

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

**A RESOLUTION APPROVING THE SECOND AMENDMENT TO THE
THIRD AMENDED AND RESTATED FRANCHISE AGREEMENT**

On September 28, 2009, the Livermore City Council adopted Resolution No. 2009-189 approving a franchise agreement for solid waste collection services: *Agreement between the City of Livermore and Livermore Sanitation, Inc. for Solid Waste, Recyclable Materials and Compostable Materials Services* (the "Original Agreement").

On May 9, 2011, the City Council adopted Resolution No. 2011-069 approving the *Amended and Restated Agreement between the City of Livermore and Livermore Sanitation, Inc. for Solid Waste, Recyclable Materials and Compostable Materials Services*.

On September 8, 2014, the City Council adopted Resolution No. 2014-141 approving the *Second Amended and Restated Agreement between the City of Livermore and Livermore Sanitation, Inc. for Solid Waste, Recyclable Materials and Compostable Materials Services*.

On June 8, 2015, the City Council adopted Resolution No. 2015-075 approving the Special Rate Review Amendment to the Franchise Agreement.

On November 9, 2015, the City Council adopted Resolution No. 2015-157 approving the Second Amendment to the Franchise Agreement.

On April 27, 2020, the City Council adopted Resolution No. 2020-051 approving the *Third Amended and Restated Agreement between the City of Livermore and Livermore Sanitation, Inc. for Solid Waste, Recyclable Materials and Compostable Materials Services* (the "Original Franchise Agreement").

On May 9, 2022, the City Council adopted Resolution No. 2022-076 approving the First Amendment to Agreement for Services amending the Original Franchise Agreement (the Original Franchise Agreement as amended by such First Amendment being referred to as the "Franchise Agreement").

On October 19, 2021, LSI staff notified the City that they planned to sell all shares of LSI to another company, Waste Connections US, Inc. ("Waste Connections").

On October 21, 2022, Waste Connections submitted a final letter of commitment to the City which is attached hereto as Exhibit A.

Section 12.5 of the Franchise Agreement with LSI requires City Council approval of any assignment and reserves the right for the City to conduct an assignment review.

On September 28, 2022, HF&H Consultants finalized their Assignment Report which is attached hereto as Exhibit B.

As a result of the review, City staff determined that Waste Connections meets the minimum criteria for the consideration of the Assignment based on the information provided.

At a public City Council meeting, the City Council agreed to the assignment and the associated amendments to the Franchise Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that:

1. Waste Connections provided the Letter of Intent, dated October 21, 2022, outlining its commitments to the City and its residents, which is attached hereto as Exhibit A and incorporated by this reference. The City has relied on the commitments and warranties in that letter and the Assignment Report for the adoption of this Resolution and its approval of the Second Amendment to the Franchise Agreement as set forth below.

2. The City Manager is authorized to sign on behalf of the City of Livermore, the Second Amendment to the Franchise Agreement, attached hereto as Exhibit C. A copy of the Franchise Agreement is on file in the Office of the City Clerk.

3. Authorizes the City Manager to take whatever actions are necessary and appropriate to carry out the purpose and intent of this resolution, including approving minor changes to the proposed Second Amendment.

4. This Resolution is not subject to the requirements of California Environmental Quality Act ("CEQA"). This Resolution is not a "project" within the meaning of Section 15378 of Title 14 of the California Code of Regulations ("State CEQA Guidelines") because it has no potential for resulting in direct or indirect physical change in the environment. The amendment of the franchise agreement is exempt from CEQA review because it does not constitute a project under CEQA pursuant to Section 15378(b)(5) of the State CEQA Guidelines, which provides that organizational and administrative activities of governments that will not result in physical changes in the environment are not considered projects for CEQA purposes. The documents and materials that constitute the record of proceedings on which these findings have been based are located at the City Clerk's office. The custodian for these records is the City Clerk of the City.

