

**RESTATED
SOLID WASTE, RECYCLING, AND ORGANIC SERVICES
FRANCHISE AGREEMENT**

**BETWEEN
CITY OF MORRO BAY**

**AND
MORRO BAY GARBAGE SERVICE, INC.**

SEPTEMBER 2022

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RESTATED SOLID WASTE, RECYCLING, AND ORGANIC MATERIALS SERVICES FRANCHISE AGREEMENT

This Agreement is entered into on the 13th day of September, 2022 by and between the **City of Morro Bay**, a municipal corporation, hereinafter referred to as “City,” and **Morro Bay Garbage Service, Inc.**, a California Corporation hereinafter referred to as “Contractor,” for Contractor to provide Solid Waste, Recycling and Organic Materials services within the incorporated limits of City.

RECITALS

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

1. Chapters 8.16 and 8.18 of the Morro Bay Municipal Code established regulations and procedures to provide for the storage, Collection, and removal of all Discarded Materials, hereinafter collectively referred to as Discarded Materials generated and/or accumulated within the City; and
2. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (AB 939) Division 30 of the California Public Resources Code, commencing with §40000, has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for Recyclable Materials handling within their jurisdictions; and
3. The State of California has found and declared that the amount of Solid Waste generated in California, coupled with diminishing disposal capacity and interest in minimizing potential environmental impacts from landfilling 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 a reduction in Landfill Disposal and to maximize the use of feasible waste reduction, Reuse, Recycling, and composting options in order to reduce the amount of material that must be Disposed; and
4. 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. To this end, on or about December 14, 2021, the Morro Bay City Council adopted Chapter 8.18 into the Morro Bay Municipal Code in order to implement compliance with SB 1383; and
5. The City previously determined that an agreement granted to a private company for the Collection, Processing, and marketing of Commercial and Residential Recyclable Materials is the most effective and efficient way to Collect and Divert Commercial and Residential Recyclable Materials within the City. The City sought competitive proposals (“RFP”) for such services. As a result, the Contractor submitted a proposal to the City entitled City of Morro Bay Solid Waste and Recycling RFP, and in 2001 the City selected the Contractor on the competitive advantages of that proposal over other proposals received by the City; and
6. Pursuant to California Public Resources Code Section 40059(a)(2), the City Council previously determined that the public health, safety, and well-being required adoption of an exclusively franchised Garbage, Recycling and Greenwaste Services Franchise Agreement (the “Original Agreement”), which was awarded to Contractor as a qualified company for the Collection and subsequent Transfer, Transportation, Recycling, Processing, and/or Disposal of Discarded

Materials. The Original Agreement was adopted by City Resolution No. 48-01, effective on or about January 1, 2002. The Original Agreement was amended on four (4) occasions in order to implement extensions of the timeframe for Contractor's services and effect other miscellaneous amended terms of service. The Original Agreement and all amendments thereto are collectively referred to herein as the "Prior Agreements;" and

7. Given the comprehensive scope and complexity of SB 1383, amongst other State regulations adopted since the implementation of the Original Agreement, the City and Contractor have determined that a full restatement of the Prior Agreements is in order. The City continues to declare its intention of maintaining reasonable rates and high-quality service for Discarded Materials Service and the Collection, Processing, and marketing of Recyclable Materials. The Contractor is responsible for arranging Commercial and Residential Recyclable Materials Collection, Processing, marketing and educational outreach services; and
8. This Restated Solid Waste, Recycling, and Organic Materials Services (this "Agreement") is intended to fully supersede and replace all Prior Agreements between the City and Contractor for purposes of Contractor's solid waste and recycling services in the City of Morro Bay, including new terms of rate structuring and compliance with Applicable Laws; and
9. This Franchise Agreement has been developed by and is satisfactory to the Parties. The City wishes to continue utilizing the Contractor's services to offer Discarded Materials Collection services to Single-Family, Multi-Family, and Commercial Generators in the City of Morro Bay pursuant to the terms of this restated Agreement.

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

Article 1. Definitions

- 1.1 **"AB 939"** means the California Integrated Waste Management Act of 1989, as it may be amended from time to time.
- 1.2 **"Affiliate"** means all businesses (including corporations, limited and general partnerships and sole proprietorships) which are directly or indirectly related to Contractor by virtue of direct or indirect common ownership interest or common management shall be deemed to be "Affiliated with" Contractor and included within the term "Affiliates with" Contractor and included within the "Affiliates" as used herein. An Affiliate shall include a business in which Contractor owns a direct or indirect ownership interest, a business which has a direct or indirect ownership interest in Contractor and/or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) "ten percent (10%)" shall be substituted for "fifty percent (50%)" in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.
- 1.3 **"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 **"AB 341"** means the California Jobs and Recycling Act of 2011 (Chapter 476, Statues of 2011 [Chesbro, AB 341]), also commonly referred to as "AB 341", as amended, supplemented, superseded, and replaced from time to time.

- 1.5 **"AB 939"** means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), also commonly referred to as "AB 939," as amended, supplemented, superseded, and replaced from time to time.
- 1.6 **"Agreement"** means this Residential and Commercial Solid Waste, Recycling and Organic Materials Services Franchise Agreement (including all exhibits and attachments, and any amendments thereto) between City and Contractor.
- 1.7 **"Applicable Law"** means all Federal, State, County, and local laws, regulations, rules, orders, judgments, degrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the Collection, Transportation, and Processing of Recyclable Materials, Organic Materials, and Solid Waste that are in force on the Effective Date and as may be enacted, issued, or amended during the Term of this Agreement. Applicable Law includes, but is in no way limited to, AB 939, AB 341, AB 1826, and SB 1383.
- 1.8 **"Approved Facility(ies)"** means any one of or any combination of the: Materials Recovery Facility; Approved Organic Materials Processing Facility; Approved Transfer Facility; and/or Approved Disposal Facility.
- 1.9 **"Approved Disposal Facility"** means the landfill or transfer station specified in Exhibit A, selected by City where Solid Waste Collected under this Agreement is sent for final Disposal.
- 1.10 **"Approved Organic Materials Processing Facility"** means the facility specified in Exhibit A to which the Contractor shall Transport Organic Materials for Processing.
- 1.11 **"Approved Processing Facility(ies)"** means any one of or any combination of the: Materials Recovery Facility; Approved Organic Materials Processing Facility; and/or Approved Transfer Facility.
- 1.12 **"Approved Transfer Facility"** means the facility specified in Exhibit A, selected by City where Discarded Materials Collected under this Agreement are temporarily stored, separated, converted, or otherwise processed.
- 1.13 **"Billings"** means any and all statements of charges for services rendered by Contractor pursuant to this Agreement.
- 1.14 **"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.
- 1.15 **"Bulky Waste"** means an item too large to fit in the container on the premises, including but not limited to household appliances (including refrigerators with and without Freon, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances, and other similar items commonly known as White Goods); furniture (including chairs, sofas, mattresses, and rugs); Electronic Waste (including discarded electronic equipment such as, but not limited to, television sets, computer monitors, central processing units (CPUs), laptop computers, and peripherals (e.g., external computer hard drives, computer keyboards, computer mice, and computer printers), and other similar items commonly known as "brown goods" and E-Waste); residential wastes (green waste larger than four (4) inches in diameter or four (4) feet in length, such as tree stumps, trunks or branches not exceeding one cubic yard per collection); clothing; and tires. Bulky Waste does not include car bodies, Construction and Demolition Debris or items requiring more than two persons to remove. In the event a question ever arises as to whether a specific item or category

of items meets the definition of Bulky Waste, City shall be responsible to determine whether said definition shall apply, which determination shall be final and binding on the Parties. Bulky Waste does not include items herein defined as Exempt Waste. Bulky Waste must have been generated on the Customer's Premises in order to qualify for removal.

- 1.16 **"Business Days"** mean days during which the City offices are open to do business with the public.
- 1.17 **"California Code of Regulations (CCR)"** means the State of California Code of Regulations. CCR references in this Agreement are preceded with a number that refers to the relevant Title of the CCR (e.g., "14 CCR" refers to Title 14 of CCR).
- 1.18 **"California Integrated Waste Management Act of 1989"** means Public Resources Code, §40000 et. seq.
- 1.19 **"CalRecycle"** means California's Department of Resources Recycling and Recovery.
- 1.20 **"Cardboard"** means corrugated fiberboard consisting of a fluted corrugated sheet and one (1) or two (2) flat linerboards, as is often used in the manufacture of shipping containers and corrugated boxes. Cardboard is a subset of Recyclable Materials.
- 1.21 **"Cart"** means a plastic Container with a hinged lid and wheels that is serviced by an automated or semi-automated Collection vehicle. A Cart has capacity of 20, 35, 64 or 96 gallons (or similar volumes).
- 1.22 **"City"** means the City of Morro Bay, a General Law Municipal Corporation, and all the territory lying within the municipal boundaries of the City as presently existing or as such boundaries may be modified during the term, acting through the City Council or the City Manager. The City may designate responsibilities to City staff or a third party designee through written letter between the City Manager and designee.
- 1.23 **"City Manager"** means the City staff member or their designee responsible for contract management and maintenance.
- 1.24 **"Collect" or "Collection"** (or any variation thereof) means the act of taking possession of Recyclable Materials, Organic Materials, Solid Waste, Bulky Items, and other material at the place of generation in City.
- 1.25 **"Commercial"** shall mean of, from, or pertaining to non-Residential Premises where business activity is conducted, including, but not limited to, retail sales, services, wholesale operations, manufacturing, and industrial operations, but excluding businesses conducted upon Residential property which are permitted under applicable zoning regulations and are not the primary use of the property.
- 1.26 **"Commercially Generated Recyclable Materials"** means Recyclable Materials generated at commercial, governmental and/or industrial property and separated by the Generator for Collection.
- 1.27 **"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 franchised Drop Box Compactors serviced by franchised Roll-Off Collection vehicles.

- 1.28 **“Complaint”** shall mean each written or orally communicated statement made by any Person, whether to City or Contractor, alleging: (1) non-performance, or deficiencies in Contractor’s performance, of its duties under this Agreement; (2) a violation by Contractor of this Agreement; or (3) an SB 1383 Non-Compliance Complaint as required under 14 CCR Section 18995.3.
- 1.29 **“Compostable Plastics” or Compostable Plastic”** means plastic materials that meet the ASTM D6400 standard for Compostability.
- 1.30 **“Composting” or “Compost”** (or any variation thereof) includes a controlled biological decomposition of Organic Materials yielding a safe and nuisance free Compost product.
- 1.31 **“Construction and Demolition Debris” or “C&D Debris”** means any combination of inert building materials and Solid Waste resulting from construction, remodeling, repair, cleanup, or demolition operations as defined in California Code of Regulations, Title 22 Section 66261.3 *et seq.* This term includes, but is not limited to, asphalt, concrete, cement, brick, lumber, gypsum wallboard, cardboard, and other associated packaging, roofing material, ceramic tile, carpeting; plastic pipe and steel. The material may be commingled with rock, soil, tree stumps; and other vegetative matter resulting from land clearing and landscaping for construction or land development projects.
- 1.32 **“Container”** means Bins, Carts, Compactors, or Contractor owned franchise Roll-Offs used for Collection and storing of Discarded Materials before removal.
- 1.33 **“Contractor”** means, Morro Bay Garbage Service, Inc., a California Corporation, organized and operating under the laws of the State and its officers, directors, employees, agents, companies, related-parties, affiliates, subsidiaries, and subcontractors.
- 1.34 **“County”** means the County of San Luis Obispo, a political subdivision of the State of California.
- 1.35 **“CPI”** means the Consumer Price Index for All Urban Consumers Los Angeles-Long Beach-Anaheim CUURS49ASA0.
- 1.36 **“Curb” or “Curbside”** (or any variation thereof) means the cornered edging between the street and sidewalk. Curb or Curbside also means and describes the location of a Collection Container for pick-up, where such Container is placed on the street or alley against the face of the Curb, or where no Curb exists, the Container is placed within reasonable distance that do not cause a safety concern and allows for pick-up with solid waste collection vehicles.
- 1.37 **“Customer”** means the Person whom Contractor submits its billing invoice to and collects payment from for Collection services provided to a Premises. The Customer may be either the Occupant or Owner of the Premises.
- 1.38 **“Designated Waste”** means non-Hazardous Waste which may pose special Disposal problems because of its potential to contaminate the environment, and which may be Disposed of only in Class II Disposal sites or Class III Disposal sites pursuant to a variance issued by the California Department of Health Services. Designated Waste consists of those substances classified as Designated Waste by the State, in California Code of Regulations Title 23, Section 2522 as may be amended from time to time.
- 1.39 **“Designee”** means an entity the City contracts with or otherwise arranges to carry out any of the City’s responsibilities of this Agreement as authorized in 14 CCR Section 18981.2. A Designee may be a government entity, a hauler (including Contractor) or other private entity, or a combination of those entities. For the purposes of this Agreement, Designee shall mean the San Luis Obispo Integrated Waste Management Authority (IWMA), as designated in Exhibit B, until such time as the City may serve as its own Designee or designate another government entity, hauler (including

Contractor) or other private entity to be the Designee.

