

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

For Collection, Transportation, and Disposal of Solid
Waste Within the City of San Luis Obispo

This Agreement between the City of San Luis Obispo and San Luis Garbage Company for Collection of Solid Waste ("Agreement"), is made and entered into as of the _____ day of June, 2022, (the "Effective Date") in the State of California by and between the City of San Luis Obispo, a political subdivision of the State of California, (hereafter "City") and San Luis Garbage Company, a California corporation (hereafter "Franchisee"), each of which may be referred to individually as a "Party" or together as the "Parties".

RECITALS

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

WHEREAS: The Parties entered into a Franchise Agreement for Solid Waste Collection on August 20, 2010; and,

WHEREAS: Section 5.8 of the Franchise Agreement for Solid Waste Collection provides City with the right to direct Franchisee to modify the scope of one or more types of service described in the Agreement, or to otherwise modify its performance under the Agreement, subject to providing additional compensation; and,

WHEREAS: The State of California has found and declared that the amount of refuse generated in California, coupled with diminishing Disposal capacity and potential adverse environmental impacts from landfill Disposal and the need to conserve natural resources, have created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program. The State has, through enactment of AB 939 and subsequent related legislation including, but not limited to: the Jobs and Recycling Act of 2011 (AB 341), the Event and Venue Recycling Act of 2004 (AB 2176), SB 1016 (Chapter 343, Statutes of 2008 [Wiggins, SB 1016]), the Mandatory Commercial Organics Recycling Act of 2014 (AB 1826), and the Short-Lived Climate Pollutants Bill of 2016 (SB 1383), directed the responsible State agency, and all local agencies, to promote Diversion and to maximize the use of feasible waste reduction, re-use, Recycling, and Composting options in order to reduce the amount of refuse that must be Disposed; and

WHEREAS: SB 1383 establishes regulatory requirements for jurisdictions, Generators, haulers, Solid Waste facilities, and other entities to support achievement of State-wide Organic Waste Disposal reduction targets; and

WHEREAS: SB 1383 requires the City to implement Collection programs for Organic Waste, Recyclable Materials, and Solid Waste, meet Processing Facility requirements, conduct contamination monitoring, provide education, maintain records, submit reports, monitor compliance, conduct enforcement, and fulfill other requirements; and, the City has chosen to delegate some of its responsibilities to the Franchisee, acting as the City's designee, through this Agreement; and

WHEREAS: Both Parties have, in good faith, negotiated changes to the Franchise Agreement for Solid Waste

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Deleted: <#>The Legislature of the State of California, by enactment of California Integrated Waste Management Act of 1989, Division 30 of the California Public Resources Code, commencing with Section 40000 (CIWMA), declares that it is within the public interest to authorize and require local agencies to make adequate provisions for solid waste handling within their jurisdictions. The law, AB 939 requires a 50 percent reduction in the amount of waste which is landfilled by 2000; and¶
¶
<#>The City has authority to grant a franchise for collection, diversion, and disposal of solid waste within the City of San Luis Obispo pursuant to City Charter Article X and Chapter 8.04 of the San Luis Obispo Municipal Code; and¶
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<#>The City Council has determined that solid waste, including discards from residential and non-residential properties, must be regulated to protect public health, safety and welfare; to conserve landfill disposal capacity; and to develop and maintain effective resource management programs; and¶
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<#>The City Council has determined that all occupied developed properties in the City must participate in the City's solid waste collection and disposal service; and¶
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<#>The City Council has determined that an exclusive franchise granted to a private company is the most effective and efficient way to collect and remove solid waste within the City; and¶
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<#>The City Council has determined that the Franchisee can provide needed solid waste services; and¶
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<#>Franchisee is responsible for arranging for solid waste collection and disposal service, and an appropriate landfill destination for collected solid
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Franchise Agreement – Solid Waste

Collection necessary to support the City's and Franchisee's compliance with SB 1383, as set forth herein; and

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WHEREAS, this Agreement is intended to restate and supersede all prior Franchise Agreements for Solid Waste Collection between City and Franchisee; and

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

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This Amendment #1 shall become effective on the date this Amendment #1 is signed by both Parties. ¶

**ARTICLE 1.
DEFINITIONS**

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

- 1.1** "AB 341" means the California Jobs and Recycling Act of 2011 (Chapter 476, Statutes of 2011 [Chesbro, AB 341]), also commonly referred to as "AB 341", as amended, supplemented, superseded, and replaced from time to time.
- 1.2** "AB 939" means the California Integrated Waste Management Act of 1989, (Division 30 of the California Public Resources Code), also commonly referred to as "AB 939," as amended, supplemented, superseded, and replaced from time to time.
- 1.3** "AB 1826" means the Organic Waste Recycling Act of 2014 (Chapter 727, Statutes of 2014 modifying Division 30 of the California Public Resources Code), also commonly referred to as "AB 1826," as amended, supplemented, superseded, and replaced from time to time.
- 1.4** **"Affiliate"** means all businesses (including corporations, limited and general partnerships, and sole proprietorships) which are directly or indirectly related to Franchisee by virtue of a common ownership interest or common management shall be deemed to be "Affiliated with" Franchisee and included within the term "Affiliate" as used herein. An Affiliate shall include a business in which Franchisee owns a direct or indirect ownership interest, a business which has a direct or indirect ownership interest in Franchisee and /or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in Franchisee. For purposes of determining whether an indirect ownership exists, the constructive ownership provisions of Section 31 8(a) of the Internal Revenue Code of 1986, as in effect the date of this Agreement, shall apply; provided, however, that (i) "ten percent (10%)" shall be substituted for "fifty percent (50%)" in Section 31 8(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 31 8(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.
- 1.5** **"Agreement"** means this agreement the between the City and Franchisee for arranging for the collection, diversion, and disposal of solid waste, and collection and any future amendments hereto.
- 1.6** "Applicable Law" means all Federal, State, County, and local laws, regulations, rules, orders, judgments, degrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the Collection, Transportation, and Processing of Recyclable Materials, Organic Materials, and Solid Waste that are in force on the Effective Date and as may be enacted, issued or amended during the Term of this Agreement. Applicable Law includes, but is in no way limited to, AB 939, AB 341, AB 1826, and SB 1383.
- 1.7** **"Arranger"** means any person that arranges for the collection, diversion, transfer, burning, disposal or processing of any solid waste.
- 1.8** "Bin" means a Container with capacity of approximately one (1) to eight (8) cubic yards, with a hinged lid, and with wheels (where appropriate), that is serviced by a front end-loading and/or rear-end loading Collection vehicle, including Bins with Compactors attached to increase the capacity of the Bin.

Deleted: means the California Integrated Waste Management Act of 1989, as it may be amended from time to time.¶

- 1.9** "Bulky Item(s)" or "Bulky Waste" means discarded, large household appliances, furniture, tires, carpets, mattresses, and similar large items which require special handling due to their size, but can be collected without the assistance of special loading equipment (such as forklifts or cranes) and without violating vehicle load limits. It does not include abandoned automobiles.
- 1.10** "Business Days" mean days during which the City offices are open to do business with the public.
- 1.11** "California Code of Regulations" or "CCR" means the State of California Code of Regulations. CCR references in this Agreement are preceded with a number that refers to the relevant Title of the CCR (e.g., "14 CCR" refers to Title 14 of CCR).
- 1.12** "CalRecycle" means California's Department of Resources Recycling and Recovery.
- 1.13** "Cart" means a plastic Container with a hinged lid and wheels that is serviced by an automated or semi-automated Collection vehicle. A Cart has capacity of 20, 35, 64 or 96 gallons (or similar volumes).
- 1.14** "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C Section 9601, et seq.
- 1.15** "City" means the City of San Luis Obispo, a Charter municipal corporation, and all the territory lying within the municipal boundaries of the City as presently existing or as such boundaries may be modified during the term of this Agreement. The City may designate responsibilities to one or more third parties, in writing, between the City Manager and the designee.
- 1.16** "Collect" or "Collection" (or any variation thereof) means to take physical possession, Transport, and remove Discarded Materials and other material at the place of generation in the City.
- 1.17** "Commencement Date" means the date specified in Article 3 when Collection, Transportation, Processing, and Disposal services required by this Agreement shall be provided.
- 1.18** "Commercial" shall mean of, from, or pertaining to non-Residential Premises where business activity is conducted, including, but not limited to, retail sales, services, wholesale operations, manufacturing, and industrial operations, but excluding businesses conducted upon Residential property which are permitted under applicable zoning regulations and are not the primary use of the property.
- 1.19** "Compactor" means a mechanical apparatus that compresses materials together with the Container that holds the compressed materials or the Container that holds the compressed materials if it is detached from the mechanical compaction apparatus. Compactors include two (2) to eight (8) cubic yard Bin Compactors serviced by front-end loader Collection vehicles and ten (10) to fifty (50) cubic yard Drop Box Compactors serviced by Roll-Off Collection vehicles.
- 1.20** "Complaint" shall mean each written or orally communicated statement made by any Person, whether to City or Franchisee, alleging: (1) non-performance, or deficiencies in Franchisee's performance of its duties under this Agreement; (2) a violation by Franchisee of this Agreement; (3) an SB 1383 Non-Compliance Complaint as required under 14 CCR Section 18995.3.
- 1.21** "Compost" (or any variation thereof) includes a controlled biological decomposition of Organic Materials yielding a safe and nuisance free Compost product.

Deleted: means the City of San Luis Obispo, a Charter municipal corporation, and all the territory lying within the municipal boundaries of the City as presently existing or as such boundaries may be modified during the term of this Agreement....

Deleted: means to take physical possession of, transport, and remove Solid Waste within and from the City....

Deleted: "Commercial and Industrial Property" means property upon which business activity is conducted, including, but not limited to, retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding businesses conducted upon residential properties which are permitted under applicable zoning regulations and are not the primary use of the property.¶

1.22 **“Compostable Plastic”** means plastic materials that meet the ASTM D6400 standard for Compostability.

1.23 **“Construction and Demolition Debris”** or **“C&D”** means used or discarded construction materials removed from a Premises during the construction, repair, demolition, or renovation of a structure.

1.24 **“Container”** means Bin, Carts, Compactors, and franchise Roll-Offs.

1.25 **“County”** means the County of San Luis Obispo, a political subdivision of the State of California.

1.26 **“Customer”** means the Person whom Franchisee submits its billing invoice to and collects payment from for Collection services provided to a Premises. The Customer may be either the Occupant or Owner of the Premises.

1.27 **“Demolition Debris”** means used construction materials removed from a premises during the razing or renovation of a structure.

1.28 **“Designated Collection Location”** means the place where an authorized recycling agent or a solid waste collector has contracted with either the City or a private entity to collect solid waste.

1.29 **“Designated Disposal Facility”** or **“Designated Disposal Site”** means the landfill or transfer station, selected by City where Solid Waste Collected under this Agreement is sent for final Disposal. The Designated Disposal Facility is subject to the City's right of direction. The Designated Disposal Facility is the Cold Canyon Landfill as the primary, owned and operated by Waste Connections and located at 2268 Carpenter Canyon Rd, San Luis Obispo, CA 93401, and Chicago Grade Landfill, or the Santa Maria Landfill, as alternatives.

1.30 **“Designated Waste”** means non-Hazardous Waste which may pose special Disposal problems because of its potential to contaminate the environment, and which may be Disposed of only in Class II Disposal sites or Class III Disposal sites pursuant to a variance issued by the California Department of Health Services. Designated Waste consists of those substances classified as Designated Waste by the State, in California Code of Regulations Title 23, Section 2522 as may be amended from time to time.

1.31 **“Discarded Materials”** means Recyclable Materials, Organic Materials, and Solid Waste placed by a Generator in a receptacle and/or at a location for the purposes of Collection, excluding Excluded Waste.

1.32 **“Disposal Facility”** means a landfill, or other Facility for ultimate Disposal of Solid Waste.

1.33 **“Disposal Site(s)”** means any properly licensed and permitted solid waste facility or facilities arranged by Franchisee after consultation with City for the ultimate disposal of solid waste collected by Franchisee.

1.34 **“Designated Processing Facility”** means any properly licensed and permitted plant or site used for the purpose of sorting, cleansing, treating, reconstituting, processing and marketing recyclable materials, which has been arranged by Franchisee after consultation with City.

