

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

For Collection and Disposal of Food and Green Waste
Within the City of San Luis Obispo

This Agreement (Agreement) is made and entered into this 19 day of Nov, 2015, in the State of California by and between the City of San Luis Obispo, a municipal corporation and charter city of the State of California, (City) and San Luis Garbage Company, a California corporation, (Contractor), for the Collection and processing of Food and Green Waste and the performance of other services related to meeting the goals and requirements of the California Integrated Waste Management Act of 1989.

RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

1. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (AB 939) Division 30 of the California Public Resources Code, commencing with 40000, has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for Food and Green Waste handling within their jurisdictions. AB 939 requires a fifty percent (50%) reduction in the amount of waste which is landfilled by the year 2000; and
2. The separate Collection and processing of Food and Green Waste to produce usable compost was selected in the City's Source Reduction and Recycling Element adopted , June 1994 hereinafter referred to as the SRRE, as a means of meeting the 2000 State mandated diversion goals of AB 939; and
3. Since March 1997 Contractor has provided the City with green waste collection, transportation and disposal services for residential properties, multi-family dwelling units, institutional and commercial and industrial properties; and
4. On September 28, 2014, the Governor approved AB 1826 which requires each jurisdiction, on and after January 1, 2016, to implement an organic waste recycling program to divert organic waste from certain businesses; and
5. In order to implement AB 1826's requirements, Contractor has proposed to enter into a long term agreement with Hitachi Zosen Inova to construct and operate a Kompogas facility at Contractor's property located at 7388 Old Santa Fe Road, San Luis Obispo, to compost food and green waste generated by the City, and

6. In order to finance such facility, Contractor requires a twenty year commitment from the City to divert all food and green waste to Contractor; and
7. The City Council finds that an exclusive franchise granted to a private company for the collection and processing of Food and Green Waste is the most effective and efficient way to collect and divert residential Food and Green Waste within the City; and
8. The City Council further finds that the construction of a food and green waste processing facility is in the best interests of the City, will help promote the health, safety and welfare of the community and the environment and otherwise furthers the goals and objectives of AB 1286.

NOW, THEREFORE, for and in consideration of the mutual promises herein contained, it is hereby agreed by and between the City and Contractor as follows:

ARTICLE I DEFINITIONS

- 1.1 **"AB 939"** means the California Integrated Waste Management Act of 1989, as it may be amended from time to time.
- 1.2 **"Affiliate"** means all businesses (including corporations, limited and general partnerships and sole proprietorships) which are directly or indirectly related to Company by virtue of direct or indirect common ownership interest or common management shall be deemed to be "Affiliated with" Contractor and included within the term "Affiliates with" Contractor and included within the "Affiliates" as used herein. An Affiliate shall include a business in which Contractor owns a direct or indirect ownership interest, a business which has a direct or indirect ownership interest in Contractor and/ or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest 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 determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.
- 1.3 **"Agreement"** means this Food and Green Waste Agreement (dated 11/19/15, including all exhibits and attachments, and any amendments thereto) between City and Contractor for Collection, processing and marketing of Food and Green Waste and other services related to meeting the diversion goals and requirements of AB 939.

- 1.4 **"Billings"** means any and all statements of charges for services rendered by Contractor pursuant to this Agreement.
- 1.5 **"California Integrated Waste Management Act of 1989"** means Public Resources Code §§ 40000 et. seq.
- 1.6 **"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, acting through the City Council or the City Manager.
- 1.7 **"Collect" or "Collection"** means to take physical possession, transport, and remove Food and Green Waste within and from the City.
- 1.8 **"Commercially Generated Food and Green Waste"** means Food and Green Waste generated at commercial and/or industrial property and separated by the Waste Generator for Collection and which are excluded from the scope of this Agreement as described in Article 4, Scope of Agreement.
- 1.9 **"Compost"** means a stabilized humus product which is the result of composting.
- 1.10 **"Composting"** means a controlled biological decomposition that converts raw organic matter into a stabilized humus product.
- 1.11 **"Container"** means any bin, vessel, can or receptacle used for Collection and storing Food and Green Waste before removal.
- 1.12 **"Contractor"** 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 and subcontractors where applicable.
- 1.13 **"Environmental Laws"** means all federal and state statutes, 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.; 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.

- 1.14 **"Facility"** means any plant or site utilized by Contractor (or a subcontractor of Contractor) for the purposes of performing the duties to fulfill this Agreement, including, without limitation, processing the City's Green Waste and Food Waste. For purposes of Section 2.3, **"Facility"** means a Kompogas facility (or other similar technology) capable of processing the City's Green Waste and Food Waste.
- 1.15 **"Facility Operation Date"** means the date on which, following its start-up, testing and commissioning, the Facility processes commercial quantities of Food and Green Waste.
- 1.16 **"Fiscal Year"** means the period commencing on January 1 and concluding December 31 for Contractor. For City it means the period commencing July 1 of one year and concluding June 30 of the subsequent year.
- 1.16 **"Food Waste"** means a waste material of plant or animal origin that results from the preparation or processing of food for animal or human consumption and that is separated from the municipal solid waste stream. Food waste includes, but is not limited to, food waste from food facilities as defined in Health and Safety Code section 113789 (such as restaurants), food processing establishments as defined in Health and Safety Code section 111955, grocery stores, institutional cafeterias (such as prisons, schools and hospitals), and residential food scrap collection. Food waste does not include any material that is required to be handled only pursuant to the California Food and Agricultural Code and regulations adopted pursuant thereto.
- 1.17 **"Green Waste"** means tree trimmings, grass cuttings, dead plants, leaves, branches, dead trees and scrap wood (not more than six (6) inches in diameter) and similar materials generated at the premises.
- 1.18 **"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.
- 1.19 **"Materials Recovery Facility"** means a permitted Facility where Solid Waste, Recyclable Materials, Food or Green Waste are sorted or separated for the purposes of Recycling, Composting or reuse.
- 1.20 **"Multi-family Dwelling Unit"** means any Premises, other than a Single Family Dwelling Unit, used for residential purposes, irrespective of whether residence therein is transient, temporary or permanent.
- 1.21 **"Owner"** means the person holding the legal title to the real property constituting the Premises to which Food and Green Waste collection service is to be provided under this Agreement.

