

**NEW MEMORANDUM OF UNDERSTANDING
AMONG THE CITIES OF MOUNTAIN VIEW AND SUNNYVALE
RELATING TO THE OPERATION OF A MATERIALS RECOVERY
AND TRANSFER STATION**

**Final
July 2021**

TABLE OF CONTENTS

RECITALS	1
AGREEMENT.....	1
1. Purpose and Goals.....	1
2. Definitions.....	2
3. Term.....	4
3.1 Base Term	4
3.2 Applicable Provisions During Pre-Commencement Period	5
3.3 Full Applicability of MOU Provisions.....	5
3.4 Meet and Confer on Extension	5
3.5 Early Withdrawal	5
4. Planned Capital Improvements.....	5
4.1 Schedule.....	5
4.2 Amortization Period	6
4.3 Funding for Planned Capital Improvements	6
4.4 Operation of the Facility Prior to the Full Start Up Date.....	6
5. Facility Services and Operations	6
5.1 MSW	7
5.2 Recyclables.....	7
5.3 Organics	7
5.4 C&D Debris.....	7
5.5 Additional Services to Residents.....	7
5.6 Operational Standards.....	7
5.7 Facility Maintenance and Repair.....	8
6. Material Streams.....	8
6.1 Initial Tonnage	8
6.2 Materials Stream Composition	8
6.3 Diversion Goals.....	8
6.4 Changes in Material Streams and Tonnages	8
7. Operator	9
7.1 Operator Agreement	9
7.2 Operator Procurement.....	9
7.3 Operator Compensation	10
8. Other Third-Party Agreements.....	10
8.1 Ancillary Programs by One or More Partners	10
8.2 Sole Managing Partner Programs	10
8.3 Sole Other Partner Programs	10
8.4 Notice to Other Partners of Impacts	10
8.5 Disposal Agreements.....	10
9. Other Facility Users.....	10
9.1 New or Additional Partners.....	11
9.2 Merchant Users	11
10. Financial Provisions.....	11
10.1 General Provisions.....	11
10.2 Pre-Commencement Period.....	12

10.3	Tip Fees.....	13
10.4	Gate Rates.....	14
10.5	Recyclables Revenue Distribution.....	14
10.6	Annual Reconciliation	14
10.7	Invoices.....	14
10.8	Financial Procedures and Protocols.....	15
11.	Coordination, Record Keeping, and Reporting	15
11.1	Coordination	15
11.2	Record Keeping and Reporting.....	15
12.	Risk Allocation	16
12.1	General.....	16
12.2	Force Majeure	16
12.3	Rates and Fee Challenges	16
13.	Dispute Resolution.....	16
14.	Miscellaneous.....	16
14.1	Notice	16
14.2	Governing Law	17
14.3	Exhibits.....	17
14.4	Amendment.....	17
14.5	Entire Agreement	17
14.6	Warranties.....	17
14.7	Drafting	17
14.8	Severability.....	17

EXHIBITS

Exhibit A	Material Delivery
Exhibit B	Material Streams
Exhibit C	Material Composition and Diversion
Exhibit D	Capital Improvements
Exhibit E	Reporting by Managing Partner
Exhibit F	Partner Payments
Exhibit G	Services to Residents
Exhibit H	Recyclables
Exhibit I	Reserve Guidelines

This New Memorandum of Understanding (“MOU”) is made this [REDACTED] day of [REDACTED], 2021 (“Effective Date”) by and between the CITY OF MOUNTAIN VIEW, a chartered municipal corporation (“Mountain View”) and CITY OF SUNNYVALE, a chartered municipal corporation (“Sunnyvale” or “Managing Partner”), (each a “Partner” and collectively the “Partners”).

RECITALS

WHEREAS, the Partners and the City of Palo Alto currently utilize the Sunnyvale Materials Recovery and Transfer Station (“Facility”) as more particularly set forth in that Second Memorandum of Understanding Among the Cities of Mountain View, Palo Alto, and Sunnyvale Relating to the Construction and Operation of a Materials Recovery and Transfer Station and the Long Term Disposal of Municipal Solid Waste at Kirby Canyon Landfill, dated June 9, 1992, as amended and as may be amended (“Second MOU”); and

WHEREAS, under the terms of the Second MOU, the Managing Partner owns the Sunnyvale Materials Recovery and Transfer Station (“Facility”); and

WHEREAS, the Managing Partner contracts with a third party to operate the Facility (“Operator”); and

WHEREAS, the Second MOU expires soon, and the Partners have negotiated this MOU to outline the use and management of the Facility by the Partners and other third parties beginning on the Commencement Date, as defined below. The Second MOU shall be of no further force or effect after the Commencement Date and the City of Palo Alto will not participate after the Commencement Date.

NOW, THEREFORE, in consideration of the foregoing, the Partners hereby agree as follows:

AGREEMENT

1. Purpose and Goals

The Partners have entered into this MOU for the following purposes and to accomplish the following goals:

- (a) Address the Partners’ obligations and responsibilities with sufficient specificity to address contingencies.
- (b) Ensure future Operator Agreements are structured to be in alignment with, and in support of the MOU.
- (c) Ensure the Partners are guaranteed capacity in the Facility to meet all defined processing needs.
- (d) Meet each Partner’s Diversion needs in a fair and equitable manner.
- (e) Identify and mitigate financial risks to the Partners related to the scope of this MOU to the extent possible, including avoidance of unanticipated financial obligations.
- (f) Simplify financial reporting, where possible, to facilitate clearer messaging to decision-makers and the public.

2. Definitions

- 2.1 “C&D Debris” includes discarded building materials, packaging, debris, and rubble resulting from construction, alteration, remodeling, repair, or demolition operations on any pavements, excavation projects, houses, commercial buildings, or other structures, excluding Excluded Waste. C&D Debris includes rocks, soils, tree remains and other yard trimmings which results from land clearing or land development operations in preparation for construction.
- 2.2 “Capital Reserve Fund” means that reserve fund established by the Managing Partner pursuant to Section 10.1(b) to be used for the cost of anticipated or unanticipated capital improvements, except those covered by the Equipment Maintenance/Replacement Reserve Fund, to the Facility, including the Planned Capital Improvements, as set forth in Section 4.
- 2.3 “Commencement Date” means January 1, 2022.
- 2.4 “Disposal” means the final disposition of MSW or Residue at a Landfill
- 2.5 “Diversion” or “Diverted” broadly refers to activities that recover useful materials from MSW, and thus reduce the amount of materials intended for Disposal. Specific Diversion activities directly provided by the Facility or by third parties through the provisions of the MOU include, but are not limited to recovery of Organics, Recyclables, and C&D Debris from Processing of MSW and Residue, and from Processing of source-separated Organics, source-separated Recyclables, and source-separated C&D Debris.
- 2.6 “Diversion Goal” means, as provided in Section 6.3 and Exhibit C Material Composition and Diversion, the relative ratio of annual tons of MSW to be Diverted at the Facility to total annual tons of MSW delivered, expressed as a percentage.
- 2.7 “Effective Date” means the date on which the MOU is fully executed by both Partners.
- 2.8 “Equipment Maintenance/Replacement Reserve Fund” means that reserve fund established by the Managing Partner pursuant to Section 10.1(c) to be used to pay for any anticipated equipment maintenance and replacement expenses for the Facility.
- 2.9 “Excluded Waste” means hazardous substance, hazardous waste, volatile, corrosive, biomedical, infectious, biohazardous, radioactive, sewage, restaurant grease and tallow and toxic substances or material, waste that the Managing Partner reasonably believes would, as a result of or upon Disposal, be a violation of local, state or federal law, regulation or ordinance, including land use restrictions or conditions, waste that cannot be Disposed of in Class III landfills, waste that in the Managing Partner’s reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose any Partner or the Operator to potential liability.
- 2.10 “Facility” means the Sunnyvale Materials Recovery and Transfer Station, i.e., the SMaRT Station®.
- 2.11 “Force Majeure” means the failure of any Partner to meet its obligations under this MOU by reason of acts of God, earthquakes, droughts, floods, storms, explosion, fires, third party strikes, insurrection, riots, pandemics, epidemics, acts of the public enemy, or federal, state, or local law, order, rule, or regulation, excepting any imposed by a Partner in its sole discretion.

