

AGREEMENT BETWEEN  
THE CENTRAL MARIN SANITATION AGENCY  
AND  
CITY OF SUNNYVALE  
FOR THE  
FOOD WASTE DISPOSAL SERVICES

SEPTEMBER 2024

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AND CITY OF SUNNYVALE  
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This Agreement is entered into and executed as of the \_\_\_\_ day of September, 2024 (the "Effective Date"), by and between the Central Marin Sanitation Agency ("CMSA") a joint powers authority in Marin County, and City of Sunnyvale ("City"), (together referred to as the "Parties" or "Party").

RECITALS

WHEREAS, City is a California charter city that provides food waste processing and disposal services to its customers; and

WHEREAS, City is seeking a facility to which City, through its subcontracted waste hauler(s), can discharge processed residential and commercial food waste from the Sunnyvale Materials Recovery and Transfer (SMaRT) Station; and

WHEREAS, CMSA has two anaerobic digesters that produce biogas for beneficial use as fuel; and

WHEREAS, CMSA believes its Facility currently has the capacity to accept daily amounts food waste, in accordance with the terms of this Agreement; and

WHEREAS, the Parties agree that the quantity that CMSA can accept from City may increase or decrease in the future; and

WHEREAS, the Parties agree to cooperate with each other in good faith to implement or amend this Agreement.

NOW, THEREFORE, in consideration of the terms and conditions contained in this Agreement and for other good and valuable consideration, CMSA and City agree as follows:

## ARTICLE 1. DEFINITIONS

Accept (or Acceptance or other variations thereof) is the transfer of ownership of Food Waste from City to CMSA.

Agreement means this Agreement, which may be amended and supplemented pursuant to Section 12.06.

Applicable Law means all statutes, rules, regulations, permits, orders, or requirements of the Federal, State, applicable County, and local government authorities and agencies having applicable jurisdiction, that apply to or govern the Facility, the Site, or the performance of the Parties' respective obligations hereunder in effect as of the Execution Date and as amended and/or enacted hereinafter.

Change in Law means the occurrence of any event or change in Applicable Law as follows:

(1) the adoption, promulgation, amendment, modification, rescission, revision or repeal of any Applicable Law or change in judicial or administrative interpretation thereof occurring after the Execution Date hereof; or

(2) any order or judgment of any Federal, State, or local court, administrative agency or governmental body issued after the Execution Date hereof if:

(i) such order or judgment is not the result of the willful misconduct or negligent action or inaction of the Party relying thereon or of any third party for whom the Party relying thereon is directly responsible; and

(ii) the Party relying thereon, unless excused in writing from so doing by the other Party, shall make or have made, or shall cause or have caused to be made, Reasonable Business Efforts in good faith to contest such order or judgment (it being understood that the contesting in good faith of such an order or judgment shall not constitute or be construed as willful misconduct or negligent action of such Party); or

(3) the imposition by a governmental authority or agency of any new or different material conditions in connection with the issuance, renewal, or modification of any permit or approval after the Execution Date; or

(4) the failure of a governmental authority or agency to issue, or the suspension, termination or rejection of, any permit or approval after the Execution Date hereof.

City Facility means the Sunnyvale Materials Recovery and Transfer (SMaRT®) Station which is the City of Sunnyvale's solid waste processing facility in Sunnyvale, California.

Commercial Food Waste Generator means those restaurants, grocery stores, markets, and other food processing businesses participating in City's food waste collection program.

Contract Year means CMSA's fiscal year of July 1 of one year to June 30 of the following year.

Delivery (Deliver or Delivered or other variations thereof) means arrival of City at the Site entrance during Facility Receiving Hours for the purposes of delivering Food Waste to CMSA.

Disposal means depositing of Pomace or Residual of Digested Food Solids for beneficial use, including, but not limited to composting, land application, or disposal at an authorized landfill.

Facility means the CMSA's wastewater treatment plant located at 1301 Andersen Drive, San Rafael, California.

Facility Receiving Hours are hours when the CMSA will be open to Accept Food Waste at the Facility as defined in Section 6.03.

Food Waste means pre-processed organic consumer food materials from City's Facility acceptable for anaerobic codigestion at CMSA's Facility. No food waste extracted from Municipal Solid Waste shall be allowed. Food Waste includes fruits, vegetables, meat, seafood, small bones, dairy, eggs, breads, pastas, sauces, cooking oil, grease, tea bags, coffee grounds and filters, and other related food waste materials. Food waste can be either of a solid consistency (typically greater than 22% solids) that is Delivered in an end-dump trailer, or if can be diluted into a pumpable food waste slurry (typically less than 22% solids) at the City Facility that is Delivered in a tanker truck.

Force Majeure event includes but is not limited to floods, earthquakes, epidemics, pandemics, government orders and restrictions, and other extraordinary acts of nature, war or insurrection, riots, or other similar catastrophic events, not caused or maintained by the Party seeking relief, which event is not reasonably within the ability of that Party to intervene in or control to the extent that such event has a materially adverse effect on the ability of that Party to perform its obligations hereunder. No event, the effects of which could have been prevented by reasonable precautions, including compliance with Applicable Laws, shall be a Force Majeure event. No failure of performance by CMSA, City, their respective contractors shall be a Force Majeure event unless such failure is itself caused by a Force Majeure event as to CMSA, City, and their respective contractors.

