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September 28, 2022

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*Transmitted via email*

**Subject: Solid Waste Franchise Assignment – Livermore Sanitation Inc. – FINAL REPORT**

Dear Ms. Erlandson:

HF&H Consultants, LLC (HF&H) provides the enclosed report on our due diligence review (Review) of the assignment of the City of Livermore's Solid Waste, Recyclable Materials, and Compostable Materials Services Agreement (Agreement) with Livermore Sanitation Incorporated (LSI). This report presents the scope of our Review, the findings of our Review, proposed conditions to the assignment of the Agreement based on our Review, and our recommendations.

Sincerely,  
HF&H CONSULTANTS, LLC



Rob Hilton  
President

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## **GLOSSARY**

Agreement – Solid Waste, Recyclable Materials, and Compostable Materials Services Agreement between LSI and the City.

Assignee – See WC

Assignment – a change in control that falls under the definition of Assignment pursuant to the terms of the Agreement.

CSR – Customer Service Representative

Franchisee – see LSI

City – City of Livermore

LSI – Livermore Sanitation Inc, the hauler for the City.

PEOP – Public Education and Outreach Plan.

RDRS – Recycling and Disposal Reporting System

Review – Assignment Review.

WC – Waste Connections, INC.

## EXECUTIVE SUMMARY

LSI has proposed an Assignment of its Agreement with the City. An assignment, as defined in the franchise agreement, means any material change in the ownership of the company. In this case, LSI has proposed to sell all of the stock of LSI to Waste Connections. This report presents the City with the results of HF&H's Review to support the City in determining whether it is in its best interest to accept the terms of the proposed Assignment.

HF&H was engaged to perform a Review of LSI in accordance with Section 12.5 of the Agreement. In general, the review found that the transaction will result in a change in control and governance of LSI. Waste Connections (the acquiring company) appears to meet the minimum criteria for the consideration of the Assignment from our review of provided documents.

Waste Connections has stated that the current management and employees will be retained, however each of those employees has the ultimate discretion about their choice to remain employed and it is important that Waste Connections maintains a work environment that encourages those valued employees to stay.

Our Review of Waste Connections demonstrated that they have the requisite qualifications, experience, and performance record to be considered for the assignment and reference checks to other agencies were generally positive. The only concern raised in the review of Waste Connections relates to their failure to disclose certain information related to the assessment of liquidated damages against them. The particular issue was discussed with Waste Connections and a revised disclosure was provided.

Our Review of LSI identified certain shortfalls in performance that are documented herein. The specific issues were relatively minor in nature, were promptly resolved, and never resulted in the contractor being subject to liquidated damages or found in default of the Agreement.

HF&H recommends that the City review and consider the specific findings of this report prior to approving any Assignment of the Agreement. Should the City wish to proceed with Assignment, HF&H recommends conditioning the approval of the Assignment on LSI's agreement to implement the various recommendations contained in this report.

In addition to its obligations under the Agreement, Waste Connections has provided written assurances regarding their commitments to:

- Retain current staff and notify the City in writing regarding open and new staff positions;
- Keep the current rate-adjustment methodology as outlined in the Franchise Agreement so as to maintain modest annual rate increases;
- Provide quality service in accordance with standards spelled out in the Franchise Agreement;
- Continued community engagement; and,
- Comply with section 12.5.2 of the Franchise Agreement.

## SECTION 1 OVERVIEW

### A. Background

The Agreement between LSI and the City provides LSI with the exclusive right to collect residential, multi-family, and commercial discarded materials in the City, subject to the limitations of that Agreement and applicable law or where other current programs provide for collection of household hazardous waste. In 2011, the Agreement was amended to adjust certain revenue and related monetary credits due to the City, provisions of services in portions of unincorporated Alameda County, and to establish rates for drop box and compactors organics material services. The Agreement was further amended in 2015 to account for a new collective bargaining agreement and a special rate review for an increased Recyclable Materials processing fee. The Third amendment in 2020 extended the term of the agreement, allowed for additional capital purchases, and prepared for new state legislature (e.g., SB 1383).

In October 2021, LSI notified the City of its intent to sell their company to WC, Inc., a publicly-traded, waste management company. Section 12.5 of the Agreement governs this type of transaction and reserves the right for the Franchising Agency to conduct an Assignment Review (Review). The Review was performed by HF&H Consultants, in accordance with the process outlined in the Agreement, and identified a few performance gaps related to program implementation, reporting, and public education (see “Section 2: Findings and Recommendations”).

