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ORIGINAL

AGREEMENT BETWEEN THE CITY OF SAN JOSE AND ZERO WASTE ENERGY DEVELOPMENT COMPANY FOR ORGANICS PROCESSING SERVICES

THIS AGREEMENT ("this Agreement") is made and entered into by and between the CITY of San Jose, a municipal corporation of the State of California, (the "CITY") and Zero Waste Energy Development Company LLC (the "CONTRACTOR").

WHEREAS, on February 4, 2010, CITY issued a Request for Proposals ("RFP") for Organics Processing Services for the solid waste collected by the Commercial Franchisee; and

WHEREAS, on April 16, 2010, CONTRACTOR submitted a response to the RFP and the various addenda to the RFP; and

WHEREAS, after consideration of CONTRACTOR's response and the responses of other proposers for the same services, CITY's staff and the evaluation panel have recommended CONTRACTOR to perform the services more fully described in this Agreement; and

WHEREAS, the CITY Council desires to award to CONTRACTOR, and CONTRACTOR has determined to accept such award, an Agreement to perform the services described in this Agreement; and

WHEREAS, the Mitigated Negative Declaration prepared for this project under File No. SP09-057 was adopted on June 21, 2011 in accordance with the requirements of the California Environmental Quality Act;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, AGREEMENTS AND CONSIDERATIONS CONTAINED HEREIN, CITY AND CONTRACTOR HEREBY AGREE AS FOLLOWS:

801290

ARTICLE 1 DEFINITIONS

For the purpose of this Agreement, the definitions contained in this Article shall apply unless otherwise specifically stated. If a word or phrase is not defined in this Article, the definition of such word or phrase as contained in Chapter 9.10 of the San Jose Municipal Code shall control. When not inconsistent with the context, words used in the present tense include the past and future, words in the plural include the singular, words in the singular include the plural, words in the noun include the verb, and words in the verb include the noun. Use of the masculine gender shall include the feminine gender.

1.1 Abandoned Loads.

Rejected Loads which have not been removed by the Commercial Collection Franchisee consistent with Exhibit C.

1.2 Accept.

Assume full custody of Organic Materials Delivered to the Organics Processing Facility by the Commercial Collection Franchisee, or other hauler designated by CITY.

1.3 Affiliate.

Parent company, subsidiary, partner, or joint venture of the CONTRACTOR.

1.4 Alternate Facility.

Any legally permitted facility specified by CONTRACTOR and approved by CITY used to Transfer or Process Organic Material into Approved Products.

1.5 Anaerobic Digestion ("AD").

Any controlled anaerobic Processing of Input Material that results in the production of methane gas and digestate suitable for Composting.

1.6 Approved Product.

Material from the Processing of Organic Materials and listed in Exhibit D ("Approved Products").

1.7 City Representative.

The Director of Environmental Services, and his or her designee.

1.8 Commercial Collection Franchisee.

Any Person granted a franchise by the City of San Jose to provide Commercial Collection and Recyclable Material Processing Services. If at any time during the term of this Agreement the CITY takes over all or part of the collection of Organic Materials from Commercial Customers from one or more Commercial Collection Franchisees, then references to the Commercial Collection Franchisee shall mean the CITY as the context requires.

1.9 Commercial Customer.

Person receiving Commercial Service or Billing for Commercial Service from the Commercial Collection Franchisee.

1.10 Commercial Collection and Recyclables Processing Service.

The collection, processing, transfer, and disposal of Solid Waste, Mixed Waste, Source Separated Recyclables and Recyclable Material from commercial premises; and the collection, Pre-processing and transfer of Organic Material to the Organics Processing Contractor.

1.11 Commercial Premises.

All premises except residential premises, multi-family dwellings, Mixed Use Developments collected by the multi-family solid waste hauler consistent with the San Jose Municipal Code, and CITY facilities. Commercial Premises include but are not limited to commercial, industrial, manufacturing, institutional, and warehouse premises.

1.12 Compost.

Material that is the result of Composting. Compost should be tested through the Seal of Testing Assurance Program ("STA") or other program with comparable requirements.

1.13 Composting.

Any controlled aerobic decomposition process for a period of not less than eight (8) weeks, such that the resulting material meets the maximum acceptable metal concentration limits specified in Section 17868.2, and pathogen reduction requirements specified in Section 17868.3 of Title 14, California Code of Regulations, Chapter 3.1.

1.14 Construction and Demolition Debris.

Construction and Demolition Debris (C&D) means recyclable and non-recyclable waste building materials, packaging and rubble resulting solely from construction, remodeling, and demolition operations on pavements, houses, commercial buildings and other structures.

1.15 Contamination.

Non-Organic, non-biodegradeable materials including but not limited to dirt, sod, plastic, rock, metal, rubber, textiles, Styrofoam, plastic coated paper, liquid waste, glass in amounts greater than .25% (one quarter of one percent) by weight per load.

1.16 Delivery.

Transport of Organic Materials by the Commercial Collection Franchisee, or other City approved designated haulers, and/or transport of Residue by CONTRACTOR to the Disposal Facility.

1.17 Director.

The Director of the Environmental Services Department of the City of San José.

1.18 Disposal.

The final disposition of Residue by the CONTRACTOR at the Disposal Facility.

1.19 Disposal Facility.

The Newby Island Landfill, located at 1601 Dixon Landing Road, San Jose, CA or other legally permitted facility specifically designated by the City Representative for the disposal or processing of Residue.

1.20 Disposal Transfer Fee.

Fee assessed by CONTRACTOR to Commercial Collection Franchisee for the Transfer of Abandoned Loads to the Disposal Facility.

1.21 Food Discards.

Material that will decompose or putrefy including pre and post consumer kitchen and table food scraps; animal or vegetable waste that is generated during or results from the storage, preparation, cooking or handling of food stuffs; fruit waste; grain waste; dairy waste; meat and fish waste; compostable paper approved by CONTRACTOR, paper or waxed cardboard contaminated with various food waste.

1.22 Glass Contaminated Residual.

Material that has been processed through either a wet and/or dry recyclables line that is typically 2"-2 1/2" minus in size that contains greater than .25% glass Contamination by weight per load and is a minimum of 50% inert material by weight per load.

1.23 Hazardous Waste.

Any material which is defined as a hazardous waste or universal waste under State or federal law or regulations including, but not limited to cathode ray tubes, batteries (except automotive lead-acid), items containing mercury (such as switches, thermometers, and thermostats), and fluorescent lamps.

1.24 Holidays.

January 1, Thanksgiving Day and December 25.

1.25 Input Material.

Organic Materials suitable for Anaerobic Digestion or prepared for Composting after Processing to remove Contamination, Prohibited Materials or Recyclable Materials.

1.26 Organic Material.

Food Discards, Plant Trimmings, and other materials, that are capable of being Processed. Plastic products labeled as compostable or biodegradable shall not be considered Organic Material unless individually approved by CONTRACTOR.

1.27 Organics Processing Facility.

Phase I AD Facility, San Jose AD Facility, GreenWaste Material Recovery Facility, and Z-Best Composting Facility.

1.28 Organics Processing Services.

The provision of services by CONTRACTOR to Process Organic Material at the Organics Processing Facility.

1.29 Organic Streams.

Organic Material, that contains no more than thirty percent (30%) paper or fiber materials, which includes OCC/Kraft, wax OCC, books, mixed paper and compostable paper, and no more than

.25% glass (one quarter of one percent) by weight per load, Delivered by the Commercial Collection Franchisee distinguished by four levels of Contamination at the point of Delivery to the Organics Processing Facility:

Organics Stream One: Organic Material with no more than five percent (5%) Contamination by weight per load, and no Prohibited Material.

Organics Stream Two: Organic Material with greater than five percent (5%) and no more than ten percent (10%) Contamination by weight per load, and no Prohibited Material.

Organics Stream Three: Organic Material with greater than ten percent (10%) and no more than twenty (20%) Contamination by weight per load, and no Prohibited Material.

Organics Stream Four: Organic Material with greater than twenty (20%) Contamination and no more than thirty (30%) Contamination by weight per load, and no Prohibited Material.

1.30 Person.

Any real person, firm, company, association, organization, partnership, corporation, trust, public agency, school district, the State of California, its political subdivisions and/or instrumentalities thereof.

1.31 Phase I AD Facility.

The first phase of CONTRACTOR's San Jose AD Facility comprised of sixteen (16) digesters and designed to Process approximately 75,000 tons of Input Material annually, and Anaerobically Digest 60,000 tons of Suitable Material annually.

1.32 Plant Trimmings.

Any vegetable matter resulting from normal yard and landscaping maintenance that is not more than five (5) feet in its longest dimension, six (6) inches in diameter, or that weighs less than sixty (60) pounds; Christmas tree; plant debris such as palm, yucca and cactus; grass clippings; leaves; prunings; weeds; branches; brush; and other forms of horticultural waste collected by the Commercial Collection Franchisee.

1.33 Pre-Processing.

The separation and removal of Recyclable Materials, Contamination, and/or Prohibited Materials from the Organic Material to comply with the Organics Streams by the Commercial Collection Franchisee prior to Delivery to the Organics Processing Facility, or Alternate Facility.

1.34 Processing.

The acts of Anaerobic Digestion, Composting or otherwise separating and converting the Organic Material into Approved Products.

1.35 Prohibited Material.

Sludge; stable matter; vegetable matter or lumber that is more than five (5) feet in length in its longest dimension or more than six (6) inches in diameter, or weighing more than sixty (60) pounds; used oil or used oil filters; automobiles; automobile parts except those which fall within the definition of Recyclable Materials; boats; boat parts; boat trailers; internal combustion engines; waste under the control of the Nuclear Regulatory Commission; biohazardous or

biomedical waste that may cause disease or reasonably be suspected of harboring pathogenic organisms including human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, sharps, contaminated clothing and surgical gloves from the operation of medical clinics, hospitals, and other facilities that process this waste; hazardous waste as defined as a hazardous waste under California or federal law or any regulations promulgated pursuant to such laws; universal waste such cathode ray tubes, batteries (except automotive lead-acid), items containing mercury (such as switches, thermometers, and thermostats), fluorescent lamps, and other materials as identified in California Code of Regulations, title 22, division 4.5, chapter 23, as may be amended; and electronic waste (E-Waste) such as discarded electronics equipment containing cathode ray tubes (CRTs) computers monitors, televisions, stereo equipment, peripherals, and other electronic equipment.

1.36 Recyclable Material.

Recyclable materials include glass, paper, cardboard, wood, concrete, plastic, used motor oil and filters, ferrous and non-ferrous metal, aluminum, and any other materials that are capable of being recycled. The terms recycle, recycled and recycling each mean and refer to the process of collecting, sorting, cleansing, treating, reconstituting, re-using and/or selling recycling materials, and returning them to the use in the economy. Recyclable Materials shall also include any material defined in Section 9.10 of the San Jose Municipal Code or City regulation.

1.37 Recycle.

The process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. Recycle does not include the Processing required by this Agreement, transformation as defined by Public Resources Code Section 40201, or storage and stockpiling of Recyclable Materials by CONTRACTOR or any other Person.

1.38 Rejected Load.

Loads of Organic Material Delivered to the Organic Processing Facility that do not meet the Organic Streams criteria and for which CONTRACTOR has no obligation to Process.

1.39 Residue.

Constituents of the Organics Streams that can not be Processed into an Approved Product, or which is expressly subject to Disposal in this Agreement.

1.40 San Jose AD Facility.

The facility operated by CONTRACTOR at 2100 Los Esteros Road in San Jose, CA to Process Organic Streams, and Anaerobically Digest Suitable Material.

1.41 Sold.

A market-based transaction when the ownership of the Approved Product is documented through a bill of sale, sales agreement, cancelled checks, invoice, or other appropriate written documentation.

1.42 Solid Waste.

All putrescible and nonputrescible solid and semisolid waste material including garbage, rubbish, industrial wastes, vegetable and animal solid and semisolid wastes, bulky goods,

salvageable material included for collection in a Solid Waste container, Construction and Demolition Debris containing wet waste or material generated from other activities in excess of 10%, and other discarded solid and semisolid wastes. For the purposes of this Agreement, Solid Waste does not include material which can be reused in its existing form or with nominal processing which is set out for collection in a Recyclable Material or Organic Material container, or dry materials or wet materials container; special waste; hazardous waste; low-level radioactive waste; infectious waste; abandoned automobiles; and Construction and Demolition Debris.

1.43 Suitable Material.

Suitable Materials are Organic Materials that generate methane when Anaerobically Digested to create biogas as an Approved Product without negatively impacting digester performance. Suitable Materials do not include 1/4" minus Pre-Processed Organic Material, wax coated fiber, stumps, branches, lumber, fibrous Plant Trimmings such as palm or yucca or Contamination or Prohibited Materials.

1.44 Total Compensation.

The compensation due to CONTRACTOR consistent with Article 9 and Exhibit A of this Agreement.

1.45 Transfer.

Use of non-route vehicles, including tractors and trailers to transport Organic Material to or from an Organics Processing Facility, or Residue to a Disposal Facility.

1.46 Transfer Facility.

A facility with the primary purpose of loading or unloading Organic Material for Transfer.

1.47 Work Day.

Any day of the week except Sundays and Holidays as designated by this Agreement.

ARTICLE 2 TERM OF AGREEMENT

2.1 Term.

The Term of this Agreement shall be from date of execution through June 30, 2027, subject to the provisions of Article 17 of this Agreement.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

3.1 Organizational Status.

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

3.2 Authorization.

CONTRACTOR has the authority to enter into and perform its obligations under this Agreement. The Directors have taken all actions required by law, its articles of organization, its bylaws, or otherwise, to authorize the execution of this Agreement. The real person(s) signing this Agreement on behalf of CONTRACTOR has/have authority to do so.

3.3 No Conflict With Applicable Law Or Other Documents.

CONTRACTOR's performance of its obligations under this Agreement does not conflict with, violate, or result in breach of any existing applicable law; or any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which CONTRACTOR is a party or by which CONTRACTOR or any of its properties or assets are bound.

3.4 No Litigation.

There is no action, suit, proceeding or investigation at law or in equity, before or by any court or governmental entity, pending or threatened against CONTRACTOR or its members, or otherwise affecting CONTRACTOR or its members, wherein an unfavorable decision, ruling, or finding, in any single case or in the aggregate, would materially adversely affect CONTRACTOR's performance hereunder, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or which would have a material adverse effect on the financial condition of CONTRACTOR or its members.

3.5 Expertise.

CONTRACTOR has the expertise and professional and technical capability to perform all of its obligations under this Agreement and is ready, willing and able to so perform.

3.6 Financial Condition.

CONTRACTOR has made available to CITY information on its financial condition, and that of its members. CONTRACTOR recognizes that CITY has relied on this information in evaluating the sufficiency of CONTRACTOR's financial resources to perform this Agreement. To the best of CONTRACTOR's knowledge, this information is complete and accurate, does not contain any material misstatement of fact and does not omit any fact necessary to prevent the information provided from being materially misleading.

ARTICLE 4 SERVICES PROVIDED BY CONTRACTOR

4.1 Grant of Exclusive Agreement.

Except as otherwise provided in this Agreement, CONTRACTOR is hereby granted an exclusive agreement to provide Organics Processing Services to the City of San Jose. The CITY shall Deliver (if CITY is directly providing collection services) or, through a Commercial Collection Franchisee, or in any other manner in conformance with applicable law, cause to be Delivered all Organic Materials collected from Commercial Customers to CONTRACTOR pursuant hereto, provided that:

i. The total tonnage to be delivered to CONTRACTOR does not cause the CONTRACTOR to exceed the permitted capacity of the Organics Processing Facility; and

ii. The requirement to deliver the Organic Material to the Organics Processing Facility is in compliance with federal and state law.

Nothing in this provision shall be deemed to apply to any materials collected by a person who is not a Commercial Collection Franchisee and who is allowed under applicable law to collect such material. CONTRACTOR shall have the exclusive right to receive and Process all Organic Material collected pursuant to the CITY's exclusive Commercial Collection Franchise, provided, however, that CITY's obligation hereunder shall remain in effect notwithstanding earlier termination, if any, of the Commercial Collection Franchise. No other services shall be exclusive to CONTRACTOR.

4.2 Limitations to Exclusive Agreement.

Nothing in this agreement shall be construed to limit any of the following:

4.2.1 Reduction in Processing Tonnage for Allocation to Pilot Studies.

CITY's discretion to request that the Commercial Collection Franchisee divert up to ten (10) percent of the total tons of Commercial Waste for pilot studies prior to Delivery to CONTRACTOR provided a minimum of 5500 tons per month of Organic Material has been provided to CONTRACTOR prior to allocation of pilot tonnage. CITY shall provide written notice to CONTRACTOR no less than sixty (60) calendar days prior to implementation of the CITY request.

4.2.2 Pre-Processing by Commercial Collection Franchisee.

Pre-Processing of the Commercial Waste by the Commercial Collection Franchisee prior to Delivery to the CONTRACTOR.

4.3 Service Standards.

CONTRACTOR shall perform all services under this Agreement in a thorough and professional manner.

4.4 Labor and Equipment.

CONTRACTOR shall provide and maintain all labor, equipment, tools, facilities, and personnel supervision required for the performance of CONTRACTOR's obligations under this Agreement. CONTRACTOR shall at all times have sufficient backup equipment and labor to fulfill CONTRACTOR's obligations. The enumeration of, and specification of requirements for,

particular items of labor or equipment shall not relieve CONTRACTOR of the duty to furnish all others that may be required, whether enumerated or not. No compensation for CONTRACTOR's services or for CONTRACTOR's supply of labor, equipment, tools, facilities, or supervision shall be provided or paid to CONTRACTOR by CITY or by any service recipient except as expressly provided by this Agreement.

4.5 Holiday Service.

CITY observes Thanksgiving Day, December 25th, and January 1st as legal holidays. CONTRACTOR shall not be required to provide Organic Processing Services, nor to maintain office hours, on these designated Holidays.

ARTICLE 5 PROCESSING OF ORGANIC MATERIALS

Beginning July 1, 2012, and continuing until the expiration or termination of this Agreement, CONTRACTOR shall provide Organics Processing Services in accordance with the terms and conditions of this Agreement.

5.1 Transition.

CONTRACTOR understands and agrees that the time between date of execution and June 30, 2012 is intended to provide CONTRACTOR with sufficient time to, among other things, reach full level of Processing capacity, make all appropriate marketing arrangements to market the Approved Products, and to complete all other requirements necessary to fully implement Organics Processing Services.

5.1.1 CONTRACTOR shall follow the activities specified in ("Exhibit C-1") ("Transition and Implementation Plan").

5.1.2 The Transition and Implementation Plan, Exhibit C-1, may be modified from time to time by mutual written agreement of CONTRACTOR and the City Representative in order to provide a smooth transition of services, provided that no such modification shall extend any time for performance beyond the dates set forth in this Agreement.

5.1.3 Failure to adhere to Exhibit C-1 ("Transition and Implementation Plan"), is subject to liquidated damages. Unresolved requirements before the end of the transition period may constitute a default under Article 17 of the Agreement.

5.2 Acceptance or Rejection of Load.

CONTRACTOR shall Accept Organic Streams 1,2,3, and 4 as defined in Section 1.29. Delivered by the Commercial Collection Franchisee to the Organics Processing Facility in accordance with the protocol contained in Exhibit C-2 ("Processing Plan").

5.2.1 Load Checking.

CONTRACTOR shall follow the protocol specified in Exhibit C-2 ("Processing Plan"), to check loads for Contamination, prior to Acceptance to ensure that the loads comply with the specified requirements for each type of Organic Stream.

If the loads do not comply with specified requirements for the Organic Stream, CONTRACTOR may accept a load on a case-by-case basis at the rate set forth in Exhibit A, ("Compensation Rates"), for Contaminated loads, and as further described in Exhibit C-2 ("Processing Plan"). CITY and CONTRACTOR will mutually agree on the acceptable frequency for making such exceptions.

5.2.2 Rejection of Load.

CONTRACTOR shall follow the protocol specified in Exhibit C-2 ("Processing Plan"), for rejecting loads, including the process for communicating with the applicable Commercial Collection Franchisee regarding the basis for the rejection.

After weighing and after any subsequent commingling of materials, no load rejection or application of a Prohibited Material Surcharge or Reloading Fee (as specified in Exhibit A – ("Compensation Rates") shall be applied.

5.2.3. Excessive Organics Processing Facility Turnaround.

CONTRACTOR shall not cause the Commercial Collection Franchisee to queue or be delayed in other ways more than thirty (30) minutes within the Organics Processing Facility. This prohibition is not triggered by delays caused by the Commercial Collection Franchisee driver.

5.3 Weighing.

5.3.1 General.

CONTRACTOR shall maintain procedures, records and internal controls to record weights as specified in this Section and Exhibit C-2 ("Processing Plan").

5.3.2 Scale Requirements.

All scales shall be registered with the Santa Clara County Department of Weights and Measures and shall be regularly maintained to ensure their reliability and continued functioning. Current certificates of registration, inspection reports and all maintenance records shall be made available for review by CITY upon receipt of written request from the CITY Representative. Scales shall be operated in the same manner as required by State of California weigh master regulations.

5.3.3 Weighing of Organic Streams Upon Delivery.

All Organic Streams Accepted pursuant to this Agreement shall be weighed upon initial Delivery to the Transfer Station or Organics Processing Facility and prior to any commingling with Organic Materials from any other source.

5.3.4 Weighing of all Incoming Organic Materials.

CONTRACTOR shall record and report the total weight by load after the Load Check Procedure detailed in Exhibit C-2 is complete of all Organic Materials classified as either Organic Stream 1, 2, 3, or 4 delivered to the Transfer Station or Organics Processing Facility, the total weight of the Residue generated from handling Organic Materials at the Transfer Station or Organics Processing Facility from any source, and the weight of Organic Materials transported from the Transfer Station or Organics Processing Facility and Delivered to other Transfer Stations or Organics Processing Facilities, or for Disposal.

5.3.5 Weighing of Approved Products and Other Outbound Materials.

CONTRACTOR shall weigh all Approved Products just prior to the time the Approved Products leave the Organics Processing Facility. CONTRACTOR shall also weigh and report all other materials that are sent off-site from the Organics Processing Facility, including any Organic Materials that were not Accepted.

5.3.6 Weighing of Residue.

CONTRACTOR shall weigh all Residue just prior to departure from the Organics Processing Facility for transport to, and Delivery to, the Disposal Facility.

CONTRACTOR shall report the weight of all other Residue that is sent off-site from the Organics Processing Facility.

5.4 Ownership of Material.

Title to the Organic Stream shall pass to CONTRACTOR from the Commercial Collection Franchisee when the load is Accepted.

5.5 Commingling of Materials.

CONTRACTOR shall not at any time commingle any loads Delivered by the Commercial Collection Franchisee with other loads prior to weighing and classifying the materials from each load as Organic Streams 1, 2, 3, or 4, or without express written authorization of the City Representative.

After weighing and after any subsequent commingling of materials, no load rejection or application of a Prohibited Material Surcharge or Reloading Fee (as outlined in Exhibit A - Compensation Rates) shall be applied.

5.6 Litter Abatement.

CONTRACTOR shall not litter premises in the process of providing the services required by this Agreement. CONTRACTOR shall transport or cause the transport of all Organic Material, Approved Product, and Residue in such a manner as to prevent the spilling or blowing of such waste from CONTRACTOR's vehicle. CONTRACTOR agrees to clean up litter at the Organics Processing Facility within two (2) hours of receiving notice from the CITY. Notice may be given by telephone, or electronic mail ("email").

5.7 Hazardous Waste and Other Prohibited Material.

5.7.1 CONTRACTOR shall establish, implement and maintain written operating procedures including, but not limited to, handling and removing the Hazardous Wastes and other Prohibited Material in accordance with local, state, and federal regulations and applicable guidelines.