- 1.40 **“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 by Contractor, excluding Excluded Waste.
- 1.41 **“Disposal” or “Dispose” (or any variation thereof)** means the final disposition of Solid Waste, or Processing Residue at a Disposal Facility.
- 1.42 **“Disposal Facility”** means a landfill, or other Facility for ultimate Disposal of Solid Waste.
- 1.43 **“Divert” or “Diversion” (or any variation thereof)** means to prevent Discarded Materials from Disposal at landfill or transformation facilities, (including facilities using incineration, pyrolysis, distillation, gasification, or biological conversion methods) through source reduction, reuse, Recycling, Composting, anaerobic digestion or other method of Processing, subsequent to the provisions of AB 939. Diversion is a broad concept that is to be inclusive of material handling and Processing changes that may occur over the Term including, but not limited to, changes in standard industry practice or implementation of innovative (but not necessarily fully proven) techniques or technology that reduce Disposal risk, decrease costs and/or are for other reasons deemed desirable by the City.
- 1.44 **“Dwelling Unit”** means any individual living unit in a; Single-Family dwelling (SFD) or Multi-Family dwelling (MFD) structure or building, a mobile home, or a motor home located on a permanent site intended for, or capable of being utilized for, Residential living other than a hotel or motel.
- 1.45 **“Effective Date”** means the date on which the latter of the two Parties signs this Agreement.
- 1.46 **“Electronic Waste”** means “Covered Electronic Waste” as defined in Section 42463 of the Public Resources Code and other discarded electronic equipment commonly known as “brown goods” such as, but not limited to, CD players and recorders, DVD players and recorders, stereos, computers, printers, keyboards, and peripherals. Revenues, if any, from the recycling of Electronic Waste shall be accounted for separately from revenues from other Recyclable Materials.
- 1.47 **“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 6901 et seq.; the Federal Clean Water Act, 33 USC 1251 et seq.; the Toxic Substances Control Act, 15 USC 2601 et seq.; the Occupational Safety and Health Act, 29 USC 651 et seq.; the California Hazardous Waste Control Law, California Health and Safety Code §25100 et seq.; the California Hazardous 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.; currently in force and as hereinafter amended, and all rules and regulations promulgated there under.
- 1.48 **“Excluded Waste”** means Hazardous Substance, Hazardous Waste, Infectious Waste, Designated Waste, volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, waste that Contractor 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 Contractor’s reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor 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. Excluded Waste does not include Used Motor Oil or Use Motor Oil Filters when properly placed for Collection by Contractor, as set forth in this Agreement.
- 1.49 **"Facility"** means any plant or site, owned, or leased and maintained and/or operated or used by Contractor for the purposes of performing the duties to fulfill this Agreement.
- 1.50 **"Federal"** means belonging to or pertaining to the Federal government of the United States.
- 1.51 **"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).
- 1.52 **"Food Recovery Organization"** means an entity that primarily engages in the collection or receipt of edible food from commercial edible food generators and distributes that edible food to the public for Food Recovery either directly or through other entities.
- 1.53 **"Food Scraps"** means those Discarded Materials that will decompose and/or putrefy including: (i) all kitchen and table Food Waste; (ii) animal or vegetable waste that is generated during or results from the storage, preparation, cooking or handling of food stuffs; (iii) fruit waste, grain waste, dairy waste, meat, and fish waste; and, (iv) vegetable trimmings, houseplant trimmings and other Compostable Organic Waste common to the occupancy of Residential dwellings. Food Scraps are a subset of Food Waste.
- 1.54 **"Food-Soiled Paper"** means Compostable paper material that has come in contact with Food Scraps or liquid, such as, but not limited to, Compostable paper plates, napkins, and pizza boxes. Food -Soiled Paper is a subset of Food Waste.
- 1.55 **"Food Waste"** means Source Separated Food Scraps and Food-Soiled Paper. Food Waste is a subset of Organic Materials.
- 1.56 **"Fiscal Year"** means the period commencing January 1 and concluding December 31 for Contractor. For City it means the period commencing July 1 of one year and concluding June 30 of the subsequent year.
- 1.57 **"Franchise Reimbursement"** means the fee paid by Contractor to the City as described in Article 7.
- 1.58 **"Generator"** means any Person whose act or process produces Discarded Materials as defined in the Public Resources Code, or whose act first causes Discarded Materials to become subject to regulation.
- 1.59 **"Gross Receipts"** means any and all revenue received from billings by Contractor, and compensation in any form, of Contractor or subsidiaries, parent companies or other Affiliates of Contractor, for the collection and transportation of Solid Waste pursuant to this Agreement, in accordance with generally accepted accounting principles, including, but not limited to, monthly customer fees for collection of Solid Waste, without subtracting Franchise Fees or any other cost of doing business. Contractor's Net Recycling Revenues are included in Gross Receipts for purposed of calculating Franchise Fees. IWMA fees are not included in Gross Receipts.
- 1.60 **"Hazardous Substance"** means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic waste", "pollutant", or "toxic substances", or similarly identified as hazardous to human health or the environment, in or pursuant to: (i) the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource

Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and, (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and, (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other Applicable Law currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's (PCBs), petroleum, natural gas, and synthetic fuel products, and by-products.

- 1.61 **"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 Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as solar panels from Residential Premises, and Hazardous Waste by the U.S. Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder, and Public Resources Code §40141.
- 1.62 **"Holidays"** are defined as New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.
- 1.63 **"Household Hazardous Waste" or "HHW"** means Hazardous Waste generated at Residential Premises within the City. HHW includes: paint, stain, varnish, thinner, adhesives, auto products such as old fuel, Used Motor Oil and Filter, Used Oil Filter, batteries, household batteries, fluorescent bulbs , tubes, cleaners and sprays, pesticides, fertilizers and other garden products, needles, syringes, and lancets.
- 1.64 **"Infectious Waste"** means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities, and other similar establishments that are identified in Health and Safety Code Section 25117.5 as may be amended from time to time.
- 1.65 **"Liquidated Damages"** means the amounts due by Contractor for failure to meet specific quantifiable standards of performance as described in Article 12.
- 1.66 **"Materials Recovery Facility"** means a permitted Facility, as specified in Exhibit A, where Discarded Materials are sorted or separated for the purposes of Recycling or reuse.
- 1.67 **"Mulch"** means a layer of material applied on top of soil, and, for the purposes of the Agreement, Mulch shall conform with the following conditions, or conditions as otherwise specified in 14 CCR Section 18993.1(f)(4):
- A. Meets or exceeds the physical contamination, maximum metal concentration, and pathogen density standards for land applications specified in 14 CCR Section 17852(a)(24.5)(A)(1) through (3).
 - B. Was produced at one or more of the following types of Facilities:
 - 1. A Compostable material handling operation or facility as defined in 14 CCR Section 17852(a)(12), that is permitted or authorized under Division 7 of Title 14 of the CCR, other than a chipping and grinding operation or facility as defined in 14 CCR Section 17852(a)(10);
 - 2. A Transfer/Processing Facility or Transfer/Processing operation as defined in 14 CCR Section 17402(a)(30) and (31), respectively, that is permitted or authorized under 14 CCR, Division 7, Chapter 12; or,

3. A Solid Waste landfill as defined in PRC Section 40195.1 that is permitted under 27 CCR, Division 2.
- 1.68 **"Multi-Family Dwelling Unit"** means, notwithstanding any contrary definition in City Code, any Premises, other than a Single-Family Dwelling Unit, used for Residential purposes, with five (5) or more Dwelling Units (regardless of whether residence therein is temporary or permanent), including such Premises when combined in the same building with Commercial establishments, that receive centralized, shared, Collection service for all units on the Premises which are billed to one (1) Customer at one (1) address. Customers residing in Townhouses, mobile homes, condominiums, or other structures with five (5) or more Dwelling Units who receive centralized, shared, Collection service for all units on the Premises which are billed to one (1) Customer at one (1) address shall be considered Multi-Family.
- 1.69 **"Net Recycling Revenues"** means the gross recycling revenues received by Contractor from the sale of all Recyclable Materials handled by Contractor as a whole (including the recycling of Electronic Waste, HHW, U-Waste and White Goods) that are generated in the City, less all processing costs incurred by Contractor for such Recyclable Materials.
- 1.70 **"Occupant"** means the Person who occupies a Premises.
- 1.71 **"Organic Materials"** means Yard Trimmings and Food Waste, individually or collectively. No Discarded Material shall be considered to be Organic Materials, however, unless it is separated from Recyclable Material and Solid Waste. Organic Materials are a subset of Organic Waste.
- 1.72 **"Organic Waste"** means wastes containing material originated from living organisms and their metabolic waste products including, but not limited to, food, Yard Trimmings, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges, or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined in 14 CCR Section 18982(a)(4) and 14 CCR Section 18982(a)(16.5), respectively.
- 1.73 **"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.
- 1.74 **"Party"** or **"Parties"** refers to the City and Contractor, individually or together.
- 1.75 **"Person"** means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, Commercial entity, governmental entity, public entity, or any other legal Person.
- 1.76 **"Premises"** means any land or building in the City where Recyclable Materials, Organic Materials, or Solid Waste is generated or accumulated.
- 1.77 **"Processing"** or **"Process"** means to prepare, treat, or convert through some special method.
- 1.78 **"Processing Facility"** means any plant or site used for the purpose of sorting, cleansing, treating or reconstituting Recyclable Materials, or Reusable Materials for the purpose of making such material available for Recycling or reuse or the Facility for the Processing and/or Composting of Organic Materials.
- 1.79 **"Prohibited Container Contaminants"** means the following: (i) Discarded Materials placed in the Recyclable Materials Container that are not identified as acceptable Recyclable Materials for the City's Collection program; (ii) Discarded Materials placed in the Organic Materials Container that are not identified as acceptable Organic Materials for the City's Collection program; (iii) Discarded

Materials placed in the Solid Waste Container that are acceptable Recyclable Materials and/or Organic Materials to be placed in the City's Recyclable Materials or Organic Materials Containers or otherwise managed under the City's Collection program; and, (iv) Excluded Waste placed in any Container.

- 1.80 **"Proposition 218"** means Articles XIII C and XIII D of the California Constitution and any implementing legislation promulgated thereunder, as may be amended from time to time.
- 1.81 **"Recyclable Materials"** means those Discarded Materials that the Generators set out in Recyclables Containers for Collection for the purpose of Recycling by the Contractor and that exclude Excluded Waste. No Discarded Materials shall be considered Recyclable Materials unless such material is separated from Organic Materials, and Solid Waste. Recyclable Materials shall include, but not be limited to: newspaper, aluminum, tin and bi-metal cans, clear and colored glass containers, all plastic containers (except polystyrene), corrugated cardboard, mixed paper (Including white and colored ledger paper, chipboard, junk mail, magazines and phone books) and used motor oil and filter. Acceptable Recyclable Materials may be added to or removed from this list from time to time by mutual consent or at the sole discretion of the City. Contractor shall not add or remove materials to or from this list without written approval from the City Manager or signed amendment to the Agreement, and such approval shall not be unreasonably withheld. For the purpose of collection of Recyclable Materials through contractor's collection services, recyclable materials shall be limited to those materials identified by the collection contractor as acceptable recyclable materials.
- 1.82 **"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.
- 1.83 **"Related Party Entity"** means any Affiliate that has financial transactions with Contractor.
- 1.84 **"Renewable Natural Gas" or "RNG"** means 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).
- 1.85 **"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.
- 1.86 **"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.
- 1.87 **"Reusable Materials"** means items that are capable of being used again after minimal Processing. Reusable Materials may be Collected Source Separated or recovered through a Processing Facility.
- 1.88 **"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.
- 1.89 **"San Luis Obispo County Integrated Waste Management Authority (SLO IWMA)" or "IWMA"** means the Joint Powers Authority that has the responsibilities as defined by the Joint Powers Agreement related to the City's compliance with Applicable Law. The City may, at its discretion,

designate the IWMA certain responsibilities and rights of the City related to reporting, monitoring, and education requirements as specified in this Agreement or subsequent written authorization by City Manager.

- 1.90 **“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.
- 1.91 **“Self-Hauler” or “Self-Haul” or “Self-Hauling”** means a Person who hauls Discarded Materials, recovered material, or any other material, he or she has generated to another Person. Self-Hauler also includes a person who back-hauls waste, or as otherwise defined in 14 CCR Section 18982(a)(66). Back-haul means generating and transporting Organic Waste to a destination owned and operated by the Generator using the Generator’s own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A). A Self-Hauler must be a Person within the City who is not primarily engaged in the business of collection, removal or transportation of Solid Waste, Organic Waste, or Recyclables, but in the course of performing the Person’s primary business function incidentally transports Solid Waste, Organic Waste, or Recyclables with equipment owned or leased by that Person. Examples of Self-Haulers include, but are not limited to, gardeners, landscapers, and household cleanup service firms. A Person who is engaged in the business of collection, removal or transportation of C&D material (other than as work performed ancillary to the person’s business and using that person’s own forces and equipment) is not a Self-Hauler under any circumstance.
- 1.92 **“Service Level”** refers to the size of a Customer’s Container and the frequency of Collection service.
- 1.93 **“Single Family Dwelling Unit”** means, notwithstanding any contrary definition in City Code, any detached or attached house or residence designed or used for occupancy by one (1) family, provided that Collection service feasibly can be provided to such Premises as an independent unit, and the Owner or Occupant of such independent unit is billed directly for the Collection service. Single-Family includes Townhouses that maintain individual collection service regardless of whether each unit is separately billed for their specific Service Level. Single-Family also includes duplex, tri-plex, or four-plex Residential structures regardless of whether each unit maintains individual collection service or is separately billed for their specific Service Level.
- 1.94 **“Solid Waste”** means Solid Waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, §40191 and regulations promulgated hereunder. 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.
- 1.95 **“Solid Waste Enterprise”** means “solid waste enterprise” as defined in Public Resources Code Section 40193 (i.e., any individual, partnerships, joint venture, unincorporated private

- organization, or private corporation, which is regularly engaged in the business of providing solid waste handling services).
- 1.96 **“Source Separated”** means the segregation, by the Generator, of materials designated for separate Collection for some form of Recycling, Composting, recovery, or reuse.
- 1.97 **“State”** means the State of California.
- 1.98 **“Subcontractor”** means a Party who has entered into a contract, express or implied, with the Contractor for the performance of an act that is necessary for the Contractor’s fulfillment of its obligations for providing service under this Agreement. Vendors providing materials and supplies to Contractor shall not be considered Sub-Contractors.
- 1.99 **“Term”** means the term of this Agreement, including extension periods if granted, as provided for in Article 3.
- 2.00 **“Ton” or “Tonnage”** means a unit of measure for weight equivalent to two thousand (2,000) standard pounds or one (1) short ton.
- 2.01 **“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).
- 2.02 **“Transfer”** means the act of transferring the materials Collected by Contractor in its route vehicles into larger vehicles for Transport to other facilities for the purpose of Recycling or Disposing of such materials.
- 2.03 **“U-Waste” or “Universal Waste”** means all waste defined by Title 22, Subsection 66273.1 through 66273.9 of the California Code of Regulations.
- 2.04 **“Waste Generator”** See **“Generator”**.
- 2.05 **“White Goods”** means inoperative and discarded refrigerators, microwave ovens, ranges, water heaters, and other similar household appliances, which are a subset of Bulky Wastes.
- 2.06 **“Working Days”** means days on which the Contractor is required to provide regularly scheduled Collection services under this Agreement.
- 2.07 **“Yard Trimmings”** means those Discarded Materials that will decompose and/or putrefy, including, but not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of Organic Materials resulting from normal yard and landscaping maintenance that may be specified in City Legislation for Collection and Processing as Organic Materials under this Agreement. Yard Trimmings does not include items herein defined as Excluded Waste. Yard Trimmings are a subset of Organic Materials. Yard Trimmings placed for Collection may not exceed six (6) inches in diameter and three (3) feet in length and must fit within the Contractor-provided Container. Acceptable Yard Trimmings may be added to or removed from this list from time to time by mutual consent or at the sole discretion of the City. Contractor shall not add or remove materials to or from this list without written approval from the City Manager or signed amendment to the Agreement, and such approval shall not be unreasonably withheld.

Article 2. Representations and Warranties of Contractor

2.1 Contractor Status

Contractor shall be an independent contractor and not an agent or employee of the City.

2.2 Contractor Authorization

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

2.3 Compliance With Laws and Regulations

Contractor shall comply with all existing and future City, County, State, and Federal laws, including all Environmental Laws.

2.4 Grant and Acceptance of Agreement

Subject of Article 3.4 (Conditions of the Effectiveness of Agreement), City hereby grants to Contractor the right and privilege to Collect and Dispose all Solid Wastes generated and/or accumulated within City as defined in Section 8.16.120 of the Morro Bay Municipal Code. Contractor shall perform its duties under this Agreement in accordance with Chapter 8.16 of the Morro Bay Municipal Code, incorporated herein by reference.

City also hereby grants to Contractor an exclusive franchise to Collect, process and market Recyclable Materials accumulating at Single Family and Multi-family Dwelling Units in the City and Commercially Generated Recyclable Materials that are offered for Collection to Contractor in accordance with this Agreement, unless such duties are otherwise delegated to a Designee.

Contractor shall perform all duties required under this Agreement in accordance with all applicable current and future laws, rules, and regulations at rates established by City pursuant to the procedures set forth herein below. For purposes of this Agreement, said laws, rules, and regulations shall include but not be limited to any policy, resolution, or ordinance adopted by a duly constituted governing body of a public agency, including joint powers authorities and districts.

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

2.5 Serve Without Interruption

Contractor shall perform all duties throughout the term of this Agreement without interruption.