1.35 **“Dispose”** or **“Disposal”** means the ultimate disposition of Solid Waste or Processing Residue at a Disposal Facility.

1.36 **“Divert”** or **“Diversion”** (or any variation thereof) means to prevent Discarded Materials from Disposal at

Deleted: Debris" means used or discarded construction materials removed from a premises during the construction, repair or renovation of a structure.¶

Deleted: means any bin, vessel, can or receptacle used for collecting and storing solid waste before removal.

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Deleted: means the ultimate disposition of solid waste collected by Franchisee at a landfill in full regulatory compliance or other fully permitted disposal site.¶

Franchise Agreement – Solid Waste

landfill or transformation facilities, (including facilities using incineration, pyrolysis, distillation, gasification, or biological conversion methods) through source reduction, reuse, Recycling, Composting, anaerobic digestion, or other method of Processing, subsequent to the provisions of AB 939. Diversion is a broad concept that is to be inclusive of material handling and Processing changes that may occur over the Term including, but not limited to, changes in standard industry practice or implementation of innovative (but not necessarily fully proven) techniques or technology that reduce Disposal risk, decrease costs and/or are for other reasons deemed desirable by the City.

- 1.37** “Dwelling Unit” means any individual living unit in a: Single-Family Dwelling Unit or Multi-Family Dwelling Unit or building, a mobile home, or a motor home located on a permanent site intended for, or capable of being utilized for, Residential living other than a Hotel or Motel.
- 1.38** “Edible Food” means food intended for human consumption. For the purposes of this Agreement, Edible Food is not Solid Waste if it is recovered and not discarded. Nothing in this Agreement requires or authorizes the recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code. If the definition in 14 CCR Section 18982(a)(18) for Edible Food differs from this definition, the definition in 14 CCR Section 18982(a)(18) shall apply to this Agreement.
- 1.39** “Effective Date” means the date on which the latter of the two Parties signs this Agreement, as specified in Section 3.1 of this Agreement.
- 1.40** “Excluded Waste” means Hazardous Substance, Hazardous Waste, Infectious Waste, Designated Waste, volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, waste that Franchisee reasonably believes would, as a result of or upon Disposal, be a violation of local, State or Federal law, regulation or ordinance, including land use restrictions or conditions, waste that cannot be Disposed of in Class III landfills, waste that in Franchisee’s reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Franchisee or City to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code.
- 1.41** “Facility” means any plant or site utilized by Franchisee (or its Subcontractor) for the purposes of performing the duties under this Agreement, including, but not limited to, Transfer, Processing, or Disposal of Discarded Materials Collected in the City.
- 1.42** “Federal” means belonging to or pertaining to the Federal government of the United States.
- 1.43** “Food Recovery” means actions to Collect and distribute food for human consumption which otherwise would be Disposed, or as otherwise defined in 14 CCR Section 18982(a)(24).
- 1.44** “Food Scraps” means those Discarded Materials that will decompose and/or putrefy including: (i) all kitchen and table Food Waste; (ii) animal or vegetable waste that is generated during or results from the storage, preparation, cooking or handling of food stuffs; (iii) fruit waste, grain waste, dairy waste, meat, and fish waste; and, (iv) vegetable trimmings, houseplant trimmings and other Compostable Organic Waste common to the occupancy of Residential dwellings. Food Scraps are a subset of Food Waste.
- 1.45** “Food-Soiled Paper” means Compostable paper material that has come in contact with Food Scraps or

Deleted: means any plant or site, owned or leased and maintained and/or operated or used by Franchisee for purposes of performing under this Agreement.¶

liquid, such as, but not limited to, Compostable paper plates, napkins, and pizza boxes. Food -Soiled Paper is a subset of Food Waste.

1.46 “Food Waste” means Source Separated Food Scraps and Food-Soiled Paper. Food Waste is a subset of Organic Materials.

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“Franchise” means the special right granted by the City of San Luis Obispo to operate a Discarded Materials Collection company providing such services within the City.

1.47 “Franchise Fee” means the fee paid by Franchisee to the City as described in Article 8.

Deleted: means the special right granted by the City of San Luis Obispo to operate a solid waste collection company providing such services within the City.¶

1.48 “Franchisee” means San Luis Garbage Company, a corporation organized and operating under the laws of the State of California, and its officers, directors, employees, agents, companies.

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1.49 “Full Regulatory Compliance” means compliance with all applicable permits for a facility and with other applicable regulations such that the Franchisee will at all times maintain the ability to fully comply with its obligations under this Agreement.

1.50 “Generator” or “Waste Generator” means any Person 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.

1.51 “Green Waste” means those Discarded Materials that will decompose and/or putrefy, including, but not limited to, green trimmings, tree trimmings, grass cuttings, dead plants, weeds, prunings, brush, leaves, branches, brush, dead trees, small pieces of untreated and unpainted wood and other types of Organic Waste resulting from normal yard and landscaping maintenance that may be specified in City Legislation for Collection and Processing as Organic Materials under this Agreement. Green Waste does not include items herein defined as Excluded Waste. Green Waste is a subset of Organic Materials. If Green Waste is more than six (6) inches in diameter, it shall be Collected in the Bulky Waste Collection program.

Deleted: means tree trimmings, grass cuttings, dead plants, leaves, branches and dead trees (no more than six (6) inches in diameter) and similar materials generated at the premises.¶

1.52 “Gross Revenues” means the sum of the cash receipts derived by Franchisee from customer billings for Solid Waste Collection services and orange bag sales provided in the City.

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“Hazardous Substance” means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as “Hazardous Substances”, “hazardous materials”, “Hazardous Wastes”, “toxic waste”, “pollutant”, or “toxic substances”, or similarly identified as hazardous to human health or the environment, in or pursuant to: (i) the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and, (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and, (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other Applicable Law currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl’s (PCBs), petroleum, natural gas, and synthetic fuel products, and by-products.

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1.54 “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.

Deleted: “Hazardous Waste” is as defined in Article 2, Chapter 6.5, Section 25117 of the Health and Safety Code and Public Resource Code Section 40141. For the purposes of this Agreement, however, hazardous waste shall not include Household Hazardous Waste which maybe contained in solid waste....

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1.56 "Holidays" are defined as New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

1.57 **"Household Hazardous Waste"** means hazardous waste generated at residential premises.

1.58 **"Interruption of Service"** means (a) any period during which Franchisee's operations are diminished or discontinued by circumstances beyond its control, or (b) any period during which operations are diminished or discontinued as a result of any breach of the Agreement by Franchisee or (c) any period after the City has terminated the franchise and until the City can reasonably acquire other suitable service and/or enter into a new franchise agreement.

1.59 "Liquidated Damages" means the amounts due by Franchisee for failure to meet specific quantifiable standards of performance as described in Article 12.

1.60 **"Materials Recovery Facility"** means a permitted Facility where Discarded Materials are sorted or separated for the purposes of Recycling, Processing, or Reuse.

1.61 **"Medical Waste"** means biohazardous waste, sharp wastes, waste which is generated or produced as a result of the diagnosis, treatment or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biological products, pursuant to California Health and Safety Code, Section 25023.2.

1.62 **"Multi-Family Dwelling Unit" or "Multi-Family"** means, notwithstanding any contrary definition in the City Municipal Code, any Premises, other than a Single Family Dwelling Unit, used for residential purposes, irrespective of whether residence therein is transient, temporary or permanent, including such Premises when combined in the same building with Commercial establishments, that receive centralized, shared, Collection service for all units on the Premises which are billed to one (1) Customer at one (1) address. Customers residing in Townhouses, mobile homes, condominiums, or other structures with five (5) or more Dwelling Units who receive centralized, shared, Collection service for all units on the Premises which are billed to one (1) Customer at one (1) address shall be considered Multi-Family.

1.63 "Occupant" means the Person who occupies a Premises.

1.64 **"Occupied"** means when a person or persons has taken or is/are holding possession of a premises for temporary or permanent use. For the purpose of determining whether a premises was occupied during periods when Solid Waste Collection service was available to such Premises, the Premises shall be presumed to have been so occupied unless evidence is presented that no gas, electric, telephone or water utility services were consumed on such premises during such periods or such other evidence is presented to the satisfaction of the City Manager.

1.65 **"Organic Materials"** means Green Waste and Food Waste, individually or collectively. No Discarded Material shall be considered to be Organic Materials, however, unless it is separated from Recyclable Material and Solid Waste. Organic Materials are a subset of Organic Waste.

1.66 "Organic Waste" means wastes containing material originated from living organisms and their metabolic waste products including, but not limited to, food, Yard Trimmings, lumber, wood, paper products, printing

Deleted: means a permitted Facility where solid wastes are sorted or separated for the purposes of recycling or reuse.¶

Deleted: means any premises, other than a Single Family Dwelling Unit, used for residential purposes, irrespective of whether residence therein is transient, temporary or permanent.¶

and writing paper, manure, biosolids, digestate, and sludges, or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined in 14 CCR Section 18982(a)(4) and 14 CCR Section 18982(a)(16.5), respectively.

1.67 "Owner" means the Person or Persons holding legal title to real property and/or any improvements thereon and shall include the Person(s) listed on the latest equalized assessment roll of the County Assessor.

1.68 "Party" or "Parties" refers to the City and Franchisee, individually or together.

1.69 "Person" means any individual, firm, association, organization, partnership, corporation, consortium, business trust, joint venture, Commercial entity, governmental entity, public entity, the United States, the State of California, the County, local agencies, special purpose districts, or any other legal Person.

"Premises" means any land or building where Discarded Materials are generated or accumulated.

1.70 "Process" or "Processing" means to prepare, treat, or convert through some special method.

1.71 "Processing Facility" means any plant or site used for the purpose of sorting, cleansing, treating or reconstituting Recyclable Materials, or Reusable Materials for the purpose of making such material available for Recycling or reuse or the Facility for the Processing and/or Composting of Organic Materials.

1.72 "Prohibited Container Contaminants" means the following: (i) Discarded Materials placed in the Recyclable Materials Container that are not identified as acceptable Recyclable Materials for the City's Collection program; (ii) Discarded Materials placed in the Organic Materials Container that are not identified as acceptable Organic Materials for the City's Collection program; (iii) Discarded Materials placed in the Solid Waste Container that are acceptable Recyclable Materials and/or Organic Materials to be placed in the City's Recyclable Materials or Organic Materials Containers or otherwise managed under the City's Collection program; and, (iv) Excluded Waste placed in any Container.

1.73 "Recyclable Materials" means Recyclable Materials as defined under the Franchise agreement between the Parties for Recyclable Materials Collection, as it may be amended from time to time.

1.74 "Recycle" or "Recycling" means the Process of sorting, cleansing, treating, and reconstituting at a Recyclable Materials Processing Facility, materials that would otherwise be Disposed of at a landfill for the purpose of returning such materials to the economy in the form of raw materials for new, reused, or reconstituted products. Recycling includes Processes deemed to constitute a reduction of landfill Disposal pursuant to 14 CCR, Division 7, Chapter 12, Article 2. Recycling does not include gasification or transformation as defined in Public Resources Code Section 40201.

1.75 "Related Party Entity" means any affiliated entity which has financial transactions with the Franchisee.

1.76 "Residential" shall mean of, from, or pertaining to a Single-Family Premises or Multi-Family Premises including Single-Family homes, apartments, condominiums, Townhouse complexes, mobile home parks, and cooperative apartments.

1.77 "Residential Property" means property used for residential purposes, irrespective of whether such dwelling units are rental units or are owner-occupied, and includes both single family and multi-family dwelling units.

1.78 "Residue" means those materials which, after Processing, are Disposed rather than Recycled due to either the lack of markets for materials or the inability of the Processing Facility to capture and recover the

Deleted: means the Person or Persons record title to the property constituting the premises to which solid waste collection service is to be provided under this Agreement or the person holding legal title to a facility used by Franchisee under this Agreement.¶

Deleted: 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 and special purpose districts.¶

Deleted: means any land, or building where solid waste is generated or accumulated.¶

Deleted: means residential and non-residential by-products or discards of economic value which include, but are not limited to, aluminum, glass, paper, plastic, metal, and green or woody debris.¶

materials.