5.7.2 CONTRACTOR shall maintain an employee training program to ensure that employees can properly identify, handle, and remove Hazardous Waste and other Prohibited Material. Records that describe the training and the employees who received the training shall be maintained by CONTRACTOR. These records shall be available for review upon request by the City Representative.

5.7.3 Within the same business day and prior to commingling, as outlined in the Load Check protocol in Exhibit C -2, CONTRACTOR shall notify the Commercial Collection Franchisee that Delivered a load with Hazardous Waste or other Prohibited Materials. The Commercial Collection Franchisee shall cause the material to be picked-up within twenty-four (24) hours of notification or shall compensate CONTRACTOR in accordance with Exhibit A. CITY shall not be responsible for the cost to transport and dispose of Hazardous Waste or other Prohibited Materials provided the CITY is not the Commercial Collection Franchisee.

5.8 Processing Services.

CONTRACTOR shall ensure that the Organic Streams are Processed in accordance with Exhibit C-2 ("Processing Plan").

5.9 Composting.

CONTRACTOR may Compost Input Material from Organic Streams at the Organics Processing Facility consistent with Section 6.8 and Exhibit C ("Processing Plan").

5.10 Disposal of Residue.

CONTRACTOR shall properly Dispose of any and all Residue removed from the Organics Processing Facility in accordance with Article 8 of this Agreement. Organic Material that has not been Processed shall not be Disposed of as Residue except as expressly provided for in this Agreement.

5.11 Approved Products.

CONTRACTOR shall ensure that all Organic Streams Accepted pursuant to this Agreement are Processed into the Approved Products listed in Exhibit D.

5.11.1 Storage of Approved Products.

CONTRACTOR shall at all times provide for adequate storage of Approved Products as provided in Exhibit C-4 ("Approved Product Marketing Plan").

5.11.2 Additional Approved Products.

In the event additional products are identified by CONTRACTOR, CONTRACTOR may make written request for approval of such additional products to the Director. However, CONTRACTOR may not Process, or allow Processing of, Organic Streams into any such additional products unless these products are approved by the Director in writing. It is expressly understood that the Director may reject additional products and that nothing herein shall in any way be deemed to require the Director to authorize any additional products as Approved Products.

5.12 Marketing Services.

CONTRACTOR shall develop and maintain stable markets for the Approved Products.

5.12.1 Marketing Methods.

CONTRACTOR shall at all times comply with the marketing specifications and requirements of Exhibit C-4 ("Approved Product Marketing Plan").

5.12.2 Approved Products Sales Summary.

CONTRACTOR shall maintain such records as are necessary and sufficient to verify that Organic Streams Accepted pursuant to this Agreement are Processed into and marketed as Approved Products. Upon the request of the CITY Representative, CONTRACTOR shall make available for onsite inspection by CITY Representative the following sales information for all Approved Products Sold or donated:

- Tonnage sold of each Approved Product
- Market classification of end users

- Total revenue received.

CITY shall have the right to inspect records pertaining to buyers and unit prices at CONTRACTOR'S facility. To the extent that the CITY would need to make copies of such records, CONTRACTOR may redact pricing and buyer information. Such records may be subject to the California Public Records Act if such records have been provided to the CITY. CONTRACTOR shall be notified by the CITY if there is a request for this information so that CONTRACTOR may have the opportunity to intervene and object to the release of the information.

5.13 Contingency.

CONTRACTOR shall follow the procedures set forth in Exhibit C-6 ("Contingency Plan"), for circumstances when operations at the Organics Processing Facility or Transfer Facility are diminished or unavailable for any reason.

ARTICLE 6 EQUIPMENT, PERSONNEL AND FACILITIES

6.1 Equipment Specifications.

All Organics Processing Services equipment used by CONTRACTOR in the performance of services under this Agreement shall be of the necessary quality to perform the services.

6.2 Equipment Maintenance.

CONTRACTOR shall maintain all Organics Processing Services equipment in a clean condition and in good repair at all times. All parts and systems of the equipment shall operate properly and be maintained in good working order. Additional maintenance requirements are specified in Exhibit C-2 ("Processing Plan").

6.3 Equipment Inventory.

On or before June 15, 2012, CONTRACTOR shall submit an inventory of transfer vehicles and other vehicles to be used in transport of Organic Streams prior to or following Processing, and for transport of Residue. The inventory shall indicate each vehicle using an identification number assigned by CONTRACTOR, Vehicle Identification Number, DMV license number, type of fuel used, and the type and capacity of each vehicle. The inventory shall include the tare weight of each vehicle as determined by weighing at a public scale. The specific procedure for performing the tare weighing shall be subject to the approval of the CITY Representative. Each vehicle inventory shall be accompanied by a certification by CONTRACTOR that all vehicles meet the requirements of this Agreement. CONTRACTOR shall, upon request submit an updated inventory to the CITY Representative.

6.4 Vehicle Registration, Licensing and Inspection.

All vehicles used by CONTRACTOR in the performance of services under this Agreement shall be in compliance with all registration, licensing and inspection requirements of the California Highway Patrol, the California Department of Motor Vehicles, and any other applicable laws or regulations.

CONTRACTOR shall maintain copies of all certificates and reports evidencing compliance, and shall make such certificates and reports available for inspection upon request by the City Representative. CONTRACTOR shall not use any vehicle to perform services under this Agreement that is not in compliance with applicable registration, licensing and inspection requirements.

6.5 Reserve Equipment.

CONTRACTOR shall have available to it, at all times, reserve Organics Processing Services equipment which can be put into service and operation within twenty-four (24) hours of any breakdown. Such reserve equipment shall correspond in size and capacity to the equipment used by CONTRACTOR to perform the services required by this Agreement.

6.6 Personnel Requirements.

6.6.1 General Manager Qualifications.

CONTRACTOR shall have a qualified general manager or other individual with comparable title and direct responsibility for performance under this Agreement with five

(5) or more years of experience in performing the same or similar functions. Upon CITY request, CONTRACTOR shall provide a written description of its general manager's duties, responsibilities, and commitments to parties other than the CITY, including duties and responsibilities related to CONTRACTOR management activities, and other collection, processing or disposal operations. The written description shall be provided within twelve (12) calendar days of the CITY request.

6.6.2 Access to General Manager.

The general manager or his/her designated representative who has equivalent decision making authority shall be readily available to the CITY Representative and the Director through the use of telecommunications equipment at all times that CONTRACTOR is providing services pursuant to this Agreement.

6.6.3 Emergency Contact.

CONTRACTOR shall provide the CITY Representative with emergency phone number(s) at which the general manager, and any other CONTRACTOR representative authorized to act on CONTRACTOR's behalf, can be reached outside of normal CONTRACTOR office hours. The emergency representative shall respond to any call from the CITY within one (1) hour.

6.6.4 Other Personnel Qualifications.

CONTRACTOR shall employ and assign qualified personnel to perform all services set forth herein. CONTRACTOR shall be responsible for ensuring that its employees comply with all federal, state, and local laws applicable to their employment, responsibility, and position.

6.6.5 Management and Supervision.

CONTRACTOR shall at all times maintain a level of management and supervisory staffing sufficient to perform the services required by this Agreement. Upon CITY request, CONTRACTOR shall provide written identification of key management and supervisory personnel, and such additional related information as may reasonably be requested by the CITY, including but not limited to, organization chart(s), resumes, job descriptions, identification of current responsibilities, and allocation of time to responsibilities.

6.6.6 Training.

CONTRACTOR shall provide the initial and ongoing personnel training necessary or required to perform the requirements of this Agreement. Training includes, but may not be limited to, operational training, safety training programs, compliance with Equal Employment Opportunities (EEO), the Americans with Disabilities Act (ADA), and other training as more specifically described in Exhibit C, Plans.

6.7 Facility Maintenance.

CONTRACTOR shall maintain the Organics Processing Facility consistent with Exhibit C-2 ("Processing Plan").

6.8 Minimum Anaerobic Digestion Capacity Commitment.

CONTRACTOR shall provide adequate capacity at the Organics Processing Facility for Processing all Organic Streams Delivered pursuant to this Agreement.

The primary Processing for Suitable Materials shall be through Anaerobic Digestion at the San Jose AD Facility. CONTRACTOR may only Compost Organic Materials that are:

- Not Suitable for Anaerobic Digestion; or
- Suitable Materials for Anaerobic Digestion if CONTRACTOR has Anaerobically Digested the minimum tonnage of Suitable Material specified below for any given month based on annual capacity commitment.

For the period of July 1, 2012 through December 31, 2013, or after the Phase I AD Facility is operational, CONTRACTOR shall provide capacity at the Phase I AD Facility to Anaerobically Digest, and Anaerobically Digest the first 5,000 tons per month of Suitable Material. For each calendar year thereafter, CONTRACTOR shall adjust its commitment to Anaerobically Digest Suitable Material at the Phase I AD Facility based on the previous years' tonnage of Suitable Material Delivered, capacity used, capacity available at the Phase I AD Facility and whether the Phase II/Phase III Facilities have been commissioned. The annual capacity commitment for any given year may:

1. Increase by the total amount of Suitable Material Delivered in the previous year that exceeded that year's capacity commitment if the additional capacity needed is available at the Phase I Facility or the Phase II/III Facilities; or

2. Increase by an amount less than the total amount of Suitable Material Delivered in the previous year that exceeded that year's capacity commitment if only a portion of the additional capacity needed is available at the Phase I Facility and the Phase II/III Facilities have not been commissioned; or

3. Remain fixed at the previous year's commitment if the Suitable Material Delivered exceeded the previous year's capacity commitment and no additional capacity is available at the Phase I Facility and the Phase II/III Facilities have not been commissioned; or

4. Decrease to the actual amount of Suitable Material Delivered if the Suitable Material Delivered was less than the previous year's capacity commitment

CONTRACTOR shall offer the CITY the first right to use any available tonnage capacity for Anaerobic Digestion of Suitable Material at the Phase I Facility. The use of the additional capacity does not constitute a commitment to increase the capacity for the following year. The CITY will have first right to utilize uncommitted capacity for Phase II and Phase III as those phases become available provided the tonnage of Suitable Material actually Delivered to the San Jose AD Facility in the previous twelve (12) months exceeded the capacity commitment to the CITY for Anaerobic Digestion.

The CITY's obligations under Section 4.1 shall remain irrespective of any adjustment in the minimum Anaerobic Digestion capacity commitment.

6.8.1 Suitable Material Determination.

Suitable Material required to be Processed through Anaerobic Digestion will be calculated by multiplying the total tons of Input Material in each Organic Stream Delivered by the annual Suitable Material percentage.

The Suitable Material percentage shall remain fixed during the period of July 1, 2012 through December 31, 2013 at 85% for Organic Stream One, 80% for Organic Stream Two, 70% for Organic Stream Three, and 60% for Organic Stream Four.

Thereafter, the Suitable Material percentage will be determined annually as the average of the Suitable Material identified through two characterization studies of Input Material, as detailed in Section 10.1.2.

In order to determine if the monthly allocation has been met, the Suitable Material percentage will be applied to the incoming Input Material. The annual tonnage of material processed through the digesters will be confirmed through monthly calculations as follows:

Total inbound material – outbound for disposal – outbound for further processing = material digested

The resulting material digested would represent the amount that had been digested in that period, and must be shown to be above the minimum Anaerobic Digestion capacity commitment to the CITY.

6.9 <u>Facility Permits and Licenses</u>.

CONTRACTOR shall be solely responsible for obtaining, at its own expense, any and all permits, licenses, and approvals necessary for the transportation, or Processing and Transfer of materials Accepted in the performance of Organics Processing Services, and maintain same in full force and effect throughout the term of the Agreement.

6.9.1 CONTRACTOR shall provide proof of such permits, licenses, or approvals and shall demonstrate compliance with the terms and conditions of such permits, licenses, and approvals upon the request of the City Representative.

6.9.2 CONTRACTOR shall at all times ensure that it is in full compliance with all other local, regional, State and federal regulatory requirements. CONTRACTOR shall at all times anticipate, and be proactive in identifying and actively participating in the timely resolution of issues related to regulatory compliance in order to ensure that there is no lapse in CONTRACTOR's ability to fulfill the requirements of this Agreement.

6.10 <u>Facility Access</u>.

CONTRACTOR shall at all times, with reasonable verbal notice, provide the City Representative with access to any facilities engaged in providing Organics Processing Services.

6.11 <u>Hours of Operation</u>.

The Organics Processing Facility shall be open for Delivery on the following schedule: Monday through Friday from 6:00am to 5:00pm and Saturday from 6:00am to 3:30pm, excluding Holidays.

6.12 <u>Office Hours</u>.

CONTRACTOR and staff shall be available to CITY staff Monday through Friday from 8:30 AM to 5:00 PM, excluding Holidays, or as otherwise approved by the CITY Representative.

ARTICLE 7 DIVERSION AND PERFORMANCE STANDARDS

7.1 Minimum Diversion Standards.

Beginning January 1, 2013, CONTRACTOR shall achieve an overall Diversion Standard, calculated for each calendar year, based on weighting the following minimum Diversion Standards for each Organic Stream: 90% for Organic Stream 1; 85% for Organic Stream 2; 75% for Organic Stream 3; and 65% for Organics Stream 4. The weighting shall be based on actual tons Accepted each calendar year. The minimum overall Diversion Standard shall be calculated in the following manner:

Step 1: For each Organic Stream, calculate percent of total tons Accepted, as follows:

Percent OS Accepted = Tons OS Accepted / Total Tons Accepted

Example

% OS1 Accepted = 20,000 OS1 tons / 80,000 total tons = 25.0%

% OS2 Accepted = 20,000 OS2 tons / 80,000 total tons = 25.0%

% OS3 Accepted = 40,000 OS3 tons / 80,000 total tons = 50.0%

% OS4 Accepted = 0 OS4 tons / 100,000 total tons = 0.0%

Step 2: For each Organic Stream, calculate weighted Diversion Standard based on Organic Stream Diversion Standards listed above, as follows:

Weighted OS Diversion Standard = Percent OS Accepted x OS Diversion Standard

Example

Weighted OS1 Diversion Std = 25.0% Accepted x 90% Diversion Std = 22.50%

Weighted OS2 Diversion Std = 25.0% Accepted x 85% Diversion Std = 21.25%

Weighted OS3 Diversion Std = 50.0% Accepted x 75% Diversion Std = 37.50%

Weighted OS4 Diversion Std = 0.0% Accepted x 65% Diversion Std = 0.00%

Step 3: Calculate overall weighted Diversion Standard by summing the weighted Diversion Standards for each Organic Stream calculated in Step 2, as follows:

Overall Weighted Diversion Standard = Weighted OS1 Diversion Standard + Weighted OS2 Diversion Standard + Weighted OS3 Diversion Standard + Weighted OS4 Diversion Standard

Example

Overall Weighted Diversion Std = 22.50% + 21.25% + 37.50% + 0.00% = 81.25%

7.1.1 Annual Diversion Calculation.

The Diversion rate will be calculated on a calendar year basis beginning January 1, 2013, as the tons of Organic Streams Accepted less the tons of Residue divided by the tons of Organic Streams Accepted in the applicable calendar year:

Diversion Rate = (Tons of OS Accepted – Tons OS Residue)/ Tons of OS Accepted

7.1.1.1 Measurement of Accepted Organic Stream Tonnage.

The Tons of OS Accepted shall be calculated as the sum of the tonnage of each OS Accepted by the Organics Processing Facility for the most recently completed month.

The Delivered tonnage shall be calculated using daily tonnage reports from the CONTRACTOR's scale house data management system that summarize weight tickets for vehicles Delivering OS.

The tonnage of each Delivered OS that was not Accepted (if any) shall be calculated based on documented records for each load of Delivered OS that the CONTRACTOR does not Accept.

7.1.1.2 Tons of Residue Disposed.

The tons of Residue Disposed shall be wholly attributable to the Processing required by this Agreement, and shall be calculated as the monthly sum of the tonnage disposed as reported by the Disposal Facility.

If the CITY's estimate of the Residue tonnage differs from the actual Residue tonnage reported by the Disposal Facility, CONTRACTOR shall comply with CITY's request to inspect supporting documentation within seven (7) calendar days of the CITY's written request.

The material that remains after CONTRACTOR has Processed or Disposed of an Abandoned Load may be Disposed at the Disposal Facility. This tonnage shall not be attributed to the tons of Residue Disposed in calculating CONTRACTOR's diversion rate under Section 7.1.1 or be deducted from CONTRACTOR's disposal allocation.

7.1.1.3 Determination of Residue Disposed at Commingled Facilities.

If the Organic Streams are commingled with Organic Material from other sources for Transfer or Processing, the percentage of Residue attributed to San José will be calculated using the following methodology.

No less than twice annually CONTRACTOR shall complete a waste audit of organic material from other sources. Residue Disposed shall be calculated as follows:

Step 1: Determine residue rate from audit material from other sources by dividing tons of audit residue removed by tons of audit material processed.

Example

Audit Material Processed = 100 tons

Residue Generated = 10 tons

Residue Rate (Other Sources) = 10 tons / 100 tons = 10%

Step 2: Determine total residue from other sources by multiplying audit residue rate by tonnage processed from other sources.

Example

Total Annual Tons Processed (Other Sources) = 4,000 tons

Total Annual Residue (Other Sources) = 10% residue rate * 4,000 tons = 400 tons

Step 3: Determine the amount of residue attributable to Organic Material Processing by subtracting total residue generated from other sources from the total residue generated from all sources.

Example

Total Annual Facility Residue Generated = 14,000 tons

Annual OS Residue (SJ Material) = 14,000 tons – 400 tons = 13,600 tons

7.2 Additional Provisions.

CONTRACTOR acknowledges that CITY shall have the right to review all supporting documentation relevant to verifying Diversion Standard calculations; and planning for any increase to Diversion Standards.

7.3 Failure to Achieve Minimum Diversion Standards.

CONTRACTOR acknowledges and agrees that failure to meet the minimum Diversion Standards set forth in this Article may result in the termination of this Agreement or the imposition of liquidated damages as provided in Exhibit B.

7.4 Increasing Diversion Standard.

CONTRACTOR acknowledges that CITY may request an increase to the Diversion Standards. The amendments to the scope and change to the compensation rate, if any, are to be mutually agreed upon by CITY and CONTRACTOR pursuant to Adjustment for Change in Scope under Article 9.

ARTICLE 8 DISPOSAL

8.1 CITY's Responsibility.

CITY shall arrange and pay for sufficient landfill capacity for the Disposal of Residue from the Processing of Organic Streams. CITY shall pay the Disposal Facility directly for the Disposal of the Residue unless otherwise mutually agreed by CITY's Director of Environmental Services and CONTRACTOR.

8.2 CONTRACTOR's Responsibility.

8.2.1 Delivery of Residue.

CONTRACTOR shall transport all Residue from the Processing of the Organic Streams Accepted pursuant to this Agreement to the Disposal Facility, or to such other facilities as the City Representative may designate in writing. In the event the Disposal Facility is closed, CONTRACTOR shall transport and dispose of the Residue at such other legally permitted disposal facility as designated in writing by the City Representative. CONTRACTOR may be liable for liquidated damages for transporting Residue to a facility that has not been approved by the City Representative. If the CITY directs material to a disposal facility other than Newby Island, the CITY shall compensate CONTRACTOR for the difference in transportation costs, disposal fees or other related costs incurred.

8.2.2 Limitation on Use of CITY-Arranged Landfill Capacity.

CONTRACTOR shall not, under any circumstances whatsoever, utilize the CITY-arranged disposal capacity for the disposal of any material that was collected, processed, and/or transported without the express prior written authorization of the City Representative.

8.2.3 Compliance with Regulations.

CONTRACTOR shall observe and comply with all regulations in effect at the Disposal Facility or any other CITY-designated disposal facility at the time CONTRACTOR transports and disposes of materials at the site. CONTRACTOR shall at all times while at the Disposal Facility or any other CITY-designated disposal facility, operate according to safe industry practices.

8.2.4 CONTRACTOR's Acknowledgement and Responsibility.

CONTRACTOR acknowledges that CITY will not pay for the disposal of Residue from processing Organic Streams to the extent CONTRACTOR was required to divert the Organic Streams under Article 7 and failed to meet the minimum Diversion Standards. The cost to transport and dispose of the additional Residue is the sole responsibility of the CONTRACTOR. The additional cost to dispose of the Residue at the Disposal Facility would be paid by the CONTRACTOR to the CITY.

ARTICLE 9 CONTRACTOR'S COMPENSATION

The method and amount of compensation provided for in this Article and Exhibit A shall be the full, entire and complete compensation due to CONTRACTOR for all costs necessary to perform all services required by this Agreement in the manner and at the times prescribed.

CONTRACTOR acknowledges that the exclusive source of compensation will be from the Commercial Collection Franchisee, and that CITY does not have an additional or separate obligation to compensate CONTRACTOR from any other source of funds, including but not limited to, the general fund, special funds, or other fees, charges, assessments and taxes.

Provided, however, the previous sentence shall not affect CITY's obligations under this Agreement nor shall it affect CONTRACTOR's rights to enforce said obligations.

The CITY shall cause the Commercial Collection Franchisee to compensate CONTRACTOR directly pursuant to the terms of this Agreement. CONTRACTOR shall charge the Commercial Collection Franchisee for Processing of Organic Materials delivered thereby the per ton and other fees provided in Exhibit A, Compensation Rates as they may be adjusted from time to time pursuant to this Agreement.

Throughout the term of this Agreement, CITY shall set the Total Processing Fee and approve the maximum commercial collection rates at levels and at times consistent with the terms of this Agreement, and sufficient to allow the Commercial Collection Franchisee to pay the Total Compensation due to CONTRACTOR. Except as provided for in this Agreement, if the CITY assumes all or part of the collection of Organic Materials from the Commercial Collection Franchisee or from Commercial Customers, then CITY shall assume the obligations set forth for the Commercial Collection Franchisee set forth in this Article.

9.1 Definitions.

The following terms are defined for the purposes of this Article and Exhibit A, Compensation Rates:

9.1.1 Annual Percentage Change.

The annual change in the Consumer Price Index, All Urban Consumers ("CPI-U") or six percent (6%), whichever is less. The annual change in the CPI-U is calculated by subtracting the Average Index Value (as defined in Section 9.1.2) for the 12-month period ending October 31 of the then-current Rate Year from the Average Index Value for the 12-month period ending October 31 of the most-recently completed year and dividing the result by the Average Index Value for the 12-month period ending October 31 of the most-recently completed year.

For example, if the CONTRACTOR is calculating the Processing Fees for year four (commencing July 1, 2015), the Annual Percentage Change for the CPI-U would be calculated as follows:

[(Average CPI-U for November 2013 through October 2014) minus (Average CPI-U for November 2012 through October 2013)] divided by (Average CPI-U for November 2012 through October 2013).

If Average CPI-U for November 2013 through October 2014 is 235.822 and the Average CPI-U for November 2012 through October 2013 is 230.260, the Annual

Percentage Change for the CPI-U would be equal to: (235.822 – 230.260) / 230.260= 2.416%.

The calculated Annual Percentage Change shall be carried three places to the right of the decimal and rounded to the nearest thousandth.

9.1.2 Average Index Value.

The sum of the monthly index values during the 12-month period ending in October 31 divided by 12 (in the case of indices published monthly) or the sum of the bi-monthly index values divided by 6 (in the case of indices published bi-monthly). The Average Index Value shall be carried three places to the right of the decimal and rounded to the nearest thousandth.

9.1.3 Base Component.

That portion of each Processing Fee that represents CONTRACTOR's charge for Processing the Organic Stream and includes all CONTRACTOR's expenses and profit, but excludes the Government Fee Component.