- 2.12 “Full Start-Up Date” means the date that the Facility commences full service following completion of the Planned Capital Improvements, as defined in Section 4, currently estimated to be March 2025.
- 2.13 “Gate Rate(s)” means the rate(s) charged to Self-Haul customers by the Managing Partner or its Operator for processing and/or Disposal of C&D Debris, MSW, Organics, Recyclables, and other materials delivered to the Facility.
- 2.14 “Hauler” means any entity with the right to collect and transport discarded MSW, Recyclables, Organics, or other materials to the Facility for processing or Disposal that is generated within a Partner’s jurisdiction as provided for in a franchise, license, permit or other approval issued by a Partner under the terms of its municipal code and applicable law. Hauler includes a Partner if it provides collection services with its own personnel. Hauler does not include anyone utilizing the ability to Self-Haul.
- 2.15 “Host Fee” means those payments to the Managing Partner as set forth in Section 10.3(c). The Host Fee compensates the Managing Partner for hosting the Facility within its jurisdiction and is charged for the entrance to and use of Sunnyvale property.
- 2.16 “Land Rent” means those payments to the Managing Partner as set forth in Section 10.3(d). The Land Rent compensates the Managing Partner for the reasonable rental value of Sunnyvale property for use of the Facility.
- 2.17 “Landfill” means the landfill used for Disposal of Residue, which is the Kirby Canyon Sanitary Landfill as of the Effective Date.
- 2.18 “Managing Partner” means the City of Sunnyvale.
- 2.19 “MRF Fines” means the two-inch (2”) minus material fraction (i.e., material equal to or less than two (2) inches in diameter) that results from mechanized sorting of recoverable materials from MSW, and that are high in organic content. MRF Fines are a subset of Organics.
- 2.20 “MOU” means this Memorandum of Understanding.
- 2.21 “Municipal Solid Waste” or “MSW” means solid waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, Section 40191 and regulations promulgated thereunder. Excluded from the definition of MSW are Excluded Waste, source-separated Recyclables, source-separated Organics, and radioactive waste. Notwithstanding any provision to the contrary, MSW may include de minimis volumes or concentrations of waste of a type and amount normally found in residential solid waste after implementation of programs for the safe collection, recycling, treatment, and disposal of household hazardous waste in compliance with Sections 41500 and 41802 of the California Public Resources Code as they may be amended from time to time.
- 2.22 “Operator” means the third-party providing day-to-day Facility operations under the terms of an Operator Agreement with the Managing Partner. If no Operator Agreement is executed or in effect, Managing Partner may be the Operator.
- 2.23 “Operator Agreement” means the agreement between the Managing Partner and Operator for day-to-day operation of the Facility.

- 2.24 “Organics” means material originated from living organisms and their metabolic waste products including, but not limited to food, green materials, landscape and pruning waste, lumber, wood, paper products, printing and writing paper, MRF Fines, or as otherwise defined by the Managing Partner. As of the Effective Date and unless modified by the Managing Partner, Organics does not include organic textiles and carpets, manure, biosolids, digestate, and sludges.
- 2.25 “Partner” means one of Mountain View, Sunnyvale, or any entity that becomes a Partner under the provisions of Section 9.1.
- 2.26 “Planned Capital Improvements” means those capital improvements set forth in Exhibit D Capital Improvements to be constructed by or at the direction of the Managing Partner, as set forth in Section 4.
- 2.27 “Pre-Commencement Period” means the period beginning with the Effective Date and ending with the Commencement Date during which the Second MOU remains in effect, while the Planned Capital Improvements provisions of the MOU set forth in Sections 3.1, 4, 7, and 10.2 are also in effect.
- 2.28 “Residue” means those materials that, after processing, are Disposed of rather than recycled due to either the lack of viable markets for materials, lack of recoverable materials of a sufficient quantity or quality to warrant additional recovery, or inability of the Facility to capture and recover the materials.
- 2.29 “Recyclables” means those materials identified in Exhibit H Recyclables, which may be revised as provided for in Section 6.4.
- 2.30 “Second MOU” means that certain Second Memorandum of Understanding Among the Cities of Mountain View, Palo Alto, and Sunnyvale Relating the Construction and Operation of a Materials Recovery and Transfer Station and the Long Term Disposal of Municipal Solid Waste at Kirby Canyon, dated June 9, 1992, as amended and as may be amended.
- 2.31 “Self-Haul” means the transport of MSW, Recyclables, Organics, or other materials to the Facility for processing and/or Disposal by the generator of such material, or some other entity permitted to do so on behalf of the generator without a solid waste franchise or similar permit, under the terms of the ordinances or regulations of a Partner or other applicable regulatory authority. Self-Haul for types of materials may exclude or include materials from generators outside of the jurisdictional boundaries of the Partners as set forth in Section 5.1. Self-Haul does not include the transport of materials to the Facility by the Partner’s personnel.
- 2.32 “Tip Fee(s)” means the per-ton fee paid by each Partner as set forth in Section 10.3.

3. Term

3.1 Base Term

The MOU shall take effect upon the Effective Date and expire on December 31, 2036 unless earlier terminated as provided in this MOU.

3.2 Applicable Provisions During Pre-Commencement Period

During the Pre-Commencement Period, the terms of the Second MOU shall apply and be in effect. During the Pre-Commencement Period, only the applicable provisions of Sections 3, 4, 7 and 10.2 of this MOU shall apply and be in effect, which includes Sections 3.1 through 3.4, the provisions of Section 4 related to the design of the Planned Capital Improvements, those provisions of Section 7 as applied to development and execution of an Operator Agreement during the Pre-Commencement Period, and Section 10.2.

3.3 Full Applicability of MOU Provisions

Except for those provisions identified in Section 3.2 above which apply during the Pre-Commencement Period, all other provisions of the MOU shall take effect on and apply as of the Commencement Date.

3.4 Meet and Confer on Extension

On or before December 31, 2033, the Partners shall meet and confer regarding whether to extend the MOU and the applicable terms and conditions of any extension.

3.5 Early Withdrawal

A Partner other than the Managing Partner may terminate the MOU after the Commencement Date with written notice to the other Partners provided at least two (2) years in advance of the termination date. The Managing Partner may terminate the MOU after the Commencement Date with written notice to the other Partners provided at least three (3) years in advance of the termination date. Upon receipt of such notice, the Partners shall determine the assets and liabilities for the Facilities as of the date of such notice. The withdrawing Partner shall be responsible for its share of all outstanding liabilities, including debt services for the Facility or any improvements. Payment to satisfy such outstanding liabilities shall be made to the Managing Partner prior to withdrawal.

4. Planned Capital Improvements

The Managing Partner shall perform or cause to be performed the Planned Capital Improvements set forth in Exhibit D Capital Improvements. The design of the Planned Capital Improvements shall commence during the Pre-Commencement Period.

4.1 Schedule

The Managing Partner shall design, construct, and complete the Planned Capital Improvements from the Effective Date until the Full Start-Up Date pursuant to the estimated schedule set forth in Exhibit D Capital Improvements. The Partners shall approve any reasonable adjustments to the schedule requested by the Managing Partner, which shall not require an amendment to this MOU and shall be effective unless objected to in writing by a Partner within thirty (30) days of receipt of the updated schedule as provided by the Managing Partner. The Managing Partner shall provide the other Partners with quarterly status updates on the Planned Capital Improvements, and any Partner may at any time request to promptly meet and confer regarding the updates. The Managing Partner shall further allow Partner review of initial designs, including by a consultant of Partner's choice and at Partner's sole expense, provided that such review shall not hinder Managing Partner's ability to meet its schedule obligations to the Partners. Partners shall take such steps as are necessary to minimize schedule impacts by arranging, in advance, for expedited internal and/or consultant review. If edits to the type or scope of Planned Capital Improvements are necessary, the Managing Partner shall inform the Partners of the requested change and its effect on cost and schedule. The Partners shall reasonably review and approve such changes,

which will not be unreasonably withheld. Any dispute regarding a change shall be subject to the dispute resolution procedures set forth in Section 13. The Managing Partner shall not be responsible for changes to the schedules due to factors beyond its reasonable control, including, but not limited to, failure by other Partners to promptly respond to questions or opportunities for comment, permit issuance, environmental review, contractor disputes not due to or caused by the willful misconduct or negligent acts of the Operator and/or the Managing Partner, litigation not initiated by or due to or caused by the willful misconduct or negligent acts of Operator and/or the Managing Partner, or any Force Majeure. The Managing Partner shall be responsible for changes to the schedule within its reasonable control and, should it be unable to provide transfer of MSW for Disposal shall pay for any differential costs incurred by a Partner delivering MSW that it would have otherwise delivered to the Facility or to other facilities for processing and/or Disposal, at the then applicable market rate, while waiting for access to the Facility.

4.2 Amortization Period

The cost of the Planned Capital Improvements shall be amortized over the period of years set forth in Exhibit D Capital Improvements. Any change to the amortization period shall be a revision to the Planned Capital Improvements subject to Section 4.1.

4.3 Funding for Planned Capital Improvements

The Managing Partner shall secure the necessary funds, in an amount agreed to by the Partners and based on the requirements of the final design for the Planned Capital Improvements, to fund the design and construction of the Planned Capital Improvements, including related costs that result from construction, such as those due to necessary changes in operations during construction. The Managing Partner may, with agreement from the Partners, which shall not be unreasonably withheld, include the estimated cost of additional and anticipated future capital improvements to the Facility, as outlined in Exhibit D Capital Improvements, in the amount of any financing, including any bond issuance, loan, or similar instrument. To facilitate comparison of full costs, the actual cost of the Planned Capital Improvements and any additional capital improvements included in any financing for the Planned Capital Improvements, including annual debt service, shall be calculated as part of the Tip Fees described in Section 10.3 and Exhibit F Partner Payment. Partners and the Managing Partner shall determine the actual frequency and form of payment for each Partner's share of annual debt service, which may vary over time.

4.4 Operation of the Facility Prior to the Full Start Up Date

The Partners understand and agree that the Facility may be able to provide only limited or modified services other than MSW transfer for Disposal, prior to the Full Start Up Date. The Partners shall reasonably coordinate any changes to the services set forth in this Section caused by the Planned Capital Improvements. The Managing Partner shall not be in breach of the Second MOU or this MOU if prior to the Full Start Up Date the Facility fails to provide any service other than MSW transfer for Disposal that is required to be provided under the Second MOU or this MOU.

5. Facility Services and Operations

The Managing Partner shall provide those services at the Facility as generally set forth in this Section, with processing of the materials more particularly described in Exhibit B Material Streams.

