

~~Organic Materials Services Agreement~~ **AMENDED AND RESTATED AGREEMENT BETWEEN**  
**THE CITY OF SAN LUIS OBISPO**  
**AND**  
**SAN LUIS GARBAGE COMPANY**

For Collection and Disposal of ~~Organic Materials~~  
Within the City of San Luis Obispo

This Agreement between the City of San Luis Obispo and San Luis Garbage Company for Collection and processing of ~~Organic Materials~~ ("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 Green Waste and Food Waste Collection on November 1, 2015 ("Agreement"); and,
- WHEREAS:** Section 4.6 of the Agreement 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 and Recyclable Materials, meet Processing Facility requirements, conduct contamination monitoring, provide education, maintain records, submit reports, monitor compliance, conduct enforcement, and fulfill other requirements; and, the City has chosen to delegate some of its responsibilities to the Franchisee, acting as the City's designee, through this Agreement; and
- WHEREAS:** Both Parties have, in good faith, negotiated changes to the Agreement necessary to support the City's compliance with SB 1383, and other Applicable Law, as set forth herein.

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~~I. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (AB 939) Division 30 of the California Public Resources Code, commencing with 40000, has declared that it is within the public interest to au~~

~~Deleted: authorize, understandings, and require local agencies to make adequate provisions for Food and Green Waste handling within their jurisdictions. AB 939 requires a fifty percent (50%) reduction in the amount of waste which is landfilled by the year 2000; and intentions of the parties:¶~~

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~~Deleted: Since March 1997 Contractor has provided the City with green waste collection, transportation and disposal services for residential properties, multi-family dwelling units, institutional and commercial and industrial properties; and¶  
On September 28, 2014, the Governor approved AB 1826 which requires each jurisdiction, on and after January 1, 2016, to implement an organic waste recycling program to divert organic waste from certain businesses; and¶  
In order to implement AB 1826's requirements, Contractor has proposed to enter into a long term agreement with Hitachi Zosen Inova to construct and operate a Kompogas facility at Contractor's property located at 7388 Old Santa Fe Road, San Luis Obispo, to compost food and green waste generated by the City, af ...~~

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Organic Materials Services Agreement

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7. **WHEREAS**, this Agreement is intended to restate and supersede all prior Franchise Agreements for Food and Green Waste Collection between City and Franchisee; and

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

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**ARTICLE 1.  
DEFINITIONS**

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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.

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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 Company by virtue of direct or indirect common ownership interest or common management shall be deemed to be "Affiliated with" Franchisee and included within the term "Affiliates with" Franchisee and included within the "Affiliates" 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 Contractor and/ or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) "ten percent (10%)" shall be substituted for "fifty percent (50%)" in Section 318(a)(2)(C) and in Section 318(a)(J)(C) thereof; and (ii) Section 318(a)(S)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

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1.5 "Agreement" means the Food and Green Waste (or "Organics") Agreement (dated \_\_\_\_\_ including all exhibits and attachments, and any amendments thereto) between City and Franchisee for Collection, processing and marketing of Food and Green Waste and other services related to meeting the diversion goals and requirements of AB 939 and SB 1383.

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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.

"Approved Organic Materials Processing Facility" means the Hitachi Zosen Inova (HZI) Kompogas Facility located at 4300 Old Santa Fe Rd, San Luis Obispo, CA 93401, and Engel & Gray Inc. Regional Compost Facility, located at 745 West Betteravia Road, Santa Maria, California, which have been selected by the Franchisee and approved by the City.

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1.7 "Approved Disposal Facility" means 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 located at 2290 Homestead Rd, Templeton, CA 93465, or the Santa Maria

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Landfill located at 2065 E Main St, Santa Maria, CA 93454, as alternatives which have been selected by the Franchisee and approved by the City. Franchisee shall notify City before using an alternative facility.

- 1.8** "Billings" means any and all statements or charges for services rendered by Franchisee pursuant to this Agreement.
- 1.9** "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.
- 1.10** "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.
- 1.11** "Bulky Item Collection Program" means the Contractor's Collection service for bulky items, including bulky Green Waste, in accordance with the Franchise Agreement for Solid Waste Collection entered into on May \_\_\_\_\_, 2022 between the City and Franchisee.
- 1.12** "Business Days" mean days during which the City offices are open to do business with the public.
- 1.13** "California Code of Regulations (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).
- 1.14** "California Integrated Waste Management Act of 1989" means Public Resources Code §§ 40000 et. seq.
- 1.15** "CalRecycle" means California's Department of Resources Recycling and Recovery.
- 1.16** "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).
- 1.17** "City" means the City of San Luis Obispo, a municipal corporation and charter city, and all the territory lying within the municipal boundaries of the City as presently existing or as such boundaries may be modified during the Term of this Agreement, acting through the City Council or the City Manager. The City may designate responsibilities to one or more third parties, in writing, between the City Manager and the designee.
- 1.18** "Collect" or "Collection" (or any variation thereof) means the act of taking physical possession of Recyclable Materials, Organic Materials, Solid Waste, Bulky Items, and other material at the place of generation in the City.
- 1.19** "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.

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**1.20** "Commercially Generated Food and Green Waste" means Food and Green Waste generated at commercial and/or industrial property and separated by the Waste Generator for Collection and which are excluded from the scope of this Agreement as described in Article 4, Scope of Agreement.

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**1.21** "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.

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**1.22** "Complaint" shall mean each written or orally communicated statement made by any Person, whether to City or Franchisee, alleging: (1) non-performance, or deficiencies in Franchisee's performance of its duties under this Agreement; (2) a violation by Franchisee of this Agreement; or, (3) an SB 1383 Non-Compliance Complaint as required under 14 CCR Section 18995.3.

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**1.23** "Compost" (or any variation thereof) includes a controlled biological decomposition of Organic Materials yielding a safe and nuisance free Compost product.

**1.24** "Compostable Plastic" means plastic materials that meet the ASTM D6400 standard for Compostability.

**1.25** "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.

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**1.26** "Container" means Bins, Carts, Compactors and franchise Roll-Offs.

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**1.28** "County" means the County of San Luis Obispo, a political subdivision of the State of California.

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**1.29** "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.

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**1.30** "Customer Notice" means the Franchisee's notice to Customer(s) as described in Section 5.4.

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**1.31** "Designated Collection Location" means the place where the Franchisee or an authorized Recycling agent or a Solid Waste Collector has contracted with either the City or a private entity to Collect Solid Waste.

**Deleted: Contractor** means San Luis Garbage Company, a corporation organized and operating under the laws of the State of California, and its officers, directors, employees, agents, companies and subcontractors, related-parties, Affiliates, and Subcontractors where applicable.¶

**1.32** "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.

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**1.33** "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.

**1.34** "Disposal Facility" means a landfill, or other Facility for ultimate Disposal of Solid Waste.

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- 1.35 “Dispose” or “Disposal” (or any variation thereof) means the final 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 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 2.2 of this Agreement.
- 1.40** "Environmental Laws" means all federal and state statutes, county, local and City ordinances and regulations concerning public health, safety and the environment including, by way of example and not limitation, the comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC 9601 et seq.; the Resource Conservation and Recovery Act, 42 USC 6902 et seq.; the Federal Clean Water Act, 33 USC 1251; the Toxic Substances Control Act, 15 USC 1601 et seq.; the Occupational Safety and Health Act, 29 USC 651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code 25100 et seq.; the California Toxic Substances Account Act, California Health and Safety Code 25300 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code 25249.5 et seq.; as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.
- 1.41 “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.

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1.42 **"Facility"** means any plant or site utilized by Franchisee (or a Subcontractor of Franchisee) for the purposes of performing the duties to fulfill this Agreement, including, without limitation, Transfer, Processing, or Disposal of Discarded Materials Collected in the City.

1.43 **"Facility Operation Date"** means December 18, 2018, the date on which, following its start-up, testing and commissioning, the Facility began processing commercial quantities of Food and Green Waste.

1.44 **"Federal"** means belonging to or pertaining to the Federal government of the United States.

1.45 **"Fiscal Year"** means the period commencing on January 1 and concluding December 31 for Franchisee. For City it means the period commencing July 1 of one year and concluding June 30 of the subsequent year.

1.46 **"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).

1.47 **"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.

1.48 **"Food-Soiled Paper"** means Compostable paper material that has come in contact with Food Scraps or liquid, such as, but not limited to, Compostable paper plates, napkins, and pizza boxes. Food - Soiled Paper is a subset of Food Waste.

1.49 **"Food Waste"** means Source Separated Food Scraps and Food-Soiled Paper. Food Waste is a subset of Organic Materials.

1.50 **"Franchise Fee"** means the fee paid by Franchisee to the City as described in Article 7.