9.1.4 CPI-U.

The Consumer Price Index, All Urban Consumers, All Items, Not Seasonally Adjusted, San Francisco-Oakland-San Jose Metropolitan Area compiled and published by the U.S. Department of Labor, Bureau of Labor Statistics. The CPI-U for December 2009 was 224.239.

9.1.5 Government Fee Component.

That portion of each Processing Fee that represents CONTRACTOR's charge for all federal, State, and local fees applied to Processing the Organic Stream at the Organics Processing Facility. This does not include any regulatory fines, penalties, or judgments imposed on the facility by any regulatory agency or the court.

9.1.6 Rate Year.

The 12-month period, commencing July 1 and concluding June 30, for which the Processing Fee is calculated.

9.2 Rate Year One Processing Fees.

On or before July 1, 2012, the proposed Processing Fees for July 1, 2012 through June 30, 2013 ("Rate Year One") shall be adjusted to reflect the following changes for the period from the submittal of the CONTRACTOR's proposal to July 1, 2012:

- Estimated inflation or deflation changes in the costs included in the Base Components based on the percentage change in the Consumer Price Index since October 2010; and
- Actual changes to government fees in the Government Fee Component since 2010.

9.2.1 Processing Fee Adjustment.

The Proposed Processing Fees will be adjusted from 2010 to 2012 as described below.

9.2.1.1 CPI-U Adjustment Factor.

The CPI-U adjustment factor shall be determined in the following manner:

(Step 1) Calculate the Annual Percentage Change in the CPI-U, rounded to the nearest thousandth; and

(Step 2) Calculate 1 plus the results of step 1 multiplied by 2 to yield a two-year percentage change in CPI-U that will be used as the CPI-U adjustment factor. The CPI-U adjustment factor shall be rounded to the nearest thousandth.

For example, if the Annual Index Value for the 12-month period ending October 31, 2011 is 213.027 and the Average Index Value for the 12-month period ending October 31, 2010 is 209.982, then the CPI-U adjustment factor is calculated as follows:

Step 1 = Annual Percentage Change = (213.027 – 209.982) / 209.982 = .0145
Step 2 = 1+ (0.0145 X 2) = 1.029

9.2.1.2 Base Component Adjustment.

The Year One Base Component shall equal the Base Component listed in Exhibit A multiplied by CPI-U adjustment factor rounded to the nearest hundredth of a dollar.

9.2.1.3 Government Fee Component Adjustment.

The adjusted Year One Government Fee Component for each Processing Fee shall be the sum of the then-current government fees as of January 1, 2012.

9.2.1.4 Total Processing Fee.

The Year One Processing Fees for each Organic Stream shall be equal to the sum of the adjusted Base Component and the adjusted Government Fee Component. The Processing Fee shall be rounded to the nearest hundredth of a dollar.

9.3 Annual Processing Fee Adjustments Commencing Year Two.

Annually, beginning July 1, 2013 ("Year Two"), the Base Component of each Processing Fee shall be adjusted by the Annual Percentage Change in the CPI-U and the Government Fee Component shall be adjusted to reflect actual government fees.

9.3.1 Processing Fee Adjustment.

The Processing Fees of the then-current Year will be adjusted as follows to determine the Processing Fees for the coming Year:

9.3.1.1 CPI-U Adjustment Factor.

For the purposes of this Section 9, the CPI-U adjustment factor shall equal one plus the Annual Percentage Change in the CPI-U. The CPI-U adjustment factor shall be rounded to the nearest thousandth.

9.3.1.2 Base Component Adjustment.

The Base Component for the coming year shall be calculated as the Base Component listed in Exhibit A multiplied by CPI-U adjustment factor rounded to the nearest hundredth of a dollar.

9.3.1.3 Government Fee Component Adjustment.

The adjusted Government Fee Component for each Processing Fee for the coming Year shall be the sum of the then-current government fees. The government fees to be revised include those presented in Section 9.15 and Exhibit A.

9.3.1.4 Total Processing Fee.

The Processing Fees for each Organic Stream for the coming Year shall be equal to the sum of the adjusted Base Component and the adjusted Government Fee Component (determined in accordance with Sections 9.3.1.2 and 9.3.1.3, respectively). The Processing Fee shall be rounded to the nearest hundredth of a dollar.

9.4 Application to Adjust Processing Fee.

9.4.1 Adjustment Methodology.

Within the first two weeks of January prior to the commencement of the coming fiscal year for which Processing Fees are to be determined, CONTRACTOR shall submit at least three (3) copies of its application requesting the fee adjustment for the coming year. The application shall present the calculations of the Annual Percentage Change in the final CPI-U, the CPI-U adjustment factor, adjusted Base Component, adjusted Government Fee Component, total Processing Fees, and all supporting documentation for the calculations and documentation of then-current government fees. The application shall not be deemed complete and ready for review by the CITY until the CITY has received all requested supporting documentation for the calculations. CITY shall request, in writing, any additional supporting documentation within thirty (30) days of receiving CONTRACTOR's application. If no request for additional supporting documentation is made within thirty (30) days of receiving CONTRACTOR's application, the application shall be deemed complete and ready for review.

9.4.2 City Review of Application.

Once the application is deemed complete, CITY shall have 60 days to review and either accept, reject or modify the request. If the CITY's recommendation is to adjust the processing fee, CITY shall have an additional 45 days to schedule the request for City Council consideration. The Total Processing Fee set by the CITY shall be sufficient to compensate CONTRACTOR from the date CONTRACTOR was entitled to an adjustment to the Total Processing Fee under the terms of this Agreement.

9.5 Adjustment of Government Fee Component.

The CONTRACTOR must request approval from the CITY in writing regarding any change in the Processing Fee due to a change in the Government Fee. If the change in the Government Fee occurs at a time when the request could not be submitted with the annual application to adjust the Processing Fee, CONTRACTOR shall separately request the adjustment at least ninety (90) calendar days before any change in the Processing Fee is effective. Any adjustment in the Government Fee component shall be sufficient to compensate CONTRACTOR from the date CONTRACTOR was entitled to an adjustment to the Government Fee component under the terms of this Agreement.

9.6 Adjustment for Change in Scope.

In the event the CITY requests a change in scope, the CONTRACTOR shall furnish the CITY with projected operational and cost data for the change in scope to support any adjustment to the Processing Fee. The CITY reserves the right to require that the CONTRACTOR supply any additional cost data or other information it may reasonably need to ascertain the appropriate Processing Fee adjustments, if any, for the change in scope.

9.7 Disallowed Bases for Adjustment.

An application to adjust the Processing Fee will not be considered for reasons including, but not limited to, the following:

- Costs incurred due to CONTRACTOR's negligence, or intentional misconduct.
- Any fines or penalties imposed on CONTRACTOR.

9.8 Wire Transfer.

CITY shall cause all payments to CONTRACTOR by the Commercial Collection Franchisee for Total Compensation under this Agreement be made by wire transfer to CONTRACTOR's designated bank account(s). The wire transfer containing the payment must show that the payment was sent on or before the due date. The Commercial Collection Franchisee may deduct its costs of the wire transfers from the monthly payment otherwise due to CONTRACTOR.

9.9 Payments to CONTRACTOR.

CONTRACTOR shall invoice Commercial Collection Franchisee pursuant to Exhibit A no later than the seventh (7) day of the month following the month such services were rendered. The invoice shall include a detailed listing of each delivery to the Organic Processing Facility, which shall include, at a minimum, the truck number, date of delivery, and tons delivered (sorted by date).

The Commercial Collection Franchisee shall remit the compensation directly to CONTRACTOR on the last day of the calendar month following the calendar month the services were rendered, with the timeline for payment to be extended by the same number of days equivalent to any delay in receipt of the invoice. Organic Processing fees shall be calculated by multiplying the actual tons delivered to CONTRACTOR by Organic Stream during the previous month by the then-current per-ton Organic Processing fee including any additional compensation charges incurred by the Commercial Collection Franchisee and due CONTRACTOR as provided in Exhibit A.

CONTRACTOR may charge the Commercial Collection Franchisee a late payment charge in an amount equal to ten percent (10%) of the monthly remittance amount that was not timely paid to the CONTRACTOR. If the Commercial Collection Franchisee fails to pay delinquent remittance amount within thirty (30) days of the date required, the CONTRACTOR may charge the Commercial Collection Franchisee a second late payment charge in an amount equal to ten percent (10%) of the monthly remittance outstanding after such thirty (30) day period. Such second late payment charge shall be in addition to the first late payment charge. In addition, the Commercial Collection Franchisee shall pay interest on all unpaid monthly remittance amounts at the rate of ten percent (10%) per annum or the legal rate allowed, whichever is less, from the date said monthly remittance amounts were due and payable to the date actually paid. The aforementioned shall not apply to disputed portions of invoices.

9.10 Resolution of Discrepancies.

Within ten (10) calendar days of receipt of the invoice, the Commercial Collection Franchisee shall notify the CONTRACTOR, in writing, of any discrepancies or deficiencies in the invoice ("Notice of Discrepancies").

Within ten (10) days of receipt of Notice of Discrepancies, CONTRACTOR and Commercial Collection Franchisee shall meet and attempt to resolve any dispute concerning said invoices. If CONTRACTOR and Commercial Collection Franchisee are unable to resolve said dispute within twenty (20) days after receipt of the Notice of Discrepancies, then CONTRACTOR and Commercial Collection Franchisee shall, within five (5) days after the expiration of said twenty-day period, immediately meet with the CITY Representative to resolve any such discrepancies or deficiencies and shall provide the CITY Representative any and all documentation relating to the discrepancy or deficiency that is requested by the CITY Representative or which CONTRACTOR or Commercial Collection Franchisee wishes to provide in support of their respective positions. Within fifteen (15) calendar days of meeting with the CITY Representative, the CITY Representative shall notify CONTRACTOR and Commercial Collection Franchisee, in writing, of CITY representative's resolution of the discrepancies or deficiencies. The CITY Representative's determination shall be final.

During the existence of any dispute, the Commercial Collection Franchisee shall pay all undisputed amounts to CONTRACTOR. (By way of example, if Commercial Collection Franchisee disputes the load's classification by CONTRACTOR as Organic Stream 3 and if the Commercial Collection Franchisee was of the opinion that the load was Organic Stream 2, then Commercial Collection Franchisee shall pay the costs for Organic Stream 2 pending the resolution of the dispute). Within ten (10) days of resolution of the dispute, Commercial Collection Franchisee shall pay to CONTRACTOR any additional sums which may be found by CITY Representative to be due to CONTRACTOR.

9.11 Enforcement of Payment.

If the Commercial Collection Franchisee fails to pay the compensation due to CONTRACTOR after the parties have completed the Resolution of Discrepancies process, and the CITY has made a final determination, the CITY shall take appropriate actions to assess and collect liquidated damages from the Commercial Collection Franchisee for the failure to pay. Any liquidated damages which are collected by the CITY arising from the failure to pay shall be paid to CONTRACTOR to offset the compensation due. In the event the CITY is unable to cause the Commercial Collection Franchisee to fully pay the compensation due to CONTRACTOR within thirty (30) days of the CITY's action, CONTRACTOR shall have the right to exercise all the rights and remedies, and to maintain any action at law, to enforce payment of the compensation due to CONTRACTOR.

9.12 Withholding of Payment.

In addition to express provisions contained elsewhere in this Agreement, or, if CITY elects, CITY may direct the Commercial Collection Franchisee to withhold or retain all or a portion of any monthly payment for any of the following reasons.

- Failure of CONTRACTOR to make payments to any subcontractor for material or labor unless CONTRACTOR agrees in writing to indemnify and hold the CITY harmless from any claims by the subcontractor
- Use of any subcontractors without CITY's prior written approval.

- Disposal of Residue at the Disposal Facility from processing Organic Streams in an amount that exceeds the specific tonnage allocation from the CITY.

Simultaneously with the direction to the Commercial Collection Franchisee described in this Section 9.12, CITY shall provide written notice to CONTRACTOR of the reason for withholding of payments.

9.13 Payment of Withheld Amounts.

Upon CONTRACTOR's remedy of the above-listed grounds for withholding payment and demonstration of the remedy to the reasonable satisfaction of the City Representative, the Commercial Collection Franchisee shall pay all withheld amounts within twelve (12) calendar days. The Commercial Collection Franchisee shall not be liable for interest on any disputed amounts pending resolution of dispute.

9.14 Additional Compensation.

CITY shall cause the Commercial Collection Franchisee to compensate CONTRACTOR for all tons of Organic Material not delivered to CONTRACTOR pursuant to the terms of this Agreement. Compensation to CONTRACTOR shall be calculated annually on a per ton basis for the total tons of Organic Materials not Delivered to CONTRACTOR, pursuant to the terms of this Agreement, at the then current rate for Organic Stream 1 provided in Exhibit A and as further described below:

9.14.1 Glass Contaminated Residue Compensation.

In accordance with the definition of Glass Contaminated Residual contained in Section 1.22 of this Agreement, CITY shall cause the Commercial Collection Franchisee to compensate CONTRACTOR on a calendar year basis for the total tons of Organic Materials not Delivered to CONTRACTOR, pursuant to the terms of this Agreement, calculated as the total tons of Glass Contaminated Residual in excess of the Commercial Collection Franchisee's annual allowance of ten percent (10%) by weight of the total waste Pre-Processed by the Commercial Collection Franchisee, multiplied by the total percentage of Organic Material by weight found to be contained within the Commercial Collection Franchisee's Glass Contaminated Residual as provided in Section 10.1.4 of this Agreement.

The tonnage for additional compensation shall be calculated as follows:

TTP = Total Tons Pre-Processed (tons)
GRA = Glass Contaminated Residual Allowance (tons)
GRR = Glass Contaminated Residual Retained (tons)
EGR = Excess Glass Contaminated Residual (tons)
OMC = Organic Material Content (percentage)
OMO = Organic Material Overage (tons)

TTP x 10% = GRA
GRR – GRA = EGR
EGR x OMC = OMO

For example:

150,000 TTP x 10% = 15,000 GRA
17,000 GRR -15,000 GRA = 2,000 EGR
2,000 EGR x 35% OMC = 700 OMO

9.14.2 Excess Organic Material in Commercial Collection Franchisee Residue Compensation.

If the Commercial Collection Franchisee Disposes more than twenty percent (20%) by weight of the total waste stream collected from Commercial Premises, CITY shall cause the Commercial Collection Franchisee to compensate CONTRACTOR on a calendar year basis for the total tons of Organic Material not Delivered to CONTRACTOR.

Compensation shall be calculated as the total tons of Residue Disposed in excess of the twenty percent (20%) by weight of the total waste stream collected from Commercial Premises multiplied by the total percentage of Organic Material by weight contained within the Commercial Collection Franchisee's Pre-processing Residue as provided in Section 10.1.4 of this Agreement.

The tonnage for additional compensation shall be calculated as follows:

TTC = Total Tons Collected
ADA = Annual Disposal Allowance (tons)
TTD = Total Tons Delivered to CONTRACTOR
PPR = Pre-Processing Residue (tons)
OPR = Organic Processing Residue (tons)
ARD = Annual Residue Disposed (tons)
ETD = Excess Residue Disposed (tons)
OMC = Organic Material Content (percentage)
OMD = Organic Materials Disposed (tons)

TTC x 20% = ADA
TTD x 10% = OPR
PPR + OPR = ARD
ARD – ADA = ETD
ETD x OMC = OMD

For example:

200,000 TTC x 20% = 40,000 ADA
80,000 TTD x 10% = 8,000 OPR
36,000 PPR + 8,000 OPR = 44,000 ARD
44,000 ARD - 40,000 ADA = 4,000 ETD
4,000 ETD x 35% OMC = 1,400 OMD

9.15 Failure To Deliver During July 1, 2012 Through December 31, 2012.

If the Commercial Collection Franchisee fails to deliver Organic Streams to CONTRACTOR, CITY shall take appropriate action to assess and collect liquidated damages from the Commercial Collection Franchisee. Any liquidated damages which are collected by the CITY

arising from failure to deliver Organic Streams during the period from July 1, 2012 through December 31, 2012 shall be paid to CONTRACTOR. In the event the CITY is unable to cause the Commercial Collection Franchisee to Deliver the Organic Streams, CONTRACTOR may exercise all the rights and remedies, and to maintain any action at law, to enforce payment of the compensation due to CONTRACTOR.

9.16 Cessation of Services.

CONTRACTOR may cease providing Organic Processing Services in the event that the Commercial Collection Franchisee fails to pay an undisputed amount greater than $50,000 that is more than ninety (90) days past due.

9.17 Reconciliation of Compensation.

If pursuant to Section 6.8.1, it is determined that CONTRACTOR did not meet its minimum Anaerobic Digestion capacity commitment and adequate Suitable Material was Delivered to CONTRACTOR, then this amount shall be deducted from the next month's invoice to the Commercial Collection Franchisee for the total tonnage of material that should have been Anaerobically Digested, calculated by:

Step 1: Determining the total tonnage of material that should have been Anaerobically Digested by subtracting the total material processed through the digesters under this Section 6.8.1 from the annual capacity commitment.

Step 2: Determining the weighted tonnage of each Organics Stream Accepted during the same period by dividing the total tonnage of each Organics Stream Accepted by the total tonnage of Input Material Accepted.

Step 3: Determining the compensation due to the Commercial Collection Franchisee by applying the weighted tonnage of each Organics Stream that should have been Anaerobically Digested by the difference in the Total Processing Fee from Rate Table 1 and Rate Table 2 in Exhibit A for each Organics Stream.

Example:

Capacity commitment – tonnage of material processed through digesters = tonnage that should have been Anaerobically Digested

60,000 – 50,000 = 10,000

10,000 tons x OS1 @ 25% = 2,500 tons x (Rate Table 1 OS1 – Rate Table 2 OS1 = Rate Applied) = compensation due

10,000 tons x OS2 @ 25% = 2,500 tons x (Rate Table 1 OS1 – Rate Table 2 OS1 = Rate Applied) = compensation due

10,000 tons x OS3 @ 50% = 5,000 tons x (Rate Table 1 OS1 – Rate Table 2 OS1 = Rate Applied) = compensation due

10,000 tons x OS4 @ 0% = 0 tons x (Rate Table 1 OS1 – Rate Table 2 OS1 = Rate Applied) = compensation due

ARTICLE 10 ADDITIONAL SERVICES

10.1 Special Services.

10.1.1 Performance Audits.

CONTRACTOR agrees to cooperate and assist CITY in conducting performance audits, pilot test programs, and any other agreed upon extra service or program requested by CITY. CITY may require that certain waste characterization studies are performed by a third party.

10.1.2 Waste Characterization.

CITY may request that CONTRACTOR perform up to two waste characterization studies for each year of the Agreement. The purpose of these studies is to determine the percentage of Suitable Material contained in each Organic Stream and characterize Processing waste. Each Organics Stream will be sorted separately and categorized as:

- Post-sorting Residue; or
- Recyclable Materials to be Transferred for Processing; or
- Non Suitable Material to be Transferred for Processing

  Non Suitable Material Transferred for Processing at Z-Best Composting Facility or an Alternate Facility as part of this waste characterization will not be commingled with other materials. The Processing Residue will be added to the Post-Sorting Residue above and deducted from the total amount of Non Suitable Material to be Transferred for Processing.

- Suitable Material

  The total amount of Suitable Material shall be calculated by taking the tonnage of each Organics Stream Delivered under this waste characterization and subtracting 1) post-sorting Reside, 2) Recyclable Materials to be Transferred for Processing and 3) Non Suitable Material to be Transferred for Processing.

The scope of these studies shall be mutually determined by the CITY and the CONTRACTOR. The studies will be conducted at such times as are mutually agreed upon by CONTRACTOR and the City Representative. The Suitable Materials Anaerobically Digested by CONTRACTOR annually shall be calculated based on the average percentage of Suitable Materials by weight contained within each Organics Stream Delivered as determined by these waste characterization studies. When feasible, these waste characterization studies shall be conducted in coordination with the waste characterization studies described in Section 10.1.3.

10.1.3 Waste Characterization Studies of Organic Materials Delivered.

The CITY or the Commercial Collection Franchisee may request that the CONTRACTOR participate in up to two (2) waste characterization studies of Organic Material Delivered to CONTRACTOR by the Commercial Collection Franchisee in the

first year of this Agreement, and up to one (1) waste characterization study each year thereafter during the Term of this Agreement. The waste characterization studies described in this Section will be conducted to determine the adequacy of Pre-Processing by Commercial Collection Franchisee to meet the Organics Stream criteria, and to determine whether the Organic Materials Delivered are being accurately designated to the appropriate Organic Stream by the CONTRACTOR.

CITY, CONTRACTOR, and Commercial Collection Franchisee shall cooperate to determine the scope and methodology and review the results of these waste characterization studies. The results of the study may require the CITY to require the Commercial Collection Franchisee to utilize commercially reasonable efforts to modify Pre-Processing in order to ensure the maximum amount of Organic Materials are Delivered to CONTRACTOR, or to bring Organic Materials Delivered into compliance with the Organic Streams criteria. Additionally, the results of such studies may identify a need to modify or clarify the definition of Organic Streams. The CITY, CONTRACTOR, and Commercial Collection Franchisee may mutually agree to change the definition of Organic Streams.

CONTRACTOR shall be responsible for its direct costs for conducting the studies described in this Section. CONTRACTOR shall not be responsible for any direct costs for the performance of work by any third party identified in the waste characterization scope and methodology described above nor any costs incurred by CITY or Commercial Collection Franchisee. The party requesting the study shall be responsible for third party costs.

CITY or Commercial Collection Franchisee may conduct additional waste characterization studies. CONTRACTOR shall cooperate with such studies. CONTRACTOR shall not be responsible for any costs associated with the additional waste characterization studies, and will be compensated by the requesting party for CONTRACTOR's costs incurred to conduct the additional waste characterization studies.

10.1.4 Organic Material Characterization Studies of Commercial Collection Franchisee Residue.

CITY and CONTRACTOR agree the Commercial Collection Franchisee's Residue Disposal stream, and Glass Contaminated Residual stream shall be monitored in order to determine the percentage of Organic Materials, by weight, contained within each of these streams. CITY and/or CONTRACTOR may conduct up to four (4) scheduled Organic Material characterization studies per year of the material leaving the Commercial Collection Franchisee's Pre-Processing facility. CITY shall require the Commercial Collection Franchisee's full cooperation in such studies.

In accordance with Section 9.14 of this Agreement, the percentage of Organic Material by weight contained within the Commercial Collection Franchisee's Residue Disposal stream, and Glass Contaminated Residue stream from each of these Organic Material waste characterization studies shall be averaged if more than one study is performed in any given calendar year, and used to determine the annual compensation due from the Commercial Collection Franchisee to CONTRACTOR in accordance with this Agreement.

CITY, CONTRACTOR, and Commercial Collection Franchisee shall cooperate to determine the scope and methodology of these Organic Material waste characterization studies. The results of these Organics Material waste characterization studies may also be used to identify the opportunities for commercially reasonable Pre-Processing improvements by the Commercial Collection Franchisee to maximize the volume of Organic Materials being Delivered to CONTRACTOR, to minimize the amount of Organic Material contained within Glass Contaminated Residue, and to reduce the total amount of Commercial Collection Franchisee Residue Disposed.

CONTRACTOR, Commercial Collection Franchisee, and CITY shall cooperate with the Organic Material waste characterizations described in this Section. CONTRACTOR shall be responsible for its direct costs for conducting the studies described in this Section and any direct costs for the performance of work by any third-party identified in the waste characterization scope and methodology described above. CONTRACTOR shall not be responsible for any costs incurred by CITY or Commercial Collection Franchisee.

CONTRACTOR shall not be responsible for any costs associated with any additional waste characterization studies requested by CITY or Commercial collection Franchisee, and CITY will compensate CONTRACTOR for costs incurred to conduct any additional Organic Material waste characterization studies.