Hazardous Waste means materials that are hazardous, including but not limited to:

(1) "Hazardous Waste" pursuant to Section 40141 of the California Public Resources Code; all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by Sections 25110.02, 25115, and 25117 of the California Health and Safety Code (the California Hazardous Waste Control Act), California Health and Safety Code Section 25100 et seq., and future amendments to or recodification of such statutes or regulations promulgated thereunder, including 23 California Code of Regulations Sections 2521 and 2522;

(2) materials regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended (including, but not limited to, amendments thereto made by the Solid Waste Disposal Act Amendments of 1980), and related Federal, State and local laws and regulations;

(3) materials regulated under the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., as amended, and related Federal, State of California, and local laws and regulations, including the California Toxic Substances Account Act, California Health and Safety Code Section 25300 et seq.;

(4) materials regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601, et seq., as amended, and regulations promulgated thereunder; and

(5) materials regulated under any future additional or substitute Federal, State or local laws and regulations pertaining to the identification, transportation, treatment, storage or disposal of toxic substances or Hazardous Waste; with the exception that Hazardous Waste, for the purpose of this Agreement, shall specifically exclude Household Hazardous Waste.

If two or more governmental agencies having concurrent or overlapping jurisdiction over Hazardous Waste adopt conflicting definitions of "Hazardous Waste," for purposes of collection, transportation, processing and/or disposal, the more restrictive definition shall be employed for purposes of this Agreement.

Holidays/CMSA Non-Operating Days are New Year's Day, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving Day, and Christmas Day or any other day that CMSA gives City seventy-two (72) hours' prior written notice that the Facility will not be in operation that day.

Household Hazardous Waste are those wastes resulting from products used by the general public for household purposes which, because of their quantity, concentration, or physical or chemical characteristics, may pose a substantial known or potential hazard to human health or the environment when improperly treated, disposed, or otherwise managed.

Labor Action means labor unrest, including strike, work stoppage, lock-out, slowdown, sick-out, picketing, industrial disturbance, and any other concerted job action.

Liquid Organic Waste means all other processed, screened, liquid materials that are received at the Facility for codigestion, including but not limited to Fats, Oils, and Grease (FOG), soy whey, brewery and winery wastewater, and other food and beverage manufacturing wastewater.

Notice (or Notify or other variation thereof) means written notice given by one Party to the other Party in relation to the execution of the various obligations of both Parties under this Agreement.

Permits means all Federal, State and local, statutory or regulatory approvals, or other measures or mechanisms necessary for either Party to be in full legal compliance in the performance of all their obligations, as renewed or amended from time to time.

Person includes any individual, firm, association, organization, partnership, corporation, trust, joint venture, the United States, the State, a county, a municipality or special district, or any other entity whatsoever.

Pomace means material resulting from processing the Food Waste through the Facility's paddle finisher after acceptance and prior to digestion, that requires recycling or Disposal.

Pre-process means the handling, removal of Unacceptable Materials, and processing of the Food Waste by City.

Process (or Processing or any other variation thereof) means the handling, digestion, and Disposal of Food Waste, Pomace, and Residual of Digested Food Solids by CMSA at the Facility after Acceptance.

Reasonable Business Efforts means those efforts a reasonably prudent entity comparable to the Parties would expend under the same or similar circumstances in the exercise of such entity's business judgment, intending in good faith to take steps calculated to satisfy the obligation that such entity has undertaken to satisfy.

Residual of Digested Food Solids means material remaining after digestion and dewatering of Food Waste that requires Disposal.

Site means the parcel of land on which the Facility is situated.

State means the State of California.

Ton means a unit of measure for weight equivalent to two thousand (2,000) standard pounds (where each pound contains 16 ounces).

Unacceptable Material(s) means wastes or other materials that CMSA cannot Process as part of the Food Waste and are considered contamination, including but not limited to plastic, Styrofoam, glass, metal, bones, paper, cardboard, wood, yard waste, cans, straps, ropes, cords, wires, bottles or any other material in quantities that would impact CMSA's ability to process Food Waste or meet regulatory compliance.

De minimis quantities of these wastes materials which under typical operating circumstances would not significantly disrupt Facility operations will not be considered Unacceptable Materials. At the execution date of this Agreement, CMSA has determined that de minimis quantities of contamination over a 12 month period result in less than \$29,500 of unplanned corrective maintenance, which includes unclogging and repairing pumping systems among other tasks. This definition may evolve over time by mutual agreement of the Parties to reflect new methods that allow processing of additional materials.

Uncontrollable Circumstance(s) means any act, event, or condition outside either Party's control and not the result of willful or negligent action or inaction on the part of such Party, whether affecting the Facility, City Facility, or either Party, which materially and adversely affects the ability of either Party to perform any of its obligations under this Agreement, including:

(1) The failure of any appropriate Federal, State, or local public agency or private utility having operational jurisdiction in the area in which the Facility or City Facility is located, to provide and maintain utilities, services, water, sewer or power transmission lines which are required for Facility operations or City Facility operations; or

(2) A Change in Law or applicable regulations, such as including without limitation changes to the Facility's Air Permit conditions; or

(3) The suspension or interruption of either Party's operations as a result of any release, spill, power outage, contamination, migration or presence of any Hazardous Waste, petroleum and petroleum products or as a result of any release, spill, contamination of toxic materials where the Party is not liable for the release, spill or contamination, or a potentially responsible party. The suspension of operations due to a release, spill or contamination where the Party's liability for the release, spill or contamination arises solely from Party's status as the operator of the facility or owner of the property will be considered an Uncontrollable Circumstance; or

(4) A treatment process upset to the Facility that prevents the use of the digesters, or a disruption to the City Facility operation or similar event not related to Food Waste processing and; or

(5) A Force Majeure event that temporarily or permanently interrupts Facility operations or City Facility operations; or

(6) A Facility equipment or control system failure that interrupts the ability of the Facility to receive and process the Food Waste; or

(7) A City Facility equipment failure that interrupts the ability of the City Facility Station to receive, preprocess, or transport Food Waste.