On motion of Council Member Munro, seconded by Vice Mayor Bonanno, the foregoing resolution was passed and adopted on November 28, 2022, by the following vote:

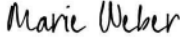
AYES: Council Members Carling, Kiick, Munro, Vice Mayor Bonanno, and Mayor Woerner

NOES: None


ABSENT: None

ABSTAIN: None

ATTEST:

DocuSigned by:

803794826BC44BB
Marie Weber
City Clerk
12/5/2022 | 1:38 PM PST

APPROVED AS TO FORM:

DocuSigned by:

ACD00D4E252C458
Jason Alcala
City Attorney

- Exhibit A - Waste Connections, Inc. Letter of Commitment
- Exhibit B – HF&H Assignment Review Report
- Exhibit C - Second Amendment to Third Amended and Restated Franchise Agreement



WASTE CONNECTIONS, INC.
Connect with the Future®

Ronald J. Mittelstaedt
Executive Chairman

October 21st, 2022

Ms. Judy Erlandson
Public Works Manager, City of Livermore
City Hall
1052 S. Livermore Ave.
Livermore, CA 94550

via email: jaerlandson@LivermoreCA.gov

Re: **Letter of Commitment 10/21/22**

Dear Ms. Erlandson,

This letter is in response to our discussion with you on October 12TH which follows your email correspondence on October 11th. Our goal is to address your remaining concerns and provide Staff with additional support to continue moving our proposed transaction forward. All elements of our previous commitments dated September 27th and October 10th have been added to this letter for ease.

Waste Connections commits as follows:

1. Retaining current staff and related compensation:
 - a. Our plan is to retain all full-time staff members of LSI.
 - b. Regarding compensation, non-union employees will continue to receive base compensation/wages at or above current base amounts and exempt employees will have the opportunity to earn bonus or incentive compensation greater than they previously received by participating in Waste Connections' incentive compensation programs.
 - c. We will honor existing union collective bargaining agreements and the compensation arrangements set forth in those agreements.

2. Medical Benefits transition:
 - a. For Teamster and Machinist Union employees, we will continue to offer union healthcare benefits that include coverage through Kaiser Permanente. For non-union employees, we will offer a very competitive healthcare benefit package through Blue Cross Blue Shield. We will not be offering non-union medical coverage through Kaiser Permanente.
 - b. Health and Benefit Plans – at this point we haven't had an opportunity to speak with the Livermore Sanitation employees (union or non-union) about their existing plans or coverage. Our objective, as it always is, is to make the transition as smooth as possible for our employees. There will be no benefit change for the union employees which represents the majority of the employees at LSI. For the non-union employees there could be a change, but we believe it will be received favorably with enhanced benefit packages for the employees to choose from. Our intent for the non-union employees will be to keep them as financially whole as possible for comparable coverage. If they choose to select a more comprehensive benefit package it may result in an out-of-pocket expense for the employee.
3. Consistency of services and honoring franchise agreement:
 - a. We are prepared to continue to provide the same quality of service that LSI currently provides.
 - b. We will comply with all franchise agreement requirements, including but not limited to: (i) providing reports required by the agreement, (ii) adhering to the rate adjustment methodology set forth in the agreement, (iii) utilizing local billing and customer service staff, and (iv) abiding by the liquidated damages provisions set forth in the agreement.
4. EV and zero emission: As “zero-emission” collection vehicles become a viable alternative in their production capacity, cost, and durability, we will use commercially reasonable efforts to deploy them for service in the City of Livermore if that is the direction the City desires to pursue at that time. As we discussed, it will likely take several years before any such deployment commences.
5. WCN Corporate structure: Please see the attached Organization Chart.
6. References from City Staff with San Jose and Milpitas:
 - a. For San Jose, please contact Jeff Anderson at (408) 975-2518.
 - b. For Milpitas, please contact Elaine Marshall at (408) 586-2603.
7. Legal:
 - a. We agree that that we will not assign the franchise agreement to a third party for at least five years and at any time an assignment would require the City of Livermore's approval.