The issue areas covered in this Review are as follows:

#### Compliance Issue Areas

- Implementation of all collection services and recycling programs
- Public education and outreach
- Performance consistent with the standards of performance defined in the Agreement
- Billing review
- Delivery of material to the correct facilities
- Provision of operating assets that meet the requirements of the Agreement
- Reporting
- Payment of fees
- Insurance and performance sureties required by the Agreement
- Liquidated damages

#### Assignment Term Issue Areas

- Financial condition of Franchisee and Assignee
- Risk to Franchising Agency and/or rate payers

#### Financial Condition Issue Areas

- Financial health and stability
- Return on investment

- Ability to maintain ongoing operating costs without compromising performance

## **Experience and Qualification Issue Areas**

- Experience
- Qualifications
- Performance of Assignee
  - Litigation History
  - Regulatory violations

## **B. Techniques**

HF&H's Review team conducted the following activities:

- Initial and follow-up information requests to LSI, WC, and the City.
- Phone interviews with LSI's operations and management staff.
- Review of monthly, quarterly, and annual reports and other requested financial and operational data.
- Sample testing of LSI collection customers invoices.
- Review of tonnage and facility reports.
- Review and calculation and payment of fees.
- Calls and meetings with LSI.

## **C. Limitations of the Analysis**

The scope of HF&H's analysis was limited as follows:

- The Review covered a wide range of performance areas in the Agreement. Therefore, the recommendations include several areas for suggested follow-up monitoring related to specific issues.
- The information used in the Review is, to the best of our understanding, accurate based on the data and information as provided by LSI, WC and/or the City, and was reviewed for reasonableness within industry standards.
- The Review did not entail independent verification of the accuracy or completeness of all of the source documents provided by LSI, WC, and the City.
- While the recommendations identify potential areas for improvement, the scope of work for the Review did not include development of specific remedies. The City may wish to meet and confer with LSI and WC to implement solutions to the issues identified in this report.
- Other matters might have come to our attention that would have been reported to the City had we addressed additional topic areas, additional issues within topic areas, and/or performed additional procedures.

## SECTION 2: FINDINGS & RECOMMENDATIONS

HF&H performed review and analysis of LSI's performance and compliance with the Agreement, the terms under which the Assignee intends to purchase the Franchisee, the financial health and stability of the Franchisee and its operations, and the experience and qualifications of the Assignee in relation to its ability to perform its obligations at or above the standards defined within the Agreement. The findings of this Review are documented in this section and provide documentation of all instances of non-compliance with the Agreement, as well as other potential areas of concern.

Generally, LSI has been found to be compliant with the terms and conditions of its Agreement with the City, with some exceptions noted in the findings below. For each area where non-compliance was documented, LSI has been notified and has attempted to remedy the situation and/or HF&H has made recommendations to prevent future failures to meet compliance. Particular areas of concern are related to public education, outreach, and reporting.

HF&H believes that the recommendations below should be implemented regardless of the approval of a change in control and that these recommendations should help to ensure that the City's Agreement needs are better met.

### A. Compliance Review

#### A-1. Implementation of Collection and Recycling Programs Required Under Agreement

The Agreement establishes specific collection services, documented in Section 5 of the Agreement, which must be performed by LSI. HF&H reviewed all requirements of Section 5.2 – Solid Waste Services, 5.3 - Recycling Services, 5.4 – Compostable Materials Program, 5.5 – City Facilities and Events Collection, 5.6 – Provision of Service to Schools, 5.7 – Construction and Demolition Debris Collection, 5.8 – Abandoned Solid Waste Collection, 5.9 Community Garage Sale Event, and 5.10 – E-Waste and U-Waste Collection.

HF&H collected evidence of LSI's compliance with collection services through materials on their website, rate sheets, monthly reports, quarterly reports, and annual reports as well as discussions with City staff. Where services could not be verified through documentation, HF&H contacted LSI and/or City staff to verify compliance. It is important to note that only a sample of information from this material was examined during this review.

#### Findings

HF&H found that LSI is generally compliant with the core collection services for solid waste, recycling, compostable materials, City facilities, schools, C&D, abandoned waste, garage sale events, e-waste and u-waste, and the bulky / on-call cleanup program, with the following exception:

- Multi-family customers subscribed to carts are not offered used oil recovery kit collection, as prescribed in the Agreement. LSI confirmed our assessment and informed us that COVID restrictions and the challenges of getting property manager approval delayed this program.

#### Recommendations

- HF&H recommends that LSI and the City meet and confer about how to address the above issue now that COVID related restrictions have largely been lifted.



## A-2. Public Education and Outreach Analysis

The Agreement establishes specific public education and outreach requirements to be performed by LSI, in accordance with Exhibit C of the Agreement. This part of the Review was broken into five separate sections: 1) single family; 2) multi-family; 3) commercial; 4) schools; and, 5) special events. For each section, HF&H reviewed printed collateral, Public Education and Outreach Annual Plans (PEOPs), and monthly / quarterly / annual reports from Rate Year 10 and Rate Year 11 that were submitted by LSI on behalf of the City. Printed collateral was reviewed for the inclusion of specified educational topics outlined in the Agreement and included newsletters, posters, recycling guides, postcards, and bill inserts. Reports were used to identify the number of engagements LSI had with customers to offer educational and/or technical support.