5.1 MSW

The Facility shall accept all MSW generated within each Partner's jurisdiction and delivered to the Facility by a Hauler or through Self-Haul. MSW shall be processed to remove Recyclables and to remove Organics for further processing by a third party(ies), and the Residue shall be Disposed of at the Landfill.

5.2 Recyclables

The Facility shall accept all source-separated Recyclables delivered on behalf of a Partner to the Facility by a Hauler or through Self-Haul. Recyclables shall be processed consistent with applicable legal requirements and market conditions. Processed Recyclables shall be transported to, or otherwise be made available for marketing and sale, and the Residue shall be Disposed of at the Landfill.

5.3 Organics

The Facility shall accept all source-separated Organics generated within each Partner's jurisdiction and transferred to the Facility, as shown in Exhibit B Material Streams, by a Hauler or through Self-Haul. Organics shall be pre-processed at the Facility and any Residue shall be Disposed of at the Landfill. Pre-processed Organics shall be transferred to applicable processing facilities.

5.4 C&D Debris

The Partners may arrange for Haulers to transport source-separated C&D Debris and other materials collected in roll-off boxes, to facilities other than the Facility for processing and Disposal. Self-Haul of C&D Debris shall be permitted as approved by the Partners. C&D Debris shall be processed at the Facility, consistent with applicable requirements and market conditions for recycling, except as otherwise mutually agreed by the Partners. Processed C&D Debris shall be transported to, or otherwise be made available for marketing and sale, and the Residue shall be Disposed of at the Landfill.

5.5 Additional Services to Residents

The Facility shall provide those additional services to residents of the Partners, as set forth in Exhibit G Services to Residents.

5.6 Operational Standards

The Facility shall comply with those hours and dates of operation, material delivery protocol, exempt waste procedures, and other Facility operational logistical requirements that affect Partners, residents of Partners' jurisdictions, or third parties delivering material to the Facility, as set forth in Exhibit A Material Delivery. The Managing Partner may modify or amend such operational standards and requirements temporarily in response to Force Majeure. Depending on the nature of the Force Majeure event, the Managing Partner shall provide reasonable notice of the modification or amendment, provide an opportunity for Partners to comment, and shall give due consideration to Partner's input. In other situations involving substantive changes to the operational standards and requirements described in this Section 5.6 and excluding changes to material streams accepted at the Facility as provided in Section 6.4, the Managing Partner shall consult with and give due consideration to Partner's input no less than sixty (60) days prior to making such changes. Upon amendment by the Managing Partner, excluding a temporary amendment due to Force Majeure, the Managing Partner shall provide each Partner with an amended Exhibit A Material Delivery, which shall become part of this Agreement without further written amendment.

5.7 Facility Maintenance and Repair

The Managing Partner shall maintain and repair the Facility as necessary to meet the requirements of the MOU, and the Partners shall ensure that such costs are included in annual budgets or proportionately reimbursed to the Managing Partner.

6. Material Streams

6.1 Initial Tonnage

Upon the Commencement Date, the Partners shall require Haulers to transport those collected materials set forth in Exhibit B Material Streams to the Facility. The tonnage amounts identified in Exhibit B Material Streams represent guaranteed capacity at the Facility for such stream, but do not obligate the Partner to actually provide such tonnage to the Facility in the event that discarded materials are less than anticipated. Partners may provide tonnages in excess of those identified in Exhibit B Material Streams, subject to available capacity as reasonably determined by the Managing Partner and as previously communicated to the Partners. Unless otherwise noted in Exhibit B Material Streams and subject to Section 6.4, the Partners shall ensure that all Haulers operating within their jurisdiction solely utilize the Facility for each material stream required to be delivered to the Facility under the terms of this MOU. Partners shall take such reasonable enforcement measures as necessary to ensure compliance by its Haulers, which shall include inserting Facility delivery requirements and penalties for non-compliance in all applicable Hauler franchises, agreements, permits, licenses, and other approvals and ensuring compliance with the applicable provisions.

6.2 Materials Stream Composition

The Partners understand and agree that effective and efficient operation of the Facility requires understanding and anticipating the current and anticipated future composition of waste streams of each Partner. The Partners shall develop a protocol for conducting future MSW, Organics, and Recyclables composition studies and analyses to ensure compliance with applicable regulatory requirements or as deemed advisable by the Partners, and for the purpose of allocating Recyclables sales revenues between the Partners as set forth in Section 10.5. The cost of joint studies shall be paid by the Parties proportionally, based on the relative amount of delivered tons of each waste stream. For purposes of this MOU, any change to tonnage or composition shall be measured against the prior year's tonnage, or the most recent composition study. The Partners may at any time agree to modify Exhibit C Material Composition and Diversion, in which case the Managing Partner shall provide each Partner with an amended Exhibit C Material Composition and Diversion, which shall become part of this Agreement without further written amendment.

6.3 Diversion Goals

The Managing Partner shall operate the Facility to achieve the Diversion Goal specified in Exhibit C Material Composition and Diversion and as provided under the terms of this MOU. The Diversion Goal may be modified by mutual agreement of the Partners, in which case the Managing Partner shall provide each Partner with an amended Exhibit C Material Composition and Diversion which shall become part of this Agreement without further written amendment.

6.4 Changes in Material Streams and Tonnages

In the event that a Partner wishes to implement a new collection program or alter an existing program such that the composition or tonnage of delivered material may change, that Partner shall inform the

other Partners no less than six (6) months prior to the planned implementation date for the change. The Partners shall collectively determine the impact on all Partners and will work in good faith to identify an equitable solution. If, after the Effective Date, a Partner wishes to deliver less than all of a given waste stream to the Facility, that Partner shall inform the other Partners no less than six (6) months prior to the planned implementation date for the change. The Partners shall collectively determine the impact, and modify Tip Fees as necessary to ensure that any change in the net cost of operating the Facility is paid by the Partner reducing its delivery.

7. Operator

7.1 Operator Agreement

The Managing Partner may, in its reasonable discretion, contract with a third-party Operator to operate the Facility on its behalf, as set forth in the Operator Agreement. The Managing Partner shall oversee the Operator and administer the Operator Agreement. The Operator Agreement shall be consistent with the terms of this MOU and should ensure alignment of Operator's performance with Partner goals, including a clear connection between the financial responsibilities and Diversion expectations of the Partners, and those of the Operator.

7.2 Operator Procurement

For any new or extended Operator Agreement executed after the Effective Date, the Partners shall meet and confer to identify the process for Operator procurement, including the benefits of a competitive or single source procurement and length of term, the timely review of any draft requests for proposals and draft Operator Agreements by the Partners, and the participation of Partner representatives in proposal evaluations. The selection of the Operator and the terms of any final Operator Agreement shall be determined by the Managing Partner in a manner consistent with the agreed procurement process. Notwithstanding the foregoing and subject to future Partner discussion, the Partners anticipate that all amended or new Operator Agreements will address the following:

- (a) Provision of financial incentives and/or disincentives that motivate Operator performance to meet Partner goals for the amount, percentage, and/or timing of Diversion of specific material streams or other performance incentives. The Partners anticipate that Recyclables revenue incentive(s), if any, will be based on achieving defined percentages of specified benchmark commodity indices and/or sale prices, rather than as a direct share of Recyclable revenues.
- (b) How the Operator will or will not be compensated for typical and atypical variations in tonnage delivered to the Facility. Further, the Operator Agreement should include, if feasible, other means for reducing risk of unanticipated Operator expenses. The Operator Agreement should reward efficiency, require Operator flexibility in accommodating Partner needs in a timely manner, and reward Operator-suggested innovations that reduce cost or increase efficiency and that are approved by the Partners, as set forth in the MOU.
- (c) In addition to general compliance with applicable law, Operator activities related to SB 1383 compliance, including but not limited to meeting recovery targets, conduct of and/or coordination with parties conducting composition studies, data tracking and reporting, and other matters requested by the Partners.

- (d) Specification of Operator responsibility for the impacts and costs related to Operator's labor unrest, including strike, work stoppage, slowdown, sick out, picketing, or other concerted job action.

7.3 Operator Compensation

The Operator shall be compensated for services as set forth in the Operator Agreement, including whether and how compensation may be paid out of reserve funds as identified in Section 10.1.

8. Other Third-Party Agreements

8.1 Ancillary Programs by One or More Partners

With prior consultation with other Partners, the Managing Partner may take the lead role in procuring agreements with third parties for waste-related services at the Facility to be used by one or more Partners. Each Partner may, but is not required to, participate in such programs and agreements and shall pay its proportional cost of participating, which shall be detailed in such agreement. The Tip Fee shall be adjusted as necessary to account for such program.

8.2 Sole Managing Partner Programs

With prior written notice to the other Partners, the Managing Partner may execute third-party agreements for waste-related services at the Facility or that impact the Facility, that are for the sole benefit of the Managing Partner, and that do not affect the other Partners' use of the Facility or cost of doing so. The Managing Partner shall be solely responsible for all costs of such programs.

8.3 Sole Other Partner Programs

With prior written notice to the other Partners, a Partner, other than the Managing Partner, may execute third-party agreements for waste-related services at the Facility or that impact the Facility, that are for the sole benefit of the Partner, and that do not affect the other Partners' use of the Facility or costs of doing so. Upon request, the Managing Partner may assist in the negotiation and administration of such agreements to the extent feasible, given other commitments and with reasonable compensation for the Managing Partner's ongoing management, which shall be set forth in an agreement between such Partner(s) and the Managing Partner.