The following are excluded from Uncontrollable Circumstances, without limitation, unless caused by an Uncontrollable Circumstance listed above:

(1) Adverse changes in the financial condition of either Party or any Change in Law with respect to any taxes based on or measured by net income, or any unincorporated business, payroll, franchise or employment taxes;

(2) The consequences of errors on the part of either Party, its employees, agents, subcontractors or affiliates, including errors in plans and specifications that should reasonably have been identified;

(3) The failure of either Party to secure and/or maintain the necessary regulatory permits for delivery and processing of Food Waste; and

(4) The lack of fitness for use, or the failure to properly maintain, of any materials, equipment or parts constituting any portion of the Facility or City Facility.



(5) Labor Actions of or affecting the employees or contractors (including, in the case of City, other Collectors) of the Party that is asserting Uncontrollable Circumstances.

## ARTICLE 2. REPRESENTATIONS AND WARRANTIES

2.01 Of CMSA. CMSA represents and warrants as of the date hereof:

a. Status. CMSA is a publicly owned utility formed under the California Joint Exercise of Powers Act.

b. Authority and Authorization. CMSA has full legal right, power, and authority to execute this Agreement and perform its obligations hereunder. This Agreement has been duly executed by CMSA and constitutes a legal, valid, and binding obligation of CMSA enforceable against CMSA in accordance with its terms. CMSA has complied with Applicable Law in entering into this Agreement.

c. No Conflicts. The execution by the CMSA of this Agreement, the performance by the CMSA of its obligations under, and the fulfillment by the CMSA of the terms and conditions of, this Agreement does not knowingly (1) conflict with, violate or result in a breach of any Applicable Law; or (2) conflict with, violate, or result in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which CMSA is a Party or by which CMSA or any of its properties or assets are bound, or constitute a Default thereunder.

d. No Approvals. CMSA warrants that all legally required Permits and approvals of whatsoever nature have been secured for CMSA to provide services hereunder and meet CMSA's obligations, and CMSA further warrants that it shall, at its sole cost and expense, keep in effect or obtain at all times during the Term all permits, and approvals which are legally required for CMSA to provide such services and meet its obligations.

e. No Litigation. There is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality pending or, to the best of CMSA's knowledge, threatened, against CMSA wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by CMSA of its obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity of, or the ability to enforce, this Agreement or any other agreement or instrument entered into by CMSA in connection with the transactions contemplated hereby.

f. Public Works. The services requested by CMSA under this Agreement do not constitute a "public work" and are not subject to any of the provisions of the Public Works law, Labor Code Sections 1720-1901, nor of the regulations promulgated thereunder.

2.02 Of City. City represents and warrants as of the date hereof:

a. Status. City is a California charter city and a municipal corporation duly organized and validly existing under the laws of the State of California.

b. Authority and Authorization. City has full legal right, power and authority to execute this Agreement, and perform its obligations hereunder. This Agreement has been duly executed by City and upon execution constitutes a legal, valid, and binding obligation of City enforceable against City in accordance with its terms. City has complied with Applicable Law in entering into this Agreement.

c. No Conflicts. Neither the execution by City of this Agreement, the performance by City of its obligations hereunder, nor the fulfillment by City of the terms and conditions hereof: (1) conflicts with, violates, or results in a breach of Applicable Law; or (2) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which City is a Party or by which City or any of its properties or assets are bound, or constitutes a Default thereunder.

d. No Approvals. No approval, authorization, license, permit, order or consent of, or declaration, registration or filing with any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution and delivery of this Agreement by City.

e. No Litigation. There is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality pending or, to the best of City's knowledge, threatened, against City that would materially adversely affect the performance by City of its obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity of, or the ability to enforce this Agreement or any other agreement or instrument entered into by City in connection with the transactions contemplated hereby.

f. Subcontracted Hauler(s). Below are City's subcontracted waste hauler(s) authorized to Deliver Food Waste to CMSA:

- HAULER: J.D. Services, Inc.

City must immediately notify CMSA and receive authorization for subcontracted waste hauler(s) and their respective vehicles not listed below prior to delivering loads to CMSA.

All applicable portions of this Agreement that are applicable to the City are also applicable to its subcontracted waste hauler(s).

## ARTICLE 3. THE PARTIES

### 3.01 Independent Contractor.

The Parties intend that each will perform its obligations as an independent contractor and neither as a partner or joint venturer with the other. No agents, employees, contractors, consultants, licensees, agents or invitees of a Party will be deemed to be employees, contractors, licensees, agents or invitees or agents of the other Party.

### 3.02 Parties in Interest.

Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons other than the Parties and their respective representatives, successors, and permitted assigns.

### 3.03 Binding on Successors.

Subject to Section 12.03 below, the provisions of this Agreement shall inure to the benefit of and be binding on the successors and permitted assigns of the Parties.

### 3.04 Confidentiality of Information.

The Parties acknowledge and agree that information submitted by either Party pursuant to this Agreement may be subject to compulsory disclosure upon request from a member of the public under the California Public Records Act, Government Code Section 7920.000 *et seq.*

### 3.05 Sole Responsibility.

Each Party shall be solely responsible for the acts and omissions of its officers, employees, contractors, and agents.

## ARTICLE 4. TERM OF AGREEMENT

### 4.01 Term.

This Agreement shall become effective on the date it is executed by both Parties and will continue in effect for approximately one (1) year thereafter (the "Term") unless terminated earlier by either Party in accordance with Article 7 or 11. The Term will end on \_\_\_\_\_, 2025.

