

**RESTATED FRANCHISE AGREEMENT BETWEEN  
THE CITY OF SAN LUIS OBISPO  
AND  
SAN LUIS GARBAGE COMPANY**

For Collection and Disposal of Solid Waste, Recyclable Materials,  
and Organic Materials Within the City of San Luis Obispo

This Agreement between the City of San Luis Obispo and San Luis Garbage Company for Collection, Transportation, Diversion, Processing, marketing, and Disposal of Solid Waste, Recyclable Materials, and Organic Materials (the “Restated Franchise Agreement” or the “Agreement”), is made and entered into on \_\_\_\_\_ (as the “Effective Date”) in the State of California by and between the City of San Luis Obispo, a political subdivision of the State of California (hereafter “City”) and San Luis Garbage Company, a California corporation (hereafter “Franchisee”), each of which may be referred to individually as a “Party” or together as the “Parties”.

**RECITALS**

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

1. **WHEREAS:** The Parties entered into an Amended and Restated Franchise Agreement for Collection, Transportation, and Disposal of Solid Waste on June 3, 2022 (the “Solid Waste Agreement”); and
2. **WHEREAS:** The Parties entered into a second, separate Amended and Restated Agreement for Collection and Disposal of Recyclable Materials on June 3, 2022 (the “Recyclable Materials Agreement”); and
3. **WHEREAS:** The Parties entered into a third, separate Amended and Restated Agreement for Collection and Disposal of Organic Materials on June 3, 2022 (the “Green Waste Agreement”); and
4. **WHEREAS:** The Solid Waste, Recyclable Materials, and Green Waste Agreements provide the City with the right to direct Franchisee to modify the scope of one or more types of services, or to otherwise modify its performance under the Agreement, subject to providing additional compensation; and
5. **WHEREAS,** the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (AB 939), set forth in Public Resources Code Sections 40000 et seq., declares that it is within the public interest to authorize and require local agencies to make adequate provision for Solid Waste Handling within their jurisdiction: and,
6. **WHEREAS:** The State of California has found and declared that the amount of refuse generated in California, coupled with diminishing Disposal capacity and potential adverse environmental impacts from landfill Disposal and the need to conserve natural resources, have created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program. The State has, through enactment of AB 939 and subsequent related legislation, including but not limited to the Jobs and Recycling Act of 2011 (AB 341), the Event and Venue Recycling Act of 2004 (AB 2176), SB 1016 (Chapter 343, Statutes of 2008 [Wiggins, SB 1016]), the Mandatory Commercial Organics Recycling Act of 2014 (AB 1826), and the Short-Lived Climate Pollutants Bill of 2016 (SB 1383), directed the responsible State agency, and all local agencies, to promote Diversion and to maximize the use of feasible waste reduction, re-use, Recycling, and Composting options in order to reduce the amount of refuse that must be Disposed; and

7. **WHEREAS:** SB 1383 establishes regulatory requirements for jurisdictions, Generators, haulers, Solid Waste Facilities, and other entities to support achievement of State-wide Organic Waste Disposal reduction targets; and
8. **WHEREAS:** SB 1383 requires the City to implement Collection programs for Organic Waste and Recyclable Materials, meet Processing Facility requirements, conduct contamination monitoring, provide education, maintain records, submit reports, monitor compliance, conduct enforcement, and fulfill other requirements; and the City has chosen to delegate some of its responsibilities to the Franchisee, acting as the City's designee, through this Agreement; and
9. **WHEREAS:** The Parties have agreed to merge the Solid Waste, Recyclable Materials, and Green Waste Agreements enumerated above into one single franchise agreement through this Restated Franchise Agreement, which includes all agreements between City and Franchisee regarding Solid Waste, Recyclable Materials, and Organic Materials; and
10. **WHEREAS:** this Agreement is intended to restate and supersede all prior Franchise Agreements for Solid Waste, Recyclable Materials, and Green Waste Collection between City and Franchisee; and

**NOW, THEREFORE,** in consideration of the mutual promises, covenants, and conditions herein contained, CITY and FRANCHISEE do hereby agree as follows:

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**ARTICLE 1.  
DEFINITIONS**

For purposes of this Agreement, unless a different meaning is clearly required, the following terms shall have the following meanings:

- 1.1** “**AB 341**” means the California Jobs and Recycling Act of 2011 (Chapter 476, Statutes of 2011 [Chesbro, AB 341]), also commonly referred to as “AB 341”, as amended, supplemented, superseded, and replaced from time to time.
- 1.2** “**AB 939**” means the California Integrated Waste Management Act of 1989, (Division 30 of the California Public Resources Code), also commonly referred to as “AB 939”, as amended, supplemented, superseded, and replaced from time to time.
- 1.3** “**AB 1594**” means State of California Assembly Bill No. 1594 approved September 28, 2014. AB 1594 provides that as of January 1, 2020, the use of green material as Alternative Daily Cover does not constitute diversion through recycling and would be considered disposal.
- 1.4** “**AB 1826**” means the Organic Waste Recycling Act of 2014 (Chapter 727, Statutes of 2014 modifying Division 30 of the California Public Resources Code), also commonly referred to as “AB 1826”, as amended, supplemented, superseded, and replaced from time to time.
- 1.5** “**Affiliate**” means all businesses (including corporations, limited and general partnerships and sole proprietorships) which are directly or indirectly related to Franchisee by virtue of direct or indirect common ownership interest or common management shall be deemed to be “Affiliated with” Franchisee and included within the term “Affiliate” as used herein. An Affiliate shall include a business in which Franchisee owns a direct or indirect ownership interest, a business which has a direct or indirect ownership interest in Franchisee, and/or a business which is also owned, controlled, or managed by any business or individual which has a direct or indirect ownership interest in Franchisee. For purposes of determining whether an indirect ownership exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) “ten percent (10%)” shall be substituted for “fifty percent (50%)” in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded, and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.
- 1.6** “**Agreement**” means this agreement between City and Franchisee arranging for the Collection, Transportation, Processing, Diversion, marketing, and Disposal of Residential and Commercial Solid Waste, Recyclable Materials, and Organic Materials, as well as other services related to meeting the Diversion goals and requirements of AB 939 and SB 1383, and any future amendments hereto.
- 1.7** “**Applicable Law**” means all Federal, State, County, and local laws, regulations, rules, orders, judgments, degrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the Collection, Transportation, and Processing of Recyclable Materials, Organic Materials, and Solid Waste that are in force on the Effective Date and as may be enacted, issued, or amended during the Term of this Agreement. Applicable Law includes, but is in no way limited to, AB 939, AB 341, AB 1826, and SB 1383.

- 1.8** “**Approved Disposal Facility**” means the Cold Canyon Landfill, owned and operated by Cold Canyon Land Fill, Inc. and located at 2268 Carpenter Canyon Rd, San Luis Obispo, CA, 93401, as the primary, and Chicago Grade Landfill located at 2290 Homestead Rd, Templeton, CA, 93465, or the Santa Maria Landfill located at 2065 E Main St, Santa Maria, CA, 93454, as alternatives. All three of these have been selected by the Franchisee and approved by the City. Franchisee shall notify City before using an alternative Facility.
- 1.9** “**Approved Organic Materials Processing Facility**” means the Kompogas Facility located at 4300 Old Santa Fe Rd, San Luis Obispo, CA, 93401, and Engel & Gray Inc. Regional Compost Facility, located at 745 West Betteravia Road, Santa Maria, CA, 93455, which have been selected by the Franchisee and approved by the City.
- 1.10** “**Approved Recyclable Materials Processing Facility**” means the Materials Recovery Facility at Cold Canyon Landfill, owned, and operated by Cold Canyon Land Fill, Inc. and located at 2268 Carpenter Canyon Rd, San Luis Obispo, CA, 93401, which has been selected by the Franchisee and approved by the City.
- 1.11** “**Arranger**” means any person that arranges for the Collection, Diversion, Transfer, burning, Disposal, or Processing of any Solid Waste.
- 1.12** “**Billings**” means any and all statements or charges for services rendered by Franchisee pursuant to this Agreement.
- 1.13** “**Bin**” means a metal or plastic waste Container with capacity of approximately one (1) to eight (8) cubic yards, with a hinged lid that allows for proper closure, and with wheels (where appropriate), that is serviced by a front end-loading and/or rear-end loading Collection vehicle, including Bins with Compactors attached to increase the capacity of the Bin.
- 1.14** “**Bulky/Large Item(s)**” or “**Bulky/Large Waste**” means discarded, bulky/large household appliances, furniture, tires, carpets, mattresses, and similar bulky/large items which require special handling due to their size but can be Collected without the assistance of special loading equipment (such as forklifts or cranes) and without violating vehicle load limits. It does not include abandoned automobiles.
- 1.15** “**Bulky/Large Item Collection Program**” means the Contractor’s Collection service for Bulky Items, including bulky Green Waste.
- 1.16** “**Business Days**” mean days during which the City offices are open to do business with the public.
- 1.17** “**California Code of Regulations**” or “**CCR**” means the State of California Code of Regulations. CCR references in this Agreement are preceded with a number that refers to the relevant Title of the CCR (e.g., “14 CCR” refers to Title 14 of CCR).
- 1.18** “**California Integrated Waste Management Act of 1989**” means Public Resources Code §§ 40000 et. seq.
- 1.19** “**CalRecycle**” means California's Department of Resources Recycling and Recovery.
- 1.20** “**Cardboard**” means corrugated fiberboard consisting of a fluted corrugated sheet and one (1) or two (2) flat linerboards, as is often used in the manufacture of shipping containers and corrugated boxes. Cardboard is a subset of Recyclable Materials.

- 1.21** “**Cart**” means a plastic Container with a hinged lid and wheels that is provided by the Franchisee, approved by the City, used by the Waste Generator, serviced by an automated or semi-automated Collection vehicle, and used for collection, accumulation, and removal of solid waste from commercial or residential Premises. A Cart has capacity of 20, 35, 64 or 96 gallons (or similar volumes).
- 1.22** “**CERCLA**” means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C Section 9601, et seq.
- 1.23** “**City**” means the City of San Luis Obispo, a municipal corporation and charter city, and all the territory lying within the municipal boundaries of the City as presently existing or as such boundaries may be modified during the Term of this Agreement. The City may designate responsibilities to one or more third parties, in writing, between the City Manager and the designee.
- 1.24** “**Collect**” or “**Collection**” (or any variation thereof) means to take physical possession, Transport, and remove Discarded Materials in the form of Solid Waste, Recyclable Materials, Organic Materials (Food and Green Waste), Bulky/Large Items, and other material at the place of generation in the City.
- 1.25** “**Commercial**” shall mean of, from, or pertaining to non-Residential Premises where business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing, and industrial operations, but excluding businesses conducted upon Residential Property which are permitted under applicable zoning regulations and are not the primary use of the property.
- 1.26** “**Compactor**” means a mechanical apparatus that compresses materials together with the Container that holds the compressed materials or the Container that holds the compressed materials if it is detached from the mechanical compaction apparatus. Compactors include two (2) to eight (8) cubic yard Bin Compactors serviced by front-end loader Collection vehicles and ten (10) to fifty (50) cubic yard Drop Box Compactors serviced by Roll-Off Collection vehicles.
- 1.27** “**Complaint**” shall mean each written or orally communicated statement made by any Person, whether to City or Franchisee, alleging: (1) non-performance, or deficiencies in Franchisee’s performance of its duties under this Agreement; (2) a violation by Franchisee of this Agreement; or (3) an SB 1383 Non-Compliance Complaint as required under 14 CCR Section 18995.3.
- 1.28** “**Compost**” (or any variation thereof) includes a controlled biological decomposition of Organic Materials yielding a safe and nuisance free Compost product.
- 1.29** “**Construction and Demolition Debris**” or “**C&D**” means used or discarded construction materials removed from a Premises during the construction, repair, demolition, or renovation of a structure.
- 1.30** “**Container**” means Bins, Carts, Compactors, and Franchise Roll-Offs that are provided by the Franchisee.

- 1.31** “**Contaminant**” or “**Contamination**” means any material or substance placed into or found in a Collection Container other than the type of Source Separated material for which that Collection Container is intended or reserved. For example, anything that is not Recyclable Materials is a Contaminant if placed into or found in a Recyclable Materials Collection Container. Similarly, anything that is not Organic Materials is a Contaminant if placed into or found in an Organic Materials Collection Container.
- 1.32** “**County**” means the County of San Luis Obispo, a political subdivision of the State of California.
- 1.33** “**Customer**” means the Person whom Franchisee submits its billing invoice to and collects payment from for Collection services provided to a Premises. The Customer may be either the Occupant or Owner of the Premises.
- 1.34** “**Customer Notice**” means the Franchisee’s notice to Customer(s) as described in Section 6.2.
- 1.35** “**Designated Collection Location**” means the place an authorized Recycling agent or a Solid Waste Collector has contracted with either the City or a private entity to Collect Solid Waste, Recyclable Material, or Organic Material.
- 1.36** “**Designated Disposal Facility**” means the landfill or Transfer Station, selected by City, where Solid Waste and/or Processing Residue under this Agreement is sent for final Disposal. The Designated Disposal Facility is subject to the City’s right of direction. The Designated Disposal Facility is the Cold Canyon Landfill, and located at 2268 Carpenter Canyon Road, San Luis Obispo, CA, 93401, as the primary, and Chicago Grade Landfill or the Santa Maria Landfill are alternatives.
- 1.37** “**Designated Processing Facility**” means any properly licensed and permitted plant or site used for the purpose of sorting, cleansing, treating, reconstituting, Processing, and marketing Recyclable and/or Organic Materials, which has been arranged by Franchisee after consultation with City.
- 1.38** “**Designated Waste**” means non-Hazardous Waste which may pose special Disposal problems because of its potential to contaminate the environment, and which may be Disposed of only in Class II Disposal sites or Class III Disposal sites pursuant to a variance issued by the California Department of Health Services. Designated Waste consists of those substances classified as Designated Waste by the State, in California Code of Regulations Title 23, Section 2522 as may be amended from time to time.
- 1.39** “**Discarded Materials**” means Solid Waste, Recyclable Materials, and/or Organic Materials, including Bulky/Large Items but excluding Excluded Waste, placed by a Generator in a Container and/or at a location for the purposes of Collection.
- 1.40** “**Disposal Facility**” means a landfill or other Facility for ultimate Disposal of Solid Waste.
- 1.41** “**Disposal Site(s)**” means any properly licensed and permitted Solid Waste Facility or Facilities arranged by Franchisee after consultation with City for the ultimate Disposal of Solid Waste collected by Franchisee.
- 1.42** “**Dispose**” or “**Disposal**” (or any variation thereof) means the ultimate disposition of Solid Waste or Processing Residue at a Disposal Facility.

- 1.43** “**Divert**” or “**Diversion**” (or any variation thereof) means to prevent Discarded Materials from Disposal at landfill or transformation facilities, (including facilities using incineration, pyrolysis, distillation, gasification, or biological conversion methods) through source reduction, reuse, Recycling, Composting, anaerobic digestion, or other method of Processing, subsequent to the provisions of AB 939. Diversion is a broad concept that is to be inclusive of material handling and Processing changes that may occur over the Term, including but not limited to changes in standard industry practice or implementation of innovative (but not necessarily fully proven) techniques or technology that reduce Disposal risk, decrease costs and/or are for other reasons deemed desirable by the City.
- 1.44** “**Dwelling Unit**” means any individual living unit in a: Single-Family Dwelling Unit or Multi-Family Dwelling Unit or building, a mobile home, or a motor home located on a permanent site intended for, or capable of being utilized for, Residential living other than a Hotel or Motel.
- 1.45** “**Effective Date**” means the date on which the latter of the two Parties signs this Agreement, as specified in Section 2.2 of this Agreement.
- 1.46** “**Environmental Laws**” means all Federal and State statutes as well as county, local, and City ordinances and regulations concerning public health, safety, and the environment, including, by way of example and not limitation, the comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC 9601 et seq.; the Resource Conservation and Recovery Act, 42 USC 6902 et seq.; the Federal Clean Water Act, 33 USC 1251 et seq.; the Toxic Substances Control Act, 15 USC 1601 et seq.; the Occupational Safety and Health Act, 29 USC 651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code 25100 et seq.; the California Toxic Substances Account Act, California Health and Safety Code 25300 et seq.; and the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code 25249.5 et seq., as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.
- 1.47** “**Excluded Waste**” means Hazardous Substance, Hazardous Waste, Infectious Waste, Designated Waste, volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, waste that Franchisee reasonably believes would, as a result of or upon Disposal, be a violation of local, State or Federal law, regulation or ordinance, including land use restrictions or conditions, waste that cannot be Disposed of in Class III landfills, waste that in Franchisee’s reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Franchisee or City to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code.
- 1.48** “**Facility**” means any plant or site utilized by Franchisee (or a Subcontractor of Franchisee) for the purposes of performing the duties under this Agreement, including but not limited to Transfer, Processing, or Disposal of Discarded Materials Collected in the City.
- 1.49** “**Facility Operation Date**” means December 18, 2018, the date on which, following its start-up, testing, and commissioning, the Facility began Processing Commercial quantities of Food and Green Waste.
- 1.50** “**Federal**” means belonging to or pertaining to the Federal government of the United States.
- 1.51** “**Fiscal Year**” means the period commencing January 1 and concluding December 31 for Franchisee. For City it means the period commencing July 1 of one year and concluding June 30 of the subsequent year.
- 1.52** “**Food Recovery**” means actions to Collect and distribute food for human consumption which otherwise

would be Disposed, or as otherwise defined in 14 CCR Section 18982(a)(24).

- 1.53** “**Food Scraps**” means those Discarded Materials that will decompose and/or putrefy including: (i) all kitchen and table Food Waste; (ii) animal or vegetable waste that is generated during or results from the storage, preparation, cooking or handling of food stuffs; (iii) fruit waste, grain waste, dairy waste, meat, and fish waste; and (iv) vegetable trimmings, houseplant trimmings and other Compostable Organic Waste common to the occupancy of Residential dwellings. Food Scraps are a subset of Food Waste.
- 1.54** “**Food-Soiled Paper**” means Compostable paper material that has come in contact with Food Scraps or liquid, such as, but not limited to, Compostable paper plates, napkins, and pizza boxes. Food-Soiled Paper is a subset of Food Waste.
- 1.55** “**Food Waste**” means Source-Separated Food Scraps and Food-Soiled Paper. Food Waste is a subset of Organic Materials.
- 1.56** “**Franchise**” means the special right granted by the City of San Luis Obispo to operate a company providing Collection, Transportation, Diversion, Processing, marketing, and Disposal of Discarded Materials within the City.
- 1.57** “**Franchise Fee**” means the fee paid by Franchisee to the City as described in Article 8, Payments To City, and as set forth in Exhibit A.
- 1.58** “**Franchisee**” means San Luis Garbage Company, a corporation organized and operating under the laws of the State of California, and its officers, directors, employees, agents, companies, related-parties, Affiliates, and Subcontractors where applicable.
- 1.59** “**Generator**” or “**Waste Generator**” means any Person whose act or process produces Discarded Materials, or whose act first causes Discarded Materials to become subject to regulation.
- 1.60** “**Green Waste**” means those Discarded Materials that will decompose and/or putrefy, including but not limited to green trimmings, tree trimmings, grass cuttings, weeds, dead plants, pruning, leaves, branches, brush, dead trees, small pieces of untreated and unpainted wood, and other types of Organic Waste resulting from normal yard and landscaping maintenance that may be specified in City Legislation for Collection and Processing as Organic Materials under this Agreement. Green Waste does not include items herein defined as Excluded Waste. Green Waste is a subset of Organic Materials. Green Waste placed in Organic Materials for Collection may not exceed six (6) inches in diameter. If Green Waste is more than six (6) inches in diameter, it shall be Collected in the Bulky/Large Item Collection program.
- 1.61** “**Gross Revenues**” means the sum of the cash receipts derived by Franchisee from Customer Billings for Collection of Discarded Materials and orange bag sales provided in the City.
- 1.62** “**Hazardous Substance**” means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as “Hazardous Substances”, “hazardous materials”, “Hazardous Wastes”, “toxic waste”, “pollutant”, or “toxic substances”, or similarly identified as hazardous to human health or the environment, in or pursuant to: (i) the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic

substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other Applicable Law currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's (PCBs), petroleum, natural gas, and synthetic fuel products, and by-products.

- 1.63** "**Hazardous Waste**" means any Discarded Material or mixture of materials, which is toxic, corrosive, flammable, radioactive or which, because of its quantity, concentration, physical, chemical, or infectious characteristics may do harm to either humans, animals, or the environment, or as defined in Article 2, Chapter 6.5 25117 of the Health and Safety Code and Public Resources Code 40141.
- 1.64** "**Holidays**" are defined as New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.
- 1.65** "**Household Hazardous Waste**" means Hazardous Waste generated at Residential Premises.
- 1.66** "**Liquidated Damages**" means the amounts due by Franchisee for failure to meet specific quantifiable standards of performance as described in Article 12.
- 1.67** "**Materials Recovery Facility**" means a permitted Facility where Discarded Materials are sorted or separated for the purposes of Recycling, Composting, Processing, or Reuse.
- 1.68** "**Maximum Service Rate**" means the maximum amount that the Franchisee may charge Customers for Solid Waste Collection and as may be adjusted in accordance with the provisions of this Agreement.
- 1.69** "**Medical Waste**" means biohazardous waste, sharp wastes, waste which is generated or produced as a result of the diagnosis, treatment or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biological products, pursuant to California Health and Safety Code, Section 25023.2.
- 1.70** "**Mixed-use Development**" or "**MXD**" means a mix of Commercial Premises and five (5) or greater Dwelling Units utilizing any combination of Collection Containers for the accumulation of and set out of Solid Waste.
- 1.71** "**Multi-Family Dwelling Unit**" or "**Multi-Family**" or "**MFD**" means, notwithstanding any contrary definition in the City Municipal Code, any Premises, other than a Single-Family Dwelling Unit, used for Residential purposes, irrespective of whether residence therein is transient, temporary, or permanent, that receive centralized, shared, Collection service for five (5) or more units on the Premises. which are billed to one (1) Customer at one (1) address. Customers residing in Townhouses, mobile homes, condominiums, or other structures with five (5) or more Dwelling Units who receive centralized, shared, Collection service for all units on the Premises which are billed to one (1) Customer at one (1) address shall be considered Multi-Family.
- 1.72** "**Occupant**" means the Person who occupies a Premises.

- 1.73** “**Occupied**” means when a person or persons has taken or is/are holding possession of a Premises for temporary or permanent use. For the purpose of determining whether a Premises was Occupied during periods when Collection of Discarded Materials was available to such Premises, the Premises shall be presumed to have been so Occupied unless evidence is presented that no gas, electric, telephone or water utility services were consumed on such Premises during such periods, or such other evidence is presented to the satisfaction of the City Manager.
- 1.74** “**Organic Materials**” means Green Waste and Food Waste, individually or collectively. No Discarded Material shall be considered to be Organic Materials, however, unless it is separated from Recyclable Materials and Solid Waste. Organic Materials are a subset of Organic Waste.
- 1.75** “**Organic Waste**” means wastes containing material originated from living organisms and their metabolic waste products, including but not limited to food, Yard Trimmings, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges, or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined in 14 CCR Section 18982(a)(4) and 14 CCR Section 18982(a)(16.5), respectively.
- 1.76** “**Overage**” means Discarded Materials set out for Collection either on top of or outside of a Container or in any manner that prevents the Container lid from completely closing or potentially cause Discarded Materials to spill during Collection by Contractor’s vehicles.
- 1.77** “**Owner**” means the Person or Persons holding legal title to real property, and/or any improvements thereon, constituting the Premises to which Collection of Discarded Materials is to be provided under this Agreement, and shall include the Person(s) listed on the latest equalized assessment roll of the County Assessor.
- 1.78** “**Party**” or “**Parties**” refers to the City and Franchisee, individually or together.
- 1.79** “**Person**” means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, Commercial entity, governmental entity, public entity, the United States, the State of California, the County of San Luis Obispo, local agencies, cities, special purpose districts, or any other legal Person.
- 1.80** “**Premises**” means any land or building in the City where Discarded Materials are generated or accumulated.
- 1.81** “**Process**” or “**Processing**” means to prepare, treat, or convert through some special method.
- 1.82** “**Processing Facility**” means any plant or site used for the purpose of sorting, cleansing, treating, or reconstituting Recyclable Materials, or Reusable Materials for the purpose of making such material available for Recycling or reuse or the Facility for the Processing and/or Composting of Organic Materials.
- 1.83** “**Prohibited Container Contaminants**” means the following: (i) Discarded Materials placed in the Recyclable Materials Container that are not identified as acceptable Recyclable Materials for the City’s Collection program; (ii) Discarded Materials placed in the Organic Materials Container that are not identified as acceptable Organic Materials for the City’s Collection program; (iii) Discarded Materials placed in the Solid Waste Container that are acceptable Recyclable Materials and/or Organic Materials to be placed in the City’s Recyclable Materials or Organic Materials Containers or otherwise managed under the City’s Collection program; and (iv) Excluded Waste placed in any Container.