8.4 Notice to Other Partners of Impacts

Each Partner shall provide the other Partners with at least ninety (90) days' advance written notice of any material change to a third-party agreement, subject to this Section or of a Partner's intent to negotiate or implement new or modified terms to any third-party agreement that could have a direct or indirect impact on the Facility, Operator, or other Partners.

8.5 Disposal Agreements

During the term of this MOU, and except as otherwise agreed to by the parties, each Partner shall execute and maintain an agreement with the Landfill or with the Managing Partner to permit the Disposal of MSW and Residue at the Landfill. In all cases, such disposal agreements shall not conflict with this MOU.

9. Other Facility Users

The Managing Partner shall not permit any third party, excluding Haulers or those exercising Self-Haul, to transport waste materials to the Facility except as permitted in this Section.

9.1 New or Additional Partners

With the consent, which may not be unreasonably withheld, of the other Partner, or one additional Partner if there are two or more Partners other than the Managing Partner, the Managing Partner may execute agreements with other public agencies to become Partners to the MOU with no adverse financial or operational impacts to existing Partners, unless otherwise agreed. The Managing Partner may develop a template agreement to add new Partners for prior review and approval by the existing Partners. Upon development and approval of such template, the Managing Partner may execute the template with any new Partner, subject to compliance with the California Environmental Quality Act (CEQA) and other applicable law(s).

9.2 Merchant Users

With mutual agreement of the other Partners, which may not be unreasonably withheld, if the sale does not have an adverse financial or operational impact on the other Partners, unless otherwise agreed, the Managing Partner may offer excess capacity in the Facility for any waste stream to a third-party merchant user, who may be a solid waste hauler or public agency. Such sales shall not affect the capacities provided to each Partner in Exhibit B Material Streams. The Managing Partner may develop a template agreement to offer excess capacity to merchant users for prior review and approval of the other Partners. Upon development and approval of such template, the Managing Partner may execute the template with any merchant user, subject to compliance with the California Environmental Quality Act (CEQA) and other applicable law(s).

10. Financial Provisions

10.1 General Provisions

Except as otherwise provided in this MOU, the Partners shall be responsible for all costs of operating the Facility in those proportions, as set forth in Exhibit F Partner Payments. The Partners understand and agree that the Managing Partner shall be entitled to recover all direct and indirect costs of operating the Facility incurred under this MOU, as set forth in Exhibit F Partner Payments. The Managing Partner shall prepare annual budgets, reserve targets, capital replacement schedules, and other planning documents necessary to operate the Facility in coordination with the Partners. The Managing Partner shall notify the other Partners as soon as reasonably possible if it incurs an unbudgeted single expense of Fifty Thousand Dollars (\$50,000) or more and whether reserve funds are planned to be utilized to cover such unbudgeted expense. The Managing Partner shall accurately account for all revenues and costs related to the Facility. Without limiting the foregoing, the Managing Partner shall establish and maintain the following funds:

- (a) **SMaRT Station Enterprise Fund.** The SMaRT Station Enterprise Fund shall be used for allocating net costs of the Facility to Partners and which shall have a net zero balance at the end of each fiscal year.
- (b) **Capital Reserve Fund.** The Capital Reserve Fund shall be used for those purposes set forth in Section 2.2 and subject to the guidelines set forth in Exhibit I Reserve Guidelines. The Managing Partner, in coordination with the Partners, shall determine whether any changes to the appropriate amount of the Capital Reserve Fund are required as part of the annual budget process and are consistent with adopted reserve policies, as they may be amended by Managing Partner in consultation with the Partners. At the termination of this MOU or upon early termination by Partner, as described in Section 3.5, any excess funds in the Capital Reserve Fund shall be returned to the Partners in proportion to their initial contribution.

- (c) **Equipment Maintenance/Replacement Reserve Fund.** The Equipment Maintenance/Replacement Reserve Fund shall be utilized to pay for any anticipated equipment maintenance and replacement expenses for the Facility, subject to the guidelines set forth in Exhibit I Reserve Guidelines. The Managing Partner may accumulate funds in the Equipment Maintenance/Replacement Reserve Fund to pay for anticipated expenses in future fiscal years, as deemed appropriate. The Managing Partner, in coordination with the Partners, shall determine whether any changes to the appropriate amount of the Equipment Maintenance/Replacement Reserve Fund are required as part of the annual budget process and are consistent with adopted reserve policies, as they may be amended by Managing Partner in consultation with the Partners. At the termination of this MOU or upon early termination by Partner as described in Section 3.5, provided all applicable debts and obligations under the MOU have been satisfied, any unspent funds in the Equipment Maintenance/Replacement Reserve Fund shall be returned to the Partners in proportion to their initial contribution.

The Partners acknowledge the probable need to replace equipment or make capital improvements during the term of the MOU (“deferred replacement”). The exact nature and timing of which, are not known as of the Effective Date. Deferred replacements shall provide for a ten-year recovery of equipment costs and a fifteen (15) year recovery of capital improvement costs. Such projected expenditures shall be reviewed in advance by the Partners, as part of the annual budgeting process provided for the Capital Reserve Fund and the Equipment Maintenance/Replacement Reserve Fund, as described in subsections (b) and (c) above. Upon termination of the MOU at the end of the base term or an extension, or Partner exercise of early withdrawal rights as provided in Section 3.5, the applicable Partner(s), other than the Managing Partner, shall owe a prorated portion of their total share of such agreed costs, as shown in the examples contained in the following table.

Example	Calendar Year Deferred Replacement Cost is Incurred	Length of MOU Term	Remaining Length of MOU Term (Years)	Remaining Length of MOU Term (%)	Partner Obligation (\$)
1.	12 th year	15 years	3 years	20.0% (3 years /15 years)	20.0% of Partner’s full share of cost
2.	12 th year	18 years (includes a 3-year extension)	6 years	33.3% (6 years /18 years)	33.3% of Partner’s full share of cost

10.2 Pre-Commencement Period

Consistent with Section 4, the Managing Partner may incur costs for the Planned Capital Improvements during the Pre-Commencement Period and provided that it notifies the Partners prior to doing so. The Partners will endeavor to recover all costs of the Planned Capital Improvements through an applicable debt or similar financings and paid over time through debt service components of the Tip Fees. However, in the event the Managing Partner identifies the need to incur additional costs that are not included in such financing and that exceed fifty thousand dollars (\$50,000), the Managing Partner will promptly notify and discuss such need with the Partners and will consider any reasonable alternative to minimize or eliminate the need to incur the cost. Managing Partner may provide an invoice for Partner’s share of such

costs to the other Partners, which shall be paid within ninety (90) days of receipt. Partner's share of such costs shall be allocated on the same basis, as provided in Exhibit F Partner Payments, for debt service.

10.3 Tip Fees

All Partners shall pay the Managing Partner a Tip Fee for each ton of each delivered stream. Exhibit F Partner Payments specifies the initial Tip Fees for each delivered stream as of January 1, 2022, provided that the initial Tip Fees shall be adjusted on July 1, 2021, as provided in subsection (d) below, to reflect changes in the cost of living since the Effective Date. Exhibit F Partner Payments outlines the components of cost, specifies whether such costs are fixed or variable, and defines the method of allocation to Tip Fees. Cost components include Operator compensation, Managing Partner annual budget, debt service, transfer and transport (as applicable), third party processing, Disposal, Host Fee, Land Rent, and reserves. Tip Fees include the cost of services to Partners' residents provided for in Section 5.5.

- (a) In addition to the above, if a program or function is established to benefit one Partner or a subset of Partners, the Tip Fee for such Partners shall be adjusted to fully recover all direct and indirect costs of such program or function from the participating Partners.
- (b) Tip Fees shall be adjusted annually on July 1 as part of the Facility's annual budget process and as determined by the Partners. Exhibit F Partner Payments outlines the process for adjusting the Tip Fees.
- (c) The Tip Fee paid by Partners shall include the Host Fee, which shall be paid to and retained by the Managing Partner for use for any lawful purpose. Exhibit F Partner Payments specifies the initial Host Fee for each delivered stream as of January 1, 2022, provided that the initial Host Fee shall be adjusted on July 1, 2021 and each July 1 thereafter to reflect changes in the San Francisco-Oakland-Hayward Metropolitan Area Consumer Price Index (All Urban Consumers), which is calculated based on the annual change in the index from December of the prior year. In the event that this index is no longer calculated by the Bureau of Labor Statistics, the Partners shall use the successor index or other index that most closely resembles the All Urban Consumers index.
- (d) The Tip Fee paid by the Partners shall include Land Rent. Exhibit F Partner Payments specifies the initial Land Rent to be applied to each delivered stream as of January 1, 2022, provided that the initial Land Rent shall be adjusted on July 1, 2021 and each July 1 thereafter to reflect changes in the San Francisco-Oakland-Hayward Metropolitan Area Consumer Price Index (All Urban Consumers), which is calculated based on the annual change in the index from December of the prior year. In the event that this index is no longer calculated by the Bureau of Labor Statistics, the Partners shall use the successor index or other index that most closely resembles the All Urban Consumers index.

Land Rent is allocated to each of the Partners in proportion to their relative use of the total overall permitted capacity of the Facility (tons per day), as specified by the Facility's State solid waste facility permit. The initial Land Rent (\$/ton) was calculated in this manner:

- Total FY 2021-22 land rent for all Partners = \$822,608
- Permitted capacity of the Facility = 1,500 tons per day
- Operating days per year = 260
- Permitted tons per year = 260 x 1,500 = 390,000

- Land Rent per Ton = $\$822,608 / 390,000 = \2.11

By way of example, if the City of Mountain View delivered 52,000 tons to the Facility in a year (all streams excluding Self Haul) then it would pay a total of \$109,720 for that year in Land Rent (52,000 x \$2.11) as the Tip Fee.