1.51 **"Franchisee"** means San Luis Garbage Company, a corporation organized and operating under the laws of the State of California, and its officers, directors, employees, agents, companies, related-parties, Affiliates, and Subcontractors where applicable.

1.52

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

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**Deleted:** <#>"Food Waste" means a waste material of plant or animal origin that results from the preparation or processing of food for animal or human consumption and that is separated from the municipal solid waste stream. Food waste includes, but is not limited to, food waste from food facilities as defined in Health and Safety Code section 113789 (such as restaurants), food processing establishments as defined in Health and Safety Code section 111955, grocery stores, institutional cafeterias (such as prisons, schools and hospitals), and residential food scrap collection. Food waste does not include any material that is required to be handled only pursuant to the California Food and Agricultural Code and regulations adopted pursuant thereto.¶  
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**"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.

**1.53** **"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 625117 of the Health and Safety Code and Public Resources Code S40141.

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

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

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

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**1.58** **"Multi-family Dwelling Unit"** or **"Multi-Family"** or **"MFD"** means, notwithstanding any contrary definition in the City Municipal Code, any Premises, other than a Single Family Dwelling Unit, used for Residential purposes, irrespective of whether residence therein is transient, temporary, or permanent, 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.

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**1.59** **"Occupant"** means the Person who occupies a Premises.

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

**1.61** **"Organic Waste"** means wastes containing material originated from living organisms and their

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metabolic waste products including, but not limited to, food, Yard Trimmings, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges, or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined in 14 CCR Section 18982(a)(4) and 14 CCR Section 18982(a)(16.5), respectively.

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

1.63 "Party" or "Parties" refers to the City and Contractor, individually or together.

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

1.65 "Premises" means any land or building in the City where Discarded Materials are generated or accumulated.

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

1.67 "Prohibited Container Contaminants" means the following for the purposes of this Agreement: (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.

1.68 "Recyclable Materials" or "Recyclables" 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.

1.69 "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.

1.70 "Related Party Entity" means any Affiliate which has financial transactions with Franchisee.

1.71 "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.

1.72 "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 materials.

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Deleted: <#>"Recyclable Materials" means residential by-products or discards of economic value set aside, handled, packaged or offered for Collection in a manner different from Solid Waste. Including, but not limited to, aluminum, newspaper, clear and colored glass, tin and bi-metal, High density Polyethylene (HOPE), Polyethylene Terephthalate (PET), cardboard, chipboard, and mixed paper.¶  
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Deleted: <#>"Single Family Dwelling Unit" means each Premises used for or designated as a single family residential dwelling, including each unit of a duplex or triplex in all cases in which there is separate or individual Solid Waste Collection services.¶  
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<#>"Solid Waste" means all putrescible and non-putrescible refuse, garbage, green waste, construction and demolition debris, rubbish, and Recyclable Materials, and as otherwise defined in Public Resources Code 40191.¶  
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- 1.73** “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.
- 1.74** “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.
- 1.75** “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).
- 1.76** “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).
- 1.77** “Service Level” refers to the size of a Customer’s Container and the frequency of Collection service.
- 1.78** “Single Family Dwelling Unit” or “Single-Family” or “SFD” means, notwithstanding any contrary definition in the Municipal 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.
- 1.79** “Solid Waste” means Solid Waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, §40191 and regulations promulgated thereunder. Excluded from the definition of Solid Waste are Excluded Waste, C&D, Source Separated Recyclable Materials, Source Separated Organic Materials, and radioactive waste. Notwithstanding any provision to the contrary, Solid Waste may include de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of Household Hazardous Waste in compliance with Section 41500 and 41802 of the California Public Resources Code as may be amended from time to time. Solid Waste includes salvageable materials only when such materials are included for Collection in a Solid Waste Container not Source Separated from Solid Waste at the site of generation.
- 1.80** “Source Separated” means the segregation, by the Generator, of materials designated for separate Collection for some form of Recycling, Composting, recovery, or reuse.

**Deleted:** 1.27 “Single Family Dwelling Unit” means each Premises used for or designated as a single family residential dwelling, including each unit of a duplex or triplex in all cases in which there is separate or individual Solid Waste Collection services.¶

**Deleted:** 1.28 “Solid Waste” means all putrescible and non-putrescible refuse, garbage, green waste, construction and demolition debris, rubbish, and Recyclable Materials, and as otherwise defined in Public Resources Code 40191.¶

Organic Materials Services Agreement

1.81 "State" means the State of California.

1.82 "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.

1.83 "Term" means the Term of this Agreement, including extension periods if granted, as provided for in Article 2.

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

1.85 "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).

1.86 "Transfer" means the act of transferring the materials Collected by Franchisee in its route vehicles into larger vehicles for Transport to other facilities for the purpose of Processing, Recycling, or Disposing of such materials.

1.87 "Transfer Station" includes those facilities used to receive Solid Wastes, temporarily store, separate, convert, or otherwise Process the materials in the Solid Wastes, or to Transfer the Solid Wastes directly from smaller to larger vehicles for Transport and those facilities used for transformations.

1.88 "Waste Generator" or "Generator" means any Person as defined by the Public Resources Code, whose act or Process produces Solid Waste as defined in the Public Resources Code, or whose act first causes Solid Waste to become subject to regulation.

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Organic Materials Services Agreement

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**ARTICLE 2,  
GRANT AND ACCEPTANCE OF AGREEMENT**

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**2.1 Grant and Acceptance of Agreement**

Subject to Section 2.5 (Conditions to the Effectiveness of Agreement), City hereby grants to Franchisee an exclusive franchise to collect and process Organic Materials accumulating at all Premises in the City that are offered for Collection to Franchisee in accordance with this Agreement.

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

**2.2 Effective Date**

The effective date of this Agreement shall be June, 2022.

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**2.3 Term of Agreement**

The term of this Agreement shall commence at 12:01 a.m., June, 2022 on the Effective Date and expire at midnight on December 18, 2038, the twentieth (20th) annual anniversary of the Facility Operation Date, subject to extension as provided in Section 2.4 (Option to Extend).

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**2.3.1 Term Contingency**

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

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

¶  
<#>By no later than January 1, 2018, Contractor executing a definitive long-term agreement with Hitachi Zosen Inova U.S.A. LLC (or other company approved by City) for the development, construction and operation of a Kompogas Facility (or other similar technology) capable of processing the City's Green Waste and Food Waste; and¶

¶  
<#>The term of this Agreement shall not exceed thirty five (35) years from the commencement date set forth in Section 2.3 above.¶

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

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**2.4 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 least twelve (12) months each. If City elects to exercise this option, it shall give written notice not later than one hundred eighty (180) days prior to the initial termination date, or, if one extension has been exercised, one hundred eighty (180) days prior to the extended termination date.

**2.5 Conditions to Effectiveness of Agreement**

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

**A. Accuracy of Representations.** The representations and warranties made by Franchisee throughout this Agreement are accurate, true and correct on and as of the effective date of this Agreement.

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**B. Absence of Litigation.** There is no litigation pending in any court challenging the award of this Agreement to Franchisee or the execution of this Agreement or seeking to restrain or enjoin its performance.

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Organic Materials Services Agreement

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C. **Furnishing of Insurance and Bonds.** Franchisee has furnished evidence of the insurance and bonds required by Article 10, Indemnification, Insurance and Bond.

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D. **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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2.6 **Responsibilities of City**

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

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**ARTICLE 3.  
TERMS OF AGREEMENT**

**3.1 Franchisee Status**

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

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**3.2 Franchisee Authorization**

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

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**3.3 Compliance with Laws and Regulations**

Franchisee shall comply with all existing and future Applicable Law, with particular note of SB 1383, Article X of the City Charter and Chapters 8.04 of the Municipal Code.

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**3.4 Serve Without Interruption**

Franchisee shall Collect and Process Organic Materials throughout the Term of this Agreement without interruption, except as described in Section 12.4.

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**3.5 Permits and Licenses**

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

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**3.6 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.

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ARTICLE 4. SCOPE OF AGREEMENT

4.1 Scope of Agreement

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

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4.2 Limitations to Scope

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

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A. Organic Materials which are separated at any Premises and which are Transported by the Owner or Occupant of such Premises (or by their employee) to a Facility;

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B. Green Waste removed from Premises by a gardening, landscaping, or tree trimming company as incidental part of a total service offered by that company.