CONTRACTOR shall have the right to observe the Pre-Processing by the Commercial Collection Franchisee in the presence of a representative of the Commercial Collection Franchisee.

10.2 <u>Pilot Programs</u>.

CITY may request CONTRACTOR to conduct pilot test programs that temporarily change the organics processing method, the type of service, or the service schedule for a portion of the Organic Streams or Organic Material directed by CITY to CONTRACTOR. In the case of Organic Streams, a pilot test program shall be limited to no more than ten percent (10%) of the Organic Stream, and subject to the provisions of Section 4.2.1, unless otherwise specifically agreed by CONTRACTOR and CITY's Director. Each pilot test program shall be limited to a term of no more than eighteen (18) months unless otherwise specifically agreed by CONTRACTOR and CITY's Director.

CONTRACTOR shall perform any additional record keeping required by a pilot test program. If CONTRACTOR agrees to perform a pilot test program, CONTRACTOR and CITY's Director shall execute a letter of agreement prior to the start of the pilot test program. The letter of agreement shall set forth the terms of the pilot test program including program costs, program operating parameters, and program duration.

If a pilot test program affects the cost of providing a service, the program costs set forth in the letter of agreement may include an adjustment to the monthly payments otherwise payable to CONTRACTOR under this Agreement to reflect the benefits and/or burdens of the pilot test program. The adjustment shall be set so as to capture any increase or decrease in CONTRACTOR's direct operating costs resulting from the pilot test program. "Direct operating cost" includes planning costs; labor expense, including supervision (wages, employment taxes, and fringe benefits); materials, supplies and fuel; and amortized costs of new equipment purchased or equipment modified for the pilot test program. Any increases in direct operating

costs must be established by CONTRACTOR and must be capable of verification by an independent auditor.

10.3 Other Programs and Services.

CONTRACTOR shall provide other services and programs as requested by CITY at a price to be mutually agreed upon between CONTRACTOR and the Director. In the event CONTRACTOR and the Director cannot reach a mutually agreed upon price for the requested service or program within sixty (60) calendar days of CITY's request, CITY shall have the right to procure the service of other vendors or contractors to provide the requested service.

ARTICLE 11 RECORD KEEPING, REPORTING AND INSPECTIONS

11.1 Processing, Composting, Marketing, and Disposal Records.

CONTRACTOR shall maintain records of Processing, Composting, marketing, and Disposal of all Organic Streams during the term of this Agreement and for five (5) years from the creation of the records. Records shall be organized by chronology. CONTRACTOR and CITY will mutually agree on the type of data and reporting requirements prior to the beginning of service.

11.2 Financial Records.

CONTRACTOR shall maintain accurate and complete accounting records containing the underlying financial and operating data relating to and showing the basis for computation of all costs associated with providing services under this Agreement. The accounting records shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP), consistently applied. These records shall be maintained for a minimum period of five (5) years from the time of record creation, and may include, but not be limited to, any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other documents evidencing or relating to charges for services, or expenditures and disbursements charged to CITY.

11.3 Inspection or Audit.

11.3.1 Any documents required to be maintained pursuant to this Agreement must be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, Director, or a designated representative of any of these officers.

11.3.2 The CITY's right to inspect records survives the termination of this Agreement for three (3) years. CONTRACTOR shall make records available for inspection within two (2) weeks of receiving a written request to inspect records from the CITY.

11.4 Financial Reports.

CONTRACTOR shall, at CONTRACTOR's expense, retain an independent third party Certified Public Accountant ("CPA") licensed and 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 to provide attestation services ("Services") performed under the American Institute of Certified Public Accountant's ("AICPA") attestation standards, as well as the related AICPA Statements on Standards for Attestation Engagements. The CPA shall issue a review report affirming whether the following assertions are true:

- The CONTRACTOR is operating profitably (without disclosure of the amount); and
- The CONTRACTOR has timely met all debt and interest payments; and
- The CONTRACTOR has made payments on all purchases within vendor terms; and
- The CONTRACTOR has timely made payment of all payrolls, related taxes, and required reports; and
- The CONTRACTOR has a positive net worth, and
- The CONTRACTOR is in compliance with all financial covenants with its banks.

CONTRACTOR's fiscal year is September 1 through August 31. CONTRACTOR shall provide said attestation reports annually commencing for the fiscal year ending August 31, 2013. Said attestation reports shall be due within six months of CONTRACTOR's fiscal year end. CONTRACTOR and CITY may mutually agree to discontinue attestation services after a minimum of five years of reporting.

11.5 Security of Records.

CONTRACTOR shall maintain security measures to protect the records from events such as fire or theft. Electronically-maintained data/records shall be protected and a second copy of data/records shall be saved to a protected source such as an external hard-drive.

11.6 Custody of Records.

CONTRACTOR shall deliver to CITY, upon a written request, records relating to this Agreement for maintenance at City Hall if there is evidence that would lead a reasonable person to believe the records could be lost or discarded due to dissolution, disbandment, or termination of CONTRACTOR'S business.

11.7 Data Management and Reporting.

11.7.1 Record Retention and Reporting Objectives.

Records shall be maintained and retained in forms and by methods that facilitate flexible use of data contained in records to structure reports, as needed. Records shall be maintained in such a manner that CONTRACTOR can generate reports to compile recorded data into useful forms of information that can be used to, among other things:

- Determine processing fees as specified in Exhibit A, Compensation Rates;
- Determine the tons of Organic Streams Delivered, Accepted, Processed, Approved Products Sold, and tons of Residue Disposed;
- Calculate amount of Processing Fees due to CONTRACTOR under the terms of this Agreement;
- Evaluate performance in meeting or exceeding the Diversion Standard(s) for the Organic Stream(s);
- Determine needs for adjustment to programs;
- Determine amount, if any, of liquidated damages to be remitted to the CITY.

11.7.2 Operational Data Required.

11.7.2.1 Scale House Records.

All scale house transactions shall be recorded for receipt of Organic Materials Delivered to the Transfer Facility or Organics Processing Facility by the Commercial Collection Franchisee and by all other facility users.

11.7.2.1.1 At a minimum, the following data shall be maintained separately for each vehicle Delivering materials:

- Name or location of the Facility receiving the vehicle
- Name of company operating the vehicle and its vehicle number
- Weight tag number (unique, non-repeating number)
- Date of Delivery to the Facility
- Time of arrival at Facility
- Type of material Delivered (e.g., separately identify each Organic Stream)
- Net weight of materials Delivered (in Tons) (e.g., fully loaded "gross" weight less "tare" weight of empty vehicle)
- Route number(s) if provided by Commercial Collection Franchisee
- District(s) served, if applicable

11.7.2.1.2 Outgoing Materials.

At a minimum, the following data shall be maintained separately for each vehicle transporting materials off-site, including but not limited to Residue, Approved Products Sold, and Organic Materials Sold on behalf of other parties, and materials rejected:

- Name or location of the Facility vehicle is leaving
- Name of company operating the vehicle and its vehicle number (Residue and rejected loads only).
- Weight tag number (unique, non-repeating number)
- Date materials are transported off Facility premises
- Time of departure from Facility
- Type of material transported off Facility premises (e.g., Residue, other types of Organic Materials Sold)
- Net weight of materials (in Tons) (e.g., fully loaded weight less vehicle weight)
- Destination location for materials (Residue and rejected loads only).

11.7.2.2 Rejection or Conditional Acceptance of Organic Streams.

Acceptance and/or rejection of loads will be carried out in accordance with Exhibit C. This plan at a minimum addresses the following:

- Tons rejected;
- Estimated percentage of load rejected or conditionally Accepted (if known);

- Date and time materials were rejected or conditionally Accepted;
- Reason for rejection or conditional Acceptance;
- Person who inspected and rejected, or conditionally Accepted the materials;
- Number of the vehicle that Delivered the materials (if known)
- Final disposition of material

11.7.2.3 Processing and Marketing Records.

At a minimum, the following data shall be maintained for Processing and marketing:

11.7.2.3.1 Processing records shall be maintained including data on all Processing activities, Composting activities, temperature control, moisture control, material sampling and testing, etc;

11.7.2.3.2 Processing equipment breakdown records for significant events that impede CONTRACTOR's ability to accept and process Delivered materials, including, but not limited to:

- Facility location
- Date of breakdown
- Type of equipment
- Duration of breakdown
- Reason for breakdown
- Impacts, if any, to Processing operations
- Mitigation measures taken to avoid similar breakdowns

11.7.2.3.3 Marketing information for Approved Products including, but not limited to:

- Type of material
- Market Classification of consumer
- Date sold or donated
- Tons shipped
- Invoice number
- Weight tag number
- End use and markets for all Approved Products.

11.7.2.4 Residue Disposal Records.

CONTRACTOR shall maintain records of Transfer and Disposal of all Processing Residue from the Organics Processing Facility including records from outbound scale house transactions and the Disposal Facility Owner/Operator weight tickets.

11.8 Reporting Requirements.

11.8.1 Transition and Implementation Reports.

11.8.1.1 General.

CONTRACTOR acknowledges it is critical that the CITY be informed of the status of the transition and implementation of Organics Processing Services. CONTRACTOR shall provide, at a minimum, a monthly report following the first month of the transition period; a bimonthly report from January 2012 through April 2012; and weekly reports from May 2012 through June 2012. The contents of these reports shall be mutually agreed by CONTRACTOR and the City Representative.

11.8.1.2 Transition Schedule.

CONTRACTOR acknowledges that the deadlines specified in Exhibit C ("Transition and Implementation Plan") for facility development, modification, expansions, or other activities are critical to ensuring Processing capacity by July 1, 2012. CONTRACTOR may request changes to this schedule provided CONTRACTOR makes the request at least 48 hours before the due date, the CONTRACTOR submits a plan to mitigate the delay, and the change would not result in extending the start-up date beyond July 1, 2012. CITY reserves the right to impose liquidated damages for any delays in the ability of CONTRACTOR to Accept or Process Organic Materials Delivered by the Commercial Collection Franchisee beyond July 1, 2012 if the delay is due to CONTRACTOR's failure, partially or fully, to complete one or more tasks on or before any dates specified in Exhibit C-1 ("Transition and Implementation Plan").

11.8.2 Summary of Monthly, Quarterly, and Annual Reporting Requirements.

11.8.2.1 Operational Data.

The following table identifies the operational data the CONTRACTOR shall routinely submit. Data shall be listed separately for each Organic Stream and shall include totals. Unless otherwise specified, the Tonnage data referenced below pertains to Tonnages Delivered by the Commercial Collection Franchisee.

Operational Data	Monthly	Quarterly	Annual
Tons Delivered (by OPF)	X		
Tons Rejected (by OPF)	X		
Tons Accepted and Processed (by OPF)	X		
Tons Sold (list separately by the type of Approved Product classification and include total Tons Sold)	X		
Tons of Residue Disposed and Name of Disposal Facility(ies) Used	X		
Diversion Rate	X		
Diversion Standard			X
Tons of AD Capacity Used	X		
Significant Events		X	

Updated Marketing Plan			X

11.8.2.2 Financial Information.

The following table identifies the financial information the CONTRACTOR shall routinely submit. If applicable, data shall be listed separately for each Organic Stream and for the Commercial Collection Franchisee and shall also include totals.

Financial Information	Monthly	Quarterly	Annual
Per-Ton Processing Fee	X		
Amount billed by CONTRACTOR to Commercial Collection Franchisee	X		
CITY fees or payments (if any) due to CITY	X		
Commercial Collection Franchisee past due amount	X		
Total revenue received from Approved Products Sold		X	
Financial Reports			X
Officers, Board Members, Shareholders			X
Wage & Labor Policy Reporting			X

11.8.3 Monthly Reports.

11.8.3.1 Tons Delivered, Rejected, Accepted, Processed, and Sold.

The tons Delivered, Accepted, Processed, and Sold shall be calculated using daily Tonnage reports from the scale house data management system. Note that the tons Accepted shall be calculated as the tons Delivered less tons Rejected.

11.8.3.2 Tons Residue Disposed.

The tons of Residue Disposed shall be the tonnage determined in accordance with procedures described in Article 7.

11.8.3.3 Diversion Rate.

The Diversion Rate shall be calculated in accordance with procedures described in Article 7.

11.8.3.4 Percent of Tonnage Allocation Used.

The percent of Tonnage Allocation used at the Disposal Facility shall be calculated as Tons of Residue Disposed from January 1 through the end of the most-recently completed month divided by the annual Tonnage Allocation, multiplied by 100.

11.8.3.5 Per-Ton Processing Fees.

CONTRACTOR shall list for each Organic Stream the per-Ton Processing Fees in effect for the most-recently completed month.

11.8.3.6 CITY fees or payments (if any) due to CITY.

If the CONTRACTOR owes the CITY fees or liquidated damages, the CONTRACTOR shall itemize each fee or payment due for the most-recently completed month.

11.8.4 Quarterly Reports.

11.8.4.1 Significant Events.

CONTRACTOR shall discuss any significant events that have impacted or will impact the organization and/or the Organics Processing Facility including, but not limited to, operational changes related to receipt, Acceptance, Processing, marketing, Residue Disposal, hazardous materials, and notices of violations. CONTRACTOR shall describe the potential consequences of such events and plans to mitigate such consequences.

11.8.5 Annual Reports.

11.8.5.1 Summary of Monthly Data.

Annual reports shall include a summary report that presents all monthly data required by the monthly reporting requirements and shall include an annual total for each item reported.

11.8.5.2 Officers, Board Members, Shareholders.

CONTRACTOR shall provide names and addresses of all officers, board members, the names and addresses of stockholders owning more than 5% of any class of stock in the corporation, and creditors who are owed a debt equal to 5% or more of the company's total assets.

11.9 Report Format.

CONTRACTOR shall provide records to the CITY using an electronic format approved by the City Representative. The reports may be sent by electronic mail ("e-mail"), or if e-mail is not feasible, through an alternate electronic medium that is compatible with the CITY's software and computer systems.

11.10 Report Submittal.

CONTRACTOR shall submit the following reports in accordance with the deadlines set forth below.

11.10.1 Monthly Report.

CONTRACTOR shall submit monthly reports to the CITY on or before the last day of the calendar month immediately following the monthly period covered by the report.

11.10.2 Quarterly Report.

CONTRACTOR shall submit quarterly reports within thirty (30) days of the end of the previous calendar quarter.

11.10.3 Annual Report.

CONTRACTOR shall submit annual reports on or before February 15th for the services provided in the previous calendar year. The final annual report covering the last six months of service shall be submitted by August 15th following termination of the Agreement.

11.10.4 Submittal Day Exceptions.

If the last day of the month falls on a Saturday, Sunday or a designated holiday under this Agreement, the report is due on the next calendar day.

11.10.5 Submittal to CITY.

All reports shall be submitted to the CITY Representative.

11.10.6 Late, Inaccurate, Incomplete Reports.

For any reports that are not filed by the due date or are incomplete, inaccurate or delinquent, CONTRACTOR shall submit a corrected report within thirty (30) calendar days of written notice from the CITY.

11.11 On-Request Reports.

CONTRACTOR shall maintain current information regarding key personnel; vehicle inventory; composting data; lab tests of compost; all applicable local, state, or federal permits; Approved Product sales; and tonnage for materials Delivered, Rejected, Processed, Sold, and Disposed.

11.12 Commercial Collection Franchisee Reports.

CITY shall provide to CONTRACTOR the quarterly reports from the Commercial Collection Franchisee, after such reports are deemed final by CITY. The reports shall provide CONTRACTOR the information necessary to calculate the Total Compensation due pursuant to Article 9.

ARTICLE 12 NONDISCRIMINATION AND WAGE POLICY

12.1 Nondiscrimination.

In the performance of all work and services under this Agreement, CONTRACTOR shall not discriminate against any person on the basis of such person's race, sex, color, national origin, religion, marital status, sexual orientation, actual or perceived gender, or disability. CONTRACTOR shall comply with all applicable local, state and federal laws and regulations regarding nondiscrimination, including those prohibiting discrimination in employment.

12.2 Wage Policy.

CONTRACTOR and its approved subcontractors, as set forth in Exhibit E. ("Approved Subcontractors and Affiliates"), shall pay those employees who are employed in the job classifications listed in Exhibit F, ("Wage Requirements and Information") and are performing work related to this Agreement those specified rates as set forth in Exhibit F. CONTRACTOR shall also comply with worker retention provisions, job fair provisions and labor peace provisions of Exhibit F and shall meet the documentation and reporting requirements set forth therein.

ARTICLE 13 QUALITY OF PERFORMANCE OF CONTRACTOR

13.1 Intent.

CONTRACTOR acknowledges and agrees that among CITY's primary goals in entering into this Agreement are to ensure that the services are of the highest caliber, that maximum diversion levels are achieved, and that materials processed are put to the highest and best use to the extent commercially reasonable.

13.2 Liquidated Damages.

It shall be the duty of CONTRACTOR to perform services under this Agreement in such a manner as to implement practices, policies, and procedures designed to achieve the goals set forth in Section 13.1 above. CONTRACTOR agrees its failure to perform the services as set forth in this Agreement would cause CITY damage. CITY and CONTRACTOR mutually agree that making a precise determination of the amount of CITY's damage as a result of CONTRACTOR's failure would be impractical and/or extremely difficult. Therefore, the parties agree that, in the event of such failure, CITY may assess as liquidated damages the amounts listed in Exhibit B. If invoice is not paid in thirty days, CITY may direct Commercial Collection Franchisee to deduct such charge as set forth in Exhibit B from any monies due or which may become due to CONTRACTOR.

13.3 Procedure for Review of Liquidated Damages.

The City Representative shall issue a written notice to CONTRACTOR ("Notice of Breach") that lists the liquidated damages associated with nonperformance, and the nature of the breach.

The liquidated damages shall become final unless, within ten (10) calendar days of the date of the Notice of Breach, CONTRACTOR provides a written request for a meeting with the Director of Environmental Services ("Director") to present evidence that the liquidated damages should not be applied.

The City Representative shall schedule a meeting between the CONTRACTOR and the Director or the Director's designee as soon as reasonably possible after timely receipt of CONTRACTOR's request.

The Director or the Director's designee shall review CONTRACTOR's evidence and render a decision sustaining or reversing the liquidated damages as soon as reasonably possible after the meeting. Written notice of the decision shall be provided to CONTRACTOR.

In the event CONTRACTOR does not submit a written request for a meeting within ten (10) calendar days of the date of the Notice of Breach, the City Representative's determination shall be final and CITY may invoice the CONTRACTOR for final liquidated damages determined as provided herein which invoice shall be paid by CONTRACTOR within thirty days of receipt by CONTRACTOR (and CITY may deduct the liquidated damages from amounts otherwise due to CONTRACTOR).

13.4 Exercise of Rights.

CITY's right to collect liquidated damages shall not prevent CITY from exercising any other right or remedy, including the right to terminate this Agreement, for CONTRACTOR's failure to perform the work and services in the manner set forth in this Agreement.

ARTICLE 14 FINANCIAL ASSURANCE OF PERFORMANCE

14.1 Performance Bond.

At least ten (10) calendar days before July 1, 2012, CONTRACTOR shall furnish to the City Clerk, and keep current, a Performance Bond in a form as set forth in Exhibit H ("Form of Performance Bond"), to this Agreement, for the faithful performance of this Agreement and all of CONTRACTOR's obligations arising hereunder in an amount as follows:

$1.5 million for the first year, and annually thereafter 25% of CONTRACTOR's revenue from the previous 12 months.

14.1.1 Licensed Surety.

The performance bond shall be executed by a surety company licensed to do business in the State of California; having an "A-" or better rating by A. M. Best or Standard and Poor's and included on the list of surety companies approved by the Treasurer of the United States. If the performance bond is shorter than the term of this Agreement, CONTRACTOR shall submit proof of renewal or extension at least ninety (90) calendar days prior to the performance bond expiration date.

14.2 Alternative Security.

CONTRACTOR may request, and CITY may allow CONTRACTOR to provide the following alternative security for the performance of this Agreement in the same amount specified for the Performance Bond in the form of: (a) a prepaid irrevocable standby letter of credit from a financial institution satisfactory to the Director and approved as to form by the City Attorney; or (b) a certificate of deposit in the name of the CITY with a financial institution satisfactory to the Director.

In the event alternative security is approved by the CITY, CONTRACTOR shall notify the City Representative within three (3) calendar days of any change in status. CITY may periodically request verification from the financial institution that issued the letter of credit regarding the status of the letter of credit. If the letter of credit is no longer in full effect, CONTRACTOR must cure the defect within five (5) calendar days. Failure to cure within this period may subject the CONTRACTOR to liquidated damages.

ARTICLE 15 INSURANCE

15.1 Insurance Policies.

CONTRACTOR shall secure and maintain throughout the term of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with CONTRACTOR's performance of work or services under this Agreement. CONTRACTOR's performance of work or services shall include performance by CONTRACTOR's employees, agents, representatives and subcontractors.

15.2 Terms of Insurance Coverage.

CONTRACTOR shall maintain a minimum scope of insurance, minimum limits of insurance, deductibles and self-insured retention, and endorsements as specified in Exhibit G ("Insurance").

15.3 Acceptability of Insurers.

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

15.4 Verification of Coverage.

CONTRACTOR shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this Agreement. 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. CONTRACTOR shall furnish CITY with new certificate of insurance and endorsements on each renewal of coverage or change of insurers.

Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the CITY's Risk Manager:

City of San Jose – Department of Finance
Risk Management
200 East Santa Clara Street, 13th Floor
San Jose, CA 95113-1905

15.5 Subcontractors.

CONTRACTOR shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

15.6 Modification of Insurance Requirements.

The insurance requirements provided in this Agreement may be modified or waived by CITY's Risk Manager, in writing, upon the request of CONTRACTOR if the CITY's Risk Manager determines such modification or waiver is in the best interest of CITY considering all relevant factors, including exposure to CITY.

15.7 Rights of Subrogation.

All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against CITY with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses by the above-described insurance. CONTRACTOR shall ensure that any companies issuing insurance to cover the requirements contained in this Agreement agree that they shall have no recourse

against CITY for payment or assessment in any form on any policy of insurance. The clauses "Other Insurance Provisions" and "Insured Duties in the Event of an Occurrence, Claim or Suit" as it appears in any policy of insurance in which CITY is named an additional insured shall not apply to CITY.

ARTICLE 16 INDEMNIFICATION

16.1 General Indemnification.

CONTRACTOR shall indemnify and hold harmless CITY, CITY's contractors, public officials, officers, directors, employees, agents and other contractors of each of them, from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals as well as all Court or other dispute resolution costs), liabilities, expenditures, or causes of action of any kind (including negligent, reckless, willful or intentional acts or omissions of the CONTRACTOR, any subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any services or anyone for whose acts any of them may be liable), arising from, relative to, or caused by the performance of the services pursuant to this Agreement. This indemnity includes, but is not limited to, claims attributable to bodily injury, sickness, disease or death, and to injury or destruction of tangible property. CONTRACTOR agrees, at CONTRACTOR's expense, after written notice from CITY, to defend any action against CITY that falls within the scope of this indemnity, with counsel reasonably acceptable to CITY. Additionally, if CONTRACTOR, after receipt of written notice from CITY, fails to make any payment due under this Agreement to CITY, CONTRACTOR shall pay any reasonable attorneys' fees or costs incurred by CITY in securing any such payment from CONTRACTOR. Payment of any amount due pursuant to the foregoing indemnity shall, after receipt of written notice by CONTRACTOR from CITY that such amount is due, be made by CONTRACTOR prior to CITY being required to pay same, or in the alternative, CITY, at CITY's option, may make payment of an amount so due and CONTRACTOR shall promptly reimburse CITY for same.