- 1.84** **"Recyclable Materials"** means residential by-products or discards of economic value set aside, handled, packaged, or offered for Collection in a manner different from Solid Waste, including but not limited to aluminum, newspaper, clear and colored glass, tin and bi-metal, High density Polyethylene (HDPE), Polyethylene Terephthalate (PET), Cardboard, chipboard, and mixed paper.
- 1.85** **"Recycle"** or **"Recycling"** means the Process of sorting, cleansing, treating, and reconstituting at a Recyclable Materials Processing Facility, materials that would otherwise be Disposed of at a landfill for the purpose of returning such materials to the economy in the form of raw materials for new, reused, or reconstituted products. Recycling includes Processes deemed to constitute a reduction of landfill Disposal pursuant to 14 CCR, Division 7, Chapter 12, Article 2. Recycling does not include gasification or transformation as defined in Public Resources Code Section 40201. The Collection, Transfer, Transportation or Disposal of Recyclable Materials not intended for, or capable of, reuse is not Recycling.
- 1.86** **"Related Party Entity"** means any Affiliated entity which has financial transactions with Franchisee.
- 1.87** **"Residential"** shall mean of, from, or pertaining to a Single-Family Premises or Multi-Family Premises including Single-Family homes, apartments, condominiums, Townhouse complexes, mobile home parks, and cooperative apartments.
- 1.88** **"Residential Property"** means property used for residential purposes, irrespective of whether such Dwelling Units are rental units or are Owner-Occupied and includes both single family and multi-family Dwelling Units.
- 1.89** **"Residue"** or **"Residual"** means those materials which, after Processing, are Disposed rather than Recycled due to either the lack of markets for materials or the inability of the Processing Facility to capture and recover the materials.
- 1.90** **"Reusable Materials"** means items that are capable of being used again after minimal Processing. Reusable Materials may be Collected Source-Separated or recovered through a Processing Facility.
- 1.91** **"Roll-Off"** means an open-top or lidded Container with a capacity of seven (7) to forty (40) cubic yards that is serviced by a Franchise Roll-Off Collection vehicle.
- 1.92** **"Source reduction and recycling element (SRRE)"** means plans prepared by all jurisdictions in accordance with Public Resources Code Section 41000 et seq. The SRRE sets forth a jurisdiction's basic strategy for management of Solid Waste and Divertible materials generated within its borders, with emphasis on implementation of source reduction, Recycling, and Composting programs.
- 1.93** **"Service Area"** means that area within the corporate limits of the City of San Luis Obispo, California, as the same may be modified from time to time through annexation or otherwise.
- 1.94** **"SB 1383"** means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time. For the purposes of this Agreement, SB 1383 specifically refers to the Short-Lived Climate Pollutants (SLCP): Organic Waste Reductions regulations developed by CalRecycle and adopted on November 3, 2020, that created Chapter 12 of 14 CCR, Division 7 and amended portions of regulations of 14 CCR and 27 CCR.

- 1.95** “**Self-Haul**” or “**Self-Hauler**” means a Person who hauls Discarded Materials, recovered material, or any other material, to another Person, or as otherwise defined in 14 CCR Section 18982(a)(66). Self-Hauler also includes a Person who back-hauls waste, as defined in 14 CCR Section 18982(a)(66)(A).
- 1.96** “**Service Level**” refers to the size of a Customer’s Container and the frequency of Collection service.
- 1.97** “**Single-Family Dwelling Unit**” or “**Single-Family**” or “**SFD**” means, notwithstanding any contrary definition in the City Municipal Code, any detached or attached house or residence with fewer than five (5) units on the designed or used for occupancy by one (1) family, provided that Collection service feasibly can be provided to such Premises as an independent unit, and the Owner or Occupant of such independent unit is billed directly for the Collection service. Single-Family includes Townhouses that maintain individual Collection service regardless of whether each unit is separately billed for their specific Service Level. Single-Family also includes duplex, tri-plex, or four-plex Residential structures regardless of whether each unit maintains individual Collection service or is separately billed for their specific Service Level.
- 1.98** “**Solid Waste**” means Solid Waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, §40191 and regulations promulgated thereunder. Excluded from the definition of Solid Waste are Excluded Waste, C&D, Source-Separated Recyclable Materials, Source-Separated Organic Materials, and radioactive waste. Notwithstanding any provision to the contrary, Solid Waste may include de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of Household Hazardous Waste in compliance with Section 41500 and 41802 of the California Public Resources Code as may be amended from time to time. Solid Waste includes salvageable materials only when such materials are included for Collection in a Solid Waste Container not Source-Separated from Solid Waste at the site of generation.
- 1.99** “**Source-Separated**” means the segregation, by the Generator, of materials designated for separate Collection for some form of Recycling, Composting, recovery, or reuse.
- 1.100** “**State**” means the State of California.
- 1.101** “**Subcontractor**” means a Party who has entered into a contract, express or implied, with the Franchisee for the performance of an act that is necessary for the Franchisee’s fulfillment of its obligations for providing service under this Agreement. Vendors providing materials and supplies to Franchisee shall not be considered Subcontractors.
- 1.102** “**Term**” means the term of this Agreement, including extension periods if granted, as provided for in Article 2, Grant and Acceptance of Agreement.
- 1.103** “**Ton**” or “**Tonnage**” means a unit of measure for weight equivalent to two thousand (2,000) standard pounds.
- 1.104** “**Townhouse**” means an attached or semi-attached Dwelling Unit within a group of attached or semi-attached Dwelling Units. A Townhouse shall be considered a Single-Family Dwelling Unit if each unit maintains individual Collection service subscription. A Townhouse shall be considered a Multi-Family Dwelling Unit if the Premise receives centralized, shared, Collection service for all units on the Premise. These shall be the designations regardless of whether the Premises are billed individually or through a central account (e.g., homeowner association, property manager).

- 1.105** “**Transfer**” means the act of transferring the Discarded Materials Collected by Franchisee in its route vehicles into larger vehicles for Transport to other Facilities for the purpose of Processing, Recycling, or Disposing of such Discarded Materials.
- 1.106** “**Transfer Station**” includes those Facilities used to receive Solid Wastes, temporarily store, separate, convert, or otherwise Process the materials in the Solid Wastes, or to Transfer the Solid Wastes directly from smaller to larger vehicles for Transport and those Facilities used for transformations.
- 1.107** “**Transport**” or “**Transportation**” means the act of Transferring the materials Collected by Contractor in its route vehicles into larger vehicles for Transport to other Facilities, for the purpose of Recycling or Disposing of such materials.
- 1.108** “**Waste Generator**” or “**Generator**” means any Person whose act or process produces Discarded Materials, or whose act first causes Discarded Materials to become subject to regulation.
- 1.109** “**Working Days**” means days on which the Franchisee is required to provide regularly scheduled Collection services under this Agreement.

## **ARTICLE 2.**

### **GRANT AND ACCEPTANCE OF AGREEMENT**

**2.1**     **Grant and Acceptance of Agreement**

Subject to Section 2.5 (Conditions to the Effectiveness of Agreement), City hereby grants to Franchisee an exclusive Franchise to Collect, Transport, Divert, Process, market, and Dispose of Solid Waste, Recyclable Materials, and Organic Materials accumulating at Single-Family, Multi-Family, Mixed-Use, and Commercial Premises in the City in accordance with the City’s Municipal Code and this Agreement, except where otherwise precluded by Applicable Law.

Franchisee hereby accepts the grant of the Franchise on the terms and conditions set forth in this Agreement. Franchisee agrees to perform and be bound by each of the conditions proposed in the grant and by procedural ordinance and the requirements of Acceptance on file with the City Clerk’s office (Article X of the City Charter, Section 1006, Duties of Grantee).

**2.2**     **Effective Date**

The Effective Date of this Agreement shall be April 1, 2025 (“Effective Date”).

**2.3**     **Term of Agreement**

The Term of this Agreement shall commence at 12:01 a.m. on the Effective Date, and expire at midnight on December 18, 2038, subject to extension as provided in Section 2.4 (Option to Extend).

**2.3.1**   **Term Contingency**

In the event of a change of law or technology which would render the Collection, Transportation, Diversion, Processing, marketing, or Disposal services to be implemented under this Agreement obsolete, unnecessary, impractical, undesirable, or illegal, the City reserves the right to terminate this Agreement upon the giving of a six (6) month prior written notice of City's election to so terminate this Agreement. It is understood between Franchisee and City that this Agreement is motivated by the passage of AB 939 and SB 1383, and that subsequent legislation could make this Agreement unnecessary and/or adverse to the best interests of the City. In particular, City and Franchisee acknowledge the possibility of future legislation changing the requirements of AB 939 and SB 1383, and/or requiring a coordination of the Collection of Solid Waste, Recyclable Materials, and/or Organic Materials by and through entities other than the Franchisee.

**2.4**     **Option to Extend**

The City, by written authorization of the City Manager and upon written mutual consent by the Franchisee, shall have the option to extend this Agreement up to three, five (5) year term extensions to the initial term. If City elects to exercise this option, it shall give written notice not later than ninety (90) days prior to the initial termination date, or, if one or two extensions have been exercised, ninety (90) days prior to the extended termination date.

City shall consider performance standards and the results of performance audits, as outlined in Section 6.4 (Diversion Standards), in decisions regarding extension of term.

## **2.5 Conditions to the Effectiveness of Agreement**

The obligation of City to permit this Agreement to become effective and to commence performing its obligations under this Agreement is subject to the satisfaction of each and all of the conditions set out in this Section 2.5 below, each of which may be waived in whole or in part by City, in its sole direction.

- A. Accuracy of Representations.** The representations and warranties made by Franchisee throughout this Agreement are true and correct on and as of the Effective Date of this Agreement.
- B. Furnishing of Insurance and Bonds.** Franchisee has furnished evidence of the insurance and bonds required by Article 10 (Indemnity, Insurance, and Performance Bond).
- C. Effectiveness of City Council Action.** The City's Ordinance approving this Agreement shall have become effective pursuant to California law on or prior to the Effective Date of this Agreement.

## **2.6 Responsibilities of City**

The City does not assume any responsibility for, nor shall it be held liable for, damages for the failure on the part of any Person producing Food or Green Waste material within the City to deliver the same to Franchisee; provided, however, it is mutually understood and agreed that the City and its officers will at all times during the period of this Agreement cooperate to enforce the terms of this exclusive Agreement and the Franchise within the City.

# **ARTICLE 3. REPRESENTATION AND WARRANTIES OF THE FRANCHISEE**

## **3.1 Franchisee Status**

Franchisee is duly organized, validly existing and in good standing under the laws of the State of California and has the financial ability to perform its obligations set forth in this Agreement. Additionally, the Franchisee has no suits or threatened suits which would impair the financial ability of the Franchisee to perform its obligations under this Agreement, and entering into this Agreement by Franchisee will not in any way constitute a breach of any other agreements entered into by Franchisee with other parties or constitute a violation of any law.

## **3.2 Franchisee Authorization**

Franchisee has the authority to enter into and perform its obligations under this Agreement. The Board of Directors of Franchisee (or the shareholders, if necessary) have taken all actions required by law, its articles of incorporation, its bylaws or otherwise to authorize the execution of this Agreement. The persons signing this Agreement on behalf of Franchisee have the authority to do so.

## **3.3 Compliance with Laws and Regulations**

Franchisee shall comply with all existing and future City, County, state, and Federal laws, including all Environmental Laws, with particular note of SB 1383, Article X of the City Charter and any Chapter within the City's Municipal Code. Franchisee shall be entitled to an adjustment in its compensation in accordance with Exhibit A (Annual Rate Adjustment Methodology), for providing additional or modified services due to changes to the City's Municipal Code, it being specifically agreed that changes in the City's Municipal Code are a "Change in Law" as that term is defined in Exhibit A.

**3.4 Serve Without Interruption**

Franchisee shall Collect, Process, and market (if applicable) Commercial and Residential Solid Waste, Recyclable, and Organics Materials throughout the Term of this Agreement without interruption except as described in Section 12.5 (Excuse from Performance).

**3.5 Permits and Licenses**

Franchisee shall procure and keep in full force and effect all permits and licenses, pay all charges and fees, and give all notices as necessary.

**3.6 Preservation of City Property**

Franchisee shall pay to the City, on demand, the cost of all repairs to public or private property made necessary by the willful or negligent conduct of Franchisee employees under this Agreement.

**3.7 Financial Representation**

Franchisee represents that it has the financial ability to full perform its obligations as set forth in this Agreement.

**3.9 Franchisee as Arranger**

The City and Franchisee mutually agree that the City's granting of this Franchise shall not be construed as the City "arranging for" the Collection and Disposal of Solid Waste, Recyclable, or Organic Materials within the meaning of CERCLA. The parties further mutually agree that the granting of the Franchise by City shall be construed as an action whereby the Franchisee is granted, and accepts the rights, responsibilities, benefits, and liabilities of Collection and Disposal of Solid Waste, Recyclable Materials, and Organic Materials. Commencing on the Effective Date of this Agreement and, to the extent that Franchisee's performance under this Agreement requires the Collection and Disposal of Solid Waste, Recyclable Materials, and Organic Materials, may be construed as "arranging for" Collection and Disposal of Solid Waste, Recyclable Materials, and Organic Materials within the meaning of CERCLA, such actions shall be the sole responsibility of Franchisee and Franchisee expressly agrees to be solely responsible for all such actions with respect to CERCLA.

**ARTICLE 4:  
SCOPE OF AGREEMENT**

**4.1 Scope of Agreement**

Subject to Section 4.2 (Limitations to Scope), the Franchise granted to Franchisee shall be exclusive for Discarded Materials, except where otherwise precluded by Applicable Law.

**4.2 Limitations to Scope**

The Franchise for the Collection, Transportation, Diversion, Processing, marketing, and Disposal of Discarded Materials granted to Franchisee shall be exclusive except as to the following categories of Discarded Materials listed in this Section. The granting of this Franchise shall not preclude the categories of Discarded Materials listed below from being delivered to and Collected and Transported by others, provided that nothing in this Agreement is intended to or shall be construed to excuse any Person from obtaining any authorization from City which is otherwise required by law:

- A.** Construction and Demolition Debris which is not offered by Persons performing the work and which may be legally Collected and Disposed of by some alternate means;
- B.** Solid Waste Self-Hauled by Generators to Disposal Facilities;
- C.** Animal waste and remains from slaughterhouse or butcher shops;
- D.** By-products of sewage treatment, including sludge, sludge ash, grit, and screening;
- E.** Excluded Waste, Hazardous Waste, liquid waste, and Medical Waste;
- F.** Source-Separated Recyclable Materials separated from other Discarded Materials by the Waste Generator and for which Waste Generator sells or is otherwise compensated by a collector in a manner resulting in a net payment to the Waste Generator for such Recycling or related services;
- G.** Source-Separated Recyclable Materials which are separated at any Premises, and which are (1) Self-Hauled by the Owner or Occupant of such Premises (or by their employee) to a charitable, environmental, or other non-profit organization or (2) Collected and Transported directly by such organization;
- H.** Source-Separated Recyclable Materials which are separated at any Premises, and which are Self-Hauled by the Owner or Occupant of such Premises (or by their employee) to a Facility;
- I.** Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, 14500, et seq. California Public Resources Code;
- J.** Organic Materials which are separated at any Premises, and which are Self-Hauled by the Owner or Occupant of such Premises (or by their employee) to a Facility; and/or
- K.** Green Waste removed from Premises by a gardening, landscaping, or tree trimming company as incidental part of a total service offered by that company.
- L.** Any other Discarded Materials determined by the City as mutually agreed upon between the City and Franchisee.

Franchisee shall additionally cooperate with and shall not impede, interfere, or attempt to impede or interfere with the implementation, expansion, or operation of Food Recovery efforts in the City.

Franchisee acknowledges and agrees that City may permit other Persons beside Franchisee to Collect any or all types of the Discarded Materials listed in this Section 4.2, without seeking or obtaining approval of Franchisee under this Agreement.

This Franchise to Collect, Transport, Process, and market Solid Waste, Recyclable Materials, and Organic Materials shall be interpreted to be consistent with Applicable Law, now and during the Term of the Agreement, and the scope of this Agreement shall be limited by current and developing Applicable Law with regard to Discarded Materials handling, Discarded Materials flow control, and related doctrines. In the event that future interpretations of current law, enactment or developing legal trends limit the ability of the City to lawfully provide for the scope of services as specifically set forth herein, Franchisee agrees that the scope of the Agreement will be limited to those services and materials which may be lawfully provided for under this Agreement.

Further, the Franchisee agrees that the City shall not be responsible for any lost profits and/or damages claimed by the Franchisee to arise out of further limitations of the scope of the Agreement set forth herein. It shall be the responsibility of Franchisee to minimize the financial impact to other services being provided.

**4.3 Administration of Agreement**

The City Manager shall administer this Agreement and the City's Utilities Director shall supervise Franchisee compliance with the Agreement terms and conditions.

**4.4 Use of City Streets**

Such grant of Franchise shall give Franchisee the right and privilege to operate Solid Waste, Recycling, and Organic Materials Collection vehicles and equipment on such streets, public ways, rights-of-way, or easements of the City as reasonably appropriate for Franchisee to provide the services herein.

**4.5 Annexation**

Franchisee shall automatically extend all services herein described to any area annexed to the City, except that the City may permit a firm franchised by the County of San Luis Obispo before the annexation to continue service the area for a period not less than five (5) years.

**4.6 New Programs and City's Right to Request Changes**

**4.6.1 General**

City may request Franchisee to perform additional services (including new Diversion programs, billing services, etc.) or modify the manner in which it performs existing services. Pilot programs and innovative services which may entail new Collection methods, different kinds of services, and/or new requirements for Waste Generators are included among the kinds of changes which City may request. Franchisee shall present, within forty-five (45) days of a request to do so by City, a proposal to provide additional or expanded Diversion services pursuant to the terms of Section 4.6.2 (New Programs). Franchisee shall be entitled to an adjustment in its compensation in accordance with Exhibit A (Annual Rate Adjustment Methodology), for providing such additional or modified services.

**4.6.2 New Programs**

Franchisee shall present, within forty-five (45) days of a request to do so by City, a proposal and action plan to provide additional or expanded services not otherwise listed in Section 5.5 (Public Container Collection). The action plan shall contain a complete description of the following:

- A. Collection methodology to be employed (equipment, workforce, etc.),
- B. Equipment to be utilized (vehicle number, types, capacity, age, etc.),
- C. Labor requirements (number of employees by classification),
- D. Type of Containers to be utilized,
- E. Provision for program publicity/education/marketing,
- F. A projection of the financial results of the program's operations for the remaining Term of the Agreement in a balance sheet and operating statement format, including documentation of the key assumptions underlying the projections and the support for those assumptions, and
- G. Facility(ies) to be utilized.

#### **4.6.3 City's Right to Acquire Services**

Franchisee acknowledges and agrees that City may permit other Persons besides Franchisee to provide additional services not otherwise contemplated under Section 4.6 (New Programs and City's Right to Request Changes). If, pursuant to Section 4.6.2 (New Programs), Franchisee and City cannot agree on terms and conditions of such services in ninety (90) days from the date when City first requests a proposal from Franchisee to perform such services, Franchisee acknowledges and agrees that City may permit Persons other than Franchisee to provide such services.

#### **4.6.4 Implementing New Services**

If the Franchisee is capable of performing or developing the requested service or modifying an existing service and the City has agreed to have the Franchisee provide such additional service in accordance with the agreed upon proposal and action plan; then the Franchisee shall commence service within ninety days (90) days from the date the proposal was agreed upon. Adjustment in the Franchisee's compensation shall be implemented during the next rate adjustment period outlined in Exhibit A (Annual Rate Adjustment Methodology).

#### **4.7 Ownership of Discarded Materials**

Once Solid Waste, Recyclable Materials, and/or Organic Materials are placed in Containers and properly presented for Collection, ownership and the right to possession shall transfer directly from the Generator to Franchisee by operation of this Agreement. Title to and liability for any Excluded Waste shall remain with the Generator of such Excluded Waste. Franchisee is hereby granted the right to retain, Recycle, Process, reuse, Compost, Divert, Dispose of, and otherwise use such Solid Waste, Recyclable Materials, and Organic Materials, or any part thereof, in any lawful fashion or for any lawful purpose consistent with the hierarchy and goals of AB 939, AB 341, AB 1594, SB 1383, AB 1826 and other Applicable Law.

Subject to the provisions of this Agreement, Franchisee shall have the right to retain any benefit resulting from its right to retain, Recycle, Process, reuse, Compost, Divert, or Dispose of the Solid Waste, Recyclable Materials, and Organic Materials which it Collects.

Solid Waste, Recyclable Materials, and Organic Materials, or any part thereof, which are delivered to a Facility (whether landfill, Processing Facility, transformation Facility, Transfer Station, or Material Recovery Facility) shall become the property of the owner or operator of the Facility(ies) once deposited there by Franchisee. The City may obtain ownership or possession of Solid Waste, Recyclable Materials, and/or Organic Materials placed for Collection upon written notice of its intent to do so.

### **ARTICLE 5. DIRECT SERVICES**

#### **5.1 General**

The work to be done by the Franchisee pursuant to this Agreement shall include the furnishing of all labor, supervision, equipment, materials, supplies, and all other items and tasks necessary to perform the services required.

It is mandatory that the work to be done by Franchisee pursuant to this Agreement shall be accomplished in a thorough and professional manner so that all Occupied developed properties within the City are provided reliable, courteous, prompt, and high-quality Collection of Discarded Materials at all times. All Collection activities shall be conducted in such a manner that public and private property will not be damaged. Franchisee shall deliver Containers with closed lids in designated Collection locations and shall not place them in the street or on adjoining property.

The enumeration of, and specification of requirements for, particular items of labor or equipment, or aspects of service quality, shall not relieve Franchisee of the duty to furnish / accomplish all others, as may be required, whether enumerated or not.

The City reserves the right to revise its laws and regulations pertaining to Collection and Disposal of Discarded Materials in order to protect public health, safety and welfare. The Franchise Agreement is subject to any such future revisions of the City's laws and regulations, and Franchisee agrees to comply with any such changes in said laws and regulations as if incorporated into the Agreement.

## **5.2 Three-Container Collection System**

Franchisee shall provide Collection of Discarded Materials as part of the City's three-Container Collection program to all Single-Family Customers, Multi-Family Dwelling Units, Mixed-Use, and Commercial, industrial, and institutional properties for the Collection of Source-Separated Recyclable Materials, Source-Separated Organic Materials, and Solid Waste. Franchisee shall ensure that the Collection of Discarded Materials services provided under this Agreement are at all times performed in accordance with Applicable Law. Franchisee shall Transport the Solid Waste, Recyclable Materials, and Organic Materials to Designated Disposal or Processing Facilities that are appropriate for each material type, as outlined herein.