### Findings

#### Single Family Education and Outreach Activities

HF&H found that LSI is generally compliant with the single-family education and outreach activities, with the following exceptions:

##### Non-Compliance

- Corrective action notices for use in instances where the resident sets out inappropriate materials were not available nor provided to customers until Rate Year 11.
- Technical information related to home composting was not provided in brochures and newsletters. The only information provided to residents was a link in the Q&A section of the LSI website.
- Annual clean-ups were not advertised to residents through bill inserts in Rate Year 10 or Rate Year 11. One of two required newspaper advertisement was provided in Rate Year 11.
- LSI's website does not include a single-family customer address look-up feature that shows collection dates or up to date information on the City's ranks relative to its 75% diversion goal.

##### Partial Compliance

- Bill inserts contained service-related announcements (e.g., new services, proper HHW handling, holiday tree collection) instead of the information being printed on the bills themselves.
- LSI has not advertised on the local radio or cable television broadcasts in the last 5 years. However, LSI recently participated in a commercial that will air on the local channel along with Livermore Recycles.

#### Multi Family Education and Outreach Activities

HF&H found that LSI is generally compliant with the multi-family education and outreach activities, with the following exceptions:

##### Partial Compliance

- Bill inserts contained service-related announcements (e.g., new services, proper HHW handling, holiday tree collection) instead of the information being printed on the bills themselves.
- LSI has not advertised on the local radio or cable television broadcasts in the last 5 years. However, LSI recently participated in a commercial that will air on the local channel along with Livermore Recycles.

- LSI's website included a list of 'green' complexes in Livermore. However, the list is not searchable or ranked, as required in the Agreement.

### **Commercial Education and Outreach Activities**

HF&H found that LSI is generally compliant with Commercial education and outreach activities, with the following exceptions:

#### Non-Compliance

- Corrective action notices for use in instances where the resident sets out inappropriate materials were not available nor provided to customers. LSI stated that they are working on notices that will be ready in September 2022.

#### Partial Compliance

- Newsletters contained general information on re-use, recycled products, and donation locations. However, the newsletters contained either limited or no specific vendor names, numbers, or contacts.
- Bill inserts contained service-related announcements (e.g., new services, proper HHW handling, holiday tree collection) instead of the information being printed on the bills themselves.

### **Schools Education and Outreach Activities**

LSI is required to provide approximately 170 classroom presentations to public school children about recycling and composting at school and at home. LSI provided a list of schools visited in Rate Year 10 and informed HF&H that no schools were visited or requested virtual presentations in Rate Year 11 due to COVID restrictions. HF&H's review of the number of classroom visits in Rate Year 10 estimated 58 classroom presentations, which is below the requested level in the Agreement.

### **Special Events Education and Outreach Activities**

LSI is required to participate in exhibit booths at special events, assist the City with sponsored events, and assist with the Arroyo Clean-Up. LSI confirmed that while the clean-up did not occur in Rate Year 11, likely due to complications related to COVID, they are still the sponsor for the Arroyo Clean-Ups. LSI's documentation confirms attendance and participation at these events. The City also informed HF&H that they do see LSI attending community workshops and feel that LSI is actively assisting the City with sponsored events.

### **Recommendation**

- HF&H recommends LSI update their website to include the Single-Family address search feature and the multi-family 'green' complex search feature. additional information related to home composting should be included directly on the website under the Single-Family pages.
- HF&H recommends LSI include service-related announcements on bills for single-family, multi-family, and commercial customers and include annual clean-up information on single-family bill inserts.
- HF&H recommends that the City condition the Assignment on an agreement that if WC's educational materials are not of a quality acceptable to the City, WC will fund a third-party education contractor to work with the City to design and produce the collateral required by the Agreement.
- HF&H recommends that LSI and the City meet and confer regarding the use of local television and radio for promotional activities and adjust outreach material based on the results of this discussion.

- The commercial corrective action notice should be approved by the City, when complete, and used as appropriate to educate Commercial customers.

### **A-3. Performance Standards Analysis**

The Agreement establishes specific performance standards for LSI's drivers and customer service representatives (CSR), as documented in Sections 5.18 and 6.11. The performance standards focused around consistent and frequent trainings on safety and upcoming customer-related programs. CSRs are also required to periodically call commercial food scrap customers to confirm their understanding of the program.

HF&H reviewed the monthly driver safety training records, the CSRs' quarterly training material, and the technical assistance logs to verify that LSI was meeting the requirements as specified in the Agreement. The driver training records provided sufficient detail on the topic and attendance of the meetings. The CSR quarterly training material included City-specific collection program updates and internal system updates for new organics programs or fees.