1.79 “Reusable Materials” means items that are capable of being used again after minimal Processing. Reusable Materials may be Collected Source Separated or recovered through a Processing Facility.

1.80 “Roll-Off” means an open-top or lidded Container with a capacity of seven (7) to forty (40) cubic yards that is serviced by a franchise roll-off Collection vehicle.

1.81 “Rubbish” means all waste wood, wood products, printed materials, paper, paste board, rages, straw, used and discarded clothing, packaging materials, ashes, floor sweepings, glass and other materials not included in the definition of Garbage, Hazardous Substance, or Recyclable Materials.

1.82 “SB 1383” means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time. For the purposes of this Agreement, SB 1383 specifically refers to the Short-Lived Climate Pollutants (SLCP): Organic Waste Reductions regulations developed by CalRecycle and adopted on November 3, 2020 that created Chapter 12 of 14 CCR, Division 7 and amended portions of regulations of 14 CCR and 27 CCR.

1.83 “SB 1383 Renewable Natural Gas” or “SB 1383 RNG” means SB 1383 qualified gas derived from Organic Waste that has been Diverted from a landfill and Processed at an in-vessel digestion Facility that is permitted or otherwise authorized by 14 CCR to recover Organic Waste, or as otherwise defined in 14 CCR Section 18982(a)(62).

1.84 “Self-Haul” or “Self-Hauler” means a Person who hauls Discarded Materials, recovered material, or any other material, to another Person, or as otherwise defined in 14 CCR Section 18982(a)(66). Self-Hauler also includes a Person who back-hauls waste, as defined in 14 CCR Section 18982(a)(66)(A).

1.85 “Service Level” refers to the size of a Customer’s Container and the frequency of Collection service.

1.86 “Single Family Dwelling Unit” or “Single-Family” or “SFD” means, notwithstanding any contrary definition in City Code, any detached or attached house or residence designed or used for occupancy by one (1) family, provided that Collection service feasibly can be provided to such Premises as an independent unit, and the Owner or Occupant of such independent unit is billed directly for the Collection service. Single-Family includes Townhouses that maintain individual collection service regardless of whether each unit is separately billed for their specific Service Level. Single-Family also includes duplex, tri-plex, or four-plex Residential structures regardless of whether each unit maintains individual collection service or is separately billed for their specific Service Level.

1.87 “Solid Waste” means Solid Waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, §40191 and regulations promulgated thereunder. Excluded from the definition of Solid Waste are Excluded Waste, C&D, Source Separated Recyclable Materials, Source Separated Organic Materials, and radioactive waste. Notwithstanding any provision to the contrary, Solid Waste may include de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of Household Hazardous Waste in compliance with Section 41500 and 41802 of the California Public Resources Code as may be amended from time to time. Solid Waste includes salvageable materials only when such materials

Deleted: 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 service.¶

are included for Collection in a Solid Waste Container not Source Separated from Solid Waste at the site of generation.

1.88 “Source Separated” means the segregation, by the Generator, of materials designated for separate Collection for some form of Recycling, Composting, recovery, or reuse.

1.89 “State” means the State of California.

1.90 “Subcontractor” means a Party who has entered into a contract, express or implied, with the Franchisee for the performance of an act that is necessary for the Franchisee’s fulfillment of its obligations for providing service under this Agreement. Vendors providing materials and supplies to Franchisee shall not be considered Subcontractors.

1.91 “Term” means the term of the Agreement, as provided for in Article 3.

1.92 “Ton” or “Tonnage” means a unit of measure for weight equivalent to two thousand (2,000) standard pounds.

1.93 “Townhouse” means an attached or semi-attached Dwelling Unit within a group of attached or semi-attached Dwelling Units. A Townhouse shall be considered a Single-Family Dwelling Unit if each unit maintains individual Collection service subscription. A Townhouse shall be considered a Multi-Family Dwelling Unit if the Premise receives centralized, shared, Collection service for all units on the Premise. These shall be the designations regardless of whether the Premises are billed individually or through a central account (e.g., homeowner association, property manager).

1.94 “Transfer” means the act of transferring the Discarded Materials Collected by Franchisee in its route vehicles into larger vehicles for Transport to other facilities for the purpose of Processing or Disposing of such Discarded Materials.

1.95 “Transport” or “Transportation” means the act of transferring the materials Collected by Contractor in its route vehicles into larger vehicles for Transport to other facilities for the purpose of Recycling or Disposing of such materials.

1.96 “Waste Generator” or “Generator” means any Person 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.

1.97 “Working Days” means days on which the Franchisee is required to provide regularly scheduled Collection services under this Agreement.

ARTICLE 2.

REPRESENTATIONS AND WARRANTIES OF THE FRANCHISEE

2.1 Corporate Status

Franchisee is a corporation duly organized, validly existing and in good standing under the laws of the State of California. It is qualified to transact business in the State of California and has the corporate power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

2.2 Corporate Authorization

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

Deleted: means all putrescible and non-putrescible residential refuse, commercial solid waste, institutional solid waste, garbage, recyclable material, yard waste, and rubbish, and as otherwise defined in Public Resources Code 640191. Solid waste which is not required to be collected includes:¶
<#>Demolition and construction debris which are not offered by persons performing the work and which may be legally collected and disposed of by some alternate means;¶
<#>¶
<#>Recyclable materials separated from solid waste by the waste generator and for which waste generator sells or is otherwise compensated by a collector in a manner resulting in a net payment to the Waste generator;¶
<#>¶
<#>Recyclable materials separated from solid waste by the waste generator and which the waste generator donates to a charitable organization such as the Boy Scouts;¶
<#>¶
<#>Materials removed by householders or occupants and transported by them to disposal facilities or recycling centers;¶
<#>¶
Residential recyclable materials source separated by the waste generator for the purposes of scheduled collection with the recyclable materials collection Franchisee.¶
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execution of this Agreement. The persons signing this Agreement on behalf of Franchisee have authority to do so.

2.3 Compliance with Laws and Regulations

Franchisee shall comply with all existing and future City, County, other local agencies, State, and Federal laws and regulations with particular note of [SB 1383](#), Article X of the City Charter and Chapters 8.04 of the City Municipal Code.

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2.4 Financial Representation

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

2.5 Absence of Litigation

Franchisee represents that there are no suits or threatened suits which would impair the financial or legal ability of Franchisee to perform its obligations under this Agreement and that the entering into this Agreement by Franchisee will not in any way constitute a breach of any other agreement entered into by Franchisee with other parties or constitute a violation of any law.

**ARTICLE 3.
TERM OF AGREEMENT**

3.1 Effective Date

The effective date of this Agreement shall be June _____, 2022 ("Effective Date").

3.2 Term

The term of this Agreement shall commence, at 12:01 a.m., on the Effective Date, June _____, 2022 and expire at midnight, August 20, 2025, subject to extension as provided in paragraph 3.3 (Option to Extend).

The City Council may elect to renew this franchise at any time during the three year period prior to the end of the franchise.

3.3 Option to Extend

The City, by written authorization of the City Manager, shall have the sole option to extend this Agreement up to 36 months in periods of at least twelve (12) months each. If City elects to exercise this option, it shall give written notice not later than ninety (90) days prior to the initial termination date, or, if one extension has been exercised, ninety (90) days prior to the extended termination date.

3.4 Conditions to Effectiveness of Amendment

The obligation of City to permit this Agreement to become effective and to perform its undertakings provided for in this Agreement is subject to the satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by the City, in its sole direction.

- (1) **Accuracy of Representations.** The representations and warranties made by Franchisee in Article 2 of this Agreement are true and correct on and as of the effective date of this Agreement.
- (2) **Furnishing of Insurance and Bonds.** Franchisee has furnished evidence of the insurance and bonds required by Article 10. Indemnification, insurance and Bond.
- (3) **Effectiveness of City Council Action.** The City's Ordinance No. _____, approving this Agreement, shall have become effective pursuant to California law on or prior to the effective date of this Agreement.

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**ARTICLE 4.
SCOPE OF AGREEMENT**

4.1 Grant and Acceptance of Exclusive Franchise for Solid Waste Collection and Disposal

Subject to paragraphs 3.4 (Conditions to Effectiveness of Agreement) and 4.2 (Limitations to Scope), this Agreement grants the Franchisee the exclusive right to arrange for the Collection, Processing, Diversion, and Disposal of Solid Waste from Residential and Commercial properties placed in the Designated Collection Location for regular or scheduled Collection in accordance with the City's Municipal Code and this Agreement, except where otherwise precluded by Applicable Law. Franchisee accepts the grant of the Franchise under the terms and conditions as set forth in this Agreement. Franchisee agrees to perform and be bound by each of the conditions proposed in the grant and by procedural ordinance and the requirements of Acceptance on file with the City Clerk's office (Article X of the City Charter, Section 1006, Duties of Grantee).

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4.2 Limitations to Scope

This Agreement for the Collection, Processing, Diversion, and Disposal of Solid Waste from Residential and Commercial properties shall be exclusive except as to the following categories of Discarded Materials, which the Franchisee may, but shall not be obligated to Collect, Transfer, Process, Divert or Dispose of. Discarded Materials which are not required to be Collected include:

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A. Construction and Demolition Debris which is not offered by Persons performing the work and which may be legally Collected and Disposed of by some alternate means;

B. Solid Waste Self-Hauled by Generators to Disposal Facilities.;

- C. To the extent allowable by Applicable Law, all Recyclable Materials whether
1. Source Separated by the Generator for the purpose of placing for scheduled Collection with the Recycling Collection franchisee; or
 2. Source Separated from Solid Waste by the Generator and which the Generator either donates to a charitable organization, or sells or is otherwise compensated by a collector in a manner resulting in a net payment to the Generator; or,
 3. Source Separated at any Premises and transported by the Owner or Occupant of such Premises (or by their full-time employees) to a Processing Facility.

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- D. All Organic Materials whether
1. Source Separated by the Generator for the purpose of placing for scheduled Collection with the Organic Materials Collection franchisee; or
 2. Source Separated from other Discarded Materials by the Generator and which the Generator either donates to a charitable organization, or sells or is otherwise compensated by a collector in a manner resulting in a net payment to the Generator; or
 3. Source Separated at any Premises and transported by the Owner or Occupant of such Premises (or by their full-time employees) to a Processing Facility; or,
 4. Green Waste removed from a Premises by a gardening, landscaping, or tree trimming company as an incidental part of a total service offered by that company rather than as a hauling service.
 5. Franchisee shall cooperate with and shall not impede, interfere, or attempt to impede or interfere with the implementation, expansion, or operation of Food Recovery efforts in the City.

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<#>All green waste material whether¶
<#>. source separated by the waste generator for the purpose of placing for scheduled collection with the green waste collection franchisee, or¶
<#>separated from solid waste by the waste generator and which the waste generator either donates to a charitable organization, or sells or is otherwise compensated by a collector in a manner resulting in a net payment to the waste generator; or¶
<#>separated at any premises and transported by the owner or occupant of such premises (or by his or her full-time employees) to a processing facility.¶

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E. Animal waste and remains from slaughterhouse or butcher shops.

F. By-products of sewage treatment, including sludge, sludge ash, grit and screening.

G. Excluded Waste, Hazardous Waste, liquid waste and medical waste.

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

This grant to Franchisee of an exclusive Franchise, right and privilege to Collect, Transfer, Process, Divert, and Dispose of Solid Waste shall be interpreted to be consistent with State and Federal laws, now and during the Term of this Franchise Agreement and the scope of this exclusive Franchise shall be limited by current and developing State and Federal laws with regard to Solid Waste handling, exclusive Franchise, Solid Waste flow control, and related doctrines.

In the event that future interpretations of current Applicable Law, enactment or developing legal trends limit the ability of the City to lawfully provide for the scope of Franchise services as specifically set forth herein, Franchisee agrees that the scope of the Franchise will be limited to those services which may be lawfully provided for under this Agreement. Further, the Franchisee agrees that the City shall not be responsible for any lost profits or damages claimed by the Franchisee to arise out of further limitations of the scope of the Agreement set forth herein. It shall be the responsibility of Franchisee to minimize the financial impact to other services being provided.

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4.3 Administration of Franchise

The City Manager shall administer the City's solid waste franchise and the City's Utility Director shall supervise Franchisee's compliance with the Agreement's terms and conditions.

