by Contractor and Authority and were approved by Authority resolution on

West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement

## Article 8. Contractor's Compensation and Rate Setting

or before the Effective Date of the Agreement. Per-Ton Rates for Rate Period One are provided in Exhibit G.

## 8.4 Per-Ton Rate Adjustments

Per-Ton Rates for Rate Periods Two through Ten shall be adjusted annually by CPI commencing July 1, 2023, in accordance with this Section 8.4.

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

1. **"Annual Percentage Change"** means the Average Index Value of an index for the 12-month period ending December of the then-current Rate Period minus the Average Index Value for the 12-month period ending December of the most-recently completed Rate Period, divided by the Average Index Value for the 12-month period ending December of the most-recently completed Rate Period. The Annual Percentage Change shall be rounded to the nearest thousandth (1,000<sup>th</sup>).
2. **"Average Index Value"** means the sum of the monthly index values during the 12-month period ending in December divided by 12 (in the case of indices published monthly) or the sum of the bi-monthly index values divided by 6 (in the case of indices published bi-monthly).

For example, if the Contractor is preparing its Rate application for Rates to be effective for Rate Period 2, the Annual Percentage Change in CPI shall be calculated as follows: [(Average CPI for January 2022 through December 2022) – (Average CPI for January 2021 through December 2021)] / (Average CPI for January 2021 through December 2021)].

**B. Contractor Component.** The Contractor component of each Approved Facility or Alternate Facility Per-Ton Rate shall be adjusted on :

1. The basis of one hundred percent (100%) of the Annual Percentage Change in the Consumer Price Index, All Urban Consumers (All Items), for the San Francisco/Oakland/Hayward as published by the U.S. Department of Labor, Bureau of Labor Statistics ("Index"), Series ID: CUURS49BSA0; or,
2. Five percent (5%), whichever is less. However, if the five percent (5%) cap applies, any amounts exceeding five percent (5%) for a particular year will be applied to the following rate adjustment.

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

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

1. Governmental fees for Disposal for Rate Period One are as follows:



## West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement

## Article 8. Contractor's Compensation and Rate Setting

Fee Title	Fee Amount	Fee Basis	Governing Body	Tons Eligible for Fee in RP1
CA AB 939 (AB1220)	\$1.40	Per ton	State of California	100% of Delivered Tons
San Jose Business Tax	\$13.00	Per ton	City of San Jose	100% of Delivered Tons
County Planning Fee	\$0.78	Per ton	Santa Clara County	100% of Delivered Tons
Household Hazardous Waste	\$1.50	Per ton	Santa Clara County	100% of Delivered Tons
County AB 939	<b>\$2.60</b>	Per ton	Santa Clara County	
City of San Jose LEA	\$.52	Per ton	City of San Jose	100% of Delivered Tons
<b>Total</b>	<b>\$19.80</b>	Per ton	N/A	100% of Delivered Tons

2. Governmental fees for Mixed Organic Waste Processing for Rate Period One are as follows:

Fee Title	Fee Amount	Fee Basis	Governing Body	Tons Eligible for Fee in RP1
City of San Jose LEA	\$.52	Per ton	City of San Jose	100% of Delivered Tons
<b>Total</b>	<b>\$.52</b>	Per ton	N/A	100% of Delivered Tons

3. Governmental fees for C&D Processing for Rate Period One are as follows. Whether Diverted or used as ADC, Authority fees for Delivered C&D is as shown; C&D Disposed will have a government fee component equal to Disposal and paid by Contractor:

Fee Title	Fee Amount	Fee Basis	Governing Body	Tons Eligible for Fee in RP1
City of San Jose LEA	\$0.52	Per ton	City of San Jose	100% of Delivered Tons
<b>Total</b>	<b>\$0.52</b>	Per ton	N/A	100% of Delivered Tons

The above governmental fees were in effect as of July 1, 2020. If any of said fees are increased prior to Rate Period One, then the Per-Ton Rates shall be immediately adjusted.