### 4.02 Term Extensions.

a. Agreement to Extend. The Parties may agree in writing to extend this Agreement on mutually acceptable terms after the end of the initial Term. Each extension will be of at least 12 months in duration and will be part of the Term. The Parties shall endeavor to commit to an extension at least ninety (90) days before the expiration of the then-current Term.

b. Agreement in Full Effect. All provisions of this Agreement shall remain in effect during any extension except as otherwise agreed to in a written instrument signed by both Parties.

### 4.03 Survival of Certain Provisions.

All indemnifications provided for herein and any other rights and obligations of the Parties expressly stated to survive the termination of this Agreement, shall survive such termination including, but not limited to, the following provisions: Section 6.05 (Records and Reports), Article 8 (Insurance) and Article 9 (Indemnity).

## ARTICLE 5. PREPARATION, DELIVERY, AND ACCEPTANCE OF FOOD WASTE

### 5.01 Delivered Food Waste.

City will use Reasonable Business Efforts and will employ specified procedures to ensure that all Food Waste Delivered by City to CMSA's Facility has been Pre-processed, is free of Unacceptable Materials, and is acceptable based on CMSA's requirements for its Food Waste processes and its Facility processes as set forth in this Agreement.

Deliveries of Food Waste by City will commence when City notifies CMSA that food waste is available.

a. Pre-processing of Food Waste. Before Delivery, the Food Waste must be pre-processed into pieces approximately one inch square in size or smaller at the City Facility. Options for pre-processing include a hammermill, a press and polishing system, or depackaging equipment or like equipment. CMSA must be informed of the specific equipment being employed at City Facility prior to receiving food waste, and City must inform CMSA at least 4 weeks prior to any proposed changes in the pre-processing equipment at City Facility.

b. Preventing Contamination of Loads. City will use Reasonable Business Efforts to prevent Unacceptable Materials from being included in Food Waste Delivered by City to CMSA.

### 5.02 Acceptance of Food Waste.

a. Acceptance and Ownership of Food Waste. CMSA shall accept an aggregate of up to 6,000 gallons per day, one to seven times a week and occasionally more, of Food Waste from City during the Term. Food Waste shall be Delivered at approximately 17-27% Total Solids Content and CMSA and City agree to discuss adjusting these maximum amount based on City and CMSA Facility capacities. Food waste shall be Delivered in a tanker truck or an end dump truck.

Notwithstanding the above, CMSA shall have the right but not the obligation to inspect each and every load of Food Waste to confirm that no Unacceptable Materials are contained therein. Food Waste will be deemed accepted by CMSA unless CMSA rejects the materials as they are being offloaded or immediately after offloading at the Facility. If the Food Waste is contaminated in a manner that could not be ascertained upon visual inspection during dumping but CMSA notifies City prior to completion of processing that the Food Waste contains Unacceptable Materials, CMSA shall have the right to reject the remainder of that load of Food Waste.

b. Rejection of Unacceptable Material.

(1) Inspection. CMSA may use Reasonable Business Efforts to detect and discover Unacceptable Material.

(2) Rejection of Contaminated Loads. CMSA may reject any loads containing Unacceptable Materials, if a qualified CMSA representative observes Unacceptable Materials discharged into the Food Waste receiving tank and believes, using their professional judgment, that the Unacceptable Materials are of a type or quantity that will disrupt Facility operations (e.g., by clogging pipelines or

damaging equipment or impacting the digestion process, the biogas utilization process, or the disposability of dewatered biosolids).

Should CMSA reject any Delivered loads of Food Waste at the Facility due to the presence of Unacceptable Materials, CMSA shall immediately upon discovery notify the delivery truck driver and the City authorized representative (as defined below) verbally, identifying CMSA's reason for rejection of the Delivered Food Waste and identifying the specific truck of City or its subcontracted waste hauler(s) that Delivered the rejected Food Waste, if possible. If CMSA rejects Food Waste Delivered to the Facility per Section 5.02.a, City, through its subcontracted waste hauler(s), will promptly remove the rejected Food Waste from the Facility at its own expense.

## ARTICLE 6. OTHER PROGRAM COMMITMENTS

### 6.01 Facility Operations.

a. Operating Throughput Commitment. City estimates a maximum of 6,000 gallons per day, three to five times a week and occasionally more, of Food Waste (after the required Pre-processing and including the weight of any dilution water that may be added at City Facility). Target delivered percent Total Solids Content is approximately 17-30%. Food waste will be Delivered in a tanker truck.

b. Vehicle Turnaround. CMSA will use Reasonable Business Efforts to allow the vehicles of City's subcontracted waste hauler(s) identified in Section 2.02 to enter, position their vehicles for dumping, dump their load of Food Waste (including Facility clean up), turnaround and exit the Facility within an average of sixty (60) minutes or less after arriving at the Facility absent vehicle breakdown, driver negligence, lack of cooperation on the part of the driver, or driver parking to use restrooms, telephone or other driver or truck-related issues, and provided that the truck arrives at the Facility during Facility Receiving Hours. If delivering in an end dump, Hauler has visited the CMSA site and is aware that a full standard length and width end-dump trailer will not fit. A shorter and narrower end dump trailer is required Hauler or a tanker truck for pumpable food waste.

c. Facility Clean-up. City, through its subcontracted waste hauler(s), will clean and wash down the Facility's Food Waste receiving area after each load of Food Waste is dumped into its underground receiving tank. Upon completion of the dumping and cleaning, all debris and liquid waste that may have spilled during the dumping operation shall be removed and the area left in a clean and orderly state. Washdown water, hoses, brooms, and a dumpster are located at the Facility's Food Waste receiving area and may be used by City for Facility clean-up. If City or its subcontracted waste hauler(s) fails to clean up its debris and/or liquid waste, CMSA shall be entitled to charge City the sum of One Hundred Dollars (\$100.00) for each delivery that City fails to clean-up.

d. Permits. City will be responsible at its own expense for any and all permits required for the collection and Pre-processing of Food Waste, and delivery of Food Waste to the Facility as well as the disposal of rejected Food Waste and debris and liquid waste spilled during loading into the vehicles and transportation to the Facility.