- 1.22 **"Person"** means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of San Luis Obispo, local agencies, cities and special purpose districts.
- 1.23 **"Premises"** means any land or building in the City where Solid Waste is generated or accumulated.
- 1.24 **"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.
- 1.25 **"Recycling"** means the process of separating for Collection, Collecting, treating and/or reconstituting Food and Green Waste which would otherwise be discarded without receiving compensation or returning them to the economy in the form of raw materials for new, reused, or reconstituted products. The Collection, transfer, transportation or disposal of Food and Green Waste not intended for, or capable of, reuse is not Recycling.
- 1.26 **"Related Party Entity"** means any Affiliate which has financial transactions with Company.
- 1.27 **"Single Family Dwelling Unit"** means each Premises used for or designated as a single family residential dwelling, including each unit of a duplex or triplex in all cases in which there is separate or individual Solid Waste Collection services.
- 1.28 **"Solid Waste"** means all putrescible and non-putrescible refuse, garbage, green waste, construction and demolition debris, rubbish, and Recyclable Materials, and as otherwise defined in Public Resources Code 40191.
- 1.29 **"Term"** means the term of this Agreement, as provided for in Article 2.
- 1.30 **"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.
- 1.31 **"Waste Generator"** means any Person as defined by the Public Resources Code, whose act or process produces Solid Waste as defined in the Public Resources Code, or whose act first causes Solid Waste to become subject to regulation.

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 Contractor an exclusive franchise to collect and process Food and Green Waste accumulating at all Premises in the City that are offered for Collection to Contractor in accordance with this Agreement.

Contractor hereby accepts the Agreement on the terms and conditions set forth in this Agreement.

2.2 Effective Date

The effective date of this Agreement shall be Nov 19, 2015.

2.3 Term of Agreement

Subject to Section 2.3.1 below, the term of this Agreement shall commence at 12:01 a.m., Nov. 19, 2015, and expire at midnight on the twentieth (20th) annual anniversary of the Facility Operation Date, subject to extension as provided in Section 2.4 (Option to Extend).

2.3.1 Term Contingency

The Contractor and City acknowledge that the foregoing twenty (20) year term of the Agreement is expressly contingent upon:

- (a) By no later than January 1, 2018, Contractor executing a definitive long-term agreement with Hitachi Zosen Inova U.S.A. LLC (or other company approved by City) for the development, construction and operation of a Kompogas Facility (or other similar technology) capable of processing the City's Green Waste and Food Waste; and
- (b) By no later than January 1, 2020, completion of a Kompogas Facility (or other similar technology) capable of processing the City's Green and Food Waste; provided, however, that in the event such Facility has not been completed by January 1, 2020, due to reasons beyond the reasonable control of, and not due to the fault or negligence of Contractor, such completion date shall be extended by the number of days reasonably required to complete the Facility, but only to the extent that Contractor uses (and continues to use) due diligence to pursue completion of the Facility. Notwithstanding the foregoing, the term of this Agreement shall not exceed thirty five (35) years from the commencement date set forth in Section 2.3 above.

In the event Contractor does not enter into such definitive agreement and/or the facility is not constructed and operational within the time frames set forth in the Section 2.3.1, Contractor and City agree that the term of this Agreement shall be until August 20, 2025.

In the event of a change of law or technology which would render the collection and processing 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 Contractor and City that this Agreement is motivated by the passage of AB 939, and that subsequent legislation could make this Agreement unnecessary and/or adverse to the best interests of the City. In particular, City and Contractor acknowledge the possibility of future legislation changing the requirements of AB 939, and/or requiring a coordination of the collection of Solid Waste, Food and Green Waste.

2.4 Option to Extend

The City shall have the sole option to extend this Agreement up to 36 months in periods of least twelve (12) months each. If City elects to exercise this option, it shall give written notice not later than one hundred eighty (180) days prior to the initial termination date, or, if one extension has been exercised, one hundred eighty (180) days prior to the extended termination date.

2.5 Conditions to 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.

- A. Accuracy of Representations.** The representations and warranties made by Contractor throughout this Agreement are accurate, true and correct on and as of the effective date of this Agreement.
- B. Absence of Litigation.** There is no litigation pending in any court challenging the award of this Agreement to Contractor or the execution of this Agreement or seeking to restrain or enjoin its performance.
- C. Furnishing of Insurance and Bonds.** Contractor has furnished evidence of the insurance and bonds required by Article 10, Indemnification, Insurance and Bond.
- D. Effectiveness of City Council Action.** The City's Ordinance No. 1624 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 Contractor; 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 as it relates to the Collection of Food and Green Waste within the City.

**ARTICLE 3
TERMS OF AGREEMENT**

3.1 Contractor Status

Contractor 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 Contractor has no suits or threatened suits which would impair the financial ability of the Contractor to perform its obligations under this Agreement, and that the entering into this Agreement by Contractor will not in any way constitute a breach of any other agreements entered into by Contractor with other parties, or constitute a violation of any law.

3.2 Contractor Authorization

Contractor has the authority to enter into and perform its obligations under this Agreement. The Board of Directors of Contractor (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 Contractor have the authority to do so.

3.3 Compliance with Laws and Regulations

Contractor shall comply with all existing and future City, county, state, and federal laws, including all Environmental Laws, with particular note of Article X of the City Charter and Chapter 8.04 of the Municipal Code.

3.4 Serve Without Interruption

Contractor shall Collect and process Food and Green Waste throughout the term of this Agreement without interruption except as described in Section 12.4.

3.5 Permits and Licenses

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

3.6 Preservation of City Property

Contractor shall pay to the City, on demand, the cost of all repairs to public property made necessary by any of the operations of Contractor under this Agreement.

ARTICLE 4
SCOPE OF AGREEMENT

4.1 Scope of Agreement

Subject to Section 4.2 (Limitations to Scope), the Agreement granted to Contractor shall be exclusive for Food and Green Waste Collection, except where otherwise precluded by law.

4.2 Limitations to Scope

The Agreement for the Collection and processing of Food and Green Waste granted to Contractor shall be exclusive except as to the following categories of Food and Green Waste listed in this Section. The granting of this Agreement shall not preclude the categories of Food and Green Waste 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. Green Waste which are separated at any Premises and which are transported by the owner or occupant of such Premises (or by his/her employee) to a Facility;
- B. Green Waste removed from Premises by a gardening, landscaping, or tree trimming company as incidental part of a total service offered by that company.

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

This Agreement to Collect, transport and process Food and Green Waste shall be interpreted to be consistent with state and federal laws, now and during the term of the Agreement, and the scope of this Agreement shall be limited by current and developing state and federal laws with regard to Food and Green Waste handling 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, Contractor agrees that the scope of the Agreement will be limited to those services and materials which are lawfully provided for under this Agreement. The City shall not be responsible for any lost profits and/or damages claimed by the Contractor as a result of changes in law.

4.3 Administration of Agreement

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

4.4 Use of City Streets

This Agreement shall give Contractor the right and privilege to operate Food and Green Waste Collection vehicles and equipment on such streets, public ways, rights-of-way, or easements of the City as reasonably appropriate for Contractor to provide the services herein.

