

AGREEMENT FOR SOLID WASTE, RECYCLABLE  
MATERIALS, ORGANIC MATERIALS AND YARD  
TRIMMINGS COLLECTION AND PROCESSING  
SERVICES

BETWEEN

THE CITY OF PALO ALTO

AND

GREENWASTE OF PALO ALTO

October 2008

## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1. DEFINITIONS.....	3
ARTICLE 2. TERM OF AGREEMENT.....	4
2.01 Effective Date .....	4
2.02 Term.....	4
2.03 Option to Extend Term .....	4
2.04 Conditions to Effectiveness of Agreement .....	4
A. Accuracy of Representations .....	4
B. Absence of Litigation.....	5
C. Furnishing of Bond and Guaranty.....	5
D. Effectiveness of City’s Approval.....	5
ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF CONTRACTOR .....	6
3.01 Corporate Status.....	6
3.02 Corporate Authorization .....	6
3.03 Statements and Information in Proposal.....	6
3.04 No Conflict with Applicable Law or Other Documents .....	6
3.05 No Litigation.....	6
3.06 Financial Condition.....	7
3.07 Expertise .....	7
ARTICLE 4. COLLECTION OF SOLID WASTE, RECYCLABLE MATERIALS, ORGANIC MATERIALS AND YARD TRIMMINGS.....	8
4.01 Scope of Work - General .....	8
4.02 Transition and Implementation Plan.....	8
4.03 Grant of Exclusive and Non-Exclusive Rights .....	9
A. Exclusive Rights .....	9
B. Non-Exclusive Rights .....	9
4.04 Collection of Solid Waste .....	9
A. Single Family Residential Premises.....	9
B. Multiple Family Residential Premises .....	10
C. Commercial/Industrial Premises.....	10
D. City Facilities and City-Furnished Public Litter Receptacles.....	10

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
4.05	Collection of Recyclable Materials and Organic Materials ..... 10
A.	Single Family Residential Premises..... 10
B.	Multiple Family Residential Premises ..... 11
C.	Commercial/Industrial Premises..... 11
D.	City Facilities and City-Furnished Recycling Receptacles..... 11
4.06	Collection of Yard Trimmings ..... 11
A.	Single Family Residential Premises..... 11
B.	Multiple Family Residential Premises ..... 11
C.	Commercial/Industrial Premises..... 12
D.	City Parks and Other Facilities ..... 12
4.07	Drop-Box Collection Services ..... 12
A.	Solid Waste ..... 12
B.	Construction and Demolition Recycling..... 12
C.	Single-Source Separated Recyclables..... 12
D.	Yard Trimmings..... 12
4.08	Special Services ..... 12
4.09	Other Collection-Related Services..... 13
A.	General..... 13
B.	Cleaning of Public Receptacles ..... 13
C.	Building Plan Review ..... 13
D.	Program Evaluation ..... 14
4.10	Hours of Collection..... 14
4.11	Collection Standards ..... 14
A.	Care of Private Property..... 14
B.	Noise ..... 15
C.	Service Quality..... 15
4.12	Litter Abatement ..... 15
A.	Minimization of Spills ..... 15
B.	Clean Up ..... 16
4.13	Hazardous Waste ..... 16

## TABLE OF CONTENTS

(continued)

	<b>Page</b>
A. General.....	16
B. Notice to Customers.....	16
C. Contractor to Segregate and Dispose.....	16
D. Operating Procedures and Employee Training.....	17
4.14 Provision of Emergency Services.....	17
4.15 Public/Customer Service and Accessibility.....	17
A. Office.....	17
B. Office Hours.....	18
C. Staffing.....	18
D. Telephone.....	18
E. Correspondence.....	19
F. Emergency Contact.....	19
G. Web Site.....	19
H. Large Customers.....	19
4.16 Billing and Collecting For Specific Services.....	19
4.17 Drop-Off and Recycling Center.....	20
ARTICLE 5. TRANSPORTATION OF MATERIALS.....	22
5.01 General.....	22
5.02 Transportation of Solid Waste.....	22
5.03 Transportation of Recyclable Materials.....	22
5.04 Transportation of Yard Trimmings.....	22
5.05 Transportation of Construction and Demolition Debris for Recycling.....	23
5.06 Transportation of Organic Materials.....	23
ARTICLE 6. PROCESSING OF MATERIALS FOR RECOVERY AND REUSE.....	24
6.01 General.....	24
6.02 Recyclable Material Processing.....	24
A. Capacity and Priority Assurances.....	24
B. Processing.....	24
C. No Disposal/Residue Limit.....	24
D. Marketing.....	25

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
E.    Weighing.....	25
F.    Reporting.....	25
G.    Inspection.....	25
6.03 Construction and Demolition Debris Processing.....	25
A.    Capacity and Priority Assurances .....	25
B.    Processing .....	26
C.    No Disposal/Residue Limit.....	26
D.    Marketing.....	26
E.    Weighing.....	26
F.    Reporting.....	26
G.    Inspection.....	27
6.04 Organic Materials Processing .....	27
A.    Capacity and Priority Assurances .....	27
B.    Processing.....	27
C.    No Disposal or Use as ADC .....	27
D.    Marketing.....	27
E.    Weighing.....	28
F.    Reporting.....	28
G.    Inspection.....	28
ARTICLE 7. EQUIPMENT, PERSONNEL AND FACILITIES .....	29
7.01 General.....	29
7.02 Vehicles.....	29
A.    General.....	29
B.    Purchase of Vehicles.....	29
C.    Vehicle Identification.....	30
D.    Cleaning and Maintenance.....	30
E.    Operation.....	31
F.    Sale.....	31
7.03 Solid Waste, Recycling and Yard Trimming Containers.....	32
A.    General.....	32

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
B.    Repair and Replacement .....	32
C.    Cleaning, Painting and Maintenance of Contractor-Furnished Containers .....	32
D.    Other .....	33
7.04 City Right to Purchase Equipment, Sales of Equipment .....	33
7.05 Personnel.....	33
A.    General.....	33
B.    Driver Qualifications .....	34
C.    Uniforms .....	34
D.    Safety Training.....	34
E.    No Gratuities.....	35
F.    Employee Conduct and Courtesy.....	35
G.    Provision of Recycling/Public Education Specialist.....	35
H.    Ongoing Training and Testing .....	35
I.    Sober and Drug-Free Workplace .....	36
J.    City Role in Hiring of Key Management Employees.....	36
7.06 Use of Workers Not Employed by Contractor.....	36
7.07 Initial Hiring.....	37
7.08 Wages and Benefits.....	38
7.09 Facilities .....	39
ARTICLE 8. RECORD KEEPING, REPORTING AND INSPECTIONS.....	41
8.01 General.....	41
8.02 Record Keeping; Audit .....	41
8.03 Data Management; Billing Support .....	41
8.04 Reporting.....	42
8.05 Right to Inspect Operations .....	42
8.06 Compliance Reporting .....	42
8.07 Reports as Public Records .....	42
ARTICLE 9. Compensation .....	43
9.01 General.....	43

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
9.02 Total Compensation .....	44
9.03 Compensation for Rate Periods One and Two.....	44
A. Rate Period One .....	44
B. Rate Period Two .....	45
9.04 Compensation for Subsequent Rate Periods .....	45
9.05 Compensation for Extra Services.....	45
9.06 City Landfill Adjustment .....	47
9.07 Compensation Adjustment Process.....	47
A. Adjustment Calculations .....	47
B. Contractor Review of Adjustments.....	47
C. City Manager Action.....	47
D. Resolution of Disputes .....	48
9.08 Monthly Payment of Contractor’s Compensation .....	48
A. Monthly Base Compensation .....	48
B. Extra Service Compensation .....	48
C. City Landfill Adjustment .....	48
D. Total Monthly Payment .....	48
9.09 Special Compensation Review .....	48
A. Eligible Items .....	48
B. Ineligible Items .....	49
C. Submittal of Request.....	50
D. Review of Costs .....	50
E. Burden of Justification.....	50
F. Decision .....	50
G. Review .....	51
9.10 Compensation Adjustments for Changes in Service.....	51
9.11 Rate-Setting Process .....	52
A. General.....	52
B. Rate Structure.....	52
C. Rate Categories .....	52

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
9.12 City Payment of Fees for Solid Waste Disposal.....	52
9.13 Compensation During Extended Term .....	53
9.14 Additional Financial Incentives for Zero Waste Program Implementation.....	53
A. General.....	53
B. Mixed Recycling.....	53
C. Commercial Organics .....	55
D. Procedure .....	56
ARTICLE 10. INDEMNITY, INSURANCE, PERFORMANCE BOND, GUARANTY.....	57
10.01 Indemnification .....	57
10.02 Insurance .....	57
A. Types and Amounts of Coverage.....	57
B. Acceptability of Insureds .....	59
C. Required Endorsements .....	59
D. Delivery of Proof of Coverage.....	61
E. Other Insurance Requirements.....	61
10.03 Faithful Performance Bond.....	62
10.04 Alternative Security .....	63
10.05 Hazardous Waste Indemnification.....	63
10.06 Integrated Waste Management Act Indemnification .....	63
10.07 Guaranty.....	64
ARTICLE 11. DEFAULT AND REMEDIES.....	65
11.01 Contractor Default .....	65
11.02 Right to Suspend or Terminate Upon Default .....	66
11.03 Specific Performance .....	66
11.04 City’s Right to Cure .....	67
11.05 City’s Right to Perform.....	67
11.06 City’s Use of Property Upon Default.....	67
11.07 Damages.....	68
11.08 City’s Remedies Cumulative .....	68
11.09 Liquidated Damages .....	68



**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
11.10 Force Majeure .....	70
A. Excuse from Performance.....	70
B. Obligation to Restore Ability to Perform.....	70
C. Notice.....	70
D. City’s Rights in the Event of Force Majeure .....	70
11.11 City Default.....	71
11.12 Assurance of Performance .....	71
ARTICLE 12. OTHER AGREEMENTS OF THE PARTIES .....	72
12.01 Relationship of Parties .....	72
12.02 Compliance with Law .....	72
12.03 Property Damage .....	72
12.04 Grants.....	72
12.05 Assignment .....	73
A. City Consent Required.....	73
B. Assignment Defined.....	73
C. City Review of Requests to Consent to a Proposed Assignment.....	74
12.06 Subcontracting .....	75
12.07 Binding on Successors .....	75
12.08 Parties in Interest.....	75
12.09 Waiver.....	75
12.10 Contractor’s Investigation; No Warranties by City .....	75
12.11 Condemnation.....	76
12.12 Representatives of the Parties .....	76
A. Representative of City.....	76
B. Representative of Contractor .....	76
12.13 Notice.....	76
12.14 Duty of Contractor Not to Discriminate .....	78
12.15 City Environmental Policies .....	78
12.16 Right of City to Make Changes .....	78
12.17 Cooperation During Transition.....	79

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
12.18 Protection of Customer Privacy .....	79
12.19 Use of Recycled Materials .....	80
A. Recycled Paper.....	80
B. Re-Refined Motor Oil.....	80
C. Recycled Plastic .....	80
12.20 Municipal Code.....	80
12.21 No Damages for Invalidation of Agreement.....	80
12.22 Indemnity Regarding Challenge to Award of Contract .....	80
12.23 Fiscal Provisions .....	81
12.24 Affiliated Entity .....	81
<b>ARTICLE 13. MISCELLANEOUS AGREEMENTS .....</b>	<b>82</b>
13.01 Attachments .....	82
13.02 Entire Agreement .....	82
13.03 Section Headings .....	82
13.04 Interpretation.....	82
13.05 Amendment.....	82
13.06 Severability .....	82
13.07 Governing Law .....	82
13.08 Jurisdiction.....	82
13.09 No Attorneys' Fees .....	83
13.10 References to Laws.....	83

## **LIST OF ATTACHMENTS**

A	Definitions
B	Transition and Implementation Plan
C	Collection Scope of Work
D-1	City Facilities for Solid Waste and Recycling Services
D-2	Public Solid Waste Receptacles
D-3	Public Recyclables Receptacles
E	Processing Scope of Work
F	Containers Furnished by City
G	Vehicle Specifications and Quantities
H	Containers Furnished by Contractor
I	Minimum Roster of Personnel
J-1	Minimum Wage Scale
J-2	Monetary Conversion of Benefits
K-1	Required Reports
K-2	Data Management Requirements
L-1	Form of Performance Bond
L-2	Form of Continuation Certificate
M	Form of Guaranty
N-1	Contractor's Base Compensation for Rate Periods One and Two; Unit Prices for Extra Services
N-2	Compensation Adjustment Methodology
N-3	Cost Details by Service
O	Liquidated Damages Schedule
P	List of Contractor's Members
Q	Procedures for Arbitration
R	Non-Discrimination Form

**AGREEMENT FOR SOLID WASTE, RECYCLABLE MATERIALS, ORGANIC MATERIALS  
AND YARD TRIMMINGS COLLECTION AND PROCESSING SERVICES**

THIS AGREEMENT is made as of this 20th day of October, 2008, by and between the CITY OF PALO ALTO, a chartered California municipal corporation (“City”), and GREENWASTE OF PALO ALTO, a California joint venture (“Contractor”).

**RECITALS**

This Agreement is entered into on the basis of the following facts, understandings and intentions of the parties:

1. The State of California has found and declared that the amount of solid waste generated in California, coupled with diminishing landfill space and potential adverse environmental impacts from landfilling, have created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program. The State has, through enactment of the California Integrated Waste Management Act of 1989, now codified as Public Resources Code Section 40000, *et seq.* (the “Act”), directed the California Integrated Waste Management Board, and local agencies, to promote recycling and to maximize the use of feasible source reduction, recycling and composting options in order to reduce the amount of solid waste that must be disposed of in landfills. The City has already achieved a level of waste diversion from landfill disposal that exceeds the level required by the Act.

2. In October 2005, the City Council approved a Zero Waste Strategic Plan developed by a task force of City residents and businesses. The City has since then formulated a Zero Waste Operational Plan, whose purposes are to reduce significantly the amount of waste produced by residents, businesses and institutions within the City, to reduce the toxicity of the disposed waste stream, and to maximize diversion of recyclable and compostable materials generated within the City.

3. On February 29, 2008, the City issued a Request for Proposals (“RFP”) seeking proposals from qualified companies to provide the collection of Solid Waste, Recyclable Materials, Organic Materials and Yard Trimmings, the processing of

Recyclable Materials for reuse, the delivery of Yard Trimmings and Organic Materials for composting, the marketing of such materials and the transport of non-recyclable waste materials for disposal. The RFP requested proposals for new and expanded recycling services intended to implement the goals of the Zero Waste Operational Plan in an aggressive, cost-effective manner.

4. The City has evaluated all proposals submitted and has determined that the Contractor has proposed to provide the required services in a manner and on terms that are in the best interests of the City, taking into account (a) the Contractor's qualifications and experience, (b) its commitment to recycling, (c) its understanding of the flexibility that will be required to accommodate the number of changes that will occur during the term of the Agreement due to closure of the City's landfill and associated facilities, as well as the introduction and evolution of new programs intended to implement the Zero Waste Operational Plan, and (d) the cost of providing such services.

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

## **ARTICLE 1. DEFINITIONS**

Unless the context otherwise requires, capitalized terms used in this Agreement will have the meanings specified in Attachment A.

Other capitalized terms, not defined in Attachment A, will have the meanings set forth in the definitions in Section 5.20.010 of the Palo Alto Municipal Code, which are incorporated herein by this reference.

If a term is neither defined in Attachment A nor in the Palo Alto Municipal Code, that term will have the same meaning as the definition of the term contained in the Act.

## **ARTICLE 2. TERM OF AGREEMENT**

**2.01 Effective Date.** The effective date of this Agreement shall be November 24, 2008 (“Effective Date”).

**2.02 Term.** The Term of the Agreement shall commence on the Effective Date and shall end at midnight on June 30, 2017, unless extended as provided in Section 2.03. Contractor’s obligation to collect Solid Waste and Recyclable Materials and provide other services to customers as required by this Agreement shall commence July 1, 2009.