2.6 Permits and Licenses

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

2.7 Compliance with Regulatory Requirements. Contractor shall keep active all existing permits and approvals necessary for use of the Approved Processing Facility(ies) in full regulatory compliance. Upon request, Contractor shall provide copies of Facility permits and/or notices of violations (obtained from its Processing Facility Subcontractor if necessary) to City Manager.

2.8 Preservation of City Property

Contractor shall pay to the City, on demand, the cost of all repairs to public property (excepting regular wear and tear) made necessary by any of the operations of Contractor under this Agreement.

Article 3. Term of Agreement

3.1 Effective Date

The Effective Date of this Agreement shall be the date on which the latter of the two Parties signs this Agreement.

3.2 Term of Agreement

The Term of this Agreement shall commence September 13, 2022, and expire at midnight December 31, 2040, subject to extension as provided in Article 3.3 (Option to Extend).

In the event of a change of law or technology which would render the Collection and Disposal services to be implemented under this Agreement obsolete, unnecessary, impractical, undesirable, or illegal, the City reserves the right to terminate this Agreement upon the giving of a six (6) month prior written notice of City's election to so terminate this Agreement.

3.3 Option to Extend

The City shall have the sole option to extend this Agreement up to 36 months in periods of at least twelve (12) months each. If City elects to exercise this option, it shall give written notice not later than 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. The terms and conditions of this Agreement shall be applicable during said extension option unless the Parties mutually agree upon any changes.

3.4 Conditions to Effectiveness of Agreement

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

- A. Accuracy of Representations. The representations and warranties made by Contractor throughout this Agreement are accurate, true, and correct on and as of the Effective Date of this Agreement.
- B. Absence of Litigation. There is no litigation pending in any court challenging the award of this Agreement to Contractor or the execution of this Agreement or seeking to restrain or enjoin its performance.
- C. Furnishing of Insurance and Security Fund. As the Contractor has previously provided insurance and a \$350,000 security fund for the current agreement that will be superseded at the execution of the Agreement, within 30 (thirty) calendar days after the Effective Date of the Agreement, Contractor shall provide proof of insurance in the form, coverages, and amounts specified in Article 10.4 (D) of these specifications and the \$500,000 security fund.

Article 4. Scope of Agreement

4.1 Scope of Agreement; Supersession of Prior Agreements

- A. Subject to Article 4.2 (Limitations to Scope), the Agreement granted to Contractor shall be exclusive for Solid Waste, Recyclable Materials and Organic Materials, except where otherwise precluded by law. This Agreement does not include construction and demolition material Collected in Roll-Off boxes.
- B. This Agreement fully restates and supersedes the Prior Agreements between the Parties, such that the Prior Agreements have no further force or effect.

4.2 Limitations to Scope

The Agreement to Collect and Dispose all Solid Wastes generated and/or accumulated as granted

in Article 2.4 shall be subject to the following exclusions:

- A. Intergovernmental Immunity. All (i) school districts, (ii) other state agencies, (iii) any other governmental entity that is not subject to the City's police powers, and (iv) the exclusivity provisions of any ordinance to be adopted by the City;
- B. Self Hauling. Self-Hauling by City residents, Owners, or occupants of Premises as defined in Article 1.89. The use of a subcontractor is not Self-Haul within the meaning of this exception. Self-Hauling of Solid Waste or Recyclables does not exempt the property owner from subscribing to Collection service in accordance with Municipal Code Section 8.16;
- C. Gardner/Landscaper Green Waste. Green Waste and other compostables removed from a Premises by an Owner or resident of Premises or by a gardening, landscaping or tree trimming contractor as an incidental part of a total service offered by that contractor rather than as a hauling service. To qualify for this exemption, a gardener or landscaper must not be a hauling service or Solid Waste Enterprise, must not separately or additionally charge for the incidental service of removing, transporting or disposing (except for tipping fee) of the Yard Trimmings, and must utilize only his or her own employees and equipment to collect, transport and dispose of said Yard Trimmings;
- D. C&D Material. The Collection, transportation and disposal by a construction contractor of C&D Material from Remodel jobs which are generated as an incidental part of providing such Remodeling services, provided that the construction contractor is not a hauling service or Solid Waste Enterprise, does not separately or additionally charge for the incidental service of removing, transporting or disposing (except for tipping fee) of the C&D Material, and utilizes only his/her own employees and equipment to collect, transport and dispose of the C&D Material.
- E. Food Recovery operations by Food Recovery Organizations.
- F. Automotive Dismantling. The Collection, transportation and disposal of vehicles or machine parts and waste generated by an automotive/vehicle dismantler or Owner of a vehicular salvage or disposal yard.
- G. Asphalt/Concrete/Dirt Materials. This Agreement does not preclude the Collection, processing and/or transport of asphalt, concrete and dirt, and the Parties hereto acknowledged that other entities in the City are, and shall continue to be permitted to collect, process and transport asphalt, concrete and dirt materials;
- H. Hazardous Waste. This Agreement does not preclude the Collection, processing and/or transport of Hazardous Waste and non-spadeable wastewater or sewage sludge by third-party entities duly licensed to handle such Hazardous Waste and/or non-spadeable wastewater or sewage sludge materials;
- I. Water Reclamation Facility. The Collection, transportation and disposal of Recyclable Materials, Organic Materials, Solid Waste, biosolids, sludge, and grit removed from the City's Water Reclamation Facility located at 555 South Bay Boulevard, Morro Bay, California.
- J. Recyclable Materials. Recyclable Materials not "discarded" (but rather sold or donated) directly by an Owner of Premises which are disposed of at legally-mandated public redemption centers that comply with all reporting and other requirements imposed by any political entity having jurisdiction over those redemption centers. A mere discount or reduction in price of third-party charges for the handling of Recyclables is not a sale or donation within the meaning of this Agreement and is thus precluded by City's exclusive grant

in Article 2.4;

- 1) Categories of Recyclable Materials listed in this Article. The granting of this Agreement shall not preclude the categories of Recyclable 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 that is otherwise required by law:
 - a) Contractor 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;
 - b) Recyclable Materials separated from Solid Waste by the Generator and for which Generator sells or is otherwise compensated by a collector in a manner resulting in a net payment to the Generator for such Recycling or related services;
 - c) Recyclable Materials donated to a charitable, environmental, or other non-profit organization;
 - d) Recyclable Materials which are separated at any Premises and which are Transported by the Owner or Occupant of such Premises (or by their full-time employee) to a Recycling center;
 - e) Other Governmental Agencies within the City which can contract for separate Solid Waste and Recycling services; and,

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

This Agreement to Collect, Transport, Process, and market Recyclable 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 State and Federal laws with regard to Recyclable Materials handling, Recyclable Materials flow control, and related doctrines. In the event that future interpretations of current law, enactment or developing legal trends limit the ability of the City to lawfully provide for the scope of services as specifically set forth herein, Contractor agrees that the scope of the Agreement will be limited to those services and materials which may be lawfully provided for under this Agreement, and that the City shall not be responsible for any lost profits and/or damages claimed by the Contractor as a result of changes in law.

- 2) Emergency Collections by City. The casual or emergency Collection, removal, disposal or Diversion of Solid Waste or Recyclable Materials by the City through City officers or employees in the normal course of their employment;
- 3) Legally-Required Exemptions. Other Collection, removal or disposal activities required to be exempt from mandatory franchise services pursuant to law, or entities exempt from such franchise pursuant to State or Federal law, including but not limited to Non-City governmental entities located within City boundaries;
- 4) City Hauls. The Collection, removal, disposal or Diversion of Solid Waste or Recyclable Materials by the City through City officers or employees in the normal course of their City employment;

- 5) Oil Waste. This Agreement does not preclude the Collection, processing and/or transport of oil/used oil by third-party entities duly licensed to handle such waste, such as licensed automotive shops and mechanic businesses;
- 6) Tires. This Agreement does not preclude the Collection, processing and/or transport of tires by third-party entities duly licensed to handle such waste;
- 7) Infectious Waste. This Agreement does not preclude the Collection, processing and/or transport of Infectious Waste by third-party entities duly licensed to handle such waste;
- 8) HHW, White Goods and U-Waste. This Agreement does not preclude the Collection, processing and/or transport of HHW, White Goods and U-Waste by third-party entities duly licensed to handle such waste.

4.3 Administration of Agreement

The City Manager or their designee shall administer this Agreement and the City's Public Works Director, or their designee, shall supervise Contractor compliance with the Agreement terms and conditions.

4.4 Use of City Streets

Such grant of Agreement shall give Contractor the right and privilege to operate Collection vehicles and equipment on such streets, public ways, rights-of-way, or easements of the City.

4.5 City Request to Direct Changes

4.5.1 General

City may request Contractor to perform additional services (including new Diversion programs, etc.) or modify the manner in which it performs existing services. Pilot programs and innovative services that may entail new Collection methods, different kinds of services and/or new requirements for Generators are included among the kinds of changes that City may request. Contractor shall present, within 30 days of a request to do so by City, a proposal to provide additional or expanded Diversion services pursuant to the terms of Article 4.5.2. Contractor shall be entitled to request an adjustment in its compensation in accordance with Article 8.

4.5.2 New Diversion Programs

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

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

4.5.3 City's Right to Acquire Services

Contractor acknowledges and agrees that City may permit other Persons besides Contractor to provide additional Recycling services not otherwise contemplated under

Article 4.5 (City Request to Direct Changes). If pursuant to Article 4.5.2 (New Diversion Programs), Contractor and City cannot agree on terms and conditions of such services in ninety (90) days from the date when City first requests a proposal from Contractor to perform such services, Contractor acknowledges and agrees that City may permit Persons other than Contractor to provide such services.

4.5.4 Implementing New Services

If 1) Contractor is capable of performing or developing the ability to perform a requested service or modifying an existing service; and 2) City has agreed to have Contractor provide such additional service in accordance with Contractor's proposal; and 3) an adjustment in Contractor's compensation has been requested but has not been agreed upon or implemented within 90 days, City may permit a third party to perform the requested or modified existing service, and Contractor shall not be obligated, to perform such additional or modified service pursuant to the terms of Article 4.5.3.

4.6 Ownership Discarded Materials

All Discarded Materials Collected, removed, and Transported by Contractor from the Premises where produced, generated, and/or accumulated pursuant to this Agreement shall be the property and responsibility of Contractor.

Once Discarded Materials are placed in Containers and properly presented for Collection, ownership and the right to possession shall transfer directly from the Generator to Contractor by operation of this Agreement. Contractor is hereby granted the right to retain, Recycle, Process, reuse, and otherwise use such Discarded Materials or any part thereof, in any lawful fashion or for any lawful purpose consistent with the hierarchy and goals of SB 1383 and other Applicable Law. Subject to the provisions of this Agreement, Contractor shall have the right to retain any benefit resulting from its right to retain, Recycle, Process or reuse the Discarded Materials that it Collects. Discarded Materials or any part thereof, which are delivered to a Facility (Processing Facility, transformation Facility, Approved Transfer Facility or Material Recovery Facility) shall become the property of the owner or operator of the Facility(ies) once deposited there by Contractor. The City may obtain ownership or possession of Discarded Materials placed for Collection upon written notice of its intent to do so, however, nothing in this Agreement shall be construed as giving rise to any inference that City has such ownership or possession unless such written notice has been given to Contractor.

4.7 City's Right To Perform Service

In the event Contractor fails to Collect, remove, and Dispose of Solid Waste, Discarded Materials on a C's regularly scheduled Collection day within twenty-four (24) hours of a request from City or a Customer to do so, City may Collect said materials and Contractor shall be liable for all related expenses incurred by City. Such expenses include but are not limited to Disposal, administrative, and legal costs. Contractor shall reimburse City for such expenses as required.

In the event Contractor does not Collect any item or Container of Solid Waste material due to a Customer's non-compliance with rules and regulations, Contractor shall attach a tag securely to the item or container not Collected specifying the reasons for non-Collection. The tag shall contain Contractor's name and telephone number.

Article 5. Direct Services

5.1 General

The work to be performed pursuant to this Agreement shall include the furnishing of all labor, materials and equipment necessary for, and the Collection of all Solid Waste and Recyclables from, Residential Units and Commercial and Industrial Units within the City according to the terms of this Agreement, and the disposal, recycling and/or Diversion of such materials. Contractor shall own or lease and maintain at its expense all equipment necessary to perform its duties as

provided for under the Agreement, including sufficient radio equipment for office to field equipment communication. All work shall be accomplished in a courteous, thorough and workmanlike manner and adhere to the highest standards consistent with the best practice in the industry. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Contractor of the duty of accomplishing all other aspects in the manner provided in this Article, whether such aspects are enumerated elsewhere in the Agreement or not.

5.2 Solid Waste, Recycling, and Organic Materials Collection Services

5.2.1 General

No later than January 1, 2022, Contractor shall provide a three-Container Collection program for the separate Collection of Source Separated Recyclable Materials, Source Separated Organic Materials, and Solid Waste as specified in this Section 5.2, using Containers that comply with the requirements of Section 5.5.3.

5.2.2 Solid Waste

Contractor shall provide gray or black lidded Carts with gray bodied Carts or gray bodied Bins to Customers for Collection of Solid Waste, and shall provide Solid Waste Collection service, as described in this Section. Contractor shall Transport the Solid Waste to (i) the Approved Disposal Facility, or (ii) the Approved Transfer Facility for Transfer and Transport to an Approved Disposal Facility, as specified in Section 5.10. Contractor may allow carpets and textiles to be placed in the gray Containers. Prohibited Container Contaminants shall not be Collected in Solid Waste Containers. The Containers shall comply with the requirements of Section 5.5.3.

5.2.3 Recyclable Materials

Contractor shall provide blue lidded Carts with gray or blue bodied Carts or blue bodied Bins to Customers for Collection of Source Separated Recyclable Materials and shall provide Source Separated Recyclable Materials Collection service, as described in this Section. Contractor shall Transport the Source Separated Recyclable Materials to (i) the Material Recovery Facility, or (ii) the Approved Transfer Facility for Transfer and Transport to the Material Recovery Facility, as specified in Section 5.10. Prohibited Container Contaminants shall not be Collected in the Recyclable Materials Containers. The Containers shall comply with the requirements of Section 5.5.3.

5.2.4 Organic Materials

Contractor shall provide green lidded Carts with gray or green bodied Carts or green bodied Bins to Customers for Collection of Organic Materials and shall provide Organic Materials Collection service, as described in this Section. Organic Materials that are to be accepted for Collection in the Organic Materials Collection program include Food Scraps; Food-Soiled Paper; Yard Trimmings. Contractor shall Transport the Organic Materials to (i) the Approved Organic Materials Processing Facility, or (ii) the Approved Transfer Facility for Transfer and Transport to the Approved Organic Materials Processing Facility, as specified in Section 5.10. Prohibited Container Contaminants shall not be Collected in the Organic Materials Containers. The Containers shall comply with the requirements of Section 5.5.3.

No later than effective date of the Agreement, Contractor shall implement an Organic Materials Collection program that allows Generators to intentionally commingle Food Waste and Yard Trimmings in the green Containers to all Residential, Multi-Family, and Commercial business. Contractor shall provide Organic Materials Collection service, as described in this Section of this Agreement and Transport the Organic Materials to (i) the Approved Organic Materials Processing Facility, or (ii) the Approved Transfer Facility for Transfer and Transport to an Approved Organic Materials Processing Facility.