- D. **Total Adjusted Per-Ton Rates.** The Total Adjusted Per-Ton Rate shall be calculated as the sum of the adjusted Contractor component, as calculated in subsection (B) above, and the adjusted governmental component, as calculated in subsection (C) above.
- E. **Per-Ton Rate Application.** On March 1 prior to the commencement of the Rate Period for which Per-Ton Rates are to be determined (coming Rate Period), Contractor shall submit to the Authority Contract Manager an application requesting the adjustment of Per-Ton Rates for the coming Rate Period via mail and an electronic copy in Microsoft Excel format with all supporting schedules, formulas, and calculations via email. For example, on March 1, 2023 the Contractor shall submit its application for the adjustment of Per-Ton Rates to be effective July 1, 2023, (i.e., Rate Period Two).

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

Authority shall evaluate Contractor's application for mathematical accuracy and consistency with the requirements of the Agreement, and shall have the ability to require changes to the application



---

**West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement****Article 8. Contractor's Compensation and Rate Setting**

prior to approval on the basis of the application's mathematical inaccuracy or failure to comply with the procedures defined in the Agreement. Upon Authority Board of Directors' agreement that the calculations are consistent with the requirements of this Agreement and are mathematically accurate, the Per-Ton Rate adjustment (if any) will be approved by the Board of Directors.

**8.5 Extraordinary Rate Adjustments**

It is understood that the Contractor accepts the risk for changes in cost of providing services and/or quantities and composition of Materials Delivered to the Approved Facility, and therefore the extraordinary adjustments to Per-Ton Rates shall be limited to a Change in Law, an Authority-directed change in scope or services, or Authority failure to ensure Delivery pursuant to Section 5.9.D (collectively, a "Qualifying Event"). If a Qualifying Event occurs, the Contractor may petition Authority for an adjustment to the Per-Ton Rates in excess of the annual adjustment described in Section 8.4.

Contractor shall prepare an application for the extraordinary Per-Ton Rate adjustment calculating the net financial effect on its operations (both increases and decreases of costs and/or revenues) resulting from the Qualifying Event, clearly identifying all assumptions related to such calculations and providing the underlying documentation supporting the assumptions, and shall additionally provide financial statements and accounting records required to be maintained by the Contractor (pursuant to Article 6) in order to determine the accuracy and reasonableness of the Contractor's application. The application shall provide all information specific to the nature of the request being made to the Authority Contract Manager. Authority Contract Manager shall evaluate the application for reasonableness and accuracy and can request additional documentation as he/she deems necessary. The Board of Directors shall make a decision as whether to approve or deny the application, but shall approve requests where Contractor has provided documentation showing the Qualifying Event has negatively impacted costs and/or revenues at a magnitude requiring a tip fee change of \$1 or more to the Per-Ton Rate charged for any Material handled under this Agreement. Furthermore, should the Contractor fail to provide any such documentation that may be required to prove the accuracy of their calculations within thirty (30) days, their request will automatically be denied. Time begins to toll for delivery of documentation once Contractor submits application for a rate increase, with extensions being given based on additional information being requested by Authority. Contractor shall pay all reasonable costs incurred by the Authority, including the costs of outside accountants, attorneys, and/or consultants, in order to make a determination of the accuracy of the requested Per-Ton Rate adjustment.

In the event of such an application for extraordinary Per-Ton Rate adjustment that results in an increased Per-Ton Rate, it is understood that the Contractor shall have the burden of demonstrating the reasonableness of the requested adjustment. Authority Board of Director's decision shall be final. With respect to an extraordinary Per-Ton Rate adjustment requested by the Authority Contract Manager, the Authority Board of Directors shall then make the final determination as to whether an adjustment to the Per-Ton Rates will be made, and if an adjustment is permitted, the amount of the adjustment. Authority Board of Director's decision shall be final. Notwithstanding the above, Contractor may pursue any remedy available by Applicable Law with respect to Authority's failure to approve a rate adjustment in this section.