16.2 Consideration.

It is specifically understood and agreed that the consideration inuring to CONTRACTOR for the execution of this Agreement includes the promises, payments, covenants, rights and responsibilities contained in this Agreement.

16.3 Obligation.

The execution of this Agreement by CONTRACTOR shall obligate CONTRACTOR to comply with the foregoing indemnification provision; however, the collateral obligation of providing insurance must also be complied with as set forth in Article 15 above.

16.4 Subcontractors.

CONTRACTOR shall require all subcontractors to enter into a contract containing the provisions set forth in Section 16.1 in which the contract for the subcontractor fully indemnifies CITY in accordance with this Agreement.

16.5 Exception.

Notwithstanding Sections 16.1 above, CONTRACTOR's obligation to indemnify, hold harmless and defend CITY, its officers and employees shall not extend to any loss, liability, penalty, claim, damage, action or suit arising or resulting from acts or omissions constituting willful misconduct or negligence on the part of CITY its officers or employees.

16.6 Damage by CONTRACTOR.

If CONTRACTOR's employees or subcontractors cause any injury, damage or loss to CITY property, including but not limited to CITY streets or curbs (excepting normal wear and tear), CONTRACTOR shall reimburse CITY for CITY's cost of repairing such injury, damage or loss. Such reimbursement is not in derogation of any right of CITY to be indemnified by CONTRACTOR for any such injury, damage or loss. With the prior written approval of CITY's Director, CONTRACTOR may repair the damage at CONTRACTOR's sole cost and expense.

ARTICLE 17 DEFAULT AND REMEDIES

17.1 Termination.

CITY may terminate this Agreement, except as otherwise provided below in this section, by giving the CONTRACTOR thirty (30) calendar days advance written notice, to be served as provided in Section 19.7, Notices, upon the happening of any one of the following events

17.1.1 CONTRACTOR shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy (court) or a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other law or statute of the United States or any state thereof, or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

17.1.2 By order or decree of a Court, CONTRACTOR shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of the stockholders of CONTRACTOR, seeking its reorganization or the readjustment of its indebtedness under Federal bankruptcy laws or under any law or statute of the United States or of any state thereof, provided that if any such judgment or order is stayed or vacated within sixty (60) calendar days after the entry thereof, any notice of default shall be and become null, void and of no effect, unless such stayed judgment or order is reinstated in which case, said default shall be deemed immediate; or

17.1.3 By, or pursuant to, or under the authority of any legislative act, resolution or rule or any order or decree of any Court or governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all or substantially all of the property of CONTRACTOR, and such possession or control shall continue in effect for a period of sixty (60) calendar days; or

17.1.4 CONTRACTOR has defaulted, by failing or refusing to pay in a timely manner the liquidated damages, or other monies due CITY, and said default is not cured within thirty (30) calendar days of receipt of written notice by CITY to do so; or

17.1.5 CONTRACTOR has defaulted by allowing any final judgment for the payment of money to stand against it unsatisfied and said default is not cured within thirty (30) calendar days of receipt of written notice by CITY to do so; or

17.1.6 In the event that the monies due CITY under Section 17.1.4 above or an unsatisfied final judgment under Section 17.1.5 above is the subject of a judicial proceeding, CONTRACTOR shall not be in default if the sum of money is bonded. All bonds shall be in a form acceptable to the City Attorney; or

17.1.7 CONTRACTOR has defaulted, by failing or refusing to perform or observe the terms, conditions or covenants in this Agreement or any of the rules

and regulations promulgated by CITY pursuant thereto or has wrongfully failed or refused to comply with the instructions of the City Representative relative thereto and said default is not cured within thirty (30) calendar days of receipt of written notice from CITY to do so, or if by reason of the nature of such default, the same cannot be remedied within thirty (30) calendar days following receipt by CONTRACTOR of written demand from CITY to do so, CONTRACTOR fails to commence the remedy of such default within said thirty (30) calendar days following such written notice or having so commenced shall fail thereafter to continue with diligence the curing thereof (with CONTRACTOR having the burden of proof to demonstrate (a) that the default cannot be cured within thirty (30) calendar days, and (b) that it is proceeding with diligence to cure said default, and such default will be cured within a reasonable period of time).

However, notwithstanding anything contained herein to the contrary, for the failure of CONTRACTOR to provide Organic Processing Services for a period of three (3) consecutive Work Days, the CITY may secure CONTRACTOR's records and equipment on the fourth (4th) Work Day in order to provide interim services until such time as the matter is resolved (provided that the CITY shall pay the reasonable rental value of the equipment during any period in which payments to CONTRACTOR otherwise due hereunder are suspended due to CONTRACTOR'S failure to provide services in accordance with this Agreement) and CONTRACTOR is again able to perform pursuant to this Agreement; provided, however, if CONTRACTOR is unable for any reason or cause to resume performance at the end of thirty (30) Work Days, all liability of CITY under this Agreement to CONTRACTOR shall cease (other than the obligation to pay rent as described herein if the CITY is still using CONTRACTOR's equipment) and this Agreement may be deemed terminated upon notice by the City Manager but only subject to the rights of the Lender to cure any such Default as provided herein. In the event CITY secures CONTRACTOR's equipment in order to provide interim services, ownership of such equipment shall remain with CONTRACTOR and shall not transfer to CITY.

17.2 <u>Violations</u>.

Notwithstanding the foregoing and as supplemental and additional means of termination of this Agreement under this Article, in the event that CONTRACTOR's record of performance show that CONTRACTOR has frequently, regularly, or repetitively defaulted in the performance of any of the covenants and conditions required herein to be kept and performed by CONTRACTOR, in the opinion of the City Manager and regardless of whether CONTRACTOR has corrected each individual condition of default, CONTRACTOR shall be deemed a "habitual violator", shall be deemed to have waived the right to any further notice or grace period to correct, and all of said defaults shall be considered cumulative and collectively shall constitute a condition of irredeemable default. The City Manager shall thereupon issue CONTRACTOR a final warning citing the circumstances therefore, and any single default by CONTRACTOR of whatever nature, subsequent to the occurrence of the last of said cumulative defaults, shall be grounds for immediate termination of the Agreement. In the event of any such subsequent default, the City Manager may terminate this Agreement upon giving of written final notice to CONTRACTOR, such termination to be effective upon the date specified in the City Manager's written notice to CONTRACTOR. Upon such termination, all contractual fees due hereunder

plus any and all charges and interest, if any, shall be payable to the date of termination, and CONTRACTOR shall have no further rights hereunder. Immediately upon the specified date in such final notice, CONTRACTOR shall cease any further performance of services under this Agreement.

17.3 Effective Date of Termination.

In the event of the aforesaid events specified in this Article 17 above, and except as otherwise provided in said Sections, termination shall be effective upon the date specified in the City Manager's written notice to CONTRACTOR and upon said date, this Agreement shall be deemed immediately terminated and upon such termination, all liability of CITY under this Agreement to CONTRACTOR, other than the payment of moneys due, shall cease and CITY shall have the right to call the performance bond or other form of financial assurances and shall be free to negotiate with other contractors for the performance of the services specified in this Agreement. In the event of CONTRACTOR's failure to perform, CONTRACTOR shall reimburse CITY for all direct and indirect costs incurred by CITY in providing interim services.

17.4 Immediate Termination.

The City Manager may terminate this Agreement immediately upon written notice to CONTRACTOR in the event CONTRACTOR fails to provide and maintain the Performance Bond or other form of financial assurances as required by this Agreement, CONTRACTOR fails to obtain or maintain insurance policies endorsements as required by this Agreement, CONTRACTOR fails to provide the proof of insurance as required by this Agreement, or CONTRACTOR offers or gives any gift prohibited by Chapter 12.08 of the San José Municipal Code.

17.5 Termination Cumulative.

CITY's right to terminate this Agreement is cumulative to any other rights and remedies provided by law or by this Agreement.

17.6 Lender's Rights.

CITY and CONTRACTOR acknowledge that the development of the facility and acquisition of equipment necessary for CONTRACTOR to meet its obligations hereunder has required CONTRACTOR to obtain debt financing from a financial institution or financial institutions acting through one such institution as agent for such institutions, (hereinafter, the "Lender").

17.6.1 Lender Cure Rights.

If an Event of Default occurs, CITY shall notify Lender and CONTRACTOR of such Event at the same time. If CONTRACTOR shall have failed, within the time periods provided in Section 17.1 hereof, to cure the Event of Default as provided herein or fails to commence a cure within such period, CITY shall notify Lender of such failure. If Lender desires to attempt a cure, it shall notify the CITY of its intent within thirty (30) days of receiving the notice of Event of Default and shall, as soon as CITY notifies Lender of CONTRACTOR's failure to cure, commence or attempt to cure any Defaults capable of cure and shall diligently pursue cure of the Event of Default to completion. Lender shall be granted an additional thirty (30) day period, after CONTRACTOR's initial thirty (30) day period, to cure such Defaults or such longer period as may be reasonably required. The total cure period for both the CONTRACTOR and Lender shall not exceed sixty days (60) unless a longer period is reasonably required. During Lender's attempt to cure, CITY shall not terminate this Agreement. Nothing in this Agreement shall require

such Lender to attempt to cure. Notwithstanding the preceding, CITY reserves the right to provide interim services under Section 17.1.

17.6.2 Foreclosure, Other Legal Proceedings.

If, in order to effect such cure, Lender shall find it necessary to acquire CONTRACTOR's interest in this Agreement, Lender's right to cure shall be extended as necessary, up to maximum of six (6) months, to include foreclosure or other proceedings necessary therefore. If the Lender acquires title to CONTRACTOR's interest in this Agreement, the Lender shall have the right to assign its rights hereunder to a substitute operator, the identity and qualifications of which shall be subject to approval by the CITY in its sole and reasonable discretion (which discretion may include, without limitation, the minimum qualifications for any assignee provided in Section 19.5.2) provided that the substitute operator shall have succeeded to CONTRACTOR's interest in that certain Ground Lease between CITY and CONTRACTOR for the construction and operation of a dry anaerobic digestion facility on Water Pollution Control Plant land and shall have executed all documents reasonably required by CITY to evidence the new CONTRACTOR's interests and obligations hereunder and under the Lease agreement described above. Notwithstanding the foregoing, during said cure period, CITY shall have the right to substitute a substitute operator to provide the services called for herein until such Default has been cured.

17.6.3 Involuntary Termination.

If this Agreement terminates for any reason, including, without limitation, a default by CONTRACTOR hereunder or rejection of this Agreement in any bankruptcy proceeding, and within thirty (30) days after the notice to the Lender of such termination described herein the Lender, by Notice, requests CITY to enter into a new agreement, then CITY shall enter into a new agreement with the Lender or a substitute operator subject to approval of the CITY as described in Section 19.5.2 within thirty (30) days after the giving of said Notice by the Lender, subject to the requirement that the Lender continue to keep current all damages owing from CONTRACTOR to CITY under this Agreement up to and including the effective date of such assignment. Unless the parties otherwise agree, such new agreement shall continue for the period which would have constituted the remainder of the term of this Agreement including, without limitation, any option periods if exercised by the Lender or its nominee pursuant hereto, and shall otherwise have the exact same terms, conditions and language as this Agreement.

17.7 CITY Default.

CITY shall be in default hereunder for failure or refusal to perform or observe the terms, conditions or covenants in this Agreement and said default is not cured within thirty (30) calendar days of receipt of written notice of such default by CONTRACTOR in the case of monetary defaults or other defaults which can reasonably be cured in such period, or if by reason of the nature of such default, the same cannot be remedied within thirty (30) calendar days following receipt by CITY of written demand from CONTRACTOR, CITY shall have reasonable additional time to effect a cure provided that it shall diligently pursue such cure (CITY shall have the burden of proof to demonstrate (a) that the default cannot be cured within thirty (30) calendar days, and (b) that it is proceeding with diligence to cure said default, and such default will be cured within a reasonable period of time). Notwithstanding the foregoing, failure to direct Organic Materials to the CONTRACTOR's facility as required by Article 4 hereof shall be a default by CITY with no cure period. Failure by the CITY to set the Total Processing

Fee or approve a maximum collection rate sufficient to include the Total Processing Fee in accordance with the first paragraph of Article 9 hereof shall be a default by CITY with no cure period as of the first date on which the Commercial Collection Franchisee fails to pay an invoice properly submitted thereto by CONTRACTOR solely due to the CITY's failure as described above.

17.8 Remedies Upon CITY Default.

In the event of uncured CITY default, the CONTRACTOR shall have all rights and remedies available at law or in equity. In the event that the CITY default results from a failure of the CITY to cause all acceptable Organic Material to be delivered to CONTRACTOR pursuant to Article 4 hereof or to approve maximum collection rates pursuant to Article 9 hereto, CITY and CONTRACTOR agree that, in addition to all remedies available at law or in equity, CONTRACTOR shall be entitled to request a writ of mandate or other equitable remedy requiring specific performance of CITY's obligations.

17.9 CITY's Right to Terminate.

In the event that CONTRACTOR fails to complete construction, secure all necessary permits, and begin operation of the Phase I AD Facility on or before July 1, 2015, CITY may terminate this Agreement. Such written notice of termination shall be provided to CONTRACTOR no later than sixty (60) days after July 1, 2015. CITY and CONTRACTOR may, as an alternative to termination, mutually agree to a lower composting processing only service fee structure for the remaining term of this Agreement. This termination provision is subject to a delay arising from a natural disaster or similar uncontrollable circumstances specified in Section 19.21. Section 19.21, however, does not include a delay in securing permits unless the delay is caused by a natural disaster or similar uncontrollable circumstances. The CITY's right to terminate under this Section prevails over the Lender's rights under Sections 17.6.1 and 17.6.2 to the extent that any period to complete the proceedings to cure and to cure must be completed on or before December 31, 2015.

ARTICLE 18 RESERVED

RESERVED

ARTICLE 19 MISCELLANEOUS PROVISIONS

19.1 Modifications.

CITY shall have the power to make changes in this Agreement as the result of changes in law, changes in the City of San José Municipal Code, or both, to impose new rules and regulations on CONTRACTOR under this Agreement relative to the scope and methods of providing Organics Processing Services as shall from time-to-time be necessary and desirable for the public welfare. CITY shall give CONTRACTOR notice of any proposed change and an opportunity to be heard concerning those matters. The scope and method of providing Organics Processing Services as referenced herein shall also be liberally construed to include, but is not limited to the manner, procedures, operations and obligations, financial or otherwise of the CONTRACTOR. Notwithstanding the preceding, nothing in this Section 19.1 shall be construed so as to require the CONTRACTOR to incur additional costs as a result of any CITY imposition of changes without reasonable compensation therefore as described in Article 9.

19.2 Change in Law.

CITY and CONTRACTOR understand and agree that the California Legislature has the authority to make comprehensive changes in Solid Waste Management legislation and that these and other changes in law in the future which mandate certain actions or programs for counties or municipalities may require changes or modifications in some of the terms, conditions or obligations under this Agreement. CONTRACTOR agrees that the terms and provisions of the City of San Jose Municipal Code, as it now exists or as it may be amended in the future, shall apply to all of the provisions of this Agreement. In the event any future change in the San Jose Municipal Code materially alters the right or obligations of either party, then the affected service rates, as established in Exhibit A of this Agreement shall be adjusted. Nothing contained in this Agreement shall require any party to perform any act or function contrary to law. CITY and CONTRACTOR agree to enter into good faith negotiations regarding modifications to this Agreement, which are required in order to implement changes in law. When such modifications are made to this Agreement, CITY and CONTRACTOR shall negotiate in good faith, a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required of CONTRACTOR due to any modification in the Agreement under this section. CITY and CONTRACTOR shall not unreasonably withhold agreement to such compensation adjustment.

19.3 Amendments to San Jose Municipal Code.

CITY shall provide written notice to CONTRACTOR of any planned amendment to Chapter 9.10, or to other applicable chapters of the San José Municipal Code that would substantially affect the performance of CONTRACTOR's services pursuant to the Agreement. Except in the case of an amendment determined by the CITY Council to be an urgency measure, such notice shall be provided at least thirty (30) calendar days prior to the CITY Council's approval of such an amendment.

19.4 Independent Contractor.

In the performance of services pursuant to this Agreement, CONTRACTOR shall be an independent contractor and not an officer, agent, servant or employee of CITY. CONTRACTOR shall have exclusive control of the details of the services and work performed and over all persons performing such services and work. CONTRACTOR shall be solely responsible for the

acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Neither CONTRACTOR nor its officers, employees, agents, contractors or subcontractors shall obtain any right to retirement benefits, Workers' Compensation benefits, or any other benefits which accrue to CITY employees and CONTRACTOR expressly waives any claim it may have or acquire to such benefits.

19.5 Assignment.

CONTRACTOR acknowledges that this Agreement involves rendering a vital service to the CITY's residents and businesses, and that the CITY has selected CONTRACTOR to perform the services specified herein based on CONTRACTOR's experience, skill and reputation for conducting its operations in a safe, effective and responsible fashion, and CONTRACTOR's financial resources to maintain the required equipment and to support its indemnity obligation to the CITY under this Agreement. The CITY has relied on each of these factors, among others, in choosing CONTRACTOR to perform the services to be provided by CONTRACTOR under this Agreement.

19.5.1 CITY Consent Required.

CONTRACTOR shall not assign all or any of its rights or delegate or otherwise transfer all or any of its obligations under this Agreement without the prior express written consent of CITY. Any such assignment, delegation or transfer made without the prior express written consent of CITY shall be void and the attempted assignment shall constitute a material breach of this Agreement and grounds for CITY to immediately terminate this Agreement by giving written notice to CONTRACTOR. Upon such termination all liability of CITY under this Agreement to CONTRACTOR, other than payment for moneys due as of the date of termination, shall cease, and CITY shall have the right to call the Performance Bond or other financial assurance and shall be free to negotiate with other contractors, CONTRACTOR, or any other person or company for the service which is the subject of this Agreement.

19.5.2 City Review of Requests to Consent to a Proposed Assignment.

CITY need not consider a request to consent to an assignment made while CONTRACTOR is in default of its obligations under this Agreement unless such assignment is assigned pursuant to the lender's rights described in Section 17.6.

CONTRACTOR shall be required to pay the CITY's reasonable expenses, including attorneys' fees and consultants' costs, necessary to investigate the suitability of any proposed assignee and to review and finalize any documentation required as a condition of approving any such assignment;

CONTRACTOR shall furnish CITY with audited financial statements of the proposed assignee's operations for the three (3) immediately preceding operating years;

CONTRACTOR shall furnish CITY with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Organics Processing experience on a scale equal to or exceeding the scale of operations conducted by CONTRACTOR for the CITY; (ii) that in the last five (5) years, the proposed assignee has not been subject to any administrative or judicial proceedings initiated by any federal, State, or local agency and that the CONTRACTOR has provided the CITY with a complete list of such proceedings and their status; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee

conducts its operations in full compliance with all federal, State, and local laws; and (v) 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.

19.5.3 Assignment to Lender.

During the Term of this Agreement, notwithstanding the provisions of Section 19.5.1 (City Consent Required), CONTRACTOR may assign this Agreement to the Lender providing financing for the facilities and equipment necessary for its provision of services hereunder as further described in Section 17.6 (Lender's Rights), and Lender may be granted a security interest in the Agreement solely for the purposes of securing CONTRACTOR's financing obligations to the Lender. CITY agrees to execute a consent to such assignment, an acknowledgment of Lender's security interest therein and such other documentation as the Lender shall reasonably request.

19.6 Subcontractors.

The use of Subcontractors to perform services included in this Agreement shall not constitute delegation of CONTRACTOR's duties provided that CONTRACTOR has received prior written authorization from the Director to subcontract such services and the Director has approved a subcontractor who will perform such services. Approval of subcontractors by the Director shall not be unreasonably withheld or delayed.

CONTRACTOR shall be responsible for directing the work of CONTRACTOR's Subcontractors and any compensation due or payable to CONTRACTOR's Subcontractors shall be the sole responsibility of CONTRACTOR. The Director shall have the right to require the removal of any approved subcontractor for reasonable cause. The subcontractors listed in Exhibit E to this Agreement, are hereby approved by CITY as to scope of work specified in Exhibit C for each subcontractor. Additional subcontractors may be used upon written approval of the Director in accordance with this Section.

19.7 Notices.

Except as otherwise provided in this Agreement, whenever either party desires to give notice to the other, the notice must be in writing and given as provided in this Section. For the present, the parties designate the following as the respective persons and places for giving notice:

To CITY:	Director of Environmental Services CITY of San José 200 East Santa Clara St., 10th Floor San José, CA 95113
To CONTRACTOR:	General Manager Zero Waste Energy Development Company LLC 1500 Berger Drive San Jose, CA 95112

Notices shall be effective when deposited in the U.S. mail, postage prepaid, or when personally delivered to the address specified above or to such other address as designated by a party by providing written notice of a change in address. Notice may also be sent by electronic mail (e-mail) transmission and shall be effective when received, provided that e-mail transmissions received after 4:30 p.m. or on weekends or holidays will be deemed received on the next business day. The original of items that are transmitted by e-mail must also be mailed or

personally delivered as provided above within three (3) business days of the e-mail transmission.

19.8 Governing Law.

The law of the State of California shall govern the rights, obligations, duties and liabilities of CITY and CONTRACTOR under this Agreement and shall govern the interpretation of this Agreement.

19.9 Venue.

Any litigation between CITY and CONTRACTOR concerning or arising out of this Agreement shall be filed and maintained exclusively in the Superior Courts of Santa Clara County, State of California, or in the United States District Court for the Northern District of California to the fullest extent permissible by law. Each party consents to service of process in any manner authorized by California law.

19.10 Compliance With Law.

In the performance of this Agreement, CONTRACTOR shall comply with all applicable laws, regulations, ordinances and codes of the federal, state and local governments, including without limitation the Charter of the City of San Jose and the San Jose Municipal Code.

19.11 Ownership of Written Materials.

All reports, documents, or other materials developed by CONTRACTOR or any other person engaged by CONTRACTOR in connection with the services to be performed under this Agreement shall be and shall remain the property of the CITY without limitation or restrictions on the use of such materials. CONTRACTOR may also use such materials

19.12 Prohibition Against Gifts.

CONTRACTOR acknowledges that Chapter 12.08 of the San José Municipal Code prohibits CITY's officers and designated employees from accepting gifts as defined in Chapter 12.08. CONTRACTOR agrees not to offer any CITY officer or designated employee any gift prohibited by Chapter 12.08. CONTRACTOR's offer or giving of any gift prohibited by Chapter 12.08 will constitute a material breach of this Agreement. In addition to any other remedies CITY may have in law or equity, CITY may terminate this Agreement for such breach as provided in Article 17 of this Agreement.

19.13 Disqualification of Former Employees.

CONTRACTOR is familiar with Chapter 12.10 of the San José Municipal Code ("Revolving Door Ordinance") relating to the disqualification of CITY's former officers and employees in matters which are connected with their former duties or official responsibilities. CONTRACTOR shall not utilize either directly or indirectly any officer, employee, or agent of CONTRACTOR to perform services under this Agreement, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

19.14 Transition of Next Contractor.

Upon expiration or early termination of the Agreement, CONTRACTOR shall cooperate fully with CITY, the Commercial Collection Franchisee, and any subsequent contractor(s) to ensure a smooth transition of services described in this Agreement. Such cooperation may include but not be limited to providing a list of workers who will be displaced by the transfer of services to a

successor contractor no less than one hundred twenty (120) calendar days prior to the termination of this Agreement; attend meetings as necessary with the CITY and successor contractors commencing one hundred eighty (180) calendar days prior to the termination of this Agreement; and providing other reports and data required by this Agreement.

19.15 Use of Recycled Products.

19.15.1 For services rendered pursuant to this Agreement, CONTRACTOR shall use recycled paper for all printed materials such as brochures, reports, studies, and promotional literature.