**2.03 Option to Extend Term.** The City may extend the Term of this Agreement for one (1) or more periods of twelve (12) months, up to a maximum of four (4) years, on the same terms and conditions. If City wishes to extend the Term it shall deliver a written notice to Contractor at least six (6) months before the expiration of the Term (i.e. on or before December 31, 2016) specifying the number of additional months by which it wishes to extend the Term. If the City initially elects to extend the term for less than four (4) years, it may subsequently elect to further extend the term in increments of twelve (12) months, up to a total of four (4) years, i.e. until June 30, 2021. If the City wishes to further extend the term in this fashion it shall deliver a written notice to Contractor at least thirty (30) days prior to the expiration of the extended term.

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

**A. Accuracy of Representations.** The representations and warranties made by Contractor in Article 3 of this Agreement shall be true and correct on and as of the Effective Date, and a certification to that effect dated as of the Effective Date shall be delivered by Contractor to City on the Effective Date.

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

**C. Furnishing of Bond and Guaranty.** Contractor has furnished the Performance Bond required by Section 10.03, or alternative security described in Section 10.04 if approved by City, and the Guaranty required by Section 10.07.

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

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



### **ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF CONTRACTOR**

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

**3.02 Corporate Authorization.** Contractor has the authority to enter into and perform its obligations under this Agreement. The board of directors, the shareholders, and general partner of the Contractor's two partners have taken all actions required by law, their articles of incorporation and bylaws, their partnership agreements or otherwise to authorize the execution of this Agreement. The persons signing this Agreement on behalf of Contractor have authority to do so.

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

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

**3.05 No Litigation.** There is no action, suit, proceeding, or investigation at law or in equity, before or by any court or governmental entity, pending or threatened against Contractor or its partners, or otherwise affecting Contractor or its partners, wherein an unfavorable decision, ruling, or finding, in any single case or in the

aggregate, would materially adversely affect Contractor's performance hereunder, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or which would have a material adverse effect on the financial condition of Contractor or its partners.

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

**3.07 Expertise.** Contractor has the expertise and professional and technical capability to perform all of its obligations under this Agreement and is ready, willing and able to so perform.

**ARTICLE 4. COLLECTION OF SOLID WASTE, RECYCLABLE MATERIALS, ORGANIC MATERIALS AND YARD TRIMMINGS**

**4.01 Scope of Work - General.** The work to be done by Contractor includes the furnishing of all labor, supervision, equipment, materials, supplies and all other items necessary to perform the services required by the Agreement in a thorough, workmanlike, cost-effective and efficient manner, so that residents, businesses and institutions within the City are provided reliable, courteous and high-quality services at all times. 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 that may be required, whether enumerated or not.

Contractor shall perform all work in accordance with Attachments C and E, all provisions of which are incorporated herein whether or not such provisions are specifically referred to in any other section of this Agreement. In addition, to the extent that Contractor's Proposal includes promises to perform services in addition to, or at a higher standard of service than those required by the Request for Proposals, those promises are incorporated into this Agreement and Contractor hereby ratifies its agreement to perform as promised.

**4.02 Transition and Implementation Plan.** The parties recognize that substantial planning and preparation will be required to ensure a successful initiation of collection operations by Contractor on July 1, 2009. To that end, Contractor has prepared a detailed transition and implementation plan addressing the steps Contractor will take, and the schedule on which it will take them, to prepare for commencement of collection operations. The implementation plan covers, among other matters, Contractor's schedule for hiring and training of personnel, acquiring necessary collection vehicles and arranging for their registration and inspection, acquiring equipment including new containers (carts, bins and boxes), preparing customer information materials (including collection schedules, route maps, billing forms, complaint forms, service request forms and so forth), distributing new containers to customers as required, securing a local office and a vehicle and container storage facility, and developing a contingency plan, and is attached as Attachment B.

Contractor shall diligently adhere to the implementation plan and shall meet periodically, whenever City requests, to review progress. Failure to adhere to the implementation plan, including its schedule, shall constitute a breach of this Agreement which, if uncured, shall constitute a default under Section 11.01.

The specific plans and other materials required to be submitted by the implementation plan are subject to City's review and approval. City will take actions, make decisions, and provide directions to Contractor in accordance with the schedule and time allowances set forth in Attachment B, so as not to delay Contractor's adherence to the implementation plan schedule.

#### **4.03 Grant of Exclusive and Non-Exclusive Rights**

**A. Exclusive Rights.** Subject to the terms and conditions of this Agreement and State laws (including the right of State agencies and public schools to use a Solid Waste enterprise other than Contractor), and except as otherwise specifically provided herein, City grants to Contractor for the Term the exclusive authority, right and privilege to collect, transport and dispose of all Solid Waste generated by or accumulated on all Residential and Commercial/Industrial Premises in the City and to collect, transport and recycle all Recyclable Materials and Yard Trimmings from Residential Premises. This grant is also subject to the exceptions and exclusions provided in Section 5.20.110 of the Municipal Code.

**B. Non-Exclusive Rights.** Subject to the terms and conditions of this Agreement and State laws, and except as otherwise specifically provided herein, City grants to Contractor for the Term the non-exclusive right to collect, transport and recycle Recyclable Materials, Organic Materials and Yard Trimmings from Commercial/Industrial Premises.

#### **4.04 Collection of Solid Waste**

**A. Single Family Residential Premises.** Contractor shall collect all Solid Waste generated at Single Family Residential Premises within the City and placed for collection at curbside or at sideyard/backyard locations by Customers who subscribe for such collection or who are eligible for such collection under policies

adopted by City from time to time. Solid Waste shall be collected at the frequencies and in the manner specified in Attachment C, Section 1.A.

**B. Multiple Family Residential Premises.** Contractor shall collect all Solid Waste generated at Multiple Family Residential Premises within the City and placed for collection. Solid Waste shall be collected at the frequencies and in the manner specified in Attachment C, Section 1.B.

**C. Commercial/Industrial Premises.** Contractor shall collect all Solid Waste generated at Commercial/Industrial Premises within the City and placed for collection. Solid Waste shall be collected at the frequencies and in the manner specified in Attachment C, Section 1.C.

**D. City Facilities and City-Furnished Public Litter Receptacles.** Contractor shall collect all Solid Waste generated at City Facilities and placed for collection. The current City Facilities to be served, the frequency of collection and the number and capacity of containers to be collected are listed on Attachment D-1. The number and location of City Facilities to be provided service may change during the Term, as may the number and capacity of containers at each facility. Contractor shall also collect all Solid Waste deposited in City-owned receptacles, including those receptacles placed at bus stops. The approximate number of public Solid Waste receptacles, their current locations and collection frequencies are shown on Attachment D-2, each of which may change during the Term. Public Solid Waste receptacles shall be provided service at the frequencies and in the manner specified in Attachment C, Section 1.D.

#### **4.05 Collection of Recyclable Materials and Organic Materials.**

**A. Single Family Residential Premises.** Contractor shall collect Recyclable Materials from all Single Family Residential Premises within the City placed for collection at curbside or at sideyard/backyard locations by Customers who are eligible for such collection under policies adopted by the City from time to time. Recyclable Materials shall be collected at the frequencies and in the manner specified in Attachment C, Section 2.A.

**B. Multiple Family Residential Premises.** Contractor shall collect Recyclable Materials from all Multiple Family Residential Premises within the City placed for collection. Recyclable Materials shall be collected at the frequencies and in the manner specified in Attachment C, Section 2.B.

**C. Commercial/Industrial Premises.** Contractor shall collect Recyclable Materials from all participating Commercial/Industrial Premises that are placed for collection in Contractor-furnished containers. Contractor shall collect Organic Materials from all participating Commercial/Industrial Premises that are placed for collection in approved containers. Contractor shall also collect cardboard from shared containers in the business districts and wooden pallets. Recyclable Materials and Organic Materials shall be collected at the frequencies and in the manner specified in Attachment C, Section 2.C.

**D. City Facilities and City-Furnished Recycling Receptacles.** Contractor shall collect Recyclable Materials placed for collection at the City Facilities listed on Attachment D-1. Contractor shall collect Recyclable Materials deposited in City-owned Recycling Receptacles at City Hall and other locations in downtown Palo Alto, the number and location of which are shown on Attachment D-3. Contractor shall also collect and recycle polystyrene and plastic film at City Hall.

#### **4.06 Collection of Yard Trimmings.**

**A. Single Family Residential Premises.** Contractor shall collect Yard Trimmings from all Single Family Residential Premises within the City placed for collection at curbside or at sideyard/backyard locations by Customers who are eligible for such collection under policies adopted by the City from time to time. Yard Trimmings shall be collected at the frequencies and in the manner specified in Attachment C, Section 3.A.

**B. Multiple Family Residential Premises.** Contractor shall collect Yard Trimmings from all Multiple Family Residential Premises within the City placed for collection. Yard Trimmings shall be collected at the frequencies and in the manner specified in Attachment C, Section 3.B.

**C. Commercial/Industrial Premises.** Contractor shall collect Yard Trimmings from all participating Commercial/Industrial Premises that are placed for collection in City-furnished or Contractor-furnished containers. Yard Trimmings shall be collected at the frequencies and in the manner specified in Attachment C, Section 3.C.

**D. City Parks and Other Facilities.** Contractor shall collect Yard Trimmings placed for collection at the City Facilities listed on Attachment D-1.

#### **4.07 Drop-Box Collection Services.**

**A. Solid Waste.** Contractor shall collect Solid Waste deposited in Contractor-furnished drop boxes (7, 15, 20, 30 and 40 cubic yard capacities) on an on-call basis and on a monthly scheduled service basis, as requested by Customer. The drop boxes shall be provided and collected as specified in Attachment C, Section 4.

**B. Construction and Demolition Recycling.** Contractor shall collect Construction and Demolition Debris deposited in Contractor-furnished drop boxes (7, 15, 20, 30 and 40 cubic yard capacities) on an on-call basis. The drop boxes shall be provided and collected as specified in Attachment C, Section 4.

**C. Single-Source Separated Recyclables.** Contractor shall collect Single-Source Separated Recyclables deposited in Contractor-furnished drop boxes (7, 15, 20, 30 and 40 cubic yard capacities) on an on-call and monthly scheduled service basis, as requested by Customer. The drop boxes shall be provided and collected as specified in Attachment C, Section 4.

**D. Yard Trimmings.** Contractor shall collect Yard Trimmings deposited in Contractor-furnished drop boxes (15, 20, and 30 cubic yard capacities) on an on-call and on a monthly scheduled service basis, as requested by Customer. The drop boxes shall be provided and collected as specified in Attachment C, Section 4.

**4.08 Special Services.** Contractor shall provide the following special services as specified in Attachment C, Section 5.

- Solid Waste and Recyclables Collection at Household Hazardous Waste Events
- On-Call Recycling Cleanout Service
- Annual Clean-Up Days
- Special Events
- Physical Limitations Program

**4.09 Other Collection-Related Services.** Contractor shall provide the following services:

**A. General**

- Performance Audits
- Route Audits
- Waste Generation/Characterization on Single Stream Recycling
- Waste Audits for Green Business Certifications
- Program Evaluation Audits
- Customer Public Opinion Surveys

Details of each of the above are described in Attachment C, Section 5.G.

**B. Cleaning of Public Receptacles.** All public receptacles listed on Attachments D-2 and D-3, including lids and metal liners, shall be thoroughly power-washed (with high pressure water and a strong detergent) twice a year. The Contractor shall provide a list of dates for cleaning to Director for approval thirty (30) days in advance of the first scheduled date. In addition, Contractor shall wipe the exteriors and lids of all public receptacles listed on Attachments D-2 and D-3 with water and detergent every two weeks, on a schedule approved by the Director. Contractor shall clean the interiors of public receptacles whenever needed to avoid odors and shall collect any materials that have accumulated within or around the receptacles.

**C. Building Plan Review.** Contractor shall provide assistance to City by reviewing and providing comments on applications for City permits to construct new



buildings or to remodel existing buildings. Contractor shall review building plans for adequate space to accommodate the number and size of containers for Solid Waste, Recyclable Materials, Organic Materials, and Yard Trimmings for adequate collection vehicle access and turnaround. Contractor shall provide City, within five (5) Business Days of receiving the plans, its written evaluation of the plans and any recommendations to improve safety and assure sufficient storage space and convenient access.

**D. Program Evaluation.** Contractor shall periodically conduct surveys of the Single-Family Residential, Multi-Family Residential, and Commercial Solid Waste, Recyclable Materials, Organic Material, and Yard Trimmings Collection programs to assess one or more of the following performance indicators: average volume of Recyclable Materials per setout per customer, average volume of Organic Materials per setout per customer, average volume of Yard Trimmings per setout per customer, participation level (i.e., number of Customers setting out Containers per week), contamination levels, etc. Contractor shall perform up to five (5) days of route surveys each rate period. The City and Contractor shall meet and discuss the purpose of the survey and the method, scope, and data to be provided by the Contractor.

**4.10 Hours of Collection.** Collection of Solid Waste, Recyclable Materials, Organic Materials, and/or Yard Trimmings may occur only within hours authorized by the City. The City Municipal Code currently prohibits collection of Solid Waste, Recyclable Materials or Yard Trimmings (1) earlier than 6:00 a.m. or later than 6:00 p.m. in residential districts and at schools, churches and commercial premises adjacent to residential districts, and (2) earlier than 4:00 a.m. or later than 9:00 p.m. in commercial districts subject to reasonable modification made by the Director.

**4.11 Collection Standards.**

**A. Care of Private Property.** Contractor shall use due care when handling Solid Waste, Recyclable Materials, Organic Material, and Yard Trimmings Containers. Containers shall not be thrown from trucks, roughly handled, damaged or broken. Containers shall be returned to the collection point upright, with lids properly closed.

Contractor shall ensure that its employees close all gates opened by them in making collections, unless otherwise directed by the Customer, and avoid crossing landscaped areas and climbing or jumping over hedges and fences.

City will refer complaints about damage to private property, including common areas in common-area subdivisions, to Contractor. Contractor shall promptly repair, or arrange for the repair of, all damage to private property caused by its employees within ten (10) days of the complaint being received.

**B. Noise.** All collection operations shall be conducted as quietly as possible and shall conform to any federal, state, County and City noise level regulations. The noise level shall not exceed 95 decibels at a distance of 25 feet from the collection vehicle, as provided in Municipal Code Section 9.10.060(h). The City may conduct random checks of noise emission levels to ensure such compliance.

**C. Service Quality.** Contractor shall promptly (within ten (10) days) and courteously respond to, and satisfactorily resolve, Customer complaints relating to: missed pick-ups, spills and litter resulting from collection; collection schedule changes; broken or missing containers; improper set-outs; noise; obstruction of traffic or sidewalks during collection; and collection vehicle operation, including safety.

#### **4.12 Litter Abatement.**

**A. Minimization of Spills.** Contractor shall use due care to prevent Solid Waste, Recyclable Materials, Organic Materials, or Yard Trimmings from being spilled or scattered during the collection or transportation process. If any Solid Waste, Recyclable Materials, Organic Materials, or Yard Trimmings is spilled, Contractor shall promptly notify the City and clean up all spilled materials, whether on private or public property. Each collection vehicle shall carry a broom and shovel at all times for this purpose.

Contractor shall not transfer loads from one vehicle to another on any public street or private roadway, unless it is necessary to do so because of mechanical failure or damage to a collection vehicle which renders it inoperable.

**B. Clean Up.** The Contractor shall clean up litter in the immediate vicinity of any Solid Waste, Recyclable Materials, Organic Materials, or Yard Trimmings storage area (including the areas where collection containers or bins and debris boxes are placed for collection) whether or not Contractor has caused the litter. Contractor shall notify the Customer and the City after the second such occurrence at a specific Premises in a calendar year. City may require the Customer to accept and pay for increased service (i.e., a larger bin or more frequent collections).

#### **4.13 Hazardous Waste**

**A. General.** Contractor shall be aware of, and comply with, all laws and regulations relating to the handling and transportation of Hazardous Waste and hazardous materials, including those regarding training and documentation.