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

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Agreement to Collect, Transport, and Process Organic Materials shall be interpreted to be consistent with State and Federal laws, now and during the Term of the Agreement, and the scope of this Agreement shall be limited by current and developing Applicable Law with regard to Organic Waste handling and related doctrines. In the event that future interpretations of current law, enactment or developing legal trends limit the ability of the City to lawfully provide for the scope of services as specifically set forth herein, Franchisee agrees that the scope of the Agreement will be limited to those services and materials which are lawfully provided for under this Agreement. The City shall not be responsible for any lost profits and/or damages claimed by the Franchisee as a result of changes in law.

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4.3 Administration of Agreement

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

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4.4 Use of City Streets

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

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4.5 Annexation

Franchisee shall automatically extend all services herein described to any area annexed to the City,

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Organic Materials Services Agreement

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except that the City may permit a firm franchised by the County of San Luis Obispo before the annexation to continue service the area for a period not less than five (5) years.

**4.6 City Right to Request Changes**

**4.6.1 General**

City may request 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 thirty (30) days of a request to do so by City, a proposal to provide additional or expanded Diversion services pursuant to the terms of Section 4.6.2. Franchisee shall be entitled to an adjustment in its compensation in accordance with Section 8.5 (Extraordinary Adjustments), for providing such additional or modified services.

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**4.6.2 New Diversion Programs**

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

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

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

Franchisee acknowledges and agrees that City may permit other Persons besides Franchisee to provide additional Organic Materials services not otherwise contemplated under Section 4.6 (City's Right to Request Changes). If pursuant to Section 4.6.2 (New Diversion 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.

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**4.6.4 Implementing New Services**

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

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**4.7 Ownership of Organic Materials**

Once Organic Materials are placed in Containers and properly presented for Collection, ownership and the right to possession shall transfer directly from the Generator to Franchisee by operation of this Agreement. Franchisee is hereby granted the right to retain, Recycle, Process, reuse, Compost and otherwise use such Organic Materials or any part thereof, in any lawful fashion or for any lawful



Organic Materials Services Agreement

purpose consistent with the hierarchy and goals of AB 939 and AB 1826, and constitutes a reduction in landfill Disposal in accordance with SB 1383. Subject to the provisions of this Agreement, Franchisee shall have the right to retain any benefit resulting from its right to retain, Recycle, Process, Compost or reuse the Organic Materials which it Collects. Organic Materials or any part thereof, which are delivered to a Facility shall become the property of the Owner or operator of the Facility(ies) once deposited there by Franchisee.

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**ARTICLE 5.  
DIRECT SERVICES**

**5.1 General**

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

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

**5.2 Organic Materials Collection Services**

**A. Three-Container Collection System.** Franchisee shall provide Organic Materials Collection service, 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) between the Franchisee and City for each Discarded Material type. Franchisee shall ensure that the Organic Materials services provided under this Agreement are at all times performed in accordance with Applicable Law, including SB 1383, and operationally align with the Collection of Solid Waste and Recyclable Materials in order to operate a successful three-Container Collection system.

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 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.

**B. Collection Service.** Franchisee shall provide Organic Materials Containers and Collection service to all Single-Family, Multi-Family, and Commercial Generators in accordance with Article 5 of this Agreement. Franchisee's Organic Materials Collection program shall allow Generators to intentionally commingle Food Waste and Green Waste in the Organic Materials Containers. Franchisee shall Collect and remove all Organic Materials placed in Containers at the Designated Collection Locations for Commercial, Single-Family, and Multi-Family Customers, and Transport the Organic Materials to (i) the Approved Organic Materials Processing Facility for Processing in accordance with this Agreement. Prohibited Container Contaminants shall not be Collected in Organic Materials Containers. The Containers shall comply with the requirements of Section 5.7.3.

**C. Schedule.** Contractor shall provide Organic Materials Collection for all Customers not less than once each week on the same day of the week as Solid Waste Collection service.

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<#>Contractor shall Collect and remove all Food and Green Waste placed in¶  
<#>Containers at the designated Collection locations for Commercial, Single Family Dwelling Units and Multifamily Dwelling Units,¶  
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Food and Green Waste Collection shall be a minimum of Organic Materials Collection

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Franchisee will notify Customers of Holiday Collection schedules. Should the Collection day change, Franchisee shall re-route Collections within sixty (60) days of the notification by the change in Solid Waste Collection days to provide same day service.

### 5.3 Materials To Be Collected

Organic Materials to be accepted for Collection include: Food Waste, Food Scraps, Food-Soiled Paper, and Green Waste. The Parties agree that accepted types of Organic Materials may be added to or removed from this list from time to time at the sole discretion of the City. Franchisee shall not add or remove materials to or from this list without written approval from the City or signed amendment to the Agreement, and such approval shall not be unreasonably withheld.

Carpets, non-Compostable paper, textiles, and Prohibited Container Contaminants shall not be Collected in the Organic Materials Containers. The Containers shall comply with the requirements of Section 5.7.3.

Materials prohibited for Collection in the Organic Materials Containers include: Source Separated Recyclable Materials, Solid Waste, Excluded Waste, and other Prohibited Container Contaminants.

### 5.4 Refusal to Provide Collection Services

#### 5.4.1 Customer Notices

A. General. In the event Franchisee does not Collect any item or Container of Discarded Materials due to a Customer's non-compliance with rules and regulations for proper set-out or the presence of Prohibited Container Contaminants, Franchisee shall attach a Customer Notice, subject to City's approval, securely to the item or Container specifying the reasons for non-Collection. The Customer Notice shall contain Franchisee's name, telephone number, and information described below.

The Customer Notice shall, at a minimum:

- Inform the Customer of the reason for the courtesy Collection or non-Collection; and
- Include the date and time the issue was observed.
- In addition, upon the identification of Prohibited Container Contaminants in a Customer's Container, the Franchisee shall provide the Customer with the following information in the Customer Notice, or through another form of communication such as mail, e-mail, text message, or over the phone: Information on the Customer's requirement to properly separate materials into the appropriate Containers, and the accepted and prohibited materials for Collection in each Container;
- Inform the Customer of the courtesy collection or non-collection of the contaminated materials on this occasion with information that the Franchisee may assess contamination Processing fees and/or may not Collect the Container in the future; and
- Be supported by photographic evidence of the violation(s).

B. Upon identification of Prohibited Container Contaminants, Franchisee shall Collect the contaminated Organic Materials Containers and either Transport the material to the appropriate Approved Facility for Processing; or, Franchisee may Collect the contaminated materials with the Solid Waste and Transport the contaminated materials to the Approved Disposal Facility. A Collection of contaminated Recyclable Materials or Organic Materials where the materials are sent to the Approved Disposal Facility may be made with a Solid Waste Collection vehicle, provided that the contaminants may safely and lawfully be Collected as Solid Waste.

C. Communications with Customer. Whenever a Container at the Premises of a Customer is not Collected, Franchisee shall contact the Customer on the scheduled Collection day by telephone, email, text message, or other verbal or electronic message to explain why the

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¶ Food Waste materials to be collected include waste material of plant or animal origin that results from the preparation or processing of food for animal or human consumption and that is separated from the municipal solid waste stream. Food waste includes, but is not limited to, food waste from food (...)

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Container was not Collected. Whenever a Container is not Collected because of Prohibited Container Contaminants, a Customer service representative shall contact the Customer to discuss, and encourage the Customer to adopt proper Discarded Materials preparation and separation procedures.

**D. Franchisee Return for Collection.** Upon request from Customer, Franchisee shall Collect Containers that received Customer Notices specifying non-Collection within one (1) Working Day of Customer's request. Franchisee shall bill Customer for the extra Collection service event ("extra pick-up") at the applicable City-approved Rates only if Franchisee notifies Customer of the premium Rate for this service at the time the request is made by Customer.

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**E. Assessment of Contamination Processing Fees.** If the Franchisee observes twenty percent (20%) or more Prohibited Container Contaminants and has issued a Customer Notice specifying a courtesy Collection, the Franchisee may impose a contamination rate approved by the City for that Customer's Service Level, if and only if Franchisee has informed the Customer of the potential for a Processing fee pursuant to this Section. The intent of contamination fees is to provide a behavioral tool to educate and prevent Customers from placing Source Separated Discarded Material into the improper designated Container(s). To ensure that assessment of fees are to be used for the intended purposes and not as a form of revenue generation, after the first issuance of a Customer Notice for the observance of Prohibited Container Contaminants in one (1) calendar year, Franchisee may issue a fee of ten (10) dollars. After the second observance of Prohibited Container Contaminants in the same calendar year, Franchisee may issue a fee of twenty (20) dollars. After the third observance of Prohibited Container Contaminants in the same calendar year, Franchisee may issue a fee of thirty (30) dollars. In the fourth and any subsequent observances of Prohibited Container Contaminants in the same calendar year, Franchisee may increase the contamination Processing fee by ten (10) dollar increments and may Collect the contaminated materials with the Solid Waste and Transport the contaminated materials to the Approved Disposal Facility, provided that the contaminants may safely and lawfully be Collected as Solid Waste.