5.3 Refusal to Provide Collection Services

Contractor may refuse to Collect Recyclable Materials and shall not be obligated to continue to provide Recycling Container(s) to any participant in the Recycling program who, after reasonable warning by Contractor, fails to properly sort and set out Recyclable Materials. Contractor shall report monthly to City any warning notices issued to customers for materials that are improperly sorted and set out.

5.4 Marketing and Sale of Recyclable Materials

Contractor shall be responsible for the marketing and sale of all Recyclable Materials Collected pursuant to this Agreement. Revenues, if any, from the sales of these materials shall be applied to the cost of service under the Agreement to reduce Contractor's compensation. Contractor shall sell all Recyclable Materials Collected pursuant to this Agreement at not less than fair market value as described in Article 8, Contractor's Compensation and Rates.

5.5 Operations

5.5.1 Schedules

To preserve peace and quiet, no Discarded Materials shall be Collected from or within two hundred (200) feet of Residential Premises between the hours in accordance with City's Municipal Code Chapter 8.16, Residential Discarded Materials shall be Collected, Monday through Friday on the same day. Commercial Discarded Materials shall be Collected, Monday through Sunday on the same day. The one exception is the Contractor may elect to Collect motor oil and filters with a separate vehicle using an on-call program. When the regularly scheduled Collection day falls on a Holiday, Collection shall take place on the following regularly scheduled Collection day. In the event the Contractor misses the Collection of set out Discarded Materials, the Contractor shall Collect the missed pickups within one (1) Business Day of notification.

5.5.2 Vehicles

- A. General. Contractor shall provide a fleet of Collection vehicles sufficient in number and capacity to perform the work required by this Agreement in strict accordance with its terms. No vehicle shall be more than 10 years old. Contractor shall have available on Collection days sufficient back-up vehicles in order to respond to Complaints and emergencies.
- B. Specifications. All vehicles used by Contractor in providing Discarded 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 watertight bodies designed to prevent leakage, spillage, or overflow. All such vehicles shall comply with U.S. Environmental Protection Agency noise emission regulations and other applicable noise control regulations.
- C. Condition.
 - 1) Contractor shall maintain all of its properties, facilities, and equipment used in providing service under this Agreement in a safe, neat, clean and operable condition at all times.
 - 2) Contractor shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles which are not operating properly and represent a safety hazard shall be taken out of service until they are repaired and do operate properly and safely. Contractor shall perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule, and comply with all Federal, State, and local requirements with respect to vehicle maintenance and inspection as they now exist or may be amended in the future. Contractor shall keep accurate records of all vehicle maintenance, recorded according to date and mileage and shall make such records

available to City upon request.

- 3) Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. Contractor shall maintain accurate records of repair, which shall include the date/mileage, nature of repair and the signature of an authorized personnel that the repair has been properly performed.
 - 4) Contractor shall arrange all vehicles and other equipment in safe and secure location(s) in accordance with all applicable zoning regulations.
- D. Vehicle Identification. Each truck shall display in a prominent place a sign approved by the City.
- E. Operation. Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. Contractor shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by State or local weight restrictions on vehicles.

5.5.3 Solid Waste, Recycling, and Organic Materials Containers

Contractor shall supply each Single-Family Dwelling Unit with a 20, 32, 64 or 96 gallon Container for Solid Waste. The fee for each size Container is shown in Exhibit C. In addition each Single-Family Dwelling Unit will receive from Contractor a 64 or 96-gallon Container for all commingled Recyclable Materials and a 64 or 96-gallon Container for Organic Materials. Contractor shall upon request supply each multi-family complex and Commercial or governmental agency with a 64 or 96 gallon Container for Recyclables and a 64 or 96-gallon Container for Organic Materials. Commercial customers using the organic containers for general food waste will be provided up to a 64-gallon container due to weight issues for collection. If requested, the Customer may switch between a 32, 64 or 96 gallon Recyclable or Organic Materials Container. Containers shall be identified for Recyclable Materials only with signage approved by the City. Contractor agrees to provide additional Containers, as requested, by all Persons at the rental rate as shown on Exhibit C.

City and Contractor acknowledge that from time to time, a Customer may damage or destroy a Container. City and Contractor also acknowledge that from time to time Containers may be stolen from the Curb or damaged due to normal use. The fee schedule to replace lost Containers is shown on Exhibit C.

- A. Contractor shall use the Contractor-provided Collection Containers that are currently located at Customers' Premises. If Customer is currently utilizing Collection Containers that are were not provided by the Contractor, Contractor shall provide Containers from current inventory, unless it is a franchise customer supplied compactor box serviced by Contractor.
- B. No later than December 31, 2035, Contractor shall provide all Customers with Collection Containers that comply with the Container color requirements specified in this Section or as otherwise specified in 14 CCR Section 18982; 14 CCR, Division 7, Chapter 12, Article 3; or other Applicable Law. Contractor shall present proposed color changes that are different that those identified in Section 5.2 to the City for review and approval at least sixty (60) days in advance of Contractor Container purchases or repainting of metal Containers.
- C. If an existing Container breaks or is otherwise rendered non-functional on or after date of this Agreement, the Contractor shall replace the non-functional Container with a Container that complies with the color requirements of this Section. Notwithstanding this Section, the Contractor is not required to replace functional Containers, including Containers purchased prior to date of this Agreement, 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.

- D. Solid Waste Carts. Solid Waste Carts must have a lid that are gray or black in color. Solid Waste Bins and Contractor owned franchised Roll-Off Boxes must have a body that is gray in color. Hardware such as hinges, lids and wheels on the Solid Waste Container may be a different color.
- E. Recyclable Materials Carts. Recyclable Materials Carts must have a lid that is blue in color. Recyclable Materials Bins and Contractor owned franchised Roll-Off Boxes must have a body that is blue in color. Hardware such as hinges and wheels on the Recyclable Materials Containers may be a different color.
- F. Organic Materials Carts. Organic Materials Carts must have a lid that are green in color. Organic Materials Bins and Contractor owned franchised Roll-Off Boxes must have a body that is green in color. Hardware such as hinges and wheels on the Organic Materials Containers may be a different color.
- G. Labels.
 - 1) Labels on Existing Containers or Lids

Contractor 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 date of Agreement, Contractor shall imprint or label new Cart 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-molds or labels, Contractor 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 Manager or designee for approval.
- H. City Rights at Expiration of Term. Upon expiration or early termination 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 in good faith between the two parties factoring the depreciation and scrap value or at no cost to the City if such Containers are fully depreciated. 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 value.
- I. Kitchen Pails. The City's Designee shall provide, and Contractor shall distribute upon customer request, kitchen pails designed to contain Food Scraps prior to placement in the Customer's Organic Materials Cart. Contractor will be responsible for distribution of kitchen pails to Single-Family and Multi-Family Customers upon request, from Contractor's office beginning date of this Agreement. City's Designee may restock Contractor inventories at local offices for distribution to new residents or residents who need a replacement.

5.5.4 Litter Abatement

Contractor shall use due care to prevent Discarded Materials from being spilled or scattered during the Collection or Transportation Process. If any Discarded Materials are spilled during Collection, Contractor shall promptly clean up all spilled materials. Each Collection vehicle shall carry a broom, shovel and oil spill kit at all times for this purpose.

5.5.5 Personnel

- A. General. Contractor shall furnish qualified drivers, mechanical, supervisory, clerical, and other personnel as may be necessary to provide services required by this Agreement in a safe and efficient manner.
- B. Identification. Contractor shall ensure that while on duty each Collection worker wears a clean uniform that displays the Contractor's company name and the worker's name or identification number.
- C. Fees & Gratuities. Contractor shall not, nor shall it permit any agent, employee, or Subcontractors employed by it to request, solicit, demand, or accept, either directly or indirectly any compensation or gratuity for any services performed under this Agreement except as provided in Article 8 of this Agreement.
- D. Training. All drivers shall be trained and qualified in the operation of vehicles they operate and must possess a valid license, of the appropriate class, issued by the California Department of Motor Vehicles. Contractor shall provide adequate operations, health and safety training, and Hazardous Waste identification and handling training for all of its employees who use or operate equipment or who are otherwise directly involved in Collection or other related operations.
- E. Customer Courtesy. Contractor shall train its employees in Customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection crews to perform the work quietly. Contractor shall use its best efforts to ensure that all employees present a neat appearance and conduct themselves in a courteous manner. If any employee is found to be discourteous or not to be performing services in the manner required by this Agreement, Contractor shall take all necessary corrective measures. If City has notified Contractor of a Complaint related to discourteous or improper behavior, Contractor will reassign the employee to duties not entailing contact with the public while Contractor is pursuing its investigation and corrective action process.

5.6 Disposal Requirements

- A. Contractor shall Dispose of all Solid Waste Collected under this Agreement at Contractor's own expense and in accordance with all Federal, State and local laws, rules, and regulations. Contractor shall be solely responsible for securing an appropriate location for Disposal of all Solid Waste Collected by Contractor pursuant to this Agreement.
- B. Contractor shall secure within 90 days of the Effective Date of this Agreement, sufficient Disposal site capacity commitment including landfill Disposal site capacity to adequately serve the reasonable anticipated Solid Waste Disposal needs of Contractor's Customers. City reserves the right to review said Disposal capacity commitments.
- C. If Contractor receives notice from the landfill operator or recyclables processor or otherwise finds, during the term of the Agreement, to be prevented from delivering Solid Waste to the designated site, Contractor shall immediately notify, in writing, the City Manager, stating the reason(s) Contractor is prevented, or expects to be prevented, from delivering Solid Waste at the Approved Facility. Contractor shall expeditiously identify and evaluate alternative sites. An alternative designated site or sites shall be arranged for and secured by Contractor.
- D. The Parties understand and agree that City intends to commence and participate in waste Diversion and resource recovery programs pursuant to regional and/or local implementation of AB 939, or such other programs as may be established by City.

- E. Contractor shall deliver all Solid Waste to any landfill which collects the San Luis Obispo County AB 939 Tipping Fee Surcharge and Waste Management Program Fund Fee, pursuant to County Resolution No. 90-383. If the Contractor delivers Solid Waste to a landfill which does not collect the County Tipping Fee Surcharge and Waste Management Program Fund Fee, the Contractor will make, on a monthly basis, the equivalent payment directly to the County's Waste Management Tipping Fee - AB 939 Trust Fund #0159 and Waste Management Tipping Fee Trust - Site Fund # 0160.
- F. Payment of the equivalent fees shall be made to County within thirty (30) days after the end of each calendar month, or prorated portion thereof, in which the Contractor delivers waste to an alternate Facility. In the event that Payment is not received by County within thirty (30) days after the date specified, then Contractor shall pay a penalty of ten (10) percent on the outstanding balance, and Contractor shall also pay to County interest on the outstanding balance at a rate of ten percent (10%) per annum, or the maximum legal rate of interest, whichever is greater, from the date of Contractor's failure to pay.
- G. Contractor hereby agrees to Dispose of all or a portion of the Discarded Materials Collected pursuant to this Agreement in such manner as may be reasonably designated by City. In the event that City designates a different manner of, or location for, Processing or Disposal of Discarded Materials than anticipated in this Agreement, City shall defend, indemnify and save harmless Contractor, its officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of, or connected with the manner, or location for Processing or Disposing of the Discarded Materials, as designated by the City.
- H. In the event Contractor's costs decrease or increase as a result of City designating a different manner of, or location for, Processing or Disposal of than anticipated in this Agreement, either Contractor or City may request an adjustment in Collection rates which adjustment shall be effective at the time the designated manner of Disposal begins. City will not unreasonably deny any such adjustment. In the event Contractor receives any additional compensation for the value, if any, of the Solid Waste or Recyclable Materials Disposed in such a manner, such compensation shall be considered in connection with future rate adjustments.

5.7 Container Cleaning

5.7.1 Single Family Containers

Contractor shall set a steam cleaning fee and/or a clean Container exchange fee for customers with carts requesting such service up to two (2) times per year.

5.7.2 Multi-Family and Commercial Containers

Contractor shall steam clean and refurbish all Multi-Family and Commercial Bins at Contractor's own expense up to twice per year upon request. Customers desiring more frequent cleaning may arrange additional cleaning with Contractor at a rate established by City, including pick-up, cleaning, and replacement of Container. Contractor shall set a steam cleaning fee and/or a clean Container exchange fee for customers with carts requesting such service up to two (2) times per year.

5.8 Clean-Up Week

Each year throughout the term of this Agreement for a period of one week in the spring and one week in the fall, Contractor shall Collect during regularly scheduled service and at no additional charge to Customers or City all Solid Wastes placed at the Curb by Residential Customers in addition to each Customer's normal level of service pursuant to rules as mutually agreed by the Parties. Said weeks shall be established annually as mutually agreed by the Parties. Contractor shall prepare related public education materials and arrange for publication or broadcasting said

materials. Contractor shall pay all advertising costs for said week.

5.9 Free Solid Waste and Recycling Service

Contractor shall provide free collection of at least forty (40) public litter containers and at least forty (40) Recyclable Material public litter containers located in public areas, as determined by City's Public Works Director, or their designee. In addition, Contractor will provide and service a Bin for Solid Waste and Recyclable Materials generated at the Morro Bay Household Hazardous Waste Facility.

5.10 Material Processing

- A. **General.** Contractor shall Transport all Discarded Materials to the Approved Facility(ies) and shall Transfer, Process, and Dispose of Discarded Materials in accordance with Section 5.2. The Approved Facilities shall comply with the following requirements:
- B. **Approved Transfer Facility.** Contractor's Approved Transfer Facility shall be a Transfer Facility or operation that Transfers Single-Family, Multi-Family, and Commercial Source Separated Recyclable Materials, Source Separated Organic Waste, and Solid Waste Collected in accordance with this Agreement.
- C. **Approved Disposal Facility.** Contractor's Approved Disposal Facility shall be a Disposal Facility that accepts Single-Family, Multi-Family, and Commercial Solid Waste Collected in accordance with this Agreement for Disposal.
- D. **Material Recovery Facility.** Contractor's Material Recovery Facility shall be a Facility or operation that Processes Single-Family, Multi-Family, and Commercial Source Separated Recyclable Materials to recover materials designated for Collection in the Recyclable Materials Container.
- E. **Approved Organic Materials Processing Facility.** Contractor'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 Materials.

5.10.1 Receipt of Recyclable Material

The Contractor shall have in place or have made arrangements for a Materials Recovery Facility or Facilities to receive and accept all deliveries of Recyclable Materials generated in the City.

5.10.2 Status of Materials Recovery Facility

Any Materials Recovery Facility used by Contractor must be designed and constructed in accordance with all applicable State and local laws (e.g., CEQA, California Code of Regulations, etc). The Materials Recovery Facility must have all permits from Federal, State, regional, County and City agencies necessary for it to operate as a Material Recovery Facility and must be in full regulatory compliance with all such permits.

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

5.10.2.1 Approved Facility(ies) Unavailable/Use of Alternative Facility(ies).

If Contractor is unable to use the Approved Processing Facility(ies) due to an event that meets the requirements for excusing Contractor from performance of this specific obligation as described in Section 5.10 Contractor shall use an Alternative Facility provided that the Contractor provides written notice to City Manager. Within forty-eight (48) hours of emergency or sudden and unforeseen closure, the Contractor shall provide a written description of the reasons the use of

the Approved Facility is not feasible, and the period of time Contractor proposes to use the Alternative Facility. Such a change in Facility shall be temporarily permitted until such time as the City Manager is able to consider and respond to the use of the proposed alternative Processing Facility. If the use of the proposed Alternative 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 Manager. The City Manager may, in their 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 Facility, the Parties shall meet and confer to determine an acceptable Facility.