### 6.03 General Operations.

a. Facility Receiving Hours. Unless otherwise agreed upon by the Parties in advance, CMSA shall receive Food Waste from City at the Facility between the hours of 6:00 a.m. and 4:00 p.m. each Monday through Friday, and between the hours of 9:00 a.m. and 12:00 p.m. on Saturdays. CMSA may also receive Food Waste from City at the Facility on Sundays and Holidays with prior written approval from CMSA.

b. Notification in Emergency. It is the responsibility of City to notify CMSA of emergencies, and Notify changes in scheduling of the delivery of Food Waste.

c. Scale Operation. The City will weigh each Food Waste delivery vehicle before and after loading for (1) CMSA billing purposes, and (2) to determine the amount of materials received. The scale weight information for each delivery vehicle will be provided to CMSA at the time of each



Delivery to the Facility. Upon request, City will provide verification that the scales are routinely calibrated and certified by the County of Santa Clara.

d. Continuous Operations. CMSA shall keep open and operate the Facility continuously and uninterrupted, during Facility Receiving Hours, except when CMSA is prevented from doing so by any Uncontrollable Circumstance, rejection of Unacceptable Material, performing scheduled maintenance of the Food Waste processing equipment, or if a CMSA digester is out-of-service or has a processing disruption or other related wastewater treatment plant processes, such as biosolids disposal or dewatering centrate processing.

e. Traffic Flow. CMSA shall direct traffic upon entry to the Site so that vehicles of City or its representatives, including its subcontracted waste hauler(s), travel, queue, unload, and exit in a safe manner.

#### 6.04 Disposal of Pomace, Residual of Digested Food Solids, and Unacceptable Materials.

a. Pomace. CMSA will coordinate the Disposal of all Pomace from the Facility processing. City will pay its proportionate share of the pomace disposal fee which will be based on the tons of City Delivered Food Waste divided by the total tons of Food Waste received by the Facility from all sources since the last Pomace storage container disposal.

b. Residual of Digested Food Solids. CMSA at its own expense will dispose of the Residual of Digested Food Solids through compost, land application, landfill direct disposal, or any other disposal/reuse method consistent with State of California regulations.

c. Unacceptable Materials. At its own expense, CMSA cleans the Facility's food waste storage tank quarterly and deposits debris and Unacceptable Materials into debris bins. City will pay its proportionate share of the Unacceptable Material disposal fee which will be based on the tons of City Delivered Food Waste divided by the total tons of Food Waste received by the Facility during the prior quarter.

#### 6.05 Records.

a. General Record Keeping. CMSA and City shall each maintain such records related to their individual performances under this Agreement as shall be reasonably necessary to develop the reports required by this Agreement. CMSA and City agree to receive input from the other if necessary on data collection, information and record keeping, and reporting activities required to comply with Applicable Laws and to meet their reporting and Food Waste program management needs. CMSA and City shall provide the other with copies of all such records promptly upon request.

CMSA and City shall maintain records required to conduct their own operations, to support requests either may make of the other, and to respond to reasonable requests for information necessary to conduct their respective businesses. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as fire, water damage, theft, and earthquake. Electronically maintained data/records shall be protected and backed up in order to ensure complete and accurate retrieval of information.

b. Retention of Records. Unless otherwise herein required, CMSA and City shall retain all documents required to be maintained by this Agreement for at least five (5) years after the expiration

or earlier termination of this Agreement. Alternatively, either Party may send its records and data to the other Party after the normal retention period has expired. Records and data that are specifically directed to be retained shall be made available to either Party upon receipt of a written request.

6.06 City Right to Tour and Inspect Facility.

City and its designated representative(s), which include City's subcontracted waste hauler(s) identified in Section 2.02, have the right, to enter, observe, and tour the Facility on reasonable 3-day Notice during Facility Receiving Hours. City can also be accompanied on such tours by elected representatives, regulators, representatives from educational organizations, and public relations or media representatives. City representatives and guests will comply with CMSA's safety and security rules at all times while on the Facility site.

6.07 CMSA Right to Tour, Inspect, and Monitor Transfer Station.

CMSA and its designated representative(s) have the right, to enter, observe, tour, inspect and monitor the City Facility and its operations on reasonable 3-day Notice to City, Monday through Friday, during normal operating hours with legal holidays and weekends excluded. CMSA and its representatives will comply with City's safety and security rules at all times.

## ARTICLE 7. COMPENSATION

### 7.01 General.

CMSA's compensation provided for in this Article will be the full, entire and complete compensation due to CMSA pursuant to this Agreement for all labor, equipment, material and supplies, taxes, insurance, bonds, overhead, transport, Acceptance, Processing, Residual of Digested Food Solids Disposal, and all other things necessary to perform the services required by this Agreement in the manner and at the time prescribed, except for the disposal and corrective maintenance fees described in Section 6.04 and 7.03. City is not obligated to reimburse CMSA for any losses that CMSA may incur due to fluctuations in the costs of processing Food Waste.

### 7.02 Disposal Fee and Fee Escalation.

The Delivery fee at the Facility will be \$27.98 per ton of Food Waste from the Effective date until June 30, 2025. The Delivery fee shall be adjusted at the beginning of each Contract Year starting with July 1, 2025 by the amount of the annual percentage change in the Consumer Price Index for Water and Sewer and Trash Collection, U.S. City Average, Bureau of Labor Statistics Series I.D. CUSR0000SEHG.