## ARTICLE 9. INDEMNITY, INSURANCE, AND PERFORMANCE BOND

### 9.1 Indemnification

- A. **General.** Contractor shall indemnify, defend with counsel acceptable to Authority, and hold harmless (to the full extent permitted by law) Authority and its officers, officials, employees, volunteers, representatives, Member Agencies and agents from and against any and all claims, liability, loss, injuries, damage, expense, and costs (including without limitation costs and fees of litigation, including attorneys' and expert witness fees) (collectively, "Damages") of every nature arising out of or in connection with Contractor's performance under this Agreement, or its failure to comply with any of its obligations contained in the Agreement, except to the extent such loss or damage was caused by the sole negligence or willful misconduct of Authority or the negligence or willful misconduct of Franchised Collector.
- B. **Excluded Waste.** Contractor acknowledges that it is responsible for compliance during the entire Term of this Agreement with all Applicable Laws. Contractor shall not store, Transport, use, or Dispose of any Excluded Waste except in strict compliance with all Applicable Laws.

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

- C. **Environmental Indemnity.** Contractor shall defend, indemnify, and hold Authority harmless against and from any and all claims, suits, losses, penalties, damages, and liability for damages of every name, kind and description, including attorneys' fees and costs incurred, attributable to and to the extent of the negligence or willful misconduct of Contractor in handling Excluded Waste. For purposes of clarity, Franchised Collector is prohibited from Delivering Excluded Waste to Contractor under this Agreement.
- D. **Related to AB 939, AB 341, AB 1826, SB 1383, AB 1594 and SB 1016.** Contractor's duty to defend and indemnify herein includes all fines and/or penalties imposed by CalRecycle if the requirements of AB 939, AB 341, AB 1826, SB 1383, AB 1594 or SB 1016 are not met by the Authority due to Contractor failure.



West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement

## Article 9. Indemnity, Insurance, and Performance Bond

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

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

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

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

## 9.2 Insurance

- A. General Requirements.** Contractor and any Subcontractor shall, at its sole cost and expense, maintain in effect at all times during the Term of this Agreement not less than the following coverage and limits of insurance:
- B. Coverages and Requirements.** The comprehensive general liability insurance shall include broad form property damage insurance.
1. Minimum Coverages. Insurance coverage shall be with limits not less than the following:
 

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



West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement

## Article 9. Indemnity, Insurance, and Performance Bond

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

**Workers' Compensation** – Statutory Limits/Employers' Liability - \$3,000,000/accident for bodily injury or disease.

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

**Environmental Impairment Liability** - \$10,000,000, with a \$1,000,000 deductible, covering liability arising from the release of pollution at a Facility.

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

2. Additional Insured. Authority, its officers, officials, employees, volunteers, representatives, Member Agencies and agents shall be named as additional insured on all but the workers' compensation and Blanket Fidelity/Crime Policy coverages.
3. Said policies shall remain in force through the life of this Agreement and shall be payable on a "per occurrence" basis unless Authority's Risk Manager specifically consents in writing to a "claims made" basis. For all "claims made" coverage, in the event that the Contractor/Subcontractor changes insurance carriers Contractor/Subcontractor shall purchase "tail" coverage or otherwise provide for continuous coverage covering the Term of this Agreement and not less than three (3) years thereafter. Proof of such "tail" or other continuous coverage shall be required at any time that the Contractor/Subcontractor changes to a new carrier prior to receipt of any payments due.
4. The Contractor/Subcontractor shall declare all aggregate limits on the required coverage are in place before commencing performance of this Agreement and are available throughout the performance of this Agreement.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice (10 days for non-payment) has been given to the Authority. If Contractor's insurer refuses to provide this endorsement, Contractor shall be responsible for providing written notice to the Authority that coverage will be canceled thirty (30) days after the date of the notice or ten (10) days for non-payment.

5. The deductibles or self-insured retentions are for the account of Contractor/Subcontractor and shall be the sole responsibility of the Contractor/Subcontractor.
6. Contractor shall furnish the Authority with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on insurance industry forms, provided those endorsements or policies conform to the contract requirements. All certificates and endorsements are to be received and approved by the Authority before work commences. "The Authority reserves the right to review at

West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement

Article 9. Indemnity, Insurance, and Performance Bond

Contractor's corporate office copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications. The Contractor shall be allowed to redact information that it considers confidential".