**B. Notice to Customers.** Contractor shall notify all Customers at least once a year of (i) the prohibition against the disposal of Hazardous Waste in containers placed for collection by Contractor, (ii) the obligation of each Customer to provide for the proper handling and disposition of Hazardous Waste, and (iii) options available to Customers for the collection and appropriate processing of Hazardous Waste. To the extent that Contractor has actual knowledge of the existence of such Hazardous Waste in a container placed for collection, Contractor shall not collect such container. Contractor shall, prior to leaving the location where such Hazardous Waste has been observed, leave a tag at least 3" x 6" which informs the customer why the collection was not made and lists the telephone number for the City of Palo Alto Household Hazardous Waste Management Program.

**C. Contractor to Segregate and Dispose.** In the event Contractor inadvertently collects any Hazardous Waste and during the course of transportation and disposition becomes actually aware that it has collected such Hazardous Waste, Contractor shall segregate the Hazardous Waste, and shall arrange for its transport to a properly permitted recycling, treatment or disposal facility of Contractor's choosing. Contractor shall be solely responsible for the transport and appropriate disposition of all Hazardous Waste that is collected by the Contractor. Contractor shall cooperate with City attempts to locate and collect from the responsible Customer.

**D. Operating Procedures and Employee Training.** Contractor shall establish, implement and maintain written operating procedures designed to ensure Contractor's utilization of techniques generally accepted in the waste hauling industry for cities of the size and demographic composition of the City of Palo Alto, to handle and dispose of Hazardous Waste and its compliance with the provisions of this Section 4.12. Contractor shall establish, implement and maintain an employee training program and shall ensure that employees responsible for the identification of Hazardous Waste are fully trained. Contractor shall maintain documentation which describes the training received by its employees.

**4.14 Provision of Emergency Services.** Contractor shall provide emergency services at the City's request in the event of major accidents, disruptions, or natural calamities. Emergency services may include, but are not limited to: assistance handling, salvaging, processing, composting, or recycling materials; and disposing of Solid Waste. Contractor shall be capable of providing emergency services within twenty-four (24) hours of notification by the City or as soon thereafter as is reasonably practical in light of the circumstances. Emergency services which exceed the Contractor's obligations shall be compensated in accordance with Article 9. If Contractor cannot provide the requested emergency services, the City will have the right to take possession of the Contractor's equipment for the purposes of providing emergency services.

Contractor shall submit to City ninety (90) days prior to commencement of collection services (i.e., on or before April 2, 2009), a written contingency plan demonstrating Contractor's arrangements to provide vehicles and personnel and to maintain uninterrupted service in case of natural disaster or other emergency, including the events described in this Section and Section 11.10.

**4.15 Public/Customer Service and Accessibility**

**A. Office.** Contractor shall establish and maintain an office in the City or within two (2) miles from the City boundary if the Geng Road site cannot be made available.

**B. Office Hours.** Contractor's office shall be open to the public from 8 a.m. to 5 p.m. Monday through Friday. On those Saturdays on which collection services are performed, the office shall be open from 8 a.m. until all collection routes have been completed. The office may be closed on Sundays and holidays, as defined.

**C. Staffing.** At least two (2) thoroughly trained and knowledgeable customer service representatives shall be present at the Geng Road office whenever it is open to communicate with the City, and assist members of the public with questions, complaints about service, initiating and terminating service, paying bills, and other similar matters.

**D. Telephone.** Contractor's office shall be equipped with telephone equipment sufficient in number and capacity to allow calls received during office hours to be answered by an employee within five (5) rings. Any caller on hold for more than ninety (90) seconds shall have the option of remaining on hold or being switched to a message center where the caller may leave a message. Callers "on hold" shall be connected to a customer service representative within an additional ninety (90) seconds. All messages left shall be responded to within sixty (60) minutes. If these standards are not consistently met, or if an excessive number of callers are placed on hold, City may require Contractor to install additional telephone lines or provide additional staff coverage.

Calls received when the office is closed shall be recorded and answered before 12 noon on the following workday.

Contractor shall arrange for its telephone number to be listed in all telephone directories generally distributed in the City, on all written materials distributed by Contractor, and on Contractor's web site.

Contractor shall be capable of responding to telephone calls in English, Spanish [and such other languages as City may require].

Contractor shall use its best efforts to secure the same telephone number as the predecessor service provider.

**E. Correspondence.** Contractor shall respond to all written correspondence, including those sent electronically (“email”), from City or Customers within three (3) business Days.

**F. Emergency Contact.** Contractor shall provide the City with an emergency telephone number so that the City can reach a representative of Contractor, authorized to act on Contractor’s behalf outside of office hours. The emergency representative shall respond to any call from City within one (1) hour.

**G. Web Site.** Contractor shall establish and maintain a web site which will provide at least the following services and capabilities: (1) provide answers to frequently asked questions; (2) list the Contractor’s office address, mailing address (if different), telephone and email contact information; (3) a current schedule of collection days and routes; (4) a schedule of the current City-approved rates and charges, (5) lists of materials that may (or should not) be placed in Solid Waste, Recyclable Materials and Yard Trimming containers; (6) allow Customers to schedule services and request changes in service, including cancellation, and to file complaints; and (7) contain a link to the City’s web site. The information posted on Contractor’s web side shall be consistent with City’s web site information, unless otherwise approved by City.

**H. Large Customers.** Contractor shall designate specific employee(s) to be responsible for large customers (the top 50 waste generators) in order to maintain a good working relationship with the Customer and resolve problems in a timely manner. Large customers shall be provided an itemized list of charges by address of each customer’s facilities, within 24 hours of a request.

**4.16 Billing and Collecting For Specific Services.** When Contractor is requested to provide special services (primarily on-call drop box service), it shall determine whether the Customer has a utility account in good standing with City. If so, Contractor will notify City of the service provided and City will bill the Customer. If the Customer does not have a utility account in good standing with the City, Contractor shall require payment prior to delivery of the service (i.e., before or when the drop box is delivered to the site). Payment will be accepted in cash, certified check payable to Contractor, or credit card. Contractor shall notify City of the service provided and the

amount collected and shall remit all funds collected to City as provided in Attachment C.

**4.17 Drop-Off and Recycling Center.** Contractor shall operate the Drop-Off and Recycling Center (“Recycling Center”) located at the entrance of the Palo Alto Landfill.

The principal purpose of the Recycling Center is to provide a convenient location for residents of the City and other communities to deliver recyclable materials, household electronic devices, hazardous wastes, large appliances and other materials.

The Recycling Center’s hours of operation will be the same as those of the Palo Alto Landfill; currently these are 8 a.m. to 5 p.m., seven days per week, except the three holidays.

Contractor will provide a minimum staff of two full time employees who will be on site at all times the Recycling Center is operating. Employees will be trained in the safe handling of household hazardous wastes and electronic wastes and familiar with the laws and regulations applicable to Certified Appliance Recyclers. They will be able to communicate effectively with members of the public regarding the proper bins/locations in which to deposit materials and shall serve as ambassadors of the City’s waste prevention and recycling programs.

Contractor will furnish a forklift which shall be on site and operating in excellent condition at all times.

Contractor shall furnish all containers necessary for the safe and efficient operation of the Recycling Center. Containers shall be clearly marked so that members of the public can readily identify the type of materials that may be placed in each container. Containers shall be painted and maintained on a regular basis, at frequencies no less than those required for other containers in Attachment C.

Contractor shall receive, sort, consolidate, process, store, transport and market recyclable materials delivered to the Recycling Center, all as described in Attachment C, Section 6. Attachment C, Section 6 also contains:

- A list of acceptable materials;
- Procedures required for removal and handling of regulated materials such as mercury and CFCs;
- Additional duties of employees on site.

Contractor shall maintain the Recycling Center in a clean, neat and safe condition at all times and shall collect and dispose of all litter generated during operations on a daily basis and immediately upon request by City.

Contractor shall operate the Recycling Center as a certified appliance recycler in accordance with Health and Safety Code Section 25211 *et seq.*, Public Resources Code Section 42160 *et seq.*, and associated regulations.

When the Palo Alto Landfill ceases operation, the City may, in its sole discretion, terminate operation of the Recycling Center, operate such a center with its own forces or those of another city or private company, or continue its operation by Contractor at a different site. If the Contractor continues to operate the Recycling Center, the parties will meet to consider whether the new location or any changes in the scope of work requires an increase in, or warrants a reduction in, Contractor's Compensation.



## **ARTICLE 5. TRANSPORTATION OF MATERIALS**

**5.01 General.** Contractor shall transport all Solid Waste, Recyclable Materials, including Construction and Demolition Debris to be Recycled, Yard Trimmings, and Organic Materials collected pursuant to this Agreement to the facilities identified in this Article 5. Contractor will deliver material collected in the City directly to each of the facilities described below and will not commingle any material collected from outside the City in the vehicles used to deliver City materials to these facilities. Contractor shall not deliver Solid Waste, Recyclable Materials, including qualifying loads of Construction and Demolition Debris, Yard Trimmings or Organic Materials to facilities other than those identified in this Article without the prior written approval of City.

**5.02 Transportation of Solid Waste.** Contractor shall transport and deliver all Solid Waste collected pursuant to this Agreement to the Sunnyvale Materials Recovery and Transport Station ("SMART Station") in Sunnyvale or to the Palo Alto Landfill in Palo Alto, as directed by City from time to time. Contractor recognizes that the Palo Alto Landfill is scheduled to close in 2011.

Contractor shall cooperate with the operators of the SMART Station and the Palo Alto Landfill with regard to operations therein including, by way of example, complying with directions from the operator to unload collection vehicles in designated areas, accommodating to maintenance operations and construction of new facilities, and cooperating with the operator's hazardous waste exclusion program and tonnage tracking system.

**5.03 Transportation of Recyclable Materials.** Contractor shall transport and deliver all Recyclable Materials collected pursuant to this Agreement, including those delivered to the Recycling Center, to the Greenwaste Material Recovery Facility located at 625 Charles Street, San Jose.

**5.04 Transportation of Yard Trimmings.** Contractor shall transport and deliver all Yard Trimmings collected pursuant to this Agreement to the composting facility at the Palo Alto Landfill until that facility ceases operation. If the City directs, Yard Trimmings will be delivered to the SMART Station at no additional cost.

Thereafter, Yard Trimmings shall be transported and delivered to the SMART Station unless otherwise directed in writing by City.

**5.05 Transportation of Construction and Demolition Debris for Recycling.** Contractor shall transport and deliver all Construction and Demolition Debris collected pursuant to this Agreement to the Zanker Road Materials Processing Facility located at 675 Los Esteros Road, San Jose or to the Zanker Road Resource Recovery Operation and Landfill, located at 705 Los Esteros Road, San Jose for Recycling.

**5.06 Transportation of Organic Materials.** Contractor shall transport and deliver Organic Materials collected from Commercial/Industrial Premises and food waste collected at special events to the Greenwaste Material Recovery Facility, from which they will be transported to the Z-Best Composting Facility located at 980 State Highway 25, Gilroy for composting.

## **ARTICLE 6. PROCESSING OF MATERIALS FOR RECOVERY AND REUSE**

**6.01**     **General.** Contractor recognizes that the City Council has adopted, as a matter of municipal policy, the goal of minimizing the amount of materials that are disposed of in landfills and that the activities described in this Article are essential components of achieving that goal. A major factor in the City's decision to award this Agreement to Contractor has been the Contractor's representations and assurances as to the levels of recovery and reuse that will be achieved by processing at the facilities identified in this Article.

### **6.02**     **Recyclable Material Processing**

**A.**     **Capacity and Priority Assurances.** Contractor shall secure by the Effective Date a written assurance from the owner/operator of the Greenwaste Material Recovery Facility (Greenwaste MRF) that (1) it has the physical capacity to accept and effectively process all Recyclable Materials delivered to the facility from the City in addition to any Recyclable Material which it is currently contractually committed to accept and process; (2) its solid waste facility permit, and all other permits from governmental agencies necessary for it to operate, authorize it to accept and process the Recyclable Materials expected to be delivered from the City in addition to any Recyclable Material which it is currently contractually committed to accept and process; and (3) it has committed, or will commit, to assign Recyclable Materials collected in the City by Contractor and delivered to the facility higher priority in processing and marketing than all similar materials, other than those which are delivered under contracts which the facility owner/operator entered into before the Effective Date of this Agreement.

**B.**     **Processing.** Contractor shall assure that all Recyclable Materials delivered to the Greenwaste MRF are processed (sorted, cleaned and baled) for Recycling and/or reuse in accordance with the Processing Standards set forth in Attachment E.

**C.**     **No Disposal/Residue Limit.** Contractor shall ensure that Recyclable Materials it delivers to the Greenwaste MRF are not incinerated or disposed of at a landfill, except as provided in the following sentence. Unmarketable residue, not

to exceed eight percent (8%) by weight of mixed Recyclable Material delivered from City, measured as provided in Attachment E, may be disposed of at a permitted disposal site.

**D. Marketing.** Contractor shall ensure that no less than ninety two percent (92%) by weight of the Recyclable Materials delivered to the Greenwaste MRF is marketed for Recycling or reuse, such that those materials will qualify as having been diverted under CIWMB regulations.

**E. Weighing.** Contractor shall ensure that the owner/operator of the Greenwaste MRF operates scales at the facility that are registered with the County Department of Weights & Measures. The scales shall be regularly maintained to ensure their reliability and accuracy. Inspection reports and maintenance records shall be made available for review by City on request. All Recyclable Materials delivered to the Greenwaste MRF will be weighed upon initial delivery. Gross, tare and net weights will be recorded, along with vehicle number, date and time of delivery.

**F. Reporting.** Contractor will arrange for accurate, complete and timely reports on Tons of Recyclable Materials delivered to Greenwaste MRF, Tons of Recycled Materials marketed and prices received, and Tons of residue disposed to be produced by the owner/operator of the facility and furnished to City as provided in Attachment E.

**G. Inspection.** Contractor shall arrange for City to have free access to inspect the Greenwaste MRF during business hours.

### **6.03 Construction and Demolition Debris Processing**

**A. Capacity and Priority Assurances.** Contractor shall secure by the Effective Date a written assurance from the owner/operator of the Zanker Materials Processing Facility (ZMPF) and the Zanker Road Resource Recovery Operation and Landfill (ZRRROL) that (1) each facility has the physical capacity to accept and effectively process all C&D Debris delivered to the facility from the City in addition to any C&D Debris which they are currently contractually committed to accept and process; (2) the solid waste facility permits, and all other permits from governmental agencies necessary for each facility to operate, authorize them to accept and process the

C&D Debris expected to be delivered from the City in addition to any C&D Debris which they are currently contractually committed to accept and process; and (3) it has committed, or will commit, to assign C&D Debris collected in the City by Contractor and delivered to either facility higher priority in processing and marketing than all similar materials, other than those which are delivered under contracts which the facility owner/operator entered into before the Effective Date of this Agreement.

**B. Processing.** Contractor shall assure that all C&D Debris delivered to the ZMPF or the ZRRROL is processed (sorted, cleaned and baled) for Recycling and/or reuse in accordance with the Processing Standards set forth in Attachment E.

**C. No Disposal/Residue Limit.** Contractor shall ensure that C&D Debris it delivers to the ZMPF or the ZRRROL is not disposed of at a landfill, except as provided in the following sentence. Unmarketable residue, not to exceed twenty five percent (25%) by weight of the total combined mixed and single source separated C&D Debris delivered from City to both facilities, measured as provided in Attachment E, may disposed of at a permitted Landfill.

**D. Marketing.** Contractor shall ensure that no less than seventy five percent (75%) by weight of the total combined mixed and single source separated C&D Debris delivered from City to both facilities is marketed for Recycling or reuse, such that those materials will qualify as having been diverted under CIWMB regulations.

**E. Weighing.** Contractor shall ensure that the owner/operator of the ZMPF and the ZRRROL operates scales at each facility that are registered with the County Department of Weights & Measures. The scales shall be regularly maintained to ensure their reliability and accuracy. Inspection reports and maintenance records shall be made available for review by City on request. All C&D Debris delivered to the ZMPF or the ZRRROL will be weighed upon initial delivery. Gross, tare and net weights will be recorded, along with vehicle number, date and time of delivery.