4.4 Serve Without Interruption

Franchisee shall continue to collect and dispose of solid waste throughout the term of its franchise without interruption.

4.5 Permits and Licenses

Franchisee shall procure all permits and licenses, pay all charges and fees, and give all notices as necessary.

4.6 Preservation of City Property

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

4.7 Franchisee as Arranger

The City and Franchisee mutually agree that the City's granting of this franchise shall not be construed as the City "arranging for" the collection and disposal of solid waste or recyclables within the meaning of CERCLA. The parties further mutually agree that the granting of the Franchise by City shall be construed as an action whereby the Franchisee is granted, and accepts the rights, responsibilities, benefits and liabilities of collection and disposal of solid waste. Commencing on the effective date of this Agreement and, to the extent that Franchisee's performance under this Agreement requires the collection and disposal of solid waste, and may be construed as "arranging for" collection and disposal of solid waste within the meaning of CERCLA, such actions shall be the sole responsibility of Franchisee and Franchisee expressly agrees to be solely responsible for all such actions.

4.8 Use of City Streets

Such grant of franchise shall give Franchisee the right and privilege to operate solid waste

collection vehicles and equipment on such streets, public ways, rights-of-way, or easements of the City.

4.9 Annexation

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

4.10 Ownership of Solid Waste

Once solid waste is placed in containers and properly presented for collection, ownership and the right to possession shall transfer directly from the waste generator to Franchisee by operation of this Agreement. Franchisee is hereby granted the right to retain, process, divert, dispose of, and otherwise use such solid waste, or any part thereof, in any lawful fashion or for any lawful purpose desired by franchisee.

Subject to this Agreement, Franchisee shall have the right to retain any benefit resulting from its right to retain, process, divert, dispose of, or use the solid waste which it collects. Any cost savings resulting from decreased disposal shall off-set Franchisee's operating expenses in accordance with the "*City of San Luis Obispo Rate Setting Process and Methodology Manual for Integrated Solid Waste Management Rates*".

Solid waste, or any part thereof, which is disposed of at a disposal site or facility (whether landfill, transformation facility, transfer station, or materials recovery facility) shall become the property of the Owner or operator of the disposal site(s) or facility once deposited there by Franchisee.

The City may obtain ownership or possession of solid waste placed for collection upon written notice of its intent to do so. However, nothing in this Agreement shall be construed as giving rise to any inference that the City has such ownership or possession unless such written notice has been given to Franchisee.

**ARTICLE 5.
DIRECT SERVICES**

5.1 General

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

It is mandatory that the work to be done by Franchisee pursuant to this Agreement shall be accomplished in a thorough and professional manner so that all occupied developed properties within the City are provided reliable, courteous, prompt and high-quality services for collection of solid waste. All collection activities shall be conducted in such a manner that public and private property will not be damaged. Franchisee shall replace containers and covers in designated collection locations and shall not place them in the street or on adjoining property.

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

5.2 Three- Container Collection System

Franchisee shall provide Solid Waste Collection as part of the City's three-Container Collection program for the separate Collection of Source Separated Recyclable Materials, Source Separated Organic Materials, and Solid Waste, in accordance with the applicable Franchise Agreement(s) for each Discarded Material type. Franchisee shall ensure that the Solid Waste services provided under this Agreement are at all times performed in accordance with Applicable Law, and operationally align with the Collection of Organic Materials and Recyclable Materials in order to operate a successful three-Container Collection system.

Franchisee shall provide Containers to Customers for Collection of Solid Waste and shall provide Solid Waste Collection service in accordance with this Section. Franchisee shall Transport the Solid Waste to a Designated Disposal Facility. Franchisee may allow carpets and textiles to be placed in the Solid Waste Containers. Prohibited Container Contaminants shall not be Collected in Solid Waste Containers. The Containers shall comply with the requirements of Section 6.1.3.

5.3 Collection Service

5.3.1 Single-Family Residential Solid Waste Collection Service

For Single-Family Customers, Franchisee shall Collect Solid Waste placed in Franchisee-provided Containers at the curbside at a minimum of once a week, Monday through Friday, except as specified below. The Franchisee-provided Solid Waste Containers shall comply with the requirements of Section 6.1.3 of this Agreement. Franchisee shall Transport all Solid Waste Collected to a Designated Disposal Facility. The Franchisee will notify Solid Waste Customers of Holiday Collection schedules.

Single-Family Customers with a disability shall have the option of placing their Containers near their dwelling, visible and within reasonable distance from the curb, and without obstacles (i.e. uneven surfaces, steep inclines/declines, behind

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gates) that cause a safety concern. The Franchisee will Collect their Containers at this location and return Container to same location. Franchisee will notify residents annually, beginning within thirty (30) days of execution of this Agreement, of this Collection option. To be eligible for this Collection option, residents must present proof of their disability to the Franchisee. SL Garbage agreed upon change – duplicated.

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5.3.2 Multi-Family Solid Waste Collection Service

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

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

5.3.3 Commercial Solid Waste Collection Services

Franchisee shall Collect Solid Waste from all Commercial, industrial and institutional properties within the City, using Containers of a size and shape acceptable to Franchisee, not less than once per week. The Solid Waste Containers shall comply with the requirements of Section 6.1.3 of this Agreement. Franchisee shall Transport all Solid Waste Collected to a Designated Disposal Facility

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

Additionally, if in the City's opinion, the location of an existing Collection location for particular Multi-Family Dwelling Unit or Commercial, industrial or institutional property is inappropriate, the City may direct the Customer or Franchisee to relocate the Collection location. If a Customer refuses to comply with said directive, Franchisee shall decline to Collect Solid Waste from said mis-located Containers.

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5.4 Public Facilities Collection

When requested by the City, the Franchisee shall Collect and Dispose of all Solid Waste generated at Premises owned and/or operated by the City. Franchisee shall Collect Solid Waste from City Containers and Collection locations, not less than once per week, Monday through Friday or on Saturdays following non-working Holidays. Collections shall be scheduled at a time mutually agreed upon by Franchisee and the Waste Generator.

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Franchisee shall provide, at City's direction, additional Solid Waste Collection and Disposal and consulting services including:

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A. Collection of Solid Waste from all sidewalk litter containers;

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B. Collection of Solid Waste from City-sponsored special events as specified by the City;

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C. Collection of Solid Waste from containers in City parks as mutually agreed upon by the Franchisee and the City;

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D. Review of plans for land use or property developments with regard to Solid Waste service issues; and

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E. Residual Solid Waste remaining from temporary household hazardous waste Collection events.”

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5.5 Missed Pickups

Upon notification, Franchisee shall collect any missed pickup which had been properly and timely placed for collection within 24 hours of said notice.

5.6 Bulky Waste Collection

Franchisee shall make special Bulky Waste Collection arrangements with Generators within seven (7) days after Generators' written or verbal request for the Collection of Bulky Waste for a fee established by the City and updated by resolution when the City adjusts rates. Any single Bulky Waste item is not to exceed 200 pounds.

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Franchisee shall Collect Green Waste separately from other Bulky Items placed for Collection and shall handle such acceptable material as Organic Waste in accordance with SB 1383 regulations and the Franchise Agreement between the City and Franchisee for Organic Materials Collection, as amended.

5.7 Semi-Annual Clean-up Weeks

At least twice per year throughout the Term of this Agreement, Franchisee shall provide, in addition to regularly scheduled service, two clean-up events pursuant to guidelines established by the Franchisee and approved by the City, for Solid Waste placed at the curb by Single-Family Dwelling Units and at pre-arranged locations for Multi-Family Residential properties in addition to each Customer's normal Collection service. The dates for each event shall be proposed by Franchisee and approved by the City prior to September 1st of each year.

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Franchisee shall Collect Green Waste separately from other materials and shall Process such material as Organic Waste in accordance with SB 1383 regulations and the Franchise Agreement between the City and Franchisee for Organic Materials Collection, as amended.

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

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5.8 City Right to Request Changes

5.8.1 General

City may request Franchisee to perform additional services (including new diversion programs, billing services, etc.) or modify the manner in which it performs existing services. Pilot programs and innovative services which may entail new Collection methods, different kinds of services and/or new requirements for Waste Generators are included among the kinds of changes which City may request. Franchisee shall present, within 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 5.9. Franchisee shall be entitled to an adjustment in its compensation in accordance with Section 9.4, for providing such additional or modified services.

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5.9 New Programs

Franchisee shall present, within thirty (30) days of a request to do so by City, a proposal to provide additional or expanded services. The proposal shall contain a complete description of the following:

A. Collection methodology to be employed (equipment, workforce, etc.)

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B. Equipment to be utilized (vehicle number, types, capacity, age, etc.).

C. Labor requirements (number of employees by classification).

D. Type of Containers to be utilized.

E. Provision for program publicity/education/marketing.

F. A projection of the financial results of the program's operations for the remaining Term of the Agreement in a balance sheet and operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions.

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G. Facility to be utilized.

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5.10 City's Right to Acquire Services

Franchisee acknowledges and agrees that City may permit other Persons besides Franchisee to provide additional services not otherwise contemplated under Section 5.8 (City's Right to Request Changes). If pursuant to Section 5.8.2 (New Programs), Franchisee and City cannot agree on terms and conditions of such services in ninety (90) days from the date when City first requests a proposal from franchisee to perform such services, Franchisee acknowledges and agrees that City may permit Persons other than Franchisee to provide such services.

5.11 Report of Accumulation of Solid Waste: Unauthorized Dumping

Franchisee shall direct its drivers to note the addresses of any premises at which they observe that solid waste is accumulating and is not being delivered for collection; and the address, or other location description, at which solid waste has been dumped in an unauthorized manner. Franchisee shall report the address or description to the City within twenty-four (24) hours of such observation.

5.12 City Directed Removal of Solid Waste

Franchisee shall arrange for the removal of all accumulated solid waste and recyclables on any developed or vacant property in the City as directed by the City Utilities Director. The Franchisee shall make a good faith effort to recover the cost of disposal from the waste generator, and the costs of this effort, as well as the cost of disposal shall be chargeable to the waste generator. The Franchisee shall be entitled to include the costs incurred and not collected under this Section as an operating expense for purposes of rate setting.

5.13 Processing of Solid Waste

The City reserves the right, prior to Disposal, to direct portions of the waste stream Collected under this Agreement, to a designated Processing Facility for separation and Processing of any Recyclable Materials, Reusable Materials, or Organic Waste contained therein. City shall provide Franchisee with reasonable prior written notice concerning any change of service location.

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5.14 Designated Disposal Facility

A. General. Franchisee shall Transport all Solid Waste Collected within the City, and not separated for Recycling to a Designated Disposal Facility for Disposal in accordance with Applicable Law and this Agreement.

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B. Compliance with Regulatory Requirements and Applicable Law. The Franchisee is required to notify the City if one of Designated Disposal Facilities has their permit to accept Solid Waste revoked by the regulatory agency. Upon request, Franchisee shall provide copies of Facility permits, approvals, and/or notices of violations (obtained from the Designated Disposal Facility operator if necessary) to the City.

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C. Capacity. Franchisee has secured sufficient Disposal Facility capacity commitment including landfill Disposal site capacity commitment, to adequately serve the reasonably anticipated Solid Waste Disposal needs of the City and its Customers during the Term of this Agreement, including any extensions provided for herein. City reserves the right to review said Disposal capacity commitments. Prior to entering into any capacity commitment, Franchisee shall give prior written notice to the City concerning negotiations.

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D. Alternative Facility(ies). If Franchisee receives notice from the landfill operator or otherwise expects, during the Term of this Agreement, to be prevented from delivering Solid Waste to a Designated Disposal Facility, Franchisee shall immediately notify in writing the City's Utilities Director, stating the reason(s) Franchisee is prevented, or expects to be prevented, from Disposing of Solid Waste in a Designated Disposal Facility. Franchisee shall in good faith expeditiously identify and evaluate alternative Disposal Facilities. An alternative Disposal Facility(ies) shall be arranged for and secured by Franchisee, after consultation with the City's Utilities Director. Franchisee shall provide City with adequate written notice prior to contracting for any alternate Disposal Facility.