19.15.2 For the purposes of the Agreement, "recycled paper" means a paper or wood pulp product with not less than one hundred percent (100%) of its total weight consisting of secondary and postconsumer waste and with not less than thirty percent (30%) of its total weight consisting of postconsumer waste. "Postconsumer waste" means a finished material that would normally be disposed of as a solid waste, having completed its life cycle as a consumer item. "Secondary waste" means fragments of products or finished products of a manufacturing process that has converted a virgin resource into a commodity of real economic value and includes postconsumer waste but does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls (mill broke), wood slabs, chips, sawdust, or other wood residue from a manufacturing process.

19.15.3 CONTRACTOR may request an exemption from the requirements of this Section by submitting such request in writing to the Director. Such a request may be approved or denied, in whole or in part, at said Director's sole discretion. CONTRACTOR shall not use, in the performance of services under this Agreement, any product or material that does not meet the standards set forth above without the prior written approval of said Director.

19.16 Entire Agreement.

This Agreement and the Exhibits attached hereto constitute the entire agreement and understanding between the parties hereto, and this Agreement shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties hereto. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of this Agreement shall be predicated upon any prior representations or agreements, whether oral or written.

19.17 Severability.

If any provision of this Agreement or the application of it to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Agreement and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected, shall continue in full force and effect, and shall be enforced to the fullest extent permitted by law.

19.18 Right to Require Performance.

The failure of CITY at any time to require performance by CONTRACTOR of any provision hereof shall in no way affect the right of CITY thereafter to enforce same. Nor shall waiver by CITY of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

19.19 Headings.

Headings in this document are for convenience of reference only and are not to be considered in any interpretation of this Agreement.

19.20 Exhibits.

Each Exhibit referred to in this Agreement forms an essential part of this Agreement. Each such Exhibit is a part of this Agreement and each is incorporated by this reference.

19.21 Force Majeure.

Notwithstanding any other provision herein, no default, delay or failure to perform on the part of either party shall be considered a breach hereunder if such default, delay or failure to perform is due to causes beyond such party's reasonable control, including, but not limited to, riots, civil disturbances, epidemic, war, embargoes, severe weather, fire, earthquake, acts of God, or defaults by the other party. In the event of any such default, delay or failure to perform, any dates or times by which the affected party otherwise is scheduled to perform shall be extended for a period of time equal in duration to the additional time required because of the excused default, delay or failure to perform.

19.22 Relationship to the Commercial Collection Franchisee.

The parties acknowledge that the CONTRACTOR is not a party to the Commercial Collection Franchise nor is the Commercial Collection Franchisee a party to this Agreement. However, the parties hereto acknowledge that cooperation between all three parties is central to achieving the goals of the CITY and in assuring the ability of each party to comply with its obligations under either Agreement. The CITY therefore agrees to notify the CONTRACTOR of any proposed changes to the Commercial Collection Franchise and to notify the Commercial Collection Franchisee of any changes in this Agreement which could have a material effect on the either's ability to perform its obligations thereunder and hereunder and allow either CONTRACTOR or Commercial Collection Franchisee an opportunity to comment thereon. CITY further agrees to use its good faith efforts to fairly resolve any disputes between CONTRACTOR and Commercial Collection Franchisee as to any matters relating hereto.

WITNESS THE EXECUTION HEREOF on the date written below each party's signature.

"CITY"

APPROVED AS TO FORM:

By: _____
ROSA TSONGTAATARII
Deputy City Attorney

Date: 10/13/2011

CITY OF SAN JOSE, a municipal corporation

_____
Dennis D. Hawkins, CMC
City Clerk

Date: 10/18/11

"CONTRACTOR"

ZERO WASTE ENERGY DEVELOPMENT COMPANY LLC

By: _____
RICHARD A. CRISTINA
Director

Date: 10/10/11

By: _____
FRANK C. WEIGEL
Director

Date: 10/10/11

EXHIBIT A

COMPENSATION RATES

Beginning for services performed on or after July 1, 2012, CONTRACTOR shall be compensated for services performed in accordance with this Agreement at the following rates for each ton of Organic Streams One, Two, Three and Four Processed at the San Jose AD Facility, Z-Best Composting Facility or Alternate Facility . CITY shall be responsible for Disposal costs as specified in Article 8. The fees presented in each Rate Table below include a Base Component and Government Fee Component. All fees in this Exhibit A are presented in 2010 dollars and shall be adjusted prior to beginning service on July 1, 2012 in accordance with Section 9.2 of this Agreement.

ORGANICS PROCESSING SERVICES

Subject to the minimum Suitable Material Processing capacity commitment under Section 6.8 of this Agreement, CONTRACTOR's compensation for every ton of incoming Organic Material Processed at CONTRACTOR's Organics Processing Facility shall be charged according to Rate Table 1 under the following circumstances:

- Deliver to and Anaerobically Digest at San Jose AD Facility; or
- Deliver to San Jose AD Facility, and Compost at Z-Best Composting Facility; or
- Deliver to GreenWaste MRF and Compost at Z-Best Composting Facility; or
- For the period between July 1, 2012 and June 30, 2013 when the Organic Stream is Delivered to either GreenWaste MRF or Z-Best.

Rate Table 1: Organics Processing Fees ($/Ton)				
ORGANIC STREAM	ONE	TWO	THREE	FOUR
Contamination Level	<= 5%	>5% and <=10%	>10% and <=20%	>20% and <=30%
Base Component				
Organics Processing	$65.60	$69.91	$78.80	$86.95
Total Base Component	***$65.60***	***$69.91***	***$78.80***	***$86.95***
Government Fee Component				
LEA Fee	$1.29	$1.29	$1.29	$1.29
Total Government Fee Component	***$1.29***	***$1.29***	***$1.29***	***$1.29***
Total Processing Fee	**$66.89**	**$71.20**	**$80.09**	**$88.24**

CONTINGENCY COMPOST-ONLY PROCESSING SERVICES

CONTRACTOR's compensation for every ton of incoming Organic Material Processed at Z-Best Composting Facility or Alternate Facility shall be charged according to the fee structure described in this Rate Table 2 if the San Jose AD Facility is not operational by July 1, 2013 and up until the San Jose AD Facility is operating; or to the extent that the San Jose AD Facility Anaerobically Digests less Suitable Material than the minimum annual capacity commitment under Section 6.8 provided adequate Suitable Material is Delivered to CONTRACTOR.

Rate Table 2: Contingency Compost-Only Processing Fees ($/Ton)*				
ORGANIC STREAM	ONE	TWO	THREE	FOUR
Contamination Level	<= 5%	>5% and <=10%	>10% and <=20%	>20% and <=30%
Base Component				
Organics Processing	$63.58	$67.73	$76.21	$81.37
Total Base Component	***$63.58***	***$67.73***	***$76.21***	***$81.37***
Government Fee Component				
LEA Fee	$1.29	$1.29	$1.29	$1.29
Total Government Fee Component	***$1.29***	***$1.29***	***$1.29***	***$1.29***
Total Processing Fee	**$64.87**	**$69.02**	**$77.50**	**$82.66**

ADDITIONAL SERVICES

CONTRACTOR may Process Abandoned Loads at the Organics Processing Facility where the load was received or may reload and transfer the load to Z-Best Composting Facility or an Alternate Facility for Processing. Abandoned Loads that are not Processed may be reloaded and transferred to the Disposal Facility for Disposal.

The cost to Process, Reload and/or Transfer the Abandoned Load shall be consistent with the applicable Organic Stream and Rate Table as well as the applicable Reloading and/or Abandoned Load Transfer Fee. In addition, a Prohibited Material Surcharge will be added for any Prohibited Material in the Abandoned Load.

Additional Compensation	
Abandoned Load Transfer Fee	$100 per load
Reloading Fee	$100 per load
Prohibited Material Surcharge. (Surcharge in addition to processing fee for loads of OS 1-4 containing Prohibited Materials but not rejected by Contractor.	$5.00 per ton (for entire load) if Prohibited Materials cannot be removed. $5 per pound for small items (household batteries, small electronics, medical waste, glass. $10 per item for large items (computer monitors, car batteries, oil jugs etc). Other Hazardous Materials shall be charged at cost plus 10%.

Examples:

An Abandoned Load with a car battery that is Delivered to the San Jose AD Facility and Processed at the San Jose AD Facility will be invoiced for:

- $10 Prohibited Material Surcharge
- Applicable Organic Stream rate depending on the quality of the Organic Stream after removal of Contamination and Prohibited Material by CONTRACTOR

An Abandoned Load with a car battery that is Delivered to the San Jose AD Facility but must be Composted at Z-Best Composting Facility will be invoiced for:

- $10 Prohibited Material Surcharge
- $100 Reloading Fee
- $100 Abandoned Load Transfer Fee
- Applicable Organic Stream rate depending on the quality of the Organic Stream after removal of Contamination and Prohibited Material by CONTRACTOR

An Abandoned Load with a car battery that is Delivered to the GreenWaste Material Recovery Facility but must be Composted at Z-Best Composting Facility will be invoiced for:

- $10 Prohibited Material Surcharge
- $100 Reloading Fee
- $100 Abandoned Load Transfer Fee
- Applicable Organic Stream rate depending on the quality of the Organic Stream after removal of Contamination and Prohibited Material by CONTRACTOR

An Abandoned Load with a car battery that is Delivered to the Disposal Facility for Disposal will be invoiced for:

- $10 Prohibited Material Surcharge
- $100 Reloading Fee
- $100 Abandoned Load Transfer Fee
- CONTRACTOR will not be responsible for the Disposal Fee at the Disposal Facility.

EXHIBIT B
LIQUIDATED DAMAGES

It shall be the duty of CONTRACTOR to perform services under this Agreement in such a manner as to implement practices, policies, and procedures designed to achieve the goals set forth in Section 13.1. In the event CONTRACTOR fails to perform the services as set forth in this Agreement, CITY may assess liquidated damages against CONTRACTOR and may deduct such charge from any monies due or which may become due to CONTRACTOR in the amounts specified below.

	Description	Amount
	OPERATING STANDARDS	
1.	**Adherence to Plans.** Failure to comply with the provisions of the plans in Exhibit C, unless failure is noted in a charge below.	$1,000 first incident $2,500 for each subsequent incident
2.	**Implementation Delay**. Failure to meet Site Development and Construction transition timeline milestones as specified in Exhibit C-1, Transition and Implementation Plan.	$1,000 per milestone per Work Day.
3.	**Inadequate Capacity.** Failure to provide adequate primary or alternate processing capacity by July 1, 2012, or during the term of the Agreement.	$1,000 per Work Day.
4.	**Rejection of Qualified Loads**. Rejecting loads that meet the specified requirements for each type of Organic Stream during operating hours.	$500 per vehicle.
5.	**Excessive Facility Turnaround Time**. Queuing or other delay for a period of more than thirty (30) minutes within the Organics Processing Facility not caused by the Commercial Collection Franchisee driver.	$75 per vehicle.
6.	**Failure to Process**. Shipping, selling, or disposing of Organic Material that is not Processed as required by Exhibit C, Processing Plan.	$5,000 per incident.
7.	**Failure to Meet Diversion Standard**. Failure to meet minimum overall Diversion Standard in a calendar year period.	$10,000 for shortfall of 1% to 2%; $25,000 for shortfall of 2% to 4% and $35,000 for a shortfall of more than 4%
8.	**Commingling of City Materials with Others.** Commingling of Organic Materials collected inside and outside of the City of San Jose prior to weighing, or failure to segregate each Organics Stream, when the processing plan requires material separation.	$1,000 per incident.

	Description	Amount
9.	**Delivery of Residue to Unauthorized Facility**. Failure to deliver Residue to the Disposal Facility, or other facility designated by the CITY or except as otherwise approved by the CITY in writing.	$5,000 first failure; $25,000 each subsequent failure.
10.	**Failure to Notice City about Facility Concerns.** Failure to provide immediate notice to CITY of any issue or problem related to use of Processing or Transfer Facilities.	$1,000 per incident.
11.	**Unauthorized Use of Facilities.** Use of Processing or Transfer Facilities that are not approved by the CITY.	$5,000 per incident.
12.	**Failure to Properly Allocate Tonnage to City.** Failure to properly allocate Residue from Processing Organic Streams from the CITY.	$1,000 per incident.
	VEHICLE STANDARDS	
13.	**Vehicle Noncompliance**. Failures to license, register, and inspect the vehicles in accordance with all applicable laws and regulations.	$500 per incident per Work Day.
14.	**Litter Abatement.** Failure to properly transport Organic Material and Residue and prevent the spilling and blowing of such waste from the vehicle by use of a cover.	$500 per incident.
	REPORTING	
15.	**Late Submittals**. Failure to maintain or timely submit to the CITY any documents or reports required under Article 11.	$500 per incident per Work Day.
16.	**Inaccurate Submittals**. Failure to correct any inaccurate or incomplete reports as required by the CITY.	$300 per incident per Work Day.
	OTHER	
17.	**Hazardous Waste Reporting**. Failure to notify the appropriate authorities and the CITY of reportable quantities of Hazardous Waste.	$500 per incident.
18.	**Obtain and Maintain Permits, Licenses, and Approvals.** Failure to obtain and maintain any and all permits, licenses, and approvals necessary for the Transfer, Processing and/or transportation of materials during performance of Organics Processing Services.	$500 per incident per Work Day.
19.	**Notice of Violations**. For each notice of violation received from the Department of Resources Recycling and Recovery ("CalRecycle"), or other non-CITY regulatory agency.	$1,000 for each violation.
20.	**Denial of Site Access**. Failure to provide facility access to the CITY during agreed upon hours of operation.	$1,000 per incident per Work Day.

EXHIBIT C

EXHIBIT C-1:
TRANSITION AND IMPLEMENTATION PLAN

CONTRACTOR represents the details and timelines associated with facility development, including plans to procure, develop and permit the San Jose AD facility are based on the best available information:

- Environmental Clearance for the San Jose AD Facility was finalized on July 22, 2011.
- Ground Lease between the City and CONTRACTOR for the construction and operation of a dry anaerobic digestion facility on Water Pollution Control Plant land shall be executed in concurrence with this Agreement.

Site Development and Construction

CONTRACTOR shall meet the following milestones to ensure completion of the Phase I AD Facility:

- Obtain a building permit by September 30, 2013; and
- Complete rough pad certification no later than six (6) months after securing the building permit; and
- Obtain a certificate of occupancy no later than twelve (12) months after obtaining the rough pad certification; and
- Complete construction and begin operation no later than three (3) months after obtaining a certificate of occupancy.

CITY may impose liquidated damages pursuant to Exhibit B, Section 2, if CONTRACTOR fails to meet the milestones specified above for Site Development and Construction. CITY shall not have the right to impose liquidated damages if the delay is caused by a natural disaster or similar uncontrollable circumstance specified in Section 19.21.

Approved Product Marketing

CONTRACTOR shall make all appropriate marketing arrangements for Approved Products on or before July 1, 2012. See Exhibit C- 4: Approved Product Marketing Plan for additional information.

Coordination with the Commercial Collection Franchisee

CONTRACTOR shall coordinate with the Commercial Collection Franchisee to begin Organic Processing Services on July 1, 2012 either at the Phase I AD Facility, or at Z-Best Composting Facility.

In the event that the Phase I AD Facility is not operational by July 1, 2012, CONTRACTOR may have the Commercial Collection Franchisee deliver directly the Organic Streams that will not be Pre-Processed to the GreenWaste Material Recovery Facility (GreenWaste MRF) located at 625 Charles Street in San Jose, California, or CONTRACTOR shall haul the Organic Steams that have been Pre-Processed from the Commercial Collection Franchisee's Processing Facility,

as appropriate. During this time, CONTRACTOR agrees to receive deliveries from the Commercial Collection Franchisee Organic Material beginning at 5 a.m. at the GreenWaste MRF Monday through Saturday. CONTRACTOR assumes all cost for transportation of the material from the GreenWaste MRF and the Commercial Collection Franchisee's Processing Facility to Z-Best Composting Facility (Z-Best) located at 980 State Highway 25 in Gilroy, California or Alternate Facility. The applicable rates for Processing shall be consistent with Exhibit A.

CONTRACTOR and the Commercial Collection Franchisee have mutually agreed on and will continue to refine protocols for Organic Material Delivery, Load Check and Contamination Assessment, and Weighing procedures in order to generate accurate source information to document the disposition for all materials as outlined in Exhibit C-5 Data Collection and Reporting Plan.

CONTRACTOR agrees to have the Commercial Collection Franchisee place an employee at the Organic Processing Facility as appropriate to participate in ongoing load check program as further described in Exhibit C-2. This will increase coordination between CONTRACTOR and the Commercial Collection Franchisee on the load classification process, including the translation of a volume-based visual assessment to a Contamination rate and then an Organics Streams classification which will be used for invoicing purposes.

During the transition period, CONTRACTOR will provide additional feedback to the Commercial Collection Franchisee about the types of contamination found in the loads in order to support routing or outreach improvements.

Coordination and Collaboration with City Staff

CONTRACTOR will work with CITY staff to determine the appropriate type and level of coordination that will be required during transition and implementation. CONTRACTOR will maintain transparent and open communication with the CITY on all aspects of the Transition and Implementation Plan.

CONTRACTOR will meet with CITY staff, and provide regular and ongoing reports to the CITY on plan implementation to ensure early detection of any challenges or obstacles encountered throughout the transition. CONTRACTOR shall provide the CITY with a monthly report following the first month of the transition period, biweekly reports beginning in January 2012 and weekly reports beginning in May 2012. Any substantive changes or mitigations to this Transition and Implementation Plan will be provided by CONTRACTOR for City review and approval with at least two (2) weekdays notice before any changes are implemented.

EXHIBIT C-2:
PROCESSING PLAN

The primary Processing for Suitable Materials shall be through Anaerobic Digestion at the San Jose AD Facility. Following the startup of the San Jose AD Facility, CONTRACTOR may only Compost Organic Materials that are:

- Not Suitable for Anaerobic Digestion; or
- Suitable Materials for Anaerobic Digestion if CONTRACTOR has Anaerobically Digested the minimum tonnage of Suitable Material for any given month based on annual capacity commitment, as further described in Section 6.8.

When Suitable Material Delivered exceeds the capacity commitment on a monthly basis, one of the following will occur:

- If capacity at the Phase I AD Facility is available, then the tonnage would be Anaerobically Digested; or
- If capacity at the Phase I AD Facility is not available and the Phase II/III Facilities are not operational, then the tonnage will be Composted at Z-Best Composting Facility or an Alternate Facility; or
- If capacity at the Phase I AD Facility is not available and the Phase II/III Facilities are operational, then the tonnage would be Anaerobically Digested at the San Jose AD Facility.

Throughout the Term of the Agreement, Organic Materials may be:

- Delivered to the San Jose AD Facility and Anaerobically Digested at the San Jose AD Facility; or
- Delivered to the San Jose AD Facility and Transferred to and Composted at Z-Best Composting Facility or an Alternate Facility; or
- Delivered to the GreenWaste MRF or an Alternate Facility and Transferred to and Composted at Z-Best Composting Facility or an Alternate Facility; or
- Picked up from the Commercial Collection Franchisee's Processing Facility and Transferred to and Composted at Z-Best Composting Facility or an Alternate Facility.

CONTRACTOR may choose to Process or Dispose of Abandoned Loads, as detailed in the Abandoned Load section below.

Load Check Program

CONTRACTOR shall implement a load check program to determine whether Organic Materials Delivered meet the Organics Streams criteria, classify loads Delivered, identify loads containing Prohibited Materials and/or Hazardous Waste and properly handle and remove Prohibited Materials and/or Hazardous Waste before Processing, as applicable. CONTRACTOR's staff shall be trained to properly classify Organic Streams and to assist the Commercial Collection Franchisee to mitigate the prevalence of Rejected Loads.

Classification of each load as it is Delivered will ensure that the Commercial Collection Franchisee is charged correctly, reduce the potential for accepting Prohibited Materials and Hazardous Waste and ensure a safe working environment for employees. Any instance of Prohibited Materials and/or Hazardous Waste found at the Organics Processing Facility will be properly recorded and maintained in accordance with all local, state, and federal regulations, as required. CONTRACTOR will provide training to all employees that might come into contact with Prohibited Materials or Hazardous Waste to teach them proper identification, handling, and

removal techniques. CONTRACTOR agrees to have the Commercial Collection Franchisee place an employee at the Organics Processing Facility, as needed, to increase coordination between CONTRACTOR and the Commercial Collection Franchisee on the load classification process.

Collection and/or transfer vehicles will enter the Organics Processing Facility where loads will be weighed and an Organics Streams classification will be assigned, or the load will be Rejected. The scale house operator will create a gate tag including the information required in Exhibit C-5 Data Collection and Reporting Plan. At the San Jose AD Facility, vehicles will enter the enclosed building through special control doors and unload in the receiving area. At the GreenWaste MRF, vehicles will unload in the Transfer area. After loads have been emptied onto the receiving floor or Transfer area, load check personnel will visually inspect the load in the presence of the Commercial Collection Franchisee driver. If a load has a higher or lower Contamination level than originally assigned at the scale house, the load checker will communicate with the scale house operator to correct the gate tag to ensure the classification is accurate and the Commercial Collection Franchisee is charged accordingly. As required by Section 5.5 of this Agreement, all loads will be weighed and classified prior to being consolidated and/or commingled with other loads for Processing and loads to be Transferred will not be commingled with other materials prior to Transfer to Z-Best Composting Facility or an Alternate Facility for Composting,.

Load Rejection

Loads Delivered to the Organics Processing Facility may be Rejected by CONTRACTOR if the material does not meet the Organic Stream criteria. CONTRACTOR will document and notify the Commercial Collection Franchisee within one (1) hour of Delivery that a load has been Rejected and will direct the Commercial Collection Franchisee to reload and remove the Rejected Load within:

- two (2) hours of notification if the load was received at the San Jose AD Facility; or
- three (3) hours if the load was received at the GreenWaste MRF; or
- four (4) hours if the load was Transferred to Z-Best Composting Facility or an Alternate Facility.

CONTRACTOR will charge the Commercial Collection Franchisee a Reloading Fee as appropriate, per Exhibit A.

Abandoned Loads

Rejected loads that are not removed within the required time following notification by CONTRACTOR, will be considered Abandoned. Depending on the composition of the load, CONTRACTOR may Process Abandoned loads at the San Jose AD Facility; re-load and Transfer Abandoned loads to an approved Organics Processing Facility for Processing; or reload and Transfer Abandoned loads for Disposal at the Disposal Facility. Depending on the action taken, CONTRACTOR will charge the Commercial Collection Franchisee consistent with Exhibit A.

Abandoned loads that are Processed or Disposed shall not be considered in CONTRACTOR's diversion calculation.

Disputed Loads

If a Rejected load determination is questioned or challenged by the Commercial Collection Franchisee, CONTRACTOR will cooperate with the Commercial Collection Franchisee, who can send personnel to inspect the load within:

- one (1) hour of receiving notification if the load was Delivered to the San Jose AD Facility; or
- two (2) hours of receiving notification if the load was Delivered to the GreenWaste MRF; or
- four (4) hours of receiving notification if the load was Transferred to Z-Best Composting Facility or an Alternate Facility; or
- If load is deemed Rejected, load will be removed by Commercial Collection Franchisee after inspection or load will be considered Abandoned.