If Contractor becomes unable to deliver the City's Recyclable Materials to the Materials Recovery Facility due to causes within its control and which could have been avoided by the exercise of due care, the Contractor shall arrange for it to be accepted at another Materials Recovery Facility, in which case Contractor shall pay for any increased transportation costs, any differences in the fees charged at such Materials Recovery Facility and the fees then in effect under this Agreement. If Contractor's inability to deliver the City's Recyclable Materials to the Materials Recovery Facility is not due to causes within its control or which could have been avoided by the exercise of due care, then Contractor shall propose alternative Material Recovery Facilities including all related costs and City shall select the alternative to be used. The City shall pay for the increased cost of using an alternative facility.

5.10.2.2 Disposition of Unauthorized Waste

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

5.11 Disposal

Contractor shall ensure that the residual from the Recyclable Materials delivered to the Materials Recovery Facility by the Contractor are Disposed of at the Materials Recovery Facility in full regulatory compliance.

5.12 Contamination Monitoring

The City's 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. The Contractor shall comply with the enforcement measures in Morro Bay Municipal Code Chapter 8.18 and report in writing any Contractor performed activities regarding the identification of Prohibited Container Contaminants to the City and City's Designee, such report shall include but is not limited to, record keeping, provision of educational notices, cart tags, any records or other documents generated pursuant to MBMC 8.8.150 and 8.8.160, and reporting.

Article 6. Other Services

6.1 Billing and Collection of Charges

Contractor shall be responsible for directly billing and collecting charges due from all Residential and Commercial Customers at rates established by City as further set forth in Exhibit C. Contractor shall bill Residential Customers bi-monthly in advance and Commercial Customers monthly in arrears. The City shall approve the format of the bills sent to Customers.

Contractor shall be solely responsible for collecting all delinquent charges pursuant to a collection method approved by City. City shall not be responsible for paying Contractor for said delinquent charges, provided, however, City may, at its sole discretion, establish a method for City to collect said delinquent charges as allowed by law.

Contractor agrees to print, insert and distribute brochures, newsletters, or other information developed by the City as single-sheet, double sided bill inserts in Contractor's Customer invoices at no additional charge to the City. Bill inserts shall be designed by the City and/or its Designee with review and comment by Contractor, and final approval by the City. Additionally, Contractor shall be responsible for printing the bill inserts. For Customers receiving electronic bills, Contractor agrees to distribute brochures, newsletters, or other information developed by the City, as attachments to Customer invoices at no additional charge to the City. Contractor 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. Electronic bill inserts/attachments must be readily available for the Customer to view upon receipt of the invoice (attachments shall not be provided as links). Upon City request for such inserts, Contractor shall comply with such request during its next billing cycle for the targeted Customer group. Contractor shall perform this service with no additional requirement for compensation.

6.2 Accounting

Contractor shall keep a system of books and accounts relating to Contractor's performance of services under this Agreement in accordance with generally accepted accounting principles and shall keep all records for a period of at least three (3) years after the termination of this Agreement.

City Manager or their designee shall have the right to examine all records and accounts Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. upon twenty-four (24) hours advance notice. A certified public accountant selected by Contractor shall prepare at Contractor's expense an audit of Contractor's financial records related to this Agreement. The scope of the audit shall be specified by the City.

This audit and said accountant's report shall be submitted to City not later than six (6) months following the close of Contractor's Fiscal Year or as otherwise mutually agreed by the Parties.

City reserves the right to perform an audit at City's expense. In the event there is a discrepancy of five (5) percent or more between the City's audit and Contractor's audit using generally accepted accounting principles, Contractor shall reimburse City for the cost of said audit.

6.3 Education

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

B. **Contractor Cooperation and Support for City Educational Efforts.** Contractor acknowledges that they are part of a multi-party effort to operate and educate the public about the regional integrated waste management system. Contractor shall cooperate and coordinate with the City Manager or his/her designee, or the City's Designee on public education activities to

minimize duplicative, inconsistent, or inappropriately timed education campaigns. The Contractor 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. Cooperation with City's Designee shall include, without limitation, (i) the mailing, website advertisement and/or other circulation of educational materials developed in cooperation with City's Designee, (ii) the development of accurate education materials and designs for educational materials in cooperation with City's Designee, and/or (iii) the provision of supplemental educational material as described immediately below.

- C. **Supplemental Education.** Contractor shall obtain approval from the City on all Contractor-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. City shall have the right to request that Contractor include City identification and contact information on public education materials and approval of such requests shall not be unreasonably withheld.
- D. **Annual Notice of Requirements.** Not less than once per year during each calendar year, City's Designee shall provide to each Generator information specified in 14 CCR Section 18985.1(a). Should the annual notice be in the form of a mailer, Contractor shall coordinate with City's Designee to distribute such mailer by Contractor to all Residential and Commercial mailing addresses including individual Multi-Family Dwelling Units. Contractor shall also make this notice available in an electronic format through the Contractor's website.

6.4 **Liaison With City**

Contractor shall maintain on-going liaison with City regarding all Solid Waste management activities and any matters relating to the performance of this Agreement, including Complaints. Such liaison includes but is not limited to Contractor's attendance at monthly Public Works Advisory Board meetings and any special meetings thereof as well as attendance at City Council meetings as requested by the City.

6.5 **Complaints**

Contractor shall maintain a record of all written and verbal Complaints received, which shall be provided to City upon request. Said record shall contain at minimum information as follows, subject to cooperation from the public:

- Name, address, and telephone number of complaining party;
- Name, service address, and telephone number if different than above;
- Description of problem/Complaint and related date and time if applicable;
- Date received; and
- Date and description of Contractor's response and action taken.

Complaints received from Customers or City shall be acted upon immediately and Contractor shall make every reasonable effort to resolve said Complaints within twenty-four (24) hours of receipt.

6.6 **Office**

Contractor shall maintain an office in San Luis Obispo County, or such other area as may be mutually agreed by the Parties, at a fixed location where Customers may arrange for service and file Complaints. Telephone numbers shall either be a local or a toll-free call to residents and businesses of the City. Contractor shall at all times between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Holidays, have qualified personnel with whom City and members of the public may communicate. Contractor shall provide to City an emergency telephone number and contact person accessible twenty-four (24) hours per day. Contractor's office and telephone shall be open to the public during normal business hours. Contractor shall have a representative,

answering or message providing/receiving (voicemail) service available at said after hours telephone number.

6.7 Procurement of Recovered Organic Waste Products

- A. **Renewable Natural Gas (RNG) Vehicles.** Under this Agreement, the Contractor shall make a best effort for all Collection vehicles to be powered by RNG generated by a local facility or powered by 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, Contractor shall obtain and provide the City with a written certification by an authorized representative of the publicly owned treatment works or the wheeling agreement Contractor certifying that the in-vessel digestion Facility produces the RNG consistent with the requirements of 14 CCR Section 18993.1(h). Contractor shall maintain records of the amount of RNG purchased and shall report this information in accordance with Exhibit D. Contractor shall agree to the City the right to report this RNG usage toward the City's fulfillment of its annual recovered Organic Waste product procurement target in accordance with 14 CCR Section 18993.1.
- B. **Power.** To the extent that electricity produced from the Approved 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 Approved Organic Materials Processing Facility for that same time period.
- C. **Compost Give-Away Events.** Contractor shall make available for distribution an annual total of at least one thousand (1,000) cubic yards of Compost for all Member Agencies, including but not limited to the City, utilizing the Approved Processing Facility to City residents at no additional cost to the City or Customers at two (2) public events. To the extent that such distribution qualifies for City's procurement credit under SB 1383, City shall be allocated its proportional share of such qualified procurement based on the inbound Tonnage of Organic Materials collected by Contractor from City divided by the total inbound Tonnage of the Approved Organic Materials Processing Facility to which Contractor delivered such City Tonnage during the applicable measurement period by each Member Agency. The location, date, and time of such events shall be determined by the City with notice provided to the Contractor within twenty (20) Business Days of the date of the event and may be held in conjunction with other City -approved events. Contractor shall deliver the Compost to the agreed-upon event location at no cost to City. Contractor shall provide at least one (1) attendant for at least six (6) hours per event."

6.8 Generator Waivers and Contractor Exemptions

- A. **General.** The City's Designee may grant waivers described in this Section to Commercial or Multi-Family Generators that impact the scope of Contractor's provision of service for those Customers; provided, the Generator shall continue to subscribe with Contractor 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.

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

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

C. Review of Waiver Requests.

Generators may submit requests for de minimis waivers and physical space waivers to the City's Designee. If a Generator submits a request for a waiver to the Contractor, the Contractor shall refer the Generator to the City's Designee. Upon request of the City's Designee the Contractor shall support the City's Designee in the waiver review process by providing requested Customer information. If the City's Designee grants a waiver to a Generator, the City's Designee shall notify the Contractor and Contractor shall update the Customer's information and Service Level.

Article 7. Payments to City

7.1 Franchise Fees.

- A. Compensation to City for Grant of Franchise.** In consideration for the grant of the franchise provided herein, Contractor shall pay to City a Franchise Fee equaling 10% of the Gross Receipts derived by Contractor from the services provided in City to residential and commercial customers.

Franchise Fees paid to the City pursuant to this Section 7.1 shall be made to City within thirty (30) days of the conclusion of each month during the Term, payable on or before the last Business Day of the following month. All remittances by Contractor shall be accompanied by a report setting forth the basis and calculations used for computing the amount due. Each payment of the Franchise Fee shall be accompanied by a statement separately setting forth the Gross Revenues, including the Net Recycling Revenues, if any, collected by Contractor, and the computation of the total Franchise Fee due. Each statement shall include the following certification executed by an officer of the Franchisee: "I hereby certify that the foregoing statement of Franchise Fee payments as based on Gross Receipts, including Net Recycling Revenues collected by Contractor, is made by me, that I am authorized to make

such statement, and that, to the best of my knowledge and belief, it is true, correct and complete."

Contractor shall pay a delinquent assessment of ten percent (10%) per month on all Franchise Fees that are not paid within thirty (30) days of the date due. The Parties agree that such delinquent assessment represents a fair estimate of the City's added administrative expenses caused by such delinquent payments.

No acceptance by City of any payment shall be construed as an accord that the amount is the correct amount, nor shall such acceptance of payment be construed as a release of any claim City may have against Franchisee for any additional sums payable under the provisions of this Agreement. All amounts paid shall be subject to independent audit and recompilation by City.

7.2 Recycling Development Program and Administration Fee

The Contractor shall pay to the City a monthly Recycling Development Program and Administration Fee of \$2,900.00. The use of program funds shall be at the sole discretion of the City. All fees paid to the City shall be considered a pass-through cost for purposes of Rate setting. This fee shall be adjusted annually based on the change in Consumer's Price Index.

7.3 AB 939, AB 341, AB 1826, and SB 1383 Reimbursement. If requested by City, Contractor shall pay an AB 939, AB 341, AB 1826, and/or SB 1383 reimbursement fee to City each month. In addition, if the IWMA currently implements an AB 939, AB 341, AB 1826, and/or SB 1383 reimbursement, or Solid Waste Management fee, Contractor shall pay that fee directly to the IWMA. All AB 939, AB 341, AB 1826, and/or SB 1383 reimbursements paid to the City shall be considered a pass-through cost for purposes of Rate setting, subject to the requirements of Article 8.

7.4 Business License Tax

Contractor shall pay each annual business license tax.

7.5 Other Fees

The City shall reserve the right to set "Other" Fees, as it deems necessary. Such fees shall be set annually by City resolution and shall be considered a pass-through cost for purposes of Rate setting, subject to the requirements of Article 8.

7.6 Adjustment of Fees

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

7.7 Review of Fee Payments

The City, or its agent, reserves the right to annually perform an independent review of fee payments, to verify that fees are being paid in accordance with Agreement. The cost of such reviews will be an allowable cost under the Rate setting methodology unless there are findings pursuant to Article 12.5.

Article 8. Contractor's Compensation and Rates; Proposition 218 Compliance

8.1 Maximum Rate Schedule

In the attached Exhibit C, which is incorporated herein by this reference ("Maximum Rate Schedule"), the City has established the maximum service rates which may be charged by Contractor to its Customers in the City. The Maximum Rate Schedule will go into effect on the Effective Date of this Agreement. Contractor may establish such rates and charges Contractor believes are appropriate in the marketplace, provided such rates and charges do not exceed the maximum rates set forth in the Maximum Rate Schedule. Contractor shall not receive any other fees or compensation for the services to be performed pursuant to this Agreement in excess of those provided in the Maximum Rate Schedule unless until such additional fees or compensation

have been duly noticed and subjected to a public hearing process in accordance with Proposition 218.

8.2 Adjustments to Maximum Rate Schedule

- A. **General.** Contractor acknowledges that under current law, increases in the Maximum Rate Schedule are potentially subject to the substantive and procedural requirements of Proposition 218. During the Term, the City and Contractor may mutually agree to adjustments or increases to the Maximum Rate Schedule, subject to the provisions and requirements of Proposition 218. Any increases in the Maximum Rate Schedule are strictly subject to the assent of the City and compliance with Proposition 218 as provided in this Article.
- B. **COLA Adjustments; Government Code § 53756.** Subject to the requirements of Proposition 218 and this Agreement, the Maximum Rate Schedule may be adjusted to account for annual inflationary increases to all regular, weekly service rates for both Single-Family Residential Units and Commercial and Industrial Units in an amount equal to the annual percent change in the CPI. This adjustment (the "COLA Adjustment") shall be made each January 1st and shall be equal to the percentage change in CPI for the year that ended the immediately preceding September 30 for All Urban Consumers Los Angeles-Long Beach-Anaheim CUURS49ASA0. The COLA Adjustment calculation is [current rate X (1 + the percentage change in CPI) = new rate]. Notwithstanding the above, the COLA Adjustment to the Maximum Rate Schedule shall be subject to the following requirements:
- 1) The COLA Adjustment may take effect only after it has been adopted and passed by the City Council pursuant to a Proposition 218 hearing and/or protest process. The COLA Adjustment shall be enacted consistent with Government Code § 53756, such that no prior approval of a COLA Adjustment may exceed a period of five (5) years.
 - 2) Commencing from the date of adoption for any COLA Adjustment, such adjustments shall continue automatically, with notice to Customers, on a year-to-year basis for a period not to exceed five (5) years after the date such adjustments were adopted in accordance with Proposition 218.
 - 3) At the end of the five-year period, there shall be no further CPI escalations or other automatic adjustments to the Maximum Rate Schedule unless or until further automatic adjustments are adopted through a subsequent Proposition 218 process as required by Government Code § 53756.
 - 4) Increases for Cost Pass-Throughs. Subject to adoption in accordance with Proposition 218 and this Agreement, the Maximum Rate Schedule (Exhibit C) shall be adjusted to account for Contractor's increased costs during the Term such that cost increases shall be "passed-through" to Contractor's customers in the form of service rate adjustments ("Pass-Through Adjustments"). Such costs that shall be passed-through include, without limitation: cost increases (i.e. on any direct or indirect cost, whether fixed or variable) associated with an increase in the level of Contractor's Solid Waste, Organics or Recyclables handling services, including new programs or services, increases in tipping fees, which may be required of, or agreed to by, Contractor, increased actual costs due to changes in law or legal requirements imposed upon Contractor, and/or increases in the fees set forth in Article 7 herein.