HF&H referenced materials and reports gathered as part of its role as Executive Director for the West Valley Solid Waste Management Authority (WVSWMA) where a Waste Connection affiliate (WVC&R) is the service provider. In reviewing reports related to driver and CSR performance, it was found that WVC&R has frequently had long wait times for customer calls. From January 2021 to August 2022, HF&H has performed 175 "secret shopper" calls to log WVC&R call response times for the WVSWMA jurisdictions. The average response time for these calls was over 7 minutes, more than triple the current contractually obligated 2 minutes referenced in section 6.9.4 of the Agreement with LSI. HF&H also found that WVC&R had an average of 200 to 250 missed collection pickups per month over the past five years in their contract with WVSWMA. A double missed pick-up is defined as the failure to collect material that was properly set out from the same customer on two consecutive scheduled pickup days. WVC&R incurred 30 instances of a double missed pick-ups in FY 21-22 alone. Liquidated Damages assessments have been made for these missed pick-ups and for "double-misses" annually, with over \$7,000 of assessments made in the past year.

### **Findings**

LSI has met performance standards related to driver safety training and CSR training or activities. While reference checks with the contacts WC provided did not yield complaints about customer service or missed collections, HF&H's personal experience as contract manager for districts WC serves demonstrates that this has been an issue for WC.

### **Recommendations**

HF&H recommends that LSI maintain a local, bay area call center and retain the number of CSRs required in the agreement in order to help ensure that call response times do not increase and negatively impact customer experience should assignment be granted. HF&H also recommends that new CSR\*\*s continue with the training protocols currently in place and that new CSR hires take "ride-alongs" with drivers in Livermore to familiarize themselves with the service area and meet with City staff periodically to get the City's perspective on community concerns, programs, and services.

#### **A-4. Billing Analysis**

HF&H reviewed 35 invoices selected from LSI's April billing database to test for billing errors. Of the 35 selections, 15 were from residential customers, 15 were from commercial and multi-family customers, and 5 were from roll-off customers. The selections included a variety of service levels and miscellaneous charges.

Each invoice was compared to the current rate sheet published on LSI's website. Charges were checked against the rate sheet items for corresponding customer types and service levels. HF&H noted the amount LSI billed for each charge, and the correct charge for each line item.

#### **Findings**

There were no systemic issues found in LSI's billing review and all reviewed invoices were correct.

#### **Recommendation**

HF&H recommend that in addition to third-party billing audits, LSI perform periodic audits of their billing system to ensure customers are charged according to the rate sheet.

#### **A-5. Facilities Use Analysis**

The City approved specific disposal, recyclable processing, composting, and C&D processing sites for LSI to deliver the City's material. The approved disposal and C&D processing site is Republic Service's Vasco Sanitary Landfill in unincorporated Alameda County. The approved recyclables processing site is Alameda County Industries LLC in San Leandro. The approved composting facility is Blossom Valley Organics North Composting Site in Vernalis. HF&H confirmed LSI was using the approved disposal site by reviewing LSI's Recycling and Disposal Reporting System (RDRS) export detailing disposal by facility for 2020 and 2021. HF&H confirmed that LSI uses the approved processing facilities for the City through review of weight tickets for trucks on recyclable materials, compostable materials, and C&D routes.

#### **Findings**

LSI is in compliance with delivery of materials to the approved facilities listed in the Agreement.

WC has recently been noticed of an intent to assess liquidated damages for delivering commercial organic material collected in the WWSWMA service area to the residential composting facility, resulting in disposal of more than 60 loads of commercial and multi-family organic materials. WC self-reported the error and indicated that it was done in an effort to save costs. The issue was immediately corrected, and WC was fully cooperative in supplying records and reports evidencing the matter.

#### **Recommendation**

It is recommended that LSI add a tonnage reconciliation by facility table to quarterly and annual tonnage reports for the City. HF&H also recommends that tonnage audits be performed periodically to ensure that material continues to be sent to the approved facilities should assignment be approved.

#### **A-6. Asset Analysis**

HF&H conducted a detailed review of LSI's vehicle capital. Current vehicle inventory data was provided by LSI and compared to the vehicle capital proposed in Exhibit G2 Form 4 of the Agreement.

**Findings**

**Livermore Vehicle Capital**

LSI proposed 39 total vehicles to service the City in the Agreement signed in 2008 and added an additional 3 vehicles during the Rate Period 8 cost-based review. As of the 2022 inventory listing, LSI owns 56 vehicles, which is more than the minimum requirements to service the City. Additionally, HF&H confirmed that the collection vehicles are operating on compressed natural gas (CNG), as required in the Agreement, by reviewing fuel purchases during the most recent cost-based rate adjustment and noting the continuation of the CNG index in the rate adjustment methodology. A summary of the vehicles is provided in Figure 1 below.

