

**AGREEMENT**  
**BETWEEN**  
**THE CITY OF SUNNYVALE**  
**AND**  
**ZANKER ROAD RESOURCE MANAGEMENT, LTD.**  
**FOR**  
**ORGANIC MATERIALS PROCESSING SERVICES**

**FINAL**  
**JUNE 2021**

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## EXHIBITS

- A. Reporting Requirements
- B. Performance Standards and Liquidated Damages
- C. Guaranty
- D. Organic Materials Processing Plan
- E. Contractor's Proposal
- F. Approved Facility(ies)
- G. Iran Contracting Certification
- H. SB 1383 Organic Material Processing Requirements
- I. Performance Bond
- J. Initial Rates

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1                                   **AGREEMENT**  
2                                   **BETWEEN**  
3                                   **THE CITY OF SUNNYVALE**  
4                                   **AND**  
5                                   **ZANKER ROAD RESOURCE MANAGEMENT LTD.**  
6                                   **FOR**  
7                                   **ORGANIC MATERIALS PROCESSING SERVICES**

8       This Agreement for Acceptable Materials Processing, and Diversion Services ("Agreement") is entered into  
9       on the [ ] day of [ ], 2021, by and between the City of Sunnyvale (hereinafter, "City"), and  
10      Zanker Road Resource Management, LTD. (hereinafter, "Contractor") (collectively, the "Parties").

11                                   **RECITALS**

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

13      **WHEREAS**, the Legislature of the State of California, by enactment of the California Integrated Waste  
14      Management Act of 1989 (AB 939) (California Public Resources Code Section 40000 et seq.), has declared  
15      that it is in the public interest to authorize and require local agencies to make adequate provisions for  
16      Solid Waste Collection within their jurisdiction;

17      **WHEREAS**, the State of California has found and declared that the amount of refuse generated in  
18      California, coupled with diminishing Disposal capacity and potential adverse environmental impacts from  
19      landfilling and the need to conserve natural resources, have created an urgent need for State and local  
20      agencies to enact and implement an aggressive integrated waste management program. The State has,  
21      through enactment of AB 939 and subsequent related legislation including, but not limited to: the Jobs  
22      and Recycling Act of 2011 (AB 341), the Event and Venue Recycling Act of 2004 (AB 2176), SB 1016  
23      (Chapter 343, Statutes of 2008 [Wiggins, SB 1016]), the Mandatory Commercial Organics Recycling Act of  
24      2014 (AB 1826), and the Short-Lived Climate Pollutants Bill of 2016 (SB 1383), directed the responsible  
25      State agency, and all local agencies, to promote Diversion and to maximize the use of feasible waste  
26      reduction, re-use, Recycling, and Composting options in order to reduce the amount of refuse that must  
27      be Disposed; and,

28      **WHEREAS**, pursuant to California Public Resources Code Section 40059(a)(2) and City Charter Article XVI,  
29      the City has determined that the public health, safety, and well-being require that the right be awarded  
30      to a qualified Contractor(s) to provide Processing of Organic Materials as set forth in this Agreement; and,

31      **WHEREAS**, the City desires, having determined that Contractor, by demonstrated experience, reputation  
32      and capacity is qualified to provide Processing of Organic Materials directed to and/or pre-Processed by  
33      the SMaRT Station, that Contractor be engaged to perform such services on the basis set forth in this  
34      Agreement; and,

35      **WHEREAS**, the City and Contractor have attempted to address conditions affecting their performance of  
36      services under this Agreement but recognize that reasonably unanticipated conditions may occur during  
37      the Term of this Agreement that will require the parties to meet and confer to reasonably respond to such  
38      changed conditions; and

**WHEREAS**, under Sunnyvale Municipal Code Section 8.16.090, the City has the broad authority to contract for solid waste management services including the processing of applicable Organic Materials in and from the City and other SMaRT Station partners, to collect rates for the purpose of paying of such services, and the City Council is authorized to enter into such contract with any terms it deems necessary to protect the best interests of the City;

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained in this Agreement and for other good and valuable consideration, the Parties agree as follows:

## **ARTICLE 1 DEFINITIONS**

**"AB 1826"** means the Organic Waste Recycling Act of 2014 (Chapter 727, Statutes of 2014 modifying Division 30 of the California Public Resources Code), also commonly referred to as "AB 1826," as amended, supplemented, superseded, and replaced from time to time.

**"AB 341"** means the California Jobs and Recycling Act of 2011 (Chapter 476, Statutes of 2011 [Chesbro, AB 341]), also commonly referred to as "AB 341", as amended, supplemented, superseded, and replaced from time to time.

**"AB 939"** means the California Integrated Waste Management Act of 1989 (California Public Resources Code § 40000, et seq.), as amended, supplemented, superseded, and replaced from time to time.

**"Accept"** or **"Acceptance"** (or other variations thereof) means the transfer of Ownership of Acceptable Materials to Contractor from the Person Delivering the Acceptable Materials, as provided in Sections 5.6 59 and 5.9.

**"Acceptable Materials"** means Food Scraps, Food-Soiled Paper, MRF Fines and Yard Trimmings, individually or collectively.

**"Actions"** means all actions including claims, demands, causes of action, suits, mediation, arbitration, hearings, investigations, inquiries and proceedings, whether legal, judicial, quasi-judicial, governmental or administrative in nature and whether threatened, brought, instituted or settled.

**"Affiliate"** means any Person that is directly or indirectly related to Contractor by virtue of direct or indirect Ownership interest or common management. Any such Person shall be deemed to be "Affiliated with" Contractor and included within the term "Affiliates" as used herein. An Affiliate shall include: (i) a Person in which Contractor has a direct or indirect Ownership interest, (ii) a Person which has a direct or indirect Ownership interest in Contractor and/or (iii) a Person which is also Owned, controlled or managed by any Person which has a direct or indirect Ownership interest in Contractor. For the purposes of this definition, "Ownership" means ownership as defined in the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date here. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interests of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents.

**"Agreement"** means this Agreement for Organic Materials Processing Services between City and the Contractor, including all exhibits, attachments, and any future amendments hereto.



77 **“Alternative Daily Cover (ADC)”** means cover material used at a Disposal Site, other than at least six (6)  
78 inches of earthen material, placed on the surface of the active face of the refuse fill area at the end of  
79 each operating day to control blowing litter, fires, odor, scavenging, and vectors; or, means materials used  
80 as soil amendments for erosion control and landscaping, as described in Section 20690 of Title 27 of the  
81 California Code of Regulations.

82 **“Alternative Intermediate Cover (AIC)”** means CalRecycle-approved materials other than soil used at a  
83 landfill on all surfaces of the fill where no additional Solid Waste will be deposited within one hundred  
84 eighty (180) Days. Generally, these materials must be processed so that they do not allow gaps in the face  
85 surface, which would provide breeding grounds for insects and vermin, as described in Section 20700 of  
86 Title 27 of the California Code of Regulations .

87 **“Applicable Law”** means all federal, State, and local laws, regulations, rules, orders, judgments, Permits,  
88 approvals, or other requirements of any governmental body having jurisdiction over the Processing, and  
89 Diversion of Acceptable Materials and Disposal of Residue that are in force on the Effective Date and as  
90 they may be enacted, issued, or amended during the Term of this Agreement. Applicable Law includes,  
91 but is in no way limited to, AB 939, AB 341, AB 1826, and SB 1383.

92 **“Approved Facilities”** means the Approved Processing Facility(ies), and Approved Residue Disposal  
93 Facility(ies), collectively.

94 **“Approved Processing Facility(ies)”** means the Z-Best Composting Facility which is owned and operated  
95 by Zanker Rd. Resource Management, LTD., and approved by the City Contract Manager for Processing of  
96 Organic Materials, and any additional facilities approved per Exhibit F

97 **“Approved Residue Disposal Facility(ies)”** means the Monterey Peninsula Landfill which is owned and  
98 operated by the Monterey Regional Waste Management District and approved by the City Contract  
99 Manager for Disposal of Residue, and any additional facilities approved per Exhibit F

100 **“Beneficial Reuse Purposes”** means use of material for beneficial reuse at a Disposal Site, which shall  
101 include, but not be limited to, the following: Alternative Daily Cover, Alternative Intermediate Cover, final  
102 cover foundation layer, liner operations layer, leachate and landfill gas collection system, construction fill,  
103 road base, wet weather operations pads and access roads, and soil amendments for erosion control and  
104 landscaping.

105 **“Business Days”** means days during which City offices are open to do business with the public.

106 **“Change in Law”** means any of the following events or conditions that has a material and adverse effect  
107 on the performance by the Parties of their respective obligations under this Agreement (except for  
108 payment obligations):

- 109 (1) The enactment, adoption, promulgation, issuance, modification, elimination, or written change in  
110 administrative or judicial interpretation of any Applicable Law on or after the Effective Date; or
- 111 (2) The order or judgment of any governmental body, on or after the Effective Date, to the extent  
112 such order or judgment is not the result of willful or negligent action, error or omission, or lack of  
113 reasonable diligence of the City or the Contractor, whichever is asserting the occurrence of a  
114 Change in Law; provided, however, that the contesting in good faith or the failure in good faith to

115 contest any such order or judgment shall not constitute or be construed as such a willful or  
116 negligent action, error or omission, or lack of reasonable diligence.

117 **“City”** means the City of Sunnyvale, a municipal corporation, and all of the territory lying within its  
118 municipal boundaries as presently existing or as such boundaries may be modified during the Term.

119 **“City Contract Manager”** means the Environmental Services Department’s Solid Waste Division Manager,  
120 or other designee of the Environmental Services Director, who is responsible for the administrative  
121 management of this Agreement.

122 **“Collect” or “Collection”** (or any variation thereof) means removal by Station Users of Acceptable  
123 Materials from the place of generation, and delivery of such materials to the Station.

124 **“Commencement Date”** means January 1<sup>st</sup>, 2022, or the date Contractor begins to provide all Services set  
125 forth in this Agreement, as provided in Article 4.

126 **“Commercial”** means of, from or pertaining to non-Residential premises where business activity is  
127 conducted, including, but not limited to, wholesale and retail sales and operations, services,  
128 manufacturing and industrial operations, but excluding businesses conducted upon Residential property  
129 which are permitted under applicable zoning regulations and are not the primary use of the property.

130 **“Compost (or Composting or Composted)”** means the controlled or uncontrolled biological  
131 decomposition of organic constituents such that the resulting material meets the maximum acceptable  
132 metal concentration limits specified in Section 17868.2 and pathogen reduction requirements specified in  
133 Section 17868.3 of Title 14, California Code of Regulations Chapter 3.1.

134 **“Compost Product”** means the product resulting from the controlled biological decomposition of Organic  
135 Materials that are Source Separated from the municipal Solid Waste stream, or which are separated at a  
136 centralized facility. All Compost Product provided through this Agreement shall comply with the municipal  
137 procurement requirements of 14 CCR Section 18993.1, including being generated from California Organic  
138 Waste products, as defined by 14 CCR Section 18993.1 for each applicable material type.

139 **“Contamination” or “Contaminants”** means “Incompatible Material” or “Incompatibles” and includes but  
140 is not limited to film plastic, hard plastics, rubber, textiles, rock, concrete, glass, metal, Non-Compostable  
141 Paper, and other non-organic, non-compostable substances. Contamination percentage or level refers to  
142 the percentage, by weight, of Contaminants present in Acceptable Materials when they arrive at  
143 Contractor’s Approved Processing Facility(ies).

144 **“Contractor”** means Zanker Road Resource Management, LTD., and any Subcontractors and Affiliates  
145 listed in Exhibit F.

146 **“Contractor’s Proposal”** means the proposal to provide the services described in this Agreement,  
147 submitted to the City by Contractor, which is attached to this Agreement as Exhibit E, and incorporated  
148 herein by reference.

149 **“Criminal Activity”** means, but is not limited to:

(1) any criminal offense in connection with obtaining, attempting to obtain, or procuring a public or private agreement related to Organic Materials Processing services of any kind, including this Agreement;

or

(2) bribery or attempting to bribe a public officer or employee of a local, State, or federal agency; or

(3) fraud, embezzlement, extortion, racketeering, false claims, forgery, falsification or destruction of records, obstruction of justice, knowingly receiving stolen property, theft; or

(4) violation of antitrust laws, including laws relating to price-fixing, bid-rigging and sales and market allocation, and of unfair and anti-competitive trade practice laws, including with respect to determination of Recovered Materials Revenue Payments.

**"Days"** means calendar days, including Saturdays, Sundays, and Holidays, except as otherwise specifically provided herein.

**"Deliver", "Delivered", or "Delivery"** (or other variations thereof) means arrival of Acceptable Materials in Station Operator vehicles at the entrance of an Approved Facility during facility receiving hours for the purposes of Acceptance.

**"Designated Waste"** means non-Hazardous Waste which may pose special Disposal problems because of its potential to contaminate the environment and which may be Disposed of only in Class II Disposal sites or Class III Disposal sites pursuant to a variance issued by the California Department of Health Services. Designated Waste consists of those substances classified as Designated Waste by the State of California, presently in 23 California Code of Regulations Section 2522, and in California Water Code 13173.

**"Direct Costs"** means the sum of:

(1) payroll costs directly related to the Contractor's performance, or supervision of any obligation pursuant to the provisions of this Agreement, or City's administration and enforcement of this Agreement, comprised of compensation and fringe benefits, including vacation, sick leave, holidays, retirement, workers compensation insurance, federal and State unemployment taxes and all medical and health insurance benefits, plus

(2) the costs of materials, services, direct rental costs and supplies, plus

(3) the reasonable costs of any payments to Subcontractors necessary to and in connection with the performance under or administration and enforcement of this Agreement; plus

(4) any other cost or expense which is directly or normally associated with the task performed.

Such Direct Costs are to be substantiated by: (i) a certificate signed by the principal financial officer of the Contractor or the authorized representative of the City or his or her designee, as the case may be, setting forth the amount of the cost and the reason why the cost is properly chargeable to the City or the Contractor, as the case may be, and representing that the cost is an arm's length and competitive price, if there are competitive prices, for the service or materials supplied; and (ii) if the City or the Contractor

185 requests, as the case may be, additional back-up documentation as may be available to reasonably  
186 substantiate any Direct Cost, including invoices from suppliers and Subcontractors.

187 **“Disposal”** (or any variation thereof) means the final disposition of Residue at a Disposal Site.

188 **“Disposal Site”** means a permitted location for Disposal of Residue.

189 **“Diversion”** means activities that recover useful materials from, and reduce Disposal of Residue from,  
190 Organic Materials.

191 **“Effective Date”** means the date on which the latter of the Parties has executed this Agreement.

192 **“Event of Default”** means a default by Contractor as described in Section 10.4.

193 **“Facility”** means any plant(s) or site(s), owned or leased and maintained and/or operated or used by  
194 Contractor for purposes of performing under this Agreement.

195 **“Fiscal Year”** means the twelve (12) month period commencing July 1 and concluding June 30 of the  
196 following year.

197 **“Food Scraps”** means material that will decompose and/or putrefy including all kitchen and table food  
198 waste scraps, and animal, or vegetable, fruit, grain, dairy or fish waste that attends or results from the  
199 storage, preparation, cooking or handling of food stuffs, with the exception of animal excrement. Food  
200 Scraps may contain paper waste contaminated with putrescible material and/or biodegradable food  
201 service ware designed to disintegrate and biodegrade quickly. Food Scraps are a subset of Organic  
202 Materials. For purposes of this Agreement, Food Scraps has the same meaning as “Source-Separated  
203 Residential and Commercial Food Scraps” in Exhibit J, Initial Rates, shall not exceed 10% contamination,  
204 and shall be sized to five-inch (5”) minus. Acceptable food scraps shall be source separated from Solid  
205 Waste and subsequently processed into food mash at the Station. Acceptable Food Scraps shall meet the  
206 specifications established in Exhibit D, Table D1.

207 **“Food-Soiled Paper”** means compostable paper, paperboard, and cardboard products that have come in  
208 contact with food or liquids, such as, but not limited to, compostable paper plates, paper coffee cups,  
209 paper napkins, paper towels, paper take-out containers, paper clamshells, sandwich wrappers, and pizza  
210 boxes. Compostable/Food-Soiled Paper is a subset of Organic Materials. Food-Soiled Paper does not  
211 include Non-Compostable Paper. For purposes of this Agreement, Acceptable Food-Soiled Paper has the  
212 same meaning as “Compostable/food soiled paper products” in Exhibit J, Initial Rates, shall not exceed  
213 30% Contamination, and shall be sized to five-inch (5”) minus. For purposes of this Agreement, Food Soiled  
214 Paper means Compostable food-soiled paper captured through the Station’s mixed waste processing  
215 system. Acceptable Food-Soiled Paper shall meet the specifications established in Exhibit D, Table D1.

216 **“Generator”** means any Person that generates or produces Acceptable Materials, or whose act first causes  
217 Acceptable Materials to become subject to regulation under federal, State, or local regulations.

218 **“Gray Container Waste”** means, as provided in Exhibit H, Solid Waste that is collected in a Gray Container  
219 that is part of a three-Container Organic Waste Collection service that prohibits the placement of Organic  
220 Waste in the Gray Container as specified in 14 CCR Sections 18984.1(a) and (b) or as otherwise defined in  
221 14 CCR Section 17402(a)(6.6). For the purposes of this Agreement, Gray Container Waste includes carpet  
222 and textiles.

223 **“Guarantor”** means Zanker Road Resource Management, Ltd.

224 **“Hazardous Substance”** means any of the following: (a) any substances defined, regulated or listed  
225 (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic  
226 waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the  
227 environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and  
228 Liability Act (CERCLA) of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation  
229 Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv)  
230 the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8,  
231 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and (vii) California Water Code §13050; (b)  
232 any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts  
233 currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material,  
234 chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable  
235 federal, State or local environmental laws currently existing or hereinafter enacted, including, without  
236 limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel  
237 products, and by-products.

238 **“Hazardous Waste”** means:

239 (1) all substances defined or characterized as hazardous waste by the Federal Solid Waste Disposal  
240 Act (42 U.S.C. Section 3251 et seq.), as amended, including the Resource Conservation and  
241 Recovery Act (42 U.S.C. Section 6901 et seq.) and all future amendments thereto or regulations  
242 promulgated thereunder;

243 (2) all substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous  
244 waste by Health and Safety Code Sections 25110.02, 25115, and 25117, and future amendments  
245 to or recodifications of such statutes or regulations promulgated thereunder, including 23  
246 California Code of Regulations Sections 2521 and 2522; and

247 (3) radioactive wastes.

248 If two or more governmental agencies having concurrent or overlapping jurisdiction over hazardous waste  
249 adopt conflicting definitions of “hazardous waste,” for purposes of processing and disposal to land, the  
250 broader, more restrictive definition shall be employed for purposes of this Agreement.

251 **“Holidays”** are defined as New Year’s Day and Christmas Day, and Thanksgiving Day.

252 **“Implementation Period”** means the period between the Effective Date and the Commencement Date  
253 during which Contractor makes the necessary preparations to implement all Contractor Services and  
254 obligations set forth herein.

255 **“Incompatible Material”** or **“Incompatibles”** mean(s) human-made inert material, including, but not  
256 limited to, glass, metal, plastic, and also includes organic waste that the receiving end-user, facility,  
257 operation, property, or activity is not designed, permitted, or authorized to perform Organic Waste  
258 recovery activities as defined in 14 CCR Section 18983.1(b), or as otherwise defined by 14 CCR Section 255  
259 17402(a)(7.5).