4.5 Annexation

Contractor 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 City Right to Request Changes

4.6.1 General

City may request Contractor 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. Contractor shall present, within 30 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. Contractor shall be entitled to an adjustment in its compensation in accordance with Section 8.5 (Extraordinary Adjustments), for providing such additional or modified services.

4.6.2 New Diversion Programs

Contractor 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:

- Collection methodology to be employed (equipment, manpower, etc.)
- Equipment to be utilized (vehicle number, types, capacity, age, etc.).
- Labor requirements (number of employees by classification).
- Type of Containers to be utilized.
- Provision for program publicity/education/marketing.
- 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.
- Materials processing facility to be utilized.

4.6.3 City's Right to Acquire Services

Contractor acknowledges and agrees that City may permit other Persons besides Contractor to provide additional Food and/ or Green Waste services not otherwise contemplated under Section 4.6 (City's Right to Request Changes). If pursuant to Section 4.6.2 (New Diversion Programs), Contractor 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 Contractor to perform such

services, Contractor acknowledges and agrees that City may permit Persons other than Contractor to provide such services.

4.6.4 Implementing New Services

If 1) Contractor is capable of performing or developing the ability to perform a requested service or modifying an existing service; 2) City has agreed to have Contractor provide such additional service in accordance with Contractor's proposal; and 3) an adjustment in Contractor's compensation has been requested but has not been agreed upon or implemented within ninety (90) days, City may permit a third party to perform the request or modified existing service, and Contractor shall not be obligated, to perform such additional or modified service pursuant to the terms of Section 4.6.3.

4.7 Ownership of Food and Green Waste

Once Food and Green Waste is placed in Containers and properly presented for Collection, ownership and the right to possession shall transfer directly from the Generator to Contractor by operation of this Agreement. Contractor is hereby granted the right to retain, recycle, process, reuse, compost and otherwise use such Food and Green Waste or any part thereof, in any lawful fashion or for any lawful purpose consistent with the hierarchy and goals of AB 939 and AB 1826. Subject to the provisions of this Agreement, Contractor shall have the right to retain any benefit resulting from its right to retain, recycle, process, compost or reuse the Food and Green Waste which it Collects. Food and Green Waste or any part thereof, which are delivered to a Facility (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 Contractor.

ARTICLE 5 DIRECT SERVICES

5.1 General

The work to be done by Contractor pursuant to this Agreement shall include the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required to collect Food and Green Waste. The enumeration of, and specification of requirements for, particular items of labor or equipment shall not relieve Contractor of the duty to furnish all others, as may be required, whether enumerated or not.

The work to be done by Contractor pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the customers within the City are provided reliable, courteous and high-quality Food and Green Waste Collection service at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Contractor of the duty of accomplishing all other aspects in the manner provided in this Section, whether such aspects are enumerated elsewhere in the Agreement or not.

5.2 Food and Green Waste Services

Contractor shall Collect and remove all Food and Green Waste placed in Containers at the designated Collection locations for Commercial, Single Family Dwelling Units and Multifamily Dwelling Units.

Food and Green Waste Collection shall be a minimum of once each week on the same day of the week as Solid Waste Collection service. Contractor will notify customers of holiday Collection schedules. Should the collection day change, Contractor shall re-route Collections within sixty (60) days of the notification by the change in Solid Waste collection days to provide same day service.

5.3 Materials To Be Collected

Green waste material to be collected include tree trimmings, grass cuttings, dead plants, leaves, branches and dead trees (not more than six (6) inches in diameter) and similar materials generated at the Premises.

Food Waste materials to be collected include waste material of plant or animal origin that results from the preparation or processing of food for animal or human consumption and that is separated from the municipal solid waste stream. Food waste includes, but is not limited to, food waste from food facilities such as restaurants, food processing establishments, grocery stores, institutional cafeterias (such as schools and hospitals), and residential food scrap collection.

5.4 Refusal to Provide Collection Services

Contractor may refuse to Food and Collect Green Waste and shall not be obligated to continue to provide Green Waste Container(s) to any participant in the Food and Green Waste program

who, after reasonable warning, fails to properly sort and set out Food and Green Waste. Contractor shall report monthly to City any warning notices issued.

5.5 Christmas Tree Collection Program

Contractor shall operate an annual Christmas Tree Collection and diversion program. The program shall include curbside and drop-off Collection of Christmas Trees targeting all Single Family and Multi-family Dwelling Units and shall divert these Christmas Trees from landfill disposal.

5.6 End Uses for Food and Green Waste

Contractor shall develop and implement plans and programs to divert from disposal materials collected through curbside Collection of Food, Green Waste and Christmas Tree Collection. Contractor must provide end uses for Food and Green Waste that maximizes diversion credits for the City according to regulations established by the CalRecycle.

5.7 Operations

5.7.1 Schedules

To preserve peace and quiet, no Food or Green Waste shall be Collected from or within two-hundred (200) feet of residential Premises between 6:30 P.M. and 6:30 A.M. on any day and such Green Waste shall be Collected, Monday through Friday on the same day as Solid Waste collection. When the regularly scheduled Collection day falls on a holiday, Collection shall take place on the following regularly scheduled collection day. In the event the Contractor misses the collection of set out Food or Green Waste, the Contractor shall collect the missed pickups with one (1) business day of notification.

5.7.2 Vehicles

- A. General.** Contractor shall provide a fleet of Collection vehicles sufficient in number and capacity to perform the work required by this Agreement and in strict accordance with its terms. Contractor shall have available on Collection days sufficient back-up vehicles in order 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 Contractor in providing Food and Green Waste Collection services under this Agreement 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) Contractor 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) Contractor 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. Contractor shall perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. Contractor 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) Contractor 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. Contractor 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.

4) Contractor shall arrange all vehicles and other equipment in safe and secure location(s) in accordance with all applicable zoning regulations.

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

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

5.7.3 Food and Green Waste Containers

Contractor shall supply each Single Family Dwelling Unit with a waste wheeler in size consistent with the City approved Food and Green Waste Collection program. In addition, Contractor will supply each Single Family customer a container to collect Food Waste inside a dwelling as approved by the City. Contractor shall supply each multi-family complex and commercial customer with the appropriate type of container to adequately service the needs. Containers shall be identified for Food and/or Green Waste only. Contractor agrees to provide additional appropriate Containers, as required.

City and Contractor acknowledge that from time to time, a customer may damage or destroy a Container. City and Contractor 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, Contractor shall replace the Container, at no charge to the customer.

5.7.4 Litter Abatement

Contractor shall use due care to prevent Food or Green Waste from being spilled or scattered during the Collection or transportation process. If any Food or Green Waste is spilled during Collection, Contractor shall promptly clean up all spilled materials. Each collection vehicle shall carry a broom and shovel at all times for this purpose.