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**F. Suspension of Contamination Processing Fee Program.** Franchisee agrees that contamination fees shall not exceed one percent (1%) of Franchisee's Gross Receipts in any calendar quarter. In the event that contamination fees exceed one percent (1%) of Franchisee's Gross Receipts in any calendar quarter, the assessment of contamination fees shall be suspended immediately and indefinitely pending a program assessment by the City and Franchisee. Upon program suspension or at the request of the City at any time during the Term of the Agreement, City and Franchisee shall meet and confer regarding the application and effectiveness of contamination fees in accomplishing the behavior change. If the program is suspended due to excessive revenue generation, the City may require Franchisee to either: i) modify the program parameters; ii) modify the amount of the contamination fee; or, iii) return to the City any funds generated by the contamination fee which exceed one percent (1%) of Franchisee's Gross Receipts for a given period of time.

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**G. City Actions upon Identification of Prohibited Container Contaminants.** The City or its designee shall perform SB 1383 activities required for the identification of Prohibited Container Contaminants which includes but is not limited to, record keeping, provision of educational notices and reporting.

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**5.5 Additional Green Waste Collection Programs**

**A. Christmas Tree Program.** Franchisee shall operate an annual Christmas Tree Collection

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and Diversion program. The program shall include curbside and drop-off Collection of Christmas Trees targeting all Single-Family and Multi-Family Dwelling Units and shall Divert these Christmas Trees from landfill Disposal and Process the materials as Organic Waste in accordance with this Agreement.

**B. On-Call/Green Waste Pick-Up.** Franchisee shall make available additional Green Waste collection services upon customer request and Transport the Material to the Approved Organic Materials Processing Facility.

**5.6 C. End Uses for Organic Materials**

**General.** Franchisee shall develop and implement plans and programs to Divert from Disposal the Organic Waste Collected through Curbside Collection of Organic Materials and the additional Organic Materials Collection programs specified in Section 5.5. Franchisee must provide end uses for Organic Materials that maximize Diversion credits for the City according to regulations established by CalRecycle, and that constitute a reduction in landfill Disposal in accordance with SB 1383. Power. To the extent that electricity produced from the Organic Materials Processing Facility qualifies for City's procurement credit under SB 1383, City shall be allocated its proportional share of such qualified electricity usage based on the inbound Tonnage delivered by City divided by the total inbound tonnage of the facility for that same time period.

**5.7 Operations**

**5.7.1 Schedule**

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

**5.7.2 Vehicles**

**A. General.** Franchisee shall provide a fleet of Collection vehicles sufficient in number and capacity to perform the work required by this Agreement and in strict accordance with its terms. Franchisee shall have available on Collection days sufficient back-up vehicles in order to respond to complaints and emergencies. The fleet shall be maintained according to the requirements of Municipal Code 8.04.030.

**B. Specifications.** All vehicles used by Franchisee in providing Organic Materials Collection services under this Agreement shall comply with all Federal, State, and local requirements for such vehicles as they now exist or may be amended in the future, and be registered with the California Department of Motor Vehicles. All such vehicles shall have water-tight bodies designed to prevent leakage, spillage or overflow. All such vehicles shall comply with U.S. Environmental Protection Agency noise emission regulations and other applicable noise control regulations.

**C. Condition** 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

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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.

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Franchisee shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. Franchisee shall maintain accurate records of repair, which shall include the date/mileage, nature of repair and the signature of a maintenance supervisor that the repair has been properly performed.

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

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

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

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**F. Renewable Natural Gas (RNG) Vehicles.** Under this Agreement, the 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 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 Exhibit A. Franchisee shall agree to the City the right to report this SB 1383 RNG usage toward the City's fulfillment of its annual recovered Organic Waste product procurement target in accordance with 14 CCR Section 18993.1.

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**5.7.3 Organic Materials Containers**

**A. General.**

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

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4. If an existing Container breaks or is otherwise rendered non-functional on or after the Effective Date, the Franchisee shall replace the non-functional Container with a Container that complies with the requirements of this Section. Notwithstanding this Section, the Franchisee is 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.

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**B. Container Types and Sizes**

1. Single-Family Containers. Franchisee shall supply each Single Family Dwelling Unit with an Organic Materials Container consistent in size with the City-approved Organic Materials Collection program.
2. Multi-Family Containers. Franchisee shall supply each Multi-Family Customer with Organic Materials Container(s) to adequately service the needs of the Multi-Family Premises.
3. Commercial Containers. Franchisee shall supply each Commercial Customer with Organic Materials Container(s) to adequately service the needs of the Premises. Notwithstanding this Section, Franchisee shall not be required to provide Organic Materials Container(s) to a Commercial Customer that is exempted from Organic Materials services by the City or has demonstrated to the City that it is Diverting Organic Materials through subscription with another City-approved Franchisee, or other City -approved method, for the duration of the approved exemption.
4. Kitchen Pails. In addition, upon request, Franchisee will supply each Single Family and Multi-Family customer a kitchen pail to Collect Organic Materials inside a Dwelling Unit prior to placement in Multi-Family and Single-Family Customers' Organic Materials Container, as approved by the City. Franchisee will be responsible for distribution of kitchen pails to Single-Family and Multi-Family Customers upon request, from Franchisee's office beginning the Effective Date. City may restock Franchisee inventories at local offices for distribution to new residents or residents who need a replacement.

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**C. Container Labels.**

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

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 the 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.

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**D. Container Colors.** Organic Materials Cart lids shall be green. Organic Materials Bin, Compactor, and franchisee provided Roll-Off lids or bodies shall be green. No later than December 31, 2035, Franchisee shall provide all Customers with Collection Containers that

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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.

- E. **Additional Containers.** City and Franchisee acknowledge that from time to time, a customer may damage or destroy a Container. City and Franchisee also acknowledge that from time to time Containers may be stolen from the curb or damaged due to normal use. When notified of such occurrence, Franchisee shall replace the Container, at no charge to the City or Customer, 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.

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

**5.7.4 Litter Abatement**

Franchisee shall use due care to prevent Organic Materials from being spilled or scattered during the Collection or Transportation process. If any Organic Materials are 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.

**5.7.5 Personnel**

- A. **General.** Franchisee shall furnish qualified drivers, mechanical, supervisory, clerical, and other personnel as may be necessary to provide services required by this Agreement in a safe and efficient manner.
- B. **Identification.** Franchisee shall ensure that while on duty each Collection worker wears a clean uniform which displays the Franchisee's company name and the worker's name or identification number.
- C. **Fees & Gratuities.** Company shall not, nor shall it permit any agent, employee, or subcontractors employed by it to request, solicit, demand, or accept, either directly or indirectly any compensation or gratuity for any services performed under this Agreement except as provided in Article 8 of this Agreement.
- D. **Training.** All drivers shall be trained and qualified in the operation of vehicles they operate and must possess a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.

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 employee is found to be discourteous or not to be performing services in the manner required by this Agreement,

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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.

## 5.8 Organic Materials Processing

### 5.8.1 Receipt of Organic Materials

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

### 5.8.2 Status of Approved Organic Materials Processing Facility

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

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

### 5.8.3 Alternative Processing Facility

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

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The parties recognize that substantial planning will be required in order to assure an orderly¶ initiation of Food and Green Waste Collection services on January 1, 2016. To that end, the¶ City will require Contractor to submit by November 1, 2015 a detailed implementation plan addressing, among other things, the steps Contractor will take and the schedule on which it will take them, to prepare for such an orderly initiation of service. The implementation plan shall cover Contractor's schedule for acquiring necessary equipment, personnel, storage and maintenance facilities, administrative offices,

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**5.8.4 Disposition of Unauthorized Waste**

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

**5.8.5 Subcontracting**

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

**5.9 Disposal**

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

**5.10 Generator Waivers**

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

**B. Generator Waivers.**

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

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

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

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

C. **Waiver Requests.** Generators may submit requests for de minimis waivers and physical space waivers to the City or its designee. If a Generator submits a request for a waiver to the Franchisee, the Franchisee shall refer the Generator to the City or its designee. Upon request of the City, the Franchisee shall support the City in the waiver review process by providing requested Customer information. If the City or its designee grants a waiver to a Generator, the City shall notify the Franchisee and Franchisee shall update the Customer's information and Service Level in accordance with Exhibit A.

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**ARTICE 6.  
OTHER SERVICES**

**6.1 Billing**

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

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The City may also direct Franchisee to insert mailers relating to Franchisee provided services with the billings and shall be responsible for all labor costs with respect to the mailing inserts. The mailers must fit in standard envelopes and not increase the required postage. The City will provide not less than thirty (30) days notice to Franchisee prior to the mailing date of any proposed mailers to permit Franchisee to make appropriate arrangements for inclusion of City materials.