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

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

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5.15 **Hazardous Waste Handling and Disposal**

If the Franchisee determine that solid waste placed in any container for collection is a Hazardous Waste or Medical Waste, or other solid waste that may not be legally disposed of at the designated disposal site or presents a hazard to the Franchisee's employees, the Franchisee shall have the right to refuse to accept such solid waste. The Franchisee will contact the waste generator and request that the waste generator arrange for proper disposal.

If the Waste Generator cannot be reached immediately, the Franchisee shall, prior to leaving the premises, leave a tag at least two inches by six inches indicating the reason for refusing to collect the solid waste, in which case, a copy of the tag, along with the address of the premises (and the name of the waste generator, if known) shall be delivered to the City on the following business day.

If the Hazardous waste or medical waste or other unauthorized waste is collected before its presence is detected by Franchisee, and if the waste generator cannot be identified or fails to remove

the solid waste after being requested to do so, the Franchisee shall arrange for its legal disposal. The Franchisee shall make a good faith effort to recover the cost of disposal of such waste from the waste generator, and the costs of this effort, as well as the cost of disposal shall be chargeable to the waste generator. Provided the failure to detect the hazardous waste, medical wastes or other unauthorized wastes prior to collection and/or their delivery to the designated disposal site is not due to the negligence of the Franchisee or its employees or due to failure of the Franchisee to have an adequate in place inspection program, the Franchisee shall be entitled to include the costs incurred under this paragraph as an operating expense for purposes of rate setting.

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**ARTICLE 6.
COLLECTION SERVICE STANDARDS**

6.1 Operations

6.1.1 Schedules

To preserve peace and quiet, solid waste shall not be collected within two-hundred (200) feet of residential premises between 6:30 p.m. and 6:30 a.m. on any day, Monday through Friday. When the regularly scheduled collection day falls on a holiday, collection shall take place on the following regularly scheduled collection day. Franchisee will promptly resolve any complaints of noise to the satisfaction of the City Manager or the City Manager's designee. In the event the Franchisee misses the Collection of set out of Solid Waste Materials, the Franchisee shall collect the missed pickups with one (1) Business Day of notification.

6.1.2 Vehicles

- A. General.** Franchisee shall keep a fleet of collection trucks sufficient in number and capacity to efficiently perform the work required in the Agreement in strict accordance with the terms of this Agreement. Franchisee shall provide a detailed description concerning the number and type of vehicles necessary for performance. Franchisee shall have available on collection days sufficient back-up vehicles for each type of collection vehicle (i.e., rear loader, front loader, and roll-off) used to respond to complaints and emergencies. The fleet shall be maintained according to the requirements of Municipal Code 8.04.030.
- B. Specifications.** All vehicles used by Franchisee in providing Solid Waste collection services shall comply with all federal, state, and local requirements for such vehicles as they now exist or may be amended in the future; and be registered with the California Department of Motor Vehicles. All such vehicles shall have water-tight bodies designed to prevent leakage, spillage, or overflow. All such vehicles shall comply with U.S. Environmental Protection Agency noise emission regulations and other applicable noise control regulations.
- C. Condition.**
- 1) Franchisee shall maintain all of its properties, facilities, and equipment used in providing service under this Agreement in a safe, neat, clean and operable condition at all times.

Franchisee shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles which are not operating properly and represent a safety hazard shall be taken out of service until they are repaired and do operate properly and safely. Franchisee shall perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. Franchisee shall keep accurate records of all vehicle maintenance, recorded according to date and mileage, and shall make such records available to City upon request.

- 2) _____
- 3) Franchisee shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. Franchisee shall maintain accurate records of repair, which shall include the date/mileage, nature of repair and the signature of a maintenance

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supervisor that the repair has been properly performed.

- D. Vehicle Identification.** Each truck shall display in a prominent place a sign as required in Municipal Code 8.04.090.
- E. Operation.** Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. Franchisee shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local vehicle weight restrictions.
- F. Renewable Natural Gas (RNG) Vehicles** Under this Agreement Franchisee shall make a best effort for all Collection Vehicles to be powered by SB 1383 RNG generated by a local facility or powered by SB 1383 RNG that is purchased through a wheeling agreement with a party(ies), provided that the wheeling agreement is for purchase of gas derived from Organic Waste that has been Diverted from a Landfill and Processed at an in-vessel digestion Facility that is permitted or otherwise authorized by Title 14 of CCR to recover Organic Waste and meets the requirements of 14 CCR Section 18993.1(h). Upon the City's request, Franchisee shall obtain and provide the City with a written certification by an authorized representative of the publicly-owned treatment works or the wheeling agreement under which Franchisee purchased SB 1383 RNG certifying that the in-vessel digestion Facility produces the SB 1383 RNG consistent with the requirements of 14 CCR Section 18993.1(h). Franchisee shall maintain records of the amount of SB 1383 RNG purchased and shall report this information in accordance with Section 7. Franchisee shall agree to the City the right to report this SB 1383 RNG usage toward the City's fulfilment of its annual recovered Organic Waste product procurement target in accordance with 14 CCR Section 18993.1.

6.1.3 Containers

A. General.

1. Franchisee shall supply all Customers with Solid Waste Containers, for Collection of Solid Waste, in accordance with this Section. Franchisee shall use the Franchisee-provided Collection Containers that are currently located at Customers' Premises, if applicable. If Customer is currently utilizing Collection Containers that were not provided by the Franchisee, Franchisee shall provide Containers from current inventory.
2. Franchisee shall provide Customers (including Single-Family, Multi-Family, Commercial, and City facility Customers) with new Collection Containers as requested by the Customer to meet its desired Service Level within five (5) Working Days of Franchisee's first receipt of the Customer request.
3. On and after the Effective Date, any new Containers provided by the Franchisee shall comply with the Container standards set forth in this Section. All Containers shall display the Franchisee's name, logo, telephone number, website, capacity (yards or gallons), and some identifying inventory or serial number.
4. If an existing Container breaks or is otherwise rendered non-functional on or after Effective Date, the Franchisee shall replace the non-functional Container with a Container that complies with the color requirements of this Section. Notwithstanding this Section, the Franchisee is

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not required to replace functional Containers, including Containers purchased prior to January 1, 2022, that do not comply with the color requirements of this Section prior to the end of the useful life of those Containers, or prior to January 1, 2036, whichever comes first.

B. Container Types and Sizes

1. **Single-Family Solid Waste Containers.** Franchisee shall supply each Single-Family Dwelling Unit with a Solid Waste Container in a size consistent with the City-approved Solid Waste Collection program.
2. **Multi-Family Solid Waste Containers.** Franchisee shall supply each Multi-Family complex with the appropriate number and type of Container to adequately service the needs of the complex. Franchisee agrees to provide additional appropriate Containers, as required.
3. **Commercial Solid Waste Containers.** Franchisee shall furnish to all Commercial Customers appropriate Containers to Collect Solid Waste at Commercial Premises. Containers with a capacity of one (1) cubic yard or more shall be available in standard sizes. The kind, size, and number of Containers furnished to particular Customers shall be as determined mutually by the Customer and Franchisee. Containers which are front loading Bins shall have lids.
4. **Other Solid Waste Containers.** Franchisee shall not be obligated to provide Customers with Compactor units but will be obligated to charge the rates set by the City for the Collection of compacted Solid Waste.

C. Container Colors. Solid Waste Cart lids shall be black/grey. Solid Waste Bin, Compactor, and franchise Roll-Off lids or bodies shall be black/grey. No later than December 31, 2035, Contractor shall provide all Customers with Collection Containers that comply with the Container color requirements specified in this Section or as otherwise specified in 14 CCR Section 18982; 14 CCR, Division 7, Chapter 12, Article 3; or other Applicable Law.

D. Container Labels

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

E. All Containers with a capacity of one cubic yard or more shall meet applicable regulations for Solid Waste Bin safety and shall be maintained in good repair with neatly and uniformly painted surfaces and shall prominently display the name and telephone number of Franchisee. Additionally, one cubic yard or more Bins in public right-a-ways shall have reflectorized markings. Bins shall be clearly marked and identified as belonging to Franchisee.

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Non-Residential and Multi-Family Dwelling Unit

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F. City and Franchisee acknowledge that from time to time, a Customer may damage or destroy a Container. City and Franchisee also acknowledge that from time to time Containers may be stolen from the curb or damaged due to normal use. When notified of such occurrence, Franchisee shall replace the Container, at no charge to the Customer or City pursuant to the guidelines established by the Franchisee and approved by the City. Each Customer shall be responsible for excess damage to any such Containers not caused by Franchisee.

6.1.4 Litter Abatement

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

6.1.5 Personnel

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

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

- B. Identification.** Franchisee shall ensure that while on duty each collection worker wears a clean uniform with conspicuous insignia displaying Franchisee's company name and the worker's name or identification number.
- C. Fees & Gratuities.** Franchisee shall not, nor shall it permit any agent, employee, or subcontractors employed by it to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for any services performed under this Agreement, except as provided in Article 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.

Franchisee 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.** Franchisee shall train its employees in customer courtesy; shall prohibit the use of loud or profane language; and shall instruct collection crews to perform the work quietly. Franchisee shall use its best efforts to ensure that all employees present a neat appearance and conduct themselves in a courteous manner. If any

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employee is found to be discourteous or not to be performing services in the manner required by this Agreement, Franchisee shall take all necessary corrective measures. If City has notified Franchisee of a complaint related to a discourteous or improper behavior, Franchisee will reassign the employee to duties not entailing contact with the public while Franchisee is pursuing its investigation and corrective action process.

6.2 Service Complaints

Franchisee shall maintain and provide copies of all written service complaints and summaries of all oral service complaints and the Franchisee's response to those complaints for the term of one year and shall allow City officials to inspect these records during the required office staffing hours after the City has requested such inspection with reasonable notice.

If a disagreement arises between Franchisee and a customer, the customer may request an administrative hearing. The City's Utilities Director shall conduct an investigation and give notice of that decision. The customer may elect to appeal this decision to the City Integrated Waste Management Appeals Committee made up of representatives from the Utilities Department, the Finance Department and the Administrative Office.

6.3 Periodic Performance Audit

The City shall have the right to periodically, not less than annually, request a performance audit or billing audit to be completed by the Franchisee, the City or an independent third party; The City shall be entitled to select the type of consultant that it deems qualified to conduct said audits. The cost of such audits will be an allowable cost under the rate setting methodology unless there are findings pursuant to Section 12.8.

6.4 Performance Hearing

A. The City maintains the right to hold a public hearing at any time, not more than once each year, at which the Franchisee shall be present and shall participate, to review Franchisee's services and performance. The purpose of the hearing shall be, in part, to provide for a discussion and review of technological, economic and regulatory changes and quality of service provided to date. The goal of the performance hearing is to strive for an ever-advancing Solid Waste management system, and to ensure services are provided with adequate quality, efficiency and economy.

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Sixty (60) days after receiving notice from City of a performance review hearing, Franchisee shall, at a minimum, submit a report to City indicating the following:

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1. Changes recommended and/or new services to improve City's ability to meet the goals of AB 939, SB 1383, and other Applicable Law, and to contain costs and minimize impacts on rates; and

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2. Any specific plans for provision of changed or new services by Franchisee.

B. The reports required by this Agreement regarding Customer Complaints shall be used as one basis for review. Franchisee may submit other relevant performance information: and reports for consideration. City may request Franchisee submit specific information for the hearing. In addition, any Customer may submit comments or Complaints during or before the hearing, either orally or in writing, and these shall be considered. C. Topics for discussion and review at the performance review hearing shall include, but shall not be limited to, quality and adequacy of services provided, feasibility of providing new services, application of new technologies, Customer Complaints, amendments to this Agreement, developments in the law, new initiatives for meeting or exceeding SB 1383 and AB 939's goals, regulatory constraints, and Franchisee performance.

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City and Franchisee may each select additional topics for discussion at any performance review hearing.

D. Not later than sixty (60) days after the conclusion of each performance review hearing, City may issue a report. As a result of the review, City may request Franchisee to provide expanded or new services. Franchisee shall present, within 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:

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1. Collection methodology to be employed (equipment, workforce, etc.)

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2. Equipment to be utilized (vehicle number, types, capacity, age, etc.).