### 7.03 Facility Corrective Maintenance Expense Reimbursement.

City will reimburse CMSA annually for its proportionate share of Facility corrective maintenance expenses caused by delivery of Food Waste from City Facility containing Unacceptable Materials in excess of de minimis amounts. Reimbursement proportioning will be determined by the annual tons of Food Waste Delivered by City divided by the total annual tons on Food Waste received by the Facility.

### 7.04 Revenue from Food Waste Digestion.

The Parties agree that CMSA will retain all revenue and Renewable Energy Credits (RECs) realized from the sale of electricity generated by the codigestion of Food Waste.

## ARTICLE 8. INSURANCE

### 8.01 Insurance Requirements.

a. Insurance. Each Party shall purchase and maintain, in full force and effect during the Term adequate insurance that shall be no less than the types and amounts of insurance coverage listed below. Each Party's insurers must provide the other Party with thirty (30) calendar days' Notice of any cancellation or reduction in coverage. Each Party, for itself and contractors, shall supply certificates of insurance and additional insured endorsement to the other Party showing compliance with this Article 8 prior to the delivery of any Food Waste to the Facility. The terms and obligations of this Article shall survive termination of this Agreement.

b. Workers' Compensation Insurance. Each Party shall purchase and maintain during the Term, statutory Workers' Compensation and Employer's Liability in the amount of one million dollars (\$1,000,000) insurance policy per accident for bodily injury or disease for all of its employees working on this project. Each Party shall ensure that its contractors performing any work pursuant to this Agreement for such Party shall procure and maintain at all times during this Agreement, Workers' Compensation and Employer's Liability insurance.

c. Comprehensive General Liability Insurance. Each Party shall purchase and maintain during the Term Comprehensive General Liability insurance policy in the amount of one million dollars (\$1,000,000) for combined single limit coverage for bodily injury, personal injury, and property damage. Each Party shall ensure that its contractors performing any work pursuant to this Agreement for such Party shall procure and maintain at all times during the Term, General Liability insurance that meets or exceeds the requirements of this Agreement.

The following coverages or endorsements must be indicated on the certificate:

- (1) City shall name CMSA, its Commissioners or Directors, officers and employees as an additional insured in the policy;
- (2) CMSA shall name City, its officers, officials, employees, agents and volunteers as an additional named insured in the policy;
- (3) The coverage is primary to any other insurance carried by the other Party;
- (4) The policy covers contractual liability for the assumption of liability of others;
- (5) The policy is written on an occurrence basis;
- (6) The policy covers broad form property damage liability
- (7) The policy covers personal injury (libel, slander, and trespass) liability;
- (8) The policy will not be canceled nor reduced without thirty (30) days' written notice to the other Party.

(9) The policy(ies) cover(s) products and completed operations.

d. Automobile Liability Insurance. Each Party shall purchase and maintain an Automobile Liability insurance policy that shall apply to all owned, hired, and non-owned autos, vehicles and trailers. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage. Each Party shall ensure that its contractors performing any work pursuant to this Agreement for such Party shall procure and maintain at all times during the Term, Automobile Liability insurance that meets or exceeds the requirements of this Agreement.

e. Pollution Liability Insurance. Each Party shall purchase and maintain a Pollution Liability insurance policy with limits not less than \$1,000,000 per occurrence and in the aggregate for bodily injury and property damage. Each Party shall ensure that its contractors performing any work pursuant to this Agreement for such Party shall procure and maintain at all times during the Term, Pollution Liability insurance that meets or exceeds the requirements of this Agreement.

f. Amounts of Insurance. The amounts of insurance shall not be less than the following:

General Liability – one million dollars (\$1,000,000) per occurrence

Auto Liability – one million dollars (\$1,000,000) per occurrence

Worker's Compensation – State statutory limits and Employer's Liability – one million dollars (\$1,000,000) per accident for bodily injury or disease.

Pollution Liability – one million dollars (\$1,000,000) per occurrence

g. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than Superior or Excellent, and who are authorized to do business and in good standing in California

h. Certificate Holder. Each Party shall furnish the other with an electronic Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf and name the other Party, as noted below, as the certificate holder. All certificates are to be received and approved by the other Party prior to commencement of work. The Parties shall provide electronic certificate(s) evidencing renewals of all insurance required herein prior to the expiration date of any such insurance.

CMSA Certificate Holder:

City Certificate Holder:  
City of Sunnyvale,  
Attn: Risk Management,  
456 W. Olive Ave, Sunnyvale, CA  
94088

## ARTICLE 9. INDEMNITY

### 9.01 City Indemnification.

City, to the greatest extent allowed by Applicable Law, will protect, hold free and harmless, defend and indemnify CMSA, including its Board of Commissioners, individual commissioners, employees, consultants, and agents (collectively "indemnitees" or individually "indemnatee") from all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims or judgments, including reasonable attorney's fees, resulting from injury to or death sustained by any person (including City's or its subcontractors' employees) or damage to property of any kind, which injury, death or damage arises out of or is in any way connected with Hauler's or its contractors' performance of any part of this Agreement. Hauler's aforesaid indemnity, defense and save harmless agreement shall apply to any acts or omissions, or negligent conduct, whether active or passive, on the part of one or more of the indemnitees, except that said obligation of indemnity and hold harmless of an indemnitee shall not be applicable to injury, death or damage to property arising from the sole negligence or willful misconduct of that specific indemnitee. This indemnification, defense and hold harmless obligation shall extend to claims asserted after expiration or earlier termination, for whatever reason, of this Agreement.