**Figure 1: LSI Vehicle Inventory Capital**

LSI Vehicle Inventory Capital				
Vehicle Type	Total Vehicles Proposed	Revised Proposed Vehicles	Total Vehicle Inventory*	Difference (Inventory - Proposed)
Side Loader	18	18	18	0
Front & Rear Loader	7	8	16	8
Roll-Off	4	5	6	1
Utility	10	11	16	5
<b>Total Vehicles</b>	<b>39</b>	<b>42</b>	<b>56</b>	<b>14</b>

*\*Total per 2022 Inventory Listing*

The third amendment to the Agreement required LSI to provide a fleet of new collection vehicles sufficient in number and capacity to efficiently perform the work required in the Agreement. Based on LSI’s inventory listing, the overall number of new collection vehicles is above the minimum required per Exhibit G2. However, there are two few side loaders and four additional front and rear loaders. LSI is likely using the additional front and rear loading vehicles instead of the originally proposed side loaders based on the account types within the City. The findings are summarized in the table below.

**Figure 2: LSI New Vehicle Inventory Capital**

LSI Vehicle Inventory- New Collection Capital				
Vehicle Type	Total Vehicles Proposed	Revised Proposed Vehicles	New Vehicle Inventory*	Difference (Inventory - Proposed)
Side Loader	18	18	16	-2
Front & Rear Loader	7	8	12	4
Roll-Off	4	5	5	0
<b>Total Vehicles</b>	<b>29</b>	<b>31</b>	<b>33</b>	<b>2</b>

*\*Vehicles purchased in 2021 or 2022, as detailed in the 2022 Inventory Listing*

**Recommendation**

- No recommendations

**A-7. Reporting Standards Analysis**

LSI’s monthly, quarterly, and annual reports are subject to the information requirements described in Section 6.3 and Section 6.4 of the Agreement. While none of the reports included documentation related

to submission dates in order to verify timely submission to the City, in our conversations with the City they did not indicate to HF&H that any of LSI's reports were submitted late. When reviewing annual, quarterly, and monthly reports, HF&H noted any inaccuracies or missing information and included them in the findings below.

## Findings

### Monthly Reporting

HF&H found that LSI was generally compliant with the monthly reporting requirements, with the following exceptions:

#### Non-Compliant

- A list of accounts that are sixty (60) days past due, including information related to the account or the methods of collection of the bad debt, was not included in the monthly reports.
- The annual community garage sale event, which only occurred in Rate Year 11 (2021), was not documented in the June or July 2021 monthly report.

#### Partial Compliance

- The monthly reports did not include sufficient detail related to the marketable tonnage or residual tonnage of compostable materials or C&D materials.
- The monthly reports did not include sufficient detail related to new multi-family and commercial recyclable and compostable material accounts for cart, bin, and drop box service.

### Quarterly Reporting

HF&H found that LSI's quarterly reports were incomplete or missing key information, as further described below:

#### Non-Compliance

- Quarterly reports did not include current or historical quarterly averages of data for comparison.
- No information was provided on participation percentages by service type and material stream or on the percentage of commercial service volume that is recyclable material and compostable material.
- No information was provided related to pilot and new programs or a summary assessment of the overall solid waste, recyclable materials, and compostable materials programs from LSI's perspective.
- Neither a vehicle inventory nor an education plan for the coming rate period were included in the quarterly reports.

#### Partial Compliance

- Account information, tonnage data, and diversion levels included in the quarterly reports were described in insufficient detail.
- While the customer service representative trainings were provided in quarterly reports, the reports did not include the date and time of the next quarter's meeting.
- A revenue report summarizing monthly revenue was included in the quarterly reports, but it did not compare the revenues with the compensation and gross rate revenue expectations.

### Annual Reporting

HF&H found that LSI's annual reports were incomplete or missing key information, as further described below:

#### Non-Compliance

- The annual reports did not include LSI's annual financial statements, an equipment inventory, sufficient personnel details, material revenues, a recyclable materials market plan, a commercial and multi-family program performance report, or the income-based subscription report.

#### Partial Compliance

- Route information, productivity statistics, operational changes, and historical tonnage were provided in the annual report, but it did not include all details as required in the Agreement.

### Recommendation

- LSI should compare the reporting requirements as described in Sections 6.3 and 6.4 and ensure all future monthly, quarterly, and annual reports to include all reports, documents, and detail as required in the Agreement. Due to issues identified with regard to public education in section 2.A.2 of this report above, particular focus should be placed on provision of public education plans that should be provided as part of reports to the City.

## A-8. Fee Payment Review

HF&H reviewed a random selection of LSI's fee remittances for the City for accuracy and completeness.