- 5) These Pass-Through Adjustments may be adopted through a Proposition 218 process any time after the Effective Date of this Agreement. Pass-Through Adjustments, however, may not be increased automatically each year, but shall remain at *status quo* unless and until another Proposition 218 process is undertaken to increase Pass-Throughs again as needed to cover actual cost increases to be incurred by Contractor. (See, Government Code § 53756, which only extends automatic increases for inflationary adjustments.) Contractor agrees to notify City in writing within 30 days of any expected cost increases that could result in a Pass-Through Adjustment.
- C. **Purpose of Adjustments.** The rates and rate adjustment provisions contemplated by this Agreement are calculated (1) to provide Contractor with the means to fund Diversion efforts, (2) to cover all costs and expenses incurred by Contractor in providing the services contemplated herein, including, without limitation, fuel costs, along with a reasonable profit and (3) to obtain a certain amount of revenue, if any, from the recovery of Recyclable Materials. The parties recognize further that recycling markets, along with fuel costs, will likely fluctuate throughout the Term. Accordingly, the parties understand and agree that while Contractor will remain obligated to maximize Diversion and identify and pursue opportunities to market the Recyclable Materials it recovers, Contractor cannot, among other items, influence or dictate fuel prices or the availability or adequacy of markets for Recyclable Materials, including beverage containers, and that a future fuel cost increase, or decline in revenue from the sale of Recyclable Materials may, depending upon the scale of that increase or decline, justify a cost pass-through in accordance with this Section.

8.3 Proposition 218 Process for Adjustments to Maximum Rate Schedule.

- A. **Compliance with Proposition 218 Required Timeframes.** Further adjustments and/or increases to the Maximum Rate Schedule, that are non-inflationary or “automatic” as described by Government Code §53756 are subject to the reasonable assent of the City and may be subject to compliance with Proposition 218. The City intends to comply with all applicable laws, including without limitation Proposition 218, concerning the setting of adjustments to the Maximum Rate Schedule under this Agreement. Contractor shall pay for the administration of Proposition 218 compliance, including the costs of public noticing.
- 1) Preliminary Meeting Re Proposed Rate Adjustments. At a minimum, the City and Contractor will meet at least once per year in April to discuss potential rate adjustments (increases or decreases) and the justifications therefor. Such meetings will be conducted between Contractor and the City Manager or their designee. Contractor guarantees that upon the Services Start Date the Customer rates and/or the Maximum Rates shall be competitive with the rates charged for similar services to Residential and Commercial and Industrial customers in the local area.
 - 2) Timing/Notice to City of Rate Adjustment Requests. For any rate adjustment subject to a Proposition 218 majority hearing process, Contractor hereby acknowledges that it typically takes 75-90 days to process an adjustment through Proposition 218. Therefore, Contractor shall provide the City written notice of a requested rate adjustment, with the specific proposed new rates, at least 120 days from the date such adjusted rates are contemplated to take effect. Should the Contractor and City not come to an agreement within 75 days of the initial request for a rate adjustment, in order to allow for adequate Proposition 218 noticing, the rates as proposed by the Contractor may be noticed by Contractor to customers via the Proposition 218 requirements, with hearing to be

coordinated with City in good faith, to ensure the Contractor is able to provide ongoing safe and reliable service.

- B. **Indemnification.** To the extent permitted by law, Contractor shall indemnify, defend and hold harmless the City, their officers, employees, agents and volunteers, (collectively, indemnitees) from and against all claims, damages, injuries, losses, costs, including demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest fines, charges, penalties and expenses (including attorneys' and expert witness fees, expenditures for investigation, and administration) and costs or losses of any kind whatsoever paid, imposed upon, endured or suffered by or assessed against Contractor or any of the indemnitees resulting from the establishment of the Maximum Rate Schedule under California Constitution Article XIIC and Article XIID to the imposition, payment or collection of rates and fees for services provided by Contractor under this Agreement. Notwithstanding the foregoing, this indemnity shall not extend to any portion of the rates that are not associated with Contractor's costs in providing service, such as governmental fees, franchise fees or charges, nor shall it apply to any loss arising directly from the negligence of City, its officers and employees. Nothing herein is intended to imply that California Constitution Articles XIIC or XIID, apply to the setting of rates for the services provided under this Agreement; rather this Section is provided merely to allocate risk of loss as between the Parties.
- C. **Notice of Increases to Ratepayers.** Contractor shall give prompt written notice of any duly-adopted rate increases to all customers, which notice shall inform customers of the exact date on which the increase becomes effective. These notices shall be provided on the Contractor's publicly-accessible website and shall also be included in those billing invoices mailed out at a time in conformance with Government Code § 53756, which is 30 days before inflationary rate increases are to become effective.
- D. **Rate Increase Not Automatic.** While City reserves all powers afforded to cities generally under the provisions of applicable law, this Agreement, including the rate adjustment elements hereof, has been agreed to by the parties following arms-length negotiations and upon advice of counsel, for the dual purposes of safeguarding public health and facilitating the performance of obligations undertaken by Contractor on City's behalf and for its benefit. Accordingly, while this Agreement does not require City's approval of a Maximum Rate Schedule adjustment in every case, it does contemplate that City will exercise its powers reasonably and in good faith, and shall favorably consider and shall accord proper weight to a Maximum Rate Schedule proposal if accompanied by substantial supporting evidence. Accordingly, the City Council is completely free within its police powers to exercise its discretion in considering such matters, and the City has not contracted away any of its police powers or duties to protect the public health, safety or general welfare of its citizens pursuant to State and Federal law.
- E. **Rate Studies.** The City shall at its option, have the right but not the obligation, to conduct, or retain a consultant to conduct, a Proposition 218 rate study once every three (3) years to review the Maximum Rate Schedule's substantive compliance with the requirements of Proposition 218. City shall seek review and input from Contractor on bid specifications and review of proposals submitted to City for any rate studies that are to be performed. Contractor shall reimburse City for the cost actually incurred and paid for the rate study.

Article 9. Records, Reports and Information, Studies, and Hearing Requirements

9.1 Records

9.1.1 General

Contractor shall maintain all records required to conduct its operations, to support requests it may make to City, and to respond to requests from City in the conduct of City business as specified in Exhibit D. Additionally, the Contractor shall also keep and maintain records reasonably necessary for audits, as required by this Agreement, and shall keep and maintain all records reasonably necessary to develop reports and financial statements required with respect to this Agreement. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as a fire, theft and earthquake. Electronically maintained data/records shall be protected and backed up.

Contractor shall permit the City, or its designee, to audit, examine, and make excerpts or transcripts from such data and records, and make copies of all data relating to all matters covered by this Agreement and the Applicable Law. Contractor shall maintain such data and records in an accessible location.

Contractor agrees that all data regarding business operations, Customer lists, routing, Tonnage, Service Levels, work orders issued from dispatch, Customer service logs and account notes, and work force and bargaining agreements, do not constitute Proprietary Information or Trade Secrets and shall be made available to the City Contract Manager or their designee upon request. City is subject to the California Public Records Act (Government Code section 6250, *et. seq.*) and nothing in this Agreement is intended to impair City's requirements or obligations under that Act.

9.1.2 Financial Records

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

9.1.3 General Records

City approved records shall be maintained for the City separate from other jurisdictions relating to: Customer services; weight of Recyclable Materials by type of materials; weight of Discarded Materials; routes; facilities, inventory of equipment and personnel used; facilities and equipment operations, maintenance and repair; Processing, marketing and sale of Recyclable Materials including name of the purchaser, the date of sales transaction, Processing cost per Ton, quantity purchased, value per Ton and net sales records; Complaints; and, missed pickups; and any records relating to the implementation of SB 1383.

Contractor shall maintain records for a period of five (5) years past the termination of this Agreement.

9.2 Reports

9.2.1 General.

Contractor shall maintain Customer contact data, Customer service, accounting, statistical, operational, programmatic, and other records, and associated documentation, related to its performance as shall be necessary to provide detailed and accurate reports under this Agreement, and to demonstrate compliance with this Agreement and Applicable Law, in accordance with Exhibit D. Unless otherwise required in this Agreement, Contractor 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. Records and data shall be in chronological and organized form that is readily and easily interpreted to facilitate the flexible use of data to structure reports. Contractor's records shall be stored in one central location, physical or electronic, that can be readily accessed by Contractor. 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 or its Designee, and made available to the City or its Designee; including any record or documentation that the City or its Designee, in their sole discretion, may deem necessary, for the City or its Designee 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.

9.2.2 Report Formats and Schedule

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

Monthly reports shall be submitted within twenty (20) calendar days after the end of the month being reported. Annual reports shall be submitted before March 30th, for the previous calendar year. Monthly and annual reports shall include at a minimum, all data and information described in Exhibit D, unless otherwise specified under this Agreement.

Contractor shall submit all reports to the City Manager or its Designee electronically via e-mail using software acceptable to the City. The City reserves the right to require the Contractor 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 Contractor's expense.

9.2.3 Monthly Reports

Contractor shall provide first monthly report with Customer and Service Level information to City and its Designee within twenty (20) days of the approved Agreement.

9.2.4 Additional Reports.

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

Pursuant to Exhibit D, at the City's option, the City may require that Contractor provide the City copies of the Contractor's AB 901 reports on a regular basis (such as monthly, quarterly, or annually) or within ten (10) Business Days of City request. If a Contractor has an agreement with an Approved Facility, the Contractor shall be required to provide AB 901 reports for those facilities.

9.2.5 Annual Report

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

Financial statements shall include a supplemental schedule combining Contractor's results of operations, separating the specific revenues and expenses, including detailed information with respect to general overhead claimed by the Contractor, in connection with the operations provided for in this Agreement from others included in such financial statements. The financial statements, supplemental schedule, management letter and footnotes shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and audited, in accordance with Generally Accepted Auditing Standards (GAAS) by a certified public accountant (CPA) licensed (in good standing) to practice public accounting in the State of California as determined by the State of California Department of Consumer Affairs Board of Accountancy. The CPA opinion on Contractor's annual financial statements and supplemental schedule shall be unqualified,

except as to uncertainties for which the ultimate outcome cannot be determined by the date of the CPA's opinion.

9.3 Right to Inspect Records

City shall have the right to inspect or review the payroll tax reports, specific documents or records required expressly or by inference pursuant to this Agreement, or any other similar records or reports of Contractor that City shall deem, in its sole discretion, necessary to evaluate annual reports, compensation applications provided for in this Agreement and Contractor's performance provided for in this Agreement.

The City retains the right to have an independent third party or agent of the City's choosing participate in the records inspection. Contractor will reimburse the City for any City incurred cost of conducting any optional inspection related to Article 9.

9.4 Waste Generation/Characterization Studies

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

Article 10. Indemnification, Insurance, and Security Fund

10.1 Indemnification

Without regard to the limits of any insurance coverage, Contractor agrees to indemnify, defend with counsel appointed by the City, protect and hold harmless the City, its representatives, officers, agents and employees against any and all fines, response costs, assessments, actions, suits, injunctive relief, claims, damages to persons or property, losses, costs penalties, obligations, errors, omissions or liabilities, ("claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with (i) violations of the commerce clause of the U.S. Constitution, AB 939, SB 1383, AB 1826 and any related laws and regulations, the Comprehensive Environmental Response, Compensation and Liability Act, Title 42 U.S.C. §9601 *et seq.* ("CERCLA"), HSAA, RCRA, any other Hazardous Waste laws, or other federal, state or local environmental statutes, ordinances and regulations which arise from this Agreement; (ii) the negligent performance of the work or services of Contractor, its agents, employees, subcontractors, or invitees, provided for in this Agreement; (iii) the negligent acts or omissions of Contractor hereunder, or arising from Contractor's negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, whether or not there is concurrent passive or active negligence, on the part of the City, its representatives, officers, agents or employees but excluding such claims or liabilities arising from the sole negligence or willful misconduct of the City, its representatives, officers, agents or employees, who are directly responsible to the City, and in connection therewith:

- A. Contractor will defend any action or actions filed in connection with any of said claim or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;
- B. Contractor will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work or services of Contractor hereunder; and Contractor agrees to save and hold the City, its officers, agents and employees harmless therefrom;
- C. In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising

out of or in connection with the negligent performance of or failure to perform the work or services of Contractor hereunder, Contractor agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Contractor's obligations hereunder shall survive the termination or expiration of this Agreement.

10.2 Landfill Diversion

The Contractor acknowledges that the City has adopted a SRRE that selects Recycling programs as a means of Diverting waste. It is therefore of foremost importance that the Recyclable Materials Collected under this Agreement be converted into a functional and marketable product in order that the materials may be Diverted from landfill Disposal in compliance with the City's SRRE, and AB 939. The Contractor shall therefore ensure that the Processing method used shall, at all times, meet the intent of the City's SRRE and AB 939. Should the Contractor find it necessary to utilize another method of Processing in order to meet the intent of the SRRE and AB 939, the City shall be given an opportunity to make its own determination as to the suitability and cost-effectiveness of such Process and shall approve such Process in writing. The City shall have the right to terminate this Agreement upon the giving of a six (6) month prior written notice to Contractor should it be determined that the Recycling program being implemented and/or proposed under this Agreement is ineffective in meeting the City's Diversion goals and objectives. Upon termination, the Contractor shall be entitled only to revenues less expenses incurred to that date. All revenues received thereafter, including from Recyclable Materials sales, shall be the property of the City unless otherwise agreed.

10.3 Diversion Rate Indemnification

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

10.4 Insurance

During the term of this Agreement, Contractor shall carry insurance in accordance with this Article and such other insurance as required by law. Lack of insurance does not negate the Contractor's obligation under this Agreement. Contractor agrees that in the event of loss due to any of the perils for which it has agreed to provide insurance, Contractor shall look solely to its insurance for recovery, except where caused by the active negligence, sole negligence, or willful misconduct of the City. Contractor hereby grants to the City, on behalf of any insurer providing insurance to either Contractor or City with respect to the services (occupancy of premises) of Contractor herein, a waiver of any right to subrogation which any such insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance.

Insurance shall be secured by Contractor and approved by City's risk manager prior to commencement of work according to this Agreement. The policy or a successor policy must be in effect for the duration of the Agreement.

Maintenance of proper insurance coverage is a material element of this Agreement and failure to maintain or renew coverage or to provide evidence of coverage and/or renewal may be treated by the City as a material breach of Agreement. Contractor shall forward the City specifications to Contractor's insurance agent for compliance.