5.7.5 Personnel

- A. General.** Contractor shall furnish 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.
- B. Identification.** Contractor shall ensure that while on duty each Collection worker wears a clean uniform which displays the Contractor's company name and the worker's name or identification number.
- C. Fees & Gratuities.** Company 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 8 of this Agreement.
- 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.

Contractor shall provide adequate operations, health and safety training, 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.** Contractor 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. Contractor 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, Contractor shall take all necessary corrective measures. If City has notified Contractor of a complaint related to a discourteous or improper behavior, Contractor will reassign the employee to duties not entailing contact with the public while Contractor is pursuing its investigation and corrective action process.

5.8 Implementation Plan

The parties recognize that substantial planning will be required in order to assure an orderly initiation of Food and Green Waste Collection services on January 1, 2016. To that end, the

City will require Contractor to submit by November 1, 2015 a detailed implementation plan addressing, among other things, the steps Contractor will take and the schedule on which it will take them, to prepare for such an orderly initiation of service. The implementation plan shall cover Contractor's schedule for acquiring necessary equipment, personnel, storage and maintenance facilities, administrative offices, customer relations materials (including Collection schedules, route maps, billing forms, complaint forms, service request forms, etc.). Contractor agrees to adhere strictly to the implementation plan. The implementation shall be subject to the City's review and approval.

Failure to substantially adhere to the implementation schedule will constitute a breach of this Agreement, and, if incurred, an event of default, under Article 12, Default, Remedies, and Liquidated Damages.

5.9 Food and Green Waste Processing

5.9.1 Receipt of Food and Green Waste

Commencing January 1, 2016, the Contractor shall have in place or have made arrangements for a Facility to receive and accept all deliveries of Food and Green Waste generated in the city. Contractor has designated the Engle and Gray facility to be utilized as of the Effective Date until the HZI Kompogas facility (or other similar technology) located at the Contractor's site (4388 Old Santa Fe Rd, San Luis Obispo) is constructed and operational. Contractor has designated Hitachi Zosen Inova (HZI) facility as the permanent processing site. If the HZI Kompogas facility is not constructed, Contractor will continue to utilize the Engle and Gray facility for Food and Green Waste Processing.

5.9.2 Status of Food and Green Waste Facility

Any Facility used by contractor must be designed and constructed in accordance with all applicable state and local 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.

The selected Food and Green Waste Facility must be authorized to accept, under its existing permit, and have sufficient uncommitted capacity to accept, all Food and/ or Green Waste delivered to it by, or on behalf of, the City for the term of this Agreement. Contractor shall immediately notify City of any notice of breach or default received from Food and Green Waste Facility.

5.9.3 Alternative Processing Facility

If Contractor becomes unable to deliver the City's Food and Green Waste to the Food and Green Waste Facility due to causes within its control or which could have been avoided by the exercise of due care, the Contractor shall arrange for it to be accepted at another Food and Green Waste Facility, in which case Contractor shall pay for any increased transportation costs, any differences in the fees charged at such Food and Green Waste Facility and the fees then in effect under this Agreement. If Contractor's inability to deliver the City's Food and Green

Waste to the Food and Green Waste Facility is not due to causes within its control or which could have been avoided by the exercise of due care, then Contractor shall propose alternative Food and Green Waste Facilities including all related costs and City shall select the alternative to be used.

5.9.4 Disposition of Unauthorized Waste

Contractor shall ensure that procedures to identify and reject materials delivered to the Food and Green Waste Facility which are Hazardous Waste, or which otherwise may not be legally accepted at the Food and Green Waste Facility under their permits, are in place. Contractor may, in the course of implementing such procedures, refuse to accept Food and Green Waste deposited from the City if they constitute Hazardous Waste, or otherwise may not be legally accepted at the Food and Green Waste Facility, and Contractor shall be solely responsible of the materials which are accepted. If Contractor 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. Contractor 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.

5.10 Disposal

Contractor shall ensure that the residual Solid Waste from the City's Food and Green Waste delivered to the Food and Green Waste Facility by the Contractor are disposed of at a permitted disposal site in full regulatory compliance.

**ARTICLE 6
OTHER SERVICES**

6.1 Billing

The City Council shall establish an integrated rate for the Food and Green Waste, Recycling and Solid Waste services. Contractor shall bill and collect for its services at no more nor less than these rates. Contractor's billing plan, including billing frequency, and format shall be subject to approval by City, and City shall have the right to revise the billing format to itemize certain charges.

The City may also direct Contractor to insert mailers relating to contractor provided services with the billings and shall be responsible for all labor costs with respect to the mailing inserts. 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 Contractor prior to the mailing date of any proposed mailers to permit Contractor to make appropriate arrangements for inclusion of City materials.

Contractor 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. Contractor 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.

The owner of occupied Premises shall be responsible and liable for paying the Food and Green Waste fees for that property.

6.2 Collection of Bills from Delinquent Customers

Once each year, prior to a date established by the City, Contractor may take actions pursuant to Chapter 8.04 of the Municipal Code to collect delinquent accounts.

6.3 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 Contractor, 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.

6.4 Customer Service

6.4.1 Office

Office hours shall be, at a minimum, from 8:00 A.M. to 5:00 P.M., Monday through Friday, exclusive of holidays. A responsible and qualified representative of Contractor 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. Contractor's telephone system shall be adequate to handle the volume of calls typically experienced on the busiest days. Contractor shall also maintain a local or toll free telephone number for use during

other than normal business hours. Contractor shall have a representative, answering or message providing/receiving (voice-mail) service available at said after hours telephone number.

6.4.2 Complaint Documentation

All service complaints related to Food and Green Waste Collection shall be directed to Contractor. Daily logs of complaints concerning Collection of Food and Green Waste shall be retained for a minimum of twenty-four (24) months and shall be available to City at all times during this Agreement upon twenty-four (24) hour notice.

Contractor shall log all complaints received orally or in writing and said 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 Contractor 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 Contractor 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 Contractor business hours, have access to Contractor'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 Contractor's performance under this Agreement.

6.4.3 Resolution of Customer Complaints

Contractor shall notify customers of this complaint procedure at the time customers apply for or are provided service, and subsequently, annually.

A customer dissatisfied with Contractor'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.

6.4.4 Government Liaison

Contractor 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 representative(s) to resolve customer complaints.

6.5 Education and Public Awareness

Contractor acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to achieve AB 939 and AB 1826 requirements. Accordingly,

Contractor agrees to cooperate with City in exploring 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.

Contractor shall perform all necessary public education activities related to the Food and Green Waste services as directed by the City. This shall include, but not be limited to, annual mailings to all customers explaining the Food and Green waste 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. All public education materials shall be approved in advance by the City.