3. Labor requirements (number of employees by classification).

4. Type of Containers to be utilized.

5. Provision for program publicity/education/marketing.

6. A projection of the financial results of the program's operations for the remaining Term of the Agreement in a balance sheet and operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions.

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7. Facility to be utilized.

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**ARTICLE 7.
OTHER SERVICES: BILLING, REPORTING, RECORD-KEEPING
AND PUBLIC EDUCATION**

7.1 Billing

By resolution of the City Council, the City shall establish rates for the services provided by the Franchisee. Franchisee shall bill and collect these rates. Franchisee billing format and billing frequency shall be subject to approval of the City and City shall have the right to revise the billing format to itemize certain charges.

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

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

7.2 Owner Responsible for Payment

The owner of occupied developed property shall be responsible and liable for paying the solid waste collection and disposal fees for that property.

7.3 Collection of Bills from Delinquent Solid Waste Customers.

Bills shall be considered delinquent if not paid within 30 days of the date due. Once each year, prior to a date established by the City, Franchisee may take actions pursuant to Chapter 8.04 of the Municipal Code to collect delinquent solid waste collection and disposal accounts.

7.4 Records

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

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

1. Customer services and billing;

2. Weight of Solid Waste, especially as related to reducing and Diverting Solid Waste. Information is to be separated by kind of account (Single-Family, Multi-Family, and Commercial);

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3. Special annual clean-up event results;
4. Routes;
5. Facilities, equipment, and personnel used;
6. Facilities and equipment operations, maintenance, and repair;
7. Processing and Disposal of Solid Waste;
8. Complaints; and
9. Missed pick-ups.

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C. Franchisee shall maintain records of Transfer, Diversion, and Disposal of all Solid Waste Collected in the City for the period of this Agreement and all extensions to this Agreement or successor Agreements. In the event Franchisee discontinues providing Solid Waste services to City, Franchisee shall provide all records of Diversion and Disposal of all Solid Waste Collected within the City to City within thirty (30) days of discontinuing service. Records shall be in chronological order and organized in a form readily and easily interpreted. D. Records for other programs shall be tailored to specific needs. In general, they shall include:

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1. Plans, tasks, and milestones; and,
2. Accomplishments in terms such as dates, activities conducted, quantities of products used, produced or distributed, and numbers of participants and responses.

E. Unless otherwise required in this Agreement, Franchisee shall retain all records and data required to be maintained by this Agreement for the Term of this Agreement plus five (5) years after its expiration or earlier termination. Franchisee's records shall be stored in one central location, physical or electronic, that can be readily accessed by Franchisee. Upon request, any such records shall be retrieved in a timely manner, not to exceed ten (10) Working Days of a request by the City and made available to the City; including any record or documentation that the City, requires to fulfill obligations under Applicable Law including, but not limited to, AB 939, AB 341, AB 1826, AB 876, AB 901, SB 1383, and other current or future Federal, State, or local regulations, as amended."

7.5 Waste Generation/Characterization Studies

Franchisee acknowledges that the City must perform solid waste generation and disposal characterization studies periodically to comply with AB 939 requirements. Franchisee agrees to participate and cooperate with the City and its agents, at no cost to the City, to accomplish studies and data collection, and prepare reports, as needed, to determine weights and volumes of solid waste and characterize solid waste generated, diverted, disposed, transformed, or otherwise handled or processed to satisfy AB 939 requirements.

7.6 Report Formats and Schedule

A. Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:

1. Determine and set rates, and evaluate the financial efficacy of operations; and

2. Evaluate past and expected progress towards achieving goals and objectives; and

3. Determine needs for adjustment to programs; and

4. Evaluate Customer service and Complaints.

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B. The City may at no cost to itself request that Franchisee provide such additional information in the reports set forth below as the City deems necessary or appropriate to meet its needs, including provision of information needed for the City's compliance with Applicable Law, including, but not limited to AB 939, AB 1826, AB 341, and SB 1383 report information.

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C. Franchisee may propose report formats that are responsive to the objectives and audiences for each report. The format of each report shall be subject to approval by the City

D. Monthly reports shall be submitted within ten (20) calendar days after the end of the report month. Quarterly reports shall be submitted within fifteen (20) calendar days after the end of the quarter. Quarters end on November 30, February 28, May 31, and August 31. Franchisee shall provide first monthly report with Customer and Service Level information to the City, with a copy to the City within thirty (30) days of the approved Agreement. All reports shall be submitted to City electronically via e-mail to the Utilities Director using software acceptable to the City and provide a copy of reports to the City. The City reserves the right to require the Franchisee to maintain records and submit the reports required herein through use of a web-based software platform provided or designated by the City and/or Microsoft Excel spreadsheet, at the Franchisee's expense.

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E. Franchisee shall maintain records and reports in accordance with Section 7 and shall allow the City to audit and inspect records as described in Section 7.

7.7 F. At the City's option, the City may require that Franchisee provide the City with the aggregate tonnage data related to AB 901 reporting that the City needs for its SB 1383 reporting to the extent available to Franchisee, within five (5) Business Days of City's request."Monthly Reports

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The information listed shall be the minimum reported for each service:

A. Tonnage. Solid Waste, Collected, Transferred, Diverted, and Disposed of, by sector (Commercial, Residential) of Waste Generator Collected by Franchisee, in Tons, by month. Tonnage shall be reported separately by Facility and Facility type. Franchisee shall also provide documentation of all Discarded Materials exported out of State, as provided in 14 CCR Sections 18800 through 18813.

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B. Customer Subscription.

1. Number of Containers at each Service Level by Customer Type and program, including:

i. A summary of the total gallons of Cart service, cubic yards of Bin service, and pulls; and cubic yards or Tons of Drop Box and Compactor service by Customer Type.

ii. Calculation of the average volume of service received per: Single-Family Dwelling Unit (separately identifying Dwelling Units in a duplex, triplex, or fourplex); Multi-Family Dwelling Unit; and Commercial Customer.

2. A summary of Customer subscription data, including the number of accounts; the number of Customers subscribing to each Cart and Bin Service Level listed separately for Single-Family, Multi-Family, and Commercial and separately for each type of Discarded Material; and the number of Bulky Items Collections performed.

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C. Complaint summary, for month and cumulative for report year, as above. Summarized by nature of Complaints.

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D. Narrative summary of problems encountered and actions taken with recommendations for the City, as appropriate.

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E. Education Program Report.

7.8 The monthly status of activities identified in the annual public education plan described in Section 7.16 of this Agreement. Quarterly Report

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Quarterly reports shall be quarterly summaries of the monthly information in addition to the following:

- Status report on applications for renewals of existing permits or any new permits which may be required to continue operations at the designated disposal site within existing permitted areas.
- Solid Waste, collected, diverted and disposed of, in tons, during the semi-annual residential clean-up weeks, if applicable.
- For each new program, provide activity related and narrative reports on goals and milestone and accomplishments. Describe problems encountered, actions taken and any recommendations to facilitate progress.
- Provide a summary assessment of the overall solid waste program from Franchisee's perspective relative to financial and physical status of program. The physical status is to relate to how well the program is operating for efficiency, economy and effectiveness relative to meeting all the goals and objectives of this Agreement. Provide recommendations and plans to improve. Highlight significant accomplishments, problems and proposed solutions.

7.9 Annual Report and Financial Audit

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A. Financial Audit. Franchisee shall submit to the City annual audited financial statements prepared at Franchisee's expense by an independent Certified Public Accountant not later than 180 days following the expiration of the Franchisee's fiscal year. Pursuant to the "Rate Setting Process and Methodology Manual for Integrated Solid Waste Management Rates", dated June 1994, at the time a rate application request is submitted to City, the financial forms contained in the rate application must be reconciled to the audited financial statements.

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B. Annual Report.

1. Collection and Subscription Report

- A summary of all data provided in the Tonnage report section, including quarterly and annual totals and averages.
- The type(s) of Collection service(s) provided, a list of all hauler routes serviced, and a record of the addresses served on each hauler route.
- A summary of Customer subscription data, including the number of accounts; the total number of Generators enrolled with Franchisee for service, listed separately by Service Level and Container type separately by Single-Family, Multi-Family, and Commercial Customers, and separately for each type of Discarded Material; and the number of Bulky Items Collections performed.
- A detailed list of Single-Family, Multi-Family, and Commercial Customer

[information, including Solid Waste Container Waste, Recyclable Materials, and Organic Materials Service Levels, Customer type, and Customer service addresses reflecting Customer Service Levels as of December 1 \(for the year in which the report is submitted\).](#)

2. Public Education and Outreach Report

- i. A copy of all education and outreach materials provided to Generators, or otherwise used for education and outreach efforts in accordance with this Agreement, including, but not limited to: flyers, brochures, newsletters, invoice messaging/billing inserts, and website and social media postings.
- ii. A record of the date and to whom the information was disseminated or direct contact made, in the form of a list that includes: the Generator's name or account name, the type of education or outreach received; the distribution date, and the method of distribution.
- iii. For any mass distribution through mailings or bill inserts, the Franchisee shall maintain a record of the date, a copy of the information distributed, and the type and number of accounts that received the information.
- iv. A copy of electronic media, including the dates posted of: social media posts, e-mail communications, or other electronic messages.
- v. A summary of the status of the annual education plan of the reporting year, including activities conducted and the quantitative and/or qualitative results of those activities.

7.10 Maintenance of Accounting Records

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

7.11 Right to Audit Records

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

7.12 Inspection by City

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

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7.13 Office

Franchisee shall maintain an office with telephone within the City limits where customers may apply for service, pay bills, and register complaints. At a minimum, Franchisee shall staff this office from 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays observed by the City. A representative of Franchisee shall be available during office hours to communicate with the public in person and directly by telephone.

7.14 Customer Information

Franchisee shall prepare and keep current a flier acceptable to the City which summarizes solid waste regulations, all services provided by Franchisee, solid waste collection and disposal rates, telephone numbers, special collection events, collection schedules, complaint procedures, and other pertinent information. Franchisee shall have copies of this flier available at all times in Franchisee's office; shall distribute copies to all new customers; shall annually mail copies to all of its current customers; and shall mail updated copies to all customers as notification of changes in service or rates, prior to such changes.

7.15 Regulatory Reporting

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

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

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

7.16 Public Education

A. Program Objectives. The City or its designee shall be responsible for designing, implementing, and conducting a public education and outreach program. The City's public education and outreach strategy shall focus on improving Generator understanding of the benefits of and opportunities for source reduction, Reuse, and landfill Disposal reduction and supporting compliance with Applicable Laws and regulations, including, but not limited to SB 1383. The cumulative intended effect of these efforts is to reduce the amount of each Generator's Discarded Materials and, ultimately, Disposal of Discarded Materials, and Franchisee agrees to support and not undermine or interfere with such efforts.

C. B. Franchisee Cooperation and Support for City Educational Efforts. Franchisee acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to achieve compliance with AB 939, SB 1383, and other Applicable Law. Accordingly, Franchisee agrees to take direction from City to exploit opportunities to expand public and Customer knowledge concerning needs and methods to reduce, reuse, and Recycle Solid Waste and to cooperate fully with City in this regard. Franchisee acknowledges that they are part of a multi-party effort to operate and educate the public about the regional integrated waste management system. Franchisee shall cooperate and coordinate with the City on public education activities to minimize duplicative, inconsistent, or inappropriately timed education campaigns. The Franchisee shall cooperate with and shall not impede, interfere, or attempt to impede or interfere with the implementation, expansion, or operation of public education and outreach programs or campaigns conducted by the City. Supplemental Education. Franchisee shall obtain approval from the City on all Franchisee-provided public education materials outside of the City's education plan, including, but not limited to: print, radio, television, or internet media before

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publication, distribution, and/or release. The City shall have the right to request that Franchisee include identification and contact information for the City on public education materials and approval of such requests shall not be unreasonably withheld.

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

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- E. Annual Notice of Requirements.** If not already provided through another Discarded Materials Franchise agreement between the Parties, Franchisee shall, not less than once per year, prepare and distribute to each Generator in the City a mailer that includes information specified in 14 CCR Section 18985.1(a). Such mailer shall be distributed by Franchisee to all Residential and Commercial mailing addresses including individual Multi-Family Dwelling Units and tenants of multi-tenant Commercial locations. Franchisee shall also make this notice available in an electronic format through the Franchisee's website.