- b. We agree that we will prepare a guarantee form.
 - c. We agree that we will assume any potential liabilities from Livermore Sanitation, Inc.
8. SB1383- Waste Connections will partner with the City of Livermore to follow the requirements of SB 1383. Our goal is to spend the contracted \$100,000 on SB 1383 to satisfy the wishes of the City of Livermore which currently exist in the rate structure. We propose the following with the understanding that the costs are covered in the rate structure and any amount above what is currently in the franchise agreement would require reimbursement through the rate structure. It is not anticipated the below events will exceed the contracted amount at this time.
- a. Host two (2) compost giveaway events per year at the Livermore Sanitation facility at 7000 National Drive in Livermore or elsewhere within the City at locations designated by City. Attendees at each event may pick up to two (2) 1 or 1.5 cubic yard bags of compost per event. Contractor shall provide at least 3,000 bags of compost for each event.
 - b. Deliver up to one hundred (100) cubic yards of bulk compost to a location (e.g., Compost Hub) designated by City up to once each month. Compost can be picked up at each location

These compost events and the existing \$100,000 will be completed in the calendar year. We will provide the city with an outline of what we've spent related SB 1383 to encourage maximum participation.

9. Response to HF&H report – it is our commitment to adhere to the Franchise Agreement. This includes addressing the following items laid out in the HF&H report.
- a. Including a single-family search feature on the website.
 - b. Participation in City community events.
 - c. Visits to schools.
 - d. Maintaining a local call center with sufficient staffing.
 - e. Adhering to customer service call wait times.
 - f. Commitment to avoid missed pickups.
 - g. Commitment to perform periodic billing audits.
10. LSI will remain a wholly owned subsidiary of Waste Connections US, Inc. as Waste Connections will be acquiring the common stock in the purchase of Livermore Sanitation, Inc.
11. Logos and Branding – it is our plan to keep the existing logo and name for Livermore Sanitation, Inc. once we close on the acquisition; this is typically what we do. For example, we acquired Green Team in San Jose more than 20 years ago and they have continued under the name and logo to this day. This does not mean we will remove our right or ability to change our name or logo if we feel there is a benefit to our organization

or communities we serve in the future, and we would notice the City of such intent should it ever occur.