**F. Reporting.** Contractor will arrange for accurate, complete and timely reports on Tons of C&D Debris delivered to ZMPF or the ZRRROL, Tons of C&D Debris marketed and prices received, and Tons of residue disposed to be produced by

the owner/operator of the ZMPF and the ZRRROL and furnished to City as provided in Attachment E.

**G. Inspection.** Contractor shall arrange for City to have free access to inspect the ZMPF and the ZRRROL during business hours.

#### **6.04 Organic Materials Processing**

**A. Capacity and Priority Assurances.** Contractor shall secure by the Effective Date a written assurance from the owner/operator of the Z-BEST Composting Facility (Z-BEST) that (1) it has the physical capacity to accept and effectively process all Organic Materials delivered to the facility from the City in addition to any Organic Materials which it is currently contractually committed to accept and process; (2) its solid waste facility permit, and all other permits from governmental agencies necessary for it to operate, authorize it to accept and process the Organic Materials expected to be delivered from the City in addition to any Organic Materials which it is currently contractually committed to accept and process; and (3) it has committed, or will commit, to assign Organic Materials collected in the City by Contractor and delivered to the facility higher priority in processing and marketing than all similar materials, other than those which are delivered under contracts which the facility owner/operator entered into before the Effective Date of this Agreement.

**B. Processing.** Contractor shall assure that all Organic Materials delivered to Z-BEST are processed for use as compost, mulch, or soil amendment in accordance with the Processing Standards set forth in Attachment E.

**C. No Disposal or Use as ADC.** Contractor shall ensure that Organic Materials it delivers to Z-BEST are not disposed of at a landfill or used as alternative daily cover at a landfill. Inorganic contamination, not to exceed ten percent (10%) by weight of Organic Materials delivered from City, measured as provided in Attachment E, may be disposed of at a permitted disposal site.

**D. Marketing.** Contractor shall ensure that no less than ninety percent (90%) by weight of the Organic Materials collected in City and delivered to Z-

BEST is processed for use as compost, mulch, or soil amendment such that those materials will qualify as having been diverted under CIWMB regulations.

**E. Weighing.** Organic Materials will initially be delivered to the Greenwaste MRF and weighed. Thereafter, they will be loaded into transfer vehicles for transport to Z-BEST. All Organic Materials delivered to the Z-BEST will also be weighed upon initial delivery.

**F. Reporting.** Contractor will arrange for accurate, complete and timely reports on Tons of Organic Materials delivered to the Greenwaste MRF and to Z-BEST, Tons of Organic Materials marketed and prices received, and Tons of residue disposed to be produced by the owners/operators of the Greenwaste MRF and Z-BEST, and furnished to City as provided in Attachment E.

**G. Inspection.** Contractor shall arrange for City to have free access to inspect Z-BEST during business hours.

## **ARTICLE 7. EQUIPMENT, PERSONNEL AND FACILITIES**

**7.01**     **General.** Contractor shall furnish all equipment necessary to perform safely and efficiently the services required by this Agreement except for the Containers furnished by the City which are listed on Attachment F.

### **7.02**     **Vehicles.**

**A.**     **General.** Contractor shall provide collection and auxiliary vehicles of the type, size and configuration, and in the quantities shown on Attachment G. All such vehicles shall be suitable in design and construction for arduous heavy-duty service. All vehicles shall comply with all laws and regulations including but not limited to the California Air Resources Board regulations for solid waste collection vehicles codified at 13 CCR Section 2020 *et seq.*

#### **B.**     **Purchase of Vehicles.**

1.     **Purchase of New Vehicles.** All of the vehicles placed in service on July 1, 2009 shall be new and unused, other than those to be purchased from Palo Alto Sanitation Company (PASCO), the current service provider, which are described in subsection 2. Use of newly acquired vehicles for weekend training of drivers to be employed by Contractor and dedicated to service in City shall not disqualify such vehicles from being “new and unused.”

2.     **Purchase of PASCO Vehicles.** Contractor shall purchase six (6) collection vehicles powered by compressed natural gas (CNG) from PASCO, as well as three (3) other ancillary vehicles. All of these vehicles are separately identified in Attachment G, together with their initial purchase prices and depreciation schedules.

City will provide Contractor with CNG at no cost, at its fueling facility located at 3201 East Bayshore Road, Palo Alto. Concurrently with the approval of this Agreement by City, Contractor will be issued a fueling permit by City containing the terms and conditions of Contractor’s use of that facility.

3.     **Purchase of Replacement Vehicles.** Any vehicles purchased during the Term shall be new and unused. If it becomes necessary, a used vehicle may



be placed into service on a temporary basis (i.e., no more than 90 days), provided that it is safe, in good operating condition, equivalent in design and capacity to vehicles in regular service and approved by the City.

**C. Vehicle Identification.** The name of City and Contractor, Contractor's local telephone number, and a unique vehicle identification number for each vehicle shall be prominently displayed on all vehicles. City shall approve all details, including size, color and location of text, I.D. numbers and logo.

**D. Cleaning and Maintenance.**

1. General. Contractor shall maintain all of its equipment used in providing service under this Agreement in a safe, neat, clean and operable condition at all times.

2. Cleaning. The exterior and interior of vehicles used in the collection of Solid Waste, Recyclable Materials, Organic Materials, and Yard Trimmings shall be thoroughly washed by Contractor a minimum of twice per week and thoroughly steam cleaned at least once every week. City may inspect vehicles at any time to determine compliance with sanitation requirements and aesthetic conditions. Contractor shall make vehicles available to the City, the Santa Clara County Department of Environmental Management and the Local Enforcement Agency for inspection, at any frequency they request.

3. Painting. All vehicles used in collection of Solid Waste, Recyclable Materials, Organic Materials, and Yard Trimmings shall be repainted by Contractor at least once every five years, unless the City determines that repainting a specific vehicle at that frequency is not necessary because the vehicle's appearance is satisfactory or unless the City determines that repainting a specific vehicle earlier (due to graffiti damage, etc.) is necessary to ensure that the vehicle gives the appearance of having been repainted within the preceding twenty four (24) months.

4. Maintenance. Contractor shall (i) inspect each vehicle daily to ensure that the vehicle and all equipment is operating properly; and (ii) perform or cause to be performed all scheduled maintenance functions in accordance with the

manufacturer's specifications and schedule. Vehicles which are not operating properly shall be taken out of service until they are repaired and do operate properly. Contractor shall keep accurate records of all vehicle maintenance, recorded according to vehicle or part I.D., date, and mileage, and shall make such records available to the City and the California Highway Patrol upon request.

5. Repairs. Contractor shall repair, or arrange for the repair of, all vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all vehicles and equipment in a safe and operable condition. If an item of repair is covered by a warranty, Contractor shall obtain warranty performance. Contractor shall maintain accurate records of repair, which shall include the vehicle or part I.D., date/mileage, nature of repair and the signature of a maintenance supervisor that the repair has been properly performed.

6. Storage. Contractor shall arrange to store all vehicles and other equipment in safe and secure location(s). Vehicles shall be stored at Contractor's corporation yard identified in Section 7.09 or at another location arranged by Contractor and approved, in advance and in writing, by City. Facilities used for storage or maintenance shall comply with all zoning and land use requirements applicable to the facility. City shall have access to the facilities at all times. Vehicles may not be stored (e.g., parked overnight) on City streets.

**E. Operation**. Vehicles shall be operated in compliance with the California Vehicle Code and all applicable safety regulations and City ordinances. Vehicles shall be operated only by employees of Contractor who are appropriately licensed by the California Department of Motor Vehicles. Contractor shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local weight restrictions on vehicles. Contractor shall be solely responsible for paying any fines imposed by the California Highway Patrol, or other regulatory agencies, for violation of these requirements.

**F. Sale**. If Contractor sells a vehicle or other equipment during the Term, its remaining undepreciated value shall be removed from the calculation of Contractor's Compensation. If the equipment was fully depreciated before its sale, the

revenue received by Contractor from its sale shall be reported to City and deducted from Contractor's Compensation. If such vehicle or equipment must be replaced by a similar vehicle or equipment, depreciation on the new vehicle and/or equipment, based on an eight-year useful life in the case of vehicles, shall be included in Contractor's Compensation.

**7.03      Solid Waste, Recycling and Yard Trimming Containers.**

**A.      General.** Contractor shall purchase, assemble, and deliver to Customers containers for storage of (i) Solid Waste, (ii) Recyclable Materials, (iii) Organic Materials, (iv) Yard Trimmings, (v) Construction/Demolition Debris, and (vi) "Recycling Buddies" for Multi-Family Premises, the type, size and initial quantities or minimum inventory of which are shown in Attachment H. All such containers shall be new and unused. The type, size and number of containers provided to each Customer shall be sufficient to contain, with the lid closed, all Solid Waste, Recyclable Materials and Yard Trimmings generated between collections.

**B.      Repair and Replacement.** Contractor shall repair or replace all containers damaged by collection operations or which do not meet vendors' warranties. Customers shall be provided with adequate numbers of containers available for use during all times between scheduled collection days.

**C.      Cleaning, Painting and Maintenance of Contractor-Furnished Containers.** Contractor shall maintain all Contractor-furnished containers in a functional condition and so as to present a clean and attractive appearance in the opinion of the Director. Such containers shall be painted and repainted as requested by City. Contractor-furnished containers that have been marked with graffiti shall be cleaned, repainted or removed from the Premises by Contractor within twenty-four (24) hours of notification by the Customer or City. At the same time as such containers are removed, they shall be replaced by clean, like-sized containers furnished by Contractor. Contractor shall clean and maintain all Contractor-furnished containers in a safe and sanitary condition and whenever the City, or another agency with jurisdiction as a regulator, determines that cleaning is required to abate a health concern or nuisance condition.

**D. Other.** Additional requirements related to containers are included in Attachment C.

**7.04 City Right to Purchase Equipment, Sales of Equipment.** The City may purchase any or all equipment owned by Contractor at the expiration or earlier termination of this Agreement, at its net book value as shown on Contractor's financial statements, which shall be no greater than the purchase price less the accumulated depreciation allowed for such equipment in payments of Contractor's Compensation pursuant to Article 9. Contractor shall, prior to August 1, 2009, deliver to the City properly signed UCC-1 Financing Statements and all other documents necessary or appropriate for the City to secure its purchase options and shall file, or allow the City to file, such Statements and other documentation as provided in California Commercial Code. As new or replacement equipment is purchased, similar documentation covering it shall be provided by Contractor within thirty (30) days of purchase.

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

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

City has no obligation to acquire Contractor's vehicles, or any other Contractor equipment, at the end of the initial Term or as it may be extended, nor to pay the undepreciated value (net book value) of such vehicles or equipment then or upon the earlier termination of this Agreement.

**7.05 Personnel.**

**A. General.** Contractor shall furnish competent and qualified drivers, mechanics, laborers, managerial, supervisory, clerical, and other personnel in sufficient

numbers to provide the services required by this Agreement in a safe and efficient manner. The minimum complement of full time personnel which Contractor will provide for the scope of work described in this Agreement shall be as shown on Attachment I.

Contractor shall maintain a complete roster of employees providing service under this Agreement. The roster shall contain the name, home address, phone number, social security number, job classification, date of hire, driver's license number, and such other information as City may require. The City may inspect the roster, and make a copy thereof at Contractor's expense.

**B. Driver Qualifications.** All drivers shall be trained and qualified in the operation of waste collection vehicles and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles. Each driver shall carry his/her license during work hours. Drivers must be proficient in the English language.

**C. Uniforms.** Contractor shall require its drivers, and all other employees who come into contact with the public in the City during working hours, to wear standardized uniforms bearing the Contractor's name, and to carry an identification badge or other means of identifying the employee. The City will have the right to approve the style and color of the uniforms. Such uniforms shall present a freshly cleaned appearance. Employees shall be instructed to present employment identification cards to City staff, customers, security guards and law enforcement officers upon request, during work hours.

**D. Safety Training.** Contractor shall provide, at least annually, comprehensive operational and safety training for all of its employees who utilize or operate vehicles or equipment for collection or processing of Solid Waste, Recyclable Materials and Yard Trimmings, or who are otherwise directly involved in such collection or processing. Contractor shall train its employees involved in collection to identify, and not collect, Hazardous Waste or Infectious Waste and shall make clear that any scavenging of loads is prohibited. Contractor shall provide the name of its safety officer,

the frequency of its training, and a copy of its training policy and safety training program to City upon request.

**E. No Gratuities.** Contractor shall not permit its employees to demand or solicit, directly or indirectly, any additional compensation or gratuity from members of the public for the collection of Solid Waste, Recyclable Materials and Organic Materials.

**F. Employee Conduct and Courtesy.** Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. Contractor shall regularly (at least annually) train its employees in customer courtesy, shall prohibit the use of loud or profane language and the removal of any materials from loads, and shall instruct collection crews to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by this Agreement, Contractor shall take all necessary corrective measures, including, but not limited to, transfer, discipline or termination. If City has notified Contractor of a complaint related to discourteous behavior, Contractor shall, upon request of City, reassign the employee to duties not entailing contact with the public while the Contractor is pursuing its investigation, disciplinary, and retraining process.

**G. Provision of Recycling/Public Education Specialist.** Contractor shall designate one qualified employee as specialist of recycling and public education activities. The specialist will devote all of his or her time to these activities, some of which are described in Attachment C. Contractor shall notify City, in writing, of the name of the specialist prior to commencing operations and whenever there is a change in the staffing of the position.

**H. Ongoing Training and Testing.** Contractor shall provide safety training on an ongoing basis and shall conduct random drug and alcohol testing of employees in safety-sensitive positions in compliance with regulations issued by the U.S. Department of Transportation. Contractor shall furnish City with a copy of its training manual and schedule of training of employees; City may require Contractor to

include specific topics in such manual and training program. City may attend and observe any safety or operational training classes.

**I. Sober and Drug-Free Workplace.** Contractor shall adopt policies and procedures consistent with State and federal law that ensure a sober and drug-free workplace. This includes strictly prohibiting unlawful manufacture, distribution, possession, or use of any controlled substance in the workplace, regardless of whether the employee is on duty at the time. Further, the policies and procedures shall prohibit an employee from operating either City or Contractor equipment and vehicles (whether on or off duty) while under the influence of alcohol or drugs. The purpose of these policies and procedures is to ensure workplace safety, productivity, efficiency, and the quality of Contractor's service to Customers.

**J. City Role in Hiring of Key Management Employees.** Before extending an offer of employment for the position of general manager, operations manager, or education/outreach manager, Contractor shall provide the City with proposed position descriptions and an opportunity to review information about the background and experience of the person(s) being considered, as well as an opportunity to meet with those persons. Contractor shall give thoughtful consideration to City's comments on the job descriptions and to its advice about each candidate, but shall have the ultimate right to make employment decisions in its best business judgment. This provision applies to the initial hiring for these three positions and to subsequent hirings during the Term if and when such position(s) become vacant.

**7.06 Use of Workers Not Employed by Contractor.** All drivers, mechanics, customer service representatives, supervisory and managerial workers shall be direct employees of Contractor. If Contractor engages any workers through an independent contractor, such as an employment agency, it shall ensure that such contractor or agency:

1. Provides all such workers compensation equal to that which Section 7.08 would require Contractor to pay if the workers had been hired as its own employees.

2. Complies with the nondiscrimination requirements imposed on Contractor by Section 12.14;

3. Maintains comprehensive general liability, workers compensation and employer's liability insurance covering such workers in the amount required by Section 10.02 and with policies meeting the other requirements of Section 10.02.

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

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

**7.07 Initial Hiring.**

A. Contractor shall fill the positions required to perform the work required by this Agreement, in the job classifications listed in subsection C below, by first offering employment to those employees of the predecessor contractor (Palo Alto Sanitation Company) (1) who have been working continuously from January 1, 2009 in one or more of the listed job classifications, (2) who are eligible for employment under federal and state law, (3) who meet the Contractor's minimum employment standards for new employees related to California Vehicle Code violations and driving safety, (4) who have not been convicted of a crime that is related to the job or job performance, and (5) who do not present a demonstrable danger to customers, co-workers or City employees.