- (e) In the event that the permitted capacity of the Facility is increased or decreased, the Land Rent shall be reallocated based upon the revised capacity, with the reallocated Land Rent (\$/ton) becoming effective on the effective date of the permit revision. To calculate this reallocated Land Rent, the total annual Land Rent would be divided by the revised annual permitted capacity, as above. The total Land Rent to be used in the reallocation would be equal to \$822,608 adjusted on July 1, 2021 and each July 1 thereafter to reflect changes in the San Francisco-Oakland-Hayward Metropolitan Area Consumer Price Index (All Urban Consumers), which is calculated based on the annual change in the index from December of the prior year. In the event that this index is no longer calculated by the Bureau of Labor Statistics, the Partners shall use the successor index or other index that most closely resembles the All Urban Consumers index. Land Rent may be used by the Managing Partner for any lawful purpose.

10.4 Gate Rates

Any person or entity utilizing Self-Haul shall pay the Operator on behalf of the Managing Partner a Gate Rate for all delivered materials at the Facility. Whether calculated on a weight or volume basis, the Gate Rate shall include the Host Fee and Land Rent. Revenues received from the Gate Rate, excepting the Host Fee and Land Rent, shall be utilized to offset costs of operating the Facility. Revenues from Gate Rates may be shared with the Operator to the extent provided in the Operator Agreement.

10.5 Recyclables Revenue Distribution

The Partners shall retain the proceeds from the sale of all Recyclables, as set forth in Exhibit F Partner Payments. The Partners shall conduct Recyclables composition studies for the purpose of allocating Recyclables sales revenues between the Partners, as provided in Section 6.2 and Exhibit C Material Composition and Diversion, and at the frequency specified in Exhibit C Material Composition and Diversion. The Partners may at any time agree to modify such frequency, in which case the Managing Partner shall provide each Partner with an amended Exhibit C Material Composition and Diversion, which shall become part of this Agreement without further written amendment.

10.6 Annual Reconciliation

The Managing Partner will develop detailed procedures for conducting annual reconciliations to ensure allocation of costs and revenues between the Partners as provided in this MOU. The Managing Partner shall develop proposed procedures for Partner review by October 1, 2021, with the intent of the completing adoption of the procedures by the Commencement Date.

10.7 Invoices

The Partners shall pay the Operator or Managing Partner, as directed by Managing Partner, all Tip Fees and other costs within sixty (60) days of receipt of an invoice.

10.8 Financial Procedures and Protocols

The Partners shall adopt and amend procedures and protocols to implement the financial provisions of the MOU consistent with its terms and the identified goals. Any dispute regarding the development or implementation of the procedures shall be subject to Section 13.

11.Coordination, Record Keeping, and Reporting

11.1 Coordination

- (a) Each Partner shall appoint one staff person to act as its representative. This individual shall be designated with written notice to the other Partner(s). Each Partner shall further ensure that its City Manager, Public Works Director or department director responsible for solid waste activities, and similar senior staff, as determined by each Partner, are available for Facility coordination and discussion as necessary.
- (b) The Managing Partner shall coordinate and host quarterly meetings between the Partners regarding Facility operation and other matters subject to this MOU. The Managing Partner shall provide summary notes of such meetings to the Partners within ten (10) days of each meeting, and the Partners shall notify the Managing Partner within twenty (20) days of each meeting of any issues or concerns regarding the summary notes.
- (c) The Partners shall endeavor to participate in monthly or similar interval meetings or conference calls to discuss Facility operation and other matters subject to this MOU.
- (d) Without limiting the foregoing, the Managing Partner shall ensure that the Partners remain aware of pending or potential operational changes to the Facility or to collection programs that may directly or indirectly impact other Partners. Other Partners shall provide similar notifications regarding their efforts.

11.2 Record Keeping and Reporting

The Managing Partner shall prepare and distribute reports regarding the Facility, its operations, and finances to the Partners. Such reports shall include the following:

- (a) As more particularly set forth in Exhibit E Reporting by Managing Partner, the Managing Partner shall collect and track relevant financial and operational data, modified as necessary to facilitate tracking of cost centers, and to set, manage and adjust Operator compensation and Tip Fees. Reporting materials will be checked for accuracy prior to release to the Partners.
- (b) The Managing Partner shall provide annual and semi-annual reports regarding Facility operations to the Partners.
- (c) The Managing Partner shall prepare and circulate an end of year financial report, audited by a third party, which describes all relevant financial information regarding Facility operation to ensure the accuracy of the data and other financial matters. The data used to prepare such report shall be available to Partners in sufficient detail to permit auditing by any Partner.

12.Risk Allocation

12.1 General

Each Partner shall indemnify, defend, and hold the other Partners, their officers, officials, agents, employees and volunteers harmless from all claims, suits or actions of every name, kind and description, including but not limited to reasonable attorney's fees and other costs of defense, arising from or relating to the acts or omissions of the Partner, its officers, agents, employees or volunteers except to the extent such claims, suits, or actions arise from or relate to the actions or omissions of any other Partner, its officers, agents, employees or volunteers.

In the event of concurrent negligence of two or more Partners, their officers, officials, agents, or employees, the liability for any and all claims, suits or actions of every name, kind and description arising out of this MOU shall be apportioned between the Partners under the established California rules of comparative negligence with each party bearing its own attorneys' fees and costs.

12.2 Force Majeure

If any Partner is prevented, in whole or in part, from carrying out this MOU due to a Force Majeure, then any Partner may reduce or cease performance of the MOU as necessary to respond to such event of Force Majeure. Within thirty (30) days of any Partner declaring a Force Majeure, the Partners shall meet and confer to determine the impact and duration of the event and any reasonable steps that can be taken by the Partners to mitigate or reduce the impact of the Force Majeure. In addition, in all cases and notwithstanding any Force Majeure, each Partner shall continue to pay its share of any fixed costs, included in the Tip Fees, upon request of the Managing Partner.

12.3 Rates and Fee Challenges

Each Partner shall ensure that any solid waste rates charged by each Hauler or Partner include sufficient revenues to pay the Tip Fees and any other processing and Disposal costs.

13.Dispute Resolution

The Partners shall attempt to informally meet and confer regarding any dispute regarding the interpretation of this MOU, which shall include discussions between appropriate executive staff of the Partners including department directors, and city managers as necessary. If such discussions are unable to resolve the dispute, the Partners may agree to mediation or other non-binding dispute resolution process, provided that disputes regarding financial, accounting, budgeting, or cost matters shall be decided by binding arbitration. The Partners shall equally split the cost of any mediation, arbitration, or other dispute resolution and shall bear their attorneys' fees and costs.

14.Miscellaneous

14.1 Notice

During the term of this MOU, all notices shall be made in writing and either served personally, sent by first class mail, or sent by email, provided confirmation of delivery is obtained at the time of email transmission.

Notices to Sunnyvale shall be sent to the attention of the "Solid Waste Program Manager. Notices to Mountain View shall be sent to the attention of the Assistant Public Works Director. In the event either of

these positions is vacant, notices to Sunnyvale shall be sent to the attention of the Environmental Services Director and notices to Mountain View shall be sent to the attention of the Public Works Director.

Any Partner may change the address to which notice is to be given by providing the other Partners with written notice of such change at least fifteen (15) days prior to the effective date of the change.

Service of notices shall be deemed complete on the date of receipt if personally served or if served using email provided confirmation of delivery is obtained at the time of email transmission. Service of notices sent by first class mail shall be deemed complete on the fifth (5th) day following deposit in the United States mail.

14.2 Governing Law

This MOU shall be deemed to be executed within the State of California and construed in accordance with and governed by laws of the State of California.

14.3 Exhibits

The exhibits attached to this MOU are incorporated by this reference.

14.4 Amendment

This MOU may only be amended in writing signed by all Partners, and any purported amendment shall be of no force or effect.

14.5 Entire Agreement

This MOU constitutes the entire agreement between the Partners and supersedes all prior negotiations, representations, or agreements, whether written or oral. Notwithstanding the foregoing, the Current MOU shall remain in effect during the Pre-Commencement Period, subject to the applicable provisions of this MOU. Any breach of the Current MOU during such time period shall also be a breach of this MOU. Upon the Commencement Date, this MOU shall supersede the Current MOU.

14.6 Warranties

The person signing this MOU on behalf of a Partner is authorized to do so. All procedural and other preconditions to the effectiveness of this MOU have been satisfied. There is no litigation pending or threatened that would materially impact a Partner's ability to enter into or perform this MOU.

14.7 Drafting

The Partners acknowledge that the terms of this MOU were negotiated and drafted by the Partners with the assistance of counsel. Accordingly, any rule of construction to the effect that any ambiguity is to be construed against the drafting party shall not apply to the interpretation of this MOU.

14.8 Severability

If for any reason any provision of this MOU is determined to be invalid, unenforceable or contrary to any existing or future law to any extent, such provision shall be enforced to the extent permissible under the law and such invalidity, unenforceability or illegality shall not impair the operation of or otherwise affect those portions of this MOU which are valid, enforceable and legal.

**SIGNATURE PAGE FOR NEW MEMORANDUM OF UNDERSTANDING
Among the Cities of Mountain View and Sunnyvale Relating to the Operation of a Materials Recovery
and Transfer Station**

IN WITNESS WHEREOF, the Parties hereto have executed this agreement in duplicate on the day
and year first above written.