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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. 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.

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

**6.2 Collection of Bills from Delinquent Customers**

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

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**6.3 Periodic Performance or Billing Audit**

The City shall have the right to periodically, not less than annually, request a performance audit or billing audit be completed by the 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. The cost of such audits will be an allowable cost under the rate setting methodology unless there are findings pursuant to Section 12.5.

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**6.4 Customer Service**

**6.4.1 Office**

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

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**6.4.2 Complaint Documentation**

All service complaints related to Food and Green Waste Collection shall be directed to Franchisee. Daily logs of complaints concerning Collection of Food and Green Waste shall be retained for a

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minimum of twenty-four (24) months and shall be available to City at all times during this Agreement upon twenty-four (24) hour notice.

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Franchisee shall log all complaints received orally or in writing and said log shall include the date and time the complaint was received, name, address and telephone number of complainant to the extent that such information is provided by complainant, description of complaint, employee recording complaint and the action taken by Franchisee to respond to and remedy complaint. All complaints received shall be responded to within twenty four (24) working hours of receipt.

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

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**6.4.3 Resolution of Customer Complaints**

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

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

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**6.4.4 Government Liaison**

Franchisee shall designate in writing a "Government Liaison" who shall be responsible for working with the City Manager, Utilities Director and/or one of their designated representative(s) to resolve customer complaints.

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**6.5 Education and Public Awareness**

**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, or its designee's, public education and outreach strategy may focus on topics such as: 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 and SB 1383 regulations. 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.

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**B. Franchisee Cooperation and Support.**

Franchisee acknowledges and agrees that education and public awareness are critical, key, and essential elements of any efforts to achieve AB 939, SB 1383, and other Applicable Laws. Accordingly, Franchisee agrees to cooperate and coordinate with the City or its designee to exploit opportunities to expand public and Customer knowledge concerning needs and methods to reduce, reuse, and Recycle Discarded Materials 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 or its designee 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.

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**C. Franchisee Education Activities**

1. Supplemental Education Materials. Franchisee shall perform all necessary public education activities related to the Organic Materials services as directed by the City. This shall include, but not be limited to, annual mailings to all Customers explaining the Organics Materials program, mailings prior to the start of services, flyers handed out with Container delivery and follow-up mailings or handouts related to the Collection of new materials. All public education materials shall be approved in advance by the City. 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 publication, distribution, and/or release. The City shall have the right to request that Franchisee include City identification and contact information on public education materials and approval of such requests shall not be unreasonably withheld.
2. Bill Inserts. Franchisee shall maintain its own program of providing information relevant to billing and Organic Materials 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.
3. 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.
4. Other Outreach. At the direction of the City, Franchisee shall participate in and promote AB 939, AB 341, AB 1826, SB 1383 or other Applicable Law activities 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 Discarded Materials program.

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**6.6 Procurement of Recovered Organic Waste Products**

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

six (6) hours per event.

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

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**ARTICLE 7.  
PAYMENTS TO CITY**

**7.1 Franchise Fee**

In consideration of the exclusive franchise provided for in this Agreement, Franchisee shall pay the City ten percent (10%) of its gross revenues for Organic Materials Collection services; provided, however, that such Franchise Fee shall not exceed the costs of the City to deliver service to properties. Such Franchise Fee shall be a "pass-through" expense for purposes of Rate review.

**7.2 AB 939/SB 1383 Fee**

Franchisee 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, Franchisee shall pay that fee directly to the designee. Said fees shall be an allowable cost in Franchisee's rate application. All AB 939/SB 1383 fees and Solid Waste Management fees paid to the City or its designee shall be considered a pass through cost for purposes of rate setting, and, as such changes 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.

**7.3 Business License Tax**

Franchisee shall pay each annual business license tax.

**7.4 Other Fees**

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

**7.5 Time and Method of Payment**

If 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.

**7.6 Adjustment of Fees**

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

**7.7 Review of Fee Payments**

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

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**ARTICLE 8.**  
**FRANCHISEE'S COMPENSATION AND RATES**

**8.1 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, profit and all other things necessary to perform all the services required by this Agreement in the manner and at the times prescribed.

The Franchisee does not look to the City for payment of any sums under this Agreement. Franchisee will perform the responsibilities and duties described in this Agreement in consideration of the right to charge and collect from customers for services rendered at rates fixed by the City from time-to-time and the right to sell compost and other beneficial byproducts generated from the Food and Green Waste. The City shall have the right to structure those rates as it deems appropriate so long as the revenues forecasted to be received by 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"*.

**8.2 Initial Rates**

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

**8.3 Subsequent Rates**

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

**8.4 Right to Perform Rate Reviews**

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

**8.5 Extraordinary Adjustments**

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

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

**ARTICLE 9.  
RECORDKEEPING AND REPORTING**

**9.1 Records**

**9.1.1 General**

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 Organic Materials. Information is to be separated by kind of account (Single-Family, Multi-Family, and Commercial);
3. Additional Green Waste Collection Service Requests;
4. Routes;
5. Facilities, equipment, and personnel used;
6. Facilities and equipment operations, maintenance, and repair;
7. Processing of Organic Materials;
8. Complaints; and
9. Missed pick-ups.

C. Franchisee shall maintain records of Transfer, Diversion, and Disposal of all Organic Materials Collected in the City for the period of this Agreement and all extensions to this Agreement or successor Agreements. In the event Franchisee discontinues providing Organic Materials services to City, Franchisee shall provide all records of Diversion and Disposal of all Organic Materials Collected within the City to City within thirty (30) days of discontinuing service. Records shall be in chronological order, and organized in a form readily and easily interpreted.

D. Records for other programs shall be tailored to specific needs. In general, they shall include:

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

E. Unless otherwise required in this Agreement, Franchisee shall retain all records and data required to be maintained by this Agreement for the Term of this Agreement plus five (5) years after its expiration or earlier termination. Franchisee's records shall be stored in one central location, physical or electronic, that can be readily accessed by Franchisee. Upon request, any such records shall be retrieved in a timely manner, not to exceed ten (10) Working Days of a request by the City and made available to the City; including any record or

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**RECORDS, REPORTS AND INFORMATION,  
STUDIES AND HEARING REQUIREMENTS¶**

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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.

**9.1.2 Financial Records**

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

**9.2 Reports**

**A. 9.2.1 Report Formats and Schedule** Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:

1. Determine and set rates, and evaluate the financial efficacy of operations; and
2. Evaluate past and expected progress towards achieving goals and objectives; and
3. Determine needs for adjustment to programs; and
4. Evaluate Customer service and Complaints.

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

**C.** Franchisee shall submit all reports to the City, electronically to the Utilities Director, via e-mail, using software acceptable to the City. The City reserves the right to require the Franchisee to maintain records and submit the reports required herein through use of the City-selected web-based software platform and/or Microsoft Excel spreadsheet, at the Franchisee's expense.

Monthly reports shall be submitted within 20 ten calendar days after the end of the report month.

**9.2.2 Monthly Reports**

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

- A.** Discarded Materials, Collected, Transferred, Diverted and Disposed of, by sector (Commercial, industrial, Residential) of Waste Generator-Collected by Franchisee, in Tons, by month
- B.** Complaint summary, for month and cumulative for report year, as above, summarized by nature of Complaints.
- C.** Narrative summary of problems encountered and actions taken with recommendations for the City, as appropriate.
- D.** All requirements specified in "Exhibit A."

**9.2.3 Annual Report**

The Annual Report is to be essentially in the form and content of the monthly reports. Annual reports shall include at a minimum, all data and information described in Exhibit A, unless otherwise specified under this Agreement. In addition, Franchisee's annual audited financial reports/statements, with the operations related to the City services segregated, shall be included. The annual report shall also include a complete inventory of equipment used to provide all services.

Financial statements shall include a supplemental schedule combining Franchisee's results of operations, separating the specific revenues and expenses, including detailed information with respect to general overhead claimed by the Franchisee, in connection with the operations provided for in this

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City approved records (format) shall be maintained for the City separate from other jurisdictions relating to:¶  
<#>Customer services;¶  
<#>Weight of Food and Green Waste;¶  
<#>Routes;¶  
<#>Facilities, inventory of equipment and personnel used;¶  
<#>facilities and equipment operations, maintenance and repair;¶

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Agreement from others included in such financial statements. The financial statements, supplemental schedule, management letter and footnotes shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and audited, in accordance with Generally Accepted Auditing Standards (GAAS) by a certified public accountant (CPA) licensed (in good standing) to practice public accounting in the State of California as determined by the State of California Department of Consumer Affairs Board of Accountancy. The CPA opinion on Franchisee's annual financial statements and supplemental schedule shall be unqualified, except as to uncertainties for which the ultimate outcome cannot be determined by the date of the CPA's opinion.