At the direction of the City Manager and/or Utilities Director, Contractor shall participate in and promote Recycling, reuse and other diversion techniques at community events and local activities. Such participation would normally include providing, without cost to the City, educational and publicity information promoting the goals of the City's AB 939 and AB 1826 programs.

**ARTICLE 7
PAYMENTS TO CITY**

7.1 Franchise Fee

In consideration of the exclusive franchise provided for in this Agreement, Contractor shall pay the City ten percent (10%) of its gross revenues for Food and Green Waste Collection services; provided, however, that such franchise fee shall not exceed the costs incurred by the City to deliver service to properties. Such franchise fee shall be a "pass-through" expense for purposes of rate review.

7.2 AB 939 Fee

If requested by City, Contractor shall pay an AB 939 fee, to be specified annually by the City. All AB 939 fees paid to the City shall be considered a pass through cost for purposes of rate setting.

7.3 Business License Tax

Contractor shall pay each annual business license tax.

7.4 Other Fees

The City shall reserve the right to set "Other" Fees, as it deems necessary. These expenses will be determined and a fee designed to reimburse the City. Such fees shall be set annually by City resolution and may be considered a pass through cost for purposes of rate setting.

7.5 Time and Method of Payment

If Contractor is directed to pay an AB 939, Franchise Fee or "Other" Fee, it shall do so on or before the fifteenth (15th) day of each month during the Term. Contractor shall remit to City a sum of money equal to the designated percentage of the gross revenue or a flat monthly fee as determined by the City. If any fees are not paid on or before the fifteenth (15th) day of any month, Contractor shall pay to City a late payment penalty in an amount equal to one percent (1%) of the amount owing for that month. Contractor 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.

7.6 Adjustment of Fees

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

7.7 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 Agreement. The cost of such reviews will be an allowable cost under the rate setting methodology.

ARTICLE 8

CONTRACTOR'S COMPENSATION AND RATES

8.1 General

Contractor's compensation provided for in this Article shall be the full, entire and complete compensation due to Contractor pursuant to this Agreement for all labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, profit and all other things necessary to perform all the services required by this Agreement in the manner and at the times prescribed.

The Contractor does not look to the City for payment of any sums under this Agreement. Contractor will perform the responsibilities and duties described in 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 and the right to sell compost and other beneficial byproducts generated from the Food and Green Waste. The City shall have the right to structure those rates as it deems appropriate so long as the revenues forecasted to be received by Contractor from charging such rates can reasonably be expected to generate sufficient revenues to provide for Contractor's compensation.

8.2 Initial Rates

Contractor will submit required financial documentation for this service as part of an integrated solid waste rate application. The rate application will comply with the guidelines set forth in the City's "Rate Setting Process and Methodology Manual for Integrated Solid Waste Management Rates". The portion of the rate attributable to this service shall be identified as part of the Council rate-setting process but will not be separated from the integrated rate.

8.3 Subsequent Rates

Contractor may request rate revisions in future solid waste rate applications. The rate application must comply with the City's "Rate Setting Process and Methodology Manual for Solid Waste Management Rates".

8.4 Right to Perform Rate Reviews

City reserves the right to perform, or have a qualified third party perform, a detailed review of Contractor's expenses and revenues for the purposes of adjusting rates. The results of this detailed rate review will be used to adjust rates, and the Contractor's calculated revenue requirements will be used the following year to adjust rates according to Section 8.3 Contractor's Compensation for subsequent Rate Years.

8.5 Extraordinary Adjustments

Contractor or City may request an adjustment to rates at times other than that required in Section 8.3 for unusual changes in the cost of providing service under this Agreement. Such changes may include, but are not limited to, changes in laws, ordinances, or regulations, and significant changes in Contractor's workload due to new residential or commercial development. However, when an extraordinary adjustment is requested, such adjustment shall consider changes in all costs and revenues from Contractor's proposed revenue requirement.

For each such request, Contractor shall prepare a schedule comparing the original proposed costs and revenues by line item to the then current costs and revenues, including an estimates of the cost impact of the change, using an operating ratio of 93%, applied to Contractor's costs as calculated in Contractor's proposed revenue requirement. Such request shall be prepared in a form acceptable to City with support for assumptions made by Contractor in preparing the estimate. Contractor and City shall negotiate a mutually acceptable adjustment amount.

ARTICLE 9
RECORDS, REPORTS AND INFORMATION, STUDIES
AND HEARING REQUIREMENTS

9.1 Records

9.1.1 General

Contractor shall maintain records required to conduct its operations, to support requests it may make to City, and to respond to requests from City in the conduct of City business. Additionally, the Contractor shall also keep and maintain records reasonably necessary for audits, as required by this Agreement, and shall keep and maintain all records reasonably necessary to develop reports and financial statements required with respect to this Agreement. 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/records shall be protected and backed up.

9.1.2 Financial Records

Financial records shall separate all records related to the services performed under this Agreement from any and all other types of businesses and operations conducted by the Contractor.

9.1.3 General Records

City approved records (format) shall be maintained for the City separate from other jurisdictions relating to:

- Customer services;
- Weight of Food and Green Waste;
- Routes;
- Facilities, inventory of equipment and personnel used;
- Facilities and equipment operations, maintenance and repair;
- Processing of Food and Green Waste and marketing and sale of Compost including name of the purchaser, the date of sales transaction, processing cost per ton, quantity purchased, value per ton and net sales records;
- Complaints; and,
- Missed pick ups.

Contractor shall maintain records of all Food and Green Waste Collected in the City for the term of this Agreement. In the event Contractor discontinues providing Food and Green Waste services to City, Contractor shall provide all records of all Food and Green Waste Collected in City to City within thirty (30) days of discontinuing service. Records shall be in chronological and organized form and readily and easily interpreted.

9.2 Reports

9.2.1 Report Formats and Schedule

Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Contractor may propose report formats that are responsive to the objectives and audiences for each report. The format of each report shall be approved by the City.

Monthly reports shall be submitted within twenty (20) calendar days after the end of the month being reported. Annual reports shall be submitted before September 30th, for the previous reporting year.

9.2.2 Monthly Reports

The information listed shall be the minimum reported:

- Food and Green Waste collected, sorted by type of Generator, in tons, by month, and cumulative for report year.
- Complaint summary, for month and cumulative for report year.
- Narrative summary assessment of problems encountered and actions taken with recommendations to City for improvement.
- Number of accounts by category for each month of reporting year.
- Participation rates.
- Food and Green Waste Container distribution.

The City may designate any additional information that it wishes provided in the monthly reports.

9.2.3 Annual Report

The Annual Report is to be essentially in the form and content of the monthly reports. In addition, Contractor's annual audited financial reports/statements, with the operations related to the City services segregated, shall be included. The annual report shall also include a complete inventory of equipment used to provide all services.