260 **“Infectious Waste”** means medical or biomedical waste generated at hospitals, public or private medical  
261 clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries,

262 veterinary facilities and other similar establishments that are identified in Health and Safety Code Section  
263 25925117.5.

264 **“Liquidated Damages”** means the amounts agreed upon by Contractor and City as fair and reasonable  
265 damages for Contractor’s failure to meet specific quantifiable standards of performance as described in  
266 Section 10.9 and Exhibit B.

267 **“Load”** means the payload contents of Transfer Vehicle or other vehicle as measured in Tons.

268 **“Market”** or **“Marketing”** (or other variations thereof) means all obligations of Contractor hereunder with  
269 respect to selling or giving away Recovered Materials, including market promotion, storage, insurance,  
270 packaging, transportation, sales, weighing, and maintaining records with respect thereto.

271 **“Maximum Vehicle Turnaround Time”** means an average weekly turnaround time of forty-five (45)  
272 minutes for Station Operator vehicles Delivering Acceptable Materials to an Approved Facility, where the  
273 turnaround time for each vehicle is measured from the vehicle’s arrival time, upon entry to the Approved  
274 Facility Property until the vehicle’s departure time, when it exits that Approved Facility, and excludes  
275 driver personal time and mechanical problems.

276 **“Mixed Organics”** means any combination of Food Scraps and Yard Trimmings. Mixed Organics is a subset  
277 of Organic Materials.

278 **“MRF Fines”** means the two-inch (2”) minus material that results from mechanized sorting and screening  
279 of Recoverable Materials from Solid Waste at the Station, and which are high in organic content. MRF  
280 Fines are a subset of Organic Materials. For purposes of this Agreement, Acceptable MRF Fines has the  
281 same meaning as “SMaRT Station 2-inch Minus Organic MRF fines” in Exhibit J, Initial Rates, shall not  
282 exceed 25% contamination and shall be sized to two-inch (2”) minus. Acceptable MRF Fines shall meet  
283 the specifications established in Exhibit D, Table D1.

284 **“Mulch”** means a layer of material applied on top of soil, and, for the purposes of the Agreement, Mulch  
285 shall conform with the following conditions, or conditions as otherwise specified in 14 CCR Section 279  
286 18993.1(f)(4):

287 (1) Meets or exceeds the physical contamination, maximum metal concentration, and pathogen  
288 density standards for land applications specified in 14 CCR Section 17852(a)(24.5)(A)(1) through  
289 (3).

290 (2) Was produced at one or more of the following types of Facilities:

291 i. A compostable material handling operation or facility as defined in 14 CCR Section  
292 17852(a)(12), that is permitted or authorized under Division 7 of Title 14 of the CCR, other  
293 than a chipping and grinding operation or facility as defined in 14 CCR Section 17852(a)(10);  
294 Guidance: Note that this criteria disallows Mulch produced from chipping and grinding  
295 operations to count toward fulfillment of a Jurisdiction’s annual Organic Waste product  
296 procurement target.

297 ii. A Transfer/Processing Facility or Transfer/Processing operation as defined in 14 CCR Section  
298 17402(a)(30) and (31), respectively, that is permitted or authorized under 14 CCR, Division 7,  
299 Chapter 12; or,

iii. A Solid Waste landfill as defined in PRC Section 40195.1 that is permitted under 27 CCR, Division 2.

**“Non-Compostable Paper”** includes, but is not limited to, paper, paperboard, and cardboard products that are coated with any substance, such as wax or plastic, which prevents the paper from breaking down in the composting process, or as otherwise defined in 14 CCR Section 18982(a)(41). For purposes of this Agreement, Non-Compostable Paper includes “waxed” corrugated cardboard and any paper container designed to hold liquid (e.g. cups, cartons, and soup containers). Non-Compostable Paper does not include paper towels and napkins or most paper plates, bowls, or take-out containers.

**“Organic Materials”** means any combination of Food-Soiled Paper, Food Scraps, Mixed Organics, MRF Fines, Yard Trimmings, lumber, and wood. Organic Materials is a subset of Organic Waste.

**“Organic Waste”** means Solid Wastes containing material originated from living organisms and their metabolic waste products including, but not limited to, Food Scraps, Food-Soiled Paper, Mixed Organics, MRF Fines, Yard Trimmings, organic textiles and carpets, lumber, wood, Paper Products, Printing and Writing Paper, manure, biosolids, digestate, and sludges, or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined in 14 CCR Section 18982(a)(4) and 14 CCR Section 305 18982(a)(16.5).

**“Ownership”** or **“Own”** (or other variations thereof) means ownership as defined in the constructive Ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date herein, and Section 318(a)(5)(C) shall be disregarded. For purposes of determining Ownership under this paragraph and constructive or indirect Ownership under Section 318(a), Ownership interest of less than ten (10) percent shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest of value which the Ownership interest represents, whichever is greater.

**“Paper Products”** include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling; or as otherwise defined in 14 CCR Section 314 18982(a)(51).

**“Partner Cities”** means cities, other than the City that use the Station.

**“Party or Parties”** means the City and Contractor, individually or together.

**“Permits”** means all federal, State, county, City, or other local or any other governmental permits, orders, licenses, approvals, authorizations, consents, and entitlements that are required under Applicable Law to be obtained or maintained by any Person, including Contractor, with respect to the Services performed under this Agreement, as renewed or amended from time to time.

**“Person or Persons”** means any individual, business, firm, association, organization, partnership, public or private corporation, trust, joint venture, political subdivision, special purpose district, the County of Santa Clara, public or governmental entity, as described in Section 40170 of the Public Resources Code.

**“Printing and Writing Papers”** include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications; or as otherwise defined in 14 CCR Section 18982(a)(54).

338 **“Process or Processing”** means one or more sequential and/or simultaneous steps that may include  
339 controlled separation, recovery, volume reduction, conversion, or Recycling of Solid Waste including, but  
340 not limited to, organized, manual, automated, or mechanical sorting, the use of various techniques to  
341 reduce the size of material, the use of vehicles for spreading of waste for the purpose of recovery, and/or  
342 the use of conveyor belts, sorting lines, or volume reduction equipment, or as otherwise defined in 14 333  
343 CCR Section 17402(a)(20).

344 **“Rate Period”** means a fiscal year commencing July 1st and concluding June 30th, except for Rate Period  
345 One which is an eighteen-month period from January 1st, 2022 through June 30th, 2023 and Rate Period  
346 Fifteen, which is a six-month period from July 1st through December 31st, 2036.

347 **“Recover” “Recovery” or “Recovered”** (or other variations thereof) means the picking, pulling, sorting,  
348 separating, and classifying of Acceptable Materials whether by manual or mechanical means, after  
349 Acceptance of the materials and before Marketing of Recovered Materials, including Recycling, material  
350 reuse and recovery, mulching, or Composting.

351 **“Recovered Material”** means materials which have been Recovered from Acceptable Materials through  
352 Processing activities.

353 **“Recycle” or “Recycling”** (or other variations thereof) means the process of collecting, sorting, cleaning,  
354 treating and reconstituting materials and returning them to the economic mainstream in the form of raw  
355 material for new, reused or reconstructed products which meet the quality standards necessary to be  
356 used in the marketplace. “Recycle” or “Recycling” does not include Transformation, except for the  
357 Transformation of wood (but not wood by-products, such as paper) to produce fuel.

358 **“Residential”** means of, from, or pertaining to a single-family premises or multi-family premises including  
359 single-family homes, apartments, condominiums, townhouse complexes, mobile home parks, and  
360 cooperative apartments.

361 **“Residue”** means the Solid Waste destined for Disposal, or further Transfer/Processing as defined in 14  
362 CCR Section 17402(a)(30) or 14 CCR Section 17402(a)(31), or transformation which remains after  
363 Processing has taken place and is calculated in percent as the weight of Residual divided by the total  
364 incoming weight of materials.

365 **“SB 1383”** means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added  
366 Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1  
367 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing  
368 methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate  
369 pollutants as amended, supplemented, superseded, and replaced from time to time.

370 For the purposes of this Agreement, SB 1383 specifically refers to the Short-Lived Climate Pollutants  
371 (SLCP): Organic Waste Reductions draft regulations developed by CalRecycle and adopted on  
372 November 2020 that created Chapter 12 of 14 CCR, Division 7 and amended portions of regulations of 14  
373 CCR and 27 CCR. SB 1383 shall include any administrative guidance provided by CalRecycle following the  
374 formal adoption of the regulations.

375 **“Services”** mean all obligations of Contractor under and in accordance with this Agreement to the City.



376 **“Sharps”** means hypodermic needles, pen needles, intravenous needles, lancets, and other devices that  
377 are used to penetrate the skin for the delivery of medications generated from use at Residential Premises.

378 **“Solid Waste”** has the same meaning as defined in PRC Section 40191, which defines Solid Waste as all  
379 putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse,  
380 paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and  
381 parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage  
382 sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other  
383 discarded solid and semisolid wastes, with the exception that Solid Waste does not include any of the  
384 following wastes:

385 (1) Hazardous waste, as defined in PRC Section 40141.

386 (2) Radioactive waste regulated pursuant to the Radiation Control Law (Chapter 8 (commencing with  
387 Section 114960) of Part 9 of Division 104 of the Health and Safety Code).

388 (3) Medical waste regulated pursuant to the Medical Waste Management Act (Part 14, commencing  
389 with Section 117600, of Division 104 of the Health and Safety Code). Untreated medical waste  
390 shall not be disposed of in a solid waste landfill, as defined in PRC Section 40195.1. Medical waste  
391 that has been treated and deemed to be Solid Waste shall be regulated pursuant to PRC, Division  
392 30.

393 **“Source-Separated”** means the segregation from Solid Waste, by the Generator, of materials designated  
394 for separate Collection.

395 **“State”** means the State of California.

396 **“Station”** means the SMaRT Station™ owned by the City which is utilized to receive Solid Waste in various  
397 forms, to Transfer Acceptable Materials for shipment to the Contractor and other parties prior to and/or  
398 subsequent to Processing, and to temporarily store, separate, recover, convert or otherwise Process  
399 materials, and to Transfer Residue for Disposal.

400 **“Station Operator”** means the party under contract to the City to operate the Station.

401 **“Station Users”** means the City, and all other parties that use the Station including other public  
402 jurisdictions and third parties.

403 **“Subcontractor”** means a Party, including an Affiliate or other related party, who has entered into a  
404 contract, express or implied, with the Contractor for the performance of an act on Contractor’s behalf (i)  
405 that involves Accepting, Processing, Diverting, Marketing, Residue Disposal, and/or other handling of the  
406 Acceptable Materials, and (ii) that is necessary for the Contractor’s fulfillment of its obligations for  
407 providing service under this Agreement. Vendors providing materials and supplies to Contractor shall not  
408 be considered Subcontractors.

409 **“Term”** means the duration of this Agreement, as provided for in Section 4.1.

410 **“Ton” or “Tonnage”** means a short ton of 2,000 pounds avoirdupois.

411 **“Transfer”** means the process of reloading Acceptable Material for Transport from one Approved Facility  
412 to another Approved Facility.

413 **“Transfer Vehicle”** means a tractor and trailer designed to Transport Acceptable Materials in larger  
414 amounts than are contained in a Collection vehicle.

415 **“Transformation”** means the incineration, pyrolysis, distillation, gasification, or biological conversion  
416 other than composting.

417 **“Transport”** (or any variation thereof) means the conveyance of Acceptable Materials (i) from one  
418 Approved Facility to another Approved Facility.

419 **“Uncontrollable Circumstance”** means, except as otherwise provided in 10.10 of this Agreement:

420 (1) Floods, earthquakes, other "acts of nature", war, civil insurrection, riots, acts of any government  
421 (including judicial action), and other similar catastrophic events which are beyond the control of  
422 and not the fault of the Party claiming excuse from performance hereunder. However, labor  
423 unrest by employees of Contractor or of any Affiliate directed against Contractor or an Affiliate,  
424 including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other  
425 concerted job action, is not an Uncontrollable Circumstance.; or,

426 (2) A Change in Law (as defined herein).

427 **“Unpermitted Waste”** means wastes or other materials that the Approved Facilities may not receive  
428 under their Permits, including:

429 (1) All materials that the Approved Facilities are not permitted to accept;

430 (2) Asbestos, including friable materials that can be crumbled with pressure and are therefore likely  
431 to emit fibers, being a naturally occurring family of carcinogenic fibrous mineral substances, which  
432 may be Hazardous Materials if it contains more than 1% asbestos;

433 (3) Ash residue from the incineration of solid wastes, including Solid Waste, infectious waste  
434 described in Item (8) below, wood waste, sludge not meeting at a minimum Class B standards as  
435 defined by Title 40 of the Code of Federal Regulations, Part 503 (The Standards for the Use or  
436 Disposal of Sewage Sludge) and agricultural wastes;

437 (4) Auto shredder “fluff” consisting of upholstery, paint, plastics, and other non-metallic substances,  
438 which remain after the shredding of automobiles;

439 (5) Dead animals larger than 100 pounds;

440 (6) Hazardous Substances and Hazardous Waste;

441 (7) Industrial solid or semi-solid wastes that pose a danger to the operation of the Approved Facilities,  
442 including cement kiln dust, or process residues;

- (8) Infectious Waste including wastes that have disease transmission potential and are classified as Hazardous Wastes by the State Department of Health Services, including pathological and surgical wastes, medical clinic wastes, wastes from biological laboratories, syringes, needles, blades, tubing, bottles, drugs, patient care items that as linen or personal or food service items from contaminated areas, chemicals, personal hygiene wastes, and carcasses used for medical purposes or with known infectious diseases;
- (9) Liquid wastes that are not spadeable, usually containing less than 50% solids, including cannery and food processing wastes, landfill leachate and gas condensate, boiler blowdown water, grease trap pumpings, oil and geothermal field wastes, septic tank pumpings, rendering plant byproducts, sewage sludge not meeting certain quality criteria (i.e. unclassified sludge less than B), and those liquid wastes that may be Hazardous Wastes;
- (10) Radioactive wastes under Chapter 7.6 (commencing with Section 25800) of Division 20 of the State Health and Safety Code, and any waste that contains a radioactive material, the storage or disposal of which is subject to any other state or federal regulation;
- (11) Sewage sludge comprised of human (not industrial) residue, excluding grit or screenings, removed from a wastewater treatment facility or septic tank, whether in a dry or semi-dry form not meeting certain quality criteria (i.e. unclassified sludge less than "B");
- (12) Designated Waste if not permitted at the Approved Facilities under Applicable Law, including Permits; or,
- (13) Single Loads with an excessive level of Incompatible Materials based on visual inspection.

This definition shall be promptly amended to reflect any applicable changes in permits or Applicable Law.

**"Yard Trimmings"** means those Source-Separated Acceptable Materials that will decompose and/or putrefy, including, but not limited to, tree trimmings, grass cuttings, dead plants, leaves, branches and dead trees, and similar organic materials. Yard Trimmings are a subset of Organic Materials. For purposes of this Agreement, Acceptable Yard Trimmings has the same meaning as "Source separated residential yard trimmings" in Exhibit J, Initial Rates and shall not exceed 1% Contamination. Processed Yard Trimmings shall be sized to five-inch (5") minus. Acceptable Yard Trimmings may include Yard Trimmings from non-residential sources provided they do not exceed 1% Contamination. Acceptable Yard Trimmings shall meet the specifications established in Exhibit D, Table D1.

## ARTICLE 2 GRANT AND ACCEPTANCE OF AGREEMENT

### 2.1 Scope of Agreement

With this Agreement, City grants Contractor the exclusive right to Process and Divert all Yard Trimmings, MRF Fines, and Food-Soiled Paper generated by the Station. City shall direct the Station Operator to Deliver all Yard Trimmings, MRF Fines, and Food-Soiled Paper to the Approved Facilities. In addition, the City, at its sole discretion, may direct the Station Operator to Deliver Food Scraps generated by the Station to the Approved Facilities. Contractor is the contingency processor for Food Scraps and does not have an exclusive right to Process the City's Food Scraps.

481 Contractor does not have the exclusive right to any City Yard Trimmings, MRF Fines, or Food-Soiled Paper  
482 that Contractor is not able to Accept due to insufficient Processing capacity. City may utilize alternative  
483 contractors to Process Yard Trimmings, MRF Fines, or Food-Soiled Paper in excess of what Contractor is  
484 able to Process.

485 Contractor does not have the exclusive right to Organic Materials that are generated by Station Users  
486 other than the City that are not delivered to the Station (e.g. mixed Organic Materials from the City of  
487 Mountain View that are not delivered to the Station).

488 Contractor shall Process all Yard Trimmings, MRF Fines, Food-Soiled Paper, and Food Scraps Delivered to  
489 the Approved Facilities by the Station Operator, up to the guaranteed capacity as defined in Section 5.7.B.  
490 The City is in no way obligated to compensate Contractor for any guaranteed Processing capacity that the  
491 City does not utilize if the Station is unable to generate sufficient Acceptable Materials. This Agreement  
492 does not provide Contractor with a “put or pay” tonnage guarantee. Contractor, at its sole option, may  
493 accept Acceptable Materials from the Station Operator in excess of the guaranteed Processing capacity,  
494 and would be compensated for accepting these excess tons at the rates specified in article 7.

495 Subject to the limitations in Section 5.1.C, and except where otherwise prohibited by federal, State, and  
496 local laws and regulations, Contractor shall exclusively be responsible for:

- 497 A. Accepting and Processing Delivered Acceptable Materials at the Approved Processing Facility;
- 498 B. Marketing of Recovered Materials;
- 499 C. Arranging for Disposal of Residue at the Approved Residue Disposal Facility;
- 500 D. Furnishing all labor, supervision, Processing equipment, rolling stock, other equipment, materials,  
501 supplies, and all other items and services necessary to perform its obligations under this  
502 Agreement;
- 503 E. Paying all expenses related to provision of Services required by this Agreement including, but not  
504 limited to, taxes, regulatory fees, governmental fees, and payments to the City, etc.;
- 505 F. Performing all Services in substantial accordance with the Contractor’s Proposal and in full  
506 accordance with this Agreement. If the Contractor’s Proposal and Agreement conflict, the terms  
507 and provision of the Agreement shall prevail;
- 508 G. Securing and maintaining all necessary Permits for operation of the Approved Facilities;
- 509 H. Complying with Applicable Law;
- 510 I. Providing reports in a timely manner;
- 511 J. Providing all Services required by this Agreement in a thorough and professional manner so the  
512 City is provided timely, reliable, courteous, and high-quality service at all times; and,
- 513 K. Performing or providing all other Services necessary to fulfill Contractor’s obligations under this  
514 Agreement.

## **2.2 City-Requested Change in Scope**

Without amending this Agreement, City Contract Manager may request Contractor cease performing one or more of the types of Processing services described in Article 5 and Exhibit H, may request Contractor modify the scope of one or more of those services, or may request Contractor to perform additional Processing services, including conducting pilot programs.

Upon such request, City and Contractor shall meet and confer to identify the parameters for a change in scope, and to determine any potential changes to compensation. If the change in scope causes an increase or decrease in the cost of performing the services, an equitable adjustment in Contractor's Payment will be made in accordance with Article 7.5, any change in compensation shall be mutually agreed upon between both parties prior to the change in scope being implemented.

While Contractor has the exclusive right to provide the services defined in the agreement, as defined in Section 2.1, Contractor acknowledges and agrees that at any time during the Term of this Agreement, and without seeking or obtaining approval of Contractor, City may solicit proposals from, and may contract with other Persons besides the Contractor to Process any and all types of materials excluded from the scope of this Agreement and/or to provide services not contemplated under this Agreement. In the event that contracting with other Persons for such services will reduce Contractor's compensation under this Agreement, as described in Article 7, the Contractor shall be offered the opportunity to provide the service and to match any other Person's proposed pricing. However, nothing in this Agreement shall prevent the City from contracting with other Persons in the event that Contractor is unable or unwilling to provide such services at or below the cost proposed by the other Person.