- F. Other Outreach.** At the direction of the City, Franchisee shall participate in and promote AB 939 activities, SB 1383 programs, and other Solid Waste management techniques at community events and local activities. Such participation would normally include providing, without cost, educational and publicity information promoting the goals of the City's Solid Waste Collection and Diversion programs.

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7.17 Records Retention

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

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**ARTICLE 8.
PAYMENTS TO CITY**

8.1 Franchise Fee Payments

In consideration of the exclusive franchise provided for in Article 4 of this Agreement, Franchisee shall pay the City ten percent (10%) of Franchisee's gross revenues for collection and disposal of solid waste within the City; provided, however, that such franchise fee shall not exceed the costs incurred by the City to deliver service to properties. Such franchise fees shall be a "pass-through" expense for purposes of rate review and setting. Each monthly remittance of fees to City shall be accompanied by a statement detailing gross revenues for the period covered from all operations conducted or permitted pursuant to this Agreement.

8.2 Schedule of Payment

Franchise fees described in Section 8.1 are due on the 15th day of each month for receipts from the previous month. The remittance will be accompanied by a report setting forth the basis, and calculations used for computing the amount due.

8.3 AB 939/SB 1383 Fee

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

8.4 Other Fees

The City shall reserve the right to set such other fees, as the City deems necessary. These fees will be treated as a "pass-through" expense. The amount, time and method of payment shall be similar to section 8.2.

8.5 Time and Method of Payment

If Franchisee is directed to pay an AB 939/SB 1383 Fee, Franchise Fee, or "Other" Fee, it shall do so on or before the fifteenth (15th) day of each month during the Term. Franchisee 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, Franchisee shall pay to City a late payment penalty in an amount equal to one percent (1%) of the amount owing for that month. Franchisee shall pay an additional late payment penalty of one percent (1%) owing on any unpaid balance for each following thirty (30) day period the fee remains unpaid. Late payment penalty amounts shall not be included in any revenue requirement.

8.6 Review of Fee Payments

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

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8.7 Business License Tax

Franchisee shall pay each year the annual business license tax.

**ARTICLE 9.
SERVICE RATES AND REVIEW**

9.1 General

Franchisee's compensation provided for in this Article shall be the full, entire and complete compensation due to Franchisee pursuant to this Agreement for all labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, transfer and transport, processing, division, disposal, profit and all other things necessary to perform all the services required by this Agreement in the manner and at the times prescribed, Franchisee will not be entitled to any further rate adjustments as a result of customer delinquencies and other bad debt issues.

Franchisee does not look to the City for payment of any sums, except for solid waste collection services provided to the City, under this Agreement in consideration of the right to charge and collect from customers for services rendered at rates fixed by the City from time-to-time. The City shall have the right to structure those rates as it deems appropriate so long as the revenues forecasted to be received by Franchisee from charging such rates can reasonably be expected to generate sufficient revenues to provide for Franchisee's compensation as calculated in accordance with the "*City of San Luis Obispo Rate Setting Process and Methodology Manual for Integrated Solid Waste Management Rates*".

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9.2 Service Rates

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

9.3 Rate Review

Franchisee shall submit to the City an application for rate review annually, in accordance with the procedures described in the "*City of San Luis Obispo Rate Setting Process and Methodology Manual for Integrated Solid Waste Management Rates*," dated June 1994, except as that may be modified by the City from time to time. In addition to the procedures contained in the above referenced manual, Franchisee shall submit any and all data requested by and in the format prescribed by the City. In the event Franchisee shall fail to meet the schedule set forth in the above referenced manual, a revision of rates for the following year shall not be authorized until the 1st day of the first calendar month following a 120 day period from the date that the complete application is submitted and such revision shall contain no consideration for Franchisee's failure to submit the application in accordance with the schedule set forth in the above-referenced manual.

9.4 Special Interim Rate Review

The City or franchisee may request an extraordinary or consequential adjustment outside of the base year and interim year adjustment schedules, as set forth in the "*City of San Luis Obispo Rate Setting Process and Methodology Manual for Integrated Solid Waste Management Rates*," dated June 1994. To be extraordinary and consequential, cost changes must be significant enough to require a greater than five percent (5%) decrease or increase in monthly rates for basic residential service.

9.5 Allowable Profit

When performing the procedure described in the "*City of San Luis Obispo Rate Setting Process and Methodology Manual/or Integrated Solid Waste Management Rates*," dated

June 1994, the allowable profit on expenses shall be calculated using targeted operating ratio of ninety-three percent (93%), with a range of ninety-one percent (91%) to ninety-five percent (95%), applied to Franchisee's reasonable and necessary allowable costs, as these costs are defined in the rate setting manual, incurred in the performance of its obligations under this Agreement.

9.6 Publication of Rates

Franchisee shall provide written notice to subscribers of all rate changes, prior to implementation. If appropriate, this notice should include reasons and background for the rate change.

ARTICLE 10.
INDEMNITY, INSURANCE, AND PERFORMANCE BOND

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10.1 Indemnification

10.1.1 General.

Franchisee agrees to defend, indemnify, protect and hold the City and its Council members, agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including, but not limited to, damages arising from or related to alleged or actual violations of Proposition 218 and/or its implementing legislation, injury to the Franchisee's employees, agents or officers to the extent arising from or connected with or are caused or claimed to be caused by the acts or omission of the Franchisee, and its agents, officers, directors or employees, in performing the services herein, and all expenses of investigating and defending against same; provided, however, that the Franchisee's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the City, its agents, officers or employees.

10.1.2 CERCLA.

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

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10.1.3 Integrated Waste Management Act.

Franchisee agrees to defend and indemnify the City, Council members, officers, employees and agents for any fines or penalties imposed by the California Integrated Waste Management Board or its agents in the event and to the extent that Franchisee's delays in providing information or reports required pursuant to this Agreement prevent the City from submitting reports or attaining goals in a timely manner as required by the Integrated Waste Management Act.

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10.2 Insurance

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

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

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

B. Minimum Limits of Insurance. Franchisee shall maintain limits no less than:

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- (1) **Commercial or Comprehensive General Liability:** Five Million Dollars (\$5,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit.
- (2) **Automobile Liability:** Five Million Dollars (\$5,000,000) 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 with limits of \$1,000,000 per accident for bodily injury or disease.
- (4) **Pollution Liabilities:** One million Dollars (\$1,000,000) each loss/Two Million Dollars (\$2,000,000) annual aggregate all losses.

C. 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, Council members, its officers, officials, employees, and agents; or the Franchisee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Any insurance policies providing for self insured retentions shall further provide that legal costs and costs of investigation, including consultant fees, with respect to any claim or suit, shall apply to the self insured retention amount.

D. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- (1) The City, Council members, its officers, officials, employees, and agents are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Franchisee; products and completed operations of the Franchisee; premises owned, occupied or used by the Franchisee; or automobiles owned, leased, hired or borrowed by the Franchisee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, or agents.
- (2) For any claims related to this project, the Franchisee's insurance coverage shall be primary insurance as respects the City, Council members, its officers, officials, employees, and agents. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Franchisee's insurance and shall not contribute with it.
- (3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, Council members, its officers, officials, employees, or agents.
- (4) The Franchisee's insurance shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.

- (5) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt required, has been given to the City.
- (6) The Automobile Liability Policy shall be endorsed to delete the Pollution exclusion and add the Motor Carrier Act endorsement (MCS-90), TL.1005, TL 1007 and/or other endorsements required by federal or state authorities.
- (7) Pollution, if on a Claims Made form:
 - a. The "Retro Date" must be shown and must be before the date of the contract or the beginning contract work.
 - b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
 - c. If coverage is canceled or non-renewed, and not replaced with another claims made policy form with a "Retro Date" prior to the contract effective date, the Franchisee must purchase "extended reporting" coverage for minimum of two years after completion of contract.

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

F. Verification of Coverage. Franchisee shall furnish the City with Certificates of insurance and with original endorsements effecting coverage required herein. 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 the City and are to be received and approved by the City before performance under this Agreement commences. The City reserves the right to require complete certified copies of all required policies at any time, and Franchisee shall provide said copies upon request.

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

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

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10.3 Performance Bond

Simultaneously with the execution of this Agreement, Franchisee shall file with the City a bond, payable to City, securing Franchisee's faithful performance of its obligations under this Agreement. The principal sum of the bond shall be One Half Million Dollars (\$500,000). The bond shall be executed as surety by a corporation authorized to issue surety bonds in the State of California, with a financial condition and record of service satisfactory to City. The bond shall be in a form approved by the City. If such bond at any time ceases to be effective for any reason, this shall be deemed a breach of this Agreement by Franchisee and the City shall be entitled to proceed as hereinafter provided.

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

10.4 General

In the event that Franchisee, for any reason whatsoever, fails, refuses or is unable to Collect, transport or process any or all Solid 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, Solid 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 Franchisee during the period of such emergency as determined by the City Manager, (1) to perform, or cause to be performed, such services itself with its own or other personnel without liability to Franchisee, and/or (2) to take possession of any or all of Franchisee's land, equipment and other property to Collect, transport or process any Solid Waste generated within the City which Franchisee would otherwise be obligated to Collect, transport, process or market pursuant to this Agreement. In the event the City takes possession of the Franchisee's equipment and other property, the City shall be entitled to have another Franchisee operate such equipment and property under City direction. Additionally, in the event the City takes possession of the Franchisee's equipment and other property, the City does not guarantee repair of existing problems with equipment and facilities.

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

Franchisee further agrees that in such event:

- 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 Solid Waste, including, if City so desires, employees previously or then employed by Franchisee, Franchisee further agrees, if City so requests, to furnish City the services of any or all management or office personnel employed by Franchisee whose services are necessary or useful for Solid 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.

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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 Franchisee the reasonable rental value of the equipment and facilities, possession of which is taken by City, for the period of City's possession, if

any, which extends beyond the period of time for which Franchisee has rendered bills in advance of service.

Except as otherwise expressly provided in the previous paragraph, City's exercise of its rights under this Article 11 (1) does not constitute a taking of private property for which compensation must be paid; (2) will not create any liability on the part of City to Franchisee; and (3) does not exempt Franchisee from the indemnity provisions of Article 10, Indemnification, Insurance and Bond, which are meant to extend to circumstances arising under this Section, provided that Franchisee is not required to indemnify City against claims and damages arising from the 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 Franchisee's Property

If the City suffers an interruption or discontinuance of service as described in Section 11.1 (including interruptions and discontinuance due to events described in Section 12.4, Excuse from Performance), City may take possession of and use all of Franchisee's property described above until other suitable arrangements can be made for the provision of Solid 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 Solid Waste services, as above provided, Franchisee shall continue to bill and collect payment from all users of the above-mentioned services.

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

11.4 City's Right to Relinquish Possession

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

11.5 Duration of City's Possession

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

**ARTICLE 12.
DEFAULT AND REMEDIES**

12.1 Events of Default

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

A. Fraud or Deceit. If Franchisee practices, or attempts to practice, any fraud or deceit upon City.

B. Insolvency or Bankruptcy. If Franchisee becomes insolvent, unable, or unwilling to pay its debts when due, or upon listing of an order for relief in favor of Franchisee in a bankruptcy proceeding. The Franchisee is also in default if there is an assignment of this contract for the benefit of its creditors.

C. Failure to Maintain Coverage. If Franchisee fails to provide or maintain in full force and effect the Workers' Compensation, liability, indemnification coverage or any insurance coverage or bond required under this Agreement.

D. Violations of Regulation. If Franchisee facilities fall out of full regulatory compliance or if Franchisee violates any orders or filings of any regulatory body having jurisdiction over Franchisee relative to this Agreement, provided that Franchisee may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Agreement shall be deemed to have occurred.

E. Failure to Perform. If Franchisee ceases to provide Solid Waste services as required under this Agreement for a period of two (2) days or more, for any reason within the control of Franchisee.

F. Failure to Pay/Report. If Franchisee fails to make any timely payments, including liquidated damages and penalties, required under this Agreement and/or fails to provide City with required information, reports, and/or records in a timely manner as provided for in the Agreement.