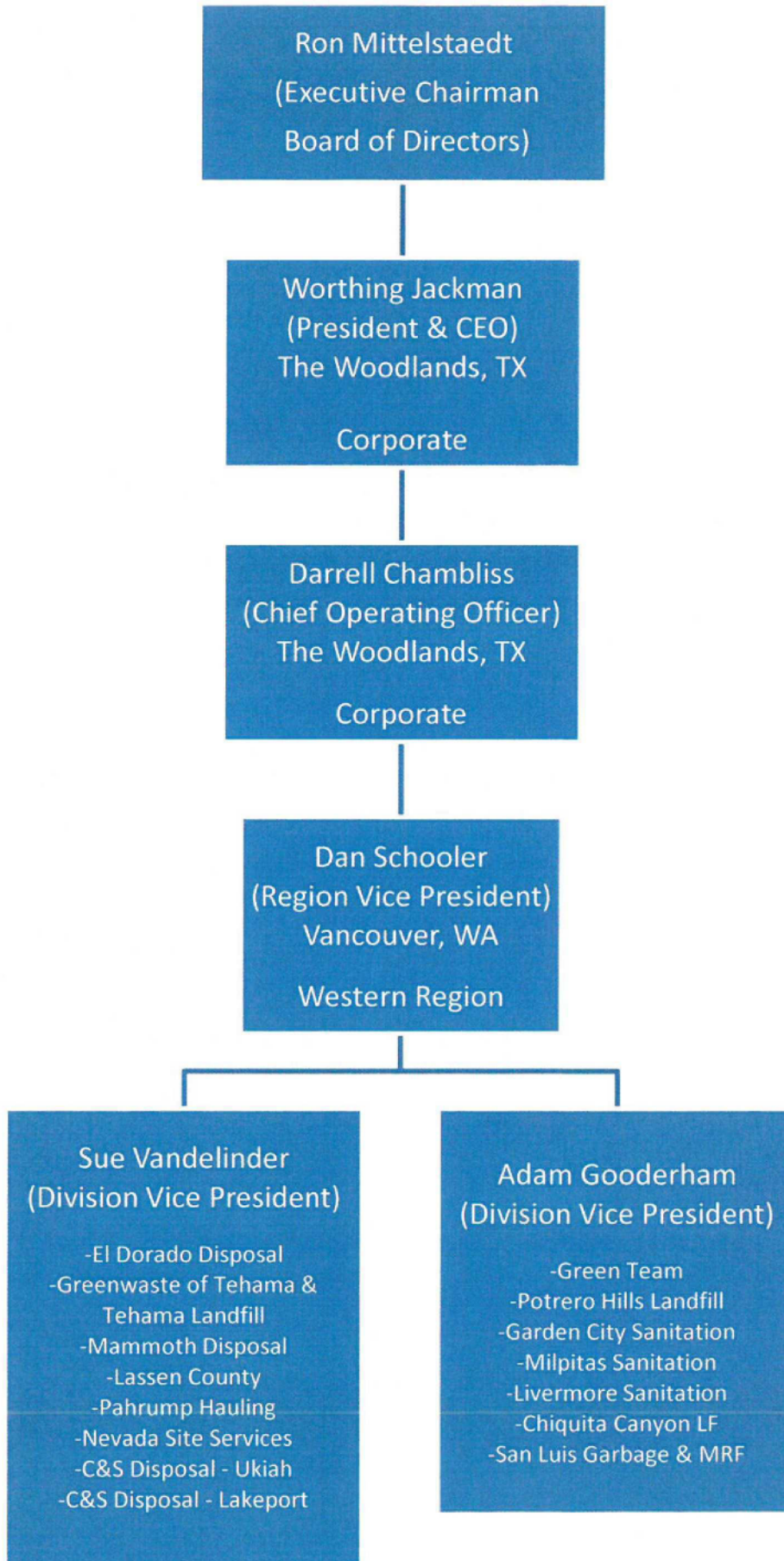
12. Outreach plan- The Waste Connections team is working with Livermore Sanitation, Inc. team on submitting a proposed post card following the request of the City of Livermore, and posting a Frequently Asked Questions document on the Livermore Sanitation website. City staff will have a proposal draft very soon to approve before we go to print.

We acknowledge that both the HF&H report and this letter will be made public. If you have any questions about the matters discussed above, please call me directly at (916)-931-0020.

Sincerely,



Ron Mittelstaedt
Executive Chairman
Waste Connections, Inc
4359 Town Center Blvd, Suite 215
El Dorado Hills, CA 95762



September 28, 2022

Ms. Judy Erlandson
Public Works Manager
Environmental Services Division
Public Works Department
City of Livermore
jaerlandson@cityoflivermore.net

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 WVSWMA 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	Revised	Total Vehicle	Difference
	Proposed	Proposed Vehicles	Inventory*	(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
Total Vehicles	39	42	56	14

**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	Revised	New Vehicle	Difference
	Proposed	Proposed Vehicles	Inventory*	(Inventory - Proposed)
Side Loader	18	18	16	-2
Front & Rear Loader	7	8	12	4
Roll-Off	4	5	5	0
Total Vehicles	29	31	33	2

**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 WVSWMA, 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 WVSWMA 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 WVSWMA 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 ¹	2020	Industry 2020-21 ¹	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

¹ 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 ¹	2020	Industry 2020-21 ¹	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

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

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

SECOND AMENDMENT TO THIRD AMENDED AND RESTATED FRANCHISE AGREEMENT

THIS SECOND AMENDMENT TO THIRD AMENDED AND RESTATED FRANCHISE AGREEMENT, AS AMENDED (this "Amendment") is made this 28th day of November 2022, by and between the CITY OF LIVERMORE, a municipal corporation (the "City"), LIVERMORE SANITATION, INC., a California corporation (the "Contractor"), and WASTE CONNECTIONS US, INC., a Delaware corporation ("Waste Connections"), collectively, "the Parties," with reference to the following:

A. The City and the Contractor are parties to that certain *Third Amended and Restated Agreement Between the City of Livermore and Livermore Sanitation, Inc. for Solid Waste, Recyclable Materials and Compostable Materials Services*, dated April 27, 2020, as amended (the "Franchise Agreement");

B. The Contractor, Waste Connections and other parties have entered a Stock Purchase Agreement, dated as of April 27, 2022, as amended (the "Purchase Agreement");

C. At a closing (the "Closing") to be held on or about December 1, 2022, in accordance with the Purchase Agreement, the current shareholders of Contractor will sell all the common stock in the Contractor (the "Contractor Shares") to Waste Connections, which will result in a change in majority control of the Contractor from the current owners of the Contractor; and

D. The Parties wish to document the terms and conditions upon which the City relies in consenting to the sale of Contractor Shares to Waste Connections (the "Assignment") as set forth in the Purchase Agreement and to amend the Franchise Agreement as permitted by Section 13.5 thereof and as set forth below.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants hereinafter set forth and other consideration the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. Consent to Assignment. From and after the Closing, the Contractor shall continue to possess all of its right, title and interest in the Franchise Agreement. The Contractor hereby agrees to keep, perform, fulfill and be bound by all of the terms, covenants and conditions required to be kept, performed, and/or fulfilled under the Franchise Agreement from and after the Closing.

2. Condition to Approval. As a condition of the City's approval of the Assignment of the Franchise Agreement, Waste Connections, the Contractor and the City agree as follows.

(a) Waste Connections' Acquisition Costs. Waste Connections agrees that amounts it pays to the current owners of the Contractor under the Purchase Agreement or any other costs incurred by the Contractor or Waste Connections in acquiring or selling stock or real property under the Purchase Agreement shall not, in calculating Rates or adjustments to Rates, be considered as an expense or otherwise affect Rates charged by the Contractor for performing services in the City pursuant to the Franchise Agreement.

(b) Payment of Costs. Contractor paid the City an advance against the City's costs to review the Assignment equal to \$100,000 as required by Section 12.5.1 A. of the Franchise Agreement.

(c) Payment of Assignment Fee. Contractor shall pay the City an assignment fee equal to 1% of Contractor's Gross Revenues for the most recently completed fiscal year as required by Section 12.5.1 B. of the Franchise Agreement. Such fee shall be paid prior to, but conditioned upon, the Closing.

(d) Contractor Employees. Waste Connections shall provide non-union employees of Contractor with base compensation, salary, and wages at or above the current amounts as of the effective date of the Amendment. Non-union exempt employees shall be eligible for bonus or incentive compensation at amounts and levels greater than provided as of the effective date of the Amendment. Non-union employees shall receive health and other benefits that are substantially similar to those provided by Contractor. Waste Connections shall comply with the terms and conditions of any collective bargaining or similar agreements applicable to Contractor's union employees, including salaries and wages and health and other benefits.

(e) Guaranty. Waste Connections shall execute and deliver a guaranty in the form set forth in Exhibit A, subject to any edits as to form as approved by the City Attorney, guarantying Contractor's performance of the Franchise Agreement, as it may be amended. Such executed guaranty shall be provided prior to the Closing.

(f) Other Terms and Conditions. As material consideration for the City's approval of the Assignment, the Parties agree to amend the Franchise Agreement as otherwise set forth in this Amendment.

3. Additional Obligations. Waste Connections and the Contractor hereby represent, affirm and warrant to City:

(a) that Waste Connections has at least ten (10) years of Solid Waste, Recyclable Material, and Organic Materials management experience on a scale equal to or exceeding the scale of operations conducted by the Contractor under the Franchise Agreement;

(b) that in the last five (5) years, Waste Connections has not been the subject of any administrative or judicial proceedings initiated by a federal, State or local agency having jurisdiction over its operations due to an alleged failure to comply with federal, State or local Applicable Law;

(c) that Waste Connections conducts its operations in a safe and environmentally conscientious manner; and

(d) that Waste Connections conducts its Solid Waste, Recyclable Material, and Organic Materials management practices in accordance with sound management practices in full compliance with all federal, State and local laws regulating the handling of Solid Waste, Recyclable Material, and Organic Materials including Hazardous Substances.