CONTRACTOR will make available to the Commercial Collection Franchisee a 500 pound beam scale, sampling buckets, and a sorting table available to conduct audits. CONTRACTOR will provide a qualified person to assist Commercial Collection Franchisee personnel and monitor any disputed load audits. CONTRACTOR will make the Organics Processing Facility available to CITY and the Commercial Collection Franchisee to conduct third party audits of contamination rates and Organic Stream classification, as described in Section 10.3 of this Agreement. In the event that loads are being disputed on a regular basis, the Commercial Collection Franchisee or the CITY may request a representative participate in an audit that will provide a calibration of the load check program to ensure the volume-based visual assessment parameters being used by CONTRACTOR's load check personnel are consistently applied and refine the protocol and/or parameters being used to translate the visual based volume assessment into the classification of Organic Materials into Organics Streams.

Organics Processing Facilities:

ZWED Anaerobic Digestion Facility

The San Jose AD Facility, located at the former Nine Par Landfill at 2100 Los Esteros Road, will be the primary Processing facility and is currently under development as described in Exhibit C-1 Transition and Implementation Plan.

The San Jose AD Facility will use a batch anaerobic digestion system that will take organic materials and, using a dry fermentation system, produce a biogas containing 50-60% methane. The AD technology captures carbon dioxide and methane from the controlled composting of organic materials in large airtight vessels.

The first few stages of the AD process take place in an approximately 100,000 square foot enclosed building. This enclosed building will consist of the following:

- A receiving area for feedstock material delivery, storage and separation,
- A large hall that will serve as a staging area for mixing and material transport,
- 16 airtight digesters to create and allow for the extraction of biogas,
- An engine room with 2 generators that generate electricity, and
- 4-8 in vessel compost curing tunnels.

The entire enclosed building is equipped with an air circulation and control system that effectively contains all the air in the building, circulates air, and exhausts air as necessary through a specially designed bio-filter to control odors and emissions.

AD Facility Processing Options

The size and quality of the material entering the San Jose AD Facility for Processing will determine how the material will be Processed 1) Organic Streams with limited contamination that are determined to be Suitable Materials, can be loaded directly into the digesters from the

receiving hall to be Anaerobically Digested, 2) loads that contain larger materials, bags or other Contaminants will need to be sorted to remove Contaminants before the Input Material becomes Suitable Material ready for Anaerobic Digestion or, 3) the Input Material bypasses the digesters and is either placed directly into the in-vessel compost tunnels to be Composted onsite or Transferred offsite for Composting at Z-Best Composting or an Alternate Facility

Handling and sorting of Organic Materials to prepare Input Materials includes a combination of manual and mechanized equipment designed for the Organic Streams being received. Handling and sorting will be carried out by the CONTRACTOR in order to gain access to materials, separate materials by size and type or reduce the size of the material to ensure proper Anaerobic Digestion or Composting occurs. Input Material that is not Suitable Material may bypass the digesters and be placed directly into the in-vessel compost tunnels to be Composted onsite or Transferred offsite for Composting at Z-Best Composting Facility or an Alternate Facility.

Once the Suitable Materials have been prepared, front-end loaders will fill the digesters to capacity. The digestion process is initiated and continues for up to twenty-one (21) days, with the biogas being generated continuously and extracted throughout the process. Appropriate records will be maintained per Section 11.8.2.1 to ensure City's ability to measure performance, and confirm the amount of Suitable Material that has been Anaerobically Digested to meet the CITY's annual capacity commitment as outlined in Section 6.8.

The in-vessel composting tunnels are an integral part of the processing infrastructure at the San Jose AD Facility. After the digestion is complete, the digested material may be moved into the in-vessel composting tunnels directly or may be mixed with wood chips (or other suitable bulking material) prior to placement in the in-vessel composting tunnels to maintain proper moisture and allow effective airflow through the material. The in-vessel composting tunnels consist of an enclosed composting system with an aerated bed that provides a controlled environment to initiate an aerobic composting process and effectively dissipate any material odors remaining from the anaerobic digestion process. All air venting from the receiving area and the mixing hall is routed through the composting tunnels' aerated bed and is then routed through the facility's bio-filter before release.

After Processing, the remaining compost material is moved to an outside area for final curing, which takes place in large aerated static piles for up to four (4) weeks. After curing, the composted material is moved to the nearby screening operation for final screening and stockpiling for sale as Approved Products. The "overs" from the screening operation may be re-used as a "bulking material", mulch, hog fuel or similar use or Sold. Residue will be Transferred to the Disposal Facility for Disposal. The "unders" from the screening operation will be Sold as a soil amendment. The biogas generated during the digestion process will be combusted in either of the two (2) phase one generators onsite to create electricity for use onsite, at Zanker Road Landfill, Zanker Material Processing Facility, or sent back to the PG&E electrical grid. CONTRACTOR may also discuss options for potential purchase of the gas with the adjacent San Jose Santa Clara Wastewater Treatment Plant.

Green Waste Material Recovery Facility

The Green Waste Material Recovery Facility, located at 625 Charles St. in San Jose, will be used to receive materials that are being transferred to Z-Best Composting Facility or an Alternate Facility for Composting.

Processing at Z-Best

Z-Best Composting Facility will be used to Process Organic Materials in the period before the San Jose AD Facility is completed, during down time, and after CONTRACTOR has met the minimum monthly capacity commitment to Anaerobically Digest Suitable Material under the provisions of Section 6.8.

The size and quality of the material entering Z-Best Composting Facility will determine whether the material will be 1) loaded directly into a 350-foot long bag designed to house all compostable wastes during the composting process or 2) handled and sorted in an enclosed 20,000 square foot building before being injected into the bags. Organic Materials Transferred to Z-Best Composting Facility for Composting will not be commingled with other materials during Processing. Materials that need handling and sorting before being loaded into bags are unloaded on the tip floor and proceed through a series of mechanized sorting processes to gain access to materials and remove Contaminants. Contaminants are removed, weighed and Transferred to the Disposal Facility for Disposal. The remaining material is shredded and transported to the composting area and injected into the bags. During injection, PVC pipes are introduced into the bag and used to aerate the materials. Retention time in the bags is approximately four (4) months. After this time, the contents are removed, turned and cured prior to screening. The materials are then transported to a screening system that is used to remove larger materials, to be either re-circulated through the facility or Transferred to the Disposal Facility for Disposal. The smaller compostable materials are stockpiled and cured for an additional four weeks before being screened into Approved Products.

Product Storage

Finished products from the San Jose AD Facility and Z-Best will typically be cured and stored for a few months before sale. In the event of a downturn in the demand for material, both sites have available storage space to store large quantities of compost and compost products until the market for the material re-emerges.

EXHIBIT C-3:

DIVERSION PLAN

CONTRACTOR shall employ the protocol below to enhance diversion and will verify and document compliance with the CITY's diversion requirements by utilizing a scale system and database to track all material movement (inbound and outbound), as described in Exhibit C-5 Data Collection and Reporting Plan and Article 11 of this Agreement. All incoming collection vehicles or transfer trailers shall be weighed in at the Organics Processing Facility.

CONTRACTOR will maximize diversion of Organic Materials in the following ways:

- Ongoing collaboration with the Commercial Collection Franchisee to inform and help refine their public outreach and education campaigns;
- Continued research and investigation into new and emerging technologies to reduce residual and increase recovery;
- Calibration and adaptation of AD technology and integration of technical advancements into processing systems; and
- Installation of new or improved Processing equipment that increases efficiencies for material recovery and/or quantities of materials Processed.

CONTRACTOR will Process all Organic Materials and only dispose of Residues which cannot be processed into Approved Products, except as expressly provided for in this Agreement.

The Disposal of Processing Residue that is attributed to CONTRACTOR shall not include residues from Processing Abandoned Loads. Calculation of these Abandoned Load residues will be estimated based on the maximum contamination level for the appropriate Organic Stream determination for each load plus 5%, calculated as a percentage of the total weight of the load(s) being Processed. The Residue from Processing Abandoned loads will not be counted towards the CONTRACTOR diversion calculation.

EXHIBIT C-4:

APPROVED PRODUCT MARKETING PLAN

CONTRACTOR (along with experienced members from GreenWaste and Zanker's Marketing Teams) will collaborate and utilize the expertise of its members to ensure Approved Products are marketed and Sold. Zanker will apply experience in marketing and selling compost and provide staff support for the initial marketing and sales of compost products. Z-Best's Marketing and sales team will rely on established relationships with compost market sectors and will team up with CONTRACTOR to provide dedicated and experienced compost marketing. Currently, Z-Best markets the Organic Materials Registration Institute (OMRI) certified, Z-Best Organic Compost and the non-OMRI certified Z-Best Landscape Compost (Municipal Solid Waste Compost "MSW") into the residential, commercial and agricultural market sectors.

CONTRACTOR will process materials in a way that commands the best market prices for the finished products produced and meets the goal of "highest and best use". The quality control efforts described in the Exhibit C-2: Processing Plan will produce the highest value products possible. Based on the Approved Product list, CONTRACTOR may determine what products to produce and where the products can be marketed. Approved Products generated at the Organics Processing Facility that can be produced and Sold include:

- ☐ Compost is the product of the process of controlled aerobic decomposition conditions for a period of not less than eight (8) weeks, such that the resulting material meets the maximum acceptable metal concentration limits specified in section 17868.2, and pathogen reduction requirements specified in section 17868.3. of Title 14, California Code of Regulations, Chapter 3.1. The Compost should meet the Seal of Testing Assurance Program ("STA") or other programs with comparable requirements.
- ☐ Wood and fiber mulch means products generated from the carbon fraction of Organic Material by composting the Organic Material to eliminate weed seeds, and processing the Organic Material into a material that can be used by contractors and landscapers to mulch areas for the control of weeds or erosion.
- ☐ Green Soil Amendment means material produced from the immature unders from the initial Organic Material pre-screening or grinding process that are not placed into windrows for composting but can be used as a weed control product, or as an amendment to soil via disking or land application. Land application does not include use as a cover material for a landfill operation.
- ☐ Topsoil additive means a material made from fines blended with soils where the fines are generated from stockpiled overs from the composting process (e.g., tree trimmings) that are placed in windrows and periodically turned and screened to produce the fines.
- ☐ Co-generation fuel means material that is produced by regrinding and screening overs from the pre-processing of incoming materials or from the post-processing of finished products and that is sold to the co-generation market as fuel.
- ☐ Animal bedding means material that is generated from the carbon fraction of Organic Material by composting the material to eliminate weed seeds and then producing a material suitable for use as bedding in horse stables and dairies.
- ☐ Biogas means a combustible gas derived from the anaerobic decomposition of organic waste.

Zanker has already penetrated markets for the Approved Products listed above, excepting Biogas, and CONTRACTOR will engage in these markets and aggressively pursue new and emerging markets. Because of the nature of the compost marketing industry, long-term contracts are not

utilized, however; pricing and volume quotes are commonly provided to customers. While finished products are typically stored for only a few months before sale, the available storage space at the Organics Processing Facility affords ample space to store large quantities of compost and other Approved Products until market conditions are most favorable.

CONTRACTOR will apply a marketing approach for Approved Products that will focus primarily on energy sales, and the specialty markets of the commercial landscape and horticulture industry. The commercial landscape market sector includes a diverse collection of current and potential customers. Landscapers, land developers, contractors, golf courses, and private recreational facilities are just a few of the potentially high volume compost and soil amendment users. In their efforts to present a more environmentally sensitive image for their businesses, many of these entities are using compost products at their own facilities or jobsites. Many project specifications demand the use of compost or related recycled products, and this further increases the demand for landscape compost and soil amendments. Commercial customers demand a product of consistent quality that is competitively priced and available in small or large quantities. Commercial landscape markets that achieve the highest and best use for the compost products produced at the Organics Processing Facility include:

Erosion Control: Compost can be used successfully for erosion control or as an alternative to woody mulches, polymer based covers, hydro mulching, and silt fences. Compost berms can filter out 10 times the sediment of silt fencing and decreases the amount of sediments reaching nearby surface waters by 99%. Also, compost doesn't have to be removed from the site and its eventual integration into the soil continues to control erosion through improved soil structure and permeability. Compost also compares quite favorably with synthetic blankets for stabilizing slopes because it reduces erosion, increases establishment of vegetation, and is less expensive. These markets will be the primary focus of CONTRACTOR in the upcoming seasons in the Bay Area markets, with the anticipation that these markets will be maturing when the San Jose AD Facility is fully operational.

Compost Filter Socks: The compost filter sock is a type of contained compost filter berm. It is a mesh tube filled with composted material that is placed perpendicular to sheet-flow runoff to control erosion and retain sediment in disturbed areas. The compost filter sock, which is oval to round in cross section, provides a three-dimensional filter that retains sediment and other pollutants (e.g., suspended solids, nutrients, and motor oil) while allowing the water to flow through. The filter sock can be used in place of a traditional sediment and erosion control tool such as a silt fence or straw bale barrier.

Compost Blanket: A compost blanket is a layer of loosely applied composted material that is placed on the soil in disturbed areas to control erosion and retain sediment. It can be used in place of traditional sediment and erosion control tools such as mulch, netting, or chemical stabilization. When properly applied, the erosion control compost forms a blanket that completely covers the ground surface. This blanket prevents storm water erosion by presenting a more permeable surface to the oncoming sheet flow, facilitating infiltration, and promoting establishment of vegetation on the surface.

EXHIBIT C-5:

DATA COLLECTION & REPORTING PLAN

Data Collection

In order to meet all data requirements of this Agreement, CONTRACTOR will utilize a scale system and database management program that is currently being utilized at the GreenWaste MRF, Zanker Facilities, and Z-Best. The "ScaleMaster" system accurately tracks material movement and generates all data in a suitable Excel pivot table format that is both user-friendly and capable of managing AD and composting operations; the Excel pivot tables allow for nearly unlimited flexibility in viewing data. All employees using the ScaleMaster system will be fully trained in the daily operations at the Organics Processing Facility in order to reduce potential data collection and management errors. All scales at the Organics Processing Facility will be registered with the Santa Clara County Department of Weights and Measures and will be regularly maintained to ensure reliability and proper function. Current certificates from the Santa Clara County Department of Weights and Measures will be posted in the scale house and copies will be provided to the City upon request.

All data and reports generated for the CITY's Commercial Organic Streams at the Organics Processing Facility will be maintained for five (5) years after the creation of the record. All inbound material that is Delivered under this Agreement will be weighed separately before being combined with other material, prior to Processing. CONTRACTOR will record the receipt of all Organic Materials Delivered to the Organics Processing Facility and will capture the following inbound information:

- Name of processing facility
- Vehicle identification (Company name and vehicle number)
- Weight tag number using non-repeating numbers
- Date and time of arrival
- Origin of materials
- Net weight in tons (gross and tare weights)
- Organic Stream based on contamination level
- Route number and/or District served (if applicable)

The following outbound information will be recorded:

- Name of facility vehicle is leaving
- Vehicle identification (Company name and vehicle number)
- Weight tag number using non-repeating numbers
- Date and time of departure
- Type of material transported offsite
- Net weight of materials in tons (fully loaded weight less vehicle weight or tare weight)
- Destination of materials

All Rejected and/or Abandoned loads that were inspected by load check and scale house personnel will be recorded in the database system or logbook approved by the City:

- Total tons Rejected
- Total tons Abandoned
- Percent of load Rejected (if applicable)
- Date and time
- Reason for Rejection
- Inspector/load check personnel

- Vehicle identification
- Final disposition of material

CONTRACTOR's marketing staff will maintain the following internal marketing records that will be made accessible to the City to review onsite as outlined in Section 5.12.2 of this Agreement:

- Tonnage sold of each Approved Product
- Market classification of end users
- Total revenue received

Upon CITY's request, the total tonnage of Approved Products Sold and the market classifications of end users will be provided.

Diversion and AD Allocation Calculations

CONTRACTOR will submit all required reports on a monthly, quarterly, and annual basis in a format acceptable to the CITY, and as described in Section 11.8 of this Agreement.

EXHIBIT C-6:

CONTINGENCY PLAN

Z-Best will be able to manage equipment failures with little interruption in normal activities or ability to continue receiving material. In the event of a power failure, a 5KW generator is kept on site to enable computer and scale systems to continue functioning. Z-Best can also stockpile material for up to 48 hours. The Organic Streams that require minimal handling and sorting can be placed directly into windrows and Composted and screened once operations return back to normal. Z-Best's rolling stock equipment is capable of turning, watering, and screening organics producing the same high quality compost as it produces using the conventional method. This enables the site to function normally during extended grinder down time. In addition, mature material can be left in windrows indefinitely if the trommel screen is in need of repairs. There is sufficient redundancy in Z-Best's fleet of rolling stock equipment to enable normal operation in the event of needed repairs, which can be accomplished in only a few days. Also, GreenWaste and Zanker have backup equipment that can be loaned to Z-Best, if necessary. The site's 157-acre area allows ample room to store yard trimmings in all phases of Composting for long periods.

CONTRACTOR will utilize scales at Zanker for weighing all inbound and outbound material to the San Jose AD Facility and will utilize the scales at the GreenWaste MRF and Z-Best for weighing all inbound and outbound material from those facilities, as appropriate. In the event that one of the scales is down at one of these facilities, Zanker and the GreenWaste MRF both have a total of three (3) and two (2) scales respectively that can be utilized as back up scales. In the event of a power failure, CONTRACTOR has existing 5KW generators at each site and will utilize these generators to ensure computer and scale systems can continue functioning and inbound and outbound materials can be managed with little to no interruption. It is anticipated that a power failure would result in a transition delay of approximately 10 minutes for queued traffic.

Finally, CONTRACTOR has a contingency plan for the power generation portion of the AD Facility, as there is redundancy built into the electrical generation facilities. There are two (2) generators that will have a constant flow of biogas. If one generator is down for some reason, the backup generator will be used to burn the biogas and generate electricity. If for some reason both generators are down (for maintenance or repair) the biogas will be stored and sent to a flare to burn off the excess biogas.

EXHIBIT D

APPROVED PRODUCTS

CONTRACTOR shall ensure that all products produced from Organic Streams Processed pursuant to this Agreement shall meet the requirements specified below.

Compost

"Compost" is the product of the process of controlled aerobic decomposition conditions for a period of not less than eight (8) weeks, such that the resulting material meets the maximum acceptable metal concentration limits specified in section 17868.2, and pathogen reduction requirements specified in section 17868.3. of Title 14, California Code of Regulations, Chapter 3.1. The Compost should meet the Seal of Testing Assurance Program ("STA") or other programs with comparable requirements.

Wood and Fiber Mulch

"Wood and fiber mulch" means products generated from the carbon fraction of Organic Material by composting the Organic Material to eliminate weed seeds, and processing the Organic Material into a material that can be used by contractors and landscapers to mulch areas for the control of weeds or erosion.

Green Soil Amendment

"Green Soil Amendment" means material produced from the immature unders from the Organic Material pre-screening or grinding process that are not placed into windrows for composting but can be used as a weed control product, or as an amendment to soil via disking or land application. Land application does not include use as a cover material for a landfill operation.

Top Soil Additive

"Top soil additive" means a material made from fines blended with soils where the fines are generated from stockpiled overs from the composting process (e.g., tree trimmings) that are placed in windrows and periodically turned and screened to produce the fines.

Co-Generation Fuel

"Co-generation fuel" means material that is produced by regrinding and screening overs from the pre-processing of incoming materials or from the post-processing of finished products and that is sold to the co-generation market as fuel.

Animal Bedding

"Animal bedding" means material that is generated from the carbon fraction of Organic Material by composting the material to eliminate weed seeds and then producing a material suitable for use as bedding in horse stables and dairies.

Biogas

"Biogas" means a combustible gas derived from the anaerobic decomposition of organic waste.

EXHIBIT E

APPROVED SUBCONTRACTORS AND AFFILIATES

The subcontractors and affiliates listed below are hereby approved by CITY as to the scope of work specified for each listed subcontractor and affiliate. CONTRACTOR may employ additional subcontractor(s) and affiliate(s) only with the prior written approval of the CITY's Director of Environmental Services as to the subcontractor(s) and affiliate(s) and the scope of work to be performed by the subcontractor(s) and affiliate(s).

Name of Company/Firm	Address	Area of Responsibility
Zanker Road Resource Management, Ltd.	675 Los Esteros Road San Jose, CA 95112	Facility/Equipment Maintenance Dust suppression Scale Bulking agents/wood chips
Zanker Road Resource Management, Ltd. Zanker Road Resource Management, Ltd. (DBA Z-Best Composting Facility)	980 State Highway 25 Gilroy, CA 95020	Organics Processing
Friebel Trucking	P.O. Box 2015 Hollister, CA 95024	Hauling Organic Materials Residual & Approved Products
MG Trucking	8555 Marcella Avenue Gilroy, CA 95020	Hauling Organic Materials Residual & Approved Products
Sencion Trucking	3350 S.W. 148th Ave. Suite 410 Miramar, FL 33027	Hauling Organic Materials Residual & Approved Products
GreenWaste Material Recovery Facility	625 Charles Street, San Jose, CA 95112	Transfer of Organic Materials

EXHIBIT F

WAGE REQUIREMENTS AND INFORMATION

Pursuant to City of San Jose Prevailing Wage and Living Wage Policies, Contractor and any subcontractor shall be obligated to pay not less than the prevailing wage or living wage in accordance with the requirements of this policy document, and the Wage Determination as indicated in Attachment 1 to this Exhibit.

I. CITY COUNCIL WAGE POLICIES

A. Living Wage Policy

Under City Council Resolution No. 68900, contractors who are awarded certain City service and labor contracts are required to pay a minimum level of compensation to covered employees who work on these projects.

Living wages shall mean the wages paid under a collective bargaining agreement between the Contractor and a recognized union representing employees who will perform services pursuant to the Agreement.

If the wage rates set forth in the collective bargaining agreement fall below the then current Living Wage Rate set by the City of San Jose, the required rate of pay shall be the City's Living Wage Rate unless the collective bargaining agreement expressly provides that the agreement shall supersede the requirements of the Living Wage Policy.

If there is no collective bargaining agreement as described above, not less than the following Living Wage Rate must be paid to covered employees performing work identified in the applicable wage determination issued by the City of San Jose's Office of Equality Assurance.

1. If health insurance benefits are provided, a wage of not less than **Thirteen Dollars and Fifty-Nine Cents ($13.59)** per hour.

2. If health insurance benefits are not provided, a wage of not less than **Fourteen Dollars and Eighty-Four Cents ($14.84)** per hour.

Please see Exhibit I for Living Wage Determination

B. Prevailing Wage Policy

California Labor Code and/or Resolutions of the City of San Jose require the payment of not less than the general rate of per diem wages and rates for holiday and overtime and adherence to all labor standards and regulations.

Prevailing Wages established by the California Department of Industrial Relations shall be the General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, Sections 1770, 1773 and 1773.1. The General Prevailing Wage Rates may be adjusted throughout the term of this Agreement.

Prevailing Wages established by the City of San Jose shall mean the wages paid under a collective bargaining agreement between the Contractor and a recognized union representing workers who perform services pursuant to this agreement; or

If there is no collective bargaining agreement as described above, not less than the prevailing rate of per diem wages for the employee craft/classification as determined by the City of San Jose's Office of Equality Assurance.

The City's Prevailing Wage will be subject to annual adjustment on the anniversary date of the agreement. Adjustment will be based on the U.S. Department of Labor/Bureau of Labor Statistics Consumer Price Index, All Items, for all Urban Consumers [CPI-U] for San Francisco-Oakland-San Jose.

C. Reports

The Office of Equality Assurance will monitor the payment of prevailing and living wages by requiring the awarded Contractor and all Subcontractors to file a LABOR COMPLIANCE WORKFORCE STATEMENT and LABOR COMPLIANCE FRINGE BENEFIT STATEMENT with supporting documentation.

The awarded Contractor and Subcontractors shall also report such other additional information, including certified payrolls, as requested by the Director of Equality Assurance to ensure adherence to the Policies.

Labor compliance statements must be filed in the Office of Equality Assurance within 10 days of execution of this Agreement at the address below.