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**9.2.4 Additional Reports.**

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 request.

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**9.3 Right to Inspect Records**

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

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**9.3.1 Right to Review Basis for Landfill Tipping Fee Increases**

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

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

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**9.4 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 City and its designated agents to accomplish 1) studies and data collection and prepare reports as needed to determine weights and volumes of Solid Waste generated, Diverted, Disposed, transformed, or otherwise handled/processed to satisfy AB 939 requirements; and 2) other efforts the City may be required to conduct for compliance with Applicable Law, such as SB 1383.

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**9.5 Performance Hearing**

The City maintains the right to hold a public hearing at any time, not more than once each year, at which the Franchisee shall be present and shall participate, to review its services and performance. The purpose of the hearing is to provide for a discussion and review of technological, economic, and regulatory changes in order to achieve a continuing, advanced Solid Waste management system; and

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to ensure customer service quality and any other areas that may be addressed regarding services are being provided with adequate quality, efficiency and economy.

Sixty (60) days after receiving notice from City of a Performance Hearing, Franchisee shall, at a minimum, submit a report to City indicating (1) changes recommended and/or new services to improve City's ability to meet the goals of AB 939 and Ab 1826 to contain costs and minimize impacts on rates; and (2) any specific plans for provision of changed or new services by Franchisee.

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**ARTICLE 10.  
INDEMNIFICATION, INSURANCE AND BOND**

**10.1 Indemnification**

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

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

**10.2 Landfill Diversion**

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

**10.3 AB 939/SB1383 Indemnification**

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

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10.4 Insurance

- A. **Minimum Limits of Insurance.** Franchisee shall maintain limits no less than:
  1. Comprehensive General Liability: One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury, Personal injury and property damage.
  2. Automobile Liability: One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
  3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of
  4. \$1,000,000 per accident.

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- B. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, directors and employees; or Franchisee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

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- C. **Other Insurance Provisions.** The policies are to contain, or be endorsed to contain, the following provisions:

- 1. General Liability and Automobile Liability Coverages
  - a) The City, its officials, employees, and directors are to be covered as insured as respects: liability arising out of activities performed by or on behalf of Franchisee; products and completed operations of Franchisee; Premises owned, leased or used by Franchisee; or automobiles owned, leased, hired or borrowed by Franchisee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers.

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- b) Franchisee's insurance coverage shall be primary insurance as respects City, its officials, directors, employees and volunteers. Any insurance or self-insurance maintained by City, its officials, or employees shall be excess of Franchisee's insurance and shall not contribute with it.

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- c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, or employees. Coverage shall state that 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.

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

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- 3. All Coverages - Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to City.

- D. **Acceptability of Insurers.** The insurance policies required by this Section shall be issued by an insurance Franchisee or companies admitted to do business in the State of California

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subject to the jurisdiction of the California Insurance Commissioner and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better.

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**E. Verification of Coverage.** Franchisee shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to City and are to be received and approved by City before work commences. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

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**10.5 Faithful Performance Bond**

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

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

**11.1 General**

In the event that Franchisee, for any reason whatsoever, fails, refuses or is unable to Collect, transport or process any or all Food and Green Waste materials which it is required by this Agreement to Collect and process, at the time and in the manner provided in this Agreement, for a period of more than seven (7) calendar days, and if, as a result thereof, Food and Green Waste should accumulate in the City to such an extent, in such a manner, or for such a time that the City Manager should find that such accumulation endangers or menaces the public health, safety or welfare, then City shall have the right, but not the obligation, upon twenty-four (24) hour prior written notice to 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 Food and/or Green 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 Food and Green 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 affect the transfer of possession of property to City for City's use.
- It will, if City so requests, keep in good repair and condition all of such property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain said property in operational condition.
- City may immediately engage all or any personnel necessary or useful for the Collection, transportation and processing Green Waste, including, if City so desires, employees previously or then employed by 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 Green Waste Collection, Transportation and processing operations and for the billing and collection of fees for these services.

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

If the interruption or discontinuance in service is caused by any of the reasons listed in Section 12.4 (Excuse From Performance), City shall pay to 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 (I) does not constitute a taking of private property for which compensation must be

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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.

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**11.2 Temporary Possession or 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 Food and Green Waste Services which may include the grant of a Contract to another company. The same notice requirements of Section 11.1 are applicable.

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

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

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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 Food and Green 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.

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**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 Food and Green Waste services as provided in this Agreement, whereupon Franchisee shall be bound to resume the same.

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**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.

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

**12.1 Events of Default**

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

- A. Fraud or Deceit.** If Franchisee practices, or attempts to practice, any fraud or deceit upon city.
- B. Insolvency or Bankruptcy.** If Franchisee becomes insolvent, unable, or unwilling to pay its debts when due, or upon listing of an order for relief in favor of Franchisee in a bankruptcy proceeding. The Franchisee is also in default if there is an assignment of this contract for the benefit of its creditors.
- C. Failure to Maintain Coverage.** If Franchisee fails to provide or maintain in full force and effect the Workers' Compensation, liability, indemnification coverage or any insurance coverage or bond required under this Agreement.
- D. Violations of Regulation.** If Franchisee facilities fall out of full regulatory compliance or if Franchisee violates any orders or filings of any regulatory body having jurisdiction over Franchisee relative to this Agreement, provided that Franchisee may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Agreement shall be deemed to have occurred.
- E. Failure to Perform.** If Franchisee ceases to provide Food and Green Waste services as required under this Agreement for a period of two (2) days or more, for any reason within the control of 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 there under and which is not corrected or remedied within the time set in the written notice the violation or, if Franchisee cannot reasonably correct or remedy the breach within the time set forth in such notice, if Franchisee should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.
- 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.

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

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I. 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.

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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 IO 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.

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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.

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

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

12.3 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: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for provided services pursuant to this Agreement, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that exclusive 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, (iv) 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.

B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards. The parties acknowledge that consistent, reliable Organic Materials 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 Agreement to it. The Parties further recognize that if Franchisee fails to achieve the performance standards defined in this Section, comply with Complaint resolution criteria, or fails to submit required documents in a timely manner, City and its residents will suffer damages and that it is and will be impractical and extremely difficult to

ascertain and determine the exact amount of damages which City will suffer. Therefore, without prejudice to City's right to treat such non-performance as an event of default under this Article 12, the parties agree that the following Liquidated Damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or inconvenient. Recognizing the importance of resolving any failure to meet the service performance standard, the City shall contact Contractor within two (2) business days of any failing reported directly to the City.

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

	Event of Non-Performance	Liquidated Damage
<u>Collection Reliability and Quality</u>		
1	<u>Failure to Implement three-Container System. For each occurrence of failing to provide Customers with Organic Materials Containers as part of the three-Container system required by and compliant with the City's Municipal Code upon request of the City or its designee (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 and/or pursuant to Section 5.10 of this agreement) unless customer refuses to accept the Organic Materials Container from Franchisee, and Franchisee has provided this information to the City or its designee for further review within two (2) business days of customer refusal.</u>	<u>\$150 / Generator or Customer / occurrence / Day until compliance achieved</u>
2	<u>For each failure over five (5) annually to commence service to a new Customer account within seven (7) days after order;</u>	<u>\$150.00</u>
3	<u>For each failure over ten (10) annually to Collect Food and/or Green Waste, which has been properly set out for Collection, from an established Customer account on the scheduled Collection day</u>	<u>\$150.00</u>
4	<u>For each failure to Collect Food and/or Green Waste which have been properly set out and accessible for Collection, from the same Customer on two (2) consecutive scheduled pickup days;</u>	<u>\$150.00</u>
5	<u>For each occurrence over five (5) annually of damage to private property;</u>	<u>\$250.00</u>
6	<u>For each occurrence of discourteous behavior;</u>	<u>\$250.00</u>
7	<u>For each failure over ten (10) annually to clean up Food and/or Green Waste spilled by Franchisee from Containers</u>	<u>\$150.00</u>
8	<u>For each occurrence over five (5) annually of Collecting Food and/ or Green Waste during unauthorized hours;</u>	<u>\$250.00</u>
9	<u>For each failure to respond to a Customer Complaint within twenty-four (24) working hours;</u>	<u>\$100.00</u>

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a new customer account within seven (7) days after order: \$150.00¶