### Findings

- HF&H recalculated the 11% franchise fee for May 2021 through November 2021 and tied the monthly remittance to the receipts received by the City. No variances in calculation were found in our selection.
- LSI remitted the complete Franchise Monitoring and Enforcement Fee, Street Sweeping Fee, Vehicle Impact Fee, and Neighborhood Preservation Fee for Rate Year 9, Rate Year 10, and Rate Year 11. HF&H's recalculation of the annual increase of the various fee yielded small variances from the total remitted by LSI due to rounding. The variance is insignificant in comparison to the total remittance.
- LSI remitted the complete SB 1383 Fee for Rate Year 10 and Rate Year 11. HF&H's recalculation of the SB 1383 Fee's annual increase yielded small variances from the total remitted by LSI due to rounding. The variance is insignificant in comparison to the total remittance.

### Recommendation

HF&H recommends that both the City and LSI continue to review fee payments to make sure that they are in compliance with the Agreement. That includes making sure fees are escalated appropriately each year where allowed by the Agreement.

## A-9. Insurance and Performance Bonds Review

HF&H reviewed the insurance and performance bond requirements listed in Section 9.5 of the Agreement. A summary of LSI's insurance requirements is provided in Figure 3 below. LSI provided copies of current

insurance certificates and the performance bond for HF&H to review. A summary of documents provided by LSI is included in Figure 3 as well.

**Figure 3: Summary of Insurance Requirements per Agreement**

Insurance Requirement	Coverage of Insurance	Provided by LSI
Comprehensive General Liability	\$10,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage.	Certificate of Liability Insurance for Commercial General Liability of \$1,000,000 per occurrence, including injury and property damage.
Automotive Liability	\$10,000,000 combined single limit per accident for bodily injury and property damage.	Certificate of Liability Insurance for Automobile Liability of \$1,000,000 combined single limit.
Worker’s Compensation and Employer’s Liability	Limit of \$1,000,000 per accident.	Certificate of Liability Insurance for Workers Compensation and Employer’s Liability of \$1,000,000 each accident
Employee Blanket Fidelity Bond	\$50,000 per Employee covering dishonesty, forgery, alternation, theft, disappearance, and destruction	Certificate of Liability for Crime of \$1,000,000
Environmental Impairment Liability	\$10,000,000 covering liability arising from release of pollution at the Approved Disposal Facility	Certificate of Liability for Pollution of \$1,000,000
Performance Bond	\$3,000,000 adjusted every three years to equal three (3) months of annual Gross Revenue.	Performance Bond of \$5,000,000 with an increase to \$7,250,000 in July 2020.
		Umbrella Liability of \$10,000,000 each occurrence and in aggregate.
		Certificate of Property Insurance of \$5,000,000 blanket building and personal property coverage, and \$7,000,000 Equipment Breakdown.



## Findings

HF&H has found that LSI's insurance requirements do not conform exactly to the requirements in the Agreement. As shown above, the titles of the insurance, the coverage levels and the use of an umbrella policy do not appear to be in line with the minimum insurance requirements. While the umbrella policy may provide financial coverage to insurance areas with deficient coverage, HF&H is not an insurance expert and cannot assert an opinion on the completeness of coverage through alternative insurance mechanisms. HF&H recommends that the City's Risk Manager review the documents provided to HF&H and determine whether LSI has satisfied the minimum insurance requirements and continues to update and meet the minimum performance bond amount.

## Recommendation

HF&H recommends LSI review the minimum requirements of the Agreement and obtain revised insurance coverage that meets the qualitative and quantitative requirements of the Agreement. HF&H also recommends the City's Risk Manager follow-up with LSI in the coming months to confirm LSI has obtained revised insurance coverage and annually to confirm LSI is maintaining sufficient coverage.

## A-10. Liquidated Damages Assessment

HF&H requested information from LSI and the City to determine whether any liquidated damages have ever been assessed against LSI. LSI claims that no liquidated damages have been assessed or paid to customers or local governments within the past five years. The City has confirmed LSI has not breached contract or been assessed liquidated damages in the past five years.

HF&H inquired about liquidated damages and breaches of contract assessed against WC during reference checks. No respondents noted that liquidated damages had been assessed. WC represented to HF&H staff through a request for information that no liquidated damages had been assessed in the past five years. As the Executive Director for WWSWMA, HF&H is aware that over the past five years WVC&R (WC affiliate) has been assessed liquidated damages annually in an average amount exceeding \$10,000 each year.

## Findings

WC stated that they had not paid liquidated damages to customers or local governments related to solid waste operations when, in fact, they had. HF&H reached out to WC to inquire why these liquidated damages were not reported in the request for information. WC stated that as a publicly traded company they are overseen by the Securities and Exchange Commission (SEC) and the Financial Accounting Standards Board (FASB) and had no liquidated damages that met the materiality threshold for reporting requirements of those two entities, and therefore did not report those damages as they did not believe them to be relevant. Upon a second request for all liquidated damages assessed upon WC, the company provided liquidated damages assessed by the WWSWMA as a result of performance standards violations and facilities use violations as described in sections A.3 and A.5 of this report.