The Certificate with endorsements and notices shall be mailed to:

Executive Director  
West Valley Solid Waste Management Authority  
C/O HF&H Consultants, LLC  
201 N. Civic Dr., Suite 230  
Walnut Creek, CA 94596

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

8. The policies shall cover all activities of Contractor/Subcontractor, its officers, employees, agents and volunteers arising out of or in connection with this Agreement.
9. For any claims relating to this Agreement, the Contractor/Subcontractor's insurance coverage shall be primary, including as respects Authority, its officers, agents, employees, and volunteers. Any insurance maintained by Authority shall apply in excess of, and not contribute to, coverage provided by Contractor/Subcontractor's liability insurance policy.
10. The Contractor/Subcontractor shall waive, by evidenced endorsement to the policy, all rights of subrogation against Authority, its officers, employees, agents, and volunteers.

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

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

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

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



West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement

## Article 9. Indemnity, Insurance, and Performance Bond

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

The Person executing this Certificate on behalf of Contractor/Subcontractor affirmatively represents that she/he has the requisite legal authority to do so on behalf of Contractor/Subcontractor, and both the Person executing this Agreement on behalf of Contractor/Subcontractor and Contractor/Subcontractor understand that Authority is relying on this representation in entering into this Agreement."

### **9.3 Performance Bond**

Within seven (7) calendar days of the Authority's notification to Contractor that the Authority has executed this Agreement, Contractor shall file with the Authority a bond, payable to the Authority, securing the Contractor's performance of its obligations under this Agreement and such bond shall be renewed annually if necessary so that the performance bond is maintained at all times during the Term. The principal sum of the bond shall be one million two hundred fifty thousand dollars (\$1,250,000), which shall be adjusted every three (3) years, commencing with Rate Period Three, to equal three (3) months of the prior Rate Period's annual Gross Receipts. The bond shall be executed as surety by a corporation authorized to issue surety bonds in the State of California that has a rating of A or better in the most recent edition of Best's Key Rating Guide, and that has a record of service and financial condition satisfactory to the Authority. The bond shall be in the form attached as Exhibit E.

As an alternative to the performance bond required above, at Authority's option, Contractor may deposit with Authority a fully prepaid irrevocable letter of credit for at least the duration of the Contract Year for which the letter of credit is deposited. Such letter of credit shall be in the amount of one million dollars (\$1,000,000). The form of the letter of credit and the issuer of the letter of credit are subject to the approval of Contract Manager and the Authority Attorney. Nothing in this Section 9.3 shall in any way obligate Authority to accept a letter of credit in lieu of the performance bond.

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

### **9.4 Corporate Guaranty**

Concurrently with execution of this Agreement, Contractor shall furnish a Guaranty of its performance under this Agreement, in the form attached hereto as Exhibit C and incorporated herein by reference, properly executed by Waste Management, Inc., a Delaware corporation which owns all of the issued and outstanding common stock of Contractor.



## ARTICLE 10. DEFAULT AND REMEDIES

### 10.1 Events of Default

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

- A. **Fraud or Deceit.** Contractor practices, or attempts to practice, any fraud or deceit upon the Authority.
- B. **Insolvency or Bankruptcy.** Contractor becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding.
- C. **Failure to Maintain Coverage.** Contractor fails to provide or maintain in full force and affect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement.
- D. **Violations of Regulation.** Contractor violates any orders or filings of any regulatory body having authority over Contractor relative to this Agreement, provided that Contractor may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach or default of this Agreement shall be deemed to have occurred.
- E. **Violations of Applicable Law.** Contractor violates Applicable Law relative to this Agreement.
- F. **Failure to Perform Direct Services.** Contractor ceases to provide services as required under this Agreement for a period of two (2) consecutive calendar days or more, for any reason within the control of Contractor.
- G. **Failure to Pay or Report.** Contractor fails to make any payments to Authority required under this Agreement or fails to provide Authority required information, reports, and/or records in a timely manner as provided for in the Agreement.
- H. **Acts or Omissions.** Any other act or omission by Contractor which violates the terms, conditions, or requirements of this Agreement, AB 939 as it may be amended from time to time, or any law, statute, ordinance, order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the default or, if Contractor cannot reasonably correct or remedy the breach within the time set forth in such notice, if Contractor should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.
- I. **False, Misleading, or Inaccurate Statements.** Any representation or disclosure made to the Authority by Contractor in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement; and, any Contractor-provided report containing a misstatement, misrepresentation, data manipulation, or an omission of fact or content explicitly defined by the Agreement, excepting non-numerical typographical and grammatical errors.