For each failure over ten (10) annually to Collect Food and/or Green Waste, which has been properly set out for Collection, from¶

an established customer account on the scheduled Collection day: \$150.00¶

For each failure to Collect Food and/or Green Waste which have been properly set out for Collection, from the same customer on¶

two (2) consecutive scheduled pickup days:¶  
For each occurrence over five (5) annually of damage to private property:¶

For each occurrence of discourteous behavior:¶  
For each failure over ten (10) annually to clean up Food and/or Green waste spilled from Bins:¶

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Food and/ or Green Waste during unauthorized hours:¶

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Food and/ or Green Waste during unauthorized hours:¶

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

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	Event of Non-Performance	Liquidated Damage
10	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 5.7 of this Agreement.	\$150 / Container / occurrence
11	Use of Unauthorized Facilities. For each individual occurrence of delivering Discarded Materials to a Facility other than an Approved Facility(ies) for each Discarded Material type under this Agreement.	\$150 / Ton / occurrence
Reports and Timeliness of Submissions to the City		
13	REPORTS. Any report shall be considered late until such time as a correct and complete report is received by City. For each calendar day a report is late, the daily assessment shall be: Monthly Reports: For each infraction Annual Reports: For each infraction	\$100 per day \$500 per day
14	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.	\$120 / day
Other		
15	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.	\$180 / occurrence
16	Failure to Issue Contamination Notices. For each failure of Franchisee Collection personnel to issue contamination warning notices and maintain documentation of issuance as required by Section 5.4 of this Agreement.	\$100 / Franchisee Route / day
17	Improper Fee Issuance. For each fee that is issued to a Generator without prior authorization from City under this agreement.	\$100 / Customer / Day

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.

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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#### 12.4 Excuse from Performance

The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes, other "acts of God", war, civil

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Amount. The City Manager may assess liquidated damages for each calendar day or event, as appropriate, that Contract

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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.

**12.5 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, and 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.

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**ARTICLE 13.  
OTHER AGREEMENTS OF THE PARTIES**

**13.1 Relationship of Parties**

The parties intend that Franchisee shall perform the services required by this Agreement as an independent contractor, engaged by City and not as an officer or employee of City nor as a partner of or joint venture with City. No employee or agent of Franchisee shall be or shall be deemed to be an employee or agent of City. Except as expressly provided herein, Franchisee shall have the exclusive control over the manner and means of conducting the Green Waste services performed under this Agreement, and all Persons performing such services.

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Franchisee shall be solely responsible for the acts and omissions of its officers, employees, subcontractors and agents. Neither Contractor nor its officers, employees, subcontractors and agents shall obtain any rights to retirement benefits, workers compensation benefits, or any other benefits which accrue to City employees by virtue of their employment with City.

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**13.2 Compliance with law**

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

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**13.3 Governing Law**

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

**13.4 Jurisdiction**

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

**13.5 Assignment**

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

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For purposes of this Section when used in reference to Franchisee, "assignment" shall include, but not be limited to (1) a sale, exchange or other transfer of at least fifty-one percent (51%) all of Franchisee's assets dedicated to service under this Agreement to a third party; (2) a sale, exchange or other transfer of outstanding common stock of Franchisee to a third party provided said sale, exchange or transfer may result in a change of control of Franchisee; (3) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which results in a change of ownership or control of Franchisee; (4) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Franchisee's property, or transfer occurring in the event of a probate proceeding; and (5) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any

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such transfer or change of ownership, or change of control of Franchisee. Franchisee acknowledges that this Agreement involves rendering a vital service to City's residents, 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 investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment;
- B. 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 Green 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 has not suffered any significant citations or other censure from any federal, state or local agency having jurisdiction over its Solid Waste management operations due to any significant failure to comply with state, federal or local Environmental Laws and that the assignee has provided City with a complete list of such citations and censures; 3) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; 4) that the proposed assignee conducts its Green Waste management practices in accordance with sound waste management practices in full compliance with all federal, state and local laws regulating the collection, transportation, processing, marketing and disposal of Solid Waste including Hazardous Wastes; and, 5) of any other information required by City to ensure the proposed assignee can fulfill the Terms of this Agreement in a timely safe and effective manner.

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

**13.6 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.

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**13.7 Binding on Assigns**

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

**13.8 Transition to Next Franchisee**

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

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**13.9 Parties in Interest**

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

**13.10 Waiver**

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

**13.11 Franchisee's Investigation**

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

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**13.12 Notice**

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

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If to City: Utilities Director  
City of San Luis Obispo  
879 Morro Street  
San Luis Obispo, CA 93401  
[ut\\_services@slocity.org](mailto:ut_services@slocity.org) and [cityclerk@slocity.org](mailto:cityclerk@slocity.org)

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If to Franchisee: District Manager, San Luis Garbage Company  
4388 Old Santa Fe Springs 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. The notice, if mailed, is deemed served three (3) days after the mailing.

**13.13 Representatives of the Parties**

References in this Agreement to the "City" shall mean the City Council and all actions to be taken by

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

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

**13.14 City Free to Negotiate with Third Parties**

City may investigate all options for the Collection and processing of Food and Green Waste after the expiration of the Term. Without limiting generality of the foregoing, City may solicit proposals from Franchisee and from third parties for the provision of Food and Green Waste services, and any combination thereof, and may negotiate and execute Agreements for such services which will take effect upon the expiration or earlier termination under Section 12.1 (Events of Default) of this Agreement.

**13.15 Compliance with City Code**

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

**13.16 Privacy**

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

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**ARTICLE 14.  
MISCELLANEOUS AGREEMENTS**

**14.1 Entire Agreement**

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

**14.2 Section Headings**

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

**14.3 References to laws and Other Agreements**

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

**14.4 Interpretation**

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

**14.5 Agreement**

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

**14.6 Severability**

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

**EXHIBIT A**  
**RECORD KEEPING AND REPORTING**

**A.1 General**

Franchisee shall maintain such accounting, statistical, and other records related to its performance under this Agreement as shall be necessary to develop the reports required by this Agreement or City Municipal Code. Franchisee agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with Applicable Laws and regulations and to meet the reporting and Discarded Materials Collection, Processing, and Disposal program management needs of the City. At the written direction or approval of City, the records and reports to be maintained and provided by Franchisee in accordance with this Exhibit and other Articles of the Agreement may be adjusted in number, format, and frequency, if required to comply with State or Federal regulatory or reporting requirements.

Information from Franchisee's records and reports can be used to, among other things:  
Determine and set Rates and evaluate the financial efficacy of operations;  
Evaluate past and expected progress toward achieving the Franchisee's Landfill Disposal reduction or Diversion goals and objectives;  
Provide concise and comprehensive program information and metrics for use in fulfilling reporting requirements under Applicable Law;  
Determine needs for adjustment to programs;  
Evaluate Customer service and Complaints; and,  
Determine Customer compliance with AB 341, AB 1826, and SB 1383 statutes and corresponding regulations; and, any subsequent State-mandated landfill Disposal reduction, Recycling, recovery, or Diversion statutes, regulations, or other requirements.

**A.2 Record Keeping**

**A. General.** Franchisee shall maintain Customer contact data, Customer service, accounting, statistical, operational, and other records related to its performance as shall be necessary to provide reporting required by this Agreement and Applicable Law and to demonstrate compliance with this Agreement and Applicable Law (such as, but not limited to, AB 939, AB 341, AB 1826, AB 876, AB 901, and SB 1383 statutes and corresponding regulations).

Franchisee shall maintain adequate records, and corresponding documentation, of information required by this Exhibit, such that the Franchisee is able to produce accurate monthly and annual reports and is able to provide records to verify such reports. Franchisee will make these records available and provide to the City any record or documentation necessary for the City to fulfill obligations under Applicable Law including, but not limited to, AB 939, AB 341, AB 1826, AB 876, AB 901, and SB 1383 statutes and corresponding regulations; and, other current or future Federal, State, or local statutes and regulations, as amended. Upon request by the City, Franchisee shall provide access to Franchisee's requested records in a timely manner, not to exceed ten (10) Business Days from the time of City's request to Franchisee.

**B. Record Retention and Security.** Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed, pursuant to this Exhibit. Franchisee's records shall be stored in one central location, physical or electronic, that can be readily accessed by Franchisee. City reserves the right to require the Franchisee to maintain the records required herein through the use of a City-selected web-based software platform, at Franchisee's expense. Unless otherwise required in this Exhibit, 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.