**CITY OF MOUNTAIN VIEW,
a chartered municipal corporation**

By: _____
City Manager

By: _____
City Clerk

APPROVED AS TO FORM:

City Attorney

**CITY OF SUNNYVALE,
a chartered municipal corporation**

By: _____
Kent Steffens, City Manager

APPROVED AS TO FORM:

John A. Nagel, City Attorney

EXHIBIT A

MATERIAL DELIVERY

Delivery of Materials

Partner Designated Hauler deliveries:

Monday-Friday 5am-5pm (and Saturday's following a holiday which falls on a weekday)

Saturday 8am-3pm

Facility Closed: January 1, the Fourth Thursday in November, December 25 ("Holidays")

Public Haul and Resident Services:

Daily 8am-5pm (except Holidays)

Buyback and Drop-off Center

Daily 8am-5pm (except Holidays)*

* Certain drop-off materials may be limited to Monday-Friday by Operator, as approved by Managing Partner with notice to Partners

Facility Operational Requirements:

Partner Designated Haulers shall follow the materials delivery protocol and policies as directed by the Operator, including but not limited to; "SMaRT Station - GENERAL SAFE OPERATION & COMPLIANCE POLICY for HAULERS"; Load check procedures; and any other standards or procedures that may be adopted in the future by the Operator to ensure safety and compliance at the Facility.

Source References:

SMaRT Operating Agreement Section 3.3

Solid Waste Facilities Permit (CalRecycle) 43-AA-0009; Transfer Processing Report

Bay Counties Waste Services: SMaRT Station General Safe Operation & Compliance Policy for Haulers (7/15/2013)

City of Sunnyvale Conditional Use Permit

EXHIBIT B

MATERIAL STREAMS

Tonnage by Stream	Sunnyvale		Mountain View		Total
MSW	72,784	62%	45,111	38%	117,894.32
Dual Stream Recycling	10,087	63%	5,835	37%	15,921.52
Single Stream Recycling (OCC)	4,266	100%	0	0%	4,265.59
Mixed Organics	0	0%	0	0%	0.00
Food Only	7,690	100%	0	0%	7,690.01
Clean Green	14,201	92%	1,316	8%	15,516.89
Public Haul	15,619	87%	2,367	13%	17,985.90
C&D	13,198	100%	0	0%	13,198.49
Loose Roll-Off	8,977	100%	0	0%	8,977.16
City of Sunnyvale Water Dept. - Clean dirt spoils	2,911	100%	0	0%	2,911.19
Specialty Collected -Source Separated Concrete	314	100%	0	0%	314.02
Sunnyvale Extra Dump	2,785	100%	0	0%	2,785.39
Totals	152,832		54,628		207,460.48

As referenced in Section 6.1 Initial Tonnage.

EXHIBIT C

MATERIAL COMPOSITION AND DIVERSION

Material Composition

In accordance with Section 6.2 of the MOU Dual-Stream characterization studies will be performed every other year by the SMaRT Station Operator. Partners may request a characterization outside of this cycle, but not more frequently than every 6 months. These characterizations shall form the basis for the allocation of revenues from the sale of source-separated recyclables delivered from Partner collection programs.

Dual-Stream Characterization (2019*, Performed by SMaRT Operator, Bay Counties Waste Services)

Diversion

Goal - 39.2% of incoming MSW

Method for Calculating Diversion Percentage

A = Tons of Municipal Solid Waste coming into the SMaRT Station. *Note: Municipal Solid Waste does not include source-separated organics, source-separated curbside materials, source-separated C&D materials such as concrete, dirt and metals and materials delivered to the Buyback/Dropoff Center.

B = Tons of Municipal Solid Waste placed in transfer trucks and hauled to the Kirby Canyon Landfill for disposal.

C = Percent of incoming Municipal Solid Waste diverted.

$$A-B/A = C$$

The following example shows how this formula will be used to calculate the diversion level achieved:

A = 200,000 tons

B = 145,000 tons

200,000 tons – 145,000 tons / 200,000 tons = 27.5% diverted

EXHIBIT D

CAPITAL IMPROVEMENTS

SMaRT Next Gen Refurbishment Overview

March 19, 2021

The refurbishment of the SMaRT Station is intended to consist of a variety of upgrades and improvements to meet the following overall goals:

- Replace worn or near end-of-life equipment and systems.
- Improve functionality for efficiency and enhanced recovery/diversion.
- Increase diversion to meet various long-term goals such as Climate Action Plans and Zero Waste Goals.
- Increase recovery of organics by way of recovery of MRF fines and compostable paper to improve compliance with regulatory requirements.
- Enhance automation or mechanical recovery systems where labor conditions or labor cost savings could be realized.
- Refurbish or replace worn or antiquated building and/or site features.

These goals are exhibited in the following improvements per the respective systems:

Mixed Waste System

- Add equipment where current equipment is lacking or where an overall improvement of the system can be achieved. A specific example is the addition of a size reducer/shredder, metering equipment either upfront or along the mixed waste processing line such that more bags are opened and their contents liberated for the remainder of the system to function more efficiently.
- Add a series of recovery system to increase diversion, both to reach the respective jurisdictions Climate Action Plans, Zero Waste Goals, as well as to aid in the requirements of new state mandates requiring elevated levels of organics diversion. These improvements are envisioned to increase the recovery of MRF fines as well as compostable paper from the mixed waste stream.
- Add automation or mechanical systems where either enhancements in the quality or quantity of recovered commodities or reductions in labor or maintenance force can realize a net benefit over time.
- Replace worn aged equipment that is either near the end of its useful life
- Anticipating the replacement of additional equipment that has additional useful life but is likely to reach the end of its useful life within the period of the Agreement.

Curbside System

Given the age and condition of the current curbside processing system, improvements include a partial renovation of the dual stream processing line to enable the system to function more efficiently and to be prepared to operate with fewer operational break downs, and allow for a reduction in staff on the sorting line. The improvements include:

EXHIBIT D

CAPITAL IMPROVEMENTS

- Reconfiguring the bunkers and infeed system to improve functionality.
- Adding equipment to improve material sizing and separation, automation, and overall functionality.
- Adding optical sorters and related equipment to reduce reliance on manual labor.
- Replacing or refurbishing the byproduct management system to improve functionality.

Transfer Station

- Replace or add a new compactor to relieve the ongoing reliance of the original compactor installed in 1994.
- Repair and or upgrade sitework features such as pavement, concrete, drainage, etc.
- Upgrade or repair features in the Transfer Station building such as worn tipping floor, dust suppression misting improvements, additional enclosures, etc.
- Replace or upgrade worn features as identified in the Infrastructure Condition Assessment Program (ICAP) analysis which evaluated the condition of the Sunnyvale SMaRT Station buildings, site and infrastructure by preparing a prioritization of work requirements and developing short and long-term work plans using the ICAP application. A portion of the improvements are envisioned to be included in the initial refurbishment of the facility and the remainder are identified as deferred improvements that are likely to be required in later years of the Agreement.

Wood and Green Waste System

- If required by the BAAQMD, add misting to reduce particulate matter and odors from this process.

Food Waste System

- If required by the BAAQMD, add enclosures and possibly a foul air treatment system. Please note that this system is only used by the City of Sunnyvale. Consequently, no costs for this improvement are included in this Schedule.

Construction and Demolition System

- If deemed necessary by Sunnyvale, add a Construction and Demolition (C&D) sorting line to the facility. Please note that this system is only used by the City of Sunnyvale. Consequently, no costs for this improvement are included in this Schedule.

EXHIBIT D

CAPITAL IMPROVEMENTS

Mixed Waste MRF Equipment	Cost
New bag opening, size reduction and metering equipment	\$1,200,000
Additional screening of the residue line to recover fines	\$3,000,000
Additional optical sorters and screens to recover compostable paper	\$3,000,000
Replace aged equipment	\$2,500,000
Subtotal Mixed Waste MRF Equipment upgrades	\$9,700,000

Curbside Equipment Upgrades	Cost
Revise infeed with added container bunker	\$1,700,000
Improved screening (OCC and glass)	\$2,350,000
Optical/robotic on container line	\$1,500,000
Subtotal Curbside Equipment Upgrades	\$5,550,000

Summation of Mixed Waste MRF and Curbside Equipment	Cost
Total Processing Equipment	\$15,250,000
Contingency and soft cost (10% contingency, 5% design)	\$2,288,000
Total MRF Equipment	\$17,538,000
Annualized Cost (3% interest, 10 year amortization period, nearest \$1,000)	\$2,056,000

Transfer Station Building Repairs/Improvements	Cost
New Compactor and Infeed Conveyor	\$2,900,000
Sitework	\$890,000
Building Improvements	\$1,480,000
Building Repairs (from ICAP assessment)	\$3,610,000
Subtotal Building and Transfer improvements	\$8,880,000
Contingency /Soft Costs (15% contingency, 12% design, permitting and CM)	\$2,398,000
Subtotal Building and Transfer improvements	\$11,278,000
Annualized Cost (3% interest, 20 year amortization period, nearest \$1,000)	\$759,000

Total Equipment and Building Improvements	Cost
Sum of Equipment and Building Improvements	\$24,130,000
Sum of Contingency/Soft Costs	\$4,686,000
Total Capital Cost	\$28,816,000
Sum of Annualized Equipment and Capital Cost	\$2,815,000