## **5.3 Collection Service**

### **5.3.1 Single-Family Residential Collection of Discarded Materials**

For all Single-Family Customers, Franchisee shall Collect Solid Waste, Recyclable Materials, and Organic Materials placed in Franchisee-provided Containers at the curbside at a minimum of once a week, Monday through Friday, except as specified below. The Franchisee-provided Containers shall comply with the requirements of Section 6.1.3 (Collection Containers) of this Agreement. Franchisee shall Transport all Solid Waste, Recyclable Materials, and Organic Materials Collected to a Designated Disposal or Processing Facility.

Single-Family Customers with a disability or unique circumstance shall have the option of placing their Containers near their dwelling, visible and within reasonable distance from the curb, and without obstacles (i.e., uneven surfaces, steep inclines/declines, behind gates) that cause a safety concern. The Franchisee will Collect their Containers at this location and return Containers to same location. Franchisee will notify residents annually, beginning within thirty (30) days of execution of this Agreement, of this Collection option. To be eligible for this Collection option, residents must either present proof of a disability or receive approval from the Franchisee on a case by case basis. In no event will the Franchisee perform any modified service that is deemed unsafe by Franchisee or City.

### **5.3.2 Multi-Family Collection of Discarded Materials**

Franchisee shall Collect Solid Waste, Recyclable Materials, and Organic Materials from all Multi-Family Dwelling Units within the City, using Franchisee-provided Containers, not less than once per week. The Containers shall comply with the requirements of Section 6.1.3 (Collection Containers) of this Agreement. Franchisee shall Transport all Solid Waste, Recyclable Materials, and Organic Materials Collected to a Designated Disposal or Processing Facility.

The Franchisee and each Customer shall agree on the Designated Collection Location. Special consideration shall be given when determining the Designated Collection Location for Multi-Family accounts to ensure that the flow of traffic is not impeded and that it does not result in aesthetic degradation of an area. The Designated Collection Location, if disputed by Customer or Franchisee, shall be determined by the City. Additionally, if, in the City's opinion, the location of an existing

Collection location for a particular Multi-Family Dwelling Unit is inappropriate, the City may direct the Customer or Franchisee to relocate the Collection location. If a Customer refuses to comply with said directive, Franchisee may decline to Collect Discarded Materials from said mis-located Containers and the Customer may be subject to fines in accordance with the City's Municipal Code.

### **5.3.3 Commercial Collection of Discarded Materials**

Franchisee shall Collect Solid Waste, Recyclable Materials, and Organic Materials from all Commercial, MXD, industrial, and institutional properties within the City, using Containers of a size and shape acceptable to Franchisee and the Customer, not less than once per week. The size and shape of the Container, if disputed by Customer, shall be determined by the Franchisee and mutually agreed upon by the City. The Containers shall comply with the requirements of Section 6.1.3 (Collection Containers) of this Agreement. Franchisee shall Transport all Solid Waste, Recyclable Materials, and Organic Materials Collected to a Designated Disposal or Processing Facility.

The Franchisee and each Customer shall agree on the Designated Collection Location. Special consideration shall be given when determining the Designated Collection Location for Commercial accounts to ensure that the flow of traffic is not impeded and that it does not result in aesthetic degradation of an area. The Designated Collection Location, if disputed by Customer or Franchisee, shall be determined by the City.

Additionally, if, in the City's opinion, the location of an existing Collection location for a particular Commercial, industrial, or institutional property is inappropriate, the City may direct the Customer or Franchisee to relocate the Collection location. If a Customer refuses to comply with said directive, Franchisee may decline to Collect Discarded Materials from said mis-located Containers and the Customer may be subject to fines in accordance with the City's Municipal Code.

## **5.4 Materials to be Collected**

### **5.4.1 Solid Waste**

Franchisee shall Collect all Solid Waste, as defined in Article 1, that is properly set out for Collection. Franchisee may allow carpets and textiles to be placed in the Solid Waste Containers, unless a textile/carpet recovery program has been established following the Effective Date of this Agreement. Containers shall comply with the requirements of Section 6.1.3 (Collection Containers). Materials prohibited for Collection in the Solid Waste Containers include Source-Separated Recyclable Materials, Organic Materials, Excluded Waste, C&D, and other Prohibited Container Contaminants.

### **5.4.2 Recyclable Materials**

Franchisee shall Collect all types of Source-Separated Recyclable Materials, as defined in Article 1, that are properly set out for Collection. Recyclable Materials to be Collected are to include, but are not limited to, newspaper, aluminum, tin and bi- metal cans, clear and colored glass containers, High Density Polyethylene (HDPE), Polyethylene Terephthalate (PET), polystyrene, corrugated Cardboard, and mixed paper (including white and colored ledger paper, chipboard, junk mail, magazines, and phone books). Containers shall comply with the requirements of Section 6.1.3 (Collection Containers). Materials prohibited for Collection in the Recyclable Materials Containers include Solid Waste, Organic Materials, Excluded Waste, and other Prohibited Container Contaminants.

### **5.4.3 Organic Materials**

Franchisee shall Collect all types of Organic Materials, as defined in Article 1 and including Food Waste, Food Scraps, Food-Soiled Paper, and Green Waste, that are properly set out for Collection. The Parties agree that accepted types of Organic Materials may be added to or removed from this list from time to time at the sole discretion of the City. Franchisee shall not add or remove materials to or from

this list without written approval from the City or signed amendment to the Agreement, and such approval shall not be unreasonably withheld. Carpets, non-Compostable paper, textiles, and Prohibited Container Contaminants shall not be Collected in the Organic Materials Containers. The Containers shall comply with the requirements of Section 6.1.3 (Collection Containers). Materials prohibited for Collection in the Organic Materials Containers include Source-Separated Recyclable Materials, Solid Waste, Excluded Waste, and other Prohibited Container Contaminants.

#### **5.5 Public Container Collection**

Franchisee shall provide, at City's direction, services related to the Collection and Disposal of Discarded Materials and consulting services at no cost to City, including:

- A. Collection of Discarded Materials from all sidewalks of City-owned Solid Waste, Recycling, and Organics litter Containers, not less than once per week, Monday through Friday, on Saturdays following non-working Holidays, or Sundays where mutually agreed upon by the City and Franchisee. Collections shall be scheduled at a time mutually agreed upon by Franchisee and the City.

As of the Effective Date of this Agreement, the number of collection services at no cost to the City, include 1,069 total solid waste and recycling services per week. Should the City request additional service locations and/or increase frequencies for the Solid Waste, Recycling, or Organics containers, the Franchisee shall allow up to a ten (10) percent increase in these services at no additional cost. Any service exceeding the ten (10) percent cap shall be addressed via a good faith meet and confer to identify payment details.

- B. Collection of Discarded Materials for up to twelve (12) special events per Calendar year as directed by the City, dropped off and Collected at a date, time, and location requested by the City and mutually agreed upon by the City and Franchisee.
- C. Review of plans for land use or property developments with regard to Collection of Discarded Materials service issues;
- D. Residual Solid Waste remaining from temporary Household Hazardous Waste Collection events.
- E. Additional services as mutually agreed upon by the City and Franchisee.

#### **5.6 Missed Pickups**

Upon notification by Customer or City, Franchisee shall Collect any missed pickup which had been properly and timely placed for Collection within 24 hours of said notice.

#### **5.7 Bulky/Large Item Collection Service**

Franchisee shall perform Collection of Bulky/Large Items to Customers in accordance with the following terms and conditions:

### **5.7.1 Frequency of Service**

Franchisee shall provide Bulky/Large Item Collection on an on-call basis to Customers requesting service. The City or Customer will notify the Franchisee of a request for Bulky/Large Item Collection and Collection shall be made from the curbside of SFDs and an agreed upon location for MFDs, MXDs, and Commercial Customers within five (5) scheduled Collection days of notification or an alternate mutually agreed upon date between the Customer and Franchisee.

### **5.7.2 Conditions of Service**

Subject to the limitations set forth in this section, Franchisee must provide Bulky/Large Item Collection service to all Customers whose Bulky/Large Items have been placed three (3) feet off the curb, swale, or paved surface of the public roadway, closest accessible roadway, or other such location agreed upon by the Franchisee and Customer, that will provide safe and efficient accessibility for Collection.

Commercial Customers may schedule a Bulky/Large Item removal through the Franchisee for a fee established by the City and updated by resolution when the City adjusts rates.

Each SFD Customer is allowed up to three (3) Bulky/Large Item Collections per Calendar Year and each MFD Customer is allowed up to twelve (12) Bulky/Large Item Collections per Calendar Year. Two (2) of the previously mentioned Bulky/Large Item Collections for SFD Customers must occur during the semi-annual clean-up weeks explained in Section 5.8 (Semi-Annual Clean-Up Weeks) and one (1) Bulky/Large Item Collection may be scheduled at any time during the Calendar Year. Eight (8) of the previously mentioned Bulky/Large Item Collections for MFD Customers must occur during the semi-annual clean-up weeks explained in Section 5.8 (Semi-Annual Clean-Up Weeks) and four (4) Bulky/Large Item Collection may be scheduled at any time during the Calendar Year. Each item scheduled and placed on the curb for Collection shall be considered a single Collection and each item is not to exceed 200 pounds each. For subsequent collection in any Calendar Year, the Customer shall receive Bulky/Large Item Collection for a fee established by the City, paid to the Franchisee, and updated by resolution when the City adjusts rates.

Franchisee shall Collect bulky Green Waste separately from other Bulky/Large Items placed for Collection and shall handle such acceptable material as Organic Waste in accordance with SB 1383 regulations.

### **5.7.3 Non-Collection of Bulky/Large Items**

Franchisee shall not be required to collect more Bulky/Large Items than specified by the Customer or items that are Excluded Waste. In the event of non-collection, Franchisee shall affix a Non-Collection Notice to the uncollected Bulky/Large Item(s) explaining why Collection was not made or make contact with the customer if a Non-Collection Notice cannot be placed on the item. Prior to non-collection of additional Bulky/Large Items, the Franchisee shall make a good faith effort to contact the Customer to offer the option to Collect the additional Bulky/Large Item(s) for a fee established by the City, paid to the Franchisee, and updated by resolution when the City adjusts rates.

### **5.7.4 Maximum Reuse and Recycling of Bulky/Large Items**

The Franchisee will make every effort to process Bulky/Large Items in accordance with the following hierarchy:

1. Reuse as is
2. Disassemble for reuse or Recycling
3. Recycle
4. Disposal

## **5.8 Semi-Annual Clean-up Weeks**

At least twice per year throughout the Term of this Agreement, Franchisee shall provide, in addition to regularly scheduled Collection service and scheduled Bulky/Large Item Collections pursuant to Section 5.7 (Bulky/Large Item Collection), two clean-up events for Residential Customers pursuant to guidelines established by the Franchisee and approved by the City. Solid Waste and Bulky/Large Items can be placed at the curb by SFD Customers and at pre-arranged locations for MFD Customers. The dates for each event shall be proposed by the Franchisee and approved by the City prior to September 1st of each year.

#### **5.8.1 Conditions of Service**

All Residential Customers are entitled to participate in semiannual clean up events. All residential Customers may:

- a. Discard up to six (6) 32 gallon bags of solid waste and/or bundled green waste in addition to their regular Collection. Bags and bundled green waste must be placed next to the Customer's Collection Containers on Collection day during the semiannual clean up week and the Franchisee will collect at no cost to the Customer or the City.
- b. Place Bulky/Large Item(s) on the curb for SFD Customers and at pre-arranged locations for MFD Customers during the semiannual clean up week for Collection by the Franchisee. The Customer must call the Franchisee to schedule the Bulky/Large Item Collection. Each SFD Customer is allowed up to one (1) no cost Bulky/Large Item Collection per clean-up week and each MFD Customer is allowed up to four (4) no cost Bulky/Large Item Collections for MFD per clean-up week. Customers are allowed to schedule their additional Bulky/Large Item Collection as defined in Section 5.7 (Bulky/Large Item Collection) during the semi-annual clean-up weeks. Any subsequent item(s) will be collected at a discounted rate. Items may not be Excluded Waste and cannot exceed 200 pounds each.

Franchisee shall Collect Green Waste separately from other materials and shall Process such material as Organic Waste in accordance with SB 1383 regulations at no cost to the Customer or the City.

Franchisee shall record by class and weight (in Tons) the Solid Waste, Bulky/Large Items, white goods, etc., Collected during the clean-up events. Franchisee shall record the kinds and weights (in Tons) of Solid Waste Diverted during these clean-ups from the landfill through Recycling, Composting, reuse, or other means of Diversion.

### **5.9 Holiday Tree Collection and Diversion Program**

Franchisee shall operate an annual Holiday Tree Collection and Diversion program. The program shall include curbside Collection of Holiday Trees targeting all SFD and MFD Customers and shall Divert these Holiday Trees from landfill Disposal and Process the materials as Organic Waste in accordance with SB 1383 and this Agreement.

#### **5.9.1 Conditions of Service**

Franchisee must Collect Holiday Trees set out on the curb for Collection for two-weeks beginning December 26 and ending two weeks thereafter during the Term of this Agreement at no charge to the Customer or the City. The Holiday Tree Collection will not count towards the Customer's no cost Bulky/Large Item Collection. Franchisee shall deliver the Collected Holiday Trees to the appropriate Organics Materials Processing Facility for Diversion through uses other than Alternative Daily Cover. Franchisee is not required to Collect or Divert Holiday Trees with tinsel, flocking, or ornaments.

## **5.10 Accumulation of Solid Waste**

### **5.10.1 Unauthorized Dumping**

Franchisee shall direct its drivers or other personnel to take a photo if possible and report the address of any Premises at which they observe Discarded Materials or abandoned Bulky/Large Items that are accumulating or dumped in an unauthorized manner. Franchisee shall report the address or description and photo to the City within twenty-four (24) hours of such observation.

### **5.10.2 City-Directed Removal of Solid Waste**

Franchisee shall arrange for the removal of all accumulated Discarded Materials and Bulky/Large Items on streets, roads, sidewalks and right-of-way in the City as directed by the City Utilities Director, or designee, within two (2) Working Days from the date contacted by the City. The Franchisee shall have the opportunity to make a good faith effort to recover the cost of Disposal from the Waste Generator, and the costs of this effort, as well as the cost of Disposal, shall be chargeable to the Waste Generator. Franchisee shall contact the Waste Generator via phone or email to confirm waste generation before any charges are billed. The Franchisee shall be entitled to include the costs incurred and not collected under this Section as an operating expense for purposes of rate setting.

## **5.11 Processing and Disposal of Discarded Materials**

### **5.11.1 Designated Disposal Facility(ies) for Solid Waste**

- A. General.** Franchisee shall Transport all Solid Waste Collected within the City and not separated for Recycling to a Designated Disposal Facility for Disposal in accordance with Applicable Law and this Agreement.
- B. Compliance with Regulatory Requirements and Applicable Law.** The Franchisee is required to notify the City if one of Designated Disposal Facilities has their permit to accept Solid Waste revoked by the regulatory agency. Upon request, Franchisee shall provide copies of Facility permits, approvals, and/or notices of violations (obtained from the Designated Disposal Facility operator if necessary) to the City.
- C. Capacity.** Franchisee has secured sufficient Disposal Facility capacity commitment, including landfill Disposal site capacity commitment, to adequately serve the reasonably anticipated Solid Waste Disposal needs of the City and its Customers during the Term of this Agreement, including any extensions provided for herein. City reserves the right to review said Disposal capacity commitments. Prior to entering into any capacity commitment, Franchisee shall give prior written notice to the City concerning negotiations.
- D. Alternative Facility(ies).** If Franchisee receives notice from the landfill operator or otherwise expects, during the Term of this Agreement, to be prevented from delivering Solid Waste to a Designated Disposal Facility, Franchisee shall immediately notify in writing the City's Utilities Director, stating the reason(s) Franchisee is prevented, or expects to be prevented, from Disposing of Solid Waste in a Designated Disposal Facility. Franchisee shall in good faith expeditiously identify and evaluate alternative Disposal Facilities. An alternative Disposal Facility(ies) shall be arranged for and secured by Franchisee, after consultation with the City's Utilities Director. Franchisee shall provide City with adequate written notice prior to contracting for any alternate Disposal Facility.

In addition, the City reserves the right to direct the Solid Waste stream to any Disposal Facility or alternate location/site. Absent such direction by the City, nothing contained herein shall be construed to mean that the City has arranged for site selection or waste Disposal.

Section 12.5 (Excuse From Performance) does not relieve Franchisee from the good faith obligation to find and secure alternate Disposal Facilities. Absent a Section 12.5 event, Franchisee shall be responsible for any increased costs, including Transportation, with respect to the alternate Disposal Facility.

#### **5.11.2 Processing and Disposal of Recyclable Materials**

##### **A. General**

Franchisee shall Transport all Collected Recyclable Materials to the Approved Recyclable Materials Processing Facility, and shall Transfer, Process, and Dispose of Discarded Materials in accordance with this Section. The Approved Facilities shall comply with the following requirements.

##### **B. Status of Approved Recyclable Materials Processing Facility**

Any Processing Facility used by Franchisee must be designed and constructed in accordance with all Applicable Law (CEQA, California Code of Regulations, etc.). The Processing Facility must have all permits from Federal, State, regional, County, and City agencies necessary for it to operate as a Material Recovery Facility and must be in full regulatory compliance with all such permits. The Approved Recyclable Materials Processing Facility must be authorized to accept, under its existing permit, and have sufficient uncommitted capacity to accept, all Recyclable Materials delivered to it by, or on behalf of, the City for the Term of this Agreement. Franchisee shall immediately notify City of any notice of breach or default received from Approved Recyclable Materials Processing. Franchisee shall, directly or through similar obligations in its subcontract(s) with Facility operators, keep active all existing permits and approvals necessary for use of the Approved Processing Facility in compliance with regulatory requirements and Applicable Law. Upon request, Franchisee shall provide copies of Facility permits and/or notices of violations (obtained from its Processing Facility Subcontractor if necessary) to City.

##### **C. Alternative Processing Facility**

If Franchisee becomes unable to deliver the City's Recyclable Materials to the Approved Processing Facility due to causes within its control and which could have been avoided by the exercise of due care, the Franchisee shall arrange for it to be accepted at another Processing Facility, in which case Franchisee shall pay for any increased Transportation costs, any differences in the fees charged at such Processing Facility, and the fees then in effect under this Agreement.

If Franchisee's inability to deliver the City's Recyclable Materials to the Approved Recyclable Materials Processing Facility is not due to causes within its control or which could have been avoided by the exercise of due care, then Franchisee shall propose alternative Processing Facilities including all related costs to the City and City shall select the alternative to be used. Within forty-eight (48) hours of an emergency or sudden and unforeseen closure at the Approved Recyclable Materials Processing Facility, the Franchisee shall provide a written description of the reasons the use of the Approved Facility is not feasible, and the period of time Franchisee proposes to use an alternative Processing Facility. Such a change in Processing Facility shall be temporarily permitted until such time as the City is able to consider and respond to the use of the proposed alternative Processing Facility. If the use of the proposed Alternative Processing Facility is

anticipated to or actually does exceed thirty (30) days in a consecutive twelve (12) month period, the use of such Processing Facility shall be subject to approval by the City. The City may, in its sole discretion, approve, conditionally approve, temporarily approve, or disapprove of the use of the proposed Alternative Processing Facility. If the City disapproves the use of the proposed Alternative Processing Facility, the Parties shall meet and confer to determine an acceptable Processing Facility.

**D. Disposition of Unauthorized Waste**

Franchisee shall ensure that procedures to identify and reject materials delivered to the Approved Recyclable Materials Processing Facility which are Hazardous Waste, Excluded Waste, or which otherwise may not be legally accepted at the Approved Recyclable Materials Processing under their permits, are in place. Franchisee may, in the course of implementing such procedures, refuse to accept Recyclable Materials deposited from a Generator if they constitute Hazardous Waste, or otherwise may not be legally accepted at the Approved Recyclable Materials Processing Facility, and Franchisee shall be solely responsible of the materials which are accepted. If Franchisee discovers Hazardous Waste, or other material which may not be legally accepted, among materials which it has accepted, it shall Dispose of such waste at its own expense. Franchisee may pursue all legal rights and remedies it may have against the Waste Generator(s) of such Solid Waste if the Waste Generator(s) can be identified.

**E. Subcontracting**

Franchisee shall not engage any Subcontractors for Collection, Transportation, Diversion, or Processing of Recyclable Materials without the prior written consent of City. Franchisee must obtain written agreements with Processing Subcontractors to guarantee capacity to Process Discarded Materials. If the Franchisee plans to engage other Affiliated or Related Party Entities in the provision of services, Franchisee shall provide City with thirty (30) days written notification of its plans and provide an explanation of any potential impacts related to the scope, quality, timeliness, or cost of providing services under this Agreement. All insurance documents must be reviewed and approved by the City's Risk Manager prior to City acceptance. Franchisee shall require that all Subcontractors file insurance certificates with the City, name City as an additional insured, and comply with all material Terms of this Agreement.

**F. Disposal**

Franchisee shall ensure that the Residue from a Generator's Recyclable Materials, delivered to the Approved Recyclable Materials Processing Facility by the Franchisee, are Disposed of at the Approved Disposal Facility in full regulatory compliance.

### **5.11.3 Processing and Disposal of Organic Materials**

**A. General**

Franchisee shall Transport all Organic Materials Collected to the Approved Organic Materials Processing Facility. Franchisee's Approved Organic Materials Processing Facility shall be a Facility that Processes Single-Family, Multi-Family, and Commercial Source-Separated Organic Materials to recover Organic Waste.

**B. Status of Approved Organic Materials Processing Facility**

The Approved Organic Materials Processing Facilities used by Franchisee must be designed and constructed in accordance with all Applicable Laws (e.g., CEQA, California Code of Regulations, etc.). The Facility must have all permits from Federal, State, regional, County and City agencies necessary for it to operate as a Food and/ or Green Waste Facility and must be in full regulatory compliance with all such permits. Franchisee shall, keep active all existing permits and approvals necessary for use of the Approved Organic Materials Processing Facilities in full regulatory compliance. Upon request, Franchisee shall provide copies of Facility permits and/or notices of violations (obtained from its Processing Facility Subcontractor, if necessary) to the City Manager.

The Approved Organic Materials Processing Facilities must be authorized to accept, under its existing permit, and have sufficient uncommitted capacity to accept, all Organic Materials delivered to it by, or on behalf of, the City for the Agreement Term. Franchisee shall immediately notify City of any notice of breach or default received from Approved Organic Materials Processing Facilities.

**C. Alternative Processing Facility**

If Franchisee becomes unable to deliver the City's Organic Materials to an Approved Organic Materials Processing Facility due to causes within its control or which could have been avoided by the exercise of due care, the Franchisee shall arrange for it to be accepted at another Processing Facility, provided that the Franchisee provides written notice to the City, in which case Franchisee shall pay for any increased Transportation costs, any differences in the fees charged at such alternative Processing Facility and the fees then in effect under this Agreement. If Franchisee's inability to deliver the City's Organic Materials to the Approved Organic Materials Processing Facility is not due to causes within its control or which could have been avoided by the exercise of due care, then Franchisee shall propose alternative Processing Facilities including all related costs and City shall select the alternative to be used. In the event of an emergency or sudden unforeseen closure of the Approved Organic Materials Processing Facility, Contract shall, within forty-eight (48) hours of the emergency or sudden and unforeseen closure, provide a written description of the reasons the use of the Approved Facility is not feasible, and the period of time Franchisee proposes to use the alternative Processing Facility. Such a change in Processing Facility shall be temporarily permitted until such time as the City is able to consider and respond to the use of the proposed alternative Processing Facility. If the use of the proposed Alternative Processing Facility is anticipated to or actually does exceed thirty (30) days in a consecutive twelve (12) month period, the use of such Processing Facility shall be subject to approval by the City. The City may in its sole discretion, approve, conditionally approve, temporarily approve, or disapprove of the use of the proposed Alternative Processing Facility. If the City disapproves the use of the proposed alternative Processing Facility, the Parties shall meet and confer to determine an acceptable Processing Facility.