## **2.3 Municipal Programs**

Station Users manage Collection and Processing programs intended to reduce the amount of material that is Disposed and to meet the requirements of Applicable Law. Over the Term of this Agreement, no provision of this Agreement shall limit, prevent, penalize, or impede, in any manner, Station Users from continuing and expanding these programs, reducing the scope of these programs, or developing new programs to reduce or Divert material. As a result, the amounts of Acceptable Material(s) Delivered for Processing at the Approved Processing Facility(ies), and the composition of such Acceptable Material(s) will change over time. Contractor shall not be compensated for any changes in the characterization of, quantity of, or for other changes to materials it receives except through a Change in Scope as provided in Section 2.2. A change in the characterization of an Acceptable Material which exceeds the contamination limits of that material (as specified in Article 1) would constitute a Change in Scope.

## **2.4 Subcontracting**

Contractor shall not engage any Subcontractor(s) for Processing of Organic Materials without the prior written consent of the City Contract Manager. As of the Effective Date, the City has approved Contractor's use of those Subcontractor's identified in Exhibit E. Upon ten (10) Business Days' prior written notice from the City Contract Manager, Contractor shall provide the City Contract Manager a copy of the fully executed version of any subcontract.

Notwithstanding the foregoing, Contractor shall provide the City Contract Manager with thirty (30) calendar days' written notice prior to engaging other Affiliated or related party entities as Subcontractors in the provision of services with an explanation of the benefits of such a change and any potential impacts

related to the quality, timeliness, or cost of providing services under this Agreement. For this Agreement, Subcontractors or related party entities subcontracted by Contractor are one and the same as Contractor

for the purposes of fulfilling Contractor's obligations. The City shall not accept any excuse from performance on the basis of Contractor's inability to compel the performance of such an Affiliated or related party entity.

If Contractor (i) uses a Subcontractor for Services required to be provided by Contractor related to Acceptable Materials Acceptance, Processing, Diversion, and Marketing, or (ii) enters into any contract, agreement or understanding with an Affiliate or third party for services required to be provided by Contractor related to Acceptable Materials Acceptance, Processing, Diversion, and Marketing, Contractor shall ensure that terms and conditions (such as insurance requirements, indemnifications, Acceptance, Processing, Marketing performance, Maximum Vehicle Turnaround Time guarantee, Residue level guarantees) of any such contract, agreement, or other understanding Contractor has with such Affiliate or third party can be enforced by the City as an additional insured or an express third party beneficiary thereof in the same manner provided in Article 9 and in a manner reasonably satisfactory to City.

If Contractor or Subcontractor owns or operates the Approved Facilities, Contractor shall include City as an additional insured on liability policies as provided in Section 9.4, defend and indemnify City and Partners as provided in Sections 9.1, 9.2, and 9.3 satisfactory to the City's Risk Manager, and provide that any Materials Recovery and Marketing performance standards or guarantees made to any other Facility users are made to City as well, including obligations such as recovered product quality guarantees and limits on the Residue level. Contractor shall demonstrate compliance with the requirements of this paragraph on or before the Commencement Date of this Agreement.

Contractor (or its Affiliate or Subcontractor(s)) warrants throughout the Term that the Approved Facilities selected by Contractor are respectively authorized and Permitted to accept Acceptable Materials in accordance with, and in full compliance with Applicable Law, and in accordance with Section 6.4. Contractor shall notify the City Contract Manager within five (5) Business Days of receipt of a notice of violation at any Approved Facility. Contractor shall: (1) verify compliance for Approved Facilities owned by third parties by contacting the local enforcement agency and other regulatory agencies having jurisdiction over the Approved Facilities at least quarterly; and (2) upon City Contract Manager direction, shall promptly provide the City Contract Manager with copies of the Approved Facilities' Permits or notice of violations.

## ARTICLE 3 REPRESENTATIONS AND WARRANTIES

### 3.1 Contractor

By acceptance of this Agreement, Contractor represents and warrants that:

- A. **Existence and Powers.** Contractor is a corporation duly organized, validly existing, and in good standing under the laws of the State of California, is qualified to transact business in the State and has full legal right, power, and authority to enter into and perform its obligations under this Agreement.

- 593 B. **Due Authorization and Binding Obligation.** Contractor has the authority to enter into and  
594 perform its obligations under this Agreement. Contractor has taken all actions required by law or  
595 otherwise necessary to authorize the execution of this Agreement. The Person(s) signing this  
596 Agreement on behalf of Contractor have authority to do so, and this Agreement constitutes the  
597 legal, valid, and binding obligation of Contractor enforceable against Contractor under its terms.
- 598 C. **Truth and Accuracy of Information.** The information supplied by Contractor in all written  
599 submittals made in connection with Contractor's Services, including Contractor's Proposal and  
600 any other supplementary information submitted to the City, and which the City has relied on in  
601 awarding and entering this Agreement, is true, accurate, and complete, and does not contain  
602 material omissions or misleading statements. Contractor will inform City Contract Manager of any  
603 change in that information within one (1) week of discovering any untruth or inaccuracy.
- 604 D. **Contractor's Due Diligence.** Contractor has made an independent investigation and examination  
605 (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work  
606 to be performed hereunder. Relying solely upon its own investigation, advice, and counsel,  
607 Contractor has taken such matters into consideration in entering this Agreement to provide  
608 Services in exchange for the Contractor Revenue provided for under the terms of this Agreement.
- 609 E. **Ability to Perform.** Contractor possesses the business, professional, and technical expertise to  
610 manage, Process, and Divert Acceptable Materials, and Contractor possesses the equipment,  
611 facilities, and employee resources required to perform its obligations under this Agreement.
- 612 F. **Voluntary Use of Approved Facilities.** Contractor, without constraint and as a free-market  
613 business decision in accepting this Agreement, agrees to use the Approved Facility(ies) it has  
614 proposed, or other location approved by City, for the purposes of Processing or Diverting all  
615 Acceptable Materials and for Disposal of Residue. Such decision by Contractor in no way  
616 constitutes a restraint of trade notwithstanding any Change in Law regarding flow control  
617 limitations or any definition thereof.
- 618 G. **No Warranty Regarding Volumes or Material Types.** Contractor recognizes that City expressly  
619 disclaims any warranties, either express or implied, as to the quantity, composition, volume, type,  
620 merchantability or fitness for any particular purpose of Acceptable Materials as Delivered and  
621 Accepted, and Processed by Contractor. Contractor acknowledges that the quantity and  
622 composition of Delivered Acceptable Materials will vary over the Term.
- 623 H. **Capacity.** Contractor warrants that as of the Commencement Date it has Processing capacity at  
624 the Approved Processing Facility(ies) to Process all Acceptable Materials Delivered to Approved  
625 Facility(ies) by the Station Operator. Contractor shall maintain such capacity throughout the Term  
626 as provided in Section 5.7.
- 627 I. **Permits and Approvals.** Contractor warrants that all licenses, Permits, qualifications, and  
628 approvals that are legally required or otherwise necessary for Contractor to perform its  
629 obligations under this Agreement shall be secured on or before the Commencement Date of this  
630 Agreement. Contractor further warrants that it shall, at its sole cost and expense, keep in effect  
631 or obtain at all times during the Term all licenses, Permits, and approvals that are legally required  
632 for Contractor to perform its obligations under this Agreement.

J. **Covenant Not to Sue.** For the Term of this Agreement, Contractor agrees that neither Contractor, its officers, employees, agents, Subcontractors, nor its Affiliates, will file any lawsuit against the City, its Partners, and/or the Station Operator that alleges any claims related to, arising out of, or in connection with the City's Request for Proposals process for the Contractor's Services or the Station Operator's services, including the award of any agreement or contract thereunder.

K. **Iran Contracting Act Certification.** Contractor represents and warrants that it is in compliance with and has completed all requirements necessary to become certified under the Iran Contracting Act (Public Contract Code Sec. 2200). Proof of certification shall be included as Exhibit G of this Agreement.

L. **No Default.** Contractor shall not be in breach or default under this Agreement or any other agreement with the City.

M. **Compliance with Laws.**

(1) Contractor shall not discriminate against, or engage in the harassment of, any City employee or volunteer or any employee of Contractor or applicant for employment because of an individual's race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), ethnic or national origin, ancestry, citizenship status, uniformed service member status, marital status, family relationship, pregnancy, age, cancer or HIV/AIDS-related medical condition, genetic characteristics, and physical or mental disability (whether perceived or actual). This prohibition shall apply to all of Contractor's employment practices and to all of Contractor's activities as a provider of services to the City.

(2) Contractor shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.

### **3.2 City**

By acceptance of this Agreement, City represents and warrants that:

A. **Existence and Powers.** City is a municipal corporation organized and validly existing under the laws of the State of California, with full legal right, power, and authority to enter into and perform its obligations under this Agreement.

B. **Due Authorization and Binding Obligation.** City has taken all actions required by law or otherwise to authorize the execution of, and to perform its obligations under this Agreement. The Person(s) signing this Agreement on behalf of City have authority to do so, and this Agreement constitutes the legal, valid, and binding obligation of City enforceable against City under its terms.

C. **No Warranty Regarding Volumes or Material Types.** City expressly disclaims any warranties, either express or implied, as to the volume, type, merchantability or fitness for any particular purpose of the Acceptable Materials Delivered to and Accepted, and Processed by Contractor.

**3.3 Both Parties** By acceptance of this Agreement, the Parties represent and warrant that:



A. **No Conflicts.** To the best of the Parties' knowledge, after reasonable investigation, neither the execution or delivery of this Agreement or the performance by the Parties of their obligations hereunder does not conflict with, violate, or result in breach of:

(1) Any Applicable Law;

(2) Any term or condition of any judgment, order, or decree of any court, administrative agency, or other governmental authority; or,

(3) Any agreement or instrument to which Contractor or any of its Affiliates is a party or by which Contractor or any of its Affiliates' properties or assets are bound, or constitutes a default thereunder.

B. **No Litigation.** There is no administrative filing, action, suit, or other proceeding as of the Effective Date, at law or in equity, before or by any court or governmental authority, commission, board, agency, or instrumentality decided, pending or, to the Parties' best knowledge, threatened by or against either Party wherein an unfavorable decision, ruling, or finding in any single case or in the aggregate, would:

(1) Materially adversely affect the performance by either Party of its respective obligations hereunder or the transactions contemplated by this Agreement;

(2) Adversely affect the validity or enforceability of this Agreement; or,

(3) Have a material adverse effect on the financial condition of Contractor, or any surety or entity guaranteeing Contractor's performance under this Agreement.

C. **Legal Prohibition.** The Parties have no knowledge of any adverse judicial decision or Applicable Law in effect on the Effective Date that either affects the validity of this Agreement or would prohibit the performance by either Party of its respective obligations hereunder or the transactions contemplated by this Agreement.

## ARTICLE 4 TERM OF AGREEMENT

### 4.1 Term and Option to Extend

The Term of this Agreement shall commence on January 1, 2022, the Commencement Date, and continue in full force for a period of fifteen (15) years, through and including December 31, 2036, unless the Agreement is terminated pursuant to Article 10. Between the Effective Date and Commencement Date, Contractor shall perform all activities necessary to fully provide the Services required by this Agreement beginning on the Commencement Date.

The City has no obligation to renegotiate, renew, or extend the rights granted to Contractor beyond the initial fifteen--year (15-year) Term of the Agreement.

## ARTICLE 5 FACILITY OPERATIONS

### 5.1 Overview of Scope

- A. **Acceptance.** Contractor shall Accept Delivered Acceptable Materials under the terms of this Agreement, subject to the limitations of Section 5.1.C.
- B. **Processing and Marketing.** Contractor agrees to Process, Divert, Market, and as necessary Transfer and Transport, all Acceptable Materials as Delivered and Accepted under the terms of this Agreement.
- C. **Limitations to Scope.** The scope of this Agreement does not include Acceptance or Processing of materials other than those defined in this Agreement.
- D. **Cost of Service.** Contractor is solely responsible for all costs associated with provision of Services under this Agreement.
- E. **Facility Fees.** Contractor shall pay all fees assessed by governmental or regulatory agencies for operation of the Approved Facilities, as provided in Article 7.
- F. **Compliance with Facility Rules.** Station Operator shall observe and comply with all regulations in effect at the Approved Facility and cooperate with Contractor or other operators with respect to Delivery and Acceptance of Acceptable Materials, including complying with Unpermitted Waste exclusion programs.

### 5.2 Days and Hours

- A. **Approved Facility(ies).** Contractor shall operate the Approved Facility(ies) in accordance with the days and hours of operation set forth below. Contractor shall take Delivery of Acceptable Materials 24 hours per day, Sunday through Saturday, except on Holidays. Contractor may not reduce the hours or total number of hours for Acceptance of Acceptable Materials without prior written approval of the City Contract Manager except for reductions required by a change in a Permit subsequent to the Commencement Date. Contractor shall provide the City Contract Manager a minimum of sixty (60) Days written notice of such an anticipated modification. Between the hours of 4:00 a.m. and 8:00 p.m., Monday through Friday, the Station Operator shall not deliver more than 180 tons per day of Acceptable Materials to the Approved Facility(ies), as specified in Exhibit D, Table D4. Station Operator shall not deliver more than the maximum daily, monthly, and annual tonnages of Acceptable Materials as specified in Exhibit D, Tables D2 and D3.

### 5.3 Traffic Control and Direction

- A. **Road Design and Maintenance.** Contractor shall construct and maintain all roads at the Approved Facilities for use by vehicles Delivering Acceptable Materials to safely and efficiently access and use each Approved Facility. Contractor shall direct on-site traffic to appropriate unloading areas and provide a safe working environment for the Station Operator's employees. Contractor shall provide necessary signs and personnel to assist drivers to proper unloading areas. Contractor shall maintain all signs at each Approved Facility in a clean and readable condition. The Contractor shall

provide and maintain signs for the convenience of Persons using each Approved Facility and to facilitate safe and efficient traffic flow at each Approved Facility.

**B. Maximum Vehicle Turnaround Guarantee.** Contractor shall manage the scale house and vehicle receiving process at each Approved Facility to ensure that Station Operator's vehicles Delivering Acceptable Materials are not unnecessarily delayed in unloading. Station Operator's vehicles shall be given equal priority with other vehicles unloading at the site, such that all vehicles are weighed and allowed to unload in the order that they arrive ("first come first served.") Contractor guarantees (the "Maximum Vehicle Turnaround Guarantee") that each of the Station Operator's vehicles Delivering material is able to conduct its Delivery of such materials within the Maximum Vehicle Turnaround Time specified in Article 1, (45 minutes) absent vehicle breakdown or driver negligence. As of the Commencement Date of the Agreement, the arrival time shall be the time recorded for the vehicle at the motor vehicle scale when the inbound weight of the vehicle is recorded. An exit time shall not be recorded because the vehicle's tare weight will be recorded in the scale system allowing the vehicle to by-pass the scale when exiting the Facility. The Contractor will operate a video camera system that will capture the time the vehicle arrives at the site and exits the site providing a record of the date and time for each Load. Upon City Contract Manager request, Contractor shall provide the City reports or access to electronic scale house system records that provide the City Contract Manager information to determine vehicle turnaround times based on documented entry time at the entry scale house and documented facility exit time. The City Contract Manager may approve the Station Operator's use of GPS (global positioning system) records for Collection vehicles to calculate turnaround time, and the City may conduct on-site surveys of performance to verify compliance with the Maximum Vehicle Turnaround Time.

Contractor shall, upon City Contract Manager request, provide the City and Station Operator with the opportunity to review daily video recordings of the inbound and outbound vehicles to calculate the average vehicle turnaround time. If the average weekly vehicle turnaround time for the week in question is in excess of the Maximum Vehicle Turnaround Time, the Contractor shall pay the Station Operator ten dollars (\$10.00) per Load for each minute in excess of the forty-five (45) minute average guaranteed, where the number of Loads shall be equal to the number of Loads received during the week in which the Maximum Vehicle Turnaround Time was exceeded. For the purposes of this Section, a week shall include the five (5) most recently completed Days of Facility operations.

Within fourteen (14) Days of the Commencement Date, City Contract Manager may assess Liquidated Damages in accordance with 11.9.

## **5.4 Scale Operation**

**A. Maintenance and Operation.** Contractor shall maintain and operate one State-certified motor vehicle scales at each Approved Facility in accordance with Applicable Law. Contractor shall provide documentary evidence of such certification within ninety (90) Days of the Commencement Date and within ten (10) Days of City Contract Manager's request during the Term. Scales shall be operated by State-licensed weighmaster(s). Contractor shall link all scales at each Approved Facility to a centralized computer recording and billing system that shall be compatible with Contractor's systems. Such computerized system shall track pertinent data on all incoming and outgoing vehicles and materials as specified in Section 5.4.G. Contractor shall

operate scales during the Approved Facility Delivery and Acceptance hours specified in Section 5.2, and during other hours as determined by the Contractor as necessary to weigh all inbound and outboard vehicles Delivering Acceptable Materials with the exception that Contractor is not required to weigh empty vehicles if the vehicle tare weight was recorded during the most recently completed six (6) month period in accordance with Section 5.4.B. Contractor shall provide City Contract Manager with access to weighing information at all times and provide electronic copies on the next Business Day following the City Contract Manager's request therefore.

B. **Vehicle Tare Weights.** Within fourteen (14) Days of the Commencement Date, Contractor shall weigh the Station Operator's vehicles and determine the unloaded ("tare") weight(s) of the vehicle(s). City Contract Manager shall approve Contractor's tare weight establishment procedures. Contractor shall record tare weight, name of Station Operator, and vehicle identification number. Within ten (10) Business Days of weighing, Contractor shall provide the City Contract Manager and the Station Operator a report listing vehicle tare weight information. Contractor shall determine tare weights of vehicles no less than once each calendar quarter within the first two (2) weeks of the quarter. City Contract Manager may, at any time and without limitation, request re-determination of tare weights, in which case Contractor shall re-determine tare weights for requested vehicles within five (5) Business Days.

C. **Substitute Scales.** If any scale at an Approved Facility is inoperable, being tested, or otherwise unavailable, Contractor shall weigh vehicles on the remaining operating scale(s). To the extent that all the scales are inoperable, being tested, or otherwise unavailable, the outbound weights from the Station scales shall be utilized for purposes of compensation and reporting.

D. **Estimates.** If the scales at both the Approved Facility and the Station are inoperable, Contractor shall estimate the Tonnage of the Acceptable Materials Delivered to and Accepted at the Approved Facility by utilizing the arithmetic average of each vehicle's recorded Tons of Acceptable Materials Delivered on its preceding three (3) Deliveries, on the same day of the week, to the Approved Facility. During any period the scales are out of service, Contractor shall continue to record all information required by Section 5.4.G for each Delivery of Acceptable Materials to an Approved Facility.

E. **Testing.** Contractor shall test and calibrate all scales in accordance with Applicable Law, but at least every twelve (12) months or upon City Contract Manager request. Contractor shall furnish evidence of scale testing and calibration to the City Contract Manager upon request.

F. **Weighing Standards and Procedures.** Contractor shall weigh and record inbound weights of all vehicles Delivering Acceptable Materials to each Approved Facility upon arrival at the Approved Processing Facilities and weigh and record outbound weights of vehicles for which Contractor does not maintain tare weight information. Contractor shall provide each driver a receipt showing the date, time, and quantity of Acceptable Materials that the vehicle Delivered to the Approved Facility. Contractor shall also weigh and record inbound weights for vehicles Transporting Recovered Materials to Market and Residue to the Approved Residue Disposal Facility.