City of San Jose
Office of Equality Assurance
200 East Santa Clara Street
Fifth Floor
San Jose, CA 95113
Phone: 408-535-8430

NOTE: THIS EXHIBIT INCLUDES THE LABOR COMPLIANCE WORKFORCE STATEMENT AND LABOR COMPLIANCE FRINGE BENEFIT STATEMENT TO BE SUBMITTED BY THE AWARDED CONTRACTOR ONLY.

II. LIVING WAGE POLICY PROVISIONS

On November 17, 1989, by Resolution No. 68554 and amended on June 8, 1999 by Resolution No. 68900, the San Jose City Council adopted its Living Wage Policy to meet the employment and economic development needs of low wage workers by mandating:

1. A minimum level of compensation for workers employed by contractors and subcontractors who are awarded certain City of San Jose service and labor contracts with an expenditure in excess of $20,000 and recipients who receive direct monetary financial assistance from the City in the amount of $100,000 or more in any twelve month period, excluding non-profit corporations;

2. The provision of health insurance benefits or the ability to afford health insurance;

3. Retention of employees when certain new contractors take over a continuing City service;

4. An environment of labor peace; and

5. Employee Work Environment Evaluation (Third Tier Review)

A. WAGE REQUIREMENTS

1. Covered Employees Defined:

For the purpose of this provision, Covered Employees means any person employed by the Contractor or Subcontractor who meets the following conditions:

a) The person does not provide volunteer services that are uncompensated except for reimbursement of expenses such as meals, parking or transportation;

b) The person expends at least half of his/her time on work for the City;

c) The person is at least eighteen (18) years of age; and

d) The person is not in training for the period of training specified under training standards approved by the City of San Jose.

B. EMPLOYEE RETENTION REQUIREMENTS

One of the provisions of the Living Wage Policy is a requirement that on certain agreements over $50,000, the new Contractor must retain the workers who have been performing the services under the previous contractor. Employee retention is applicable to the Contractor and all Subcontractors under the Agreement in two respects: (1) the Contractor will be obligated to adhere to these requirements in hiring; and (2) the Contractor will also be obligated to cooperate with the City in transitioning to a new contractor at the end of the term of the Agreement.

The following provisions are applicable to this Agreement:

1. Qualified Retention Employee Defined

Qualified Retention Employee means any person employed by the predecessor contractor or any subcontractor to the predecessor contractor who meets the following requirements:

a) The person provides direct labor or service on the Agreement;

b) The person is not an "exempt" employee under the Fair Labor Standards Act (FSLA); and

c) The person has been employed on the City contract by the predecessor service contractor or subcontractor for at least six months prior to the date of the new Agreement.

2. Current Eligible Retention Employee Defined

Current Eligible Retention Employee means a current employee of the new Contractor who meets the following requirements:

a) The person has been employed by the Contractor for at least six months prior to the date of the new service or labor agreement;

b) The person would otherwise need to be terminated as a result of the implementation of the City of San Jose Living Wage Policy; and

c) The Contractor chooses to designate the person as a Current Eligible Retention Employee.

The Contractor must establish requirements a. and b. above by submitting payroll records or other reliable evidence satisfactory to the Director of Equality Assurance. If the Contractor cannot submit such evidence, the employee cannot be designated a Current Eligible Retention Employee.

C. EMPLOYMENT OF QUALIFIED RETENTION EMPLOYEES

The new Contractor shall offer continued employment to all Qualified Retention Employees who are interested in such continued employment.

The City's Office of Equality Assurance will provide the new Contractor with information regarding which employees of the predecessor contractor are Qualified Retention Employees to the extent such information is available to the City of San Jose.

Notwithstanding anything to the contrary in this provision, the new Contractor may deem an employee not to be a Qualified Retention Employee if, and only if:

1. The employee has been convicted of a crime that is related to the job or to his/her job performance; or

2. The Contractor can demonstrate to the City that the employee presents a significant danger to customers, co-workers or City staff.

In the event that the new Contractor does not have enough positions available to hire all Qualified Retention Employees desiring continued employment and to retain its Current Eligible Retention Employees, the new Contractor shall hire Qualified Retention Employees and retain Current Eligible Retention Employees by seniority within each employment classification. For any positions that become available during the initial ninety (90) day period of the contract, the new Contractor shall contact Qualified Retention Employees and rehire its Current Eligible Retention Employees by seniority within each employment classification.

1. Retention Requirements

a) Qualified Retention Employees hired by the new Contractor may not be discharged without cause during the initial ninety (90) day period of their employment.

b) The new Contractor shall offer continued employment to each Qualified Retention Employee who received a satisfactory performance evaluation at the end of the initial ninety (90) day period of employment. Such employment shall be offered under the same terms and conditions established by the new Contractor for all of its employees.

2. Third Party Beneficiary

Qualified Retention Employees are third party beneficiaries of this Agreement which means that the employee has the right to enforce the provisions of the Agreement independent of the City's right to enforce the provisions of the Agreement. The third party rights will become effective only when the Agreement becomes effective.

3. Obligations Upon Termination

Upon termination of this Agreement, Contractor shall fully cooperate with all City requests regarding contacts with Contractor's employees to enable a transition in the workforce to a new Contractor.

D. EMPLOYEE WORK ENVIRONMENT EVALUATION (Third Tier Review)

All service or labor agreements are required to undergo an Employee Work Environment Evaluation, commonly referred to as "Third Tier Review." This Review looks into a Contractor's history as an employer and work condition commitments. Each Contractor is required to complete an Employee Work Environment Questionnaire and return it to the City.

The information should address employee health benefits; compensated days off; employee complaint procedures; compliance with state and federal workplace standards; Employee Retention requirements, if applicable; and Service Disruption/Labor Peace provisions, if applicable.

E. LABOR PEACE

The City of San Jose has determined that labor peace is essential to the proprietary interests of the City to ensure that contractors are good employers, provide a good work environment without encroaching on the contractor's ability to conduct business and comply with federal, state and City employment policies.

Contractors are required to complete the **Questionnaire** and attach any documents to show how it will prevent labor disputes or unrest from occurring during the term of the City Agreement.
As explained in the **Questionnaire**, Contractor is free to submit any plan or program that demonstrates a good work environment and prevents disruption in services due to disputes with its employees. The following examples are provided solely for purpose of example. They are not intended to limit a Contractor in any way from submitting any plan or program than assures labor peace.

1. Any existing or proposed plans, benefits or programs undertaken by the employer to attract and retain qualified employees and assist in providing uninterrupted service through the employer's workplace condition and practices (Example: Company's Employee Handbook);
2. A written dispute resolution policy or procedure (Example: Company's Employee Handbook);
3. A written grievance policy or procedure (Example: Company's Employee Handbook);
4. The formation of a joint labor-management committee – A committee comprised of employees from both labor and management to discuss issues of mutual concern;
5. A collective bargaining agreement between a firm and a recognized union;

6. Labor neutrality provisions – A labor neutrality provision means the proposer, as employer, will accept a union's campaign to convince the employer's employees about the merits of unionization and also refrain from offering arguments against unionization;
7. "Card check" provision – A "card check" provision means the proposer/employer would agree to allow representatives from a labor union to come on company property during work hours for the purposes of organizing its workforce and collecting union authorization cards. The proposed/employer pledges to recognize the union if a certain number of signed union authorization cards are collected. This type of provision is typically coupled with a Labor Neutrality provision; or
8. Any other information, plan or program regarding how the Proposer will protect against disruptions in service due to disputes with its employees during the Term and any Option period of the Agreement.

The Agreement incorporates by reference provisions regarding Labor Peace based on the Contractor's responses to the Request For Proposal for this Organics Processing Services.

F. ENFORCEMENT

1. General

Contractor acknowledges it has read and understands that, pursuant to the terms and conditions of this Contract, it is required to pay workers either a prevailing or living wage ("Wage Provision") and to submit certain documentation to the City establishing its compliance with such requirement. ("Documentation Provision.") Contractor further acknowledges the City has determined that the Wage Provision promotes each of the following (collectively "Goals"):

a) It protects City job opportunities and stimulates the City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.

b) It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.

c) Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San Jose.

d) It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.

2. Remedies for Contractor's Breach of Prevailing Wage/Living Wage Provisions

a) **Withholding Of Payment:** Contractor agrees that the Documentation Provision is critical to the City's ability to monitor Contractor's compliance with the Wage Requirement and to ultimately achieve the Goals. Contractor further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Wage Requirement. In light of the critical importance of the Documentation Provision, the City and Contractor agree that Contractor's compliance with this Provision, as well as the Wage Requirement, is an express condition of City's obligation to make each payment due to the Contractor pursuant to this Agreement. The City is not obligated to make any payment due the Contractor until Contractor has performed all of its obligations under these Provisions. This Provision means that City can withhold all or part of a payment to Contractor until all required documentation is submitted. Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of the Wage Provision or the Documentation Provision.

b) **Restitution:** Contractor agrees that in the event of a breach of its obligations it will pay any amounts underpaid in violation of the required payments and City's administrative costs and liquidated damages and, in the case of financial assistance, to refund any sums disbursed by the City.

c) **Liquidated Damages For Breach Of Wage Provision:** Contractor agrees its breach of the Wage Requirement would cause the City damage by undermining the Goals, and City's damage would not be remedied by Contractor's payment of restitution to the workers who were paid a substandard wage. Contractor further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing/living wage and the longer the amount of time over which such wages were not paid. The City and Contractor mutually agree that making a precise determination of the amount of City's damages as a result of Contractor's breach of the Wage Requirement would be impractical and/or extremely difficult. Therefore, the parties agree that, in the event of such a breach, Contractor shall pay to the City as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the amount of wages that should have been paid.

d) **Additional Remedies:** Contractor agrees that in addition to the remedies set forth above City retains the right to suspend or terminate the Agreement for cause and to debar Contractor or subcontractors from future City contracts and/or deem the recipient ineligible for future financial assistance.

G. AUDIT RIGHTS

All records or documents required to be kept pursuant to this Contract to verify compliance with the Wage Provision shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Contractor's address indicated for receipt of notices in this Contract.

H. COEXISTENCE WITH ANY OTHER EMPLOYEE RIGHTS

These provisions shall not be construed to limit an employee's ability to bring any legal action for violation of any rights of the employee.

Attachment 1

Living Wage Determination

CONTRACT SCOPE: ORGANICS PROCESSING SERVICES
DATE: October 3, 2011

Contracts governed by both the City of San Jose's Living Wage Policy (Resolution No. 68900) and its Prevailing Wage Policy (Resolution No. 61144) are subject to the Policy with the higher wage requirements.

LIVING WAGE RATES

All employees of the Organics Processor and any subcontractors are to be paid not less than the following.

LIVING WAGE WITH HEALTH BENEFITS	LIVING WAGE WITHOUT HEALTH BENEFITS
$13.59	$14.84

Living wage rates will be adjusted on the anniversary date of the agreement.

Hours and Days of Work
(Industrial Welfare Commission Order No. 16-2001)

City of San Jose agreements subject to City prevailing wage or living wage policies will use the same guidelines for all covered classifications/employees.

Employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and
(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh (7th) consecutive day of work in a workweek.

ATTACHMENT 2

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

LABOR COMPLIANCE WORKFORCE STATEMENT

CONTRACTOR NAME:_____

CONTRACT:_____

In the chart below, list the name, prevailing wage or living wage classification(s) to be used, rate of pay and hire date for each employee expected to work on the above contract. See example below.

EMPLOYEE NAME	CRAFT/TRADE CLASSIFICATION	BASIC HOURLY RATE OF PAY (On City of San Jose Contract)	DATE OF HIRE (Indenture Date If Apprentice)
Example: Bob Jones	***Recycle Driver***	***$24.28***	***6/1/2002***

ATTACHMENT 3

LABOR COMPLIANCE FRINGE BENEFIT STATEMENT

CONTRACTOR NAME:_____

CONTRACT:_____

I certify under penalty of perjury that fringe benefits are paid to the approved plans, funds, or programs as listed below:

Classification	Fringe Benefit Hourly Amount	Name of the Plan or Fund (Attach Premium Transmittal)
1.	Vacation $	
Documentation of Plan contribution must be returned with this statement Please attach a copy of your most recent transmission into each medical, pension, or profit sharing plan account indicating worker name and amount of contribution.	Health & Welfare $	
	Pension $	
	Apprentice $	
	Other (specify) $	
2.	Vacation $	
	Health & Welfare $	
	Pension $	
	Apprentice $	
	Other (specify) $	
3.	Vacation $	
	Health & Welfare $	
	Pension $	
	Apprentice $	
	Other (specify) $	

☐ **All (or some) fringes are paid in cash by adding the amount to the employee's basic hourly rate.**

_____
Company Name (Please Print)

_____
Name and Title (Please Print)

_____
Date

_____
Signatue

ATTACHMENT 4
LABOR COMPLIANCE ADDENDUM

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

LABOR COMPLIANCE ADDENDUM

AGREEMENT TITLE:	**Organics Processing Services**
CONTRACTOR Name and Address:	

By executing this Addendum, Contractor acknowledges and agrees that the work performed pursuant to the above referenced Agreement or Service Order is subject to all applicable provisions.

Payment of Minimum Compensation to Employees. Contractor shall be obligated to pay not less than the General Prevailing Wage Rate and/or Living Wage Rate as indicated in the attached Exhibit(s) titled **Work Classification and/or Living Wage Determination**.

A. Prevailing Wage Requirements. California Labor Code and/ or Resolutions of the San Jose City Council require the payment of not less than the general prevailing rate of per diem wages and rates for holiday and overtime and adherence to all labor standards and regulations. The General Prevailing Wage Rates may be adjusted throughout the term of this Agreement. Notwithstanding any other provision of this Agreement, Contractor shall not be entitled to any adjustment in compensation rates in the event there are adjustments to the General Prevailing Wage Rates.

B. Living Wage Requirements. Any person employed by Contractor or subcontractor or City financial recipient or any sub recipient whose compensation is attributable to the City's financial assistance, who meets the following requirements is considered a covered employee. The employee: 1) is not a person who provides volunteer services, that are uncompensated except for reimbursement of expenses such as meals, parking or transportation; 2) spends at least half of his or her time on work for the City [4 hours a day or 20 hours a week]; 3) is at least eighteen (18) years of age; and 4) is not in training for the period of training specified under training standards approved by the City.

C. Reports. Contractor shall file a completed and executed copy of this Addendum with the Finance Department/Purchasing Division. Upon award the Finance Department/Purchasing Division) shall provide the contractor with compliance documents to be completed and returned (with supporting documentation) to the Office of Equality Assurance. **These documents must be returned within 10 days of receipt**. Contractor shall not perform on site work on this contract until labor compliance documents are filed.

Contractor shall also report additional information, including certified payrolls, as requested by Director of Equality Assurance to assure adherence to the Policy.

D. ***Coexistence with Any Other Employee Rights.*** These provisions shall not be construed to limit an employee's ability to bring any legal action for violation of any rights of the employee.

E. ***Audit Rights.*** All records or documents required to be kept pursuant to this Agreement to verify compliance with the Wage Requirement shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Contractor's address indicated for receipt of notices in this Contract.

F. ***Enforcement.***

1. **General.** Contractor acknowledges it has read and understands that, pursuant to the terms and conditions of this Agreement, it is required to comply with the Wage Requirement and to submit certain documentation to the City establishing its compliance with such requirement. ("Documentation Provision.") Contractor further acknowledges the City has determined that the Wage Requirement promotes each of the following (collectively "Goals"):
   a. It protects City job opportunities and stimulates the City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
   b. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.
   c. Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San Jose.
   d. It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.

2. **Remedies for Contractor's Breach of Prevailing Wage/Living Wage Provisions.**

   a. **WITHHOLDING OF PAYMENT:** Contractor agrees that the Documentation Provision is critical to the City's ability to monitor Contractor's compliance with the Wage Requirement and to ultimately achieve the Goals. Contractor further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Wage Requirement. In light of the critical importance of the Documentation Provision, the City and Contractor agree that Contractor's compliance with this Provision, as well as the Wage Requirement, is an express condition of City's obligation to make each payment due to the Contractor pursuant to this Agreement. **THE CITY IS NOT OBLIGATED TO MAKE ANY PAYMENT DUE THE CONTRACTOR UNTIL CONTRACTOR HAS PERFORMED ALL OF ITS OBLIGATIONS UNDER THESE PROVISIONS. THIS**

PROVISION MEANS THAT CITY CAN WITHOLD ALL OR PART OF A PAYMENT TO CONTRACTOR UNTIL ALL REQUIRED DOCUMENTATION IS SUBMITTED. Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of the Wage Requirement or the Documentation Provision.

b. **RESTITUTION:** Require the employer to pay any amounts underpaid in violation of the required payments and City's administrative costs and liquidated damages and, in the case of financial assistance, to refund any sums disbursed by the City.

c. **SUSPENSION OR TERMINATION:** Suspend and/or terminate Agreement for cause;

d. **DEBARMENT:** Debar Contractor or subcontractor from future City contracts and/or deem the recipient ineligible for future financial assistance.

e. **LIQUIDATED DAMAGES FOR BREACH OF WAGE PROVISION:** Contractor agrees its breach of the Wage Requirement would cause the City damage by undermining the Goals, and City's damage would not be remedied by Contractor's payment of restitution to the workers who were paid a substandard wage. Contractor further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid. The City and Contractor mutually agree that making a precise determination of the amount of City's damages as a result of Contractor's breach of the Wage Requirement would be impracticable and/or extremely difficult. **THEREFORE, THE PARTIES AGREE THAT, IN THE EVENT OF SUCH A BREACH, CONTRACTOR SHALL PAY TO THE CITY AS LIQUIDATED DAMAGES THE SUM OF THREE (3) TIMES THE DIFFERENCE BETWEEN THE ACTUAL AMOUNT OF WAGES PAID AND THE AMOUNT OF WAGES THAT SHOULD HAVE BEEN PAID.**

City	Contractor
By_____	By_____
Name:	Name:
Title:	Title:
Date:_____	Date:_____

EXHIBIT G

INSURANCE

CONTRACTOR shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the work hereunder by the CONTRACTOR, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the CONTRACTOR's bid.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and

2. The coverage provided by Insurance Services Office Form Number CA 0001 covering automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and

3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance, and any other applicable law, providing full coverage required by law for all employees engaged in work on the Project.

4. CONTRACTOR's Pollution Liability Insurance, including coverage for all operations, completed operations and professional services (without exclusion for asbestos or lead); and

5. All other insurance required to be maintained under applicable laws, ordinances, rules, and regulations.

There shall be no endorsement reducing the scope of coverage required above unless approved by the CITY's Risk Manager.

B. Minimum Limits of Insurance

CONTRACTOR shall maintain limits be no less than:

1. Commercial General Liability: $5,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and

2. Automobile Liability: $1,000,000 combined single limit each accident; and

3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits and any other applicable law, which shall be at least $1,000,000 per accident: and

4. CONTRACTOR's Pollution Liability: $2,000,000 each occurrence/aggregate limit

5. All other insurance: the amounts required to be maintained under applicable laws, ordinances, rules, and regulations.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Managers. At the option of the CITY either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, or it's officials, employees, agents, and contractors; or CITY shall require the construction contractor to procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's' Risk Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages

   a. The CITY, its officials employees, agents, and contractors are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of contractor; products and completed operations of contractor; premises owned, leased or used by contractor; and automobiles owned, leased, hired or borrowed by contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Insures. The Additional Insured Endorsement included on all such insurance policies shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured.

   b. The contractor's insurance coverage shall be primary insurance as respects the Insures. Any insurance or self-insurance maintained by the Insures shall be excess of contractor's insurance and shall not contribute with it.

   c. Any failure to comply with reporting provisions of the policies by contractor shall not affect coverage provided to the Insures.

   d. Coverage shall state that contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

   e. Coverage shall contain a waiver of subrogation in favor of The CITY, its officials, employees, agents, and contractors

2. Workers' Compensation and Employers' Liability

   Coverage shall contain waiver of subrogation in favor of the City of San Jose, its officers, employees, agents and contractors

3. All Coverages

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced, or modified except after thirty (30) days' prior written notice has been given to the CITY, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

E. Duration

1. Commercial General Liability, Pollution Liability coverages shall be maintained continuously for a minimum of five (5) years after completion of work under this AGREEMENT.

2. If any of such coverages are written on a claims-made basis, the following requirements apply:

   a. The policy retroactive date must precede the date work commenced under this AGREEMENT.

   b. If the policy is cancelled or non-renewed and coverage cannot be procured with the original retroactive date, CONTRACTOR must purchase an extended reporting period equal to or greater than five (5) years after completion of work under this AGREEMENT.

F. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to Parties' Risk Managers.

G. Verification of Coverage

The CONTRACTOR shall furnish the CITY with certificates of insurance and with original endorsements affecting coverage required by this Agreement. 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.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

CITY OF SAN JOSE – Human Resources
Risk Management
200 East Santa Clara Street, 2nd Floor Wing
San Jose, California 95113-1905

H. CONTRACTOR's Insurance Requirements

CONTRACTOR shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

I. Proof of Coverage

CONTRACTOR or consultant shall not commence work under this Agreement until all required insurance, certificates, and an Additional Insured Endorsement have been obtained and delivered to the CITY for approval subject the conditions listed above.

EXHIBIT H

FORM OF PERFORMANCE BOND

_____ SERVICES
FOR THE
CITY OF SAN JOSE, CALIFORNIA

KNOW ALL MEN BY THESE PRESENTS: that

(here insert full name and address or legal title of contractor)

as Principal, hereinafter called CONTRACTOR, and, _____
(Name of Insurer)
as Surety, hereinafter called Surety, are held firmly bound unto the CITY OF SAN JOSE, CALIFORNIA as Obligee, hereinafter called the CITY, in the amount of not less than (

$1.5 million for the first year, and annually thereafter 25% of CONTRACTOR's revenue from the previous 12 months.

) for the payment whereof CONTRACTOR and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, CONTRACTOR has by written agreement dated_____, 20__, entered into an Agreement with the CITY for providing (to be inserted) Services in accordance with RFP specifications and Agreement of the CITY OF SAN JOSE, CALIFORNIA, which Agreement is by reference made a part hereof, and is hereinafter referred to as the Agreement.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if CONTRACTOR shall promptly and faithfully perform said Agreement, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the CITY.

Whenever CONTRACTOR shall be, and declared by the CITY to be in default under the Agreement, the CITY having performed the CITY's obligations thereunder, the Surety may promptly remedy the default, or shall promptly perform one of the following:

1. Complete the Agreement in accordance with its terms and conditions.
2. Obtain a bid or bids for completing the Agreement in accordance with the terms and conditions, and upon determination by the Surety of the lowest responsible bidder, or if the CITY elects, upon determination by the CITY and the Surety

jointly obtain a bid or bids for completing the Agreement in accordance with the terms and conditions, and upon determination by the Surety of the lowest responsible bidder, or if the CITY elects, upon determination by the city and the Surety jointly of the lowest responsible bidder, arrange for an agreement between such bidder and the CITY, and make available as work progresses (even thought there should be a default or a succession of defaults under the Agreement or Agreement of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Agreement price; but not exceeding, including costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Agreement price," as used in this paragraph, shall mean the total amount payable by the CITY to CONTRACTOR under the Agreement and any amendments thereto, less the amount properly paid by the CITY to CONTRACTOR.

Any suit under this bond must be instituted before the expiration date of the Agreement or if extended for an additional term by the CITY, the expiration of the extended term.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the CITY named herein or the executor, administrator or successors of the City of San Jose, California.

Signed and sealed this ____ day of _____, 20__.

(Principal) (Seal)

_____

(Witness) (Title)

Surety (Seal)

(Name of Insurer)

(Witness) By:

_____

(Attorney-in-Fact)

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