West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement

## Article 10. Default and Remedies

- J. **Seizure or Attachment.** There is a seizure of, attachment of, or levy on, some or all of Contractor's operating equipment, including without limits its equipment, maintenance or office facilities, Approved Disposal Facility, or any part thereof.
- K. **Suspension or Termination of Service.** There is any termination or suspension of the transaction of business by Contractor related to this Agreement, including without limit, due to labor unrest including strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action lasting more than two (2) Business Days.
- L. **Criminal Activity.** Contractor, its officers, managers, or employees are found guilty of criminal activity related directly or indirectly to performance of this Agreement or any other agreement held with the Authority.
- M. **Assignment without Approval.** Contractor transfers or assigns this Agreement or any portion thereof without the expressed written approval of the Authority as provided in Section 12.6.
- N. **Failure to Provide Proposal or Implement Change in Service.** Contractor fails to provide a proposal for new services or changes to services or fails to implement a change in service as requested by the Authority as specified in Section 3.12.
- O. **Failure to Provide Capacity.** Contractor fails to provide capacity for all Materials at any point during the Term of this Agreement, including the optional Term extension.
- P. **Failure to use Approved Facility.** Contractor fails to use the Approved Facility or Alternate Facility at any point during the Term of this Agreement
- O. **Failure to Perform Any Obligation.** Contractor fails to perform any obligation established under this Agreement.

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

## 10.2 Right to Terminate Upon Event of Default

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

Contractor shall be given ten (10) Business Days from written notification by Authority to cure any default arising under subsections C, E, F, I, J, and K in Section 10.1.

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

Notwithstanding the above, Authority in its sole discretion may suspend, and if necessary terminate the Agreement immediately if for any reason (other than as contemplated by Section 5.9.D) the Contractor is unable to use the Approved and Alternate Facility for an extended period of time (thirty (30) days, consecutively or in the aggregate over a twelve (12) month period).



### 10.3 Authority's Remedies in the Event of Default

In the event of Contractor's default and failure to cure as provided in Section 10.2, Authority maintains the following remedies:

- A. **Waiver of Default.** Authority may waive any event of default or may waive Contractor's requirement to cure a default event if Authority determines that such waiver would be in the best interest of the Authority. Authority's waiver of an event of default is not a waiver of future events of default that may have the same or similar conditions.
- B. **Suspension of Contractor's Obligation.** Authority may suspend Contractor's performance of its obligations if Contractor fails to cure default in the time frame specified in Section 10.2 until such time the Contractor can provide assurance of performance in accordance with Section 10.8.
- C. **Liquidated Damages.** Authority may assess Liquidated Damages for Contractor's failure to meet specific performance standards pursuant to Section 10.6.
- D. **Termination.** In the event that Contractor should default and fail to cure the default, in the performance of any provisions of this contract, and the default is not cured for any default within in ten (10) Business Days if the default creates a potential public health and safety threat or arises under Section 10.1.C, E, F, I, J, or K, or otherwise thirty (30) calendar days after receipt of written notice of default from the Authority, then the Authority may hold a hearing at its Authority Board of Directors meeting to determine whether this Agreement should be terminated. In the event Authority decides to terminate this Agreement, the Authority shall serve twenty (20) Business Days written notice of its intention to terminate upon Contractor. In the event Authority exercises its right to terminate this Agreement, the Authority may, at its option, upon such termination, either directly undertake performance of the services or arrange with other Persons to perform the services with or without a written agreement. This right of termination is in addition to any other rights of Authority upon a failure of Contractor to perform its obligations under this Agreement.

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

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

### 10.4 Possession of Records upon Termination

In the event of termination for an event of default, the Contractor shall furnish Authority Contract Manager with immediate access to all of its business records, including without limitation, proprietary Contractor computer systems, related to the services to be provided under this Agreement.