B. If Contractor does not have enough positions available in the listed job classifications to offer employment to all of the predecessor contractor's employees who are eligible for employment under subsection A, Contractor shall maintain a list of the predecessor contractor's employees who were not offered employment. If any positions become available during the first six (6) months of operation (i.e., from July 1, 2009 through December 31, 2009), Contractor shall offer employment to persons on the list by seniority within each job classification.

C. The job classifications covered by this section are drivers, mechanics, laborers, field supervisors, and customer service representatives. It does not apply to management, or other administrative or clerical employees.

#### **7.08 Wages and Benefits.**

A. Upon commencement of operations on July 1, 2009, Contractor shall pay employees wages and benefits no less than the total hourly wage shown on Attachment J-1, increased in each case by the same percentage that the Consumer Price Index, All Urban Consumers for the San Francisco-Oakland-San Jose Metropolitan Area ("Index") has increased between April 2008 (i.e., 222.074) and April 2009. The total hourly wage in each job classification shall be increased on July 1, 2010 and on July 1 of each year thereafter by an amount not less than the percentage that the Index has increased between April 2009 and April 2010, in the case of the adjustment to be made on July 1, 2010, and between the corresponding Aprils in succeeding years.

B. Contractor must provide a health benefit program for employees in the job classifications listed in Section 7.07.C, substantially identical to the program described in its Proposal.

C. The hourly cash equivalent of benefits such as sick leave, vacation/holiday, and health insurance will be determined as shown on Attachment J-2. Subject to the requirement in subsection B for a health insurance program, Contractor may provide any combination of wages and benefits so long as the hourly cash equivalent of such combination equals the "total hourly wage" shown on Attachment J-1, as adjusted.

D. Contractor will (1) recognize vacation accrual rates based on seniority earned by employees during their service with the current collector; and (2) allow employees who worked for the current collector and who had previously scheduled vacation during July through September 2009 to take up to ten (10) working days of that vacation as scheduled despite not having accrued sufficient vacation with Contractor, provided such employees agree that subsequent accruals of vacation will first be applied to offsetting the vacation advanced by Contractor.

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

**7.09 Facilities.** Contractor shall provide all facilities necessary for vehicle parking and maintenance, container storage and maintenance, employee parking, administration and all other activities required to provide the services required by this Agreement. Contractor shall own or lease the facilities; secure all permits needed to conduct operations at the facilities and operate in compliance with such permits; design, finance and construct any site improvements; and maintain the facilities in good condition.

The Contractor's corporation yard shall be located in Santa Clara County. No later than January 1, 2009, Contractor shall enter into a lease for the corporation yard and provide City a copy of the fully-executed lease. The lease term shall begin no later than July 1, 2009. Contractor shall comply with the terms of the lease for the corporation yard. Contractor shall not move its operations to a different site without prior notice to, and written approval of, City.

Concurrently with City approval of this Agreement, Contractor will enter into a lease with the City for use of an approximately 0.9 acre parcel of City-owned property at 2000 Geng Road, is to be used for administrative purposes (including route supervision and customer service functions) and for limited storage of containers such as wheeled carts and bins to be delivered to customers. The initial monthly rental, commencing July 1, 2009 will be Twelve Thousand One Hundred Fifty Dollars (\$12,150). The rental payments have been included in Contractor's Compensation shown on Attachment N-1.

In subsequent years, rent will be adjusted by reference to a specified index and thereafter modified to reflect market rental rates. Rental payments are included in Contractor's Compensation as a pass through cost, as shown on Attachment N-1 and N-2 and will continue to be reimbursed on a pass through basis as they are adjusted or modified throughout the Term.

If the County imposes a possessory interest tax on Contractor's leasehold interest, those tax payments will also be reimbursed as a pass through cost.

Contractor shall comply with the terms of the lease for the Geng Road site.

## **ARTICLE 8. RECORD KEEPING, REPORTING AND INSPECTIONS**

**8.01 General.** Contractor recognizes that maintenance of complete, accurate, reliable and verifiable records of its operations and timely submission to City of accurate and complete reports is an essential aspect of the service to be provided by it under this Agreement.

**8.02 Record Keeping; Audit.** Contractor shall maintain accurate records of its operations in sufficient detail to allow for accurate determinations of all matters that require periodic determination under this Agreement. These records shall cover (i) personnel, (ii) equipment, (iii) collection operations, (iv) customer service (name, address, service level and changes, special collection details, etc.), (v) recycling operations, (vi) financial transactions, (vii) billings by Contractor for services provided and other matters, in such detail and format necessary to compile the reports required by this Agreement, including those identified in Attachment K-1. City may review and make copies (at Contractor's expense), of all of Contractor's operational and business records related to this Agreement, including those described in this section.

City may, at any reasonable time during the Term and for three (3) years thereafter, audit Contractor's records pertaining to matters covered by this Agreement. Contractor shall maintain and retain such records for at least three (3) years after the expiration or earlier termination of this Agreement.

Contractor shall maintain record security sufficient to preserve records from destruction or damage from reasonably foreseeable events including fire, earthquake and theft. Data maintained in an electronic medium shall be protected, and backed up, with a copy stored at a separate site from the original data. Contractor may utilize a record storage service to store at a secure off-site location those records to which immediate access is not needed, so long as those records can reliably be retrieved within 24 hours after a request by Contractor or City.

**8.03 Data Management; Billing Support.** Contractor shall provide a data management system capable of supporting City's delivery of accurate and timely bills to Customers. The specific capabilities of this system are described on Attachment K-2.

**8.04 Reporting.** Contractor shall compile and submit complete and accurate reports required by this Agreement, including those identified in Attachment K-1, in the format and at the frequencies specified. Reports identified on Attachment K-1 shall contain a statement, signed by the Contractor's representative designated pursuant to Section 12.12.B, that the report is complete and accurate to the representative's knowledge, after due inquiry.

**8.05 Right to Inspect Operations.** City will have the right, but not the obligation, to observe and inspect all of the Contractor's operations involved in providing service under this Agreement. Contractor shall cooperate fully with such inspections. In connection therewith, City will have the right to enter any facilities operated or used by Contractor during operating hours, speak to any of Contractor's employees (and those of any subcontractor) and receive accurate responses from such employees to any inquiries directed to such employees. In addition, upon reasonable notice and without interference with Contractor's operations, City may review and copy any of Contractor's operational and business records related to this Agreement. If City so requests, Contractor shall make specified personnel available to accompany City employees on inspections and shall provide electronic copies of records stored in electronic media.

**8.06 Compliance Reporting.** Contractor shall submit monthly, quarterly and annual reports to the City documenting the disposition of Solid Waste, Recyclable Materials, and Yard Trimmings and shall format such reports so that they may be used by the City to demonstrate compliance with the reporting requirements of the Act or any other subsequently enacted federal or state laws or regulations governing integrated waste management.

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

## **ARTICLE 9. COMPENSATION**

**9.01 General.** 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, cost of capital, payments to processors, payments to subcontractors, taxes, insurance, bonds, overhead, profit, and all other things necessary to perform all the services in the manner required by this Agreement. Base Compensation for the first two years of the Agreement (FY 2009/10 and FY 2010/11) is established based on Contractor's Proposal, as refined to reflect the final scope of services, which includes Zero Waste Services as well as Baseline Services. The costs associated with providing the services to be covered by Base Compensation for FY 2009/10 and FY 2010/11 are set out in Attachment N-1. Contractor has carefully reviewed Attachment N-1 immediately before executing this Agreement. Contractor is satisfied that those costs, and the net revenue from sales of Recyclable Materials, are accurate and acknowledges that the Base Compensation set out in Section 9.03, adjusted as provided in Section 9.04 and supplemented as provided in Section 9.05, represents the entire compensation due Contractor. In subsequent years, Base Compensation will be adjusted annually, based on the application of specified indices produced by the U.S. Department of Labor, Bureau of Labor Statistics to specified cost pools and to the profit allowance, which together comprise Base Compensation. Both parties recognize that in some or all years Contractor's actual costs may increase or decrease at rates different from the rates at which the various indices change. If Contractor's actual costs are less than the costs adjusted by the specified indices, Contractor will be entitled to retain the difference. Conversely, if Contractor's costs are greater than the costs as adjusted by the specified indices, Contractor will not be entitled to additional compensation to make up the difference.

A fundamental principle underlying this Agreement is that Contractor is entitled to one hundred percent (100%) of the revenues it receives from the sale of Recyclable Materials and other materials that it collects from within the City, including CRV revenues. Contractor has estimated the amount of those revenues for the initial two years of the Term and they are incorporated into the Base Compensation calculations for Rate Year One and Rate Year Two (Attachment N-1). Similar to the cost pools shown

on Attachment N-1, the revenue from sales of Recyclable Materials shown on Attachment N-1 will be adjusted by the change in a specified index when calculating Contractor's Base Compensation for Rate Period Three and subsequent Rate Periods. As with costs, both Parties recognize that actual revenues from the sale of Recyclable Materials may exceed, or fall short of, the calculated amounts in Rate Period Three and thereafter. As with costs, if such revenues exceed the calculated amount, Contractor is entitled to retain them, while if they fall short, City is not obligated to offset the shortfall.

The cost of providing certain services is difficult to forecast because the extent to which such services will be demanded by customers is uncertain. For that reason, they are excluded from Base Compensation and will be compensated on a unit price and/or allowance basis as provided in Section 9.05.

**9.02 Total Compensation.** The Contractor's Total Annual Compensation shall equal the sum of the following:

- Base Compensation (Sections 9.03 and 9.04), including calculated net revenues from the sale of Recyclable Materials (including CRV Revenues), Yard Trimmings, Construction and Demolition Materials, and any other materials Collected pursuant to this Agreement;
- Additional compensation for extra services provided which are compensated on a unit-price basis pursuant to Section 9.05 (Extra Service Compensation); and,
- Adjustment (reduction) for any Solid Waste or Yard Trimmings delivered to the City Landfill pursuant to Section 9.06 (City Landfill Adjustment).

**9.03 Compensation for Rate Periods One and Two.**

**A. Rate Period One.** Contractor's Base Compensation for Rate Period One, which is the 12-month period commencing July 1, 2009 and ending on June 30, 2010, shall be Ten Million Three Hundred Sixty Seven Thousand Two Hundred Seventy Nine Dollars (\$10,367,279.00) as detailed in Attachment N-1.

Contractor's Total Annual Compensation for Rate Period One shall equal the sum of (i) Base Compensation for Rate Period One, (ii) Extra Service Compensation, and (iii) City Landfill Adjustment, if any.

**B. Rate Period Two.** Contractor's Base Compensation for Rate Period Two, which is the 12-month period following Rate Period One (i.e., from July 1, 2010 to June 30, 2011) shall be Ten Million Four Hundred Fifty Thousand Six Hundred Seventy Four Dollars (\$10,450,674.00), as detailed in Attachment N-1.

Contractor's Total Annual Compensation for Rate Period Two shall equal the sum of (i) Base Compensation for Rate Period Two, (ii) Extra Service Compensation; and, (iii) City Landfill Adjustment, if any.

**9.04 Compensation for Subsequent Rate Periods.** Contractor's Base Compensation for all Rate Periods following Rate Period Two shall be determined using the index-based adjustment method presented in Attachment N-2. The method involves use of specified cost adjustment factors (the percentage change in various consumer price indices) to calculate changes in the Contractor's Base Compensation. The percentage change in the applicable indices is applied to the calculated cost pools and calculated net revenues from sale of materials collected that comprise the Contractor's Base Compensation for the then-current Rate Period to determine the Contractor's Base Compensation for the coming Rate Period. For example, in January 2012 when calculating Contractor's Base Compensation for Rate Period Four (FY 2012/2013), the percentage change in cost indices will be applied to the calculated Rate Period Three cost pools to calculate Rate Period Four costs.

The Contractor's Total Annual Compensation for all Rate Periods following Rate Period Two shall equal the sum of the following:

- Base Compensation calculated using the formula presented in Attachment N-2;
- Extra Service Compensation for extra services performed during the Rate Period; and,
- City Landfill Adjustment for Solid Waste and/or Yard Trimmings delivered to the City Landfill during the Rate Period, if any.

**9.05 Compensation for Extra Services.** Contractor's Extra Service Compensation shall be the compensation provided to Contractor for services that are not included in the Base Compensation. These services include:



- A. Backyard/Sideyard Collection of Solid Waste from Single-Family Premises.
- B. Collection of Solid Waste, Recyclable Materials and Yard Trimmings from hard-to-service areas identified in Attachment C.
- C. Drop box service (scheduled and on-call).
- D. Cart Purchases.
- E. Special Events in excess of 16 per year.

The Contractor shall be compensated on a unit-price basis for each of the extra services performed. Following completion of each calendar quarter, the Extra Service Compensation shall be calculated by the City based on its billing records and billing reports submitted by the Contractor. The Extra Services Compensation shall equal the sum of each unit-price fee multiplied by the number of extra services performed by Contractor during each month in the most-recently completed calendar quarter. The City will pay the Contractor on a quarterly basis in arrears for all extra service performed.

The Contractor's unit-prices for Rate Periods One and Two are based on the Contractor's Proposal and are presented in Attachment N-1. These unit prices shall be adjusted annually to reflect changes in a specified cost index in accordance with the procedures described in Attachment N-2.

Contractor shall not be compensated for extra services other than those specified in this Section. The City may charge Customers additional fees for services such as collection of extra Bulky Items, but Contractor shall not receive extra compensation for these services.

Contractor shall keep accurate and complete records of services billed by Contractor to allow City to verify the accuracy of Contractor's billing reports and to calculate compensation for extra services.

**9.06 City Landfill Adjustment.** If the City exercises its right under Section 5.01 to direct Contractor to deliver Solid Waste to the City Landfill rather than to the SMaRT Station, Contractor's Compensation shall be reduced to reflect the cost savings associated with transporting the Solid Waste a shorter distance. The City Landfill Adjustment shall equal the per-ton City Landfill Credit multiplied by the number of tons of Solid Waste delivered to the City Landfill. Based on the Contractor's Proposal, the per-ton City Landfill Credit for Solid Waste in Rate Period One is Two Dollars (\$2.00) per Ton and in Rate Period Two is Two Dollars (\$2.00) per Ton. This per-ton credit shall be adjusted annually for the Rate Periods after Rate Period Two to reflect changes in the cost index identified in Attachment N-2. The Contractor shall pay the City the City Landfill Adjustment on a monthly basis in arrears and such payment shall be reflected as a deduction to the monthly payment of Contractor's Compensation pursuant to Section 9.08.

**9.07 Compensation Adjustment Process**

**A. Adjustment Calculations.** On or before January 31 of each year commencing with January 2011, the Director will calculate the annual percentage change in the indices specified in Attachment N-2; Contractor's Base Compensation for the coming Rate Period; adjusted unit prices for extra services and the per ton City Landfill Credit. The Director will submit three copies of the City's calculated compensation adjustment and supporting documentation for the coming Rate Period to Contractor on or before January 31. For example, on or before January 31, 2011, the Director will submit to the Contractor three copies of the City's calculated compensation adjustment to be effective for Rate Period Three (July 1, 2011 through June 30, 2012).

**B. Contractor Review of Adjustments.** The Contractor shall promptly review the City's calculated Base Compensation and unit price adjustments and will provide written notice to the Director on or before February 28 of its acceptance of such calculations or of any objections. The Director and Contractor shall discuss Contractor's objections and may agree on changes to the City's calculations.

**C. City Manager Action.** The City Manager will provide Contractor an opportunity to meet to present any objections to the adjustment calculated by the

Director. The City Manager will take formal action to adjust Contractor's Base Compensation, unit prices for extra services, and City's Landfill Credits before July 1 of each year commencing with July 2011. The decision of the City Manager will be final, subject to Contractor's rights referred to in subsection D.

**D. Resolution of Disputes.** If Contractor believes the City has made an error in calculating any of the adjustments, it may seek review of the City's action through arbitration initiated in the manner and within the time prescribed in Attachment Q.

**9.08 Monthly Payment of Contractor's Compensation.** On or before the fifteenth day of each month, commencing in August 2009, the City will remit to the Contractor a payment for Contractor's Compensation. The monthly payment will be calculated as follows.