## Recommendation

HF&H recommends that the City, LSI, and WC review the performance obligations to ensure that operations are in compliance, and continue to be in compliance with the Agreement. The City has similar performance standards and liquidated damage thresholds to the WWSWMA agreement, and the City should continue to monitor the reports and service provided by LSI or the acquiring company should

Assignment be granted. Should changes in collection quality or reliability against the performance standards of the Agreement degrade, the City should work with its contractor to add resources to remedy those issues.

## **B. Review of Assignment Terms**

HF&H reviewed the proposed terms of the change in control between the Franchisee and Assignee, which included the information required by Section 12.5 of the Agreement. This review, along with the review performed in Section 2.C Review of Financial Condition of Franchisee and Assignee (below), is intended to assess whether the proposed sale would create undue risk to the City and/or ratepayers resulting from the transaction.

### **Findings**

Upon review of the terms of Assignment (and the review of the financial condition of the Franchisee and Assignee seen in Section 2.C below), HF&H has concluded that the Assignee should be able to make a reasonable return on investment without creating undue risk to the City and/or ratepayers resulting from the transaction. Calculations based on the financial statements provided by the Franchisee show the Franchisee is in good health and meets, and should continue to meet, favorable returns based on industry standards. Additionally, the return-on-investment calculation has been demonstrated to fall within reasonable industry ranges.

Additionally, the acquisition of this book of business will allow for WC to potentially benefit from extension of the Agreement, along with the strategic benefit of being the incumbent service provider should the City wish to go out to a competitive request for proposal.

### **Recommendation**

HF&H recommends that the City continue to monitor operations and ensure that the Assignee continues to provide operations that meet the obligations of the Agreement throughout the remaining term of the Agreement. LSI should maintain the current customer service/outreach manager position, and three outreach/public education positions, along with its four customer service representatives, currently staffed to serve the City exclusively. LSI also should maintain its current accounting/billing staffing levels of 0.5 FTE controllers, 1 FTE staff accountant, and 2 FTE accounting clerks. These recommendations are essential to maintaining the level of customer service that the City currently receives. The robust reporting requirements, performance and billing reviews, along with the scheduled cost-based rate adjustments, should be sufficient to monitor and ensure that the Assignee is continuing to operate in accordance with the Agreement.

## **C. Review of Financial Condition of Franchisee and Assignee**

HF&H reviewed financial statements and other financial materials from both the Franchisee and Assignee to determine the financial health and stability of both. This included reviewing LSI's and WC's income statement and balance sheet for two full years and documenting key financial ratios. HF&H compared these financial ratios to benchmarks for companies of a similar size within the solid waste industry. Based on this review and the information obtained during Section 2.B (above), HF&H has provided the results of this analysis and its opinion on whether the individual financial performance of the company is adequate to recover a reasonable return on the investment of the Assignee, and to maintain ongoing operating costs of the Franchisee without compromising operational performance under the Agreement. As appropriate, HF&H worked with WC, the proposed Assignee, to determine the confidentiality of various

documents provided by the Franchisee and Assignee and established appropriate procedures in maintaining that confidentiality.

HF&H calculated five financial ratios as described below:

**Current Ratio:** The current ratio roughly measures a company’s ability to pay its current obligations. It is a measure of liquidity; the higher the ratio, the more liquid. It is calculated as the Total Current Assets / Total Current Liabilities.

**Quick Ratio:** The quick ratio is a more conservative measure than the current ratio to measure a company’s ability to pay its obligations using only the most liquid assets. The higher the ratio, the more liquid. It is calculated as (Cash + Accounts Receivable) / Total Current Liabilities.

**Debt to Equity Ratio:** The debt to equity ratio measures the relationship between capital contributed by creditors and capital contributed by owners. A low ratio indicates greater financial safety and borrowing flexibility. It is calculated as Total Liabilities / Owners Equity.

**Current Debt to Worth Ratio:** The current debt to worth ratio expresses the relationship between capital contributed by owners and current capital contributed by creditors. The lower the ratio, the more easily it can cover or meet its debt obligation without having to sell a lot of assets. It is calculated as Current Liabilities / Net Worth

**Profit Margin:** The profit margin calculation measures a company’s return on total sales. The higher the margin, the more return on its operations. It is calculated as Profit Before Taxes / Total Sales.

**Findings**

As summarized in the table below, WC and LSI are in equal standing in 2020 as compared to the industry benchmarks, but WC is slightly more favorable in 2021. The financial performance of WC is adequate to recover a reasonable return on the investment and maintain ongoing operating costs without compromising operational performance under the Agreement.