### 9.02 CMSA Indemnification.

CMSA, to the greatest extent allowed by Applicable Law, will protect, hold free and harmless, defend and indemnify City, its Officials, , individual Directors, Officers and Employees (collectively "indemnitees" or individually "indemnatee") from all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims or judgments, including reasonable attorney's fees, resulting from injury to or death sustained by any person (including CMSA's employees) or damage to property of any kind, which injury, death or damage arises out of or is in any way connected with CMSA's or its contractors' performance of any part of this Agreement. CMSA's aforesaid indemnity, defense and save harmless agreement shall apply to any acts or omissions, or negligent conduct, whether active or passive, on the part of one or more of the indemnitees, except that said obligation of indemnity and hold harmless of an indemnitee shall not be applicable to injury, death or damage to property arising from the sole negligence or willful misconduct of that specific indemnitee. This indemnification, defense and hold harmless obligation shall extend to claims asserted after expiration or earlier termination, for whatever reason, of this Agreement.

## ARTICLE 10. BREACHES, DEFAULTS, MEET AND CONFER

### 10.01 Breaches.

a. Definition. A breach is a material failure to perform any of the material obligations set forth in this Agreement.

b. Notice of Breach. Either Party shall promptly Notify the other Party regarding the occurrence of a breach as soon as such breach becomes known to the Noticing Party. Such Notice shall be given in writing.

c. Cure of Breach. City and CMSA shall begin cure of any breach that it commits as soon as possible after it becomes aware of its breach. Upon receiving written Notice of a breach, the breaching Party shall proceed to cure such breach as follows:

(1) Immediately, if the breach is such that in the determination of either CMSA or City, the health, welfare or safety of the public is endangered thereby, unless immediate cure is impossible, in which event the Party required to cure shall Notify the other Party, and the other Party may seek substitute services.

(2) Within thirty (30) calendar days of receiving Notice of the breach; provided that if the nature of the breach is such that it will reasonably require more than thirty (30) calendar days to cure, the breaching Party shall not be in default so long as it promptly commences to cure its breach, secures written agreement from the other Party to extend the thirty (30) calendar day cure period (which the other Party shall not unreasonably refuse), and provides the other Party, no less than weekly, written status of progress in curing such breach, and diligently proceeds to complete same.

### 10.02 Default.

a. Events of CMSA Default. Each of the following shall constitute an event of default by CMSA.

(1) Uncured Breach of Agreement. CMSA fails to cure any breach as specified in Section 10.01.

(2) Repeated Pattern of the same Breaches. CMSA commits the same breach at least three (3) times during any twelve-month period during the Term.

b. Notice of Default. CMSA shall be in default from the date of receipt of a Notice from the City identifying such default.

c. Events of City Default. Each of the following shall constitute an event of default by City.

(1) Uncured Breach of Agreement. City fails to cure any breach as specified in Section 10.01.

(2) Repeated Pattern of Breaches. City commits the same breach at least three (3) times during any twelve-month period during the Term.

d. Notice of Default. City shall be in default from the date of receipt of a Notice from CMSA identifying such default.

#### 10.03 Request to Meet and Confer.

If any breach occurs that materially affects this Agreement or a Party's ability to perform under this Agreement or a change in Applicable law that affects either Party's ability to receive diversion credits under AB 939, either Party shall send Notice to the other Party describing the problem and requesting a meet and confer meeting. The Parties may choose to meet in person or by teleconference. The meet and confer process is intended to be a prerequisite to sending a Notice of Breach.

If either Party does not agree to meet and confer, does not appear at the meet and confer meeting, or if the Parties are not able to correct the breach or solve the problem resulting from a change in the Applicable Law within a reasonable period of time not to exceed thirty (30) days after the meet and confer, unless the time period is extended by mutual agreement, the aggrieved Party may send a Notice of Breach.

Notwithstanding the above, there is no requirement that the meet and confer process be used for a failure to pay, or for emergencies or urgent matters of public health.

#### 10.04. Remedy for Breach, Other Remedies.

The Parties shall be entitled to all available monetary or equitable remedies, including specific performance and injunctive relief.

a. City Remedies in the Event of CMSA Default. Upon CMSA's failure to cure a breach pursuant to Section 10.01 or default pursuant to Section 10.02, City shall, in addition to its right to collect monetary damages, have the following rights:

(1) Waive Default. To, at its sole discretion, waive the CMSA breach or default in writing.

(2) Termination. Terminate the Agreement in accordance with Article 11, provided that no termination shall be effective until City has given written Notice to CMSA of its decision to terminate the Agreement.

(3) All Other Available Remedies. In addition to, or in lieu of termination, to exercise all of its remedies in accordance with this Article and any other remedies at law and in equity, to which City shall be entitled, according to proof.

(4) Damages Survive. If CMSA owes any damages upon City's termination of this Agreement, CMSA's liability under this Section 10.03 shall survive termination.

b. CMSA Remedies in the Event of City Default. Upon City's failure to cure a breach pursuant to Section 10.01 or default pursuant to Section 10.02, CMSA shall, in addition to its right to collect monetary damages, have the following rights:

(1) Waive Default. To, at its sole discretion, waive the City breach or default in writing.



(2) Termination. Terminate the Agreement in accordance with Article 11, provided that no termination shall be effective until CMSA shall have given written Notice to City of its decision to terminate the Agreement.

(3) All Other Available Remedies. In addition to, or in lieu of termination, to exercise all of its remedies in accordance with this Article and any other remedies at law and in equity, to which CMSA shall be entitled, according to proof.