### 10.5 Authority's Remedies Cumulative; Specific Performance

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



---

**West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement****Article 10. Default and Remedies**

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

**10.6 Performance Standards and Liquidated Damages**

- A. General.** The Parties find that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by Authority as a result of a breach by Contractor of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that exclusive services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and, (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.
- B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The Parties further acknowledge that consistent, reliable Disposal services are of utmost importance to Authority and that Authority has considered and relied on Contractor's representations as to its quality of service commitment in awarding the Agreement to it. The Parties recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The Parties further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, Authority and its residents and businesses will suffer damages, and that it is, and will be, impractical and extremely difficult to ascertain and determine the exact amount of damages which Authority will suffer. Therefore, without prejudice to Authority's right to treat such non-performance as an event of default under this Section, the Parties agree that the Liquidated Damages amounts established below in Section 10.6.C of this Agreement and the Liquidated Damage amounts therein represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective Date of this Agreement, including the relationship of the sums to the range of harm to Authority that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical.

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

Before assessing Liquidated Damages, Authority shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s) and non-performance. Authority may review (and make copies at its own expense) all information in the possession of Contractor relating to incident(s) and/or non-performance. Authority or Contractor may, within ten (10) Business Days after issuing the notice, request a meeting with the other Party. The Parties may present evidence of performance or non-performance in writing and others relevant to the incident(s). The Contract Manager shall make a recommendation based on the evidence provided to the Board of Directors.



West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement

## Article 10. Default and Remedies

The Board shall consider the recommendation and any additional information provided by the Contractor prior to authorizing the assessment of Liquidated Damages under this Section 10.6. The decision of the Board of Directors shall be final and Contractor shall not be subject to, or required to exhaust, any further administrative remedies.

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

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

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

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



## West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement

## Article 10. Default and Remedies

**2. Performance Area No. 2: Facilities**

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

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Contractor Failure to Accept Solid Waste Delivered by Franchise Collector	Inability of Contractor to Accept Solid Waste at the Approved Disposal Facility for any reason other than an event of force majeure, and without prior arrangement for use of an Alternate Facility.	No acceptable failure level	\$500/Ton
Delivery to Non-Approved Facility	Each individual occurrence of delivering Materials to a facility other than the Approved Facility designated for each Material type under Section 4 of this Agreement.	No acceptable failure level	\$500 per failure Such LDs may not exceed \$50,000 until the parties have had an opportunity to meet to discuss the issue
Disposal of Targeted Diversion Materials	Each individual occurrence of Disposal of Delivered Mixed Organic Waste without Processing.	No acceptable failure level	\$1,000/Load
Failure to Provide Adequate Capacity	Failure to provide adequate primary and alternate capacity to accept and Process Mixed Organic Waste.	No acceptable failure level	\$1,000/Day
Failure to Maintain Maximum Monthly Average Vehicle Turnaround Time	Failure to maintain a maximum monthly average vehicle turnaround time of thirty (30) minutes for Franchised Collector Delivery of Material to the Approved Facility.	Thirty (30) Minute Average Maximum	\$100 per incident

- D. Amount.** Authority may assess Liquidated Damages for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement in the amounts specified in this Section 10.6, subject to annual adjustment described below in Section 10.6.F.
- E. Timing of Payment.** Contractor shall pay any Liquidated Damages assessed by Authority within ten (10) Business Days after the decision of the Board of Directors following the meeting described in Section 10.6.B. If they are not paid within the ten (10) Business Day period, Authority may proceed against the performance bond or letter of credit required by the Agreement and/or order the termination of the rights granted by this Agreement. Claims for Liquidated Damages must be made within ninety (90) days of the Authority becoming aware of the underlying event.



---

**West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement****Article 10. Default and Remedies**

- F. Liquidated Damage Adjustments.** Liquidated Damage amounts for Rate Periods Two through Ten shall be adjusted annually by CPI, as described in Section 8.4.B.1, commencing July 1, 2023.