**Figure 4: Financial Ratio Benchmarking – LSI**

Type of Ratio	Measurement	Reporting Year				Ratios as Compared to Industry	
		2021	Industry 2021-22 <sup>1</sup>	2020	Industry 2020-21 <sup>1</sup>	2021	2020
Liquidity	Current Ratio	0.81	1.20	2.39	1.10	Less Favorable	More Favorable
	Quick Ratio	0.32	1.00	0.43	0.90	Less Favorable	Less Favorable
Capital Structure	Debt to Equity Ratio	2.52	2.00	1.57	2.50	Less Favorable	More Favorable
	Current Debt to Worth	0.45	0.79	0.34	0.59	More Favorable	More Favorable
Operating	Profit Margin	18.10%	6.90%	13.59%	6.00%	More Favorable	More Favorable

<sup>1</sup> LSI RMAU Benchmark ID: 562111 Solid Waste Collection Financial Ratio Benchmarks for annual sales equal to or greater than \$25million.

# of More Favorable	2	4
# of Less Favorable	3	1
# of Even	0	0

**Figure 5: Financial Ratio Benchmarking – WC**

Type of Ratio	Measurement	Reporting Year				Ratios as Compared to Industry	
		2021	Industry 2021-22 <sup>1</sup>	2020	Industry 2020-21 <sup>1</sup>	2021	2020
Liquidity	Current Ratio	0.84	1.20	1.37	1.10	Less Favorable	More Favorable
	Quick Ratio	0.70	1.00	1.21	0.90	Less Favorable	More Favorable
Capital Structure	Debt to Equity Ratio	1.10	2.00	1.04	2.50	More Favorable	More Favorable
	Current Debt to Worth	0.18	0.79	0.15	0.59	More Favorable	More Favorable
Operating	Profit Margin	12.53%	6.90%	4.66%	6.00%	More Favorable	Less Favorable

<sup>1</sup>WC RMAU Benchmark ID: 562111 Solid Waste Collection Financial Ratio Benchmarks for annual sales equal to or greater than \$25million.

# of <b>More</b> Favorable	3	4
# of <b>Less</b> Favorable	2	1
# of <b>Even</b>	0	0

### Recommendation

LSI and WC appear to be in good financial standing. No Recommendation.

## D. Review of Experience and Qualifications of Assignee

HF&H reviewed information regarding the experience, qualifications, and performance of the Assignee to assess their ability to perform at or above the levels of the current Franchisee. The experience and qualifications review included an evaluation of biographies, case studies, organizational charts, and reference checks. The performance evaluation included a review of WC’s regulatory violations and litigation history.

### Findings

#### Experience and Qualifications

WC represents that it “will continue to utilize the same personnel, vehicles and other equipment as exists today to fulfill all components of the Franchise Agreement.” Bernadette Camara will continue to manage day to day operations, and will report to Paul Nelson, who will in turn report to Dan Schooler. Furthermore, it does not appear that any lower-level staff will be affected by the change in control.

Reference checks were performed with regard to WC and other communities it serves. Of the references who were responsive to our calls and emails for discussion, half rated their overall experience with Waste connections a 10/10, with no respondent giving lower than an 8/10. While there may be some bias in reference checks, as it is unlikely a service provider would list a reference they are aware they have a bad relationship with, the results were overwhelmingly positive. Criticism of WC was related to disconnect between the local team and the corporate approval process and discussion about the process the local teams needed to undergo in order to get approval from corporate in order to resolve issues. All references stated they would extend their contracts with WC if given the opportunity, some went as far as saying they would extend up to 25 years.

### Litigation and Regulatory Performance

HF&H found that LSI had no liquidated damages of breaches of contract assessed. LSI did have one settlement with a former employee, the settlement amount of which would likely be considered immaterial against LSI's balance sheet.

HF&H has reviewed WC's litigation history for the past five years, and there are only a few material things to note:

- In 2017, WC's subsidiary Chiquita Canyon, LLC filed an appeal to a decision from the Los Angeles County Department of Regional Planning with regard to conditions, fees and exactions that reduced their landfill operations and represented a large increase in taxes and fees. Litigation is ongoing.
- In 2017, WC was issued a notice of violation related to a failure to pay fees. WC maintains that this fee was being contested in litigation noted above.

### Recommendation

#### Experience and Qualifications

HF&H recommends that the City require WC to notify them if, and when, any key staff, reporting, accounting, outreach and education, or CSR positions become vacant. If and when vacancies occur, the Assignee should provide the City with updates about attempts to fill the position so that the current staffing metrics are maintained. Additionally, HF&H believes that a performance review should be performed within the first two years of Assignment should it be granted in order to ensure the quality of service rate payers receive is maintained and that all positions remain filled.

#### Litigation and Regulatory Performance

None of the litigation and regulatory issues identified are directly related to WC's operations. The City may wish to periodically monitor WC's compliance with applicable laws through the periodic performance and billing reviews that are allowed under the Agreement.