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EXHIBIT A¶  
<#>A. Exhibit A – Recordkeeping and Reporting is hereby incorporated into the Agreement, as attached to this Amendment.¶

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Deleted: Record keeping and reporting requirements specified in this Agreement shall not be considered a comprehensive list of reporting requirements. In particular, this Exhibit is intended to highlight the general nature of records and reports and their minimum content and is not meant to comprehensively define the scope and content of the records and reports that Contractor is required to maintain and report by Applicable Law or this Agreement. Upon written direction or approval of City, the records and reports required by Contractor in accordance with this and other Articles of the Agreement shall be adjusted in number, format, or frequency. ¶

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Records and data shall be in chronological and organized form and readily and easily interpreted. Franchisee shall maintain adequate record security to preserve records from events that can be reasonably anticipated such as a fire, theft, and an earthquake. Electronically-maintained data and records shall be protected and backed-up. To the extent that Franchisee utilizes its computer systems to comply with record keeping and reporting requirements under this Agreement, Franchisee shall, on a monthly basis, save all system-generated reports supporting those record keeping and reporting requirements in a static format in order to provide an audit trail for all data required.

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C. **Compilation of Information for State Law Purposes.** Franchisee shall maintain accurate records for its operation, including, but not limited to, Discarded Materials quantities Collected and quantities Transported to or Transferred to each Approved Facility, listed separately by material type, Customer type, and Facility. Records shall be maintained in such form by methods that facilitate the use of data for the production of reports as needed. Franchisee will make these records available and provide to the City, any record or documentation necessary for the City to fulfill obligations under Applicable Law including, but not limited to, AB 939, AB 341, AB 1826, AB 876, AB 901, AB 1595, and SB 1383 statutes and corresponding regulations; and, other current or future local, Federal or State statutes and regulations, as amended.

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**A.3 Reporting**

**A.3.1 General**

A. **General Purpose.** Reports are intended to compile recorded data into useful forms of information that can be used by the City. All reports shall be adequate to meet City's current and future reporting requirements to CalRecycle, including AB 939, AB 341, AB 1826, and SB 1383 statutes and corresponding regulations, or any other State or Federal agency statutes and regulations throughout the Term of this Agreement.

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B. **Failure to Report.** Failure of Franchisee to comply with the reporting requirements as set forth in this Section may result in an assessment of Liquidated Damages in accordance with the Liquidated Damages provision in Section 12.3 of this Agreement. Franchisee's repeated failure to submit reports, and/or failure to submit reports on time, may be deemed an event of default and may result in the termination of the Agreement at the discretion of the City Manager, in accordance with Article 12 of this Agreement.

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C. **Report Format.** Franchisee shall submit all reports to the City electronically via e-mail using software acceptable to the City. The City reserves the right to require the Franchisee to maintain records and submit the reports required herein through use of the City-selected web-based software platform and/or Microsoft Excel spreadsheet, at the Franchisee's expense.

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D. **Submittal Process.** Reports shall be submitted to the Utilities Director per Section 9.2 of the Organic Materials Services Agreement. Reports shall be submitted electronically via email or uploaded to a document sharing platform agreed upon by the Parties. City reserves the right to require the Franchisee to maintain records and submit the reports required herein through use of a City-selected web-based software platform, at the Franchisee's expense.

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Monthly reports shall be submitted within twenty (20) calendar days after the end of the reporting month; and annual reports shall be submitted before June 30th, for the previous reporting year.

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**A.3.2 Monthly Reports**

Monthly reports shall be submitted by Franchisee to City and shall include the following information pertaining to the most recently completed calendar month. In addition, each monthly report shall include a year-to-date summary page that includes the data submitted from the monthly report(s).

submitted in the calendar year prior to the submittal of the current monthly report. Franchisee shall report the information included in the following subsections.

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**A. Tonnage Report**

1. Franchisee shall report the total quantities in Tons of Discarded Materials Collected, Transferred, Processed, and Disposed by the Franchisee, all of which shall be based on actual certified scale weights for each load, if available, or similarly accurate methodology pursuant to weighing protocol. Tonnage shall be reported separately by:
  - a. Material type, which shall include, at a minimum, separate reporting of Source Separated Organic Materials and any other type of Discarded Material separately Collected by Franchisee;
  - b. Customer/sector type (Single-Family, Multi-family, Commercial, Roll-off, C&D); and,
  - c. Approved Facility and Facility type.
2. Report Residue level and Tonnage for all Discarded Materials Processed, listed separately by material type Collected and Approved Facility(ies) used.
3. Source Separated Recyclable Materials Tonnage Marketed, by commodity, and including average commodity value for each, and Processing Residue Tonnage Disposed, listed separately by material type Collected and Approved Facility(ies) used.
4. Documentation of all Discarded Materials exported out of State, as provided in 14 CCR Sections 18800 through 18813.

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**B. Collection and Subscription Report**

1. Number of Containers at each Service Level by Customer Type and program, including:
  - a. 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.
  - b. 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, Bin, and Roll-Off Service Level listed separately for Single-Family, Multi-Family, and Commercial and separately for each type of Discarded Material; the number and type of waivers (i.e., de minimis or physical space constraint) active for Customers for each type of Discarded material; and the number of Bulky Items Collections performed.

**C. Contamination Monitoring Report**

The Franchisee shall submit the following information regarding Franchisee conducted contamination monitoring and issuance of Prohibited Container Contaminant Notices conducted pursuant to Section 5.4 of this Agreement:

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1. Description of the Franchisee's Process for determining the level of contamination;
2. Summary report of Customer Notices issued, which for each notice shall include the date of issuance, Customer name, and service address.
3. A record of each inspection and contamination incident, which shall include, at a minimum:
  - a. Name of the Customer

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- b. Address of the Customer
- c. The date the contaminated Container was observed
- d. The staff who conducted the inspection
- e. The total number of violations found and a description of what action was taken for each
- f. Copies of all notices issued to Generators with Prohibited Container Contaminants
- g. Any photographic documentation or supporting evidence.

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Any other information reasonably requested by the City or specified in contamination monitoring provisions of this Agreement.

**D. Customer Service Report**

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

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- a. Total number of SB 1383 non-compliance Complaints received and total number of SB 1383 non-compliance Complaints investigated
- b. Copies of documentation recorded for each SB 1383 non-compliance Complaint received, which shall at a minimum include the following information:
  - i. The SB 1383 non-compliance Complaint as received;
  - ii. The name and contact information of the complainant, if the SB 1383 non-compliance Complaint is not submitted anonymously;
  - iii. The identity of the alleged violator, if known;
  - iv. A description of the alleged violation; including location(s) and all other relevant facts known to the complainant;
  - v. Any relevant photographic or documentary evidence submitted to support the allegations in the SB 1383 non-compliance Complaint; and,
  - vi. The identity of any witnesses, if known.

- c. Copies of all SB 1383 non-compliance Complaint reports submitted by Franchisee to the City.

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- d. Copies of all investigation reports submitted to the City which shall include at a minimum:
  - i. The SB 1383 non-compliance Complaint as received;
  - ii. The date the Franchisee investigated the SB 1383 non-compliance Complaint;
  - iii. Documentation of the findings of the investigation;
  - iv. Any photographic or other evidence collected during the investigation; and,
  - v. Franchisee's recommendation to the City on whether or not the entity investigated is in violation of SB 1383 Regulations based on the Franchisee's investigation.

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**H. Compliance Monitoring and Enforcement Report**

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

**I. Public Education and Outreach Report**

- 1. 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.
- 2. 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.
- 3. For any mass distribution through mailings or bill inserts, the Franchisee shall maintain a record of the date, a copy of the information distributed, and the type and number of accounts that received the information.
- 4. A copy of electronic media, including the dates posted of: social media posts, e-mail communications, or other electronic messages.
- 5. 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.
- 6. The annual public education plan required by Section 6.5 of the Agreement for the upcoming then-current calendar year. For example, Franchisee submittal of a 2022 annual report in February 2023 shall include Franchisee submittal of the annual public education plan for calendar year 2023.

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**A.3.4 Additional Reports**

**A. Upon Request Reporting.** City reserves the right to request additional reports or documents in the case of unforeseen legislative or regulatory changes, requests from CalRecycle, or additional requirements imposed upon the City. The Franchisee shall provide the requested reports, documents, or information within ten (10) Business Days upon receipt of the request or within a timeframe determined by the City Manager, which shall not to exceed ten (10) days.

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

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- 1. Include reports of current throughput and permitted capacity and available capacity for Organic Materials Processing for any Facility in the City that Processes Organic Materials. Existing capacity may include identification of monthly Tons of additional Source Separated Recyclable Materials, Source Separated Organic Materials, and/or Solid Waste capacity such Facility has the ability to receive within permitted limits.
- 2. Include description of potential new or expanded Processing capacity at those Facilities, operations, and activities for Processing of Organic Materials, including information about throughput and permitted capacity necessary for planning purposes.
- 3. Be submitted using a form or format approved by the City Manager.

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

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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

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