**D. Disposition of Unauthorized Waste**

Franchisee shall ensure that procedures to identify and reject materials delivered to the Approved Organic Materials Processing Facility which are Excluded Waste, Hazardous Waste, or which otherwise may not be legally accepted at the Approved Organic Materials Processing Facility under their permits, are in place. Franchisee may, in the course of implementing such procedures, refuse to accept Organic Materials deposited from a Generator if they constitute Hazardous Waste, or otherwise may not be legally accepted at the Approved Organic Material Processing Facility, and Franchisee shall be solely responsible of the materials which are accepted. If Franchisee discovers Hazardous Waste, or other material which may not be legally accepted, among materials which it has accepted, it shall Dispose of such waste at its own expense. Franchisee may pursue all legal rights and remedies it may have against the Generator(s) of such Solid Waste if the Generator(s) can be identified.

**E. Subcontracting**

Franchisee shall not engage any Subcontractors for Collection, Transportation, or Processing of Organic Materials without the prior written consent of City. Franchisee must obtain written agreements with Processing Subcontractors to Facilities' capacity to Process Discarded Materials. If the Franchisee plans to engage other Affiliated or Related Party Entities in the provision of services, Franchisee shall provide City with thirty (30) days written notification of its plans and provide an explanation of any potential impacts related to the scope, quality, timeliness, or cost of providing services under this Agreement. All insurance documents must be reviewed and approved by the City Manager prior to City acceptance. Franchisee shall require that all Subcontractors file insurance certificates with the City, name City as an additional insured, and comply with all material terms of this Agreement.

**F. Disposal**

Franchisee shall ensure that the Residue from the Organic Materials Collected in the City and delivered to the Approved Organic Materials Processing Facility by the Franchisee are Disposed of at the Approved Disposal Facility.

**5.12 Generator Waivers**

**5.12.1 General**

The City or its designee may grant waivers described in this Section to Commercial or Multi-Family Generators that impact the scope of Franchisee's provision of service for those Customers; provided, the Generator shall continue to subscribe with Franchisee for Franchised Collection services to the extent such services are not waived by the City. Waivers issued shall be subject to compliance with SB 1383 requirements, pursuant to 14 CCR Section 18984.11, or other requirements specified by the City.

**5.12.2 Generator Waiver Types**

**A. De Minimis Waivers.** The City or its designee may waive a Multi-Family's, Commercial Business', or its Property Owner's obligation to comply with some or all of the Source-Separated Recyclable Materials and/or Organic Materials Collection requirements set forth in this Agreement, SB 1383 Regulations, and the City's Municipal Code, all as may be amended from time to time, if the Multi-Family, Commercial Business, or its Property Owner provides documentation, or the City has evidence demonstrating one of the following de minimis conditions:

1. The Multi-Family's or Commercial Business' total Solid Waste Collection service is two (2) cubic yards or more per week, and Organic Waste subject to Collection comprises less than twenty (20) gallons per week, per applicable Container, of the Multi-Family's or Commercial Business' total waste; or
2. The Multi-Family's or Commercial Business' total Solid Waste Collection service is less than two (2) cubic yards per week, and Organic Waste subject to Collection comprises less than ten (10) gallons per week, per applicable Container, of the Multi-Family's or Commercial Business' total waste.

**B. Space Constraint Waivers.** The City or its designee may waive a Multi-Family's, Commercial Business', or its Property Owner's obligation to comply with some or all of the Source-Separated Recyclable Materials and/or Organic Materials Collection service requirements set forth in this Agreement, SB 1383 Regulations, and the City's Municipal Code, in the event that the Generator qualifies for a space constraint waiver under the City's Municipal Code.

**5.12.3 Waiver Requests**

Generators may submit requests for de minimis waivers and physical space waivers to the City or its designee. If a Generator submits a request for a waiver to the Franchisee, the Franchisee shall refer the Generator to the City or its designee. Upon request of the City, the Franchisee shall support the City in the waiver review process by providing requested Customer information. If the City or its designee grants a waiver to a Generator, the City shall notify the Franchisee and Franchisee shall update the Customer's information and Service Level in accordance with record-keeping and reporting requirements presented in Article 7 (Other Services: Billing, Reporting, Record-Keeping, and Public Education).

### **5.13 Procurement of Recovered Organic Waste Products**

#### **5.13.1 Compost Give-Away Events and City Use**

Franchisee shall make available for distribution an annual total of at least one hundred (100) cubic yards of Compost, or other mutually agreed upon amount, at two (2) public events held within the City or for other City use. The location, date, and time of such events shall be determined by the City, with adequate notice to the Franchisee, and may be held in conjunction with other City-approved events. Franchisee shall deliver the Compost to the agreed-upon event location at no cost to City. Franchisee shall provide at least one (1) attendant for at least six (6) hours per event.

#### **5.13.2 Compost and/or Mulch Procurement Credit for City**

In the event a public compost or mulch give-away event is held at the Designated Processing Facility, and to the extent that such distribution qualifies for City's procurement credit under SB 1383, the City shall be allocated its proportional share of such qualified procurement based on the inbound Tonnage of Organic Materials Collected by Franchisee from City divided by the total inbound Tonnage of the Approved Organic Materials Processing Facility to which Franchisee delivered such City Tonnage during the applicable measurement period.

### **5.14 Marketing and Sale of Recyclable Materials**

Franchisee shall be responsible of the marketing and sale of all Recyclable Materials Collected pursuant to this Agreement. Revenues from the sales of these materials shall be applied to the cost of service under the Agreement to reduce Franchisee's compensation. Franchisee shall sell all Recyclable Materials Collected pursuant to this Agreement at not less than fair market value as described in Article 9, Service Rates and Review.

### **5.15 Hazardous Waste Handling and Disposal**

If the Franchisee determines that Discarded Materials placed in any Container for Collection are Excluded Waste, or other Solid Waste that may not be legally Disposed of at the designated Disposal or Processing site or presents a hazard to the Franchisee's employees, the Franchisee shall have the right to refuse to accept such Discarded Materials. The Franchisee will contact the Waste Generator and request that the Waste Generator arrange for proper Disposal.

If the Waste Generator cannot be reached immediately, the Franchisee shall, prior to leaving the Premises, leave a tag at least two inches by six inches indicating the reason for refusing to Collect the Discarded Materials, in which case, a copy of the tag, along with the address of the Premises (and the name of the Waste Generator, if known) shall be delivered to the City on the following Business Day.

If the Excluded Waste, or other unauthorized waste is Collected before its presence is detected by Franchisee, and if the Waste Generator cannot be identified or fails to remove the Discarded Materials after being requested to do so, the Franchisee shall arrange for its legal Disposal. The Franchisee shall make a good faith effort to recover the cost of Disposal of such waste from the Waste Generator, and the costs of this effort, as well as the cost of Disposal shall be chargeable to the Waste Generator. Provided the failure to detect the Excluded Waste, or other unauthorized wastes prior to Collection and/or their delivery to the designated Disposal or Processing site is not due to the negligence of the Franchisee or its employees or due to failure of the Franchisee to have an adequate in place inspection program, the Franchisee shall be entitled to include the costs incurred under this paragraph as an operating expense for purposes of rate setting.

## **ARTICLE 6.**

### **COLLECTION SERVICE AND DIVERSION STANDARDS**

#### **6.1 Operations**

##### **6.1.1 Schedules**

Franchisee shall provide Collection of Solid Waste, Recyclable Materials, and Organic Materials for all Customers not less than once each week, and Collection for all three streams of Discarded Materials shall take place on the same day of the week for any given Customer. Collection time shall follow the requirements set forth in Chapter 9 of the City's Municipal Code, as may be amended from time to time. When the regularly scheduled Collection day falls on a Holiday, Collection shall take place on the following regularly scheduled Collection day. The Franchisee will notify Customers of Holiday Collection schedules. Franchisee will promptly resolve any complaints of noise to the satisfaction of the City Manager or the City Manager's designee. In the event the Franchisee misses the Collection of set out of Discarded Materials, the Franchisee shall Collect the missed pickups within one (1) Business Day of notification.

##### **6.1.2 Vehicles**

- A. General.** Franchisee shall keep a fleet of Collection trucks sufficient in number and capacity to efficiently perform the work required in the Agreement in strict accordance with the terms of this Agreement. Franchisee shall provide a detailed description concerning the number and type of vehicles necessary for performance. Franchisee shall have available on Collection days sufficient back-up vehicles for each type of Collection vehicle (i.e., rear loader, front loader, and roll-off) used to respond to complaints and emergencies. The fleet shall be maintained according to the requirements of Municipal Code 8.04.030.
- B. Specifications.** All vehicles used by Franchisee in providing Collection of Discarded Materials shall comply with all Federal, State, and local requirements for such vehicles as they now exist or may be amended in the future; and be registered with the California Department of Motor Vehicles. All such vehicles shall have water-tight bodies designed to prevent leakage, spillage, or overflow. All such vehicles shall comply with U.S. Environmental Protection Agency noise emission regulations and other applicable noise control regulations.

**C. Condition.**

1. Franchisee shall maintain all of its properties, facilities, and equipment used in providing service under this Agreement in a safe, neat, clean and operable condition at all times.
2. Franchisee shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles which are not operating properly and represent a safety hazard shall be taken out of service until they are repaired and do operate properly and safely. Franchisee shall perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. Franchisee shall keep accurate records of all vehicle maintenance, recorded according to date and mileage, and shall make such records available to City upon request.
3. Franchisee shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. Franchisee shall maintain accurate records of repair, which shall include the date/mileage, nature of repair and the signature of a maintenance supervisor that the repair has been properly performed.

**D. Vehicle Identification.** Each truck shall display in a prominent place a sign as required in Municipal Code 8.04.090.

**E. Operation.** Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. Franchisee shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by State or local vehicle weight restrictions.

**F. Renewable Natural Gas (RNG) Vehicles** Under this Agreement, Franchisee shall make a best effort for all Collection Vehicles to be powered by SB 1383-compliant RNG generated by a local facility or powered by SB 1383-compliant RNG that is purchased through a wheeling agreement with a party(ies), provided that the wheeling agreement is for purchase of gas derived from Organic Waste that has been Diverted from a Landfill and Processed at an in-vessel digestion Facility that is permitted or otherwise authorized by Title 14 of CCR to recover Organic Waste and meets the requirements of 14 CCR Section 18993.1(h). Upon the City's request, Franchisee shall obtain and provide the City with a written certification by an authorized representative of the publicly owned treatment works or the wheeling agreement under which Franchisee purchased SB 1383-compliant RNG certifying that the in-vessel digestion Facility produces the SB 1383-compliant RNG consistent with the requirements of 14 CCR Section 18993.1(h). Franchisee shall maintain records of the amount of SB 1383-compliant RNG purchased and shall report this information in accordance with Article 7. Franchisee shall agree to the City the right to report this SB 1383-compliant RNG usage toward the City's fulfilment of its annual recovered Organic Waste product procurement target in accordance with 14 CCR Section 18993.1.

### **6.1.3 Collection Containers**

**A. General.**

1. Franchisee shall supply all Generators with Containers for Collection of Solid Waste, Recyclable Materials, and Organic Materials, in accordance with this Section. Franchisee shall use the Franchisee-provided Collection Containers that are currently located at Customers' Premises, if applicable. If Customer is currently utilizing Collection Containers that were not provided by the Franchisee, Franchisee shall provide Containers from current inventory.
2. Franchisee shall provide Customers (including Single-Family, Multi-Family, Commercial, and City facility Customers) with new Collection Containers as requested by the Customer to meet its desired Service Level within five (5) Working Days of Franchisee's first receipt of the Customer request.
3. On and after the Effective Date, any new Containers provided by the Franchisee shall comply with the Container standards set forth in this Section. All Containers shall display the Franchisee's name, logo, telephone number, website, capacity (yards or gallons), and some identifying inventory or serial number.
4. If an existing Container breaks or is otherwise rendered non-functional on or after Effective Date the Franchisee shall replace the non-functional Container with a Container that complies with the color requirements of this Section. Notwithstanding this Section, the Franchisee is not required to replace functional Containers purchased prior to January 1, 2022, that do not comply with the color requirements of this Section prior to the end of the useful life of those Containers, or prior to January 1, 2036, whichever comes first.
5. Not more than once per Calendar Year, any Customer with Cart service may request up to one (1) Cart replacement at no charge to the Customer or the City. Franchisee shall replace the Cart within five (5) Working Days and remove the old cart from the Premises.

**B. Container Types and Sizes**

1. **Single-Family Containers.** Franchisee shall supply each Single-Family Dwelling Unit with one (1) Solid Waste Container, one (1) Recyclable Materials Container, and one (1) Organic Materials Container, each in a size consistent with the City-approved Collection program Container size options.
2. **Multi-Family Containers.** Franchisee shall supply each Multi-Family complex with the appropriate number and type of Solid Waste, Recyclable Materials, and Organic Materials Containers to adequately service the needs of the complex. Franchisee agrees to provide additional appropriate Containers, as required.
3. **Commercial Containers.** Franchisee shall furnish to all Commercial Customers appropriate Containers to Collect Solid Waste, Recyclable Materials, and Organic Materials at Commercial Premises. Containers with a capacity of one (1) cubic yard or more shall be available in standard sizes. The kind, size, and number of Containers furnished to particular Customers shall be as determined mutually by the Customer and Franchisee. Containers which are front-loading Bins shall have lids.

Notwithstanding this Section, Franchisee shall not be required to provide Recyclable Materials Container(s) to a Commercial Customer that is exempted from Recyclable Materials services by the City or has demonstrated to the City that it is Diverting Recyclable Materials through another City-approved method, for the duration of the approved exemption. Similarly, Franchisee shall not be required to provide Organic Materials Container(s) to a Commercial Customer that is exempted from Organic Materials services by the City or has demonstrated to the City that it is Diverting Organic Materials through another City-approved method, for the duration of the approved exemption.

4. **Other Solid Waste Containers.** Franchisee shall not be obligated to provide Customers with Compactor units, but will be obligated to charge the rates set by the City for the Collection of compacted Solid Waste.

**C. Container Colors.** Container colors shall be as follows:

1. Solid Waste Cart lids shall be black/grey. Solid Waste Bin, Compactor, and Franchise Roll-Off lids or bodies shall be black/grey.
2. Recyclable Materials Cart lids shall be blue. Recyclable Materials Bin, Compactor, and Franchise Roll-Off lids or bodies shall be blue.
3. Organic Materials Cart lids shall be green. Organic Materials Bin, Compactor, and Franchise Roll-Off lids or bodies shall be green.

No later than December 31, 2035, Contractor shall provide all Customers with Collection Containers that comply with the Container color requirements specified in this Section or as otherwise specified in 14 CCR Section 18982; 14 CCR, Division 7, Chapter 12, Article 3; or other Applicable Law.

**D. Container Labels**

Containers for Solid Waste shall be identified as for Solid Waste only and clearly labeled in accordance with this Section. Containers for Recyclable Materials shall be identified as for Recyclable Materials only and clearly labeled in accordance with this Section. Containers for Organic Materials shall be identified as for Organic Materials only and clearly labeled in accordance with this Section.

1. **Labels on Existing Containers or Lids.** Franchisee shall ensure a label has been provided to Customer on the body or lid of each existing Container, and that such label includes language or graphic images, or both, that indicate the primary materials accepted and the primary materials prohibited in that Container. Labels shall clearly indicate items that are Prohibited Container Contaminants for each Container.
2. **Imprinted or In-Mold Labels for New Containers or New Lids.** On or before Effective Date, Franchisee shall imprint new Container bodies or lids with text or graphic images that indicate the primary materials accepted and the primary materials prohibited in that Container. Labels shall clearly indicate items that are Prohibited Container Contaminants for each Container. Prior to ordering any Containers or lids with in-mold labels, Franchisee shall submit a sample of its proposed label, proposed location(s) for placement of labels on each type of Container, and its labeling plan to City for approval.

- E. Containers with Capacity of One Cubic Yard or More.** All Containers with a capacity of one (1) cubic yard or more shall meet applicable regulations for Bin safety, shall be maintained in good repair with neatly and uniformly painted surfaces, and shall prominently display the name and telephone number of Franchisee. Additionally, one-cubic-yard or larger Bins in the public right-of-way shall have reflectorized markings. Bins shall be clearly marked and identified as belonging to Franchisee.

- F. Replacement of Damaged or Broken Containers.** City and Franchisee acknowledge that, from time to time, a Customer may damage or destroy a Container. City and Franchisee also acknowledge that, from time to time, Containers may be stolen from the curb or damaged due to normal use. When notified of such occurrence, Franchisee shall replace the Container, at no charge to the Customer or City, pursuant to the guidelines established by the Franchisee and approved by the City. Each Customer shall be responsible for excess damage to any such Containers not caused by Franchisee. Replacement of a broken Container does not count towards the Customer's free Container replacement described in Section 6.1.3.A.5.

- G. City Purchase of Containers.** Upon expiration or early termination default of Agreement, City may purchase all Containers put into service at Customer Premises during the Term of the Agreement, and said Containers shall become property of the City at a value negotiated with the City, factoring the depreciation and scrap value. All Containers and Compactors purchased and put into service at Customer Premises during the Term of the Agreement that have not been fully depreciated shall be available to the City, at the City's option, at a cost reflecting the net book value, plus scrap.

**6.1.4 Spillage and Litter Abatement**

Franchisee shall use due care to prevent Discarded Materials, equipment oil, hydraulic fluids, or any other liquid from being spilled or scattered during the course of Collection or Transportation process. If any Discarded Materials or fluids are spilled during Collection, Franchisee shall clean up all spilled materials promptly. Each Collection vehicle shall carry a broom and shovel at all times for this purpose. Franchisee shall notify the City of such spillage. Should Discarded Materials, equipment oil, hydraulic fluids, or any other liquid exist prior to Franchisee collection, the customer shall be notified and potentially not serviced if the spillage was not the fault of the Franchisee.

**6.1.5 Personnel**

- A. General.** Franchisee shall furnish such qualified drivers, mechanical, supervisory, clerical, and other personnel as may be necessary to provide services required by this Agreement in a safe and efficient manner.

If Franchisee needs to provide additional personnel, Franchisee shall be responsible for all costs related to provision of such additional personnel. Franchisee may only reduce the number and type of personnel required with prior approval of City. If quality of service declines following such reduction in type and number of personnel, the City, at its discretion, may require the Franchisee to increase the number and type of personnel utilized, at no additional cost to the City.

- B. Identification.** Franchisee shall ensure that while on duty each Collection worker wears a clean uniform with conspicuous insignia displaying Franchisee's company name and the worker's name or identification number.

- C. Fees and Gratuities.** Franchisee shall not, nor shall it permit any agent, employee, or Subcontractors employed by it, to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for any services performed under this Agreement, except as provided in Article 9, Service Rates and Review.

- D. Training.** All drivers shall be trained and qualified in the operation of vehicles they operate, and must possess a valid license of the appropriate class, issued by the California Department of Motor Vehicles.

Franchisee shall provide adequate operations, health and safety, and Hazardous Waste identification and handling training for all of its employees who use or operate equipment or who are otherwise directly involved in Collection or other related operations.

- E. Customer Courtesy.** Franchisee shall train its employees in customer courtesy; shall prohibit the use of loud or profane language; and shall instruct Collection crews to perform the work quietly. Franchisee shall use its best efforts to ensure that all employees present a neat appearance and conduct themselves in a courteous manner. If any employee is found to be discourteous or not to be performing services in the manner required by this Agreement, Franchisee shall take all necessary corrective measures. If City has notified Franchisee of a Complaint related to a discourteous or improper behavior, Franchisee will reassign the employee to duties not entailing contact with the public while Franchisee is pursuing its investigation and corrective action process. Such behavior will be penalized in accordance with the Liquidated Damages Section of this Agreement.

## **6.2 Refusal to Provide Collection Services**

### **6.2.1 Contamination**

Franchisee must offer the Customer the correct combination of Cart and Bin sizes and collection frequency beyond the minimum bundled service requirements as necessary, that matches their unique service needs to reduce contamination of Recyclable Materials and Organic Materials. To support the City's diversion goals, the Franchisee is only required to collect and process Recyclable Materials if they have been separated by the Customer from the Solid Waste and Organic Materials Containers, and will only be required to collect Organic Materials if it has been Source Separated by the Customer from Solid Waste and Recyclable Materials Containers.

If the Franchisee observes twenty percent (20%) or more of Prohibited Container Contaminants, the Container shall be considered contaminated. For the first and second occurrence within any one Calendar Year of contamination for a particular container (i.e., Recyclable Materials or Organic Materials), Franchisee may refuse to Collect Recyclable Materials and Organic Materials Containers for Customers who fail to properly sort and set out Recyclable Materials and Organic Materials. The Franchisee must affix a Contamination Violation Notice, subject to City's approval, to the contaminated Container which contains instructions on the proper procedures for sorting Recyclable Materials or Organic Materials. Upon request from the Customer, Franchisee shall Collect Containers that received Customer Notices specifying non-Collection within one (1) Working Day of Customer's request. Upon rectification from the Customer, Franchisee must Collect the Recyclable Materials or Organic Materials and Transport the material to the appropriate Approved Facility for Processing. If the Container is still contaminated during the rescheduled Collection, the Discarded Materials will be serviced as Solid Waste, provided that the contaminants may safely and lawfully be Collected as Solid Waste. Franchisee shall Collect contents of the Discarded Materials Container at no charge to the Customer or the City for the first and second occurrences within a Calendar Year of contamination for a particular container (i.e., Recyclable Materials or Organic Materials) and must notify the Customer by phone, U.S. mail, e-mail, or in person (which may be a container tag), that for the third and subsequent incidents of excess contamination, the Customer may be charged a contamination fee for the missed pickup.

The Franchisee must also contact the Customer by phone, U.S. mail, e-mail, or in person (which may be a container tag) to ensure that they have the appropriate level of service for proper collection of Recyclable Materials and/or Organic Materials. Franchisee must provide (or have provided) digital/photographic documentation to the Customer that clearly documents the Customer's on-going contamination problems and written notices of contamination as described above. After receiving approval from the City, the Franchisee may increase the Container size or collection frequency for the Customer. Franchisee shall report quarterly to City any warning notices issued and documentation, in accordance with record-keeping and reporting requirements presented in Article 7.

### **6.2.2 Overage**

If a Generator is found to habitually overflow their Collection Container(s), i.e., lid will not close, and/or material not contained within Container, Franchisee shall provide the Customer with the correct combination of Collection Containers and collection frequency that matches the Customer's unique service needs to enable clean, efficient, and cost-effective collection of Solid Waste, Recyclable Materials, and Organic Materials. City and Franchisee agree that overflow of Discarded Materials that is not properly in the Customer's Collection Containers negatively impacts public health and safety. Franchisee or designee has also agreed to conduct recycling audits and provide outreach and support to Customers receiving the correct service level.

**6.2.3 City Actions Upon Identification of Prohibited Container Contaminants.**

The City or its designee shall perform SB 1383 activities required for the identification of Prohibited Container Contaminants which include, but are not limited to, record-keeping, provision of educational notices, and reporting.

**6.3 Customer Service**

**6.3.1 Office**

Office hours shall be, at a minimum, from 8:00 AM. To 5:00 P.M., Monday through Friday, exclusive of Holidays. A responsible and qualified representative of the Franchisee shall be available during office hours for communication with the public. Telephone numbers shall either be a local or a toll free call to residents and businesses of the City. Franchisee's telephone system shall be adequate to handle the volume of calls typically experienced on the busiest days. Franchisee shall also maintain a local or toll free telephone number for use during other than normal business hours. Franchisee shall have a representative, answering or message providing/receiving (voicemail) service available at said after hours telephone number.