Financial statements shall include a supplemental schedule combining Contractor's results of operations, separating the specific revenues and expenses, including detailed information with respect to general overhead claimed by the Contractor, in connection with the operations provided for in this Agreement from others included in such financial statements. The financial statements, supplemental schedule, management letter and footnotes shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and audited, in accordance with Generally Accepted Auditing Standards (GAAS) by a certified public accountant (CPA) licensed (in good standing) to practice public accounting in the State of California as determined by the State of California Department of Consumer Affairs Board of Accountancy. The CPA opinion on Contractor's annual financial statements and supplemental schedule shall be unqualified, except as to uncertainties for which the ultimate outcome cannot be determined by the date of the CPA's opinion.

9.3 Right to Inspect Records

City shall have the right to inspect or review the payroll tax reports, specific documents or records required expressly or by inference pursuant to this Agreement, or any other similar records or reports of Contractor that City shall deem, in its sole discretion, necessary to evaluate annual reports, compensation applications provided for in this Agreement and Contractor's performance provided for in this Agreement. The City retains the right to have an independent third party or agent of the City's choosing, such as a CPA, participate in the records inspection. The cost of such inspection or review will be an allowable cost under the rate setting methodology.

9.3.1 Right to Review Basis for Landfill Tipping Fee Increases

The Contractor shall provide to the City a copy of Cold Canyon Landfill's and/or the designated Food and Green Waste processing facility's request for an increase in tipping fees no later than five (5) days following submittal of said request to the County of San Luis Obispo and/or the designated processing facility.

Additionally, the Contractor shall notify the City of the action taken by the Board of Supervisors and /or the designated processing facility regarding said request within five (5) days following said action, including letter to the Board of Supervisors and related executed resolution and/or appropriate documentation from the designated processing facility. The City retains the right to have an independent third party or agent of the City's choosing, such as a CPA, participate in the review. The cost of such inspection or review will be an allowable cost under the rate setting methodology unless there are findings pursuant to Section 12.5.

9.4 Waste Generation/Characterization Studies

Contractor acknowledges that the city must perform Solid Waste generation and disposal characterization studies periodically to comply with AB 939 requirements. Contractor agrees to participate and cooperate with City and its agents to accomplish studies and data collection and prepare reports as needed to determine weights and volumes of Solid Waste generated, diverted, disposed, transformed, or otherwise handled/processed to satisfy AB 939 requirements.

9.5 Performance Hearing

The City maintains the right to hold a public hearing at any time, not more than once each year, at which the Contractor shall be present and shall participate, to review its services and performance. The purpose of the hearing is to provide for a discussion and review of technological, economic, and regulatory changes in order to achieve a continuing, advanced Solid Waste management system; and to ensure customer service quality and any other areas that may be addressed regarding services are being provided with adequate quality, efficiency and economy.

Sixty (60) days after receiving notice from City of a Performance Hearing, Contractor shall, at a minimum, submit a report to City indicating (1) changes recommended and/or new services to improve City's ability to meet the goals of AB 939 and Ab 1826 to contain costs and

minimize impacts on rates; and (2) any specific plans for provision of changed or new services by Contractor.

ARTICLE 10
INDEMNIFICATION, INSURANCE AND BOND

10.1 Indemnification

Contractor 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 Contractor, its officers, employees agents and/or sub Contractors in performing services under this Agreement; (2) the failure of Contractor, 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 Contractor, 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). Contractor further agrees to and shall, upon demand of City, at Contractor'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 the immediately preceding paragraph to the extent arising from or related to alleged or actual violations of Proposition 218 and/or its implementing legislation,.

Contractor's duty to indemnify and defend shall survive the expiration or earlier termination of this Agreement.

10.2 Landfill Diversion

The Contractor acknowledges that the City has adopted a SRRE which selects Food and Green Waste Collection and Composting programs as a means of diverting an estimated 6,796 tons in 1995 and 8,248 tons per year by the year 2000. It is therefore of foremost importance that the Food and Green Waste and wood debris collected under this Agreement be converted into a functional and marketable product in order that the materials may be diverted from landfill disposal in compliance with the City's SRRE, and AB 939. The Contractor shall therefore use commercially reasonable efforts ensure that the processing method used shall, at all times, meet the intent of the City's SRRE and AB 939. Should the Contractor find it necessary to utilize another method of processing in order to meet the intent of the SRRE and AB 939, the City shall be given an opportunity to make its own determination as to the suitability and cost-effectiveness of such process and shall approve such process in writing. The City shall have the right to terminate this Agreement upon the giving of a six (6) month prior written notice to Contractor should it be determined that the Food and Green Waste program being implemented and/or proposed under this Agreement is ineffective in meeting the City's diversion goals and objectives. Upon termination, the Contractor shall be entitled only to revenues less expenses incurred to that date. All revenues received thereafter shall be the property of the City unless otherwise agreed.

10.3 AB 939 Indemnification

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

10.4 Insurance

- A. Minimum Limits of Insurance.** Contractor shall maintain limits no less than:
1. Comprehensive General Liability: One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury, Personal injury and property damage.
 2. Automobile Liability: One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
 3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.
- B. Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, directors and employees; or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- C. Other Insurance Provisions.** The policies are to contain, or be endorsed to contain, the following provisions:
1. General Liability and Automobile Liability Coverages
 - a) The City, its officials, employees, and directors are to be covered as insured as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; Premises owned, leased or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers.
 - b) Contractor's insurance coverage shall be primary insurance as respects City, its officials, directors, employees and volunteers. Any insurance or self-insurance maintained by City, its officials, or employees shall be excess of Contractor's insurance and shall not contribute with it.
 - c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, or employees.

d) Coverage shall state that Contractor'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.

2. Workers' Compensation and Employers Liability Coverage - The insurer shall agree to waive all rights of subrogation against City, its officials, and employees for losses arising from work performed by Contractor for City.

3. All Coverages - 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 limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to City.

D. Acceptability of Insurers. The insurance policies required by this Section shall be issued by an insurance contractor or companies admitted to do business in the State of California subject to the jurisdiction of the California Insurance Commissioner and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better.

E. Verification of Coverage. Contractor shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this clause. 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 work commences. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

10.5 Faithful Performance Bond

Simultaneously with the execution of this Agreement, Contractor shall file with City surety bond, payable to City, securing Contractor's faithful performance of its obligations under this Agreement. The bond shall be in the amount of 125% of the total annual contract price guaranteeing the faithful performance of the agreement, including any reasonable attorney's fees or other collection costs.