(e) that Waste Connections' financial resources are sufficient to ensure its ability to meet all of Contractor's obligations under the Franchise Agreement in a timely and efficient manner.

4. Limitation of Future Assignments. The first paragraph of Section 12.5.1 of the Franchise Agreement shall be amended to read in full as follows:

“Contractor shall not enter into negotiations to assign its rights, or delegate, subcontract or otherwise transfer any of Contractor’s obligations under this Agreement, which shall include any Assignment under Section 12.5, to any other Person for a period of five (5) years from the Closing as defined in the Amendment.”

5. Compost Events. Sections 5.23 and 5.24 are hereby added to the Franchise Agreement to read in full as follows:

5.23 Compost Giveaway Event

Contractor shall host two (2) compost giveaway events per year at the Livermore Sanitation facility at 7000 National Drive in Livermore or elsewhere within the City at locations designated by City. Attendees at each event may pick up to two (2) 1 or 1.5 cubic feet bags of Compost Product per event. Contractor shall provide at least 3,000 bags of Compost Product for each event.

5.24 Compost Delivery

Deliver up to one hundred (100) cubic yards of bulk Compost Product to a location (e.g. a Compost Hub) designated by City up to once each month. Compost Product can be picked at each location.

6. Defined Terms. Except as otherwise indicated in this Amendment, any capitalized terms shall have the definition ascribed to them in the Franchise Agreement.

7. Franchise Agreement in Effect. The Franchise Agreement remains in full force and effect and, except as provided herein, has not been modified, altered or amended in any respect and contains the entire agreement between the City and the Contractor with respect to the subject matter thereof. Going forward, the Franchise Agreement shall mean the Franchise Agreement as amended by this Amendment. In the event the Closing does not occur on or before December 31, 2022, this Amendment shall be null and void and the Franchise Agreement shall remain in effect pursuant to its terms and conditions.

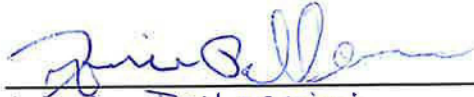
8. Counterparts. This Amendment may be signed in three (3) or more counterparts, each of which shall be deemed an original but when taken together shall constitute one and the same instrument. Counterparts may be sent for signature by email. Signatures on PDF copies thereof shall be deemed original signatures for all purposes and such PDF copies shall be admissible as evidence of the agreement in any and all administrative or judicial proceedings.

IN WITNESS WHEREOF, the Parties have executed this Amendment effective as of the day and year first above written.

CITY OF LIVERMORE

LIVERMORE SANITATION, INC.

By: _____
Name: _____
Title: _____
Date: _____

By: 
Name: Louie Pellegrini
Title: President
Date: 11-16-2022

APPROVED AS TO FORM:

WASTE CONNECTIONS US, INC.

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

APPROVED AS TO INSURANCE:

By: _____
Risk Manager/Analyst
Date: _____

Exhibit C

IN WITNESS WHEREOF, the Parties have executed this Amendment effective as of the day and year first above written.

CITY OF LIVERMORE

LIVERMORE SANITATION, INC.

By: _____

By: _____

Name:

Name:

Title:

Title:

Date: _____

Date: _____

APPROVED AS TO FORM:

WASTE CONNECTIONS US, INC.

By: _____

By: 

Name:

Name: *RONALD J. MIKKELSEN*

Title:

Title: *Executive Chairman*

Date: _____

Date: *11-16-22*

APPROVED AS TO INSURANCE:

By: _____

Risk Manager/Analyst

Date: _____

**EXHIBIT A
GUARANTY**

EXHIBIT A

THIS GUARANTY (the "Guaranty") is given as of the [] day of [], 2022, by Waste Connections US, Inc., a Delaware corporation, ("GUARANTOR"), to the City of Livermore, a California municipal corporation and general law city ("CITY").