**6.3.2 Service Complaint Documentation**

All service Complaints related to Collection of Discarded Materials shall be directed to Franchisee. Daily logs of Complaints concerning Collection of Discarded Materials shall be retained for a minimum of twenty-four (24) months and details shall be provided within the Franchisee's Quarterly Reports submitted to the City. The log shall include the date and time the Complaint was received, name, address, and telephone number of complainant to the extent that such information is provided by complainant, description of Complaint, employee recording Complaint and the action taken by Franchisee to respond to and remedy Complaint. All Complaints received shall be responded to within twenty-four (24) working hours of receipt.

All Customer service records and logs kept by Franchisee shall be available at all times during this Agreement to City upon twenty-four (24) hour notice and at no cost to City. City shall, at any time during regular Franchisee business hours, have access to Franchisee's Customer service department for purposes of monitoring the quality of Customer service or researching Customer Complaints assessing Liquidated Damages or other matters related to Franchisee's performance under this Agreement.

**6.3.3 Resolution of Customer Complaints**

Franchisee shall notify Customers of this Complaint procedure at the time Customers apply for or are provided service, and subsequently, annually.

A Customer dissatisfied with Franchisee's decision regarding a Complaint may ask the City to review the Complaint. The City's Utilities Director shall determine if the Customer's Complaint is justified, and if so, what remedy, if any shall be provided. The remedy under this Section shall be limited to a rebate of Customer charges related to the period of breach of any of the Terms of this Agreement. Any resolution of these Customer Complaints shall not affect the City's rights to Liquidated Damages.

#### **6.3.4 Government Liaison**

Franchisee shall designate in writing a "Government Liaison" who shall be responsible for working with the City Manager, Utilities Director, and/or one of their designated representatives to resolve Customer Complaints.

### **6.4 Diversion Standards**

#### **6.4.1 Warranties and Representations.**

Franchisee warrants that it is aware of and familiar with City's waste stream, and that it has the ability, and shall use commercially reasonable efforts to provide and employ, sufficient programs and services to ensure City will meet or exceed City's Diversion goals requirements (including, without limitation, amounts of Solid Waste to be Diverted, timeframes for Diversion, and any other requirements) as set forth in this Article, Applicable Law, and CalRecycle Regulations, and that Franchisee will do so without imposing any costs or fees other than those set forth in Exhibit A (Annual Rate Adjustment Methodology). Franchisee hereby agrees to assist the City to meet or exceed, on an annual basis, the Diversion Compliance, by undertaking the actions set forth in this section.

#### **6.4.2 Franchisee Required Actions.**

Franchisee shall take all of the following actions to assist the City in meeting, on an annual basis, Diversion Compliance:

1. Deliver all material set out for Collection in Cart, Bins, or Roll-Off Containers identified as containing Source Separated Recyclable Material to the Materials Recovery Facility for processing and Diversion.
2. Deliver all material set out for Collection in Cart, Bins, or Roll-Off Containers identified as containing Source Separated Organic Materials to the Organic Waste Processing Facility for processing and Diversion.
3. Only material in Garbage Carts or Garbage Bins will be delivered to the Disposal Facility for Disposal. All other material must go to the appropriate facility for full processing and Diversion.
4. Franchisee must take all commercially reasonable and lawful actions to maximize Diversion of materials from landfills.
5. Franchisee must develop and provide sufficient accurate information and data as necessary to ensure that Franchisee and City annually demonstrate Diversion Compliance to CalRecycle.
6. Franchisee must implement public education and outreach programs as required under this Agreement.

#### **6.4.3 Failure of Recyclables Market.**

Notwithstanding any other provision of this Agreement to the contrary, where CalRecycle has determined that there are no commercially viable markets for a specific type of Recyclable Materials, or with written notice to City, Franchisee is unable to identify a market for one or more Recyclable Materials despite the exercise of commercially reasonable efforts to process and market the material, and determines to Dispose of the Recyclable Material(s), such a determination shall not constitute a failure to implement service, a failure to implement a program, or an event of default hereunder.

#### **6.4.4 Failure to Meet Franchised Diversion Rate.**

If CalRecycle determines that City has failed to meet the Diversion Compliance due to Franchisee's failure to undertake the actions described in this Section, Franchisee must prepare, at Franchisee's cost and expense, and submit a corrective action plan to City sufficient to demonstrate good faith efforts by City to comply with Diversion Compliance and that is otherwise acceptable to CalRecycle. Franchisee's corrective action plan must specify all actions Franchisee will take to ensure it will meet Diversion Compliance Rates in the future and shall be subject to the review and approval by the City. Franchisee must implement all measures identified in the corrective action plan at its sole cost and expense, unless the failure to meet Diversion Compliance was due to a Change in Law or due to the negligent acts or omissions of the City. If Contractor fails to submit an adequate corrective action plan or to fully implement a City-approved corrective action plan, it shall subject Franchisee to Liquidated Damages as allowed under Article 12 in addition to any other remedies available to the City.

#### **6.5 Periodic Performance or Billing Audit**

The City shall have the right to periodically, not less than annually, request a performance audit or billing audit be completed by the Franchisee, the City, or an independent third party. The City shall be entitled to select the type of consultant that it deems qualified to conduct said audits. The cost of such audits will be an allowable cost under the rate setting methodology unless there are findings pursuant to Section 12.5 (Financial Material Errors, Omissions, or Irregularities).

#### **6.6 Performance Hearing**

- A. The City maintains the right to hold a public hearing at any time, not more than once each year, at which the Franchisee shall be present and shall participate, to review Franchisees services and performance. The purpose of the hearing shall be, in part, to provide for a discussion and review of technological, economic, and regulatory changes and quality of service provided to date. The goal of the performance hearing is to strive for an ever-advancing Discarded Materials management system, and to ensure services are provided with adequate quality, efficiency, and economy.
- Sixty (60) days after receiving notice from City of a performance review hearing, Franchisee shall, at a minimum, submit a report to City indicating the following:
1. Changes recommended and/or new services to improve City's ability to meet the goals of AB 939, SB 1383, and other Applicable Laws, and to contain costs and minimize impacts on rates; and
  2. Any specific plans for provision of changed or new services by Franchisee.
- B. The reports required by this Agreement regarding Customer Complaints shall be used as one basis for review. Franchisee may submit other relevant performance information and reports for consideration. City may request Franchisee submit specific information for the hearing. In addition, any Customer may submit comments or Complaints during or before the hearing, either orally or in writing, and these shall be considered.
- C. Topics for discussion and review at the performance review hearing shall include, but shall not be limited to, quality and adequacy of services provided, feasibility of providing new services, application of new technologies, Customer Complaints, amendments to this Agreement, developments in the law, new initiatives for meeting or exceeding SB 1383 and AB 939's goals, regulatory constraints, and Franchisee performance. City and Franchisee may each select additional topics for discussion at any performance review hearing.

- D.** Not later than sixty (60) days after the conclusion of each performance review hearing, City may issue a report. As a result of the review, City may request Franchisee to provide expanded or new services. Franchisee shall present, within thirty (30) days of a request to do so by City, a proposal to provide additional or expanded Diversion services. The proposal shall contain a complete description of the following:
1. Collection methodology to be employed (equipment, workforce, etc.).
  2. Equipment to be utilized (vehicle number, types, capacity, age, etc.).
  3. Labor requirements (number of employees by classification).
  4. Type of Containers to be utilized.
  5. Provision for program publicity/education/marketing.
  6. A projection of the financial results of the program's operations for the remaining Term of the Agreement in a balance sheet and operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions.
  7. Facility to be utilized.

#### **ARTICLE 7.**

#### **OTHER SERVICES: BILLING, REPORTING, RECORD-KEEPING, AND PUBLIC EDUCATION**

##### **7.1 Billing**

By resolution of the City Council, the City shall establish an integrated rate for Solid Waste, Recyclable Materials, and Organic Materials Collection services. Franchisee shall bill and collect these rates. Franchisee billing format and billing frequency shall be subject to approval of the City, and City shall have the right to revise the billing format to itemize certain charges.

The City may also direct Franchisee to insert mailers relating to Franchisee provided service with the Billings at no additional cost to the City. The mailers must fit in standard envelopes and not increase the required postage. The City will provide not less than thirty (30) days' notice to Franchisee prior to the mailing date of any proposed mailing to permit Franchisee to make appropriate arrangements for inclusion of City materials.

Franchisee shall maintain copies of said Billings and receipts, each in chronological order, for a period of three (3) years after the date of service for inspection by the City, or for such longer term as the City directs. Franchisee may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records cannot be altered, and can be preserved and retrieved for inspection and verification in a timely manner. Franchisee shall, in addition, provide an adequate backup system for billing records, regardless of the form in which the records are maintained. Any such backup system shall be subject to approval by the City.

##### **7.2 Owner Responsible for Payment**

The Owner of Occupied developed property shall be responsible and liable for paying the fees for Collection and Disposal of Discarded Materials for that property, although the franchisee will bill a tenant if requested by the owner.

**7.3 Collection of Bills from Delinquent Customers**

Bills shall be considered delinquent if not paid within thirty (30) days of the date due. Franchisee reserves its right to and may take such action as is legally available to Franchisee, to collect or cause collection of past due invoice amounts; provided, however, that the Franchisee shall not discontinue Solid Waste Collection to any Customer. If such past due invoice amounts are more than sixty (60) days delinquent, the Franchisee may (a) discontinue Recyclable Material or Organic Material Collection and/or (b) downsize the Customer's Service Level for Solid Waste Collection, until payment is made. Franchisee is solely responsible for collecting all delinquent charges and the City shall not be responsible for paying Franchisee for said delinquent charges.

Every five (5) years, or when the rolling total of delinquent fees equals \$50,000, whichever comes first, the Franchisee may take actions pursuant to Chapter 8.04 of the Municipal Code to collect on delinquent solid waste accounts.

**7.4 Customer Assistance Program at Franchisee's Good Will**

In exchange for the good will of the City and the general public, Franchisee voluntarily agrees to offer a low-income discount for Collection to eligible, low income Customers (the "Discount") and that the Discount shall neither impact the service rates nor be otherwise paid for or subsidized by any other Customer, City, or rate payer. Franchisee shall make the Discount available to any person enrolled in 19, 32, or 64 gallon trash service who demonstrates through appropriate documentation that they are eligible to receive the Discount using the City's existing methodology for utility services, as amended from time to time.

Franchisee shall provide all current Customers with information explaining how to qualify for and receive the Discount. Franchisee shall thereafter advertise the availability of the Discount on its website throughout the Term of this Agreement and at least once per year by direct notice to all Customers. The Discount shall be no less than twenty (20) percent of the Collection rate.

**7.5 Records**

A. Franchisee shall maintain records required to conduct its operations, to support requests it may make to City, and to respond to requests of the City. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as a fire, theft, and earthquake. Electronically maintained data and records shall be protected and an adequate backup system shall be provided for such data and records. The protection and backup systems shall be subject to approval by the City.

B. The following records shall be maintained for the City in form and detail satisfactory to the City, relating to:

1. Customer contact data, Customer services, and billing;
2. Weight of Discarded Materials, especially as related to reducing and Diverting Solid Waste. Information is to be separated by kind of account (Single-Family, Multi-Family, and Commercial) and by type of material (e.g., Solid Waste, Recyclable Materials, Organic Materials, Bulky/Large Items);
3. Results from special semi-annual clean-up events;
4. Routes;

5. Facilities, equipment, and personnel used;
  6. Facilities and equipment operations, maintenance, and repair;
  7. Processing and Disposal of Discarded Materials;
  8. Complaints; and
  9. Missed pick-ups.
- C. Franchisee shall maintain records of Transfer, Diversion, and Disposal of all Discarded Materials Collected in the City for the period of this Agreement and all extensions to this Agreement or successor Agreements. In the event Franchisee discontinues providing Collection of Discarded Materials to City, Franchisee shall provide all records of Diversion and Disposal of all Discarded Materials Collected within the City to City within thirty (30) days of discontinuing service. Records shall be in chronological order and organized in a form readily and easily interpreted.
- D. Records for other programs shall be tailored to specific needs. In general, they shall include:
1. Plans, tasks, and milestones; and
  2. Accomplishments in terms such as dates, activities conducted, quantities of products used, produced, or distributed, and numbers of participants and responses.
- E. Unless otherwise required in this Agreement, Franchisee shall retain all records and data required to be maintained by this Agreement for the Term of this Agreement plus five (5) years after its expiration or earlier termination. Franchisee's records shall be stored in one central location, physical or electronic, that can be readily accessed by Franchisee. Upon request, any such records shall be retrieved in a timely manner, not to exceed ten (10) Working Days of a request by the City and made available to the City; including any record or documentation that the City, requires to fulfill obligations under Applicable Law, including but not limited to AB 939, AB 341, AB 1826, AB 876, AB 901, SB 1383, and other current or future Federal, State, or local regulations, as amended.
- F. All financial records related to the services performed under this Agreement shall be separated from any and all other types of business and operations conducted by the Franchisee.

#### **7.6 Waste Generation, Characterization Studies, and Container Audits**

Franchisee acknowledges that the City must perform Discarded Materials generation and Disposal characterization studies periodically to comply with AB 939 requirements. Franchisee agrees to participate and cooperate with the City and its agents, at no cost to the City, to accomplish studies and data collection, and prepare reports, as needed, to determine weights and volumes of Discarded Materials and characterize Discarded Materials generated, Diverted, Disposed, transformed, or otherwise handled or Processed to satisfy AB 939 requirements.

## **7.7 Report Formats and Schedule**

- A.** Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:
1. Determine and set rates, and evaluate the financial efficacy of operations; and
  2. Evaluate past and expected progress towards achieving goals and objectives; and
  3. Determine needs for adjustment to programs; and
  4. Evaluate Customer service and Complaints.
- B.** The City may at no cost to itself request that Franchisee provide such additional information in the reports set forth below as the City deems necessary or appropriate to meet its needs, including provision of information needed for the City's compliance with Applicable Law, including but not limited to AB 939, AB 1826, AB 341, and SB 1383 report information.
- C.** Franchisee shall maintain records and reports in accordance with Article 7 and shall allow the City to audit and inspect records as described in Article 7.
- D.** At the City's option, the City may require that Franchisee provide the City with the aggregate Tonnage data related to AB 901 reporting that the City needs for its SB 1383 reporting to the extent available to Franchisee, within five (5) Working Days of City's request.
- E.** Failure of Franchisee to comply with the reporting requirements as set forth in this Section may result in an assessment of Liquidated Damages in accordance with the Liquidated Damages provision in Section 12.6 of this Agreement. Franchisee's repeated failure to submit reports, and/or failure to submit reports on time, may be deemed an event of default and may result in the termination of the Agreement at the discretion of the City Manager, in accordance with Article 12 of this Agreement.

## **7.8 Quarterly Reports**

### **A. Timeline**

Quarterly reports shall be submitted no later than 5:00 p.m. PT on the last day of the month following the end of Quarter in which the receipts are collected. Quarters end on March 31, June 30, September 30, and December 31. All reports shall be submitted to City electronically via e-mail, or by an alternative method mutually agreed upon by the City and Franchisee. The City reserves the right to require the Franchisee to maintain records and submit the reports required herein through use of a web-based software platform provided or designated by the City and/or through use of Microsoft Excel spreadsheet, at the Franchisee's expense.

## **B. Tonnage and Customer Subscription**

The Franchisee must report, to the extent reasonably practicable, the number of unique SFD and MFD accounts serviced, the number of unique Commercial and MXD accounts serviced, number of Bulky/Large Items collected, tonnage of Garbage, Recyclable Materials, and Organic Materials collected and processed for diversion broken down by Container type, tonnage of Bulky/Large Items collected, and Residual amounts (where applicable) from Recycling and Organic Materials Diversion operations that are landfilled. Quantities should be broken down by SFD, MFD, MXD, and Commercial Collection Services. MXD properties must have tonnage assigned appropriately to Residential and Commercial generators.

## **C. Contamination Monitoring Report**

The Franchisee shall submit the following information regarding Franchisee conducted contamination monitoring and issuance of Prohibited Container Contaminant Notices conducted pursuant to Section 6.2 (Refusal to Provide Collection Services):

1. Description of the Franchisee's Process for determining the level of contamination.
2. Summary report of Customer Notices issued which for each notice shall include the date of issuance, Customer name, and service address.
3. A record of each inspection and contamination incident, which shall include, at a minimum:
  - a. Name of the Customer,
  - b. Address of the Customer,
  - c. The date the contaminated Container was observed,
  - d. The staff who conducted the inspection,
  - e. The total number of violations found, and a description of what action was taken for each,
  - f. Copies of all notices issued to Generators with Prohibited Container Contaminants, and
  - g. Any photographic documentation or supporting evidence.
4. Any other information reasonably requested by the City or specified in contamination monitoring provisions of this Agreement.

## **D. SB 1383 Non-Compliance Complaints**

Franchisee shall maintain a record of all SB 1383 non-compliance Complaints as defined in 14 CCR Section 18995.3 and responses and submit the following information:

1. Total number of SB 1383 non-compliance Complaints received, and total number of SB 1383 non-compliance Complaints investigated
2. Copies of documentation recorded for each SB 1383 non-compliance Complaint received, which shall at a minimum include the following information:
  - a. The SB 1383 non-compliance Complaint as received;
  - b. The name and contact information of the complainant, if the SB 1383 non-compliance Complaint is not submitted anonymously;
  - c. The identity of the alleged violator, if known;
  - d. A description of the alleged violation; including location(s) and all other relevant facts known to the complainant;
  - e. Any relevant photographic or documentary evidence submitted to support the allegations in the SB 1383 non-compliance Complaint; and
  - f. The identity of any witnesses, if known.
3. Copies of all SB 1383 non-compliance Complaint reports submitted by Franchisee to the City.
4. Copies of all investigation reports submitted to the City which shall include at minimum:
  - a. The SB 1383 non-compliance Complaint as received;

- b. The date the Franchisee investigated the SB 1383 non-compliance Complaint;
  - c. Documentation of the findings of the investigation;
  - d. Any photographic or other evidence collected during the investigation; and
  - e. Franchisee's recommendation to the City on whether or not the entity investigated is in violation of SB 1383 Regulations based on the Franchisee's investigation.
- E. Narrative summary of problems encountered, and actions taken, with recommendations for the City as appropriate.
- F. The quarterly status of activities identified in the annual public education described in Section 7.16 (Public Education and Outreach).
- G. Status report on applications for renewals of existing permits or any new permits which may be required to continue operations at the designated Disposal site within existing permitted areas.
- H. Quantities each of Solid Waste, Recyclable Materials, and Organic Materials Collected, Diverted, and Disposed of, in Tons, during the semi-annual Residential clean-up weeks, if applicable.
- I. For each new program, provide activity related and narrative reports on goals and milestone and accomplishments. Describe problems encountered, actions taken, and any recommendations to facilitate progress.
- J. Provide a summary assessment of the overall program for the Collection of Discarded Materials from Franchisee's perspective relative to financial and physical status of program. The physical status is to relate to how well the program is operating for efficiency, economy, and effectiveness relative to meeting all the goals and objectives of this Agreement. Provide recommendations and plans to improve. Highlight significant accomplishments, problems, and proposed solutions.

## **7.9 Annual Reports and Financial Audit**

### **7.9.1 Financial Audit.**

Franchisee shall submit to the City annual audited financial statements prepared at Franchisee's expense by an independent Certified Public Accountant not later than 180 days following the expiration of the Franchisee's Fiscal Year. Pursuant to Exhibit A (Annual Rate Adjustment Methodology), at the time a rate application request is submitted to City, the financial forms contained in the rate application must be reconciled to the audited financial statements.

### **7.9.2 Annual Report.**

In addition to the Quarterly reporting requirements, the Franchisee shall provide an Annual Report, covering the most recently completed Calendar Year, in accordance with the format and submittal requirements of this section. Annual reports shall be submitted no later than 5:00 p.m. PT on the last day of the month following the end of the calendar year. The Annual Report shall include the following:

#### **A. Collection and Subscription Report**

1. A summary of all data provided in the Quarterly Tonnage reports, including annual totals and averages.
2. The type(s) of Collection service(s) provided, a list of all hauler routes serviced, and a record of the SFD, MFD, MXD, and Commercial addresses served on each hauler route.

3. To the extent reasonably practicable, a summary of Customer subscription data, including the number of accounts; the total number of Generators enrolled with Franchisee for service, listed separately by Service Level and Container type, as well as separately by SFD, MFD, MXD, and Commercial Customers, and separately for each type of Discarded Material; and the number of Bulky/Large Item Collections performed.
4. A detailed list of SFD, MFD, MXD, and Commercial Customer information, including Solid Waste, Recyclable Materials, and Organic Materials Service Levels, Customer type, Customer Name, and Customer service addresses reflecting Customer Service Levels as of December 1 (for the year in which the report is submitted).

**B. Compliance Monitoring and Enforcement Report**

1. A summary of the total number of SB 1383 Regulatory non-compliance Complaints that were received and forwarded to the City or their designee.
2. The total number of Contamination Notices issued, categorized by type of Generator.
3. Copies of all Prohibited Container Contaminant Courtesy Pick-Up and Non-Collection Notices and educational materials issued to non-compliant Generators.

**C. Public Education and Outreach Report**

1. A copy of all education and outreach materials provided to Customers or otherwise used for education and outreach efforts in accordance with this Agreement, including but not limited to flyers, brochures, newsletters, invoice messaging/billing inserts, website postings, mobile applications, and social media postings.
2. A record of the date and to whom the information was disseminated or with whom direct contact was made, in the form of a list that includes: the Customer's name or account name, the type of education or outreach received, the distribution date, and the method of distribution.
3. For any mass distribution through mailings or bill inserts, the Franchisee shall maintain a record of the date, a copy of the information distributed, and the type and number of accounts that received the information.
4. A copy of electronic media, including the date of posting, for social media posts, e-mail communications, and other electronic messages.
5. A summary of the status of the annual education of the reporting year, including activities conducted and the quantitative and/or qualitative results of those activities.
6. The annual public education required by Section 7.16 of the Agreement for the upcoming then-current calendar year. For example, Franchisee submittal of a 2024 annual report in January 2025 shall include Franchisee submittal of the annual public education planned for calendar year 2025.

**7.10 Maintenance of Accounting Records**

Franchisee shall maintain accounting records in accordance with generally accepted standards and principles of accounting. In its accounting records, Franchisee shall discreetly maintain and clearly identify all items of revenue and expense pertaining to the City's Franchised operations. Cost and revenue information for the City shall be segregated from other geographical areas served by Franchisee. Cost and revenue information for the City, in addition, shall be segregated from other business activities of the Franchisee. Separate detailed records shall be maintained by Franchisee with respect to all transactions with Affiliated entities that affect the cost and revenue of Franchisee in providing the Franchise Collection services.

**7.11 Right to Audit Records**

In addition to other reporting requirements in this Agreement, the City may review, test, and audit the books and records of the Franchisee or may engage a Certified Public Accountant for this purpose. The cost of such inspection or review will be an allowable cost under the rate setting methodology unless there are findings pursuant to Section 12.8 (Financial Material Errors, Omissions, or Irregularities).

**7.12 Inspection by City**

The designated representatives of the City shall have the right to observe and review Franchisee operations and enter Franchisee's premises for the purpose of such observation and review at all reasonable hours with reasonable notice.

**7.13 Regulatory Reporting**

Franchisee shall promptly provide the City copies of each adverse report from, and each regulatory action from, local, State, and Federal regulatory agencies. In addition, Franchisee shall send copies to City of any reports that Franchisee submits to regulatory agencies with respect to performance of this Agreement.

Franchisee shall provide City promptly with copies of any notices and correspondence from other Facilities, including Disposal sites, utilized by Franchisee in performance of this Agreement, concerning any breach of agreement with such Facility or violation of regulations, including delivery of unauthorized wastes. Franchisee shall direct such Facilities to at all times simultaneously send copies of such notices and correspondence to City.

Franchisee shall promptly provide City with copies of any reports and correspondence concerning the status of permits with respect to Franchisee and such Disposal sites and Facilities referenced above.