**10.7 Excuse from Performance**

The Parties shall be excused from performing their respective obligations hereunder and from any obligation to pay Liquidated Damages if they are prevented from so performing by reason of floods, earthquakes, other acts of nature, war, civil insurrection, riots, acts of any government (including judicial actions other than those resulting from Contractor's failure to comply with Applicable Law), and other similar catastrophic events which are beyond the control of and not the fault of the Party claiming excuse from performance hereunder. In the case of labor unrest or job action directed at a third party over whom Contractor has no control, the inability of Contractor to provide services in accordance with this Agreement due to the unwillingness or failure of the third party to: (i) provide reasonable assurance of the safety of Contractor's employees while providing such services; or, (ii) make reasonable accommodations with respect to point of Delivery, time of Acceptance, or other operating circumstances to minimize any confrontation with pickets or the number of Persons necessary to perform Disposal services shall, to that limited extent, excuse performance. The foregoing excuse shall be conditioned on Contractor's cooperation in performing Disposal services at different times and in different locations (as provided for in Section 5.9). Further, in the event of labor unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other concerted job action conducted by the Contractor's employees or directed at the Contractor, Subcontractor, or Affiliates, the Contractor shall not be excused from performance, but may with Authority approval direct Materials to an Alternate Facility as provided in Section 5.9.C.1.

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

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

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

**10.8 Right to Demand Assurances of Performance**

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

If Contractor:

- i. Is the subject of any labor unrest including work stoppage or slowdown, sick-out, picketing or other concerted job action (except to the extent excused under Section 10.7);



West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement

Article 10. Default and Remedies

- ii. Appears in the reasonable judgment of Authority to be unable to regularly pay its bills as they become due; or,
- iii. Is the subject of a civil or criminal judgment or order entered by a Federal, State, regional or local agency for violation of an Applicable Law; and
- iv. Authority believes, in good faith, that Contractor's ability to perform under the Agreement has thereby been placed in substantial jeopardy, Authority may, at its sole option and in addition to all other remedies it may have, demand from Contractor reasonable assurances of timely and proper performance of this Agreement, in such form and substance as Authority believes in good faith is reasonably necessary in the circumstances to evidence continued ability to perform under the Agreement. If Contractor fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by Authority, such failure or refusal shall be an event of default for purposes of Section 10.1.

## **ARTICLE 11. REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

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

### **11.1 Contractor's Corporate Status**

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

### **11.2 Contractor's Corporate Authorization**

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

### **11.3 Agreement Will Not Cause Breach**

To the best of Contractor's and Authority's knowledge after reasonable investigation, the execution or delivery of this Agreement or the performance by either Party of their obligations hereunder does not conflict with, violate, or result in a breach:

- i. Of any Applicable Law; or,
- ii. Any term or condition of any judgment, order, or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which Contractor or Authority is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default hereunder.

### **11.4 No Litigation**

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

- i. Materially adversely affect the performance by Party of its obligations hereunder;
- ii. Adversely affect the validity or enforceability of this Agreement; or,
- iii. Have a material adverse effect on the financial condition of Contractor, or any surety or entity guaranteeing Contractor's performance under this Agreement.



West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement  
Article 11. Representations and Warranties of the Parties

**11.5 No Adverse Judicial Decisions**

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

**11.6 No Legal Prohibition**

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

**11.7 Contractor's Ability to Perform**

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

## ARTICLE 12. OTHER AGREEMENTS OF THE PARTIES

### 12.1 Relationship of Parties

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

### 12.2 Compliance with Law

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

### 12.3 Governing Law

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

### 12.4 Jurisdiction

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

### 12.5 Binding on Successors

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

### 12.6 Assignment

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

- A. Authority Consent Required.** Contractor shall not assign its rights or delegate or otherwise transfer any or all of its obligations under this Agreement to any other Person without the prior written consent of Authority which may be withheld with or without cause at Authority's sole discretion.



West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement

## Article 12. Other Agreements of the Parties

Authority may refuse to consent to a proposed assignment unless it is satisfied that the proposed assignee is ready, willing and able to provide services in a manner equal to or better than Contractor. Any assignment made in violation of this Section 12.6.A shall be void and the attempted assignment shall constitute a Contractor default.