THIS GUARANTY is made with reference to the following facts and circumstances:

A. Livermore Sanitation, Inc., a California corporation (the "CONTRACTOR") and CITY have executed that *Third Amended and Restated Agreement Between the City of Livermore and Livermore Sanitation, Inc. for Solid Waste, Recyclable Materials and Compostable Materials Services*, dated April 27, 2020, as amended ("Agreement"), which is incorporated herein by this reference.

B. Section 12.5 and 12.5.2(B) of the Agreement require the CITY's approval of any assignment of the Agreement, which may be conditioned on the assignee's provision of a guaranty to guarantee the performance of the Agreement.

C. Guarantor has proposed acquiring the common stock of CONTRACTOR as acknowledged that certain First Amendment to the Agreement, which constitutes an assignment under the Agreement.

D. CITY is willing to consent to the assignment of the Agreement as set forth in the First Amendment to the Agreement provided that GUARANTOR executes this Guaranty.

E. GUARANTOR is providing this Guaranty to induce CITY to approve the assignment of the Agreement.

NOW, THEREFORE, in consideration of the foregoing, GUARANTOR agrees as follows:

1. Guaranty of the Agreement. GUARANTOR hereby irrevocably and unconditionally guarantees to the CITY the complete and timely performance, satisfaction and observation by CONTRACTOR of each and every term and condition of the Agreement which CONTRACTOR is required to perform, satisfy or observe. In the event that CONTRACTOR fails to perform, satisfy or observe any of the terms or conditions of the Agreement, GUARANTOR will promptly and fully perform, satisfy or observe them in the place of the CONTRACTOR. GUARANTOR hereby guarantees prompt payment to CITY of each and every sum due from CONTRACTOR to CITY under the Agreement, as and when due from time to time, and the prompt performance of every other task and duty required to be performed by the CONTRACTOR under the Agreement.

2. GUARANTOR's Obligations Are Absolute. The obligations of the GUARANTOR hereunder are direct, immediate, absolute, continuing, unconditional and unlimited and, with respect to any payment obligation of CONTRACTOR under the Agreement, shall constitute a guarantee of payment and not of collection, and are not conditioned upon the genuineness, validity, regularity or enforceability of the Agreement.

3. Waivers and Subordination. The GUARANTOR shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under Section 1 hereof for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of the CONTRACTOR; (2) any amendment,

modification or waiver of any provision of the Agreement or the extension of its Term (as defined in the Agreement); (3) the actual or purported rejection of the Agreement by a trustee in bankruptcy, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (4) any waiver, extension, release or modification with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of CITY's rights or remedies against CONTRACTOR; or (5) any merger or consolidation of the CONTRACTOR with any other organization, or any sale, lease or transfer of any or all the assets of the CONTRACTOR.

The GUARANTOR hereby waives any and all rights, benefits and defenses under California Civil Code Sections 2809, 2815, 2819, 2845, 2849, 2850, 2899 and 3433 and under or based upon, directly or indirectly, California Code of Civil Procedure Sections 580a, 580b, 580d and 726, if applicable, and all other rights permitted to be waived by California Civil Code Section 2856(a) including, without limitation, the right to require CITY to (a) proceed against CONTRACTOR, (b) proceed against or exhaust any security or collateral CITY may hold now or hereafter hold, or (c) pursue any other right or remedy for GUARANTOR's benefit, and agree that CITY may proceed against GUARANTOR for the obligations guaranteed herein without taking any action against CONTRACTOR or any other guarantor or pledgor and without proceeding against or exhausting any security or collateral CITY may hold now or hereafter hold. CITY may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against CONTRACTOR or any other guarantor or pledgor without impairing CITY's rights and remedies in enforcing this Guaranty. The GUARANTOR hereby waives and agrees to waive at any future time at the request of CITY, to the extent now or then permitted by applicable law, any and all rights which the GUARANTOR may have or which at any time hereafter may be conferred upon it, by statute, regulation or otherwise, to avoid any of its obligations under, or to terminate, cancel, quit or surrender this Guaranty. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not affect the liability of the GUARANTOR hereunder: (a) at any time or from time to time, without notice to the GUARANTOR, the time for CONTRACTOR's performance of or compliance with any of its obligations under the Agreement is extended, or such performance or compliance is waived; (b) the Agreement is modified or amended in any respect; (c) any other indemnification with respect to CONTRACTOR's obligations under the Agreement or any security therefor is released or exchanged in whole or in part or otherwise dealt with; (d) any assignment of the Agreement is effected which does not require CITY's approval; or (e) any termination or suspension of the Agreement arising by reason of a default by CONTRACTOR.