G. **Records.** Contractor shall maintain computerized scale records and reports that provide date of receipt, inbound time, inbound and tare weights of vehicles, vehicle identification number, jurisdiction of origin of materials Delivered, type of material, company/hauler identification, and classification, type, weight, and destination of material (whether an Approved Facility, a Market

location). Contractor shall maintain computerized scale records and reports providing historical vehicle tare weights for each vehicle and the date and location for each tare weight recorded.

- H. **Upon-Request Reporting.** If vehicle receiving and unloading operations are recorded on video cameras at the Approved Processing Facilities, Contractor shall make those videos available for City Contract Manager review during the Facility's operating hours, upon request of the City Contract Manager, and shall provide the name of the driver of any particular Load if available.

## **5.5 Material Delivery and Acceptance**

- A. **General.** On the Commencement Date and continuing throughout the Term, City shall direct Station Operator to Deliver Acceptable Materials to the Approved Facility(ies), and Contractor shall commence Acceptance, Processing, Diversion, and Marketing of such materials on the Commencement Date.

Contractor agrees to work cooperatively with the Station Operator to manage the Delivery and Acceptance process in such a way that Loads Accepted by the Contractor do not include an amount of contaminants that would cause Contractor to exceed Permit requirements at any Approved Facility. .

- B. **Acceptance by Contractor.** Contractor shall visually inspect Loads and periodically shall manually characterize Loads to confirm that Accepted Acceptable Materials conform to the list of Acceptable Materials in Exhibit D and do not contain Unpermitted Waste. Contractor shall implement Load- checking procedures in a uniform and non-discriminating manner from day to day and for the City's Acceptable Materials and materials from other sources. Ownership of Acceptable Materials transfers to Contractor pursuant to Section 5.5D.

- C. **Loads with Excess Contamination.** The City shall pay, or cause the Station Operator to pay, a Contaminated Load fee in the amount of \$250 per load for a Contaminated Load, defined as any load containing over the maximum Contamination limits for each Acceptable Material described in Exhibit D, Table D1. Contractor shall notify City and Station Operator of the Contaminated Load within 24 hours and document with pictures or video sent via email to designated representatives. In the absence of any dispute, or after 4 hours, the Contaminated Load Fee shall be assessed. The fee would cover disruption of operations and (1) hour labor for (5) workers to prepare the Contaminated Load for processing. In the event Contractor receives a load Contaminated to the extent that the cost to clean would exceed the (1) hour (5) worker parameters Contractor may reject the contaminated load. Any rejected loads shall be set aside for Station Operator to inspect and remove from the Contractor's facility. Any dispute about a Contaminated Load between Contractor and Station Operator shall be decided by the City Contract Manager whose determination shall be final. Loads identified as containing Unpermitted Waste shall be handled in accordance with Section 5.6.

- D. **Ownership of Acceptable Materials.** Once Acceptable Materials are Delivered by the Station Operator and Accepted by Contractor at the Approved Processing Facilities, ownership and the right to possession of Acceptable Materials shall transfer directly from the Station Operator to Contractor upon the earlier occurrence of either: (i) Processing of the material, or (ii) the end of the Day's defined hours for Acceptance of materials as specified in Section 5.2. Upon Acceptance,

all benefits and liabilities resulting from ownership and possession of the Acceptable Materials shall accrue to Contractor.

## **5.6 Rejection of Unpermitted Waste**

- A. **Inspection.** Contractor shall detect and reject Unpermitted Waste. Contractor shall comply with the inspection procedure contained in its Permit requirements. Contractor shall promptly modify that procedure to reflect any changes in Permits or Applicable Law.

Contractor shall develop a Load inspection program that includes the following components: (i) personnel and training; (ii) Load checking activities; (iii) management of materials; and, (iv) record keeping and emergency procedures. Contractor's Load checking personnel shall be trained in: (i) the effects of Hazardous Substances on human health and the environment; (ii) identification of Unpermitted Waste; and, (iii) emergency notification and response procedures.

- B. **Unpermitted Waste Handling and Costs.** Contractor shall arrange for or provide handling, Transportation, and delivery of all Unpermitted Wastes to a facility permitted to accept such material in accordance with Applicable Law. Contractor is solely responsible for making those arrangements or provisions and for all costs thereof, subject to the remedies available under Section 5.6.C below.

- C. **Remedies for Rejected Materials.** If Contractor identifies Unpermitted Waste Delivered to the Approved Processing Facility by the Station Operator, Contractor shall notify the City Contract Manager and Station Operator as provided in 5.6.D. The Station Operator shall collect, Transport, and Recycle or Dispose of that Unpermitted Waste and/or remediate any contamination resulting there from at the Station Operator's expense.

- D. **Notification.** If the Contractor rejects Unpermitted Waste Delivered to an Approved Facility by the Station Operator, Contractor shall immediately notify the City Contract Manager and the Station Operator verbally and then follow verbal notifications with written notice identifying the date and time of occurrence; material type; material weight or volume; characterization of material; the Contractor's reason for rejection of the Delivered material; photographs of the material, and the identification number or information of the vehicle that Delivered the material.

- E. **Not Applicable for Contaminated Loads.** The provisions of this Section 5.6 shall not apply to Loads with excess contamination, which shall be handled in accordance with Section 5.5.C.

- F. **Quarantined Waste.** If approved by the City Contract Manager, Contractor may Dispose of, rather than Process, specific types of Organic Materials that are subject to quarantine and that meet the requirements described in 14 CCR Section 18984.13(d), for a period of time specified by the City Contract Manager or until the City provides notice that the quarantine has been removed.

In accordance with Exhibit A, the Contractor shall maintain records and submit reports regarding compliance agreements for quarantined Organic Materials that are Disposed of pursuant to this subsection.

## 5.7 Organic Materials Processing

- A. **General.** Contractor is responsible for Processing all Organic Materials Delivered by the Station Operator. A general description of the Approved Processing Facility operation is provided in Exhibit F. All Processing activities will be conducted in accordance with Exhibits F and H, as well as the provisions of this Section 5.7.
- B. **Guaranteed Capacity.** Contractor shall secure sufficient capacity to Process all Acceptable Materials Delivered by the Station Operator up to the maximum tonnages specified in Exhibit D, Table D2 and Table D3. The temporary tonnage limitations specified in Exhibit D, Table D3 will be increased to the maximum tonnages specified in Table D2 when the Z-Best facility expansion is completed. Completion is estimated to take place in the second quarter of calendar year 2022. Beginning with the Effective Date, Contractor will provide City Contract Manager with monthly updates on the status of the Z-Best expansion project until such time as the temporary tonnage limitations, as provided in Table D3, have ended. Should Contractor anticipate that its ability to accept the full tonnage of Acceptable Materials, as specified in Table D2, will continue to be limited beyond June 1, 2022, the Parties shall meet and confer to discuss available options. If Contractor fails to provide sufficient capacity or assurance of capacity at any Approved Facility as necessary to fulfill its obligations, the City may assess Liquidated Damages in accordance with Section 10.9. Ongoing or repeated failure to provide sufficient capacity or assurance of capacity may at sole City discretion be an event of breach as provided in Section 10.1.
- C. **Organic Materials Processing Facility Operations.** Contractor shall provide Organic Materials Processing Services at the Approved Processing Facility in accordance with the Service standards described in Articles 5 and 6 and the following Service specifications:
- (1) Operating, managing, and maintaining the Approved Processing Facility including all buildings, scales, roads, utilities, equipment, and other Facility requirements.
  - (2) Providing, operating, and maintaining all equipment, rolling stock, and supplies necessary for operations and maintenance.
  - (3) Operating and maintaining the scale house and scale system and weighing Organic Materials Delivered to the Approved Processing Facility in accordance with Section 5.4.
  - (4) Directing on-site traffic to appropriate unloading areas in accordance with Section 5.3 and providing a safe working environment for Approved Processing Facility users, visitors, and employees.
  - (5) Accepting Delivery of all Organic Materials, subject to the limitations of Sections 5.5 and 5.6.
  - (6) Safely managing the Organic Materials Accepted at the Approved Processing Facility, including, but not limited to, meeting requirements of Section 6.3.(10) Marketing Recovered Materials and arranging for or providing Transportation of the Recovered Materials to end-users or Markets.
- D. **Organic Materials Composting Standards.** The following Processing standards shall be met by the Approved Processing Facility:

- 939 (1) Pre-processing activities shall include, at a minimum, the inspection for and removal of  
940 Hazardous Waste and removal of plastic bags.
- 941 (2) Composting shall be accomplished by the use of recognized Composting methods, which have  
942 been demonstrated to be able to consistently produce stable, mature Compost Product that  
943 is suitable for general purpose use, similar to the U.S. Composting Council's Class 1 rating.
- 944 (3) Post-composting processing activities shall include screening to remove plastics and other  
945 contaminants from the Compost Product.
- 946 (4) The Approved Processing Facility owner and/or operator shall cooperate with the City  
947 Contract Manager or their designee(s), should the City wish to collect data, perform field  
948 work, and/or evaluate and monitor Organic Materials Collection programs.
- 949 E. **Organic Materials Recovery: Disposal of Acceptable Materials Prohibited.** Except with the  
950 express written approval of the City Contract Manager, Contractor shall Process all un-Processed  
951 Organic Materials at a Facility that recovers Source-Separated Organic Materials and in a manner  
952 deemed not to constitute Landfill Disposal pursuant to 14 CCR Section 18983.1(a) which states  
953 that Landfill Disposal includes final deposition of Organic Waste at a Landfill or use of Organic  
954 Waste as Alternative Daily Cover (ADC) or Alternative Intermediate Cover (AIC). After Processing,  
955 materials that do not have a higher or better use may be Disposed of as Residue or used for  
956 Beneficial Reuse Purposes, to the extent allowed by State and local law.
- 957 F. **Residue Level and Disposal.** Contractor shall guarantee a Disposed Residue level that is no more  
958 than the Contamination level of the inbound Acceptable Materials plus 5%. The inbound  
959 Contamination level and City's allocation of the facility's Disposed Residue will be calculated using  
960 the methodology specified in Exhibit H.2, The Residue limit shall be calculated at the end each  
961 calendar year and compared to the amount of Facility's Residue Disposed and allocated to the  
962 City. Exceeding the Residue limit may result in City assessing Liquidated Damages per Exhibit  
963 B.1.7.
- 964 The annual Residue limit shall be calculated per the example provided below:  
965



Acceptable Material	City Tons Accepted During the Previous Calendar Year	Inbound Contamination	
		%*	Tons
Yard Trimmings - Processed	16,000	1%	160
MRF Fines	34,000	18%	6120
Food Soiled Paper	9,000	27%	2430

Total	8,710
5%	436
Residue Limit	9,146

*\*The inbound Contamination percentage for each calendar year will be determined by using the methodology outlined in Exhibit H.2. Contamination Monitoring Waste Evaluations. The tonnages and percentages above are for example only.*

## 5.8 Product Marketing

- A. **Marketing.** The Contractor shall be responsible for Marketing the Recovered Materials resulting from Processing of Organic Materials at the Approved Processing Facility. Contractor shall Market Compost Product to agricultural growers or other interested parties. Materials shall be used for Compost, Mulch, or soil amendment. Materials without a higher or better use may be Disposed of as Residue or used for Beneficial Reuse Purposes, to the extent allowed by State and local laws

Upon City Contract Manager request, Contractor shall provide a summary of its Marketing plan, recent average commodity values for each material, and end Markets for Organic Materials. Contractor shall provide the City Contract Manager with a list of broker/buyers it has used during the preceding twelve (12) months, if requested by City Contract Manager. If Contractor becomes aware that a broker or buyer has illegally handled or Disposed of material generated in the City or elsewhere, Contractor shall immediately inform the City Contract Manager and terminate its contract or working relationship with such party. Contractor shall maintain complete, accurate, and detailed Marketing records, including Tonnage of material Marketed, price, revenue received, purchaser, and end use in accordance with Section 8.1.

- B. **Compost Product Use by City.** Upon request from the City Contract Manager or their designee, Contractor shall provide up to one thousand three hundred (1,300) tons of Compost Product per calendar year to the City for use in City parks and facilities at no charge to the City. The City shall arrange for Transportation and delivery of the Compost Product to be managed by the Station

Operator (e.g., for example, via back-haul following delivery of Organic Materials to the Approved Processing Facility.)

- C. **Compost Product Give-Away.** Upon request from the City Contract Manager or their designee, Contractor shall provide loose (un-bagged) Compost Product for distribution to City residents. Contractor shall provide a certified organic Compost Product in a total tonnage equivalent to ten percent (10%) of the Source-Separated Yard Trimmings delivered under this Agreement in the previous calendar year, at no charge to the City or residents. The City shall arrange for Transportation and delivery of the Compost Product to be managed by the Station Operator (e.g., for example, via back-haul following delivery of Organic Materials to the Approved Processing Facility.)

## **5.9 Cooperation and Disputes with Station Operator**

Contractor shall cooperate and coordinate with Station Operator as necessary to fully comply with its obligations to provide Services under the terms of this Agreement. Should Contractor be in disagreement with the Station Operator, Contractor shall provide written notice of the dispute to the City Contract Manager and Station Operator. Contractor agrees to meet and confer with the Station Operator in good faith to resolve any such dispute. If at the end of thirty (30) Days following the initial notice to the City, Contractor and Station Operator have not resolved the dispute, Contractor shall notify the City Contract Manager and the City and Contractor shall follow the dispute resolution procedure in Article 11. The event of a dispute in no way absolves Contractor from continuing to perform Contractor's Service obligations under this Agreement.

# **ARTICLE 6 OTHER CONTRACTOR OBLIGATIONS**

## **6.1 Personnel**

- A. **General.** Contractor shall furnish such qualified personnel as may be necessary to provide the services required by this Agreement in a safe and efficient manner. Contractor shall designate at least one (1) qualified employee as City Contract Manager's primary point of contact with Contractor who is principally responsible for Approved Facility operations and resolution of service requests and complaints.

- B. **Driver Qualifications.** All drivers must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles. Contractor shall use the Class II California Department of Motor Vehicles employer "Pull Notice Program" to monitor its drivers for safety.

- C. **Safety Training.** Contractor shall provide suitable operational and safety training for all of its employees Contractor shall train its employees involved in Processing to identify, and not to Accept, and/or Process Unpermitted Waste. Upon the City Contract Manager's request, Contractor shall provide the City Contract Manager with a copy of its safety policy and safety training program, the name of its safety officer, and the frequency of its trainings.

- D. **Affiliates and Subcontractor Obligations.** Affiliates and Subcontractors shall be required to comply with the obligations stated in this Section 6.1.

## **6.2 Equipment and Supplies**

Contractor shall equip and operate the Approved Facilities in a manner to fulfill Contractor's obligations under this Agreement. Contractor is solely responsible for the adequacy, safety, and suitability of the Approved Facilities. Contractor shall modify, enhance, and/or improve the Approved Facilities as needed to fulfill Services under this Agreement. Contractor shall provide all rolling stock, stationary equipment, material storage containers, spare parts, maintenance supplies, Processing equipment, and other consumables as appropriate and necessary to operate the Approved Facilities and provide all Services required by this Agreement. Contractor shall place the equipment in the charge of competent operators. Contractor shall repair, maintain, and as necessary, replace all equipment at its own cost and expense.

## **6.3 Safety**

The Contractor shall conduct the operations of the Approved Facilities in a safe manner, in accordance with Applicable Law, Section 6.1.C, insurance requirements provided in Article 9, and Exhibit D.

## **6.4 Permits**

A. **Securing Permits.** Contractor shall obtain and maintain, at Contractor's sole cost, all Permits required under Applicable Law to perform Services. Contractor shall provide City copies of Permits for the Approved Facilities and shall demonstrate compliance with the terms and conditions of Permits within ten (10) Business Days of City Contract Manager request. In its Monthly Report or more frequently, as necessary, Contractor shall inform the City Contract Manager of Contractor's status in securing the issuance, revision, modification, extension, or renewal of Permits including those at its or an Affiliate's Approved Facility(ies). Within ten (10) Business Days following the City Contract Manager's request, Contractor shall provide the City Contract Manager with copies of any applications or other correspondence that the Contractor submits in connection with securing Permits.

B. **Complying with Permits.** Contractor shall comply with all Permits, including any mitigation measures related to the operation and maintenance of the Approved Facilities at no additional cost to the City. Contractor is solely responsible for paying any fines or penalties imposed for noncompliance with or violation of Permits or failure to obtain Permits.

## **6.5 Allocation Method; City-Specific Evaluations**

No later than three (3) months prior to the Commencement Date, Contractor shall provide the City Contract Manager a proposed method for allocating 1) Acceptable Materials by material type and 2) Residue to the City, in accordance with Exhibit H.2. The allocation method shall be the same as that used to report Solid Waste Disposal to the State or a similar method as reviewed and approved by the City Contract Manager. Reports including Tonnage allocations shall be certified by an authorized person or officer of each Approved Facility and submitted to the City Contract Manager in accordance with Section 8.5 and Exhibit A.

No less than annually, Contractor shall review its Marketing records to calculate the volume of Acceptable Materials received at the Approved Processing Facilities and Marketed to determine the City's percentage of various Acceptable Materials and the City's Residue level. The percentages determined from the review of Marketing records shall be used to allocate the total Tonnage of Acceptable Materials into various categories of Recovered Materials and Residue.

The Contractor shall cooperate in activities requested by the City Contract Manager to measure Diversion of Acceptable Materials including, but not limited to, providing a location for conducting composition analyses of the Acceptable Materials through sorting of materials at the Contractor's Facility.

In accordance with Exhibit H.2, the City Contract Manager may upon thirty (30) days' written notice require Contractor to conduct contamination monitoring waste evaluations at the Approved Processing Facility(ies). If the City Contract Manager directs Contractor to conduct SB 1383-compliant contamination monitoring waste evaluations, Contractor and Contract Manager shall meet and confer to determine waste evaluation methodologies and procedures as described in 14 CCR Sections 18984.5.c and 18998.1 of the April 2020 draft SB 1383 regulations, and unit price compensation pursuant to Article 7 and Exhibit H. Waste evaluation methodologies and procedures shall be approved by the City Contract Manager prior to implementation by Contractor. Alternatively, and in accordance with Exhibit H, the City may engage a third-party designee to conduct contamination monitoring waste evaluations at the Approved Processing Facility(ies).

## **6.6 Reporting**

Contractor shall submit reports in accordance with Section 8.5 and Exhibit A.

## **6.7 Right to Enter Facility and Observe Operations**

The City Contract Manager, or their designee(s) may enter, observe, and inspect Approved Facilities during Facility operations; conduct studies or surveys of the Approved Facilities; meet with the Approved Facilities' manager(s) or his or her representatives at any time, provided that the City and its representatives comply with Contractor's reasonable safety and security rules and do not interfere with the work of the Contractor or its Subcontractors. However, if the Contractor representative or Approved Facility manager is not at the Approved Facility when the City Contract Manager or their designee(s) visit without prior announcement, Contractor may limit the visit of the City Contract Manager or their designee(s) to a portion of the facility including, but not limited to, offices, container and vehicle storage areas, or maintenance yard. In that event, Contractor shall arrange for City Contract Manager or their designee(s) to return for a visit of the complete Facility within twenty-four (24) hours of the City's visit. Upon City direction, Contractor shall make personnel available to accompany City employees or representatives on inspections. Contractor shall ensure that its employees cooperate with the City and respond to the City's reasonable inquiries. Contractor shall facilitate similar observation and inspection at Approved Facilities owned by it or an Affiliate upon the City Contract Manager's request and within three (3) Business Days of receiving such request.