- B. Assignment Defined.** For the purpose of this Section, "assignment" shall include, but not be limited to, (i) a documentary assignment of Contractor's interest in, and obligations under, this Agreement; (ii) a sale, exchange or other transfer to a third party of substantially all of Contractor's assets dedicated to service under this Agreement; (iii) a sale, exchange or other transfer of over thirty percent (30%) of outstanding common stock of Contractor to a Person who is not a shareholder as of the Effective Date; (iv) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or reissuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of ownership or control of Contractor; (v) any assignment by operation of law, including insolvency or bankruptcy, an assignment for the benefit of creditors, a writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Contractor's property, or transfer occurring in the event of a probate proceeding; and (vi) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, or change of control of Contractor.
- C. Consent Requirements.** No request by Contractor for consent to an assignment need be considered by Authority unless and until Contractor has met the following requirements:
1. Contractor shall pay Authority its reasonable expenses for attorneys' fees, consultants' fees and other costs of investigation necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment. With its written request for consideration of assignment, Contractor shall submit a non-refundable deposit to Authority in the amount of one hundred and fifty thousand (\$150,000) to provide Authority funding for its review of the assignment;
  2. Contractor shall be granted no opportunity to review or approve proposed agents of the Authority associated with assignment process;
  3. Contractor shall furnish Authority with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years. Authority, following review of financial health of the assignee, may require provision of additional performance surety, insurance, or secured Closure/Post-Closure funding;
  4. Contractor shall furnish Authority with satisfactory proof:
    - i. That the proposed assignee has at least ten (10) years of Solid Waste Disposal management experience on a scale equal to or exceeding the scale of operations conducted by Contractor under this Agreement;
    - ii. That in the last five (5) years, the proposed assignee has not been the subject of any administrative or judicial proceedings initiated by a Federal, State or local agency having jurisdiction over its operations due to an alleged failure to comply with

West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement

## Article 12. Other Agreements of the Parties

Federal, State or local laws or that the proposed assignee has provided Authority with a complete list of such proceedings and their status;

- iii. That the proposed assignee conducts its operations in a safe and environmentally conscientious manner;
  - iv. That the proposed assignee conducts its operations in accordance with sound Solid Waste management practices in full compliance with all Federal, State and local laws regulating the Disposal of Solid Waste and all Environmental Laws;
  - v. Of any other information required by Authority to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner; and
- 5. Any permitted assignee must assume Contractor's responsibilities under this Agreement.
  - 6. Should Authority consent to the assignment, Contractor shall make an assignment payment to the Authority in the amount of two percent (2%) of the annual Gross Receipts for the services provided under this Agreement for the most recently completed calendar year.
- D. No Obligation to Consider.** Authority will not be obligated to consider a proposed assignment if Contractor is in default.
- E. Retention of Records.** Assignment of the Agreement in no way relieves Contractor of its record retention responsibilities under Section 6.1, nor of any and all other Contractor obligations that survive the Agreement.

**12.7 No Third Party Beneficiaries**

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

**12.8 Waiver**

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

**12.9 Notice Procedures**

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

- A.** If communications to the Authority are notices of legal action or request for public information, such communication shall be directed to:



West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement

Article 12. Other Agreements of the Parties

Kirsten M. Powell  
Logan & Powell LLP  
15466 Los Gatos Blvd., Suite 109  
Los Gatos, CA 95032

All other communications shall be directed to:

Executive Director  
West Valley Solid Waste Management Authority  
C/O HF&H Consultants, LLC  
201 N. Civic Dr., Suite 230  
Walnut Creek, CA 94596

If to Contractor:

Waste Management  
15999 Guadalupe Mines Road  
San Jose, CA 95120  
Attn. District Manager

and

Waste Management  
100 Vassar Street  
Reno, NV 89502  
Attn. President

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

### **12.10 Representatives of the Parties**

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

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

## **ARTICLE 13. MISCELLANEOUS AGREEMENTS**

### **13.1 Entire Agreement**

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

### **13.2 Section Headings**

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

### **13.3 References to Laws**

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

### **13.4 Amendments**

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

### **13.5 Severability**

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

### **13.6 Counterparts**

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

### **13.7 Exhibits**

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



West Valley Solid Waste Management Authority/Waste Management of South Bay Disposal Agreement

Article 13. Miscellaneous Agreements

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

WEST VALLEY SOLID WASTE MANAGEMENT  
AUTHORITY ("Authority")

ATTEST:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Maria W. Sheehan  
AUTHORITY CLERK

APPROVED AS TO FORM:

Daniel  
AUTHORITY ATTORNEY

USA WASTE OF CALIFORNIA, INC. ("Contractor")

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

DocuSigned by:  
Barry Skolnick  
2A640847CE8F475...

Barry Skolnick

President