**7.14 Upon-Request Reporting.**

City reserves the right to require Franchisee to provide additional reports or documents as City reasonably determines to be required for the administration of this Agreement or compliance with Applicable Law.

**7.15 Facility Capacity Planning Information.**

To the extent such information is available to Franchisee, City may require Franchisee to provide City with information of available Organic Waste Processing capacity for any Approved Processing Facilities, where available capacity may include identification of monthly Tons of additional Organic Waste such Approved Facilities have the ability to receive within permitted limits. Franchisee shall respond to City within sixty (60) days of City's request for information regarding available new or expanded capacity, to the extent such information is available to Franchisee and, at City's option, may be required to submit reports on a more regular basis (such as monthly, quarterly, or annually). If Franchisee uses a Subcontractor to perform some or all of the Facility-related services required by this Agreement, Franchisee shall use commercially reasonable efforts to secure any City-requested Facility capacity planning information from its Subcontractor(s). The annual Facility capacity planning report shall comply with the following:

Include reports of current throughput and permitted capacity and available capacity for Organic Materials Processing for any Facility in the City that Processes Organic Materials. Existing capacity may include identification of monthly Tons of additional Source-Separated Recyclable Materials, Source-Separated Organic Materials, and/or Solid Waste capacity such Facility has the ability to receive within permitted limits.

Include description of potential new or expanded Processing capacity at those Facilities, operations, and activities for Processing of Organic Materials, including information about throughput and permitted capacity necessary for planning purposes.

Be submitted using a form or format approved by the City Manager.

## **7.16 Public Education and Outreach**

### **7.16.1 Franchisee Cooperation and Support for City Educational Efforts.**

Franchisee acknowledges and agrees that education and public awareness are critical, key, and essential elements of any efforts to achieve compliance with AB 939, SB 1383, and other Applicable Law. Accordingly, Franchisee agrees to take direction from City to exploit opportunities to expand public and Customer knowledge concerning needs and methods to reduce, reuse, and Recycle Solid Waste and to cooperate fully with City in this regard. Franchisee acknowledges that they are part of a multi-party effort to operate and educate the public about the regional integrated waste management system. Franchisee shall cooperate and coordinate with the City on public education activities to minimize duplicative, inconsistent, or inappropriately timed education campaigns. The Franchisee shall cooperate with and shall not impede, interfere, or attempt to impede or interfere with the implementation, expansion, or operation of public education and outreach programs or campaigns conducted by the City.

### **7.16.2 Service Brochure**

Franchisee shall prepare and keep current a service brochure acceptable to the City which summarizes Solid Waste regulations, all services provided by Franchisee, Collection and Disposal rates, telephone numbers, special Collection events, Collection schedules, Complaint procedures, and other pertinent information. Franchisee shall have copies of this flyer available at all times in Franchisee's office and on their website; shall mail copies to all new Customers; shall annually provide copies to all of its current Customers via email or written within their bill; and shall mail updated copies to all Customers as notification of changes in service or rates, prior to such changes.

### **7.16.3 Franchisee Supplemental Education Materials.**

Franchisee shall perform all necessary public education activities related to the Recyclable Materials and Organic Materials Collection services as directed by the City. This shall include, but not be limited to, annual mailings to all Customers explaining the Recyclable Materials and Organic Materials Collection program, mailings prior to the start of services, flyers handed out with Container delivery and follow-up mailings or handouts related to the Collection of new materials or upon report of Contamination. Franchisee shall obtain approval from the City on all Franchisee-provided public education materials outside of the City's education plan, including but not limited to print, radio, television, internet media, Franchisee's website, or mobile application before publication, distribution, and/or release. The City shall have the right to request that Franchisee include identification and contact information for the City on public education materials, and approval of such requests shall not be unreasonably withheld.

#### **7.16.4 Billing Inserts.**

Franchisee shall maintain its own program of providing information relevant to billing and Collection services, issues, and needs with its bills. Franchisee shall also include in Customer bills additional information, including information on any and all programs, as directed by the City. Franchisee shall bear all labor costs with respect to inserting public education materials with the Billings. City shall bear any additional postage expense resulting from the City's inserts and shall bear other expenses related to the inserts to the extent said expenses are clearly in excess of the Franchisee's normal billing costs. All public education materials shall be approved in advance by the City. Franchisee shall be responsible for printing single-sheet, double-sided bill inserts at least annually. Inserts shall be provided in English and Spanish and printed on recycled paper. Franchisee shall provide electronic bill inserts (or separate email attachments) to Customers who are billed electronically, and paper bill inserts to Customers who receive paper bills. Upon City request for such inserts, Franchisee shall comply with such request during its next billing cycle for the targeted Customer group. Franchisee shall perform this service with no additional requirement for compensation.

#### **7.16.5 Annual Notice of Requirements.**

Franchisee shall, not less than once per year, prepare and distribute to each Generator in the City a mailer that includes information specified in 14 CCR Section 18985.1(a). Such mailer shall be distributed by Franchisee to all Residential and Commercial mailing addresses, including individual MFDs and tenants of multi-tenant Commercial locations. Franchisee shall also make this notice available in an electronic format through the Franchisee's website.

#### **7.16.6 Other Outreach.**

At the direction of the City, Franchisee shall participate in and promote AB 939 activities, SB 1383 programs, and other Discarded Materials management and waste reduction techniques at community events and local activities. Such participation would include providing, without cost, educational and publicity information promoting the goals of the City's Discarded Materials Collection and Diversion programs.

#### **7.17 Records Retention**

Franchisee shall maintain the above records, reports, and data set forth in this Article for such time as City may direct. Franchisee agrees to make all such records, reports, and data available for inspection by City or City's authorized representatives, upon reasonable notice by City.

### **ARTICLE 8. PAYMENTS TO CITY**

#### **8.1 Quarterly Fees and Payment**

The following quarterly fees and payments shall be due on the last day of the month following the end of each Quarter for which Collection was provided. Quarters end on March 31, June 30, September 30, and December 31. The Quarterly Fees shall be accompanied at the time of payment by a written report, in a format acceptable to the City, setting forth the calculations the Franchisee used to determine the amount due and the basis for those calculations. If any fees are not paid on or before the last day of the month following the end of each Quarter for which Collection was provided, Franchisee shall pay to City a late payment penalty in an amount equal to one percent (1%) of the amount owing for that month. Franchisee shall pay an additional late payment penalty of one percent (1%) owing on any unpaid balance for each following thirty (30) day period the fee remains unpaid. Late payment penalty amounts shall not be included in any revenue requirement.

### **8.1.1 Franchise Fee**

The City Council may establish and impose, by ordinance or resolution, fees or charges for benefits conferred, privileges granted, or services or products provided to the Franchisee, or for the City's reasonable regulatory costs, related to or involving Franchisee's responsibilities under this Agreement. The Franchisee shall pay to the City a Franchise Fee, AB 939 Fee, and other fees, as determined by the Parties or the City Council, to compensate the City for its solid waste-related costs, the impacts to City property, and the value of the Company's use of City property for solid waste related services. The fees are set forth in Exhibit A (Annual Rate Adjustment Methodology).

### **8.1.2 AB 939/SB 1383 Fee**

Franchisee shall pay an AB 939/SB 1383 fee to the City quarterly. The City shall retain the sole right to set priorities for the use of its AB 939/SB 1383 fee. In addition, if the City's designee implements an AB 939, SB 1383, or Solid Waste Management fee, Franchisee shall pay that fee directly to the designee. Said fees shall be an allowable cost in Franchisee's rate application. All AB 939/SB 1383 fees and Solid Waste Management fees paid to the City, or its designee shall be considered a pass-through cost for purposes of rate setting, and, as such, changes to these fees shall be adjusted accordingly, subject to all applicable laws and regulations. The City or its designee shall have the right to establish and adjust the AB 939, SB 1383, or Solid Waste Management fee at any time, provided that any changes are considered a pass-through cost for the purposes of rate setting, at the time of the change in the AB 939, SB 1383, or Solid Waste Management fee.

### **8.1.3 Other Fees**

The City shall reserve the right to set such other fees, as the City deems necessary. These fees will be treated as a pass-through expense. The amount, time, and method of payment shall be similar to that described in Section 8.1.

### **8.1.4 Adjustment of Fees**

The City may adjust the amount of fees annually. Such adjustment shall be reflected in the rates that the Franchisee is allowed to charge and collect from Customers.

### **8.1.5 Review of Fee Payments**

The City, or its agent, reserves the right to annually perform an independent review of fee payments to verify that fees are being paid in accordance with this Agreement. The cost of such inspection or review will be an allowable cost under the rate setting methodology unless there are findings pursuant to Section 12.8 (Financial Material Errors, Omissions, or Irregularities).

### **8.1.6 Business License Tax**

Franchisee shall pay each year the annual business license tax.

## **ARTICLE 9. SERVICE RATES AND REVIEW**

### **9.1 General**

In addition to any compensation specified elsewhere in the Agreement, Franchisee's compensation provided for in this Article shall be the full, entire, and complete compensation due to Franchisee pursuant to this Agreement for all labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, Transfer and Transport, Processing, Diversion, Disposal, profit, and all other things necessary to perform all the services required by this Agreement in the manner and at the times prescribed. Franchisee will not be entitled to any further rate adjustments as a result of Customer delinquencies and other bad debt issues.

Franchisee does not look to the City for payment of any sums, except for Collection of Discarded Materials services provided to the City, under this Agreement in consideration of the right to charge and collect from Customers for services rendered at rates fixed by the City from time-to-time.

**9.2 Service Rates**

Service rates are those established by Resolution adopted by City Council. Franchisee shall provide the services required by this Agreement and charge no more than the rates authorized by City Resolution.

**9.3 Rate Review**

Rates will be established the Annual Rate Methodology, hereby incorporated by reference and attached hereto as Exhibit A.

**9.4 Publication of Rates**

Pursuant to Section 6 of Article XIII D of the California Constitution and California Government Code Sections 53755-56, as may be amended from time to time, on years outside of the Proposition 218 public hearing process, the Franchisee must notify Customers of increases to their solid waste rates not less than thirty (30) days prior to the effective date of such increase. Franchisee shall provide the information in the regular billing statement or by any other mailing by the Franchisee to the address to which the Franchisee customarily mails the billing statement for the solid waste fees and charges.

**9.5 Rounding**

Adjustments to the overall Service Rates shall be made only in units of one cent (\$0.01). Fractions of less than one cent (\$0.01) shall not be considered in making adjustments. All CPI indices shall be rounded at two (2) decimal places for the adjustment calculations.

**ARTICLE 10.  
INDEMNITY, INSURANCE, AND PERFORMANCE BOND**

**10.1 Indemnification**

**10.1.1 General.**

Franchisee shall indemnify and hold harmless City, its officers, Directors, employees, and agents from and against any and all loss, liability, penalty, forfeiture, claim, demand, action proceeding or suit of any and every kind and description (including, but not limited to, injury to and death of any Person and damage to property, or for contribution or indemnity claimed by third parties) to the extent arising or resulting from and in any way connected with (1) the negligence or willful misconduct of Franchisee, its officers, employees agents and/or sub Contractors in performing services under this Agreement; (2) the failure of Franchisee, its officers, employees, agents and/or subcontractors to comply in all respects with the provisions of this Agreement, applicable laws (including, without limitation, the Environmental Laws) and regulations, and/or applicable permits and licenses; (3) the acts of Franchisee, its officers, employees, agents and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws). Franchisee further agrees to and shall, upon demand of City, at Franchisee's sole cost and expense, defend (with attorneys acceptable to City) the City, its officers, directors, employees, and agents against any claims, actions, suits or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any events described in subclauses (1) through (3) in the immediately preceding sentence to the extent arising from or related to alleged or actual violations of Proposition 218 and/or its implementing legislation.

**10.1.2 CERCLA.**

Franchisee agrees to defend and indemnify the City, Council members, officers, employees, and agents for all actions of the Franchisee associated with the Franchisee's role as the Arranger of Solid Waste service, or as a "potentially responsible party" within the meaning of CERCLA in performing Solid Waste service under any Federal, State, or local laws, rules, or regulations. The Franchisee shall further defend and indemnify City from any and all legal actions against City on the basis of the assertion that the City is an Arranger of Solid Waste services as a result of this Agreement.

**10.1.3 AB 939 and SB 1383 Indemnification.**

Franchisee agrees to indemnify and hold harmless City, its officers, Directors, employees, and agents from and against all fines and/or penalties imposed by the CalRecycle in the event the source reduction and Recycling goals or any other requirement of AB 939 or SB 1383 are not met by City with respect to the waste stream Collected under this Agreement but only to the extent that such failure is due to the failure of Franchisee to meet its obligations under this Agreement or for delays in providing information that prevents City from submitting reports required by AB 939 or SB 1383 in a timely manner.

**10.2 Insurance**

Franchisee shall procure and maintain, for the duration of the Franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services hereunder by the Franchisee, its agents, representatives, employees, or Subcontractors.

**10.2.1 Minimum Scope of Insurance.**

Coverage shall be at least as broad as:

- A. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- B. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code I (any auto).
- C. Workers' Compensation insurance as required by the State of California and Employer's Liability insurance.
- D. Pollution Legal Liability

**10.2.2 Minimum Limits of Insurance.**

Franchisee shall maintain limits no less than:

- A. Commercial or Comprehensive General Liability: Five Million Dollars (\$5,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit.
- B. Automobile Liability: Five Million Dollars (\$5,000,000) combined single limit per accident for bodily injury and property damage.
- C. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and employers' liability with limits of \$1,000,000 per accident for bodily injury or disease.
- D. Pollution Liabilities: One Million Dollars (\$1,000,000) each loss / Two Million Dollars (\$2,000,000) annual aggregate all losses.

**10.2.3 Other Insurance Provisions.**

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- A. The City, Council members, its officers, officials, employees, and agents are to be covered as insured as respects: liability arising out of activities performed by or on behalf of Franchisee; products and completed operations of Franchisee; Premises owned, occupied, or used by Franchisee; or automobiles owned, leased, hired, or borrowed by Franchisee. The coverage shall contain no special limitations on the scope of protection afforded to the City, Council members, its officers, officials, employees, agents, or volunteers.
- B. For any claims related to this project, Franchisee's insurance coverage shall be primary insurance as respects City, Council members, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by City, Council members, its officers, officials, employees, agents, or volunteers shall be excess of Franchisee's insurance and shall not contribute with it.
- C. Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to City, Council members, its officers, officials, employees, agents, or volunteers.
- D. Franchisee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- E. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either Party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt required, has been given to City.
- F. The Automobile Liability Policy shall be endorsed to delete the Pollution exclusion and add the Motor Carrier Act endorsement (MCS-90), TL.1005, TL 1007 and/or other endorsements required by Federal or State authorities.
- G. Pollution, if on a Claims Made form:
  - 1. The "Retro Date" must be shown and must be before the date of the contract or the beginning contract work.
  - 2. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
  - 3. If coverage is canceled or non-renewed, and not replaced with another claims made policy form with a "Retro Date" prior to the contract Effective Date, the Franchisee must purchase "extended reporting" coverage for minimum of two years after completion of contract.

#### **10.2.4 Acceptability of Insurers.**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. Insurers selected by Franchisee shall be admitted to issue insurance in the State of California.

#### **10.2.5 Verification of Coverage.**

Franchisee shall furnish City with certificates of insurance and with original endorsements affecting coverage required herein, which may be requested by City at any time. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to City and are to be received and approved by City before performance under this Agreement commences.

#### **10.2.6 Subcontractors.**

Franchisee shall include all Subcontractors as insurers under its policies or shall furnish separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to all of the requirements stated herein.

**10.2.7 Occurrence Based Coverage.**

All policies secured by Franchisee shall be occurrence and not claims based unless City so Consents in writing.

**10.3 Performance Bond**

Simultaneously with the execution of this Agreement, Franchisee shall file with City a bond, payable to City, securing Franchisee's faithful performance of its obligations under this Agreement. The principal sum of the bond shall be One and a Half Million Dollars (\$1,500,000).

**ARTICLE 11.  
CITY'S RIGHT TO PERFORM SERVICE**

**11.1 General**

Subject to the other provisions of this Agreement, including without limitation Sections 12.1 and 12.5, in the event that Franchisee, for any reason whatsoever, fails, refuses or is unable to Collect, Transport, Process, or market any or all Discarded Materials which it is required by this Agreement to Collect, Process, and market, at the time and in the manner provided in this Agreement, for a period of more than seven (7) days, and if, as a result thereof, Discarded Materials should accumulate in the City to such an extent, in such a manner, or for such a time that the City Manager should find that such accumulation endangers or menaces the public health, safety, or welfare, then City shall have the right, but not the obligation, upon twenty-four (24) hour prior written notice to Franchisee during the period of such emergency as determined by the City Manager, (1) to perform, or cause to be performed, such services itself with its own or other personnel without liability to Franchisee; and/or (2) to take possession of any or all of Franchisee's land, equipment, and other property to Collect, Transport, Process, and/or market any Discarded Materials generated within the City which Franchisee would otherwise be obligated to Collect, Transport, Process, or market pursuant to this Agreement. In the event that the City takes possession of the Franchisee's equipment and other property, the City shall be entitled to have another contractor operate such equipment and property under City direction. Additionally, in the event the City takes possession of the Franchisee's equipment and other property, the City does not guarantee repair of existing problems with equipment and facilities.

Notice of Franchisee's failure, refusal, or neglect to Collect, Transport, Process, or market Discarded Materials may be given orally by telephone to Franchisee at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to Franchisee within twenty-four (24) hours of the oral notification.

Franchisee further agrees that in such event:

- A. It will take direction from City to affect the transfer of possession of property to City for City's use.
- B. It will, if City so requests, keep in good repair and condition all of such property, provide all motor vehicles with fuel, oil, and other service, and provide such other service as may be necessary to maintain said property in operational condition.

City may immediately engage all or any personnel necessary or useful for the Collection, Transportation, Processing, and/or marketing of Discarded Materials, including, if City so desires, employees previously or then employed by Franchisee. Franchisee further agrees, if City so requests, to furnish City the services of any or all management or office personnel employed by Franchisee whose services are necessary or useful for operations associated with Collection, Transportation, Diversion, Processing, marketing, and Disposal of Discarded Materials, and for the billing and collection of fees for these services.

City agrees that it assumes complete responsibility for the proper and normal use of such equipment and facilities while in its possession.

If the interruption or discontinuance in service is caused by any of the reasons listed in Section 12.5 (Excuse From Performance), City shall pay to Franchisee the reasonable rental value of the equipment and facilities, possession of which is taken by City, for the period of City's possession, if any, which extends beyond the period of time for which Franchisee has rendered bills in advance of service.

Except as otherwise expressly provided in the previous paragraph, City's exercise of its rights under this Article 11 (1) does not constitute a taking of private property for which compensation must be paid; (2) will not create any liability on the part of City to Franchisee; and (3) does not exempt Franchisee from the indemnity provisions of Article 10, Indemnity, Insurance, and Performance Bond, which are meant to extend to circumstances arising under this Section, provided that Franchisee is not required to indemnify City against claims and damages arising from the acts or omissions of City officers, employees and agents in the operation or use of Franchisee's land, property, equipment, or other assets during the time City has taken possession of such items.

**11.2 Temporary Possession of Franchisee's Property**

If the City suffers an interruption or discontinuance of service as described in Section 11.1 (including interruptions and discontinuance due to events described in Section 12.5, Excuse from Performance), City may take possession of and use all of Franchisee's property described above until other suitable arrangements can be made for the provision of Collection of Discarded Materials, which may include the grant of a Contract to another company. The same notice requirements of Section 11.1 are applicable.

**11.3 Billing and Compensation to City During City's Possession**

During such time that city is providing Collection services, as above provided, Franchisee shall continue to bill and collect payment from all users of the above-mentioned services.

Franchisee further agrees that, in such event, it shall reimburse City for any and all costs and expenses incurred by City in taking over possession of the above-mentioned property for Collection Service in such manner and to an extent as would otherwise be required of Franchisee under the Terms of this Agreement. Such reimbursement shall be made from time to time after submission by City to Franchisee of each statement listing such costs and expenses, but in no event later than five (5) Working Days from and after each such submission. The City shall have the right, at its sole discretion, to take over billing and payment collection activities. The City shall then pay any net revenues to the Franchisee, after deducting all expenses, including City-incurred expenses.

**11.4 City's Right to Relinquish Possession**

It is further mutually agreed that City may at any time at its discretion relinquish possession of any or all of the above-mentioned property to Franchisee and thereupon demand that Franchisee resume the Collection services as provided in this Agreement, whereupon Franchisee shall be bound to resume the same.

**11.5 Duration of City's Possession**

City's right pursuant to this Article to retain temporary possession-of Franchisee's facilities and equipment, and to render Collection services, shall terminate when City determines that such services can be resumed by Franchisee, or when City no longer reasonably requires such facilities or equipment. In any case, City has no obligation to maintain possession of Franchisee's property and/or continue its use for any period of time and may at any time, in its sole discretion, relinquish possession to Franchisee.

**ARTICLE 12.**  
**DEFAULT, REMEDIES, AND LIQUIDATED DAMAGES**

**12.1 Events of Default**

All provisions of this Agreement to be performed by Franchisee are considered material. Each of the following shall constitute an event of default.

- A. Fraud or Deceit.** If Franchisee practices, or attempts to practice, any fraud or deceit upon city.
- B. Insolvency or Bankruptcy.** If Franchisee becomes insolvent, unable, or unwilling to pay its debts when due, or upon listing of an order for relief in favor of Franchisee in a bankruptcy proceeding. The Franchisee is also in default if there is an assignment of this contract for the benefit of its creditors.
- C. Failure to Maintain Coverage.** If Franchisee fails to provide or maintain in full force and effect the Workers' Compensation, liability, indemnification coverage or any insurance coverage or bond required under this Agreement.
- D. Violations of Regulation.** If Franchisee facilities fall out of full regulatory compliance or if Franchisee violates any orders or filings of any regulatory body having jurisdiction over Franchisee relative to this Agreement, provided that Franchisee may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Agreement shall be deemed to have occurred.
- E. Failure to Perform.** If Franchisee ceases to provide Collection services as required under this Agreement for a period of two (2) days or more, for any reason within the control of Franchisee.
- F. Failure to Pay/Report.** If Franchisee fails to make any timely payments, including Liquidated Damages and penalties, required under this Agreement and/or fails to provide City with required information, reports, and/or records in a timely manner as provided for in the Agreement.
- G. Acts or Omissions.** Any other act or omission by Franchisee which violates the terms, conditions, or requirements of this Agreement, the California Integrated Waste Management Act of 1989, as it may be amended from time to time, or any order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice the violation or, if Franchisee cannot reasonably correct or remedy the breach within the time set forth in such notice, if Franchisee should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.
- H. False or Misleading Statements.** Any representation or disclosure made to City by Franchisee in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.
- I. Attachment.** There is a seizure of attachment of, or levy on, the operating equipment of Franchisee, including without limits its equipment, maintenance, or office facilities, or any part thereof.
- J. Suspension or Termination of Service.** There is any termination or suspension of the transaction of business by Franchisee, including without limit, due to labor unrest including strike, work stoppage or slowdown, sickout, picketing, or other concerted job action lasting more than two (2) days.

Upon default by the Franchisee, the City Manager shall provide written notice to Franchisee of the violation. The City Manager shall include in the notice, a demand that the Franchisee correct the violation within ten (10) days following the delivery of said notice. If the violation is not corrected within the ten (10) days, the City shall have the right to terminate the Agreement per the provisions provided in Section 12.2. For purposes of this Agreement and any notice required thereunder, the term "days" shall mean calendar days.

**12.2 Right to Terminate Upon Default**

Upon a default by Franchisee, City shall have the right to terminate this Agreement upon ten (10) days' notice if the public health or safety is threatened, or otherwise upon thirty (30) days' notice, but without the need for any hearing, suit, or legal action. This right of termination is in addition to any other rights of City upon a failure of Franchisee to perform its obligations under this Agreement.