## **6.8 Use of Alternative Facilities; Changes to Approved Facilities**

### **A. Emergency Conditions and Use of Alternative Facility(ies).**

1. Type of Emergency Conditions. An emergency condition shall be a condition in which Contractor is unable to use an Approved Facility due to any unforeseen operational restrictions that have been imposed upon the Approved Facility by a regulatory agency or any unforeseen equipment or operational failure that will temporarily prevent the Approved Facility from Accepting, Transferring and/or Processing some or all Acceptable Materials Delivered by Station Operator, or Disposing of resulting Residue, under the terms of this Agreement.

2. Notification to City of Emergency Conditions and Use of Alternative Facility. In the event of an emergency condition, the Contractor, or Subcontractor, shall notify the City Contract Manager as soon as possible and no later than twenty-four (24) hours from the time of the incident. The notification shall include the following: (i) name of the affected Approved Facility; (ii) the Recycling and Disposal Reporting System Number of the Approved Facility; (iii) date the Approved Facility became unable to Accept, Transfer, and/or Process Organic Materials or Accept and/or Dispose of Residue; (iv) description of the operational restrictions that have been imposed upon the Approved Facility by a regulatory agency or unforeseen equipment failure or operational restriction that occurred, including a description of the reasons for such failures or restrictions; (v) the period of time the Contractor anticipates the temporary inability of the Approved Facility to Accept, Transfer, and/or Process Organic Materials or Accept and/or Dispose of Residue; and (vi) the alternative facility information specified below in subsection C, as applicable.

3. Contractor-Proposed Non-Approved Alternative Facility. In the event Contractor cannot use an Approved Facility as an alternative, as provided in Exhibit F, Contractor shall propose a plan to deliver Acceptable Materials to an alternative facility for Transfer, Processing, and/or Residue Disposal. Contractor may request a waiver from the City Contract Manager to deliver Organic Materials to the Approved Residue Disposal Facility, which the City Contract Manager may grant at its sole discretion.

Any proposed alternative facility shall meet the applicable facility standards in this Agreement and shall result in Acceptable Materials being sent to: (i) an allowable facility, operation, or use specified in California Code of Regulations, Title 14 Section 18983.1(b) and not subsequently sent to landfill Disposal; (ii) a Transfer facility for Transfer and delivery to an allowable facility operation, or for use for an activity specified in California Code of Regulations, Title 14 Section 18983.1(b); or, (iii) a Disposal facility. If Contractor is interested in using a facility for Organic Waste technology that is not specified in California Code of Regulations, Title 14 Section 18983.1(b) or not currently approved by CalRecycle, Contractor shall be responsible for securing the approvals necessary from CalRecycle prior to the City Contract Manager's final approval of such facility or activity, and shall do so in accordance with the procedures specified in California Code of Regulations, Title 14 Section 18983.2.

Contractor's notice to City Contract Manager provided under subsection 2 above shall include the following information for the alternative facility: (i) name of the alternative Facility; (ii) the Recycling and Disposal Reporting System Number of the alternative facility; (iii) name of the facility and CalRecycle issued facility number, owner and operator and Affiliate, if any, to the Contractor; (iv) the reason(s) for its selection; (v) the permitting status of and LEA inspection records related to the facility; (vi) services to be provided by the facility (e.g., Transfer, Processing, Disposal); (vii) distance from the Station; and, (viii) other such information as may be requested by the City Contract Manager.

4. City Approval of Alternative Facility or Waiver for Disposal of Materials. Upon receipt and review of the notification by Contractor pursuant to subsections 2 and 3 above regarding an Approved Facility's emergency condition, the City Contract Manager shall approve Contractor's use of an alternative facility, or, in the case of Organic Materials, direct the Contractor to Transport the Organic Materials to the Approved Residue Disposal Facility for Disposal on a temporary basis for a time period specified by the City Contract Manager, and

1155 will so notify the Contractor. Pursuant to California Code of Regulations, Title 14 Section  
1156 18984.13, if Organic Materials are Disposed, the approved Disposal period shall not exceed  
1157 ninety (90) days from the date the Approved Facility's Processing restriction or failure  
1158 commenced. In such case, the Contractor must receive written permission from the City  
1159 Contract Manager prior to Disposing of any Acceptable Material.

1160 5. Contractor Use of Alternative Facility. Contractor may use an alternative facility provided that  
1161 the Contractor provides verbal and written notice to the City Contract Manager and receives  
1162 written approval from the City Contract Manager at least twenty-four (24) hours prior to the  
1163 use of an alternative facility to the extent reasonably practical given the nature of the  
1164 emergency or sudden closure.

1165 6. Record Keeping and Reporting. Contractor shall maintain a record of all Approved Facilities'  
1166 emergency conditions and report this information to the City Contract Manager in accordance  
1167 with Exhibit A.

1168 B. City's Right to Designate Alternative Facility. If any Approved Facility specified in this  
1169 Agreement becomes unavailable for use by Contractor for Acceptable Materials Collected in  
1170 the City for a period of more than two (2) days, the City Contract Manager may designate  
1171 Contractor's use of an alternative facility as provided in Section 2.2 of this Agreement. The  
1172 Parties agree that an Approved Facility shall only be deemed to be "unavailable" if one or  
1173 more of the following has occurred: (i) an Uncontrollable Circumstance has occurred; (ii) an  
1174 Approved Facility has lost one or more permits to operate; and/or, (iii) an Approved Facility  
1175 has exhibited a pattern of violation through the receipt of repeated notices of violation from  
1176 one or more regulatory agencies. Unavailability of an Approved Facility due to Contractor's  
1177 negligence, illegal activity, neglect, or willful misconduct, is an event of breach. An Approved  
1178 Facility shall only be deemed to be "unavailable" if the lack of availability is not due to  
1179 Contractor's negligence, illegal activity, neglect, or willful misconduct.

1180 At the City Contract Manager's request, Contractor shall within five (5) Business Days notify  
1181 the City Contract Manager of any logistical changes that would be required to utilize such  
1182 alternative facility(ies). The City Contract Manager will designate the approved alternative  
1183 facility(ies) and adjust Contractor compensation for any change in cost as provided in Section  
1184 2.2. Such decision shall be final.

1185 C. Contractor-Initiated Request to Change an Approved Facility. Contractor may request City  
1186 Contract Manager approval to add or delete an Approved Facility from the list of Approved  
1187 Facilities identified in Exhibit F, by submitting a written request at least six (6) months prior  
1188 to the desired date to commence use of a new facility addressing the information required  
1189 for an alternative facility in subsection A.3 above excluding item (vii). The City Contract  
1190 Manager may grant such approval at their sole discretion, and may be conditioned on factors  
1191 including, but not limited to the performance of the current Approved Facility versus the  
1192 proposed facility, the permitting status of and LEA inspection records related to the proposed  
1193 facility, the distance of the proposed facility from the Station, review of Contractor's proposed  
1194 changes to Contractor's Revenue, any added costs incurred by the Station Operator in  
1195 Transporting Acceptable Materials, and any additional factors that may affect the value of the  
1196 Services received by the City. City may, at its sole discretion approve an increase or decrease  
1197 in Contractor's Revenue.

- D. Subcontract Arrangements. If Contractor is not the owner or operator of an alternative facility approved pursuant to this Section 6.8, Contractor shall, in accordance with Section 2.4, enter into a Subcontract with the alternative facility owner/operator and comply with all other provisions of Section 2.4.

## ARTICLE 7 CONTRACTOR REVENUE AND COMPENSATION

### 7.1 Overview

Contractor Revenue constitutes the sole and entire compensation due to Contractor pursuant to this Agreement. Contractor Revenue addresses all Contractor costs for performance of all Services required by this Agreement. Except as provided in Section 2.2, the provisions of Article 7 fully address Contractor Revenue, as set initially and as adjusted over time. Contractor acknowledges that its actual costs for Acceptance, Processing, Diversion, and Residue Disposal, and revenues from the sale of Recovered Materials may be different than anticipated in Contractor's Proposal. Contractor shall not be compensated for the difference in actual costs and/or actual revenues.

If Contractor's actual costs are less than anticipated and/or revenues are greater than anticipated, Contractor shall retain the difference. Contractor shall perform the responsibilities and duties described in this Agreement in consideration of the right to retain the revenues obtained from sale of Recovered Materials. City shall have no obligation to reimburse Contractor for any losses that Contractor may incur due to fluctuations in Market prices.

### 7.2 Per-Ton Processing Charges

- A. **General.** Except as otherwise specified in this Article 7 and in Section 2.2, Per-Ton Rates are the only source of Contractor Revenue Each Per-Ton Rate has two components:

(1) The Contractor component; and

(2) The governmental component; the sum of which shall equal the total Per-Ton Rate.

The "Contractor component" of the rates reflects Contractor's compensation for the service provided under this Agreement, and the "government component" consists of governmental and regulatory fees assessed on a per-ton basis for Acceptable Materials and Residue handled at the Approved Facility(ies).

- B. **Rates for Rate Period One.** Per-Ton Rates for Rate Period One (January 2022 – June 30, 2023) are Specified in Exhibit J, Initial Rates, which is the final cost proposal submitted by Contractor and accepted by City.

### 7.3 Per-Ton Rate Adjustments

Per-Ton Rates for Rate Periods Two through Fifteen shall be adjusted annually by CPI commencing July 1, 2023, in accordance with this Section 7.3. Rate Period One is 18 months (January - June). Rate Periods Two through Fourteen are 12 months (July – June) and Rate Period Fifteen is 6 months (July – December).

A. **Definitions.** The following terms apply to Section 7.3:

1. **“Annual Percentage Change”** means the Average Index Value of an index for the 12-month period ending June of the then-current Rate Period minus the Average Index Value for the 12-month period ending February of the most-recently completed Rate Period, divided by the Average Index Value for the 12-month period ending February of the most-recently completed Rate Period. The Annual Percentage Change shall be rounded to the nearest thousandth (1,000th).

2. **“Average Index Value”** means the sum of the monthly index values during the 12-month period ending in February (March-February) 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). For example, if the Contractor is preparing its Rate application for Rates to be effective for Rate Period 2 (July 2023 – June 2024), the Annual Percentage Change in CPI shall be calculated as follows: [(Average CPI for March 2022 through February 2023) – (Average CPI for March 2021 through February 2022)] / (Average CPI for March 2021 through February 2022)].

B. **Contractor Component.** The Contractor component of the each Per-Ton Rate shall be adjusted on:

1. The basis of one hundred percent (100%) of the Annual Percentage Change in the Consumer Price Index, All Urban Consumers (All Items), for the San Francisco-Oakland-Hayward Metropolitan Area as published by the U.S. Department of Labor, Bureau of Labor Statistics ("CPI Index"), Series ID: CUURA422SA0, or

2. Five percent (5%), whichever is less. If the CPI Index defined above is discontinued, it shall be replaced by the CPI Index that most closely approximates the original category as determined by the U.S. Bureau of Labor Statistics.

C. **Governmental Component.** The governmental component of each Per-Ton Rate shall be adjusted upward or downward to reflect the actual changes in governmental fees and/or other elements of the governmental component. The five percent (5%) cap as provided in subsection B does not apply to the governmental component. The governmental component for Rate Period One was calculated by multiplying the government fees charged at the Approved Residue Disposal Facility (Monterey Peninsula Landfill) by the assumed level of Contamination level of each Acceptable Material. The government fees assessed at the Residue Disposal Site will be adjusted each July 1 to reflect actual changes in the fees. Contractor shall provide documentation demonstrating to the City's satisfaction any change in the governmental fees. The assumed Contamination level for each Acceptable Material will remain the same throughout the term of the contract.

The initial governmental fees charged on residue disposal at the Monterey Peninsula Landfill are:



1268	Solid Waste Planning Fee	\$0.78 per Ton
1269	AB 939 Fee	\$4.10 per Ton
1270	Board of Equalization Fee	\$1.08 per Ton
1271		
1272	Total	\$5.96

The assumed Contamination level, and corresponding initial governmental fees, for each Acceptable Material are as follows:

Acceptable Material	Contamination %	Governmental Fees
Yard Trimmings	1%	\$0.06
MRF Fines	20%	\$1.19
Food-Soiled Paper	0-10%	\$0.60
Food-Soiled Paper	11% - 20%	\$1.19
Food-Soiled Paper	21% - 30%	\$1.79
Food Scraps	10%	\$0.60

D. **Total Adjusted Per-Ton Rates.** The Total Adjusted Per-Ton Rate shall be calculated as the sum of the adjusted Contractor component, as provided in subsection (B) above, and the adjusted governmental component, as provided in subsection (C) above.

E. **Per-Ton Rate Application.** Through the Term of the Agreement, and no less than ninety (90) days prior to the commencement of the next Rate Period, (e.g. by April 1 for the July 1 rate adjustment), Contractor shall submit an application to the City Contract Manager requesting the adjustment of Per-Ton Rates for the coming Rate Year via mail and an electronic copy in Microsoft Excel format with all supporting schedules, formulas, and calculations. For example, Contractor shall submit its application for adjustment of Per-Ton Rates for Rate Period Two (commencing July 1, 2023) no later than March 31, 2023. The application shall include a single table showing all Per-Ton Rates then-currently in effect and the proposed Per-Ton Rates for the subsequent Rate Period.

The City Contract Manager shall evaluate Contractor's application for mathematical accuracy and consistency with the requirements of the Agreement. The City Contract Manager may require changes to the application prior to approval on the basis of the application's mathematical inaccuracy or failure to comply with the procedures defined in this Article 7. Following City review, City Contract Manager's will provide Contractor written notice of approval of the Per-Ton Rates for the subsequent Rate Period.

## 7.4 Remittances to Contractor

Each month, within five (5) Business Days after the last day of the preceding month, Contractor shall provide the City Contract Manager and the Station Operator an invoice detailing the total Tons of each Acceptable Material Delivered to the Approved Facility(ies) by the Station Operator, the resulting Contractor Revenue for each Acceptable Material based on the applicable and then-current Per-Ton Rates, and the resulting total monthly Contractor Revenue owed to Contractor. In addition to the monthly invoice, Contractor shall provide a listing, in Microsoft Excel format, of each load delivered, and shall include date, time, material ID, vehicle ID, transaction number, gross/tare/net weights, Contractor Revenues (Contractor Component) and Governmental fees

(Governmental Component). Within fifteen (15) Business Days after receipt of Contractor invoice, the City shall remit to Contractor payment for the total invoiced monthly Contractor Revenue. Contractor shall cooperate with the City Contract Manager as needed to calculate and/or reconcile remittance amounts. If City disputes a portion of an invoice, it shall pay the undisputed portion within fifteen (15) Business Days after receipt of Contractor invoice and notify contractor in writing of the reasons for nonpayment of the disputed portion. City may request additional information from Contractor regarding an invoice and report within fifteen (15) Business Days from receipt. Such request shall be in writing and shall describe the information requested with reasonable specificity. Contractor shall furnish the requested information to the City Contract Manager within thirty (30) days from the date of the request. Disputes arising under this section will be handled as described in Article 11.

## **7.5 Extraordinary Rate Adjustments**

In the event of a City-initiated change in scope under Section 2.2 or a Change in Law, and either party believes that the change will increase or decrease the costs of providing service, the party that believes a Per-Ton Rate(s) should be adjusted will within 30 calendar days submit to the other party a proposed adjustment and the Parties will thereafter meet and discuss the matter. Contractor will promptly provide the City Contract Manager all relevant schedules, supporting documentation and other financial information requested by City to evaluate the necessity for an adjustment and the amount thereof.

Pursuant to a recommendation from the City Contract Manager within 90 days of the submission of the proposed adjustment, City will determine the amount of the adjustment, if any, and will thereafter adjust the applicable Per-Ton Rate(s) accordingly. Any adjustments are effective beginning with the next calendar month following City notice of adjustment to Contractor.

If Contractor is dissatisfied with the recommendation of the City Contract Manager it may appeal that decision to Director of Environmental Services. If an appeal is to be taken, Contractor will promptly submit a full written statement of the following:

- A. Each item with which it disagrees;
- B. The reasons for its disagreement, including supporting financial and operational data; and,
- C. The amount which it believes the applicable Per-Ton Rate(s) should be adjusted.

The final adjustment will become effective beginning with the next calendar month following City notice of adjustment to Contractor.

# **ARTICLE 8 RECORD KEEPING AND REPORTING**

## **8.1 General Record Keeping Provisions**

Contractor shall maintain, in its principal office, such accounting, statistical, and other records required to conduct its operations, to support requests it may make to City, to respond to requests from the City

Contract Manager, and as shall be necessary to develop the reports required by this Agreement. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as a fire, theft, and earthquake. Electronically-maintained data/records shall be protected and a second copy of data/records shall be saved to a protected source, such as a combination of off-site and cloud-based backup with the ability to restore complete functionality within twenty-four (24) hours.

Contractor and/or its Affiliates shall account for revenues received and expenses incurred as a result of this Agreement separately from the accounting for other operations performed by Contractor or its Affiliates.

## **8.2 Review and Inspection**

Contractor agrees to provide or make available to City Contract Manager and their designees for review during normal business hours, relevant records for all companies engaged in providing Services under this Agreement. During the Term of this Agreement, the City Contract Manager, the City's auditors, and other agents, shall have the right, during normal business hours, to conduct unannounced on-site inspections of the records and accounting systems of Contractor and to make copies of any documents it deems relevant to this Agreement. In the event the custodian of such records and systems is not on the premises at the time of inspection, Contractor shall not be in breach of this Agreement. The City Contract Manager shall then give notice to Contractor requesting access to the records, and Contractor shall make arrangements to allow for inspection within twenty-four (24) hours of such notice. Contractor acknowledges that City is required to maintain an SB 1383 implementation record, as required under 14 CCR Section 18995.2. Contractor shall allow the City Contract Manager digital access to or provide digital copies of requested implementation records within ten (10) days of City Contract Manager request. The City's right to inspect of records under this paragraph shall continue for five (5) years after the expiration or early termination of this Agreement. However, upon expiration or early termination of this Agreement, Contractor shall within one (1) week notify the City Contract Manager that records are immediately available for inspection.

## **8.3 Retention of Records**

Except as provided in Section 8.6, Contractor shall retain all records and data required by this Agreement for five (5) years after the expiration or early termination of this Agreement.

## **8.4 Other Information Requirements**

Contractor agrees to conduct data collection and other reporting activities as needed to comply with federal, State, Santa Clara County, and local laws and regulations, and the requirements of this Agreement. To the extent such requirements are set out in this and other Articles of this Agreement, they shall not be considered limiting or necessarily complete.

## **8.5 Reporting**

A. **Monthly Summary Reporting.** Within fifteen (15) Days after the end of each calendar month in form and content satisfactory to the City Contract Manager, Contractor shall submit a monthly report to the City Contract Manager and the Station Operator pursuant to Exhibit A-2. If Contractor does not submit a complete report in a timely fashion or incorporate comments, additions, and corrections requested by the City Contract Manager within fifteen (15) Days of receipt of those comments, additions, and corrections, the City Contract Manager may assess

Liquidated Damages for each Day it is late in accordance with Section 10.9.