EXHIBIT D

CAPITAL IMPROVEMENTS

Future Deferred Costs

Deferred ICAP Building Repairs - 20 years	Cost
Remainder of Building Repairs deferred to future years	\$8,202,000
2021 Present Value of deferred improvements (3% discount rate, 20 year period, nearest \$1,000)	\$4,541,000
Amortized Cost of Deferred Building Repairs (assuming 3% interest, 20 year amortization period, nearest \$1,000)	\$306,000

Deferred Replacement of Equipment - 20 years	Cost
Replacement of 44 pieces of mixed waste processing equipment with end of life likely within agreement term	\$6,060,000
2021 Present Value of deferred equipment improvements (3% discount rate, 20 year period, nearest \$1,000)	\$3,355,000
Amortized Cost of Deferred Equipment Replacement (3% interest, 20 year amortization period, nearest \$1,000)	\$226,000

EXHIBIT D

CAPITAL IMPROVEMENTS

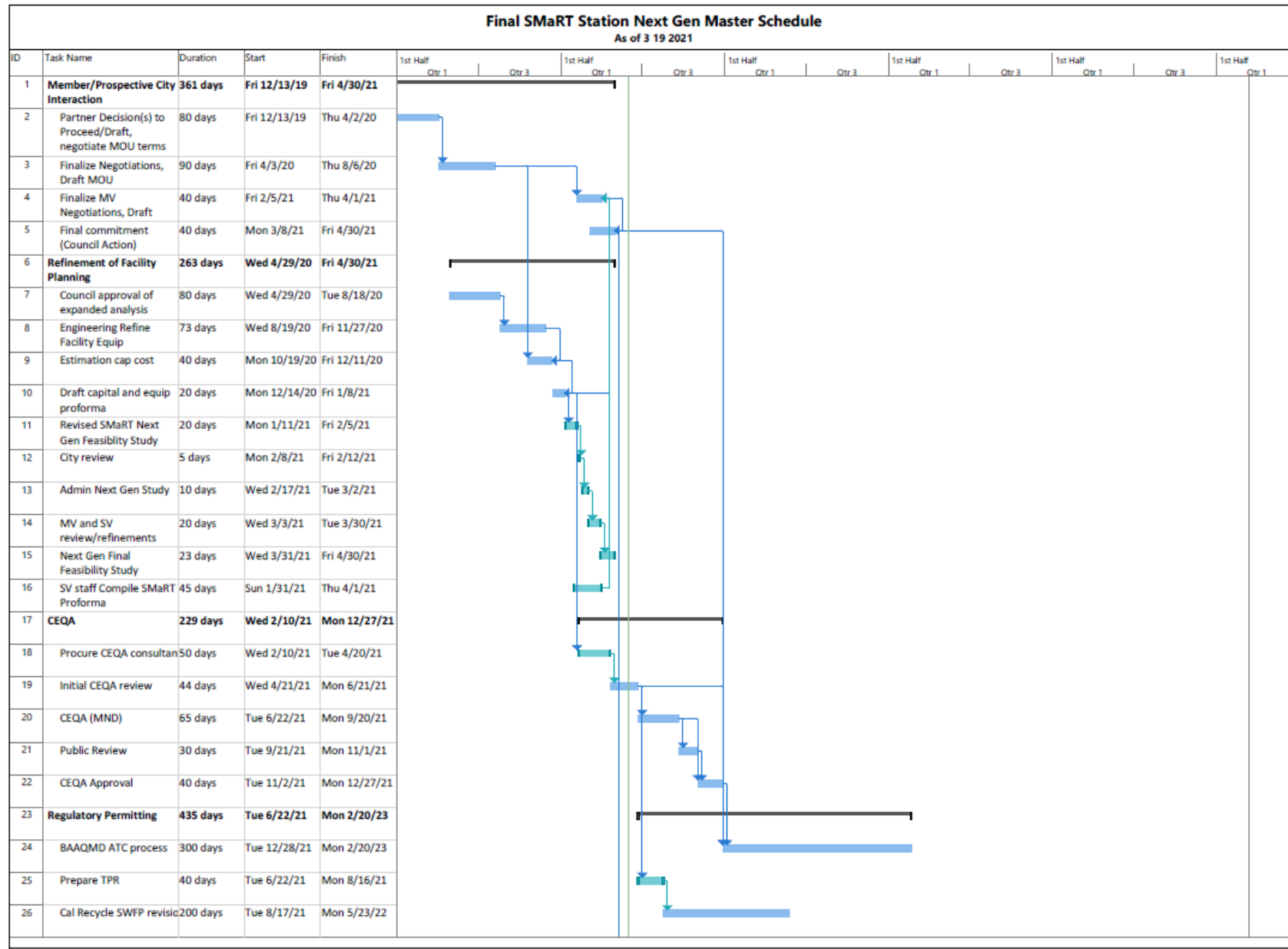


EXHIBIT D

CAPITAL IMPROVEMENTS

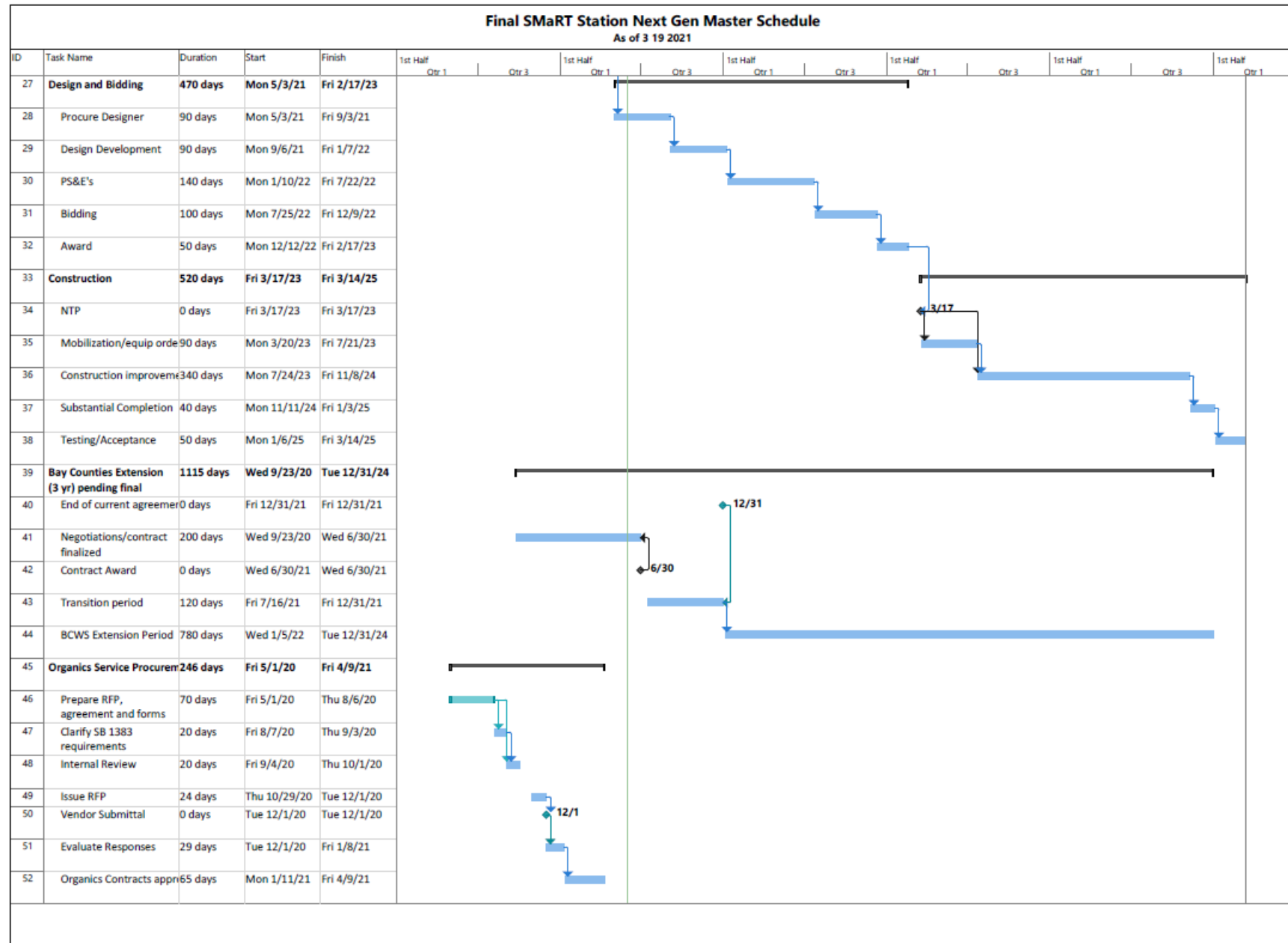


EXHIBIT E

REPORTING BY MANAGING PARTNER

Description	Frequency	Date Due	Partner Payment Dates	Notes
Budget (Operating, Capital)	Annual	March 15	NA	
Mid-Year Budget Analysis	Annual	March 15	NA	
Quarterly Billings to Cities - Operating/Capital	Quarterly	March 15, June 15, September 15, December 15	May 15, July 15, November 15, January 15	
Debt Service Billings	TBD - As Required to fulfill debt obligations	TBD - As Required to fulfill debt obligations	TBD - As Required to fulfill debt obligations	
Capital Improvement Costs Incurred (Not included in Debt Financing)	As Needed	As Needed	Due within 90 days of billing	
Operating Fund Reconciliation (True-up)	Annual	September 15	NA	3rd Party Audited
Reconciliation/True-Up Billing	Annual	September 15	NA	3rd Party Audited
Monthly Tonnage Report	Monthly	45 days after month end	NA	Include Example worksheet
Partner Updates	Quarterly	Date of Quarterly Meeting	NA	
Summary Notes - Quarterly Meetings	Quarterly	Within 10 days of Meeting	NA	
Solid Waste Facilities Permit - Inspections	Monthly	Upon receipt from LEA	NA	
CalRecycle Data - Calendar year for EAR	Annual	May 15	NA	CalRecycle EAR Due August for CY