G. Acts or Omissions. Any other act or omission by Franchisee which violates the terms, conditions, or requirements of this Agreement, the California Integrated Waste Management Act of 1989, as it may be amended from time to time, or any order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if Franchisee cannot reasonably correct or remedy the breach within the time set forth in such notice, if Franchisee should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

H. False or Misleading Statements. Any representation or disclosure made to City by Franchisee in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.

I. Attachment. There is a seizure of attachment of, or levy on, the operating equipment of Franchisee, including without limits its equipment, maintenance or office facilities, or any part thereof.

J. Suspension or Termination of Service. There is any termination or suspension of the transaction of business by Franchisee, including without limit, due to labor unrest including strike, work stoppage or slowdown, sickout, picketing, or other concerted job action lasting more than two (2) days.

Upon default by the Franchisee, the City Manager shall provide written notice to Franchisee of the violation. The City Manager shall include in the notice, a demand that the Franchisee correct the violation within 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 Franchisee, 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 Franchisee to perform its obligations under this Agreement.

12.3 Possession of Property and Billing Records and Systems Upon Termination

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

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

12.4 City's Remedies Cumulative: Specific Performance

The City's right to terminate the Agreement under Section 12.1 and to take possession of the Franchisee's properties under Section 12.3 are not exclusive, and the City's termination of the 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 the 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 the City to Franchisee, the remedy of damages for a breach hereof by Franchisee is inadequate and the City shall be entitled to injunctive relief and/or specific performance if it so desires.

12.5 Excuse from Performance

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

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

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

12.6 Liquidated Damages

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

1. Substantial damage results to members of the public who are denied services or denied quality or reliable service;
2. Such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public to whom the City provides services pursuant to this Agreement, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms;

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3. That services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and

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4. The termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the City whole for past breaches. However, substantial breaches may result in the termination of this Agreement as described in Section 12.1.

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B. Service Performance Standards and Liquidated Damages for Failure to Meet Standards. The Parties further acknowledge that consistent, reliable Solid Waste Collection service is of utmost importance to City and that City has considered and relied on Franchisee's representations as to its quality of service commitment in awarding the Franchise to it. The Parties further recognize that if Franchisee fails to achieve the performance standards, or fail 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 Damages 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.

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The City may monitor the Franchisee's performance under the Agreement in each of the performance areas listed below. In the event that the City determines that Franchisee has failed to meet the performance standard established for any of the areas identified below, the City may assess Liquidated Damages pursuant to this Section of the Agreement. Franchisee agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth below:

	<u>Event of Non-Performance</u>	<u>Liquidated Damage</u>
Collection Reliability and Quality		
1	<u>Failure to Implement three-Container System.</u> <u>For each occurrence of failing to provide Customers with Solid Waste Containers as part of the three-Container system required by and compliant with the Municipal Code (excluding Generators and Customers that demonstrate compliance with Recycling and Organic Waste Self-Hauling requirements pursuant to the Municipal Code and 14 CCR Division 7, Article 12, Article 7.)</u>	<u>\$150/ Generator or Customer / occurrence / Day until compliance achieved</u>
2	For each failure over five (5) annually to commence service to a new <u>Customer</u> account within seven (7) days after order:	\$150.00
3	For each failure over ten (10) annually to Collect Solid Waste, which has been properly set out for Collection, from an established <u>Customer</u> account on the scheduled Collection day	\$150.00
4	For each failure to Collect Solid Waste which have been properly set out for Collection, from the same <u>Customer</u> on two (2) consecutive scheduled pickup days:	\$150.00

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	<u>Event of Non-Performance</u>	<u>Liquidated Damage</u>
5	For each occurrence over five (5) annually of damage to private property:	\$250.00
6	For each occurrence of discourteous behavior:	\$250.00
7	For each failure over ten (10) annually to clean up Solid Waste spilled <u>by Contractor</u> from <u>Containers</u> :	\$150.00
8	For each occurrence over five (5) annually of Collecting Solid Waste during unauthorized hours:	\$250.00
9	For each failure to respond to a <u>Customer Complaint</u> within twenty-four (24) working hours:	\$100.00
10	For each failure to prepare for or properly conduct twice annual clean-ups including advertising and press releases	\$250.00
11	For each occurrence over ten (10) annually of failure to properly return <u>Containers</u> to avoid pedestrian or vehicular traffic impediments or to place cans upright with lid secured	\$150.00
12	For each occurrence of excessive noise above the limits specified in this Agreement	\$250.00
13	<u>Failure to Comply with Container Labeling and Colors. For each occurrence of Franchisee's failure to comply with Container labeling and color requirements pursuant to Section 6.1.3 of this Agreement.</u>	<u>\$150/ Container / occurrence</u>
14	<u>Use of Unauthorized Facilities. For each individual occurrence of delivering Discarded Materials to a Facility other than a Designated Disposal Facility(ies).</u>	<u>\$150 /Ton / occurrence</u>
Customer Responsiveness		
15	For each failure to respond to a <u>Customer Complaint</u> within sixteen (16) working hours	\$100.00
16	For each failure to process <u>Customer Complaints</u> to City	\$500.00
17	For each failure to carry out responsibilities for establishing service	\$500.00
Reports and Timeliness of Submissions to the City		
18	REPORTS. Any report shall be considered late until such time as a correct and complete report is received by City. For each <u>calendar day</u> a report is late, the daily assessment shall be:	
	<u>a.</u> Monthly Reports: For each infraction	\$100 per day
	<u>b.</u> Quarterly Reports For each infraction	\$250 per day
	<u>c.</u> Annual Reports: For each infraction	\$500 per day
19	<u>Failure to Allow Access to Records. For each failure to provide access to records in compliance with and in the timeframe specified in this Agreement.</u>	<u>\$120/day</u>
Other		

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	<u>Event of Non-Performance</u>	<u>Liquidated Damage</u>
20	<u>Failure to Perform Public Education and Outreach. For each failure to perform any individual education and outreach activity as required and in the timeframe specified by this Agreement.</u>	<u>\$180 / occurrence</u>
21	<u>Improper Fee Issuance. For each fee that is issued to a Generator without prior authorization from City under this Agreement.</u>	<u>\$100/Customer/Day</u>

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

Liquidated Damages will only be assessed after Franchisee has been given the opportunity but failed to rectify the damages, as described in this Agreement (e.g., twenty-four (24) working hours to respond to a Complaint). City may determine the occurrence of events giving rise to Liquidated Damages through the observation of its own employees or representative or investigation of Customer Complaints.

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Prior to assessing Liquidated Damages, City shall give Franchisee notice of its intention to do so. The notice will include-a brief description of the incident(s)/non-performance.

Franchisee may review (and make copies at its own expense) all information in the possession of City relating to incident(s)/non-performance. Franchisee may, within ten (10) days after receiving the notice, request a meeting with City. If a meeting is requested, it shall be held by the City Manager or their designee. Franchisee may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non performance. The City Manager or designee will provide Franchisee with a written explanation of their determination on each incident(s)/non-performance prior to authorizing the assessment of Liquidated Damages. The decision of the City Manager or designee shall be final.

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12.7 Notice, Hearing and Appeal

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

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

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- C. Amount.** The City Manager may assess liquidated damages for each calendar day or event, as appropriate, that Franchisee is determined to be liable in accordance with this Agreement.¶
- D. Timing of Payment.** Franchisee 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....¶
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12.8 Financial Material Errors, Omissions or Irregularities

The City may review, test and audit the books and records of the Franchisee for the purpose of determining whether the Franchisee is complying with the terms of the Agreement. In the event that material errors or omissions or irregularities are identified, then the cost associated with the audit; test or review shall be paid by the Franchisee to the City. In the case of financial errors, materiality shall be deemed to be two percent (2%) or greater of the gross revenues of the Franchisee from activities performed under this agreement. Recovery of any

overpayment will be negotiated on a case by case basis, either immediately or through the next rate setting evaluation.

**ARTICLE 13.
ASSIGNMENT**

13.1 Assignment

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

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

- (1) a sale, exchange or other transfer to a third party of at least fifty-one percent of Franchisee's assets dedicated to service under this Agreement;
- (2) a sale, exchange or other transfer to a third party, including other shareholders, of outstanding common stock of Franchisee which may result in a change of control of Franchisee;
- (3) any dissolution, reorganization, consolidation, merger, recapitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which Franchisee or any of its shareholders is a party which results in a change of ownership or control of Franchisee; and
- (4) any assignment by operation of law, including insolvency or bankruptcy, assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Franchisee's property, or transfer occurring in the probate proceeding; and
- (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 Franchisee.

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

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

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

- A. Franchisee shall undertake to pay City its reasonable expenses for attorney's fees and investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment;
- B. Franchisee shall furnish City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years;
- C. Franchisee shall furnish City with satisfactory proof:
 - 1. that the proposed assignee has at least ten (10) years of solid waste management experience on a scale equal to or exceeding the scale of operations conducted by Franchisee under this Agreement;
 - 2. that in the last five (5) years, the proposed assignee or affiliates has not suffered any significant citations or other censure from any federal, state or local agency having jurisdictions over its waste management operations due to any significant failure to comply with 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 solid waste management practices in accordance with sound waste management practices in full compliance with all federal, state and local laws regulating the collection and disposal of solid waste, including hazardous wastes; and,
 - 5. of any other information required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

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

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

14.1 Relationship of Parties

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

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14.2 Governing Law

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

14.3 Jurisdiction

Any lawsuits between the parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits.

With respect to venue, the parties agree that this Agreement is made in and will be performed in San Luis Obispo County.

14.4 Subcontracting

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

14.5 Interests of Franchisee

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

14.6 Binding on Successors

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

14.7 Transition of Next Franchisee

At the point of transition to a new franchisee, Franchisee will cooperate with the City and subsequent franchisee(s) to assist in an orderly transition which will include Franchisee providing route lists and

billing information. Franchisee will not be obliged to sell collection vehicles, bins, and containers to the next franchisee. The Franchisee, at its option, may enter into negotiations with the next franchisee to sell (in part or all) collection vehicles, bins and containers.

14.8 Parties in Interest

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

14.9 Waiver

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

14.10 Condemnation

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

14.11 City Free to Negotiate with Third Parties

The City may investigate, during the term and thereafter, all options for the collection, diversion, and disposal of solid waste after the expiration of the term. Without limiting the foregoing, the City may solicit proposals from Franchisee and from third parties for the provision of collection services, disposal services, recycling services, Solid waste collection and composting, and any combination thereof, and may negotiate and execute agreements for such services which will take effect upon the expiration or earlier termination under Section 11.1 of this Agreement.

14.12 Immigration Act of 1986

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

14.13 Non-Discrimination

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

14.14 Public and Employee Safety

Whenever the Franchisee's operations create a condition hazardous to the public or City employees, it shall, at its expense and without cost to the City, furnish, erect and maintain such fences,

temporary railings, barricades, lights, signs and other devices, and take such other protective measures as are necessary to prevent accidents or damage or injury to the public and employees.

14.15 Recycled Products

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

14.16 Notice

All notices, demands, requests, proposals, approvals, consent, and other communications which this Agreement requires, authorizes or contemplates, except as provided in Section 12.1, shall be in writing and shall either be personally delivered to a representative of the parties at the address below, or by email as specified 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
ut_services@slocity.org and cityclerk@slocity.org

If to Franchisee: [District Manager](#)
San Luis Garbage Company
[4388 Old Santa Fe Road](#) San Luis Obispo, CA 93401

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

Notice shall be deemed given on the day it is personally delivered or, if mailed, three days from the date it is deposited in the mail.

14.17 Representatives of the Parties

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

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

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14.18 Entire Agreement

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

14.19 Section Headings

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

14.20 References to Laws

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided.

14.21 Interpretation

This Agreement shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

14.22 Amendment

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

14.23 Severability

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

14.24 Counterparts

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

14.25 Use of "Will"

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

14.26 Surviving Provisions

Paragraphs 7.11, 7.16, 8.5, 10.2, and other provisions of this Agreement so providing, shall survive termination of this Agreement.

14.27 Investigation

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

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

Deleted: Contractor

The City of San Luis Obispo
"City"

San Luis Garbage Company
"Franchisee"

By: _____
City Manager

By: _____
Name:
Title:

Attest:

City Clerk

Approved to Form:

City Attorney