ARTICLE 11
CITY'S RIGHT TO PERFORM SERVICE

11.1 General

In the event that Contractor, for any reason whatsoever, fails, refuses or is unable to Collect, transport or process any or all Food and Green Waste materials which it is required by this Agreement to Collect and process, at the time and in the manner provided in this Agreement, for a period of more than seven (7) calendar days, and if, as a result thereof, Food and Green Waste 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 Contractor 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 Contractor; and/or (2) to take possession of any or all of Contractor's land, equipment and other property to Collect, transport or process any Food and/or Green Waste generated within the City which Contractor would otherwise be obligated to Collect, transport, process or market pursuant to this Agreement. In the event the City takes possession of the Contractor'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 Contractor's equipment and other property, the City does not guarantee repair of existing problems with equipment and facilities.

Notice of Contractor's failure, refusal or neglect to Collect, transport or process Food and Green Waste may be given orally by telephone to Contractor at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to Contractor within twenty-four (24) hours of the oral notification.

Contractor further agrees that in such event:

- It will take direction from City to effect the transfer of possession of property to City for City's use.
- 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 and processing Green Waste, including, if City so desires, employees previously or then employed by Contractor, Contractor further agrees, if City so requests, to furnish City the services of any or all management or office personnel employed by Contractor whose services are necessary or useful for Green Waste Collection, Transportation and processing operations 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 12.4 (Excuse From Performance), City shall pay to Contractor 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 Contractor 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 Contractor; and (3) does not exempt Contractor from the indemnity provisions of Article 10, Indemnification, Insurance and Bond, which are meant to extend to circumstances arising under this Section, provided that Contractor is not required to indemnify City against claims and damages arising from the sole negligence of City officers, employees and agents in the operation of Collection vehicles during the time City has taken possession of such vehicles.

11.2 Temporary Possession of Contractor'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 12.4, Excuse from Performance), City may take possession of and use all of Contractor's property described above until other suitable arrangements can be made for the provision of Food and Green Waste Services 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 Green Waste services, as above provided, Contractor shall continue to bill and collect payment from all users of the above-mentioned services. Contractor 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 Food and Green Waste service in such manner and to an extent as would otherwise be required of Contractor under the Terms of this Agreement. Such reimbursement shall be made from time to time after submission By City to Contractor 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 Contractor, 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 Contractor and thereupon demand that Contractor resume the Food and Green Waste services as provided in this Agreement, whereupon Contractor 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 Contractor's facilities and equipment, and to render Collection services, shall terminate when City determines that such services can be resumed by Contractor, or when City no longer reasonably requires such facilities or equipment. In any case, City has no obligation to maintain possession of Contractor's property and/or continue its use for any period of time and may at any time, in its sole discretion, relinquish possession to Contractor.

ARTICLE 12
DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

12.1 Events of Default

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

- A. Fraud or Deceit.** If Contractor practices, or attempts to practice, any fraud or deceit upon city.
- B. Insolvency or Bankruptcy.** If Contractor becomes insolvent, unable, or unwilling to pay its debts when due, or upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding. The Contractor is also in default if there is an assignment of this contract for the benefit of its creditors.
- C. Failure to Maintain Coverage.** If Contractor 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 Contractor facilities fall out of full regulatory compliance or if Contractor violates any orders or filings of any regulatory body having jurisdiction over Contractor relative to this Agreement, provided that Contractor 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 Contractor ceases to provide Food and Green Waste services as required under this Agreement for a period of two (2) days or more, for any reason within the control of Contractor.
- F. Failure to Pay/Report.** If Contractor 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 Contractor 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 there under and which is not corrected or remedied within the time set in the written notice the violation or, if Contractor cannot reasonably correct or remedy the breach within the time set forth in such notice, if Contractor 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 Contractor 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 Contractor, 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 Contractor, 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 Contractor, the City Manager shall provide written notice to Contractor of the violation. The City Manager shall include in the notice, a demand that the Contractor correct the violation within 10 days following the delivery of said notice. If the violation is not corrected within the 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 Contractor, City shall have the right to terminate this Agreement upon a ten (10) days notice if the public health or safety is threatened, or otherwise a 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 Contractor to perform its obligations under this Agreement.

City's right to terminate this Agreement and to take possession of Contractor's equipment and facilities 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 Contractor, the remedy of damages for a breach hereof by Contractor is inadequate and City shall be entitled in injunctive relief.

12.3 Liquidated Damages

- A. General.** City finds, and Contractor 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 Contractor of its obligations under this Agreement.

- B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The parties acknowledge that consistent, reliable Green Waste service is of utmost importance to City and that city has considered and relied on Contractor's representations as to its quality of service commitment in awarding the Agreement to it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if Contractor fails to achieve the performance standards defined in this Section, comply with complaint resolution criteria, 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 amount 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 amount 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. Recognizing the importance of resolving any failure to meet the service performance standard, the City shall contact Contractor within two (2) days of any failing reported directly to the City.

Contractor agrees to pay (as liquidated damages and not as a penalty) the amounts set forth below:

Collection Reliability and Quality

- For each failure over five (5) annually to commence service to a new customer account within seven (7) days after order: \$150.00
- For each failure over ten (10) annually to Collect Food and/or Green Waste, which as been properly set out for Collection, from an established customer account on the scheduled Collection day: \$150.00
- For each failure to Collect Food and/or Green Waste which have been properly set out for Collection, from the same customer on two (2) consecutive scheduled pickup days: \$150.00
- For each occurrence over five (5) annually of damage to private property: \$250.00
- For each occurrence of discourteous behavior: \$250.00
- For each failure over ten (10) annually to clean up Food and/or Green waste spilled from Bins: \$150.00
- For each occurrence over five (5) annually of Collecting

Food and/ or Green Waste during unauthorized hours:

\$250.00

- For each failure to respond to a customer complaint within twenty-four (24) working hours:

\$100.00

Timeliness of Submissions to City

REPORTS Any report shall be considered late until such time as a correct and complete report is received by City. For each calendar day a report is late, the daily assessment shall be:

Monthly Reports: For each infraction \$100 per day

Annual Reports: For each infraction \$500 per day

Liquidated damages will only be assessed after Contractor 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.

Prior to assessing liquidated damages, City shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. Contractor may review (and make copies at its own expense) all information in the possession of City relating to incident(s)/non-performance. Contractor 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 his/her designee. Contractor 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 Contractor with a written explanation of his or her 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.

C. Amount. The City Manager may assess liquidated damages for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement.

D. Timing of Payment. Contractor shall pay any liquidated damages assessed by City within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, City may proceed against the performance bond required by this Agreement or order the termination of this Agreement, or both pursuant to the terms of this Agreement.

12.4 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 Contractor's employees or directed at Contractor or its selected facilities is not an excuse from performance and Contractor 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 Contractor's services caused by one or more of the events excused shall not constitute a default by Contractor under this Agreement. Notwithstanding the foregoing, however, if Contractor 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 determines the excuse from service is no longer valid, the City shall notify the Contractor in writing to resume service within two (2) days from the receipt of such notification. If the Contractor 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 Contractor's land, equipment and other property and engaging Contractor's personnel in Article 11, City's Right to Perform Services, and this Article 12 shall apply.