EXHIBIT F PARTNER PAYMENTS

Cost Subset	Cost Component	Fixed/Variable	Origin	Allocation Methodology	Method of Adjustment
Operator Compensation	SMaRT Operator Payment	Fixed	Operator Agreement	Direct to System per BCWS Proposal	In accordance with Operating Agreement.
Managing Partner Costs	Spare Parts Reimbursement	Fixed	Direct Reimbursement to Operator	Direct to System - Parts Replaced	Actual Costs
	Salaries and Benefits	Fixed	Paid by Managing Partner	Indirect Cost Allocation	Actual Costs
	Other Contract Admin	Fixed	Pass through to Operator & Paid by Managing Partner	Indirect Cost Allocation	Actual Costs
	Professional Services	Fixed	Pass through to Operator & Paid by Managing Partner	Indirect Cost Allocation	Actual Costs
	Legal Services	Fixed	Paid by Managing Partner	Indirect Cost Allocation	Actual Costs
	Hazardous Waste Disposal	Variable	Direct Reimbursement to Operator	Indirect Cost Allocation	Actual Costs
	Office Rental by SV	Fixed	Credit to Partners - Paid by Sunnyvale Solid Waste Program	Indirect Cost Allocation	CPI
Debt Service	Debt Service	Fixed	Paid by Managing Partner	By System Impvs - Fixed Annual Debt Payments	Fixed over term - Per Debt Service Schedule
Third-Party Tip Fees	Third-Party Tip Fees	Variable	Paid by Managing Partner	Direct to System - Tons delivered to 3rd Party Processors	In accordance with 3rd Party agreements.
Landfill Disposal Fees	Landfill Disposal Fees	Variable	Paid by Managing Partner	Per Ton - After Diversion percentage (initially shown on Costing Model Input Tab)	In accordance with 3rd Party agreements
Host Fees	Host Fee	Variable	Paid by Managing Partner to Sunnyvale General Fund	Per Incoming Ton - By System \$3.96/ton	CPI
Land Rent	Land Rent	Fixed	Paid by Managing Partner to Sunnyvale General Fund	Based on Capacity \$2.11/ton	CPI
Capital Replacement Fund	Capital Replacement Fund	Fixed	Paid by Partners - Fund maintained by Managing Partner	By System - Percentage Allocation tons by system	In accordance with Reserve Fund terms
Revenues	Curbside Revenues - Retained by Partners	Variable	Paid to Partners by Operator	Composition Study	Actual Revenues
	MRF Revenues - Retained by Partners	Variable	Paid to Partners by Operator	MRF Tons Inbound Ratio	Actual Revenues
	Gate Fee Credit (total collected minus amount retained by Operator)	Variable	Paid to Partners by Operator	By inbound Public Haul Ratio	Actual Revenues

EXHIBIT F PARTNER PAYMENTS

New/Future costs not listed above

As agreed upon between partners

Cost Per Ton	
Stream	Per Ton: 1/1/2022 Projection ⁽¹⁾
3a MSW	\$ 160.06
3b REC Dual	\$ 230.97
3e Food	\$ 131.07
3f Clean Green	\$ 105.40
3h C&D	\$ 105.70
3g Public Haul	\$ 161.13

Indirect Cost Allocation	
Stream	Percent
3a MSW	55.46%
3b REC Dual	16.22%
3e Food	4.61%
3f Clean Green	6.74%
3h C&D	8.93%
3g Public Haul	8.04%

⁽¹⁾ Source File "2022 Budget_no impvs_v3-24-21-Combined Mountain View and Sunnyvale Costs

EXHIBIT G

SERVICES TO RESIDENTS

Drop-off for Residents and Businesses	Drop-off for Partner Residents Only
<ul style="list-style-type: none"> • Aluminum, tin and steel cans • Used clothing and shoes • Glass bottles and containers (no auto or window glass, ceramics or mirrors) • Milk and juice cartons • Corrugated cardboard • Plastic bottles and tubs (i.e., shampoo, detergent, yogurt containers) • Scrap metal (small items only) 	<ul style="list-style-type: none"> • Paint in original containers (Monday through Friday) per PaintCare program guidelines. Limit 15 gallons per visit • Cooking oil • Electronics: e.g., computers, TVs and monitors (limit four), small appliances • Microwave ovens • Clothes and Shoes • Strings of holiday lights • Fluorescent bulbs and tubes (limit of 20 per visit) • Empty one-pound propane cylinders (limit 3 per visit) • Household and auto batteries • Mercury-containing thermostats, thermometers, batteries and compact fluorescent lamp bulbs • Sharps, needles or lancets, (in biohazard, or hard plastic container with screw-top lid marked "sharps") • Used motor oil, oil filters and antifreeze (limit 10 gal per visit) • Mattresses (no fee)

Beverage Container Buy-Back: California Redemption Value (CRV) is paid on eligible bottles and cans by count (up to 50) or by weight.

Public Haul Disposal: Trash, C&D debris, yard trimmings, etc. (with fee; or Partner City Voucher)

Re-use Trailer: Furniture and other items in good condition rescued from the garbage and recycling areas of the SMaRT Station are placed in the re-use trailer for customers to take home at no charge.

Compost: Residents of Partner cities (Limit 96 gallons per week)

Tours by appointment

EXHIBIT H RECYCLABLES

“Recyclables” means those materials excluded from MSW for purposes of returning such materials to the economy in the form of raw materials for new, reused, or reconstituted products and includes, but is not limited to:

- newspaper (including inserts, coupons, and store advertisements)
- mixed paper (including office paper, computer paper, magazines, junk mail, catalogs, brown paper bags, brown paper, paperboard, telephone books, paper grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, cereal and other dry food boxes)
- aseptic cartons and gable top containers
- corrugated cardboard
- glass containers of any color (including brown, clear, and green glass bottles and jars)
- aluminum beverage containers, and other aluminum cans
- steel, tin or bi-metal cans
- plastic bottles and small tubs (1-7), including HDPE and PET (except Polyvinyl chloride (PVC) and Polystyrene (PS) and expanded Polystyrene (EPS))

The recyclables list above may be modified as provided in Section 6.4 Changes in Material Streams and Tonnages.

EXHIBIT I

RESERVE GUIDELINES

SMaRT Station Enterprise Fund:

- Established to account for operations at the Facility
- Sunnyvale Finance Department manages fund and financial reporting
- Source of funds for:
 - Payments to Facility Operator
 - Payments to Landfill Disposal Operator
 - Host Fee Payments to Managing Partner
 - Salaries and benefits to Sunnyvale staff associated with the administration of MOU, Operator agreement and landfill agreement
 - Other Facility and contract administration costs paid by Managing Partner
 - Payment to Partner cities of their shares of gate fee and recycling revenues
- Receives quarterly payments from Partner cities based on projected net expenses
- Receives revenues from public haul gate fees and sale of recyclable materials (including CRV-related payments from CalRecycle)
- Managed so that annual revenues and expenditures are in balance at end of FY, and no balance is carried forward to the next year
 - Annual true-up (aka “Reconciliation”)
- Year-end Audit by 3rd party CPA, issues report and statement of Net Expenses and Quarterly Billings (on or before September 30th of each FY)
- True-up amount added to; or deducted from 2nd quarterly billing for subsequent fiscal year

Equipment Replacement Fund:

- Established to normalize contributions for predictable capital equipment replacement, major repairs and facility maintenance that are not part of day-to-day maintenance by Operator or are not included in operator agreement (such as roof, pavement, tip floor)
- Budget is established based on a schedule of planned replacements/restoration of equipment and facility on a 20-year schedule
- Sunnyvale Finance Department manages fund and financial reporting
- Source of funds are annual contributions from SMaRT Partners based on an agreed upon percentage
- Funds are carried over at the end of the FY
- Unspent funds returned at end of MOU based on individual Partner contributions

EXHIBIT I

RESERVE GUIDELINES

- Includes Sub-Account for Capital Improvement Debt Payments and Reserves
 - One or more partners may fund some or all their share of Capital Improvement costs with a cash payment
 - Retains interest earnings on fund balance

Debt Service on the Bonds. Sunnyvale & Mountain View are responsible for debt service on the [name of bonds] based on their proportionate shares of Capital Improvements as set forth in the MOU [Insert final shares %]

- Mountain View [Insert final shares %]
- Sunnyvale [Insert final shares %]

Sunnyvale anticipates issuing revenue bonds, certificates of participation, or other evidences of indebtedness to pay for some or all of the capital improvement costs. If Sunnyvale does finance some or all of the capital costs, Mountain View will pay to Sunnyvale their share of the debt service based on the percentages set forth in the forgoing paragraph. Such payments will be made at the frequencies required by the evidence of indebtedness and at times required to permit Sunnyvale to make the periodic debt service payments when due. To the extent that some or all of the capital costs are not financed, but are paid by Sunnyvale from its fund, then Mountain View will reimburse Sunnyvale for their proportionate share of such costs advanced by Sunnyvale, as provided in the MOU.