The GUARANTOR hereby expressly waives diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, GUARANTOR's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from CITY as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by GUARANTOR or CONTRACTOR prior to such avoidance or recovery, or (b) payment in full of any obligations then outstanding.

The GUARANTOR expressly subordinates and waives its rights to subrogation, reimbursement, contribution or indemnity with respect to performance by GUARANTOR of the obligations of CONTRACTOR guaranteed hereby, until such time as CITY receives payment or performance in full of all such obligations.

4. **Term.** This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed by CONTRACTOR, and GUARANTOR shall remain fully responsible under this Guaranty without regard to the acceptance by CITY of any performance bond or other collateral to assure the performance of CONTRACTOR's obligations under the Agreement. GUARANTOR shall not be released of its obligations hereunder so long as there is any claim by CITY against CONTRACTOR arising out of the Agreement based on CONTRACTOR's failure to perform which has not been settled or discharged.

5. **No Waivers by CITY.** No delay on the part of CITY in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on GUARANTOR shall be a waiver of any obligation of GUARANTOR or right of CITY to take other or further action without notice or demand. No modification or waiver by CITY of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by CITY and by GUARANTOR, nor shall any waiver by CITY be effective except in the specific instance or matter for which it is given.

6. **Attorney's Fees.** In addition to the amounts guaranteed under this Guaranty, GUARANTOR agrees to pay reasonable attorney's fees and all other reasonable costs and expenses incurred by CITY in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder.

7. **Governing Law; Jurisdiction.** This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of laws rules for all purposes, including, but not limited to, matters of construction, validity and performance. As the Agreement is made and performed in Alameda County, GUARANTOR agrees that any action brought by CITY to enforce this Guaranty may be brought in Alameda Superior Court or the Northern District of California as applicable. GUARANTOR appoints the following person as its agent for service of process in California:

Corporation Service Company
DBA CSC – Lawyer Incorporating Service
2710 Gateway Oaks Dr., Ste. 150N
Sacramento, California 95833

8. **Severability.** If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity shall have no effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.

9. **Binding on Successors.** This Guaranty shall inure to the benefit of CITY and its successors and shall be binding upon GUARANTOR and its successors, including a successor entity formed by a merger or consolidation, a transferee of substantially all of its assets, and its shareholders in the event of its dissolution or insolvency.

10. **Authority.** GUARANTOR represents and warrants that it has the corporate power to give this guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Articles of Incorporation and by-laws, and that the person signing this Guaranty on its behalf has authority to do so.

Exhibit C

11. **Notices.** Notice shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

To CITY: City of Livermore
Attn: City Manager
1052 S. Livermore Ave
Livermore, CA 94550 1052

To GUARANTOR: Ron Mittelstaedt
Executive Chairman
Waste Connections, Inc
4359 Town Center Blvd, Suite 215
El Dorado Hills, CA 95762


with a copy to:

Waste Connections US, Inc.
3 Waterway Square Place, Suite 110
The Woodlands, TX 77380
Attention: Senior Vice President, Deputy General Counsel

The parties may change the address to which notice is to be sent by giving the other party notice of the change.

IN WITNESS WHEREOF, GUARANTOR has executed this Guaranty on the day and year first above written.

Waste Connections US, Inc.

By: 

{Insert name}
Ronald J. M. Heistad
Executive Chairman

By: _____
_____ {Insert name}