- B. **Compliance Reporting.** On a monthly basis and in accordance with Article 8, Exhibit A, and Exhibit H, Contractor shall provide all necessary reporting data requested by the City Contract Manager relating to the City's compliance requirements pertaining to AB 939, AB 341, AB 1826, SB 1383, AB 1694 as it affects the City's reporting to CalRecycle, or as needed to for ensure compliance with other regulatory agency requirements. Reports shall be presented on a calendar year and/or rate year basis, at the City Contract Manager's request, and in a format approved by the City Contract Manager.

## **8.6 CERCLA Reporting**

City views its ability to defend itself against Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and related litigation as a matter of great importance. For this reason, City regards its ability to prove where Solid Waste is taken for Transfer or Disposal a material requirement of the Agreement. Contractor shall maintain records which can establish where Residue was Disposed. This provision shall survive the expiration or earlier termination of this Agreement. Contractor shall maintain these records for a minimum of ten (10) years beyond expiration or earlier termination of the Agreement.

Contractor shall provide these records to City Contract Manager (upon request or at the end of the record retention period) in an organized and indexed manner rather than destroying or Disposing of them.

# **ARTICLE 9 INDEMNIFICATION AND INSURANCE**

## **9.1 General Indemnification**

Contractor shall indemnify, defend with counsel acceptable to City (provided that such acceptance shall not be unreasonably withheld), and hold harmless City, the Partners, and their officers, directors, employees, volunteers, and agents (collectively, "Indemnitees") from and against any and all claims, liability, loss, injuries, damages, expense, penalties, and costs (including, without limitation, City staff costs, costs and fees of litigation, including attorneys' and expert witness fees incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of every nature arising out of or in connection with Contractor's performance (including Contractor's officers, employees, agents and/or Subcontractors' performance) under this Agreement, or its failure to comply with any of its obligations contained in the Agreement, except to the extent such loss or damage was caused by the sole, active negligence or willful misconduct of Indemnitees. Contractor's duty to indemnify and defend shall survive the expiration or earlier termination of this Agreement.

## **9.2 Hazardous Substance Indemnification**

To the extent allowed by Applicable Law, Contractor shall indemnify, defend with counsel acceptable to City (provided that such acceptance shall not be unreasonably withheld), and hold harmless the City, its Partners, and their officers, directors, employees, volunteers, and agents (collectively, "Indemnitees") from and against any and all claims, damages (including but not limited to special, consequential, natural resources, and punitive damages), injuries, costs (including but not limited to all response, remediation, and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including attorneys' and expert witness

fees incurred in connection with defending against any of the foregoing or in enforcing this indemnity (collectively, "damages")) of any nature whatsoever paid, incurred, suffered by, or asserted against Indemnitees, arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure, or other plan concerning any Hazardous Substances or Hazardous Waste released, spilled, or disposed of by Contractor pursuant to this Agreement. Notwithstanding the foregoing, however, Contractor is not required to indemnify the Indemnitees against claims arising from Contractor's delivery of Residue to a Disposal Site owned or operated by a third party, unless such claims are a direct result of Contractor's negligence or willful misconduct. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9607(e), California Health and Safety Code Section 25364, and the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. to defend, protect, hold harmless, and indemnify Indemnitees from liability, and shall survive the expiration or earlier termination of this Agreement.

### **9.3 Unpermitted Waste Defense and Indemnification**

Contractor shall defend, indemnify, and hold harmless at its sole cost and expense with counsel approved by the City, the City (including the Persons described in the definition of "City" in Article 1) and the Partners in any Actions that assert or allege Liabilities paid, incurred or suffered by, imposed upon or asserted against, the City that result or are claimed to have resulted directly or indirectly from the presence, disposal, escape, migration, leakage, spillage, discharge, release or emission of Unpermitted Waste or petroleum in, on, at, or under the Approved Facilities, whether:

- A. in one or more instance,
- B. threatened or transpired,
- C. Contractor is negligent or otherwise culpable, or
- D. those Liabilities are litigated, settled, or reduced to judgment.

The foregoing indemnity in favor of the City and/or the Partners shall not apply to the extent that the Station Operator failed to have, or to use protocols to screen for Unpermitted Waste during collection.

For purposes of this Indemnity, "Liabilities" includes, in addition to those included in Exhibit A, Liabilities arising from or attributable to any operations, repair, clean-up or detoxification, or preparation and implementation of any removal, remedial, response, closure, post-closure or other plan, regardless of whether undertaken due to government directive or action, such as remediation of surface or ground water contamination and replacement or restoration of natural resources.

The foregoing indemnity is intended to operate as an agreement pursuant to 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364, to insure, protect, hold harmless and indemnify the City from liability in accordance with this Section.

### **9.4 Insurance**

Contractor shall, at its sole cost and expense, maintain in effect at all times during the Term of this Agreement not less than the following coverage and limits of insurance:

- 1455 A. **Minimum Scope of Insurance.** Coverage shall be at least as broad as:
- 1456 (1) The most recent editions of Insurance Services Office form number GL 0002 covering  
1457 Commercial or Comprehensive General Liability and Insurance Services Office form number  
1458 GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office  
1459 Commercial General Liability coverage ("occurrence" form CG 0001).
- 1460 (2) The most recent editions of Insurance Services Office form number CA 0001 covering  
1461 Automobile Liability, code 1 "any auto" and endorsement CA 0025.
- 1462 (3) Workers' compensation Employers Liability insurance as required by California Labor Code  
1463 §3700 et al.
- 1464 B. **Minimum Limits of Insurance.** Contractor shall maintain limits no less than:
- 1465 (1) Commercial or Comprehensive General Liability: Ten Million Dollars (\$10,000,000) combined  
1466 single limit per occurrence for bodily injury, Personal injury and property damage.
- 1467 (2) Automobile Liability: Ten Million Dollars (\$10,000,000) combined single limit per accident for  
1468 bodily injury and property damage.
- 1469 (3) Workers' Compensation and Employers Liability: Workers' compensation limits as required  
1470 by the Labor Code of the State of California and Employers Liability limits of One Million  
1471 dollars (\$1,000,000) per accident/occurrence.
- 1472 C. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be  
1473 declared to and approved by City. At the option of and to the satisfaction of City in its sole  
1474 discretion, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions  
1475 as respects City, the Partners, and their officers, directors, employees, volunteers, and agents  
1476 (collectively, "Indemnitees"); or Contractor shall procure a bond or other acceptable security  
1477 device guaranteeing payment of losses and related investigations, claim administration and  
1478 defense expenses for the deductibles or self-insured retentions.
- 1479 D. **Other Insurance Provisions.** The policies are to contain, or be endorsed to contain, the following  
1480 provisions:
- 1481 (1) **General Liability and Automobile Liability Coverage.**
- 1482 a. The City, the Partners, and their officers, directors, employees and volunteers are to be  
1483 covered as additional insureds as respects: liability arising out of activities performed by or  
1484 on behalf of Contractor; products and completed operations of Contractor; Premises owned,  
1485 leased or used by Contractor; or automobiles owned, leased, hired or borrowed by  
1486 contractor. The coverage shall contain no special limitations on the scope of protection  
1487 afforded to the City, its officials, directors, employees, or volunteers.
- 1488 b. Contractor's insurance coverage shall be primary insurance with regards to the circumstances  
1489 articulated in the preceding paragraph as respects City, the Partners, and their officers,  
1490 directors, employees, and volunteers. Any insurance or self-insurance maintained by City, its  
1491 officials, employees, or volunteers shall be excess of Contractor's insurance and shall not

- 1492 contribute with it.
- 1493 c. Any failure to comply with reporting provisions of the policies shall not affect coverage  
1494 provided to City, the Partners, and their officers, directors, employees, or volunteers.
- 1495 d. Coverage shall state that Contractor's insurance shall apply separately to each insured against  
1496 whom claim is made or suit is brought, except with respect to the limits of the insurer's  
1497 liability.
- 1498 e. Contractor's insurers shall agree to waive all rights of subrogation against City, the Partners,  
1499 and their officers, directors, employees, and volunteers for losses arising from work  
1500 performed by Contractor under this Agreement.
- 1501 (2) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all  
1502 rights of subrogation against City, the Partners, and their officers, directors, employees, and  
1503 volunteers for losses arising from work performed by Contractor under this Agreement.
- 1504 E. **Acceptability of Insurers.** The insurance policies required by this Section shall be issued by an  
1505 insurance company or companies admitted to do business in the State of California and with a  
1506 rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a  
1507 rating classification of A or better, unless the City's Risk Manager agrees in writing to alternative  
1508 ratings.
- 1509 To the extent permitted by law, all or any part of the required insurance may be provided under  
1510 a plan of self-insurance, only if, in the sole discretion of City, Contractor can provide adequate  
1511 assurances that the self-insured coverage provides commercially equivalent protection to City,  
1512 the Partners, and their officers, directors, employees, volunteers, and agents.
- 1513 F. **Verification of Coverage.** Contractor shall furnish the City's Risk Manager and Contract Manager  
1514 with certificates of insurance and with original endorsements affecting coverage required by this  
1515 clause. The certificates and endorsements for each insurance policy are to be signed by a Person  
1516 authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are  
1517 to be on forms provided by or acceptable to the City's Risk Manager and are to be received and  
1518 approved by the City's Risk Manager before work commences. City reserves the right to require  
1519 complete, certified copies of all required insurance policies for good cause, at any time, but shall  
1520 respect the confidentiality of such documents to the extent such confidentiality may be provided  
1521 for under California law.
- 1522 G. **Subcontractors.** Contractor shall include all Subcontractors as insureds under its policies or shall  
1523 furnish separate certificates and endorsements for each Subcontractor. All coverages for  
1524 Subcontractors shall be subject to all of the requirements stated herein.
- 1525 H. **Required Endorsements.** Both the Workers' Compensation policy and Comprehensive General  
1526 Liability policy shall contain the following endorsements in substantially the following form:
- 1527 (1) "Thirty (30) days prior written notice shall be given to City's Risk Manager and the City  
1528 Contract Manager in the event of cancellation or non-renewal of this policy. Unless notified  
1529 of a different address, such notice shall be sent to:

1530 City Contract Manager  
1531 City of Sunnyvale  
1532 456 W. Olive Avenue  
1533 Sunnyvale, CA 94086"

1534 (2) "Inclusion of City as an insured shall not affect City's rights as respects any claim, demand,  
1535 suit or judgment brought or recovered against Contractor. This policy shall protect Contractor  
1536 and City in the same manner as though a separate policy had been issued to each, but this  
1537 shall not operate to increase Contractor's liability as set forth in the policy beyond the amount  
1538 shown or to which Contractor would have been liable if only one party had been named as an  
1539 insured. Unless notified of a different address, notices of cancellation shall be sent to:

1540 City Contract Manager  
1541 City of Sunnyvale  
1542 456 W. Olive Avenue  
1543 Sunnyvale, CA 94086"

1544 I. **Delivery of Proof of Coverage.** Thirty (30) Days prior to the Commencement Date, Contractor  
1545 shall furnish City certificates of each policy of insurance required hereunder, in form and  
1546 substance satisfactory to City. Such certificates shall show the type and amount of coverage,  
1547 effective dates, and dates of expiration of policies and shall have all required endorsements. If  
1548 City requests, copies of each policy, together with all endorsements, shall also be promptly  
1549 delivered to City. Renewal certificates will be furnished to City's Risk Manager and the City  
1550 Contract Manager when issued to demonstrate maintenance of the required coverages  
1551 throughout the term.

1552 J. **Other Insurance Requirements.**

1553 (1) Contractor shall comply with all requirements of the insurers issuing policies. The carrying of  
1554 insurance shall not relieve Contractor from any obligation under this Agreement. If any claim  
1555 exceeding the amount of any deductibles or self-insured reserves is made by any third Person  
1556 against Contractor on account of any occurrence related to this Agreement, Contractor shall  
1557 promptly report the facts in writing to the insurance carrier and to the City's Risk Manager.

1558 (2) If Contractor fails to procure and maintain any insurance required by this Agreement, City  
1559 may take out and maintain, at Contractor's expense, such insurance as it may deem proper  
1560 and deduct the cost thereof from any monies due Contractor.

## 1561 **9.5 Performance Bond**

1562 A. Within seven (7) calendar days of the City's notification to Contractor that the City has executed  
1563 this Agreement, Contractor shall file with the City a bond, payable to the City, securing the  
1564 Contractor's performance of its obligations under this Agreement and such bond shall be renewed  
1565 annually if necessary so that the performance bond is maintained at all times during the Term.  
1566 The Parties shall agree on the initial date of the bond, based on whether Contractor services begin  
1567 on January 1, 2022, or if any Contractor activities necessary to provision of service under this  
1568 Agreement begin on an earlier date. The principal sum of the provision bond shall be \$1,000,000  
1569 and shall be annually adjusted by the CPI as provided in Section 7.3. The bond shall be executed  
1570 as surety by a corporation authorized to issue surety bonds in the State of California that has a



rating of A or better in the most recent edition of Best's Key Rating Guide, and that has a record of service and financial condition satisfactory to the City. The bond shall be in the form attached as Exhibit M.

- B. In lieu of a performance bond, City and Contractor may agree that Contractor will provide for the issuance of an irrevocable stand by letter of credit (the "Letter of Credit") by a bank approved by City in its sole discretion (the "Bank") for the benefit of City, subject to annual adjustment as provided in Section 7.3. Under the Letter of Credit, City may draw, in one or more drawings, an aggregate amount up to \$2 million (the "Stated Amount") upon the occurrence of (1) an Event of Default defined in Section 10.5, (2) Contractor's failure to timely pay any moneys due City, or (3) Contractor's inability to regularly pay its bills as they become due. The expiration date of the Letter of Credit must be no less than the then-current Term of this Agreement as provided in Article 4 (the "Stated Expiration Date"), unless it provides that it will not be terminated, modified or not renewed except after prior written notice by certified mail, return receipt requested, to City 60 days in advance or termination or failure to renew. The Letter of Credit may expire on the date on which the Bank receives a certificate from City saying that the Term has expired, or this Agreement has been terminated and Contractor owes City no money under this. Agreement or that Contractor has substituted an alternative letter of credit or other security document acceptable to City in City's sole discretion. The form of the Letter of Credit, including the procedures for and place of demand for payment and drawing certificate attached thereto, is subject to approval of City in its sole discretion, following the notice procedures defined in Section 12.5. The Letter of Credit must be transferable to any successor or assignee of City.

## ARTICLE 10 BREACH, DEFAULT, REMEDIES, AND TERMINATION

### 10.1 Events of Breach

All provisions of this Agreement are considered material and a Party's failure to perform any provision shall constitute an Event of Breach. In addition, each of the following shall also constitute an Event of Breach:

- A. **Failure to Maintain Coverage.** Contractor fails to provide or maintain in full force and affect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement.
- B. **Violations of Applicable Law.** Contractor violates Applicable Law relative to this Agreement, including any orders or filings of any regulatory body having authority over Contractor relative to this Agreement, provided that Contractor may contest any such orders or filings by in good faith, in which case no breach or default of this Agreement shall be deemed to have occurred upon final resolution of the contest or appeal in favor of Contractor.
- C. **Failure to Pay or Report.** Contractor fails to make any payments to City required under this Agreement, and/or refuses to provide City with required information, reports, and/or records in a timely manner as provided for in this Agreement.
- D. **Seizure or Attachment.** There is a seizure or attachment of, or levy on, some or all of Contractor's operating equipment, including, without limitation, its maintenance or office facilities, or any part thereof.

- E. **Criminal Activity of Employee.** If a Contractor's employee (other than officers or managers) is found guilty of Criminal Activity related to performance of this Agreement or any other Agreement held with the City. Contractor shall immediately notify the City upon the occurrence of any convictions or pleas.
- F. **Breach or Default of Other City Agreement.** If the Contractor or its Affiliate has entered into an agreement with the City for services outside the scope of this Agreement and is in breach or default of that Agreement.
- G. **Failure to Provide Capacity Assurance.** Failure to provide Approved Facility capacity assurance as required in Section 5.7.B.

## **10.2 Contractor Rights to Remedy Breach**

City shall promptly or as soon as practicable provide Contractor written notice of an Event of Breach. Upon written notice, Contractor shall have ten (10) Days to cure the breach. However, if Contractor demonstrates that (a) the breach is curable; and (b) ten (10) Days is insufficient to cure the breach, then Contractor shall receive thirty (30) Days in order to cure the breach or another extension of time agreed to by City provided such agreement shall not be unreasonably withheld.

## **10.3 Acts Necessary to Perform Service**

Failure to specifically require an act necessary to perform any of the services required under this Agreement does not relieve Contractor of its obligation to perform such act, or the service(s) dependent on such act.

## **10.4 Event of Default**

Each of the following shall constitute an Event of Default, upon which City shall promptly or as soon as practicable provide Contractor written notice of the default:

- A. **Failure to Cure Breach.** If Contractor fails to cure an Event of Breach as provided above in Section 10.2.
- B. **Repeated Pattern of Breach.** A pattern of breaches of this Agreement over time such that the combination of breaches constitutes a material failure by Contractor to perform its obligations, even if each individual breach is later cured.
- C. **Fraud or Deceit.** Contractor practices, or attempts to practice, any fraud or deceit upon City.
- D. **False or Misleading Statements.** Any representation or disclosure made to City by Contractor in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement. In addition, any Contractor-provided report containing a misstatement, misrepresentation, data manipulation, or a deliberate omission of fact or content explicitly defined by the Agreement, excepting typographical and grammatical errors.
- E. **Failure to Perform.** Except as provided under Section 10.10, Contractor fails to provide

Processing, Diversion, or any other Services as required under this Agreement for a minimum of either two (2) consecutive Business Days or three (3) non-consecutive Business Days within one (1) week. City may give notice of Contractor's failure to perform verbally by telephone to Contractor at its principal office and shall be effective immediately. Written confirmation of such verbal notification shall be sent to Contractor within twenty-four (24) hours of the verbal notification.

F. **Criminal Activity.** Contractor, its officers, or managers are found guilty of Criminal Activity related to performance of this Agreement or any other Agreement held with the City. Contractor shall immediately notify the City Contract Manager upon the occurrence of any convictions or pleas.

G. **Assignment without Approval.** Contractor transfers or assigns this Agreement without express written approval of the City Contract Manager, unless the assignment is permitted without City approval pursuant to Section 12.6.

H. **Insolvency or Bankruptcy.** Contractor becomes insolvent, unable, or unwilling to pay its debts, a receiver is appointed or Contractor's assets are involuntarily assigned, or upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding.

## **10.5 Event of Default Not Curable**

Contractor shall have no right to cure an Event of Default but may submit any relevant documentation for the City to consider in determining the appropriate remedy pursuant to Section 10.6.

## **10.6 City's Remedies in the Event of Default**

Upon a determination by City that an Event of Default has occurred, City has the following remedies:

A. **Waiver of Default.** City may waive any Event of Default if City determines that such waiver would be in the best interest of the City. City's waiver of an Event of Default is not a waiver of future events of default that may have the same or similar conditions.

B. **Right to Terminate.** The City Council may terminate this Agreement. The City Council shall conduct a hearing upon ten (10) Days written notice to the Contractor to determine if termination is in the best interests of the public health, safety, and welfare of the citizens of the City. In the event the City Council decides to terminate this Agreement, termination shall be effective thirty (30) Days, or such other period determined by the City Council, after City has given written notice to Contractor.

C. **Right to Suspend.** The City Council may suspend this Agreement, in whole or in part, if Contractor fails to cure within the time frame specified in Section 10.2, until Contractor can provide assurance of performance in accordance with Section 10.11. However, Contractor shall have at a minimum, a right to compensation for the services it continues to perform during any suspension. For the purposes of this Section, "suspend" means to temporarily freeze, set aside, and make inoperative one or more provisions of this Agreement.