(4) Damages Survive. If City owes any damages upon CMSA's termination of this Agreement, City's liability under this Section 10.03 shall survive termination.

#### 10.05 Waiver.

A waiver by one Party of one breach or default by the other Party shall not be deemed to be a waiver of any other breach or default by that Party, including ones with respect to the same obligations hereunder, and including new incidents of the same breach or default. The subsequent acceptance of any damages or other money paid hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or default.

#### 10.06 Determination of Remedy or Cure of Breach or Default.

Upon request of either Party, an event of breach or default shall be considered remedied or cured upon signature by both Parties of a written agreement specifying the event and stating that remedy and/or cure of such event has been completed.

#### 10.07 Uncontrollable Circumstances.

a. Performance Excused. Neither Party shall be in breach of its obligations hereunder in the event, and for so long as, it is impossible or extremely impracticable for it to perform such obligations due to an Uncontrollable Circumstance if such Party exerted Reasonable Business Efforts to prevent such Uncontrollable Circumstance, and such Party expeditiously takes all actions within its control to end, or to ameliorate the effects of such Uncontrollable Circumstance as soon as possible.

b. Notice. The Party claiming excuse from performance of its obligations based on an Uncontrollable Circumstance shall Notify the other Party as soon as is reasonably possible, but in no event later than three (3) calendar days after the occurrence of the event constituting the Uncontrollable Circumstance. The Notice shall include a description of the event, the nature of the obligations for which the Party claiming Uncontrollable Circumstance seeks excuse from performance, the expected duration of the inability to perform and proposed mitigation measures.

## ARTICLE 11. TERMINATION

### 11.01 Parties' Right to Suspend or Terminate.

a. Suspension. Either Party shall have the right to suspend this Agreement, in whole or in part, upon the occurrence of a default under Article 10 regarding an occurrence that endangers public health, welfare or safety, provided such suspension is for no longer than forty-five (45) calendar days.

b. Termination. City or CMSA have the right to terminate this Agreement for the following events:

(1) Occurrence of a default, or a breach which is not cured within the time frame specified, as set forth in Article 10. The terminating Party shall provide a 30-day notice.

(2) For any reason by providing a 30 day notice.

c. Payments Upon Termination. Upon termination, CMSA shall accept as full payment for services rendered to the date of termination any payments required based on the portion of work actually performed. If City has made any payment for services that have not been performed, then CMSA shall promptly repay to City that amount.

## ARTICLE 12. OTHER PROVISIONS

### 12.01 Notices.

Except as otherwise specified in this Agreement, all communications made hereunder to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective physical or email addresses specified below or to such other address as a Party may designate by written notice Delivered to the other parties in accordance with this Section.

#### If to City:

City of Sunnyvale Environmental Services Department  
Attn: Ramana Chinnakotla, Director of Environmental Services  
Address: 456 W Olive Ave, Sunnyvale, California 94086  
Phone: 408-730-7785  
Email : [rchinnakotla@sunnyvale.ca.gov](mailto:rchinnakotla@sunnyvale.ca.gov)

For operational contact:  
City of Sunnyvale Environmental Services Department  
Attn: Deepti Jain, Environmental Program Manager  
Address: 301 Carl Road, Sunnyvale, California 94086  
Phone: 408-730-7791  
Email: [djain@sunnyvale.ca.gov](mailto:djain@sunnyvale.ca.gov)

#### If to CMSA:

CMSA General Manager  
Attn: Jason Dow  
1301 Andersen Drive  
San Rafael, California 94901  
Telephone: (415) 459-1455  
Email: [jdow@cmsa.us](mailto:jdow@cmsa.us)

### 12.02 Authorized Representatives.

a. City. For purposes of this Agreement, the City authorized representative will be its Director of Environmental Services.

b. CMSA. For purposes of this Agreement, CMSA's authorized representative will be its General Manager.

### 12.03 Assignment.

Neither Party may assign its rights or responsibilities under this Agreement to any other Person without the consent of the other Party, which consent will not be unreasonably withheld.

#### 12.04 Conflicting Provisions.

In the event the provisions of this Agreement herein conflict with those of the Exhibits hereto, the provisions of this Agreement shall prevail.

#### 12.05 Governing Law.

This Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of California, irrespective of choice of law principles.

#### 12.06 Amendments.

The Parties may change, modify, supplement, or amend this Agreement only upon mutual written agreement duly authorized and executed by both Parties.

#### 12.07 Venue; Attorneys' Fees.

The exclusive venue for any legal proceedings shall be Marin County, or, in case of federal jurisdiction, Federal District Court, Northern District. The prevailing Party in any dispute arising under or in connection with this Agreement shall be entitled to recover its reasonable attorneys' fees and costs from the other Party.

#### 12.08 Entire Agreement.

This Agreement contains the entire Agreement between the Parties with respect to the transactions contemplated hereby. All Exhibits are hereby incorporated into this Agreement by reference. This Agreement shall completely and fully supersede all prior understandings and agreements between the Parties with respect to such transactions, including the Prior Agreement except with respect to periods prior to the Effective Date. However, nothing in this paragraph shall supersede or diminish the representations and warranties as contained in Article 2. This Agreement shall not be interpreted for or against either Party, having been prepared with the participation of both Parties.

#### 12.09 Savings Clause.

If any phrase, clause, section, subsection, paragraph, subdivision, sentence, term, or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is finally found to be void, invalid, illegal, or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision will remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Agreement or the application of this Agreement to other situations will remain in full force and effect.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement on the date first above written.

City of Sunnyvale

Central Marin Sanitation Agency

\_\_\_\_\_  
Name  
Title

\_\_\_\_\_  
Jason Dow, General Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name  
Title

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Name