- A. Minimum Scope of Insurance. Coverage shall be at least as broad as:
1. Insurance Services Office Commercial Liability coverage (occurrence form CG 0001).
 2. Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 (any auto).
 3. Workers' Compensation insurance as required by the State of California and Employer's Liability insurance.
 4. Pollution Legal Liability.
- B. Minimum Limits of Insurance. Contractor shall maintain limits no less than:
1. Commercial or Comprehensive General Liability: Five Million Dollars (\$5,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit.
 2. Automobile Liability: Five Million Dollars (\$5,000,000) combined single limit per accident for bodily injury and property damage.
 3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and employers liability with limits of \$1,000,000 per accident for bodily injury or disease.
 4. Pollution Liabilities: One Hundred Thousand Dollars (\$100,000). In addition Cold Canyon Landfill shall maintain \$2,000,000.
- C. Deductibles and Self-Insured Retentions. Any deductibles greater than \$1,000 or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, Council members, its officers, officials, employees, agents or volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Any insurance policies providing for self insured retentions shall further provide that legal costs and costs of investigation, including consultant fees, with respect to any claim or suit, shall apply to the self insured retention amount.
- D. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
1. The City, Council members, its officers, officials, employees, agents and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents or volunteers.
 2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the City, Council members, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, Council members, its officers, officials, employees, agents or volunteers.
 4. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.
 5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either Party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt required, has been given to the City.
 6. Pollution, if on a Claims Made form:
 - a. The "Retro Date" must be shown, and must be before the date of the contract or the beginning contract work.
 - b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.
 - c. If coverage is canceled or non-renewed, and not replaced with another claims made policy form with a "Retro Date" prior to the contract Effective Date, the Contractor must purchase "extended reporting" coverage for a minimum of two years after completion of contract.
 7. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.
- E. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VI. Insurers selected by Contractor shall be admitted to issue insurance in the State of California.
- F. Verification of Coverage. Contractor shall furnish the City with copies of required insurance policies and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to the City and are to be received and approved by the City before performance under this Agreement commences. The City reserves the right to require complete certified copies of all required policies at any time, and Contractor shall provide said copies upon request.
- G. Subcontractors. Contractor shall include all Subcontractors as insurers under its policies or shall furnish copies of required insurance policies and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to all of the requirements stated herein.
- H. Occurrence Based Coverage. All policies secured by Contractor shall be occurrence and not claims based unless City so consents in writing.

10.5 Security

Concurrently with execution of this Agreement, Contractor shall deliver to City a bond or a letter of credit in the amount of Five Hundred Thousand Dollars and Zero cents (\$500,000.00), which shall secure the faithful performance of this Agreement, including, without limitation, payment

of any penalty and the funding of any work to cure a breach of this Agreement, unless such requirement is waived by the City Manager. If Contractor elects to submit a bond, the performance bond shall be executed by a surety company licensed to do business in the State of California, having an A: VII or better rating, and approved by the City; and included on the list of surety companies approved by the Treasurer of the United States. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his or her power of attorney. The bond shall be unconditional and remain in force during the entire Term. If Contractor elects to submit a letter of credit, the instrument shall be an irrevocable standby letter of credit in a form approved by the City Attorney and issued by a bank which is reasonably satisfactory to City. The bank must be chartered in the United States, have a rating of B or above or a number rating of 40 or above in the Bank Watch Thomas Ratings, or such equivalent rating service as may be mutually agreed upon between the City and Contractor, maintain an office in the State of California, maintain an agent for service of process in the State of California, and otherwise do business in the State of California. In the event Contractor shall for any reason become unable to or fail in any way to perform as required by this Agreement, City may declare a portion or all of the performance bond or letter of credit forfeited to the City. Upon partial or full forfeiture of the performance bond or letter of credit, Contractor shall restore the performance bond or letter of credit to its face amount within thirty (30) days of the City's declaration. Failure to restore the performance bond or letter of credit to its full amount within thirty (30) days shall be a material breach of this Agreement.

The amount of the bond or letter of credit shall be adjusted annually by the CPI.

Article 11. City's Right to Perform Service

11.1 General

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

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

Contractor further agrees that in such event:

(1) It will take direction from City to affect the transfer of possession of property and equipment to City for City's use.

(2) It will, if City so requests, keep in good repair and condition all of such property and equipment, 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.

(3) City may immediately engage all or any personnel necessary or useful for the Collection, Transportation, Processing marketing and/or Disposing of Discarded Materials, including, if City so desires, employees previously or then employed by Contractor, Contractor further agrees, if City so requests, to furnish City the services of any or all management or office personnel employed by Contractor whose services are necessary or useful for Discarded Materials Collection, Transportation, Processing and marketing 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 Article 12.4 (Excuse From Performance), City shall pay to Contractor the reasonable rental value of the equipment and facilities, possession of which is taken by City, for the period of City's possession, if any, which extends beyond the period of time for which Contractor has rendered bills in advance of service.

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

11.2 Temporary Possession of Contractor's Property

If the City suffers an interruption or discontinuance of service as described in Article 11.1 (including interruptions and discontinuance due to events described in Article 12.4, Excuse from Performance), City may take possession of and use all of Contractor's property described above until other suitable arrangements can be made for the provision of Recycling Services which may include the grant of a Contract to another company. The same notice requirements of Article 11.1 are applicable.

11.3 Billing and Compensation to City During City's Possession

During such time that City is providing Recycling services, as above provided, Contractor shall not be paid. The City shall then pay any net revenues to the Contractor, after deducting all expenses, including City-incurred expenses.

11.4 City's Right to Relinquish Possession

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

11.5 Duration of City's Possession

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

Article 12. Default, Remedies, and Liquidated Damages

12.1 Events of Default

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

A. Fraud or Deceit. If Contractor practices, or attempts to practice, any fraud or deceit upon city.

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

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

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

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

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

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

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

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

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

Upon default by the Contractor, the City Manager or their designee shall provide written notice to Contractor of the violation. The City Manager or their designee shall include in the notice, a

demand that the Contractor correct the violation within 10 days following the delivery of said notice. For purposes of this Agreement and any notice required thereunder, the term "days" shall mean calendar days.

12.2 Right to Terminate Upon Default

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

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

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

12.3 Remedies for Nuisance Violations.

12.3.1 Liquidated Damages.

The provision of poor public service or the production of any nuisance condition will subject Franchisee to administrative procedures, potential liquidated damages and, ultimately, termination, for severe and repeated violations.

12.3.2 Nuisance Conditions.

Repeated, substantiated complaints of, or continued conditions of, poor service quality and/or nuisance conditions may be handled in the manner prescribed below. For purposes of this Section, the term "nuisance conditions" shall include, but is not limited to, the following:

- A. Failure to duly collect Solid Waste and/or Recyclables that have been properly set-out prior to beginning of service day, for Collection through the willful or negligent conduct of Franchisee employees;
- B. Uncured damage to the property of third parties or customers through the willful or negligent conduct of Franchisee employees;
- C. Legitimate complaints of rude or unprofessional behavior or conduct by Franchisee's employees in the course of their duties;
- D. Unreasonable leakage or spillage of Solid Waste or other collected materials from Franchisee's vehicles;
- E. Failure to immediately or promptly collect Solid Waste or other materials that spilled or fell from Franchisee's vehicles onto public streets or third-party property;
- F. Poor maintenance of Franchisee's vehicles, containers and equipment in violation of Sections 6.1 through 6.3 hereof;
- G. Violations of personnel standards and qualifications in contravention of Section 6.4 hereof;

- H. Any other failure to meet performance standards in such a manner as to give rise to a condition of public nuisance or threat to public health and safety.

12.3.3 Notice of Violation.

Initially, when the City Manager or his or her designee observes a violation, a verbal warning shall be given to the Contractor. If the violation is thereafter repeated and, in the opinion of the City Manager or designee, Contractor has not taken timely, effective action to correct the violation and prevent its repetition, then the City Manager or designee may issue a written notice of violation (the "Notice of Violation") describing the violation, the period in which Contractor is required to cure the violation (if such violation is curable) and a warning that continued violations can be subject to liquidated damages.

12.3.4 Franchisee's Right To Contest.

Within five (5) business days after receiving the Notice of Violation, Contractor may submit a written response (the "Response") to the Notice of Violation to the City Manager. The City Manager shall review Contractor's Response and may further investigate the claimed violation. The City Manager shall make a final determination regarding the Notice of Violation and the City Manager shall deliver to Contractor a written conclusion concerning the Notice of Violation. Additionally, at the election of either Party, the Parties may meet to develop a written corrective action plan ("Correction Plan") to prevent further occurrence of the problematic conditions established in the Notice of Violation. The Correction Plan shall be finally prepared by the City (or, at the election of the City, by Contractor) within ten (10) business days after the meeting between the City Manager or designee and Contractor. The Correction Plan may include additional procedures, as deemed necessary by the City Manager, to assure that in the future Contractor will be able to perform its services in compliance with this Agreement.

12.3.5 Liquidated Damages.

If a second Notice of Violation is issued for any violation *after* an initial verbal warning and thereafter the issuance of a written Notice of Violation that is not withdrawn pursuant to Subsections 12.3.3 or 12.3.4 above, then liquidated damages may thereafter be assessed against Contractor (as liquidated damages and not a penalty) by the City Manager in the amount of \$450 for every day the condition persists. Further, if the violation for which liquidated damages were assessed recurs on three (3) or more days within a 60-day period following any assessment of liquidated damages, then starting on the fourth (4th) day that such violation either persists or recurs the amount of liquidated damages shall increase to \$700 per day.

Contractor shall pay any Liquidated Damages assessed by City within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, City may proceed against the security fund required by this Agreement or order the termination of this Agreement, or both.

12.3.6 Basis for Liquidated Damages.

City and Contractor further recognize that if Contractor recurrently fails to prevent and remediate nuisance conditions, the 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 and its citizens will suffer. Therefore, the City and Contractor agree that the liquidated damages established herein represent a reasonable estimate of the amount of such damages for such specific violations, 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 impractical. In placing their initials at the places provided, the City and Contractor specifically confirms the accuracy of the statements made above and the fact that the City and Contractor has had ample opportunity to consult with legal counsel and obtain an explanation of these liquidated damage provisions prior to entering this Agreement.

Contractor Initials AG

City Initials GC

12.3.7 Further Remedies For Severe Or Persistent Violations.

The above provisions for a Correction Plan procedure and liquidated damages are intended to give the City and Contractor a remedy under this Agreement short of termination or default; however, should Contractor's violations be severe and repetitive or otherwise not reasonably subject to correction through liquidated damages, the City Manager may, in his or her sole discretion, institute the procedures set forth in this Article hereof.

12.4 Excuse from Performance

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

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

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

12.5 Financial Material Errors, Omissions or Irregularities

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

Article 13. Representations and Warranties of Contractor

13.1 Relationship of Parties

The Parties intend that Contractor shall perform the services required by this Agreement as an independent Contractor engaged by City and not as an officer or employee of City nor as a partner of or joint venture with City. No employee or agent of Contractor shall be or shall be deemed to be an employee or agent of City. Except as expressly provided herein, Contractor shall have the exclusive control over the manner and means of conducting the Recycling services performed under this Agreement, and all Persons performing such services. Contractor shall be solely responsible for the acts and omissions of its officers, employees, Subcontractors and agents.

Neither Contractor nor its officers, employees, Subcontractors and agents shall obtain any rights to retirement benefits, workers compensation benefits, or any other benefits that accrue to City employees by virtue of their employment with City.

13.2 Compliance with law

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

13.3 Governing Law

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

13.4 Jurisdiction

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

13.5 Assignment

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

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

Contractor acknowledges that this Agreement involves rendering a vital service to City's residents and businesses, and that City has selected Contractor to perform the services specified herein based on (1) Contractor's experience, skill and reputation for conducting its Solid Waste management operations in a safe, effective and responsible fashion, at all times in keeping with applicable Environmental Laws, regulations and best waste management practices, and (2) Contractor's financial resources to maintain the required equipment and to support its indemnity obligations to City under this Agreement. City has relied on each of these factors, among others, in choosing Contractor to perform the services to be rendered by Contractor under this Agreement.

If Contractor requests City's consideration of and consent to an assignment, City may deny or approve such request at its complete discretion. The City is concerned about the possibility that

assignment could result in significant Rate increases, as well as a change in the quality of service. Accordingly, the following standards have been set to ensure that assignment will result in continued quality service. In addition, the City reserves the right to solicit competitive bids for these services if the assignment results in a request by the assignee for Rate increases that are higher than the inflationary index and do not reflect value changes in service standards. At a minimum, no request by Contractor for consent to an assignment need be considered by City unless and until Contractor has met the following requirements:

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

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

C. Contractor shall furnish City with satisfactory proof: 1) that the proposed assignee has at least ten (10) years of Recyclable Material management experience on a scale equal to or exceeding the scale of operations conducted by Contractor under this Agreement; 2) that in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any Federal, State or local agency having jurisdiction over its Solid Waste management operations due to any significant failure to comply with State, Federal or local Environmental Laws and that the assignee has provided City with a complete list of such citations and censures; 3) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; 4) that the proposed assignee conducts its Solid 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 Contractor if Contractor is in default at any time during the period of consideration.

13.6 Subcontracting

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

13.7 Binding on Assigns

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

13.8 Transition to Next Contractor

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

solicit proposals from Contractor and from third parties for the provision of Solid Waste and Recycling services, and any combination thereof, and may negotiate and execute Agreements for such services that will take effect upon the expiration or earlier termination under Article 12.1 (Events of Default) of this Agreement.

13.15 Compliance with City Municipal Code

Contractor shall comply with all provisions of the City Municipal Code and with any and all amendments to these provisions during the Term of this Agreement.

13.16 Privacy

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

Article 14. Miscellaneous Agreements

14.1 Entire Agreement

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

14.2 Article Headings

The Article 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 Recyclable Materials 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 that shall be enforced as if such invalid or unenforceable provision had not been contained herein.

14.7 Exhibits

Each of Exhibits is attached hereto and incorporated herein and made a part hereof by this reference.

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

The City of Morro Bay

Contractor

Greg Carpenter
By Greg Carpenter (May 8, 2023 08:38 PDT)
Greg Carpenter
Interim City Manager

By 
Adam Gooderham
Division Vice President

Attest:

Dana Swanson
Dana Swanson (May 8, 2023 08:38 PDT)
Dana Swanson
City Clerk

Approved as to Form:

Christopher Neumeyer
Christopher Neumeyer (May 5, 2023 15:28 PDT)
Christopher Neumeyer
City Attorney

Exhibit A. List of Approved Facilities

Exhibit B. SB 1383 Designation Letter to the San Luis Obispo Integrated Waste Management Authority

Exhibit C. Rate Schedule

Exhibit D. Recordkeeping and Reporting

EXHIBIT A
LIST OF APPROVED FACILITIES

“Approved Disposal Facility” means the Cold Canyon Landfill as the primary, and Chicago Grade Landfill, or the Santa Maria Landfill, as alternatives, which have been selected by the Contractor and approved by the City. Contractor shall notify City before using an alternative facility.

“Approved Facility(ies)” means any one of or any combination of the following: Approved Recyclable Materials Processing Facility; Approved Organic Materials Processing Facility; and/or Approved Disposal Facility.

“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 Contractor and approved by the City.

“Approved Processing Facility(ies)” means any one of or any combination of the: Approved Recyclable Materials Processing Facility; or Approved Organic Materials Processing Facility.

“Approved Recyclable Materials Processing Facility” means the Materials Recovery Facility at Cold Canyon Processing Facility, which has been selected by the Contractor and approved by the City.

EXHIBIT B
**SB 1383 DESIGNATION LETTER TO THE SAN LUIS OBISPO INTEGRATED WASTE
MANAGEMENT AUTHORITY (IWMA)**



CITY OF MORRO BAY

CITY HALL
595 Harbor Street
Morro Bay, CA 93442

January 25, 2022

San Luis Obispo Integrated Waste Management Authority
Attention: Paavo Ogren, Interim Executive Director
870 Osos Street
San Luis Obispo, CA 93401

Subject: Senate Bill 1383 Compliance Letter of Designation

Dear Mr. Ogren:

On December 14, 2021, the City Council adopted Ordinance 645 that added to the Morro Bay Municipal Code (MBMC) Chapter 8.18, Specific Regulations for Collection and Disposal Reduction of Organic Waste, Recyclables and Solid Waste, which implements the relevant provisions of Senate Bill 1383 (Public Resources Code section 42652-42654) and the corresponding regulations in Title 14 of the California Code of Regulations (CCR), Division 7, Chapter 12, and enables the City to delegate authority for the implementation of Senate Bill 1383 and MBMC Chapter 8.18 requirements to the extent allowed by law.