**A. Monthly Base Compensation.** Monthly Base Compensation will equal 1/12 of the Contractor's Base Compensation for the then-current Rate Period; plus

**B. Extra Service Compensation.** Extra Service Compensation for extra services performed in the most-recently completed quarter will be calculated pursuant to Section 9.05 and will be included in the monthly compensation determined in January, April, July, and October; less

**C. City Landfill Adjustment.** City Landfill Adjustment for all Solid Waste delivered to the City Landfill in the most-recently completed month.

**D. Total Monthly Payment.** The total monthly payment to Contractor will equal the sum of the monthly Base Compensation plus Extra Services Compensation (if applicable), minus the monthly City Landfill Adjustment.

**9.09 Special Compensation Review**

**A. Eligible Items.** The Contractor may apply to the City for consideration of a special review of Contractor's Compensation, and the City may initiate such a review, if one or more of the following events occur:

1. Provision of emergency services pursuant to Section 4.14.
2. Flood, earthquake, other acts of nature or other similar catastrophic events which are beyond the control of and not the fault of the Contractor.
3. Change in Law occurring after the Effective Date.

In addition, City may initiate a special compensation review prior to any extension of the Term and may consider the results of such a review in its determination of whether to extend the Term and, if so, for what period.

**B. Ineligible Items.** A special review of Contractor's Compensation may not be initiated for any of the following reasons:

1. Increases or decreases in the cost of Solid Waste, Recyclable Materials, Organic Materials, or Construction and Demolition Materials Collection, transportation, or Processing in excess of the increases or decreases provided through the annual adjustment mechanism described in Attachment N-1, unless such cost increases or decreases are caused by eligible items listed in subsection A above.
2. Increases or decreases in the cost of Solid Waste, Recyclable Materials, Organic Materials or Construction and Demolition Materials Collection, transportation, or Processing caused by change in the Recyclable Materials Processing Site, Composting Site, or Construction and Demolition Materials Processing Site or by changes in operating conditions at these sites, unless such change is initiated by or at the direction of the City.
3. Increases or decreases in revenues from the sale of Recyclable Materials (including CRV revenues), Organic Materials, or Construction and Demolition Materials.
4. Increases or decreases in the number of Customers or their subscription levels, including any changes resulting from City's implementation of a mandatory customer recycling/diversion ordinance.

5. Changes in the Tonnage or composition of Solid Waste, Recyclable Materials, Organic Materials, or Construction and Demolition Materials.

6. Inability of Contractor to secure the right to use the property described in Section 7.09 for its corporation yard.

**C. Submittal of Request.** If the Contractor is requesting a special review of Contractor's Compensation, the Contractor must submit its request for a special review, and supporting cost and operational data, in a form and manner specified by the City. The financial and operational data that City is likely to require include, but are not limited to, audited financial statements, detailed customer account information, route data, tonnage reports, and other transactional data.

If City is requesting a special compensation review, the City will notify the Contractor and the Contractor shall, within thirty (30) days, submit cost and operational data as requested by the City, in a form and manner specified by the City.

**D. Review of Costs.** If the Contractor or the City requests a special review of Contractor's Compensation, the City will have the right to review any and all financial and operating records of Contractor and its Affiliates the City considers necessary to determine the cost impacts to Contractor's operations. Contractor shall ensure that such records are accurate, reliable and verifiable.

**E. Burden of Justification.** Contractor shall bear the burden of justifying to the City by substantial evidence its entitlement to continuation of current, as well as any increases in, Contractor's Compensation. If the Director determines that the Contractor has not met its burden, he/she will notify the Contractor that he/she is prepared to deny Contractor's request for additional compensation or to proceed with a reduction in compensation. If the Contractor requests, the City will provide Contractor a hearing before the Director at which it may produce additional evidence.

**F. Decision.** Based on the evidence, including but not limited to that submitted by the Contractor, the Director may grant some, all, or none of the requested increase. The City Manager will provide Contractor an opportunity to meet to present

any objections to the Director's decision. The City Manager's decision will be final; subject to Contractor's rights referred to in subsection G.

**G. Review.** If Contractor is dissatisfied with the City Manager's decision, it may initiate arbitration as provided in Attachment Q.

**9.10 Compensation Adjustments for Changes in Service.** Within thirty (30) days of a request by City to initiate a change in service, Contractor shall submit a report containing projected operational and financial data sufficient for City to evaluate the cost-effectiveness of such a change and to calculate the adjustment to Contractor's Compensation associated with implementation of the change. The report shall contain the following types of information, to the extent applicable:

1. Collection and/or processing methodology to be employed.
2. Equipment to be utilized (number of vehicles, types, capacity, etc.).
3. Labor requirements (number of employees by classification).
4. Number and capacity of containers to be used.
5. Public education/outreach materials to be developed to implement program change.
6. Estimate of additional tonnage to be diverted, together with methodology used for estimating diversion.
7. End uses of diverted materials and revenues expected to be received by Contractor.
8. Projection of financial impact of changes (i.e., increase or decrease in Contractor's Compensation).
9. Other information requested by City.

If City directs a change as provided in Section 12.16, an equitable adjustment in Contractor's Compensation will be made, effective with the commencement of the change, to reflect increases or decreases in Contractor's costs and other revenues. For purposes of adjusting the profit allowance, an operating ratio of eighty eight percent (88%) shall be applied to the increase or decrease in necessary and reasonable costs (exclusive of interest expense and direct and allocated lease costs) of the change.

The data compiled in Attachment N-3 represent the Contractor's detailed cost and operational estimates underlying its compensation for the first two years of the Term. Those data may be consulted in determining an equitable adjustment in Contractor's Compensation for specific changes in service directed by City.

#### **9.11 Rate-Setting Process**

**A. General.** The City will be solely responsible for establishing rates charged to Customers for services provided by Contractor and for billing Customers and collecting rate revenues, with the exception that Contractor shall bill Customers that do not have utility accounts with the City, as described in Section 4.16.

**B. Rate Structure.** The City will have the sole and exclusive right to change the relationship of individual rates in comparison with other rates, as City deems appropriate.

**C. Rate Categories.** If the Contractor determines the need for a rate category that does not appear on the City-approved rate schedule, Contractor shall notify the City and request establishment of such a rate category. For example, if a Customer requires Collection of a 15-cubic-yard Compactor 5 times per week and the City-approved rate schedule does not include this level of service, the Contractor shall notify the City that a rate category for this level of service would be appropriate.

**9.12 City Payment of Fees for Solid Waste Disposal.** The City will not charge Contractor for delivery of Solid Waste or Yard Trimmings collected in the City that are delivered to the Palo Alto Landfill. The City will pay charges assessed by Sunnyvale for delivery of Solid Waste and Yard Trimmings to the SMART Station.

This section does not apply to Residue from processing of Recyclable Materials, including Construction and Demolition Debris, or food waste from special events.

**9.13 Compensation During Extended Term.** If City elects to extend the Term pursuant to Section 2.03, the Contractor’s Compensation will continue to be determined as provided in this Article, with the exception that, as provided in Attachment N-2, no depreciation on vehicles or equipment fully depreciated during the initial Term will be included in the calculation. If vehicles or other equipment must be replaced during the initial Term or at the end of the initial Term, depreciation on the vehicles (based on an eight-year useful life) and/or equipment shall be included in Contractor’s Compensation for the remainder of the Term as extended.

**9.14 Additional Financial Incentives for Zero Waste Program Implementation**

**A. General.** City has relied on Contractor’s representations about its experience in, and commitment to, recycling and composting in awarding this Agreement to it. City will incur significant costs to implement the Zero Waste programs, primarily in payments to Contractor. If expected amounts of materials are not collected and subsequently diverted from landfill disposal through these programs, City will incur additional costs for those materials to be processed at the SMART Station and transferred to the Kirby Canyon landfill.

In light of these considerations, the parties have agreed to the following financial arrangements to provide additional incentives for Contractor to exert its full efforts in implementing two elements of the Zero Waste programs.

**B. Mixed Recycling.** The minimum amounts of mixed Recyclable Materials which Contractor will collect, process and recycle during the first three years of the Term are:

<b>Minimum Amount to be Collected, Processed and Recycled</b>		
<b>Year One FY 2009-10</b>	<b>Year Two FY 2010-11</b>	<b>Year Three FY 2011-12</b>
16,250 Tons	17,480 Tons	18,780 Tons



The minimum amount which Contractor will collect, process and recycle for the remainder of the Term shall be 18,780 Tons per year.

The number of Tons which Contractor has collected, processed and recycled will be determined by multiplying the Tons of mixed Recyclable Materials collected in the City and delivered to the Greenwaste Materials Recovery Facility (net weight at gate scale) by the percentage that reflects the average facility recovery rate during the year in question, based on the annual audit required by Attachment E, Section A.2.c. For example, the percentage to be used for Year Two will be based on the facility recovery rate achieved during FY 2010-11, as shown by the audit conducted during FY 2010-11. The percentage to be used for Year One (FY 2009-10) will be ninety two percent (92%).

If the minimum amount is not achieved in Year One, Contractor shall pay City \$65.00 per Ton, multiplied by the difference between 16,250 Tons and the number of Tons actually collected, processed and recycled.

If the minimum amount is not achieved in Year Two, Contractor shall pay City \$70.00 per Ton, multiplied by the difference between 17,480 Tons and the number of Tons actually collected, processed and recycled.

If the minimum amount is not achieved in Year Three, Contractor shall pay City \$75.00 per Ton, multiplied by the difference between 18,780 Tons and the number of Tons actually collected, processed and recycled.

In Year Four, the per Ton payment will be established by multiplying the per Ton payment in Year Three (\$75.00) by the same percentage that the labor-related cost component of Contractor's Compensation is adjusted for that year per Attachment N-2. The per Ton payment will be adjusted annually thereafter by the same percentage applicable in each year.

If Contractor fails to achieve the minimum amount (18,780) in Year Three or thereafter and believes that its failure is due to changes in the wastestream tonnage

and/or composition, it may within ninety (90) days after the end of the contract year in question (i.e., by September 30) request the City to adjust the minimum amount. Such a request must be accompanied by data and analysis developed by Contractor. If City agrees, the Director may adjust the minimum amount for a specified period of time. If City does not agree, the parties will meet and confer. If no resolution is forthcoming, Contractor may request that a waste composition study be performed by an independent waste management consulting/engineering firm selected by City. The City will then commission such a study, the cost of which will be shared equally by the City and Contractor. Contractor must deposit its share of the cost with the City before the City is required to award the contract for the study.

When the study is completed, the parties will meet to consider whether, in light of consultant's report, an adjustment in the minimum amount is warranted and, if so, the amount and duration of the adjustment. Any adjustment will apply commencing with the year immediately preceding Contractor's request.

If parties cannot agree, Contractor may submit the dispute to arbitration in the manner and within the time prescribed in Attachment Q.

**C. Commercial Organics.** The minimum amount of Organic Materials to be collected from commercial customers and processed into compost is 9,000 Tons per year.

If Contractor does not collect and process into compost 9,000 Tons in Year One, it will pay City \$70 per Ton, multiplied by the difference between 9,000 Tons and the number of Tons actually collected and composted. If Contractor collects and composts more than 9,000 Tons in Year One, City will pay Contractor \$70 per Ton, multiplied by the difference between the number of Tons actually collected and composted and 9,000 Tons.

The number of Tons which Contractor has collected and processed into compost will be determined by multiplying the Tons of Organic Materials collected in the City and delivered to the Greenwaste Materials Recovery Facility (net weight at gate scale) prior to transfer to the Z Best composting facility by the percentage that reflects the City-specific composting rate achieved at the Z Best composting facility based on

the audits required by Attachment E, Section B.2.c. For example, the percentage to be used for Year Two will be based on the City-specific composting rate achieved during FY 2010-11, as shown by the audits conducted during FY 2010-11. The percentage to be used for Year One (FY 2009-10) will be ninety percent (90%).

The \$70 per Ton payment will be adjusted in Year Two and thereafter by the same percentage that the labor-related cost component of Contractor's Compensation is adjusted per Attachment N-2.

The maximum payment to Contractor pursuant to this subsection C is \$140,000 per year in Year One. This maximum payment amount will also be adjusted annually by the same percentage that the \$70 per Ton payment is adjusted.

**D. Procedure.** The calculations required by this section will be done on a fiscal year basis (July 1 - June 30). The City will calculate the amounts due, based on Contractor's reports for the preceding fiscal year on or before September 30 of each year, and will notify Contractor of the amount. Sums due will be paid within thirty (30) days from the date that notice is delivered.

## **ARTICLE 10. INDEMNITY, INSURANCE, PERFORMANCE BOND, GUARANTY**

**10.01 Indemnification.** Contractor shall indemnify, defend and hold harmless City, its councilmembers, officers, employees and agents, (collectively the “Indemnitees”) from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit, of any and every kind and description, whether judicial, quasi-judicial or administrative in nature including, but not limited to, injury to and death of any person and damage to property or for contribution or indemnity claimed by third parties (collectively, the “Claims”), arising out of or occasioned in any way by, directly or indirectly, Contractor’s performance of, or its failure to perform, its obligations under this Agreement. Attorneys’ fees, expert witness fees, court costs and disbursements incurred by City, or for which City may be liable, are included within the scope of the Contractor’s indemnity obligation. The foregoing indemnity shall not apply to the extent that the Claim is caused solely by the negligence or intentional misconduct of the Indemnitees, but shall apply if the Claim is caused by the joint negligence of Contractor or other persons, including any of the Indemnitees. Upon the occurrence of any Claim, Contractor, at Contractor’s sole cost and expense, shall defend (with attorneys reasonably acceptable to City) City, its officers, employees, and agents. Contractor’s duty to indemnify and defend shall survive the expiration or earlier termination of this Agreement.

### **10.02 Insurance.**

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

1. Workers’ Compensation and Employer’s Liability. Contractor shall maintain workers’ compensation insurance covering its employees in statutory amounts and otherwise in compliance with the laws of the State of California. Contractor shall maintain employer’s liability insurance in an amount not less than One Million Dollars (\$1,000,000) per accident or disease. Contractor shall not be obligated to carry workers compensation insurance if (i) it qualifies under California law and continuously complies with all statutory obligations to self-insure against such

risks; (ii) furnishes a certificate of Permission to Self Insure issued by the Department of Industrial Relations; and (iii) furnishes updated certificates of Permission to Self Insure periodically to evidence continuous self insurance, at least ten (10) days before the expiration of the previous certificate.

2. General Liability (and Automobile Liability). Contractor shall maintain comprehensive general liability insurance with a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence and Five Million Dollars (\$5,000,000) annual aggregate covering all claims and all legal liability for personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out of, or occasioned in any way by, directly or indirectly, Contractor's performance of, or its failure to perform, services under this Agreement.

The insurance required by this subsection shall include:

- (i) Premises Operations (including use of owned and non-owned equipment);
- (ii) Products and Completed Operations (including protection against liability resulting from use of Recyclable Materials by another person);
- (iii) Personal Injury Liability with employment exclusion deleted;
- (iv) Broad Form Blanket Contractual with no exclusions for bodily injury, personal injury or property damage (including coverage for the indemnity obligations contained herein);
- (v) Owned, Non-Owned, and Hired Motor Vehicles;
- (vi) Broad Form Property Damage.

The comprehensive general liability insurance shall be written on an "occurrence" basis (rather than a "claims made" basis) in a form at least as broad as the most current version of the Insurance Service Office commercial general liability occurrence policy form (CG0001). If occurrence coverage is not obtainable, Contractor must arrange for "tail coverage" on a claims made policy to protect City from claims filed within four years after the expiration or termination of this Agreement relating to incidents that occurred prior to such expiration or termination. Any excess or umbrella policies shall be on a "following form" basis.

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

4. Hazardous Materials Storage and Transport. Contractor shall maintain insurance coverage of not less than Two Million Dollars (\$2,000,000) for personal injury, bodily injury and property damage arising out of the sudden and accidental release of any hazardous materials or wastes during storage at facilities operated by Contractor or transport of such materials by vehicles owned, operated or controlled by Contractor in the performance of the services required under this Agreement.