D. **Other Available Remedies.** City's election of one or more remedies described herein shall not limit City from any and all other remedies at law and in equity, such as a right to immediately contract with another service provider.

## **10.7 Specific Performance**

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

## **10.8 City's Remedies Cumulative**

City's rights to suspend or terminate this Agreement, to obtain specific performance, and to perform under this Article are not exclusive, and City's exercise of one such right shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies that City may have, including a legal action for damages or imposition of Liquidated Damages under Exhibit B.

## **10.9 Liquidated Damages**

The Parties agree that, as of the time of execution of this Agreement, it is impractical and extremely difficult to reasonably ascertain the extent of damages that City will suffer as a result of a breach by Contractor of its obligations under this Agreement. The Parties acknowledge that consistent and reliable Acceptance, Processing, and Diversion services are of utmost importance to City. The Parties further recognize that some quantifiable standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. Therefore, without prejudice to City's right to treat such non-performance as an Event of Default, and in addition to any other remedies provided for in this Agreement, City may assess Liquidated Damages for Contractor's failure to meet specific performance standards, and Contractor agrees to pay the Liquidated Damages amounts specified in Exhibit B.

Liquidated Damages are paid as damages, and not as a penalty. The Parties agree that the amounts set forth in Exhibit B represent a reasonable estimate of the amount of the damages that City will suffer for the specified breaches, considering all of the circumstances existing on the date of this Agreement.

A. Prior to assessing Liquidated Damages, the City Contract Manager shall give Contractor written notice of City intention to do so. The notice shall include a brief description of the incident(s)/non-performance giving rise to the damages.

B. The City Contract Manager shall assess Liquidated Damages and provide Contractor with a written explanation of its determination for each incident(s)/non-performance. The City Contract Manager may assess Liquidated Damages for each day or incident of non-performance with the Agreement. The decision of the City Contract Manager shall be final.

C. Contractor shall pay any Liquidated Damages assessed by the City Contract Manager within thirty (30) Days after they are assessed. If they are not paid within the thirty (30) Day period, the City Contract Manager shall treat such failure as an Event of Default subject to the remedies in this Article.

## **10.10 Excuse from Performance**

In the event that a Party is prevented from performing all or some of its obligations under this Agreement by an Uncontrollable Circumstance, it shall not constitute an Event of Breach or Default of this Agreement, so long as the Party in good faith has used its best efforts to perform its respective obligations. The Party

claiming excuse from performance shall, within five (5) Days after such Party has notice of the effect of such cause, give the other Party notice of the facts constituting such cause and asserting its claim to excuse under this Section. Specifically, such information shall include the following:

- A. The Uncontrollable Circumstance and the cause thereof (to the extent known);
- B. The date the Uncontrollable Circumstance began, its estimated duration, and the estimated time during which the Party's performance of its obligations hereunder will be delayed;
- C. Potential mitigating actions that might be taken by either Party and any areas where costs might be reduced and the approximate amount of such cost reductions.

In the event that either Party validly exercises its rights under this Section, the Parties hereby waive any claim against each other for any damages sustained thereby.

Labor unrest, including, but not limited to, strike, work stoppages or slowdown, sick-out, picketing, or other concerted job action conducted by Contractor's employees, directed at Contractor, or a contractor or supplier of Contractor, is not an Uncontrollable Circumstance and will not excuse performance, and Contractor will be obligated to continue to perform in accordance with this Agreement.

#### **10.11 Right to Demand Assurances of Performance**

If City believes in good faith that Contractor's ability to perform under this Agreement has been placed in substantial jeopardy, City may require that Contractor provide reasonable assurances that none of the events listed below will prevent Contractor from timely and proper performance of its obligations under this Agreement. Such events include, but are not limited to:

- A. Contractor or an Affiliate is the subject of any labor unrest including work stoppages or slowdown, sick-out, picketing, or other concerted job action affecting this Agreement;
- B. Contractor or an Affiliate appears, in City's reasonable judgment, unable to regularly pay its bills as they become due; or,
- C. Contractor or an Affiliate is the subject of a civil or criminal judgment or order entered by a federal, State, Santa Clara County, regional, or local agency for violation of a law that may affect performance under this Agreement, including but not limited to environmental laws, or laws related to fraud and malfeasance of public contracts.

If Contractor fails or refuses to provide the City Contract Manager with adequate information to establish its ability to perform within thirty (30) Days, such failure or refusal shall be an Event of Default for purposes of Section 10.4.

#### **10.12 Waiver of Defenses**

In order to insure the non-interruption of a vital public service, except as provided in Section 10.10, Contractor acknowledges that it is solely responsible for providing the services described herein, and hereby irrevocably waives the following defenses to the payment and performance of its obligations under this Agreement: any defense based upon failure of consideration, contract of adhesion, impossibility or impracticability of performance, commercial frustration of purpose, or the existence, non-

existence, occurrence or non-occurrence of any foreseen or unforeseen fact, event, or contingency that may be a basic assumption of the Contractor with regard to any provision of this Agreement.

### **10.13 Guaranty of Contractor's Performance**

The Guarantor has agreed to guaranty Contractor's performance of this Agreement including Contractor's Indemnification obligations hereunder pursuant to a Guaranty Agreement in substantially the form attached as Exhibit C. The Guaranty Agreement is being provided concurrently with Contractor's execution of this Agreement.

Subsequent to the Effective Date, there shall not have occurred any material change, financial or otherwise, that would adversely affect the ability of the Guarantor to perform its obligations under the Financial Guaranty Agreement or the ability of Contractor to perform Contractor's obligations hereunder or its obligations under any other agreement, contract or instrument entered into or to be entered into by the Contractor in connection with operation of the Approved Facilities, Contractor's obligations, the Services hereunder, and the transactions contemplated hereby.

## **ARTICLE 11 RESOLUTION OF DISPUTES**

### **11.1 Informal Resolution**

Should a dispute arise with respect to the performance and obligations of the Parties hereunder, at any time during the Term of this Agreement, the provisions of this Article shall apply. Either Party shall give the other written notice of such dispute. Such notice shall specify a date and location for the Parties to meet and confer in good faith to resolve any dispute that may arise in a cooperative and mutually satisfactory manner. The Parties shall attempt to resolve their disputes informally to the maximum extent possible.

### **11.2 Mediation**

In the event the Parties cannot resolve such dispute within thirty (30) Days of such notice, either Party may propose the appointment of a mediator for advice and non-binding mediation, and the other Party shall attend such mediation. If the dispute is not resolved through mediation, within sixty (60) Days thereafter, then either Party may refer the matter to a Court of competent jurisdiction.

### **11.3 Pendency of Dispute**

During the pendency of any dispute under this Article, all applicable time periods directly related to the dispute shall be tolled until its resolution; provided, however, that no tolling shall apply to any matters other than those directly related to the dispute and such tolling shall not entitle a Party to breach, default, or fail to perform its obligations under this Agreement. In addition, the pendency of any dispute shall not stay or affect City's remedies under this Agreement, including but not limited to its rights to terminate, suspend, or take possession of Contractor's property.

## ARTICLE 12 OTHER AGREEMENTS OF PARTIES

### 12.1 Relationship of Parties

The Parties intend that Contractor shall perform the services required by this Agreement as an independent contractor engaged by City and nothing in this Agreement shall be deemed to constitute either Party an employee, partner, joint venturer, officer, agent, or legal representative of the other Party or to create any fiduciary relationship between the Parties. Neither Contractor nor its officers, employees, Subcontractors, Affiliates, or agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits that accrue to City employees by virtue of Contractor's Agreement with City.

### 12.2 Compliance with Law

In providing the services required under this Agreement, Contractor shall at all times comply with all Applicable Law now in force and as may be enacted, issued, or amended during the Term.

### 12.3 Non-Discrimination

A. During the performance of this Agreement, Contractor and its Subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, religious creed, marital status, denial of family and medical care leave, ancestry, national origin, medical condition (cancer/genetic characteristics), age (40 and above), disability (mental and physical) including HIV and AIDS, denial of pregnancy disability leave or reasonable accommodation. Contractor and Subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and Subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, §12900 et seq.) and the applicable regulations promulgated thereunder (Cal. Code Regs, tit. 2, §7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, §12990 (a)–(f), are incorporated into this Agreement by reference and made a part hereof as if set forth in full (Cal. Code Regs, tit. 2, §7285.0 et seq.). Contractor shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under contract.

### 12.4 Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding its conflict of law principles.

### 12.5 Jurisdiction

Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Santa Clara County in the State of California, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be performed in Santa Clara County. Nothing in this Agreement shall be construed to limit the rights of either Party to seek judicial review of or remedies for any alleged breach of this Agreement by either Party.



## **12.6 Notice to Parties**

All notices required or provided for in this Agreement shall be provided to the Parties at the following addresses, by personal delivery or deposit in the U.S. Mail, postage prepaid, registered or certified mail, addressed as specified below. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices shall be deemed received five (5) Days after deposit. A Party may change the address to which notice is given by giving notice as provided herein.

### To City:

City of Sunnyvale  
Attn: City Manager  
456 West Olive Avenue  
Sunnyvale, California 94086

with a copy to:

City Attorney  
City of Sunnyvale  
456 West Olive Avenue  
Sunnyvale, California 94086

### To Contractor:

Greg Ryan, Chief Executive Officer  
Zanker Rd. Resource Management LTD.  
675 Los Esteros Rd.  
San Jose, CA 95134

## **12.7 Assignment and Transfer of Agreement**

Neither Party shall assign its rights or delegate, subcontract, or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of the other Party. Any such assignment made without the consent of the other Party shall be void and the attempted assignment shall constitute a material breach of this Agreement.

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



- 1872 B. Contractor acknowledges that this Agreement involves rendering a vital service to the City's  
1873 residents and businesses, and that City has selected Contractor to perform the services specified  
1874 herein based on (1) Contractor's experience, skill and reputation for conducting its materials  
1875 management operations in a safe, effective and responsible fashion, at all times in keeping with  
1876 Applicable Laws, regulations and good materials management practices, and (2) Contractor's  
1877 financial resources to maintain the required equipment and to support its indemnity obligations  
1878 to City under this Agreement. City has relied on each of these factors, among others, in choosing  
1879 Contractor to perform the services to be rendered by Contractor under this Agreement.
- 1880 C. If Contractor requests City's consideration of and written consent to an assignment, City may deny  
1881 or approve such request in its complete discretion.
- 1882 D. No request by Contractor for consent to an assignment need be considered by City unless and  
1883 until Contractor has met the following requirements. However, City may, in its sole discretion,  
1884 waive one or more of these requirements:
- 1885 (1) Contractor shall undertake to pay City its reasonable expenses for consultants' fees,  
1886 attorneys' fees, and investigation costs necessary to investigate the suitability of any  
1887 proposed assignee, and to review and finalize any documentation required as a condition for  
1888 approving any such assignment;
- 1889 (2) Contractor shall furnish City with audited financial statements of the proposed assignee's  
1890 operations for the immediately preceding three (3) operating years;
- 1891 (3) Contractor shall furnish City with satisfactory proof that: (1) the proposed assignee has at  
1892 least ten (10) years of Acceptable Materials Processing, and Diversion experience on a scale  
1893 equal to or exceeding the scale of operations conducted by Contractor under this Agreement;  
1894 (2) in the last five (5) years, the proposed assignee has not suffered any citations or other  
1895 censure from any federal, State or local agency having jurisdiction over its Processing, and  
1896 materials management operations due to, in City's sole and reasonable discretion, any  
1897 material or significant failure to comply with State, federal or local materials management  
1898 laws and that the assignee has provided City with a complete list such citations and censures;
- 1899 (4) The proposed assignee has at all times conducted its operations in an environmentally safe  
1900 and conscientious fashion; (4) the proposed assignee conducts materials management  
1901 practices in full compliance with all federal, State and local laws regulating the Processing,  
1902 and Diversion of all Acceptable Materials; and (5) any other information required by City to  
1903 ensure the proposed assignee can fulfill the Terms of this Agreement in a timely, safe, and  
1904 effective manner.
- 1905 E. Contractor shall provide City with any and all additional records or documentation which, in City's  
1906 sole determination, would facilitate the review of the proposed assignment. City shall not  
1907 unreasonably withhold its consent to any such assignment.
- 1908 F. On the date City approves Contractor's written request for an assignment, Contractor shall pay  
1909 City a transfer fee in the amount of \$20,000. City's approval of such an assignment shall be  
1910 conditioned on the receipt of the transfer fee.

1911 **12.8 Compliance Audit**

1912 The City may, at any time during the Term or within three (3) years following the expiration or early  
1913 termination of this Agreement, perform an audit of Contractor's compliance with the Agreement and  
1914 performance standards, Tonnage records, Residue level, and payment of monies due to the City.

1915 Contractor shall fully cooperate with the City in any such audit. Contractor shall, in addition to  
1916 compensating the City for lost payments and applicable delinquency penalties, reimburse the City's cost  
1917 if the audit demonstrates an error rate of equal to or greater than three percent (3%). The City shall pay  
1918 the cost of an audit that demonstrates an error rate of less than three (3%).

1919 **12.9 Binding on Successors**

1920 The provisions of this Agreement shall inure to the benefit of and be binding on the successors and  
1921 permitted assigns of the Parties.

1922 **12.10 Non-Waiver**

1923 Failure of either Party to exercise any of the remedies set forth herein within the time periods provided  
1924 for shall not constitute a waiver of any rights of that Party with regard to that failure to perform or  
1925 subsequent failures to perform, whether determined to be a breach, excused performance, or unexcused  
1926 defaults, by the other Party.

1927 **ARTICLE 13**  
1928 **MISCELLANEOUS PROVISIONS**

1929 **13.1 Entire Agreement**

1930 This Agreement, including the Exhibits and any attachments or appendices, represents the full and entire  
1931 Agreement between the Parties with respect to the matters covered herein.

1932 **13.2 Amendment**

1933 Neither this Agreement nor any provision hereof may be changed, modified, amended, or waived except  
1934 by written agreement duly executed by both Parties.

1935 **13.3 Section Headings**

1936 The article and section headings in this Agreement are for convenience of reference only and are not  
1937 intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

1938 **13.4 References to Laws**

1939 All references in this Agreement to laws shall be understood to include such laws as they may be  
1940 subsequently amended or re-codified, unless otherwise specifically provided.

1941 **13.5 Interpretation**

1942 This Agreement shall be interpreted and construed reasonably and neither for nor against either Party,

1943 regardless of the degree to which either Party participated in its drafting.

1944 **13.6 Severability**

1945 If any clause, provision, subsection, section, or article of this Agreement is for any reason deemed to be  
1946 invalid and unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such  
1947 portion shall not affect any of the remaining parts of this Agreement, which shall be enforced as if such  
1948 invalid or unenforceable portion had not been contained herein.

1949 **13.7 Further Assurance**

1950 Each Party agrees to execute and deliver any instruments and to perform any acts as may be necessary or  
1951 reasonably requested by the other in order to give full effect to this Agreement.

1952 **13.8 Electronic Signature and Counterparts**

1953 This Agreement may be signed electronically and executed in counterparts each of which shall be  
1954 considered an original.

1955 **13.9 Exhibits**

1956 Each of the Exhibits identified as Exhibits A through J is attached hereto and incorporated herein and made  
1957 a part hereof by this reference.

1958 **13.10 Actions of City in its Governmental Capacity**

1959 Except as provided above in Section 3.1.J, nothing herein shall be interpreted as limiting the right of  
1960 Contractor to bring any legal action against City, not based on this Agreement, arising out of any act or  
1961 omission of City in its governmental or regulatory capacity.

1962 IN WITNESS WHEREOF, the parties have executed this Agreement.  
1963

1964 ATTEST: CITY OF SUNNYVALE ("CITY")  
1965

1966  
1967 By \_\_\_\_\_ By \_\_\_\_\_  
1968 City Clerk City Manager  
1969

1970  
1971 ZANKER ROAD RESOURCE  
1972 MANAGEMENT, LTD.  
1973 ("CONTRACTOR")  
1974  
1975

1976  
1977 APPROVED AS TO FORM: By \_\_\_\_\_  
1978

1979 Greg Ryan, CEO  
1980

1981  
1982  
1983 \_\_\_\_\_  
1984 City Attorney



## **1. GENERAL**

In accordance with Sections 6.6 and Article 8, Contractor shall prepare and submit monthly and annual reports to the City Contract Manager, as provided below. Contractor may propose report formats that are responsive to the objectives and audiences for each report. City Contract Manager may require adjustments in the number, format, or frequency of reports to be provided by Contractor. Contractor shall e-mail all reports to the City Contract Manager (or another format as approved by the City Contract Manager). At City Contract Manager's request, Contractor shall use standardized reporting forms provided by City and/or an electronic reporting system specified by the City. Each report shall include a certification statement by the responsible Contractor official that, under penalty of perjury, the report being submitted is true and correct to the best knowledge of the responsible official after their reasonable inquiry.

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

- Verify tonnage and Contractor Revenue.
- Provide information to the City to assist in ensuring compliance with diversion-related mandates including, but not limited to regarding, AB 939, SB 1016, AB 314, AB 1826, and SB 1383, and to meet applicable reporting requirements.
- Assess compliance with this Agreement.

All reports shall be electronically submitted to:

Deepti Jain  
Environmental Engineering Coordinator  
Environmental Services Dept.  
City of Sunnyvale  
DJain@sunnyvale.ca.gov  
(408) 730-7791

## **2. MONTHLY REPORTS**

In accordance with Section 6.6 and Article 8, Contractor shall submit monthly reports to the City Contract Manager within fifteen (15) Days after the end of the applicable reporting month. The monthly report shall provide the following information. In addition, each monthly report shall show the monthly data for the past twelve (12) months and the total for the twelve (12) months prior to that.

- Total tonnage and corresponding total number of loads of each type of Acceptable Material Delivered by City to the Approved Facility(ies). Tonnage of each type of Acceptable Material Processed at each Approved Processing Facility

- Tonnage of each Acceptable Material marketed, by Approved Processing Facility, as applicable.
- Total tonnage and relative percentage of each type of Delivered Acceptable Material that was Diverted
- Tonnage of Residue Disposed at the Approved Residue Disposal Facility
- Summary detail for every load Delivered by the City to an Approved Facility, with including vehicle number, date and time of Delivery, Tonnage

The City may direct Contractor to provide additional information City deems necessary to corroborate tonnage reports, or to assist with regulatory reporting as provided in Section 8.5B.

### **3. ANNUAL REPORT CONTENT**

In accordance with Article 8, beginning in 2023, Contractor shall submit an annual report to the City Contract Manager no later than July 15th for the Rate Year ending the previous June 30<sup>th</sup>.

The annual report shall include the monthly report information specified in Subsection 2, with quarterly subtotals and annual totals. The annual report and shall also include:

- A. In accordance with Section 5.6.F Quarantined Waste, a record of all compliance agreements for quarantined Organic Materials that are Disposed of, including the name of producer or Customer, date issued, location of final disposition, and the amount of quarantined Organic Materials that was required to be Disposed.
- B. Information regarding all arrangements made by Contractor related to use of alternative facilities in order to comply with the provisions of Section 6.8A., B., and D. including:
  - 1. The number of days a temporary equipment waiver or operation failure waiver was in effect;
  - 2. Copies of any notifications sent to the City, and copies of City notices to Contractor;
  - 3. Documentation setting forth the date of issuance of each waiver and the effective time period for the waiver; and,
  - 4. A record of the tons of Organic Materials redirected to an alternative facility or Disposed at the Approved Residue Disposal Facility as a result of the waiver, as recorded using alternative facility and/or Approved Residue Disposal Facility scales, with vehicle number, load number, date, and weight.
- C. The statement regarding Compostable Plastics required by Exhibit H, Section B.1.