**12.3 Possession of Property and Billing Records and Systems Upon Termination**

In the event of termination for default, the City shall have the right, subject to the obligations contained in Article 12 hereof, to take possession of any and all of Franchisee's land, equipment, and other property used or useful in the Collection, Diversion, and/or Disposal of Discarded Materials and to conduct all activities concerning billing and collection of fees for these services and to use such property. The City shall have the right to retain the possession of such property until other suitable arrangements can be made for the provision of Collection of Discarded Materials, which may include the award of an agreement or franchise to another waste hauling company. If the City retains possession thereof after the period of time for which Franchisee has already been paid by means of bills issued in advance of providing service for the class of service involved, Franchisee shall be entitled to the reasonable rental value of such property (which shall be offset against any damages due the City for the Franchisees default).

Franchisee shall provide the City immediate access to all of its business records and billing system related to its billing of accounts for services and shall take direction from the City regarding the billing of Customers during the period between the City's termination of the Agreement for default until other suitable arrangements can be made for the billing of Collection of Discarded Materials. The provisions of this Section 12.3 shall survive the termination of this Agreement.

**12.4 City's Remedies Cumulative; Specific Performance**

The City's right to terminate the Agreement under Section 12.1 and to take possession of the Franchisee's properties under Section 12.3 are not exclusive, and City's termination of this Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies which City may have.

By virtue of the nature of this Agreement, the urgency of timely, continuous, and high-quality service, the lead time required to effect alternative service, and the rights granted by City to Franchisee, the remedy of damages for a breach hereof by Franchisee is inadequate and City shall be entitled to injunctive relief and/or specific performance if it so desires.

**12.5 Excuse from Performance**

The Parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes, other "acts of God", war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the Party claiming excuse from performance hereunder. Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by Franchisee's employees or directed at Franchisee, or its selected facilities is not an excuse from performance and Franchisee shall be obligated to continue to provide service notwithstanding the occurrence of any or all such events.

The Party claiming excuse from performance shall, within two (2) days after such Party has notice of such cause, give the other Party notice of the facts constituting such cause and asserting its claim to excuse under this Section.

The interruption or discontinuance of Franchisee's services caused by one or more of the events excused shall not constitute a default by Franchisee under this Agreement. Notwithstanding the foregoing, however, if Franchisee is excused from performing its obligations hereunder for any of the causes listed in this Section for a period of seven (7) days or more, City shall have the right to review the circumstances under which the excuse from performance was granted. After such review, if the City reasonably determines the excuse from service is no longer valid, the City shall notify the Franchisee in writing to resume service within two (2) days from the receipt of such notification. If the Franchisee fails to resume service within the two (2) days, the City shall have the right to terminate this Agreement by giving ten (10) days' notice, in which case the provisions relative to taking possession of Franchisee's land, equipment and other property and engaging Franchisee's personnel in Article 11, City's Right to Perform Service, and this Article 12 shall apply.

## **12.6 Liquidated Damages**

### **12.6.1. General.**

City finds, and Franchisee agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by City as a result of a breach by Franchisee of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that:

- A. Substantial damage results to members of the public who are denied services or denied quality or reliable service;
- B. Such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public to whom the City provides services pursuant to this Agreement, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms;
- C. That services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and
- D. The termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the City whole for past breaches. However, substantial breaches may result in the termination of this Agreement as described in Section 12.1.

### **12.6.2 Service Performance Standards and Liquidated Damages for Failure to Meet Standards.**

The Parties further acknowledge that consistent, reliable Collection of Discarded Materials is of utmost importance to City and that City has considered and relied on Franchisee's representations as to its quality of service commitment in awarding the Agreement to it. The Parties further recognize that if Franchisee fails to achieve the performance standards defined in this Section or fails to submit required documents in a timely manner, City and its residents will suffer damages, and that it is and will be impractical and extremely difficult to ascertain and determine the exact number of damages which City will suffer.

Therefore, without prejudice to City's right to treat such non-performance as an event of default under this Article 12, the Parties agree that the following Liquidated Damage amounts represent a reasonable estimate of the number of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or inconvenient.

The City may monitor the Franchisee's performance under the Agreement in each of the performance areas listed below. In the event that the City determines that Franchisee has failed to meet the performance standard established for any of the areas identified below, the City may assess Liquidated Damages pursuant to this Section of the Agreement.

Franchisee agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth below:

	Event of Non-Performance	Liquidated Damage
1	For each occurrence of failing to provide Customers with Solid Waste, Recyclable Materials, or Organic Materials Containers as part of the three-Container system required by and compliant with the City's Municipal Code (excluding Generators and Customers that demonstrate compliance with Recycling and Organic Materials Self-Hauling requirements pursuant to the Municipal Code and 14 CCR Division 7, Article 12, Article 7 and/or pursuant to Section 5.15 [Generator Waivers] of this agreement) unless Customer refuses to accept the Solid Waste, Recyclables Materials, or Organic Materials Container from Franchisee, and Franchisee has provided this information to the City or its designee for further review within two (2) Business Days of Customer refusal:	\$150 / Generator or Customer / occurrence / Day until compliance achieved
2	For each failure over five (5) annually to commence service to a new Customer account within seven (7) days after order:	\$150
3	For each failure over ten (10) annually to Collect Discarded Materials, which have been properly set out for Collection, from an established Customer account on the scheduled Collection day:	\$150
4	For each failure to Collect Discarded Materials which have been properly set out for Collection, from the same Customer on two (2) consecutive scheduled pickup days:	\$150
5	For each occurrence over five (5) annually of damage to private property:	\$250
6	For each occurrence of discourteous behavior:	\$250
7	For each failure over ten (10) annually to clean up Discarded Materials spilled by Franchisee from Containers:	\$150
8	For each failure to prepare for or properly conduct semiannual clean-ups, including advertising and press releases	\$250
9	For each occurrence over ten (10) annually of failure to properly return Containers to avoid pedestrian or	\$150

	Event of Non-Performance	Liquidated Damage
	vehicular traffic impediments or to place Containers upright with lid secured	
10	For each occurrence of excessive noise above the limits specified in this Agreement	\$250
11	For each occurrence of Franchisee's failure to comply with Container labeling and color requirements pursuant to Section 6.1.3 of this Agreement:	\$150 / Container / occurrence
12	Failure of Franchisee to follow Recyclable Materials and Organic Materials Contamination Procedure:	\$100 / occurrence
13	For each individual occurrence of delivering Discarded Materials to a Facility other than a Designated Disposal Facility(ies) for each Discarded Material type under this Agreement:	\$150 / Ton / occurrence
14	For each failure to respond to a Customer Complaint within twenty four (24) working hours	\$100
15	For each failure to process Customer Complaints to City	\$500
16	For each failure to carry out responsibilities for establishing service	\$500
17	Failure to submit to City all reports by the deadlines required under the provisions of this Agreement:	\$100 / day
18	Failure to include all parts of quarterly and annual reports required under the provisions of this Agreement:	\$100 / day
19	For each failure to provide access to records in compliance with and in the timeframe specified in this Agreement:	\$120 / day
20	For each failure to perform any individual education and outreach activity as required and in the timeframe specified by this Agreement:	\$180 / occurrence
21	For each failure of Franchisee Collection personnel to issue contamination notices and maintain documentation of issuance as required by Section 6.2 of this Agreement:	\$100 / Franchisee Route / day
22	For each fee that is issued to a Generator without prior authorization from City under this Agreement:	\$100 / Customer / Day

Liquidated Damages may be assessed at the discretion of the Utilities Director, not more than quarterly. The Utilities Director, or their designee, will issue a written notice to the Franchisee with the Liquidated Damages assessed and the basis for each assessment will only be assessed after Franchisee has been given the opportunity but failed to rectify the damages, as described in this Agreement (e.g., twenty-four (24) working hours to respond to a Complaint). City may determine the occurrence of events giving rise to Liquidated Damages through the observation of its own employees or representative or investigation of Customer Complaints.

Franchisee may review (and make copies at its own expense) all information in the possession of City relating to incident(s)/non-performance. Franchisee may, within ten (10) days after receiving the notice, request a meeting with City. If a meeting is requested, it shall be held by the City Manager or their designee.

Franchisee may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. The City Manager or designee will provide Franchisee with a written explanation of their determination on each incident(s)/non-performance prior to authorizing the assessment of Liquidated Damages. The decision of the City Manager or designee shall be final.

In the event Franchisee does not submit a written request for a meeting within ten (10) calendar days of the date of the Notice of Assessment, the City Manager's determination will be final.

**12.7 Notice, Hearing, and Appeal**

Should the Franchisee contend that the City is in breach of the Agreement, Franchisee shall file a written request with the Utilities Director for a consultation regarding the allegations. Such consultation shall be held within thirty days of the receipt of Franchisee's request. Franchisee shall present its position and all relevant facts to the Utilities Director. Franchisee shall be notified of the Utilities Director judgment within ten (10) days of the consultation.

If the Franchisee is not in agreement with the ruling issued by the Utilities Director, it shall have the right to appeal the decision to the City Manager. This appeal shall be made in writing to the City no later than fourteen days after the notification is mailed by Utilities Director of the judgment. The City Manager shall notify Franchisee of the time and date of the review of allegation within thirty days of the request. Franchisee shall present its position and all relevant facts to the City Manager. Franchisee shall be notified in writing within fourteen days of the City Manager's ruling. The decision of the City Manager can be appealed to City Council per Municipal Code Section 1.20.020.

**12.8 Financial Material Errors, Omissions, or Irregularities**

The City may review, test, and audit the books and records of the Franchisee for the purpose of determining whether the Franchisee is complying with the terms of the Agreement. In the event that material errors or omissions or irregularities are identified, then the cost associated with the audit, test, or review shall be paid by the Franchisee to the City. In the case of financial errors, materiality shall be deemed to be two percent (2%) or greater of the Gross Revenues of the Franchisee from activities performed under this agreement. Recovery of any over payment will be negotiated on a case-by-case basis, either immediately or through the next rate-setting evaluation.

**ARTICLE 13.  
ASSIGNMENT**

**13.1 Assignment**

Except as provided in Article 11, City's Right to Perform Service, neither Party shall assign its rights nor delegate or otherwise transfer its obligations under this Agreement to any other person without the prior written consent of the other Party. Any such assignment made without the consent of the other Party shall be void and the attempted assignment shall constitute a material breach of this Agreement. The City may, however, assign its rights and delegate its obligations under this Agreement to a joint powers authority without the prior written consent of Franchisee.

For purposes of this section, "assignment" shall include, but not be limited to

- A. A sale, exchange, or other transfer to a third party of at least fifty-one percent (51%) of Franchisee's assets dedicated to service under this Agreement;

- B. A sale, exchange, or other transfer to a third party, including other shareholders, of outstanding common stock of Franchisee which may result in a change of control of Franchisee;
- C. Any dissolution, reorganization, consolidation, merger, recapitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation, or other transaction which Franchisee or any of its shareholders is a party which results in a change of ownership or control of Franchisee;
- D. Any assignment by operation of law, including insolvency or bankruptcy, assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Franchisee's property, or transfer occurring in the probate proceeding; and
- E. Any combination of the foregoing (whether or not in related or contemporaneous transactions), which has the effect of any such transfer or change of ownership, or change of control of Franchisee.

Franchisee acknowledges that this Agreement involves rendering a vital service to City residents and businesses, and that City has selected Franchisee to perform the services specified herein based on:

- A. Franchisee's experience, skill, and reputation for conducting its Solid Waste management operations in a safe, effective, and responsible fashion, at all times in keeping with applicable Environmental Laws, regulations and best waste management practices, and
- B. Franchisee's financial resources to maintain the required equipment and to support its indemnity obligations to City under this Agreement. City has relied on each of these factors, among others, in choosing Franchisee to perform the services to be rendered by Franchisee under this Agreement.

If Franchisee requests City's consideration of and consent to an assignment, City may deny or approve such request in its complete discretion. The City is concerned about the possibility that assignment could result in significant rate increases, as well as a change in the quality of service. Accordingly, the following standards have been set to ensure that assignment will result in continued quality service. In addition, the City reserves the right to solicit competitive bids for these services if the assignment results in a request by the assignee for rate increases that are higher than the inflationary index and do not reflect value changes in service standards. At a minimum, no request by Franchisee for consent to an assignment need be considered by City unless and until Franchisee has met the following requirements:

- A. Franchisee shall undertake to pay City its reasonable expenses for attorney's fees and investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment.
- B. Franchisee shall furnish City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years.
- C. Franchisee shall furnish City with satisfactory proof:
  - 1. That the proposed assignee has at least ten (10) years of Solid Waste management experience on a scale equal to or exceeding the scale of operations conducted by Franchisee under this Agreement;
  - 2. That in the last five (5) years, the proposed assignee or affiliates has not suffered any significant citations or other censure from any Federal, State, or local agency having

jurisdictions over its waste management operations due to any significant failure to comply with Federal, State, or local Environmental Laws and that the assignee has provided City with a complete list of such citations and censures;

3. That the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion;
4. That the proposed assignee conducts its Solid Waste management practices in accordance with sound waste management practices in full compliance with all Federal, State, or local laws regulating the Collection and Disposal of Solid Waste, including Hazardous Wastes; and
5. Of any other information required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe, and effective manner.

Under no circumstances shall the City be obliged to consider any proposed assignment by Franchisee, if Franchisee is in default at any time during the period of consideration.

#### **ARTICLE 14. OTHER AGREEMENTS OF THE PARTIES**

##### **14.1 Relationship of Parties**

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

##### **14.2 Governing Law**

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

##### **14.3 Jurisdiction**

Any lawsuits between the parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the parties agree that this Agreement is made in and will be performed in San Luis Obispo County.

##### **14.4 Subcontracting**

Except as approved in writing by the City, Franchisee shall not enter into an agreement to have another Person perform Franchisee's duties of this Agreement. Franchisee shall undertake to pay City its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed Subcontractor, and to review and finalize any documentation required as a condition for approving any such subcontracting agreement.

**14.5 Interests of Franchisee**

Franchisee covenants that it presently has no interest, and shall not acquire any interest, direct or indirect or otherwise, which would conflict in any manner or degree with the performance of the work hereunder. The Franchisee further covenants that, in the performance of this work, no Subcontractor of any person having such an interest shall be employed. The Franchisee certifies that no one who has or will have any financial interest in performing this work is an officer or employee of the City.

**14.6 Binding on Successors**

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

**14.7 Transition to Next Franchise**

At the point of transition to a new Franchise, Franchisee will cooperate with City and subsequent franchisee(s) to assist in an orderly transition which will include Franchisee providing route lists and billing information. Franchisee will not be obliged to sell Collection vehicles or Containers to the next franchisee. Franchisee, at its option, may enter into negotiations with the next franchisee to sell (in part or all) Collection vehicles and/or Containers.

**14.8 Parties in Interest**

Nothing in the Agreement, whether express or implied, is intended to confer any rights on any persons other than the parties to it and their representatives, successors and permitted assigns.

**14.9 Waiver**

The waiver by either Party of any breach or violation of any provision(s) of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either Party of any monies which become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other Party of any provision of this Agreement.

**14.10. Condemnation**

The City fully reserves whatever rights it may have to acquire Franchisee's property utilized in the performance of this Agreement, by negotiated purchase or failing that, through the exercise of the right of eminent domain.

**14.11. City Free to Negotiate with Third Parties**

The City may investigate, during the Term and thereafter, all options for the Collection, Transportation, Diversion, Processing, marketing, and Disposal of Solid Waste after the expiration of the Term. Without limiting the foregoing, the City may solicit proposals from Franchisee and from third parties for the provision of Collection services, Disposal services, Recycling services, Solid Waste Collection, and Composting, and any combination thereof, and may negotiate and execute agreements for such services which will take effect upon the expiration or earlier termination under Section 11.1 (City's Right to Perform Service: General).

**14.12. Immigration Act of 1986**

The Franchisee warrants on behalf of itself, and all Subcontractors engaged for the performance of this work that only persons authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of this work.

**14.13. Non-Discrimination**

In the performance of this work, the Franchisee agrees that it will not engage in, nor permit such Subcontractors as it may employ, to engage in discrimination in employment of persons because of age, race, color, sex, national origin or ancestry, sexual orientation, physical disability, mental condition, or religion of such persons.

**14.14. Public and Employee Safety**

Whenever the Franchisee's operations create a condition hazardous to the public or City employees, it shall, at its expense and without cost to the City, furnish, erect, and maintain such fences, temporary railings, barricades, lights, signs, and other devices, and take such other protective measures as are necessary to prevent accidents or damage or injury to the public and employees.

**14.15. Recycled Products**

The City encourages the Franchisee's use of recycled products.

**14.16. Notice**

All notices, demands, requests, proposals, approvals, consents, and other communications which this Agreement requires, authorizes, or contemplates, except as provided in Section 12.1 (Events of Default), shall be in writing and shall either be personally delivered to a representative of the parties at the address below, or be deposited in the United States mail, first class postage prepaid, addressed as follows:

If to City:                      Utilities Director  
   City of San Luis Obispo  
   879 Morro Street  
   San Luis Obispo, CA 93401

If to Franchisee:            District Manager  
   San Luis Garbage Company  
   4388 Old Santa Fe Springs Road  
   San Luis Obispo, CA 93401

The address to which communications may be delivered may be changed from time to time by a notice given in accordance with this Section.

**14.17. Representatives of the Parties**

References in this Agreement to "City" shall mean the City Council, and all actions to be taken by City shall be taken by the City Council except as provided below. The City Council may delegate, in writing, authority to the City Manager, the Director of Utilities, and/or to other City officials, and may permit such officials, in turn, to delegate in writing some or all of such authority to subordinate officers. Franchisee may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

Franchisee shall, by the Effective Date, designate in writing a responsible officer who shall serve as the representative of Franchisee in all matters related to the Agreement and shall inform City in writing of such designation and of any limitations upon their authority to bind Franchisee. City may rely upon action taken by such designated representative as actions of Franchisee unless they are outside the scope of the authority delegated to them by Franchisee as communicated to City.

**14.18. Entire Agreement**

This Agreement, including any exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein.

**14.19 Section Headings**

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

**14.20 References to Laws**

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided. This Agreement supersedes any and all Agreements for Solid Waste, Recyclable Materials, and/or Organic Materials Collection, Processing, and/or marketing heretofore entered into by the parties and the City.

**14.21 Interpretation**

This Agreement, including any exhibits attached hereto, shall be interpreted and construed reasonably and neither for nor against either Party, regardless of the degree to which either Party participated in its drafting.

**14.22 Agreement**

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

**14.23 Severability**

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

**14.24 Counterparts**

This Agreement may be executed in counterparts, each of which shall be considered an original.

**14.25 Use of "Will"**

The use of the word "will" shall be construed as interchangeable with the word "shall".

**14.26 Investigation**

Franchisee has relied on its own investigations in deciding to enter into this Agreement and has not relied upon any representations of the City, its Council members, officers, directors, employees, or agents.

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

The City of San Luis Obispo  
“City”

San Luis Garbage Company  
“Franchisee”

By: \_\_\_\_\_  
Whitney McDonald, City Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Teresa Purrington, City Clerk

APPROVED TO FORM:

\_\_\_\_\_  
J. Christine Dietrick, City Attorney

# Exhibit A

## Annual Rate Adjustment Methodology

### Section 1      Objectives

This Exhibit details the process by which Maximum Service Rates are adjusted annually to provide fair and adequate compensation to Franchisee for collection of solid waste and other services provided to Customers and the City per the Agreement. The annual rate adjustment methodology described herein fulfills key objectives established by the City and Franchisee, including rate stability, predictability, fairness, transparency, ease of administration, and cost-effectiveness.

### Section 2      Index-Based Rate Adjustments

Except in the case of a Cost-Based Rate Adjustment (see Section 3, below) Franchisee's Maximum Service Rates shall be adjusted via the Index-Based Rate Adjustment methodology described in this section. The Index-Based Rate Adjustment methodology shall be used to adjust Maximum Service Rates effective each January 1 of 2026, 2027, 2028, and 2029 and any subsequent year during which a Cost-Based Rate Adjustment is not allowed or not requested by the City or the Franchisee.

In years during which Maximum Services Rates are to be adjusted pursuant to this Index-Based Rate Adjustment methodology, Franchisee shall submit a report to the City on or before September 1 detailing its calculations of Index-Based Rate Adjustment. City shall have the right to review Franchisee's calculations of Index-Based Rate Adjustment for mathematical accuracy and adherence to the terms and conditions of this Exhibit. City shall prepare written findings regarding adjustments to the Franchisee's calculations of Index-Based Rate Adjustment that are required for mathematical accuracy and adherence to the terms and conditions of this Exhibit on or before October 30.

Index-Based Rate Adjustments shall be prepared and calculated in accordance with the steps described below. All Index-Based percentages shall be rounded to the nearest hundredth of a percent, and all cost calculations shall be rounded to the nearest dollar.

#### A. Calculation of CPI Adjustment to Franchisee's Collection Services and Post-Collection Services

Franchisee's prior year cost projections for Collection Services and Post-Collection Services shall be adjusted in accordance with the Consumer Price Index (CPI) for Garbage and Trash Collection, U.S. City average, Bureau of Labor Statistics Series I.D. CUUR0000SEHG02.

The CPI Adjustment shall be equal to the percentage change in the average 12-month CPI value ending June of the current year and compared to the average 12-month CPI value ending June of the prior year.

For example, the CPI used to set the 2026 rates shall be calculated as follows:

$$\frac{(\text{Average CPI from July 1, 2024 to June 30, 2025}) - (\text{Average CPI from July 1, 2023 to June 30, 2024})}{\text{Average CPI from July 1, 2023 to June 30, 2024}}$$

If the percentage change is below 2%, the applicable CPI Adjustment shall be 2%, with the difference in the amount below 2% being carried forward as a credit on the rates and applied to the subsequent year. If the percentage change is above 5%, the applicable CPI Adjustment shall be 5%, with the difference in the amount above 5% being carried forward and applied to the rates in subsequent years. Franchisee's prior year cost projections for Collection Services and Post-Collection Services shall be escalated by the resultant CPI Adjustment, rounded to the nearest dollar.

Franchisee's 2025 cost projection for Collection Services is \$8,552,555 and Franchisee's 2025 cost projection for Post-Collection Services is \$4,602,096. For 2026, by way of example, if the percentage change in the average 12-month CPI value ending June 2026 compared to the average 12-month CPI value ending June of 2025 is 5%, then Franchisee's 2026 cost projection for Collection Services shall be \$8,980,183 and Franchisee's 2026 cost projection for Post-Collection Services shall be \$4,832,201. Likewise, if the percentage change in the average 12-month CPI value ending June 2026 compared to the average 12-month CPI value ending June of 2025 is 2%, then Franchisee's 2026 cost projection for Collection Services shall be \$8,723,606 and Franchisee's 2026 cost projection for Post-Collection Services shall be \$4,694,138.

Example Calculation for application of amounts above cap on CPI increases applied to Collection Services component of CPI Adjustment (noting that cap on CPI increases also applies to Post-Collection Services):

### **Year 1**

Collection Services: \$8,552,555

12-month average CPI index increase: 6.00%

$$\$8,552,555 \times (1+5.00\%) = \$8,980,183$$

*\*5% cap on CPI increases. 1% difference carried over to next year*

### **Year 2**

Collection Services: \$8,980,183

12-month average CPI index increase: 6.00%

$$\$8,980,183 \times (1+5.0\%) = \$9,429,192$$

*\*5% cap on CPI increases. 1% difference carried over to next year*

### **Year 3**

Collection Services: \$9,429,192

12-month average CPI index increase: 3.00%

$$\$9,429,192 \times (1+5.0\%) = \$9,900,651$$

*\*3.00% + 1.00% carried forward from Year 1 + 1.00% carried forward from Year 2*

The above is also demonstrated in Table 1, below:

**Table 1 – Example of CPI Cap and Carryforward**

	<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>2028</b>
Collection Services	\$8,552,555	\$8,980,183	\$9,429,192	\$9,900,651
12-Month Average CPI	6.00%	6.00%	3.00%	
<b>CPI Adjustment (5% Cap)</b>	<b>5.00%</b>	<b>5.00%</b>	5.00%	

#### **B. Calculation of Profit Allowance**

The Index-Based Rate Adjustment methodology includes a component for Franchisee's fair and reasonable Profit Allowance. Profit Allowance is used for the purposes of calculating Index-Based Rate Adjustments and does not constitute a guarantee of profit to the Franchisee.