5. Physical Damage. Contractor shall maintain comprehensive (fire, theft and collision) physical damage insurance covering the vehicles and equipment used in providing service to City under this Agreement, with a deductible or self-insured retention not greater than Fifty Thousand Dollars (\$50,000). Notwithstanding the foregoing, Contractor shall be allowed to self-insure for physical damage to its vehicles provided Contractor provides adequate audited financial information to City and City is reasonably satisfied that Contractor has the financial net worth to cover any losses.

**B. Acceptability of Insureds.** The insurance policies required by this section shall be issued by an insurance company or companies admitted to do business in the State of California, subject to the jurisdiction of the California Insurance Commissioner, and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A-1 or better.

**C. Required Endorsements.** Without limiting the generality of Sections 10.02.A and B, the policies shall contain endorsements in substantially the following form:

1. Workers' Compensation and Employers' Liability Policy.

"Thirty (30) days prior written notice shall be given to the City of Palo Alto in the event of cancellation or non-renewal of this policy. Such notice shall be sent to:

City of Palo Alto  
Administrative Services Department  
P.O. Box 10250  
Palo Alto, CA 94303  
Attention: Purchasing Manager

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

2. General Liability Policy; Pollution Liability Policy; Hazardous Materials Policy.

- (i) "Thirty (30) days' prior written notice shall be given to the City of Palo Alto in the event of cancellation, reduction of coverage, or non-renewal of this policy. Such notice shall be sent to:

City of Palo Alto  
Administrative Services Department  
P.O. Box 10250  
Palo Alto, CA 94303  
Attention: Purchasing Manager

- (ii) "The City of Palo Alto, its officers, employees, and agents, are additional insureds on this policy."
- (iii) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the City of Palo Alto, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."
- (iv) "Inclusion of the City of Palo Alto as an insured shall not affect the City's rights as respects any claim, demand, suit or judgment brought or recovered against the Contractor. This policy shall protect Contractor and the City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the company's liability as set forth in the policy beyond the amount shown or to

which the company would have been liable if only one party had been named as an insured.”

3. Physical Damage Policy.
  - (i) Notice of cancellation, reduction in coverage or non-renewal, as provided in Subsection C.2(a).
  - (ii) Cross liability endorsement, as provided in Subsection C.2(d).
  - (iii) Waiver of subrogation against City.

**D. Delivery of Proof of Coverage.** No later than sixty (60) days before the commencement of operations (i.e., on or before May 1, 2009), Contractor shall furnish City one or more certificates of insurance on a standard ACORD form substantiating that each of the coverages required hereunder are in force, in form and substance satisfactory to City. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall be accompanied by all required endorsements. If City requests, copies of each policy, together with all endorsements, shall also be promptly delivered to City.

Contractor shall furnish renewal certificates to City prior to July 1 of each year to demonstrate maintenance of the required coverages continuously throughout the Term.

**E. Other Insurance Requirements**

1. In the event performance of any services is delegated to a subcontractor, Contractor shall require such subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the subcontractor's employees engaged in the work. The liability insurance required by Subsection 10.02.A.2 shall cover all subcontractors or the subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section 10.02.

2. Contractor shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Contractor from any



obligation under this Agreement, including those imposed by Sections 10.01, 10.05, and 10.06. If any claim is made by any third person against Contractor or any subcontractor on account of any occurrence related to this Agreement, Contractor shall promptly report the facts in writing to the insurance carrier and to the City.

3. If Contractor fails to procure and maintain any insurance required by this Agreement, City may take out and maintain, at Contractor's expense, such insurance as it may deem proper and deduct the cost thereof from any monies due Contractor. Alternatively, the City may treat the failure as a Contractor Default under Section 11.01.

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

**10.03 Faithful Performance Bond.** Not later than ten (10) days before the Effective Date (i.e., on or before October 31, 2008), Contractor shall deliver to City a bond securing the Contractor's faithful performance of its obligations under this Agreement. The principal sum of the bond shall be Five Million Dollars (\$5,000,000). The form of the bond shall be as set out in Attachment L-1. The bond shall be executed as surety by a corporation admitted to issue surety bonds in the State of California, regulated by the California Insurance Commissioner and with a financial condition and record of service satisfactory to City.

The term of the bond shall be not less than twenty-four (24) months, or until June 30, 2010, whichever occurs first. The bond shall be extended, or replaced by a new bond in the same principal sum, for the same term (i.e., twenty-four (24) months) and in the same form, bi-annually thereafter, subject to the last paragraph of this section. Not less than ninety (90) days before the expiration of the initial bond, the Contractor shall furnish either a replacement bond or a continuation certificate substantially in the form attached as Attachment L-2, executed by the surety.

It is the intention of this Section that there be in full force and effect at all times a bond securing the Contractor's faithful performance of the Agreement, throughout its Term, provided, however, that the surety shall not be liable to City for its non-renewal of the bond or for Contractor's failure or inability to secure a replacement bond.

After Year Two, Contractor may request that the principal amount of the bond be reduced, together with a corresponding reduction in the premium for the bond. City will consider such a request in good faith, taking into account whether Contractor has performed to the satisfaction of City, but has no obligation to agree to a reduction in the bond amount. The principal amount of the bond may not be reduced below Two Million Dollars (\$2,000,000) without approval of the City Council.

**10.04 Alternative Security.** City may, in its sole discretion, allow Contractor to provide alternative security in the amount set forth in Section 10.03, in the form of (a) a prepaid irrevocable standby letter of credit in form and substance satisfactory to City and approved by the City Attorney and City's Administrative Services Director and issued by a financial institution acceptable to City, or (b) a certificate of deposit in the name of the City with a term satisfactory to City and with a financial institution acceptable to City.

**10.05 Hazardous Waste Indemnification.** Contractor shall indemnify, defend with Counsel approved by the City, protect and hold harmless the Indemnitees against all claims, of any kind whatsoever paid, incurred or suffered by, or asserted against Indemnitees arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Wastes at any place where Contractor stores or disposes of Hazardous Wastes pursuant to this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, ("CERCLA"), 42 U.S.C. Section 9607(e), and California Health and Safety Code Section 25364, to defend, protect, hold harmless and indemnify Indemnitees from liability.

**10.06 Integrated Waste Management Act Indemnification.** Contractor agrees to indemnify and hold harmless the Indemnitees against all fines and/or penalties imposed by the California Integrated Waste Management Board (CIWMB) or the Local Enforcement Agency (LEA): a) based on Contractor's failure to comply with laws, regulations or permits issued or enforced by the CIWMB or the LEA; b) caused or contributed to by the Contractor's failure to perform obligations under this Agreement.

This indemnity obligation is subject to the limitations and conditions in Public Resource Code Section 40059.1 but is enforceable to the maximum extent allowable by that Section.

**10.07 Guaranty.** Not later than ten (10) days before the Effective Date (i.e., on or before October 31, 2008), Contractor shall deliver to City a Guaranty in the form attached as Attachment M, properly executed by the Guarantor(s).

## **ARTICLE 11. DEFAULT AND REMEDIES**

**11.01 Contractor Default.** Each of the following shall constitute an event of default ("Contractor Default"):

A. Contractor fails to perform any of its obligations under Article 4, 5 or 6 of this Agreement and its failure to perform is not cured within ten (10) days after written notice from City, provided that neither notice nor opportunity to cure applies to events described in subsection C.

B. Contractor fails to perform any of its obligations under any other Article of this Agreement and its failure to perform is not cured within thirty (30) days after written notice from City, provided that if the nature of the breach is such that it will reasonably require more than thirty (30) days to cure, Contractor shall not be in default so long as it promptly commences the cure and diligently proceeds to completion of the cure within ninety (90) days after notice, and provided further that neither notice nor opportunity to cure applies to events described in subsections D through H.

C. Contractor ceases to collect Solid Waste, Recyclable Materials, or Yard Trimmings for a period of five (5) consecutive days (or on a total of five (5) days during any calendar year) on which collections are to be provided for any reason within the Contractor's control, including labor unrest such as strike, work stoppage or slowdown, sickout, picketing, or other concerted job action by Contractor's employees.

D. Contractor files a voluntary petition for relief under any bankruptcy, insolvency or similar law.

E. An involuntary petition is brought against Contractor under any bankruptcy, insolvency or similar law which remains undismissed or unstayed for ninety (90) days.

F. Contractor fails to furnish a replacement bond or a continuation certificate of the existing bond not less than ninety (90) days before expiration of the performance bond, as required by Section 10.03 or fails to maintain all required insurance coverages in force.

G. Contractor fails to provide reasonable assurance of performance within ten (10) days of a request by City under Section 11.12.

H. A representation or warranty contained in Article 3 proves to be false or misleading in a material respect as of the date such representation or warranty was made.

I. A report submitted by Contractor under this Agreement proves to contain a material misstatement of fact, omission, or other inaccuracy.

On the occurrence of a default by Contractor, City will have the right to any one or more of the remedies described in this Article, in addition to any remedies now or later available to City at law or in equity.

**11.02 Right to Suspend or Terminate Upon Default.**

A. Upon any Contractor Default, City may terminate this Agreement or suspend it, in whole or in part. Such suspension or termination shall be effective thirty (30) days after City has given notice of suspension or termination to Contractor, except that such notice may be effective in a shorter period of time, or immediately, if the Contractor Default is one which in the opinion of the City endangers the health, welfare or safety of the public, such as the failure to collect Solid Waste or Recyclable Materials and arrange for their prompt disposal or recycling. Contractor shall continue to perform the portions of the Agreement, if any, not suspended, in full conformity with its terms.

B. City may also suspend or terminate this Agreement, upon the same notice provisions, if Contractor's ability to perform is prevented or materially interfered with by a cause which excuses nonperformance under Section 11.10, despite the fact that nonperformance in such a case is neither a breach nor a Contractor Default.

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

**11.04 City's Right to Cure.** In the event that Contractor fails to perform any of its obligations under Articles 4, 5, or 6 and does not cure such failure within ten (10) days after notice from City, City may (but will not be obligated to) perform the required work, or engage a third party to do so. Contractor shall upon demand reimburse City for all costs thereof, including any payments to a third party, with interest after thirty (30) days at prime rate (as established by the Bank of America "reference rate") plus two percent (2%) but not in excess of the maximum interest rate allowed by law. If Contractor fails to make such reimbursement, City may deduct the amounts due from subsequent payments to Contractor under Article 9.

**11.05 City's Right to Perform.** If this Agreement is suspended or terminated due to a Contractor Default, City will have the right to perform and complete, by agreement or otherwise, the work herein or such part thereof as it may deem necessary and to procure labor, equipment, and materials and incur all other expenses necessary for completion of the work. If such expenses exceed the amounts which would have been payable to Contractor under this Agreement if it had been fully performed by Contractor, then Contractor shall pay the amount of such excess to City.

**11.06 City's Use of Property Upon Default.** In the event of Contractor's Default, the City will have the right to use any of Contractor's equipment, facilities and other property reasonably necessary for the provision of services hereunder and the billing and collection of fees for those services. The City may continue use of such property until other suitable arrangements can be made for the provision of such services, which may include the award of an agreement to another service provider. If the City continues use thereof after the period of time for which Contractor has already been paid, Contractor will be entitled to the reasonable rental value of such property, which shall be offset against the damages due the City as a result of Contractor's Default. Contractor shall fully cooperate with the City to effect the City's use of such property. The City may immediately engage all or any personnel necessary for the provision of services, including, if the City so desires, employees previously employed by Contractor. Contractor further agrees, if the City so requests, to assist the City in securing the services of any or all management or office personnel employed by Contractor whose skills are reasonably necessary for the continuation of services. The City agrees that it assumes responsibility for the proper, normal use of such equipment

and facilities while in its possession. Contractor agrees that the City's exercise of its rights under this section: (i) does not constitute a taking of private property for which compensation must be paid; (ii) will not create any liability on the part of the City to Contractor other than the payment of reasonable rental value as provided for in this subsection; (iii) does not exempt Contractor from the indemnity provisions of Article 10 which are meant to extend to circumstances arising under this Section.

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

**11.08 City's Remedies Cumulative.** City's rights to suspend or terminate the Agreement under Section 11.02, to obtain specific performance under Section 11.03, to cure under Section 11.04, and to perform under Section 11.05 are not exclusive, and City's exercise of one such right shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies that City may have, including a legal action for damages under Section 11.07 or imposition of liquidated damages under Section 11.09.

**11.09 Liquidated Damages.** The Parties acknowledge that efficient, consistent, and courteous collection of Solid Waste, Recyclable Materials, and Yard Trimmings is of utmost importance and City has considered and relied on Contractor's representations as to its quality of service commitment in entering into this Agreement. The Parties further recognize that quantified standards of performance are necessary and appropriate to ensure consistent and reliable service. The Parties further recognize that if Contractor fails to achieve the performance standards, City will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of those damages that City will suffer. Therefore, the Parties agree that the liquidated damage amounts listed on Attachment O represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements

made above and the fact that each party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Agreement was made.

Contractor Initial Here: \_\_\_\_\_ City Initial Here: \_\_\_\_\_

Contractor agrees to pay (as liquidated damages and not as a penalty) the amounts set forth on Attachment O and further agrees that these amounts may be deducted by City from payments to Contractor otherwise due.

City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees, agents or representatives or through investigation of reports by third parties. Prior to assessing liquidated damages, City shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. Contractor may review (and make copies at its own expense) all non-confidential information in the possession of City relating to incident(s)/non-performance. Contractor may, within ten (10) days after receiving the notice, request a meeting with the Director or his or her designee. Contractor may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. The Director or his or her designee will provide Contractor with a written explanation of his or her determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of the Director or his or her designee shall be final.

City may assess liquidated damages for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement. Contractor shall pay any liquidated damages assessed by City within ten (10) days after they are assessed. If payment is not received by that date, City may deduct the amount of liquidated damages from the next monthly payment of Contractor's Compensation.

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



**11.10 Force Majeure.**

**A. Excuse from Performance.** Neither party shall be in default of its obligations under this Agreement in the event, and for so long as, it is impossible or extremely impracticable for it to perform its obligations due to an “act of God” (including, but not limited to, flood, earthquake or other catastrophic events), civil disturbance, labor unrest of other than the party’s employees (including strike, work stoppage, slowdown, sick out, picketing, or other concerted job action), or other similar cause affecting Santa Clara County, not the fault of, and beyond the reasonable control of, the party claiming excuse. A party claiming excuse under this Section must (1) have taken reasonable precautions, if possible, to avoid being affected by the cause and (2) notify the other party as required by subsection C.

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

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

**D. City’s Rights in the Event of Force Majeure.** The partial or complete interruption or discontinuance of Contractor’s services caused by an event of Force Majeure shall not constitute an event of default under this Agreement. Notwithstanding the foregoing, in the event of non-performance excused by Force Majeure: (i) the City shall have the right to make use of Contractor’s facilities and

equipment in the same manner as described in Section 11.06 of this Agreement; (ii) if Contractor's excuse from performance by reason of Force Majeure continues for a period of thirty (30) days or more, the City shall have the right to terminate this Agreement; (iii) if Contractor's inability to collect Solid Waste, Recyclable Materials, and Yard Trimmings continues for ten (10) days or more from the date by which Contractor gave or should have given notice under Subsection C, the City may terminate this Agreement.

**11.11 City Default.** City shall be in default under this Agreement ("City Default") in the event City commits a material breach of the Agreement and fails to cure such breach within thirty (30) days after receiving notice from the Contractor specifying the breach, provided that if the nature of the breach is such that it will reasonably require more than thirty (30) days to cure, City shall not be in default so long as City promptly commences the cure and diligently proceeds to completion of the cure.

In the event of an asserted City Default, Contractor shall continue to perform all of its obligations hereunder until a court of competent jurisdiction has issued a final judgment declaring that City is in Default.

**11.12 Assurance of Performance.** If Contractor (1) persistently suffers the imposition of liquidated damages under Section 11.09; (2) is the subject of any labor unrest including work stoppage or slowdown, sickout, picketing or other concerted job action; (3) appears in the reasonable judgment of City to be unable to regularly pay its bills as they become due; (4) is the subject of a civil or criminal proceeding brought by a federal, state, regional or local agency for violation of laws (including the Environmental Laws), regulations or permits in the performance of this Agreement, or (5) performs in a manner that causes City to be uncertain about Contractor's ability and intention to comply with this Agreement, City may, at its option and in addition to all other remedies it may have, demand from Contractor reasonable assurances of timely and proper performance of this Agreement, in such form and substance as City may require. Contractor shall provide such assurances within ten (10) days of the City's request.