I am the designated Signature Authority for the City of Morro Bay. Accordingly, I hereby authorize the San Luis Obispo County Integrated Waste Management Authority (IWMA) to act as a delegate on behalf of the City of Morro Bay for the responsibilities of compliance with Senate Bill 1383 and the corresponding regulations in Title 14 of the California Code of Regulations, Division 7, Chapter 12 to the extent allowed by law.

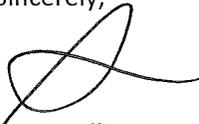
These delegated responsibilities, include, but are not limited to:

- (1) Establishing, administering, implementing, educating, and/or operating all state mandated Senate Bill 1383 programs including, but not limited to, organic waste management, education and outreach, monitoring, inspection, and record keeping programs.
- (2) Establishing, administering, and implementing the edible food recovery requirements of Senate Bill 1383 regulations. Such duties shall include but are not limited to: assessment of existing capacity for edible food recovery, establishing a food recovery program, inspection of commercial generators for compliance, and education and outreach to all businesses, residents, commercial edible food generators, and any other entities or parties required by law.
- (3) Coordinating with CalRecycle and any other state or federal entities in assessing and ensuring compliance with the CalRecycle procurement and pollution reduction targets for each party.

- (4) Monitoring and education related to 14 CCR 18984.5, 18984.5.b, 18984.5.c and 18984.11, and MBMC Chapter 8.18, including but not limited to container monitoring compliance through route reviews and evaluations, determining the applicability of and issuing waivers, and issuing educational notices where necessary and/or appropriate.
- (5) Reporting to CalRecycle on behalf of the City related to its compliance with SB 1383, consistent with the requirements prescribed by CalRecycle.

This designation will remain effective until rescinded by my authority, or my successor's authority.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized loop that crosses itself, followed by a horizontal line extending to the right.

Scott Collins
City Manager

EXHIBIT C
RATE SCHEDULE

Morro Bay Garbage**Solid Waste Service Rates - Effective 7/1/2022****City of Morro Bay**

Service Description	Service Frequency	Monthly Rate Effective 07/01/2022
MONTHLY SINGLE-FAMILY AND MULTI-UNIT RESIDENTIAL SERVICE (4 UNITS OR LESS)		
Price per month for specified waste wheeler collected each week. Residential customers must use the waste wheelers provided by the garbage company. This solid service fee for residential trash collections (container with black or gray lid) includes once a week pick-up of one greenwaste/organics container (green lid), and one recycling container (blue lid). The fees listed below do not include the updated IWMA fee of 5.4 percent of the Garbage		
MINI-CAN SERVICE		
One 19 gallon waste wheeler container	1	\$15.59
ECONOMY RATE		
One 32 gallon waste wheeler container	1	\$24.95
STANDARD RATE		
One 64 gallon waste wheeler container	1	\$49.90
PREMIUM RATE		
One 96 gallon waste wheeler container	1	\$74.86
SERVICE AWAY FROM THE STREET CURB (IN YARD)		
Additional per month per can or container charge		\$13.60
COMMERCIAL - OTHER CHARGES:		
Rates for all commercial customers include recycling or greenwaste/organics pickup once per week, included with the garbage service rate. Customers can choose from a 64 or 96 gallon blue commingled recycle waste wheeler or a 32 or 64 gallon organics waste wheeler included with the garbage service rate (96 gallon waste wheelers can only be used with green waste due to weight). The fees listed below do not include the updated IWMA fee of 5.4 percent of the Garbage Company's gross receipts.		
MONTHLY COMMERCIAL WASTE WHEELERS SERVICE		
One 32 Gallon Waste Wheeler	1	\$51.52
One 32 Gallon Waste Wheeler	2	\$100.57
One 32 Gallon Waste Wheeler	3	\$131.55
One 32 Gallon Waste Wheeler	4	\$162.52
One 32 Gallon Waste Wheeler	5	\$211.61
One 32 Gallon Waste Wheeler	6	\$260.65
One 64 Gallon Waste Wheeler	1	\$74.75
One 64 Gallon Waste Wheeler	2	\$131.50
One 64 Gallon Waste Wheeler	3	\$190.86
One 64 Gallon Waste Wheeler	4	\$258.01
One 64 Gallon Waste Wheeler	5	\$322.60

Service Description	Service Frequency	Monthly Rate Effective 07/01/2022
One 64 Gallon Waste Wheeler	6	\$376.79
One 96 Gallon Waste Wheeler	1	\$100.55
One 96 Gallon Waste Wheeler	2	\$175.34
One 96 Gallon Waste Wheeler	3	\$257.92
One 96 Gallon Waste Wheeler	4	\$343.10
One 96 Gallon Waste Wheeler	5	\$417.95
One 96 Gallon Waste Wheeler	6	\$510.81
MONTHLY COMMERCIAL CONTAINER SERVICE - (CUBIC YARDS)		
1 Yd Container	1	\$126.87
1 Yd Container	2	\$196.55
1 Yd Container	3	\$253.34
1 Yd Container	4	\$317.86
1 Yd Container	5	\$366.95
1 Yd Container	6	\$457.29
1 Yd Container	7	\$690.84
1.5 Yd Container	1	\$155.27
1.5 Yd Container	2	\$255.97
1.5 Yd Container	3	\$343.77
1.5 Yd Container	4	\$436.66
1.5 Yd Container	5	\$524.44
1.5 Yd Container	6	\$625.13
1.5 Yd Container	7	\$917.08
2 Yd Container	1	\$186.27
2 Yd Container	2	\$325.63
2 Yd Container	3	\$436.66
2 Yd Container	4	\$555.44
2 Yd Container	5	\$679.36
2 Yd Container	6	\$803.25
2 Yd Container	7	\$1,153.56
3 Yd Container	1	\$240.51
3 Yd Container	2	\$436.66
3 Yd Container	3	\$614.83
3 Yd Container	4	\$780.00
3 Yd Container	5	\$1,009.79
3 Yd Container	6	\$1,164.65
3 Yd Container	7	\$1,573.42

Service Description	Service Frequency	Monthly Rate Effective 07/01/2022
4 Yd Container	1	\$317.86
4 Yd Container	2	\$591.56
4 Yd Container	3	\$821.28
4 Yd Container	4	\$1,097.55
4 Yd Container	5	\$1,373.77
4 Yd Container	6	\$1,554.48
4 Yd Container	7	\$2,021.60
6 Yd Container	1	\$476.21
6 Yd Container	2	\$864.61
6 Yd Container	3	\$1,217.34
6 Yd Container	4	\$1,544.43
6 Yd Container	5	\$1,999.37
6 Yd Container	6	\$2,306.02
6 Yd Container	7	\$3,115.38
8 Yd Container	1	\$629.42
8 Yd Container	2	\$1,171.27
8 Yd Container	3	\$1,626.15
8 Yd Container	4	\$2,173.18
8 Yd Container	5	\$2,720.06
8 Yd Container	6	\$3,077.82
8 Yd Container	7	\$3,321.78
EXTRA COLLECTION SERVICE OPTIONS		
Overstacked Garbage & extra bags Minimum/unit	Per Occurrence	\$12.47
Overstacked Green waste & extra bags Minimum/unit	Per Occurrence	\$8.09
Overstacked Blue Bin & extra bags Minimum/unit	Per Occurrence	\$6.24
Monthly charge for additional 64 or 96-gallon recycle service	Each	\$4.17
Monthly charge for additional 32 or 96-gallon green waste service	Each	\$8.09
Monthly charge for additional commercial 96-gallon recycle service	Each	\$25.14
Service level changes more than once per 12 months	Per Occurrence	\$11.39
Small item pickup (TV, toilet)	Each	\$23.69
Per white good article/ appliance.	Each	\$79.33
Per mattress or box spring.	Each	\$23.70

Service Description	Service Frequency	Monthly Rate Effective 07/01/2022
Change waste wheeler size (once per year free)	Per Occurrence	\$11.39
Re-deliver fee-if pulled for collections	Per Occurrence	\$45.33
Install locking device on bin	Each	\$100.57
Extra bin cleaning	Each	\$79.99
Garbage extras on your scheduled pickup day	Per Yard	\$20.61
Loose Cardboard	Per Yard	\$10.34
Garbage extras - NOT ON YOUR SCHEDULED PICKUP DAY	Per Bag	\$16.97
Garbage extras - NOT ON YOUR SCHEDULED PICKUP DAY	Per Yard	\$32.71
Compactors	Per Ton	\$66.97
Bin Rental	Per Month	\$46.96
Temp Bin Rental	Per Day	\$2.61
Stand by time	Per Hour	\$90.96
Trip charge	Per Occurrence	\$11.39
Damage/Destruction of bins or waste wheelers	Each	
Any additional recycling, including greenwaste/organic services are charged out at 25% of the garbage rate.		

EXHIBIT D RECORD KEEPING AND REPORTING

D.1 General

Contractor 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. Contractor 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 Contractor 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 Contractor's records and reports can be used to, among other things:

1. Determine and set Rates and evaluate the financial efficacy of operations;
2. Evaluate past and expected progress toward achieving the Contractor's Landfill Disposal reduction or Diversion goals and objectives;
3. Provide concise and comprehensive program information and metrics for use in fulfilling reporting requirements under Applicable Law;
4. Determine needs for adjustment to programs;
5. Evaluate Customer service and Complaints; and,
6. 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.

D.2 Record Keeping

- A. **General.** Contractor 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).

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.

Contractor shall maintain adequate records, and corresponding documentation, of information required by this Exhibit, such that the Contractor is able to produce accurate monthly and annual reports, and is able to provide records to verify such reports. Contractor 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, Contractor shall provide access to Contractor's requested records in a timely manner, not to exceed ten (10) Business Days from the time of City's request to Contractor.

- 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. Contractor's records shall be stored in one central location, physical or electronic, that can be readily accessed by Contractor. City reserves the right to require the Contractor to maintain the records required herein through the use of a City-selected web-based software platform, at Contractor's expense. Unless otherwise required in this Exhibit, Contractor 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.

Records and data shall be in chronological and organized form and readily and easily interpreted. Contractor 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 Contractor utilizes its computer systems to comply with record keeping and reporting requirements under this Agreement, Contractor 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.

- C. **Compilation of Information for State Law Purposes.** Contractor 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. Contractor 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.

D.3 Reporting

D.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.
- B. **Failure to Report.** Failure of Contractor 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. Contractor'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 Z of this Agreement.

- C. **Report Format.** Contractor 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 Contractor 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 Contractor's expense.
- D. **Submittal Process.** All reports shall be submitted to the City, Department of Public Works, Solid Waste Planning and Recycling Program and the Department of Environmental Health Local Enforcement Agency or as directed by the City Manager/Director. 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 Contractor to maintain records and submit the reports required herein through use of a City-selected web-based software platform, at the Contractor's expense.
- Monthly reports shall be submitted within twenty (20) calendar days after the end of the reporting month; and annual reports shall be submitted before March 30th, for the previous calendar year.

D.3.2 Monthly Reports

Monthly reports shall be submitted by Contractor 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. Contractor shall report the information included in the following subsections.

A. Tonnage Report

1. Contractor shall report the total quantities in Tons of Discarded Materials Collected, Transferred, Processed, and Disposed by the Contractor, 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 Recyclable Materials, Source Separated Organic Materials, Solid Waste, and any other type of Discarded Material separately Collected by Contractor (including, but not limited to: bulky items, used oil, mixed construction and demolition debris, dirt, rock, metals, cardboard, wood waste, reusable Items, salvageable materials, etc.);
 - b. Customer/sector type (Single-Family, Multi-family, Commercial franchised 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.

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 franchised Drop Box and franchised 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; and the number of Bulky Items Collections performed.

C. Customer Service Report

1. Number of Customer calls listed separately by Complaints . For Complaints, list the number of calls separately by category (e.g., missed pickups, scheduled cleanups, billing concerns, damage claims). These Complaints and inquiries shall be documented and reported separately from SB 1383 Regulatory non-compliance Complaints or other regulatory non-compliance Complaints.
2. Number of missed or incomplete Collections reported in total, and per one thousand (1,000) Service Opportunities in the City which compares total missed Collections in the City during the current report period to total missed Collections in the City in past reporting periods.
3. Number of new service requests for each Customer type and requested service(s).

D. Education Program Report

The monthly status of activities identified in the annual public education plan described in Section 6.3 of this Agreement.

D.3.3 Annual Reports

In addition to the monthly reporting requirements in this Exhibit, the Contractor shall provide an Annual Report, covering the most recently-completed calendar year, in accordance with the format and submittal requirements of this Exhibit. The Annual Report shall include the information in the following subsections.

A. Collection and Subscription Report

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

B. Processing Facility Report

1. Approved Organic Materials Processing Facility: Contractor shall provide documentation demonstrating the actual percent of the material removed for landfill disposal that is Organic Waste is less than the percent specified in 14 CCR Section 17409.5.8(c)(2) or 17409.5.8(c)(3), whichever is applicable, and, if applicable, demonstrations compliance with the digestate handling requirements specified in 14 CCR Section 17896.5.
2. Approved Transfer Facility: If applicable, Contractor shall provide documentation for the Approved Transfer Facility that states the annual average Source Separated Organic content recovery rates determined by CalRecycle pursuant to 14 CCR Section 18815.5(f).
3. Temporary Equipment or Operations Failure: If the Contractor is granted a Processing facility temporary equipment or operational failure waiver, in accordance with Section 5.10 of the Agreement, the Contractor shall include the following documents and information:
 - a. The number of days the Processing Facility temporary equipment waiver or operation failure waiver was in effect;
 - b. Copies of any notifications sent to the City pursuant to Section 5.10 of the Agreement, and copies of City notices to Contractor pursuant to Section 5.10 of the Agreement;
 - c. Documentation setting forth the date of issuance of the waiver, the timeframe for the waiver; and,
 - d. A record of the Tons of Organic Materials, Recyclable Materials, and Solid Waste redirected to an Alternative Facility or Disposed at an Approved Disposal Facility as a result of the waiver, recorded by Collection vehicle or Transfer vehicle number/load, date, and weight.

C. Vehicle and Equipment Inventory

A list of all vehicles used in performing services under this Agreement including the license plate number, VIN, make, model, model year, purchase date, engine overhaul/rebuild date (if applicable), and mileage at December 31.

D. 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 Contractor 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.

D.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 Contractor 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.
- B. **AB 901 Reporting.** At the City's option, the City may require that Contractor 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 Contractor within five (5) Business Days of City request, or mutually agreed time. At the City's option, the City may review specific Customer information; however, City shall not be permitted to make copies or take records specific to Customer information. "
- C. **Facility Capacity Planning Information.** To the extent such information is available to Contractor, City may require Contractor 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. Contractor 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 Contractor and, at City's option, may be required to submit reports on a more regular basis (such as monthly, quarterly, or annually). If Contractor uses a Subcontractor to perform some or all of the Facility-related services required by this Agreement, Contractor 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:
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.

Morro Bay Garbage Services_Restated Hauler_2022

Final Audit Report

2023-05-08

Created:	2023-04-25
By:	Heather Goodwin (hgoodwin@morrobayca.gov)
Status:	Signed
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