Franchisee's Profit Allowance for the purposes of Index-Based Rate Adjustments is calculated as a function of Franchisee's current year cost projection for Collection Services. For 2025, Franchisee's Profit Allowance is 9% of the cost projection for Collection Services and in 2026 and thereafter, Franchisee's Profit Allowance shall be 10% of the cost projection for Collection Services.

Franchisee's 2025 cost projection for Collection Services is \$8,552,555; therefore, Franchisee's Profit Allowance for 2025 is \$8,552,555 times 9%, rounded to the nearest dollar, equaling \$769,730. Using the first example from Section 2.A above, if Franchisee's 2026 cost projection is \$8,980,183 (corresponding to a 5% CPI Adjustment), Franchisee's 2026 Profit Allowance for the purposes of calculating Index-Based Rate Adjustment shall be \$898,018. Likewise, and using the second example from Section 2.A above, if Franchisee's 2026 cost projection is \$8,723,606 (corresponding to a 2% CPI Adjustment), Franchisee's 2026 Profit Allowance for the purposes of calculating Index-Based Rate Adjustment shall be \$872,361 .

#### **C. Calculation of CPI Adjustment to AB 939 Fee**

Franchisee pays the City an AB 939 Fee which in 2025 is \$368,041. The AB 939 Fee shall be adjusted annually in accordance with the same CPI Adjustment calculation described in Section 2.A above, or as otherwise directed by the City.

Using the examples from Section 2.A, for 2026, if the percentage change in the average 12-month CPI value ending June 2026 compared to the average 12-month CPI value ending June of 2025 is 5%, then the 2026 AB 939 Fee shall be \$386,443. Likewise, if the percentage change in the average 12-month CPI value ending June 2026 compared to the average 12-month CPI value ending June of 2025 is 2%, then the 2026 AB 939 Fee shall be \$375,402. Alternatively, the City may direct Franchisee regarding the amount of AB 939 Fee payable to the City for the coming rate year (and shall provide that amount to the Franchisee prior to September 1 in an Index-Based Rate Adjustment year.

#### **D. Calculation of Franchise Fee**

Franchisee pays the City a Franchise Fee of 10% of Franchisee's gross revenues received from Customers in the City. For the purposes of Index-Based Rate Adjustments, the Franchise Fee is calculated as 10% of Franchisee's annual Total Cost Projection, per Section 2.F below, rounded to the nearest dollar. For 2025, Franchisee's annual Total Cost Projection is \$15,880,469 ,

yielding Franchise Fee component of \$1,588,047 . Actual Franchise Fee payments made by Franchisee to City shall be calculated as a function of Franchisee's gross revenues received from Customers in the City and may differ from the amount used in calculating adjustments to the Maximum Service Rates.

#### E. Calculation of Annual Revenue Reconciliation

Starting with the 2027 Index-Based Rate Adjustment, the difference between the Franchisee's annual Total Cost Projection and the Franchisee's actual annual total billings to Customers in the City shall be included in the annual Index-Based Rate Adjustment as an Annual Revenue Reconciliation.

For example, for the 2027 Index-Based Rate Adjustment, the difference between Franchisee's 2025 Total Cost Projection and Franchisee's total 2025 billings to Customers in the City shall be included in the 2027 annual Total Cost Projection. By way of example, if Franchisee's 2025 total billings to Customers in the City is a shortfall of 1% (-\$158,805) then \$158,805 will be added to Franchisee's Total Cost Projection for 2027. Conversely, if Franchisee's 2025 total billings to Customers in the City is a surplus of 1% (+\$158,805) then \$158,805 will be subtracted from Franchisee's Total Cost Projection for 2027.

Table 2, on the following page, provides an example of the case in which there is a 1% shortfall of billed revenues in 2025, which is added to the Total Cost Projection in 2027. The table shows a continuation of 1% shortfalls being added in 2028 and 2029 for example purposes only, and assumes the CPI adjustment to Collection Services, Post-Collection Services, and AB 939 Fee at the 5% cap. Table 2a on the following page, provides an example of the case in which there is a 1% surplus of billed revenues in 2025, which is added to the Total Cost Projection in 2027. The table shows a continuation of 1% surpluses being added in 2028 and 2029 for example purposes only, and assumes the CPI adjustment to Collection Services, Post-Collection Services, and AB 939 Fee at the 5% cap.

**Table 2 – Example Revenue Reconciliation of -1% Annually**

	2025	2026	2027	2028	2029
Collection Services	\$8,552,555	\$8,980,183	\$9,429,192	\$9,900,651	\$10,395,684
Profit Allowance	769,730	898,018	942,919	990,065	1,039,568
Post-Collection Services	4,602,096	4,832,201	5,073,811	5,327,501	5,593,876
AB 939 Fee	368,041	386,443	405,765	426,053	447,356
Franchise Fee	1,588,047	1,677,427	1,778,944	1,868,002	1,961,598
Revenue Reconciliation Example	N/A	N/A	158,805	167,743	177,894
<b>Total Cost Projection</b>	<b>15,880,469</b>	<b>16,774,272</b>	<b>17,789,435</b>	<b>18,680,016</b>	<b>19,615,977</b>
<b>Indexed Rate Adjustment</b>		<b>5.63%</b>	<b>6.05%</b>	<b>5.01%</b>	<b>5.01%</b>

Table 2a – Example Revenue Reconciliation of +1% Annually

	2025	2026	2027	2028	2029
Collection Services	\$8,552,555	\$8,980,183	\$9,429,192	\$9,900,651	\$10,395,684
Profit Allowance	769,730	898,018	942,919	990,065	1,039,568
Post-Collection Services	4,602,096	4,832,201	5,073,811	5,327,501	5,593,876
AB 939 Fee	368,041	386,443	405,765	426,053	447,356
Franchise Fee	1,588,047	1,677,427	1,743,654	1,830,725	1,922,458
Revenue Reconciliation Example	N/A	N/A	-158,805	-167,743	-174,365
<b>Total Cost Projection</b>	<b>15,880,469</b>	<b>16,774,272</b>	<b>17,436,536</b>	<b>18,307,254</b>	<b>19,224,577</b>
<b>Indexed Rate Adjustment</b>		<b>5.63%</b>	<b>3.95%</b>	<b>4.99%</b>	<b>5.01%</b>

Significant, unexpected increases or decreases in revenue may be included or excluded from the Annual Revenue Reconciliation if deemed reasonable by the parties. As a one-time exercise, the Franchisee may request to review the entirety of its revenue earnings with the City as a check-in to evaluate alignment with its revenue forecast and conditions outlined in this exhibit. By no later than September 30, 2025, the Franchisee shall provide the City with documentation of actual to-date receipts or billings, accompanied by an analysis of all corresponding service trends. Upon receipt of these materials, the City and the Franchisee shall engage in a good-faith meet-and-confer process to discuss and determine an appropriate resolution, which may include a rate adjustment in January 2026 if necessary.

#### F. Calculation of Total Cost Projection

Franchisee's annual Total Cost Projection shall be the sum of the resultant values from Section 2.A through 2.E above. For 2025, the Total Cost Projection is \$15,880,469. Table 3 below demonstrates the 2026 Total Cost Projection if the percentage change in the average 12-month CPI value ending June 2026 compared to the average 12-month CPI value ending June of 2025 is 5%. Table 4, on the following page, demonstrates the 2026 Total Cost Projection in the percentage change in the average 12-month CPI value ending June 2026 compared to the average 12-month CPI value ending June of 2025 is 2%.

Table 3 – 2026 Total Cost Projection at 5% CPI Value for 2026

	2025	2026
<b>Collection Services</b>	\$8,552,555	\$8,980,183
<b>Profit Allowance</b>	769,730	898,018
<b>Post-Collection Services</b>	4,602,096	4,832,201
<b>AB 939 Fee</b>	368,041	386,443
<b>Franchise Fee</b>	1,588,047	1,677,427
<b>Total Cost Projection</b>	<b>15,880,469</b>	<b>16,774,272</b>

Table 4 – 2026 Total Cost Projection at 2% CPI Value for 2026

	2025	2026
<b>Collection Services</b>	\$8,552,555	\$8,723,606
<b>Profit Allowance</b>	769,730	872,361
<b>Post-Collection Services</b>	4,602,096	4,694,138
<b>AB 939 Fee</b>	368,041	375,402
<b>Franchise Fee</b>	1,588,047	1,629,501
<b>Total Cost Projection</b>	<b>15,880,469</b>	<b>16,295,007</b>

#### **G. Calculation of Annual Index-Based Rate Adjustments**

The Index-Based Rate Adjustment shall be calculated as function of the Franchisee's forthcoming annual Total Cost Projection divided by the then current year Total Cost Projection, minus 100%, rounded to the nearest hundredth of a percent.

For example, taking the results shown in Table 3, on the prior page, the Index-Based Rate Adjustment for 2026 would be \$16,774,272 , divided by \$15,880,469, minus 100%, yielding a 5.63% adjustment to the Maximum Service Rates effective January 1, 2026. Using the results of Table 4, above as an example, the Index-Based Rate Adjustment for 2026 would be \$16,295,007, divided by \$15,880,469 , minus 100%, yielding a 2.61% adjustment to the Maximum Service Rates effective January 1, 2026.

This Index-Based Rate Adjustment calculation described herein shall repeat in 2027, 2028, and 2029, with the addition of the Annual Revenue Reconciliation amounts calculated pursuant to Section 2.E of this Exhibit. Rate adjustments shall be effective on January 1<sup>st</sup> of each year (unless otherwise agreed to in writing by the parties) and any delay in rate change approval not caused by Franchisee will result in additional adjustments so that all required revenues are billed within the rate year. Any delay in rate change approval that is caused by Franchisee shall not result in additional adjustments corresponding with the delay in approval.

### **Section 3 Cost-Based Rate Adjustments**

Franchisee or City shall have the right to request a Cost-Based Rate Adjustment effective January 1, 2030. Franchisee's request for Cost-Based Rate Adjustment in 2030 shall be requested in writing on or before January 15, 2029 and City's request for Cost-Based Rate Adjustment in 2030 shall be requested in writing on or before January 31, 2029. To the extent possible Any City request for Cost-Based Rate Adjustment shall be coordinated with the other agencies in San Luis Obispo County that follow the rate adjustment methodology described in this Exhibit, with all such agencies opting to request Cost-Based Rate Adjustment effective in the same rate year

Upon request by either party for Cost-Based Rate Adjustment, Franchisee shall prepare and submit financial records and calculations to the City in accordance with this Section by April 30, 2029. City shall have the right to review Franchisee's financial records related to the Cost-Based Rate Adjustment and calculations of Cost-Based Rate Adjustment for mathematical accuracy and adherence to the terms and conditions of this Section. City shall prepare written findings regarding adjustments to the Franchisee's calculations of Cost-Based Rate Adjustment that are required for mathematical accuracy and adherence to the terms and conditions of this Exhibit on or before June 30, 2029. City shall make every effort to seek City Council authorization of Cost-Based Rate Adjustment prior to August 30, 2029. If neither party requests a Cost-Based Rate Adjustment in writing as specified above, then an Index-Based Rate Adjustment shall be applied for adjustments to Maximum Service Rates effective January 1,

2030 and subject to the terms and conditions of Section 2 of this Exhibit.

Franchisee or City shall have the right to request subsequent Cost-Based Rate Adjustments no more frequently than every five (5) years following the prior Cost-Based Rate Adjustment. For example, if a Cost-Based Rate Adjustment is requested as stipulated in above in January, 2029 (and effective January 1, 2030) then the next Cost-Based Rate Adjustment may not be requested by either party until January, 2034 (for effectiveness in 2035). The schedule from the following paragraph would also apply: Franchisee would prepare and submit financial records and calculations by April 30, 2034, City would prepare written findings regarding adjustments to Franchisee's calculations of Cost-Based Rate Adjustment that are required for mathematical accuracy and adherence to the terms and conditions of this Exhibit by June 30, 2034, and City would make every effort to seek City Council authorization of Cost-Based Rate Adjustment prior to August 30, 2034.

Notwithstanding the above, nothing shall prevent the parties from mutually agreeing to conduct Cost-Based Rate Adjustments in other years (i.e., years other than 2030 and 2035), provided that both parties agree in writing to waive the five (5) year limitation on Cost-Based Rate Adjustments expressed herein. If neither party requests Cost-Based Rate Adjustments in subsequent years pursuant to the five (5) year schedule described above, then Index-Based Rate Adjustments shall be applied for adjustments to Maximum Service Rates in such years, subject to the terms and conditions of Section 2 of this Exhibit.

Franchisee shall provide all financial information and supporting documentation required by this review in a format acceptable to City (or City's designated consultant) in a timely manner. Franchisee shall not require City (or City's designated consultant) to review any such documents at Franchisee's worksite but shall instead allow for all required information and supporting documentation to be provided to City (or its designated consultant) via physical mail, e-mail, or any other delivery method approved by City.

Cost-Based Rate Adjustments shall be prepared and calculated in accordance with the steps described below.

**A. Projection of Collection Services and Post-Collection Service Costs**

Franchisee shall prepare financial records and calculations of Cost-Based Rate Adjustment using audited financial statements prepared in accordance with Generally Accepted Accounting Principles (GAAP) for Franchisee's immediately preceding three (3) fiscal years. Such financial records and calculations shall include Franchisee's projected costs for Collection Services and Post-Collection Services as well as Franchisee's projected gross revenues at then-current Maximum Service Rates for the forthcoming year (e.g., 2030 at the earliest).

Franchisee shall promptly assemble, provide, and submit such information that is reasonably necessary to support the assumptions made by the Franchisee with regard to the assumptions underlying the forecast. Upon submission of such information, the City holds the ability to make appropriate changes for non-allowable costs, large unsupported variances in cost projections including but limited to corporate transactions and allocations, large variances in inter-company and related party transactions and allocations, unjustifiable variances in any cost category, non-conformance with agreed upon depreciation terms, non-conformance agreed upon profit allowances, and other customary and reasonable adjustments as detailed in the Agreement. Cost projections for Collection Services and Post-Collection Services prepared by Franchisee must be justifiable, supportable with financial information, and provide accountability for all expenditures. In preparing such cost projections, Franchisee shall assemble and submit its forecasts of:

- a. Revenues at current Maximum Service Rates for the then-current year, including delineation of revenues by sector (single-family residential vs. commercial and multi-family) and with details of the number of subscribers by type within each sector.
- b. Projected costs of Collection Services for the then-current year and the forthcoming

year, with comparison to and explanation of any variances to actual costs for Collection Services in the prior three (3) fiscal years. Costs for Collection Services include labor, corporate overhead, depreciation (with rolling stock at 10-year depreciation lifespan), and general and administrative costs and shall be delineated as per the primary cost categories included in Franchisee's Audited Financial Statements. Franchisee must provide documentation of, and explanation for, material variances in any cost category. Projected costs for the forthcoming year shall be based on Franchisee's actual costs per Audited Financial Statements and escalated by the CPI Adjustment described in Section 2.A of this Exhibit, with the exception that Franchisee may adjust projections to account for other documentable changes in costs. Corporate overhead costs shall be limited to be less than 4% of Franchisee's Total Cost Projection for the forthcoming year and Franchisee must provide documentation and justification for any amounts of Corporate Overhead above 3% of Franchisee's Total Cost Projection for the forthcoming year. City retains the right to make appropriate adjustments to cost projections to cost categories for which Franchisee does not or cannot provide adequate documentation and explanation of material variances compared to prior years.

- c. Projected costs of Post-Collection Services for the then-current year and the forthcoming year, with comparison to and explanation of any variances to actual costs for Collection Services in the prior three (3) fiscal years. Costs for Post-Collection Services include landfill disposal, organics processing, recyclables processing and marketing, related-party transportation, and related-party rent and shall be delineated as per the primary cost categories included in Franchisee's Audited Financial Statements. Franchisee must provide documentation of, and explanation for, material variances in any cost category. Projected costs for the forthcoming year shall be based on Franchisee's actual costs per Audited Financial Statements and escalated by the CPI Adjustment described in Section 2.A of this Exhibit, with the exception that Franchisee may adjust projections to account for other documentable changes in costs. City retains the right to make appropriate adjustments to cost projections to cost categories for which Franchisee does not or cannot provide adequate documentation and explanation of material variances compared to prior years.
- d. Franchisee shall not include any non-allowable costs in its cost projections for Collection Services or Post-Collection Services. Non-allowable costs include but are not limited to:
  - i. Entertainment and non-work related travel expenses, unless authorized in advance by City.
  - ii. Advertising for services not within the scope of this Agreement or outside of the service area of the City of San Luis Obispo.
  - iii. Fines or penalties of any nature.
  - iv. Liquidated damages assessed under this Agreement.
  - v. Federal or State income taxes.
  - vi. Profit sharing payments not related to an IRS approved pension program.
  - vii. Charitable or political donations.
  - viii. Attorneys' fees and other expenses incurred by Franchisee in any court proceeding in which City and Franchisee are adverse parties, unless Franchisee is the prevailing party in said proceedings.

- ix. Attorneys' fees and other expenses incurred by Franchisee in any court proceeding in which Franchisee's own negligence, violation of law or regulation, or other wrongdoing, is in issue and occasions part of the attorneys' fees and expenses claimed, provided, however, such attorneys' fees will be allowed to the extent Franchisee can demonstrate they were reasonable and necessary and a cost of doing business, and were not the result of any intentional or willful misconduct by Franchisee or its employees; and attorneys' fees and expenses incurred by Franchisee in a court proceeding in which the legal theory or statute providing a basis of liability against Franchisee also provides for separate strict liability for City arising from the action of its citizens or ratepayers (such as in a CERCLA lawsuit).
- x. Payments to related party entities for products or services (other than lease expense, calculated as provided below), in excess of the fair market value for those products or services. For purposes of this Agreement, related party expenses are those resulting from transactions between Franchisee and another company (companies) that has (have) common ownership or management control.
- e. Franchisee's audited financial statements, and any other documentation as deemed necessary by the City, will be reviewed to determine Franchisee's cost projections for each of the foregoing categories during the year involved. City will use the financial statements to determine that costs have actually been incurred and have been assigned to the appropriate category.
- f. City may adjust the actual costs in two ways: (1) to exclude any non-allowable costs, set out below, and (2) to exclude and/or reduce any costs that were actually incurred but which are not reasonable and necessary in keeping with industry standard best practices.

**B. Calculation of Profit Allowance**

Franchisee's Profit Allowance shall be 10% of the cost projection for Collection Services, rounded to the nearest dollar.

**C. Calculation of CPI Adjustment to AB 939 Fee**

Calculation of AB 939 Fee shall be calculated in accordance with Section 2.C, above, for the applicable year as appropriate.

**D. Calculation of Franchise Fee**

Calculation of Franchise Fee shall be calculated in accordance with Section 2.D, above, for the applicable year as appropriate.

**E. Calculation of Annual Revenue Reconciliation**

Calculation of Annual Revenue Reconciliation shall be calculated in accordance with Section 2.E, above, for the applicable year as appropriate.

**F. Calculation of Total Cost Projection**

Calculation of Total Cost Projection shall be calculated in accordance with Section 2.F, above, for the applicable year as appropriate.

**G. Calculation of Cost-Based Rate Adjustment**

The Cost-Based Rate Adjustment shall be calculated as function of the Franchisee's forthcoming annual Total Cost Projection divided by the then current year Total Cost Projection,

minus 100%, rounded to the nearest hundredth of a percent. This is the same calculation described in Section 2.G, above. The resultant percentage shall be applied to the then-current Maximum Service Rates and be effective January 1 of the forthcoming year.

Rate adjustments shall be effective on January 1st of each year (unless otherwise agreed to in writing by the parties) and any delay in rate change approval not caused by Franchisee will result in additional adjustments so that all required revenues are billed within the rate year. Any delay in rate change approval that is caused by Franchisee shall not result in additional adjustments corresponding with the delay in approval.

#### **Section 4      Annual Audited Financial Statements**

Franchisee shall annually prepare Audited Financial Statements in accordance with Generally Accepted Accounting Principles (GAAP) for its operations in the San Luis Obispo County region. Franchisee shall provide City with copies of the annual Audited Financial Statements upon request and with any Cost-Based Rate Adjustment submittal.

#### **Section 5      Extraordinary Adjustments**

Except as provided herein, Franchisee may not request adjustments to Maximum Service Rates in years during which Index-Based Rate Adjustments are scheduled to be applied and must follow the timeline described in Section 3. Notwithstanding the above, Franchisee may request extraordinary adjustments to Maximum Service Rates due to changes in law affecting collection operations, including for compliance with the California Air Resource Board's (CARBS's) Advanced Clean Fleet (ACF) electrification mandate. The City may, but is not obligated to, consider requests for extraordinary adjustment to Maximum Service Rates due to changes in law affecting Post-Collection Services. Requests for extraordinary changes in Maximum Service Rates are subject to good faith negotiations between City and Franchisee.

In the event of any Change in Scope or Change in Law (each as described below) that results in a material increase or decrease in Franchisee's costs or revenues, in the event of an Extraordinary Cost Increase (as defined below), or in the event of any Change in Fees (as described below), an appropriate adjustment will be made to the Maximum Service Rates in order to compensate, to the maximum extent possible, for such increase or decrease in costs, revenues or Fees, commencing from the Effective Date(s) such increase or decrease first occurs. Any adjustment to Maximum Service Rates due to a Change in Scope, a Change in Law or an Extraordinary Cost Increase shall be in the reasonable discretion of the City.

- A. "Change in Scope" shall mean any change in the services provided by the Franchisee under the Agreement whether proposed by the Franchisee or by the City.
- B. "Change in Law" shall mean the enactment, adoption, promulgation, issuance, modification or written change in any law, regulation, order or judgment of any governmental body that affects the Franchisee's performance of services under the Agreement including, without limitation, the issuance of final regulations under existing laws.
- C. "Change in Fees" shall mean any change in franchise fees, vehicle impact fees and other fees charged to the Franchisee by the City connection with the services provided by the Franchisee under the Agreement the cancellation of any existing fees, and the adoption of any new fees.
- D. "Extraordinary Cost Increase" shall mean a substantial increase in the Franchisee's operating or capital costs or expenses that is outside of the Franchisee's control but not due to a Change in Scope or Change in Law.
- E. "Effective Date" shall mean the date in which the Franchisee notifies the City of the reasons for the cost estimate associated with a Change in Law, Change in Fees, and/or Extraordinary Cost Increase or when the Franchisee begins incurring costs for the Change in Law, Change in Fees, or Extraordinary Cost Increase, whichever is later.

In the case of a Change in Scope, a Change in Law or an Extraordinary Cost Increase, the Franchisee shall provide the City with projected operational, cost and revenue data reflecting the entire financial effect of such Change. The City reserves the right to require that the Franchisee supply any additional operational, cost and revenue data, or any other information it may reasonably need, to ascertain the appropriate financial impact of the Change and any necessary adjustment to Maximum Service resulting from such Change.

Extraordinary adjustments to Maximum Service Rates for a qualifying Change in Scope or Change in Law, for a Change in Fees, or for an Extraordinary Cost Increase shall take effect as of the beginning of the next year and will include all impacts of the extraordinary adjustment from the Effective Date of the impact; provided, however, that, in the case of any Change in Fees charged by the City, the extraordinary adjustment shall take effect as of the Effective Date of such Change in Fees. The underlying service, cost, revenue or Fee changes supporting any rate adjustment under this Section 5 will be added to the appropriate category under Sections 2 and 3 above for purposes of future cost projections.