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

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

**12.02 Compliance with Law.** In providing the services required under this Agreement, Contractor shall at all times comply with all applicable laws of the United States, the State of California and City, and with all applicable regulations promulgated by federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term and all permits affecting the services to be provided. Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices required by law.

**12.03 Property Damage.** Normal wear and tear from general vehicular traffic excepted, Contractor shall be responsible for damage to all public and private property in the City, including but not limited to streets, roads and ways (whether or not paved), and trees resulting from the operation of Contractor's vehicles or the actions of Contractor's employees in providing collection services within City. Any physical damage caused by the intentionally wrongful or negligent acts or omissions of employees or agents of Contractor to public or private property in the City shall be immediately repaired or replaced by Contractor.

**12.04 Grants.** Contractor shall, upon request, assist City in the preparation of applications to federal, state, regional and other governmental agencies and private sector organizations for grants and loans associated with recycling and reuse programs and projects. Contractor shall compile accurate and complete data, information and

documents as requested by City to apply for such grants and loans, and shall comply with any requirements to which the City is required to adhere as a condition of receiving such grants and loans. Contractor shall not apply for grants directly, in its own name, without prior notice to and written approval by City.

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

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

**B. Assignment Defined.** For the purpose of this Section, “assignment” shall include, but not be limited to, (1) a documentary assignment of Contractor’s interest in and obligations under this Agreement; (2) a sale, exchange or other transfer to a third party of substantially all of Contractor’s assets dedicated to service under this Agreement or of any processing facilities identified in Article VI currently owned by Contractor’s partners; (3) any reorganization, consolidation, merger, or other transaction to which Contractor or either of its partners are a party which results in a change of Control of Contractor (e.g., the inclusion of a new partner); (4) any combination of the foregoing, whether or not in related or contemporaneous transactions which results in a change of Control of Contractor. A merger of Greenwaste Recovery, Inc. and Zanker Road Resource Management, Ltd., shall not constitute an “assignment” requiring the City’s approval. However, Contractor shall

provide City at least 90 days notice of such a proposed merger and the consolidated entity shall provide City a new Guaranty substantially in the form of Attachment M within two business days after the merger or consolidation.

**C. City Review of Requests to Consent to a Proposed Assignment.**

1. City need not consider a request to consent to an assignment made while Contractor is in default of its obligations under this Agreement;

2. Contractor shall be required to pay the City's reasonable expenses, including attorneys' fees and consultants' costs, necessary to investigate the suitability of any proposed assignee and to review and finalize any documentation required as a condition of approving any such assignment;

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

4. Contractor shall furnish City with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of municipal solid waste/recycling management experience on a scale equal to or exceeding the scale of operations conducted by Contractor for the City; (ii) that in the last five (5) years, the proposed assignee has not been subject to any administrative or judicial proceedings initiated by any federal, state or local agency having jurisdiction over its municipal solid waste/recycling operations due to any significant failure to comply with state, federal or local laws and that the Contractor has provided City with a complete list of such proceedings and their status; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its municipal solid waste management operations in accordance with sound waste management practices in full compliance with all federal, state and local laws regulating the collection and disposal of waste, including all Environmental Laws; (v) of any other information required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner;

5. Any permitted assignee must assume Contractor's responsibilities under this Agreement.

**12.06 Subcontracting.** Contractor shall not engage any subcontractors, other than Orloff-Williams, for development of public information materials as described in Attachment C without the prior express written consent of City. Contractor shall notify the City at least thirty (30) days prior to the date on which it proposes to enter into a subcontract. City may approve or deny any such request in its sole discretion and may require the submission of the information described in Section 10.05.C and the payment of the City's expenses in evaluating the acceptability of the proposed subcontractor.

Contractor may, in cases of emergency, engage subcontractors for up to seven (7) consecutive days. Contractor shall give prompt notice to City of any such emergency subcontracting and any such engagement must be approved by City in writing if it is to extend beyond seven (7) days. Contractor shall be responsible for directing the work of any subcontractors and for any compensation due to subcontractors. City assumes no responsibility whatsoever concerning compensation. Contractor shall be fully responsible to City for all acts and omissions of a subcontractor.

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

**12.08 Parties in Interest.** Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons other than the parties to it and their representatives, successors and permitted assigns. There are no third party beneficiaries of this Agreement.

**12.09 Waiver.** The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision.

**12.10 Contractor's Investigation; No Warranties by City.** Contractor has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed by it,

including the nature and amount of the Solid Waste and Recyclable Materials generated within the City, the recycling and source reduction programs now in effect in or planned by the City, the City's landfill, and the SMART Station. The Agreement accurately and fairly represents the intentions of Contractor, and Contractor enters into the Agreement on the basis of that independent investigation and analysis.

Contractor has carefully reviewed the information in the Request for Proposals and Addenda, if any. While City believes that the information contained in the Request for Proposals is substantially correct, City makes no warranties in connection with this Agreement, including but not limited to the information contained in the Request for Proposals. The City expressly disclaims any warranties, either express or implied, as to the merchantability or fitness for any particular purpose of Recyclable Materials made available for collection by Contractor.

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

**12.12 Representatives of the Parties.**

**A. Representative of City.** Subject to the authority conferred on the City Manager by Section 5.20.080 of the Palo Alto Municipal Code, the representative of the City who is primarily responsible for the administration of this Agreement and to whom notices, demands and other formal communications shall be given is the Director of Public Works.

**B. Representative of Contractor.** The representative of the Contractor who is primarily responsible for the administration of this Agreement, and to whom notices, demands and other formal communications shall be given is Frank Weigel, Chief Operating Officer. City may rely upon actions taken and decisions made by the Contractor's designated representative as actions and decisions of the Contractor unless they are outside the scope of the authority delegated to such representative, which limitations on authority have been previously communicated to City in writing.

**12.13 Notice.** Notices, demands and other formal communications shall be in writing and shall either be personally delivered to the designated representative of

the party or deposited in the United States mail, first class postage prepaid and sent certified mail return receipt requested, addressed as follows:

If to City:                    By Personal Delivery  
Director of Public Works  
City Hall  
250 Hamilton Avenue  
Palo Alto, CA 94301

By U.S. Mail  
Director of Public Works  
P.O. Box 10250  
Palo Alto, CA 94303

With a copy to:            City Manager  
City of Palo Alto  
250 Hamilton Avenue  
Palo Alto, CA 94301

If to Contractor:         By Personal Delivery  
Mr. Frank Weigel, Chief Operating Officer  
Greenwaste of Palo Alto  
1500 Berger Drive  
San Jose, CA 95112

By U.S. Mail  
Greenwaste of Palo Alto  
1500 Berger Drive  
San Jose, CA 95112  
Attention: Mr. Frank Weigel, Chief Operating Officer

Routine, day-to-day communications between the parties may be exchanged in a manner and between subordinate employees as the designated representatives of each party may agree.

Notices, demands and other formal communications shall be deemed to have been given upon personal delivery or upon attempted delivery as shown on the U.S. Postal Service certified mail return receipt.

If the name of the principal representative or others designated to receive the notices, demands and other formal communications or the address of such person changes, written notice shall be given to the other party by means of a notice given in accordance with this section.



**12.14 Duty of Contractor Not to Discriminate.** Contractor shall not discriminate, nor permit any subcontractor to discriminate, in the employment of persons engaged in the performance of this Agreement or in the provision of service to customers on account of race, skin color, national origin, ancestry, sex, age, height, weight, disability, medical condition, sexual orientation, religion, marital status, familial status, or housing status in violation of any applicable federal or state law. Contractor acknowledges that it has read and understands the provisions of Section 2.30.510 of the Municipal Code relating to non-discrimination requirements and the penalties for violation thereof and shall comply with all such requirements, including those contained in Attachment R.

**12.15 City Environmental Policies.** Contractor and any subcontractors shall comply with City's Environmental Purchasing Policies, as may be amended from time to time.

**12.16 Right of City to Make Changes.** City may, without amending this Agreement, direct Contractor to cease performing one or more types of service described in Articles 4, 5 and 6, may direct Contractor to modify the scope of one or more such services, may direct Contractor to add new services and initiate pilot programs, or may otherwise direct Contractor to modify its performance under any other section of this Agreement. All such directions shall be in writing, signed by the Director or City Manager. Contractor shall promptly and cooperatively comply with such direction.

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

If City has directed a change in the scope of work under this Section and either party believes that such change will increase or decrease the costs of providing service, the party which believes the Contractor's compensation should be adjusted shall within thirty (30) calendar days submit to the other party a proposed adjustment and the parties shall thereafter meet and discuss the matter. Contractor shall promptly provide all relevant schedules, supporting documentation and other financial information requested by City to evaluate the necessity for an adjustment and the amount thereof.

City's Director of Public Works will participate in key meetings regarding those adjustments. Within ninety (90) days of the submission of the proposed adjustment, City will determine the amount of the adjustment, if any, and will thereafter adjust the Contractor's compensation accordingly. Any adjustments will be made effective as of the date the change in service is implemented.

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

**12.17 Cooperation During Transition.** At the expiration of the Term or earlier termination of the Agreement, or upon City's approval of a proposed assignment, Contractor shall cooperate fully with City to ensure an orderly transition to any and all new service providers. Contractor shall provide, within ten (10) days of a written request by City, then-current route lists, which identify each Customer on the route, its service level and history (number of containers, container sizes, frequency of collection, scheduled collection day), any special collection details, and detailed then-current Customer account and billing information. Contractor shall, upon request by City, sell collection vehicles and containers to the next service provider at their net book value.

Contractor shall, commencing one hundred eighty (180) days prior to the transition of services, attend meetings with the next service provider and with City staff and consultants to plan the recovery of Contractor's containers and placement of new containers. Contractor shall perform in accordance with such plan and direct route supervisors to provide "ride-alongs" so that the new service provider's employees may ride with drivers in Collection vehicles during collection operations. Contractor shall direct its drivers and other employees to provide accurate information to the new provider about routing and Customers

**12.18 Protection of Customer Privacy.** Contractor shall strictly observe and protect the rights of privacy of Customers and shall not market or otherwise distribute mailing lists with the names and addresses of residential customers.

**12.19 Use of Recycled Materials.**

**A. Recycled Paper.** Contractor shall purchase and use recycled paper products with a minimum of thirty percent (30%) post-consumer recycled content for uncoated paper and ten percent (10%) post-consumer recycled content for coated paper for all services provided under this Agreement, including office administration, reports, and communications with customers. All materials prepared by Contractor for distribution to Customers shall state “Printed on Recycled Paper.”

**B. Re-Refined Motor Oil.** Contractor shall use its best effort to use re-refined motor oil for its vehicles.

**C. Recycled Plastic.** Contractor shall purchase carts that contain the minimum post-consumer recycled content specified in Attachment H.

Upon City’s request, Contractor shall document its on-going compliance with these requirements.

**12.20 Municipal Code.** Contractor shall comply with all applicable provisions of the Palo Alto Municipal Code, including Chapter 5.20 and Chapter 9.10, and with all rules and regulations adopted by the City Manager pursuant to Section 5.20.280 of the Municipal Code. Contractor acknowledges having received a copy of Chapters 5.20 and 9.10 of the Municipal Code.

**12.21 No Damages for Invalidation of Agreement.** If a final judgment of a court of competent jurisdiction determines that this Agreement is illegal or was unlawfully entered into by City, neither party shall have any claim against the other for damages of any kind (including but not limited to loss of profits) on any theory.

**12.22 Indemnity Regarding Challenge to Award of Contract.** Contractor shall indemnify, defend and hold harmless City and its officers, employees and agents (collectively, the “Indemnitees”) from and against any and all liability, claim, demand, action, proceeding or suit of any and every kind and description brought by a third person challenging the process by which proposals were solicited and evaluated, or this Agreement was negotiated or awarded, including City’s compliance with the California Environmental Quality Act in connection with the award of this Agreement, but only to

the extent that such liability, claim, demand, action, proceeding or suit was caused by Contractor's failure to comply with applicable law or with the written instructions of any of the Indemnitees with respect to such matters.

**12.23 Fiscal Provisions.** This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. This Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This section shall take precedence in the event of a conflict with any other term, condition, or provision of this Agreement.

**12.24 Affiliated Entity.** Contractor will not form or use any Affiliate to perform any of the services or activities which Contractor is required or allowed to perform under this Agreement, other than as a subcontractor approved by the City under Section 12.06.

If Contractor enters into any financial transactions with an Affiliate for the provision of labor, equipment, supplies, services, or capital related to the furnishing of service under this Agreement, or for the purchase of Recyclable Materials, that relationship shall be disclosed to the City, and in the financial reports submitted to the City. In such event, the City's rights to inspect records and obtain financial data shall extend to such Affiliate.

## **ARTICLE 13. MISCELLANEOUS AGREEMENTS**

**13.01 Attachments.** Each of the Attachments, identified as Attachments “A” through “R,” is attached hereto and incorporated herein and made a part hereof by this reference. Any additional attachments, appendices, addenda and schedules which are attached to any duly executed amendment to this Agreement are similarly to be incorporated herein as a part of this Agreement.

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

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

**13.04 Interpretation.** Each party has participated in the preparation of this Agreement with the assistance of legal counsel to the extent desired. Accordingly, this Agreement shall be interpreted and construed reasonably and neither for nor against either party.

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

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

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

**13.08 Jurisdiction.** Any lawsuits between the parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the

parties agree that this Agreement is made in and will be performed in Santa Clara County.

**13.09 No Attorneys' Fees.** The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs expended in connection with such an action from the other party. Each party shall bear its own attorneys' fees.

**13.10 References to Laws.** All references in this Agreement to laws and regulations shall be understood to include such laws and regulations as they may be subsequently amended or recodified. In addition, references to specific governmental agencies shall be understood to include agencies that succeed to or assume the functions the named agencies are currently performing.

///

///

///

///

///

///

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

GREENWASTE OF PALO ALTO,  
a California joint venture

By: Greenwaste Recovery, Inc.,  
a California corporation

By: \_\_\_\_\_  
Name: Richard A. Cristina  
Title: President

By: \_\_\_\_\_  
Name: Jesse Weigel  
Title: Secretary

By: Zanker Road Resource Management,  
Ltd., a California limited partnership

By: Zanker Road Resource Recovery,  
Inc., a California corporation,  
its General Partner

By: \_\_\_\_\_  
Name: Richard A. Cristina  
Title: President

By: \_\_\_\_\_  
Name: Murray B. Hall  
Title: Secretary

CITY OF PALO ALTO

By: \_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM

\_\_\_\_\_  
City Attorney

APPROVED:

\_\_\_\_\_  
Director, Administrative Services

APPROVED:

\_\_\_\_\_  
Director, Public Works

**SUPPLEMENTARY ASSURANCES**  
**BY ZANKER ROAD RESOURCE MANAGEMENT, LTD**  
**AND GREENWASTE RECOVERY, INC.**

Zanker Road Resource Management, Ltd, and Greenwaste Recovery, Inc., partners in Contractor, in order to induce City to enter into this Agreement with Contractor, hereby ratify the commitments made in Contractor' s Proposal regarding processing at the facilities which they own, and agree to process materials collected in Palo Alto and delivered to those facilities as necessary for Contractor to fulfill its agreements in Article 6 of this Agreement.

By: Zanker Road Resource Management,  
Ltd., a California limited partnership

By: Zanker Road Resource Recovery,  
Inc., a California corporation,  
its General Partner

By: \_\_\_\_\_  
Name: Richard A. Cristina  
Title: President

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Murray B. Hall  
Title: Secretary

Date: \_\_\_\_\_

By: Greenwaste Recovery, Inc.,  
a California corporation

By: \_\_\_\_\_  
Name: Richard A. Cristina  
Title: President

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Jesse Weigel  
Title: Secretary

Date: \_\_\_\_\_