12.5 Financial Material Errors, Omissions or Irregularities

The City may review, test and audit the books and records of the Contractor for the purpose of determining whether the contractor is complying with the terms of the Agreement. In the event that material errors or omissions or irregularities are identified, and then the cost associated with the audit, test or review shall be paid by the Contractor 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 Contractor from activities performed under this agreement. Recovery of any overpayment will be negotiated on a case by case basis, either immediately or through the next rate setting evaluation.

ARTICLE 13
OTHER AGREEMENTS OF THE PARTIES

13.1 Relationship of Parties

The parties intend that Contractor 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 of or joint venture with City. No employee or agent of Contractor shall be or shall be deemed to be an employee or agent of City. Except as expressly provided herein, Contractor shall have the exclusive control over the manner and means of conducting the Green Waste services performed under this Agreement, and all Persons performing such services.

Contractor shall be solely responsible for the acts and omissions of its officers, employees, subcontractors and agents. Neither Contractor 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.

13.2 Compliance with law

In providing the services required under this Agreement, Contractor shall at all times, at its sole cost, comply with all applicable laws of the United States, the State of California, City, and with all applicable regulations promulgated by federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term.

13.3 Governing Law

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

13.4 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.

13.5 Assignment

Except as may be provided for in Article 11, (City's Right to Perform Service), neither party shall assign its rights, nor delegate, subcontract 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 Contractor shall consent to any assignment to a joint powers authority, or any similar public entity assignee of the City.

For purposes of this Section when used in reference to Contractor, "assignment" shall include, but not be limited to (1) a sale, exchange or other transfer of at least fifty-one percent (51%) all of Contractor's assets dedicated to service under this Agreement to a third party; (2) a sale, exchange or other transfer of outstanding common stock of Contractor to a third party provided

said sale, exchange or transfer may result in a change of control of Contractor; (3) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which results in a change of ownership or control of Contractor; (4) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Contractor's property, or transfer occurring in the event of a probate proceeding; and (5) 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 Contractor.

Contractor acknowledges that this Agreement involves rendering a vital service to City's residents, and that City has selected Contractor to perform the services specified herein based on (1) Contractor'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 (2) Contractor'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 Contractor to perform the services to be rendered by Contractor under this Agreement.

If Contractor 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 Contractor for consent to an assignment need be considered by City unless and until Contractor has met the following requirements:

A. Contractor shall undertake to pay City its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment;

B. Contractor shall furnish City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years;

C. Contractor shall furnish City with satisfactory proof: 1) that the proposed assignee has at least ten (10) years of Green Waste management experience on a scale equal to or exceeding the scale of operations conducted by Contractor under this Agreement; 2) that in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any federal, state or local agency having jurisdiction

over its Solid Waste management operations due to any significant failure to comply with state, federal 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 Green Waste management practices in accordance with sound waste management practices in full compliance with all federal, state and local laws regulating the collection, transportation, processing, marketing 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 City if Contractor is in default at any time during the period of consideration.

13.6 Subcontracting

Except as approved in writing by the City, Contractor shall not enter into an agreement to have another Person perform Contractor's duties of this Agreement. Contractor 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.

13.7 Binding on Assigns

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

13.8 Transition to Next Contractor

If the transition of services to another Contractor occurs through expiration of term, default and termination, or otherwise, Contractor will cooperate with City and subsequent Contractor(s) to assist in an orderly transition which will include Contractor providing route lists and billing information. Contractor will not be obliged to sell collection vehicles or Containers to the next Contractor. Depending on Contractor's circumstances at the point of transition, Contractor at its option may enter into negotiations with the next Contractor to sell (in part or all) Collection vehicles and/or containers.

13.9 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.

13.10 Waiver

The waiver by either party of any breach or violation of any provisions 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.

13.11 Contractor's Investigation

Contractor has relied on its own investigations, and not on any representations of the City or its agents of the conditions and circumstances surrounding the Agreement and the work to be performed by it.

13.12 Notice

All notices, demands, requests, proposals, approvals, consents and other communications which this Agreement requires, authorizes or contemplates 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 Contractor: Mike Dean
 San Luis Garbage Company
 4388 Old Santa Fe 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. The notice, if mailed, is deemed served three (3) days after the mailing.

13.13 Representatives of the Parties

References in this Agreement to the "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, Utilities Director, and/or to the City employees and may permit such employees, in turn, to delegate in writing some or all of such authority to subordinate employees. Contractor may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

Contractor shall, by the effective date, designate in writing a responsible officer who shall serve as the representative of Contractor in all matters related to the Agreement and shall inform City in writing of such designation and of any limitations upon his or her authority to bind Contractor. City may rely upon action taken by such designated representative as actions of Contractor unless they are outside the scope of the authority delegated to him/her by Contractor as communicated to City.

13.14 City Free to Negotiate with Third Parties

City may investigate all options for the Collection and processing of Food and Green Waste after the expiration of the Term. Without limiting generality of the foregoing, City may solicit proposals from Contractor and from third parties for the provision of Food and Green Waste services, 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 12.1 (Events of Default) of this Agreement.

13.15 Compliance with City Code

Contractor shall comply with those provisions of the City code which are applicable, and with any and all amendments to such applicable provisions during the Term of this Agreement.

13.16 Privacy

Contractor shall strictly observe and protect the rights of privacy of customers. Information identifying individual customers or the composition or contents of a customer's waste stream shall not be revealed to any person, governmental unit, private agency, or contractor, unless upon the authority of a court of law, by statute, or upon valid authorization of the customer. This provision shall not be construed to preclude Contractor from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses which may be required by AB 939.

ARTICLE 14
MISCELLANEOUS AGREEMENTS

14.1 Entire Agreement

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

14.2 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.

14.3 References to laws and Other Agreements

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 Food and Green Waste Collection, processing and/or marketing heretofore entered into by the parties and the City.

14.4 Interpretation

This Agreement, including the 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.

14.5 Agreement

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

14.6 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.

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

The City of San Luis Obispo
("City")

San Luis Garbage Company

("Contractor")

By 
City Manager

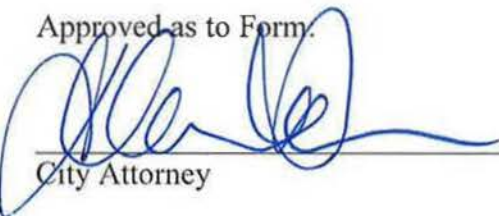
By  Name: _____

Title: Mike Darn
Division Vice President

Attest:


City Clerk

Approved as to Form.


City Attorney