- D. The statement regarding plastic bags required by Exhibit H, Section B.1.
- E. Copies of all Contractor reports submitted to the State in compliance with the provisions of Exhibit H, including but not limited to those identified in Sections 2.A, 2.C and 3.D

**4. ANNUAL STATE REPORTING**

City is required to submit annual reports to CalRecycle in accordance with CalRecycle's Electronic Annual Report (EAR) reflecting requirements of AB 341, AB 939, AB 1826, SB 1016, SB 1383, and other Applicable Law. City may request Contractor assistance in preparing such reports, in which event City and Contractor shall define the format and the information to be provided.





Contractor may be assessed Liquidated Damages in the event Contractor fails to fulfill its obligations with regards to the events listed in this Exhibit in accordance with the terms and conditions of the Agreement. Refer to Section 10.9 of the Agreement for procedures for assessing Liquidated Damages.

<b>Performance Area No. 1: Operations</b>	
1.	<u>Unauthorized Hours.</u> For each occurrence of Contractor's failure to operate the Approved Facilities during receiving hours specified in Section 5.2.A: \$250 per hour (assessed in 15-minute increments)
2.	<u>Excessive Vehicle Turnaround Time.</u> For each minute in excess of the Maximum Vehicle Turnaround Time as provided in Section 5.3B: \$10 per Load, where the number of Loads shall be equal to the number of Loads received during the week in which the Maximum Vehicle Turnaround Time was exceeded and where the Maximum Vehicle Turnaround Time shall be determined for a given week in which a week shall include the five (5) most recently completed days of Facility operations
3.	<u>Unauthorized Disposal.</u> For each individual occurrence of Disposal rather than Processing and Marketing of Acceptable Materials: \$500 per Ton
4.	<u>Delivery to Non-Approved Facility.</u> Each individual occurrence of delivering materials to a facility other than the Approved Facility designated for each material type, or an alternative facility approved by City for Contractor use as provided in Section 6.8. \$100 per Ton.
5.	<u>Excessive Residue.</u> Failure to meet the Residue percentage level requirements Section 5.7.F: Calculated at the end of each calendar year, \$10,000 for each 1% over the residue limit up to the first 5% over the residue limit. \$15,000 for each 1% over 5% of the residue limit. Example: Contractor exceeds residue limit by 7%. Liquidated Damage is (5 x \$10,000 plus 2 x \$15,000) \$80,000.

<b>Performance Area No. 2: Reporting and Other Requirements</b>	
1.	<u>Late Reporting.</u> For each Day after a due date as specified in this Agreement, that any <del>monthly</del> report or other report other than an annual report is submitted: \$100.00
2.	<u>Late Annual Reporting.</u> For each Day after the due date specified in Exhibit A that any annual report is submitted: \$500.00

3.	<u>Incomplete or Inaccurate Information.</u> For each occurrence of Contractor providing misleading or otherwise inaccurate information or reporting to City under, or in regard to this Agreement. (Typographical, cell reference, mathematical, and/or logic errors shall not be considered legitimate excuses from this requirement, nor shall ignorance.): \$500.00 per event
4.	<u>Fraudulent Records.</u> Upon clear and convincing evidence, keeping and/or providing fraudulent records with regard to Acceptable Materials and Residue Tonnage reporting: \$20,000 per incident
5.	<u>Failure to Maintain, or to Provide Access to Records.</u> Each occurrence of City Contract Manager requesting information required to be maintained by Contractor for which Contractor fails to maintain and/or provide such information as required in this Agreement: \$500/Event
6.	<u>Other Failures.</u> For each failure to perform any obligation of the Agreement not specifically stated in this Exhibit B herein: \$100.00 per incident

By placing designee's initials at the places provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party has had ample opportunity to consult with legal counsel and obtain an explanation of Liquidated Damage provisions of the time that the Agreement was made.

Contractor

City

Initial Here: \_\_\_\_\_

Initial Here: \_\_\_\_\_





### Processing Site Information

Z-Best Composting Facility (Z-Best) is located at 980 State Highway 25 in Gilroy, California. It is owned by Zanker Road Resource Management, Ltd. (Zanker). Z-Best was developed in 1997 to meet the growing demand for organics recycling in the Bay Area.

Z-Best Composting Facility	
Owner & Operator	Zanker Road Resource Management, Ltd.
SWFP No.	43-AA-0015
Capacity	Up to 1,500 tpd
Hours of Operation	6:00 a.m. to 6:00 p.m. Monday – Friday 6:00 a.m. to 10:00 p.m. (Within Processing Building) 24/7 (Material Receiving)
Operations Manager Contact Information	John Doyle   408.846.1577, 408-722-1999 john@zankerrecycling.com

Z-Best processes yard trimmings, green material, wood waste, pre-consumer and post-consumer food material, agricultural material, and compostable material. Z-Best encompasses 157 acres, is permitted to operate on 105 acres. Z-Best is designed to accept an average of 1,500 tons per day (tpd) of feedstock materials, with a maximum peak tonnage of 2,500 tpd. Post expansion in 2022, Z-Best will be permitted for an average of 2,750 tpd and peak tonnage of 3,500 tpd for up to 20 days per year max.

Z-Best accepts any combination of the following materials from both commercial and residential sectors:

- ✓ **Additives and amendments** (used for composting) – up to 500 tpd.
- ✓ **Mixed solid waste, compostable material, & post-consumer food material** (either received in an enclosed processing building or placed directly into in-vessel composting system) – up to 700 tons per day, and increasing to 1575 tons per day in 2022.
- ✓ **Green material, yard trimmings, wood waste, pre-consumer food material, & agricultural materials** processed in either the elongated windrow system, the in-vessel composting system, or shipped off-site as mulch product – up to 1,300 tpd.

Z-Best is comprised of an operations building, offices, and composting, processing, and storage areas. Equipment utilized includes: conveyors, sorting platforms, bag breaker, debris roll screens, magnetic head pulley, grinders, scale, multiple front-end loaders, windrow turners, aeration blowers, water trucks, excavators, multiple trommel screens glass removal system, and haul trucks. All equipment and machinery critical to daily operations is properly maintained with timely repairs as needed. Z-Best utilizes skilled outside technicians as well as in-house mechanics, maintenance and welding crews, all trained properly in their field to support ongoing uninterrupted processing of material received. Z-Best Safety and Environmental compliance component is well established and a critical part of everyday operations, complete with regular scheduled training sessions and daily inspections of all equipment to support a pro-active approach to supporting our personnel, equipment, and machinery.

Z-Best has five (5) distinct operations:

- ✓ **Green Material Windrow Composting** | source-separated green materials undergo traditional aerobic composting outdoors to produce organic compost for sale.
- ✓ **Processing and Transfer Operations** | a 20,000 square foot MSW processing building contains mechanical conveying and sorting equipment, bunkers for collection of recyclables and residuals, a shredder, and stockpile areas for incoming and outgoing feedstock.
- ✓ **Blending** | an area used to create custom blends of compost by mixing in various additives.

- ✓ **Mulch Processing** | oversized material from compost screening is transformed into marketable products, and may undergo grinding, screening and/or drying to achieve the desired product.

Recyclable materials recovered from Z-Best operations include scrap metal, glass, and aluminum, and are marketed through local sources.

#### Yard Trimmings

Z-Best current capacity allows for continued processing and composting of the 16,000 tons per year of source separated residential yard trimmings as described in Table 1. Yard Trimmings will be composted along with other green waste material using open windrow composting methods with no change to this component of the operation. This type of composting consists of open trapezoid shaped windrows, 20' wide x 600' long that are watered and turned regularly for 10-14 weeks meeting all CalRecycle regulatory pathogen reduction and turning requirements. Daily temperature logs are kept along with moisture content monitoring. This feedstock will be composted and processed to produce OMRI Listed Organic compost.

After the composting period, the windrows are harvested and screened using a trommel screen. The fines are finished organic compost, the overs are marketed as organic mulch after further grinding and processing.

#### Other Materials

SMART Station MRF fines, compostable food soiled paper, and source separated food scraps will be composted with other MSW using the proposed Engineered Compost System Aerated Static Pile system. The ECS ASP system is a state-of-the-art composting system with sophisticated technology to control odors and emissions and produce a high-quality compost.

This ECS system involves a primary and secondary phase. For the primary phase, the feedstock material is loaded directly into a 30'x100' bunker with negative aeration through a built-in mechanical aeration system within the concrete floor. The material is monitored for proper temperature and moisture content by a computer. The material is loaded into the bunker and capped with finished compost or composted overs, to form the covered aerated static pile. This first phase lasts 18 days. The material is then removed from the bunker and brought to a screening area where it is screened to remove the bulk of any trash content. The remaining material is then loaded into the secondary phase elongated aerated static piles for further composting and curing. This second and final phase involves positive aeration through a built-in mechanical aeration system within the concrete floor. This secondary composting phase lasts 18 days. Following both phases, the composted material is brought to the final screening plant and is screened and pulverized to create a finished landscape compost product that meets or exceeds STA requirements and CalRecycle requirements for contaminant thresholds.

For each of the four streams of organic waste outlined in Table 1, material type and tonnage will be labeled and tracked within our scale house computer software system which is capable of producing reports for easy reference containing material type, date received, material source, material inbound weight as well as the hauling company and truck/driver identification. Z-Best will provide monthly reports detailing all SMaRT tonnages by each individual material stream.

#### Disposal of Residual Material

For each material listed in Table 1, it is expected that it will contain residual including but not limited to film plastic, hard plastics, rubber, textiles, rock, concrete, glass, coated paper, and other non-organic substances. All Residual Material will be landfilled.

Residue will be taken to Monterey Peninsula Landfill in Marina CA or as needed to the Billy Wright Landfill in Los Banos CA. It will be tracked and reported using the scale system and the allocation system described above.

#### Compliance with Regulatory Requirements

Z-Best will maintain compliance with applicable regulations in effect during the term of the Agreement in accordance with the terms set forth in Section 8.5, Article 8, Exhibit A, and Exhibit H of the Agreement.

#### Marketing of Products

Z-Best has been very successful in developing markets for a range of products. Z-Best Organic Compost provides a high-quality product for organic agricultural customers and we have a growing list of repeat customers. Our Organic compost is nearly sold out every year. This type of compost is made from our yard waste stream of feedstock and is OMRI listed and reviewed for guarantee compliance by the Department of Food and Agriculture.

From this same waste stream, Organic mulch is also produced from the overs coming from the screening process. This material is marketed to materials yards and is also sold out regularly.

Z-Best Landscape Compost is made from the most contaminated feedstock we receive, mixed solid waste (MSW). Z-Best has invested in new processing and screening methods and successfully and consistently produces a high-quality compost that is STA approved and used by landscapers on Caltrans projects and other commercial and residential landscaping projects.

The Z-Best operation has a dedicated marketing and sales professional who has done an exceptional job in developing new markets, expanding the customer base, and driving sales of finished products to meet new heights each year. We are well prepared for increased feedstock to come resulting in additional finished products to sell.

#### Invoice

Z-Best will provide monthly invoices during the term of the Agreement in accordance with the terms set forth in Section 7.4 of the Agreement.

#### Reporting Requirements

Z-Best will provide monthly/ semi-annual and annual status reports in effect during the term of the Agreement in accordance with the terms set forth in Section 8.5 and Exhibit A of the Agreement. Current systems and personnel are in place and operational to meet reporting requirements providing a smooth transition in accommodating the additional material.



**Table D1 Material Specifications**

Acceptable Material	Contamination Limit	Maximum Size *
Yard Trimmings Processed	1%	5 Inch
Yard Trimmings Unprocessed	1%	N/A
MRF Fines	20%	2 Inch
Food Soiled Paper	30%	5 Inch
Food Scraps	10%	5 Inch

\* Nominal Size, assumes 98% Passing

**Table D2 Tonnage Limitations (after facility expansion)**

Acceptable Material	Daily Tonnage Maximum	Monthly Tonnage Maximum	Annual Tonnage Maximum
Yard Trimmings (Process + Unprocessed)	125	2,083	25,000
All Other Acceptable Materials (MRF Fines + Food Soiled Paper + Food Scraps)	300	6,000	70,000

**Table D3 Temporary Tonnage Limitations (before facility expansion)\***

Acceptable Material	Daily Tonnage Maximum	Monthly Tonnage Maximum	Annual Tonnage Maximum
Yard Trimmings (Processed + Unprocessed)	125	2,083	25,000
All Other Acceptable Materials (MRF Fines + Food Soiled Paper + Food Scraps)	75	1,000	12,000

\* This limit shall apply beginning January 1, 2022 until the Z-Best Expansion is completed, expected to be in 2nd Quarter of 2022, then limits revert to Table D2 above.

**Table D4 Peak Hour Delivery Restriction (total tons of all materials combined)**

Time Period	Maximum Tons
4 AM - 8 PM Monday - Friday	180
8 PM - 4 AM Monday - Friday	No Limit*
Saturday and Sunday	No Limit*

\* Daily limits from Table D1 apply for the entire period of 12:00 AM - 11:59 PM





December 1<sup>st</sup>, 2020  
City of Sunnyvale, California  
ATTN: Lisa Vo, Purchasing Manager

**RE: Proposal to the City of Sunnyvale for Organics Material Processing**

To Whom It May Concern,

On behalf of the Z-Best Composting Facility (Z-Best), we are pleased to submit our response to the City of Sunnyvale Request for Organic Material Processing.

Since 1997, Z-Best has provided organics processing services for numerous jurisdictions within the Bay Area, including the SMaRT Station. Z-Best is owned and operated by Zanker Road Resource Management, Ltd. (Zanker), which is a California Limited Partnership that began in 1985. Zanker owns and operates four nationally recognized full-service resource recovery management and composting/recycling facilities in San Jose, Sacramento, and Gilroy. In total, Zanker owns and operates one existing landfill, two construction and demolition debris material recovery operations, one anaerobic digestion facility, and one yard waste/MSW/food waste composting facility. Z-Best is designed to assist jurisdictions with meeting the State of California's AB 1826 and SB 1383 regulations and other local and State laws. As the demand for organics processing continues to grow, Z-Best is able to accommodate this increasing demand through continually increasing efficiencies and expanding operations. Z-Best is composed of organics processing professionals who have dedicated their careers to offering and improving organics diversion services.

Z-Best has conducted all due diligence necessary to confirm material facts upon which this proposal is based, and has thoroughly reviewed and understands the requirements, terms, and conditions contained in RFP F21-024.

We are excited about this opportunity to continue and grow our partnership with the City of Sunnyvale. We are confident you will find this statement of qualifications meets all the criteria you expect from your next organics processor.

Sincerely,

A handwritten signature in black ink that reads "Greg Ryan". The signature is fluid and cursive, with the first and last names clearly legible.

Greg Ryan  
Chief Executive Officer | Zanker Road Resource Management, LTD.  
675 Los Esteros Road  
San Jose, CA 95134  
office | 408.938.8755  
fax | 408.287.4088  
email | [greg@zankerrecycling.com](mailto:greg@zankerrecycling.com)



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## Executive Summary

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Zanker Road Resource Management, Ltd. (Zanker) is pleased to respond to the City of Sunnyvale Request for Proposals (RFP) F21-024 for organics processing services. Zanker offers over 35 years of experience in the waste management industry with facilities in San Jose, Sacramento and Gilroy CA. Zanker owns and operates all four facilities.

Zanker's Gilroy composting facility, Z-Best Products, is the premier yard waste and MSW composting facility in the state. This facility is proposed to compost the subject organic materials referenced in RFP 21-024, and currently processes most of the organics from the SMaRT Station.

Z-Best is a 157-acre facility that opened in 1997 and began receiving and composting yard waste using traditional open windrow composting methods to produce Organic Compost. In 2002, Z-Best expanded operations and became the first facility in the state to compost mixed solid waste (MSW). Z-Best is the largest and most successful composter of MSW in the nation, and has refined its processes over the years to produce STA approved Landscape compost, the cleanest, most marketable MSW compost in the industry. Today, Z-Best receives over 430,000 tons per year of both green waste and MSW and produces and sells over 130,000 tons per year of Z-Best Organic Compost, over 40,000 cubic yards of mulch products, and over 60,000 tons per year of landscape compost.

Z-Best is currently permitted to accept up to 1,500 tons per day of both MSW and yard waste material and is committed to continued investment in the latest and most efficient composting and processing methods available in order to achieve the highest levels of diversion. Because of the high percentage of trash content, MSW waste with food waste presents likely the most challenging stream of waste to successfully compost while producing a finished product that meets the stringent State maximum contamination limits for glass, plastic and other contaminants. Z-Best has developed a very successful and efficient final screening and pulverizing process in producing Landscape compost from MSW feedstock that is unmatched in quality.

In response to the skyrocketing demand for organics processing in response to State regulatory requirements such as SB 1383, Z-Best has submitted an application and is in the process of obtaining approval for an expansion of its operation. The proposed expansion involves a modification of Use Permit, an increase in daily permitted tonnage, and a new, state of the art composting technology. The proposed new system is an Engineered Compost Systems (ECS) aerated static pile (ASP) composting system. We are proposing to replace the current CTI system with the ECS ASP system, which is far more efficient and allows us to double our MSW composting capacity while operating within the same site footprint. This expansion project is expected to be operational in 2022 and will increase capacity from the current 1,500 tons per day to 2,750 tons per day of material. The ECS system is far more efficient in breaking down hard to compost materials such as wood and fiber, offers reduced emissions per ton of material, reduced odors, and its versatility allows Z-Best to propose on all the waste streams and volumes covered in this RFP. Because of the uncertainty involved in the permitting process timelines, Z-Best can only promise full capacity for residential yard trimmings on January 1, 2022. For the remaining



materials, Z-Best can offer partial capacity beginning January 1, 2022, and full capacity after the completion of our expansion in early 2022.

Z-Best is uniquely qualified to respond to this RFP, both as the current service provider and the only facility in the greater Bay Area permitted to compost MSW derived Organics. Our imminent expansion will allow the City of Sunnyvale to secure a short and long-term organics processing solution as population grows.

In recognition of our long partnership with the City of Sunnyvale and the SMaRT Station, Z-Best has provided the City with two sets of cost forms. The first set reflects costs associated with the stated terms and conditions in the RFP, and the second set of cost forms reflects a 10% discount if the City were to extend the term to 10 years and award Z-Best all of the four organic material streams identified in the RFP.

We appreciate your consideration of this response and look forward to continuing our relationship into the future.

## Key Personnel

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**Greg Ryan (Zanker: Chief Executive Officer)** | Mr. Ryan has been with Zanker Road Resource Management, Ltd. for over 27 years and has worked in all aspects of the business over that time. Spending his entire career in the solid waste industry, Mr. Ryan started at Zanker Road Landfill in 1993 with varied responsibilities including Health and Safety, Equipment Maintenance, Compliance, and Operations. In 1997, Mr. Ryan began permitting and developing the new Z-Best Composting Facility (Z-Best) in Gilroy to meet the growing demand for organics recycling in the Bay Area. Over the next 10 years, Z-Best grew from a small green waste composting site into the premier organics facility in the State, processing over 430,000 tons per year of green waste, food waste, and municipal solid waste. As CEO of Zanker, Mr. Ryan currently oversees all Zanker Facilities, as well as affiliated companies GreenWaste Debris Box Service and Zero Waste Energy Development Company. *Years of Service* | 27+  
*Office Location* | Zanker Recycling, 705 Los Esteros Road, San Jose, CA 95134, 408.938.4902

**John Doyle (Operations Manager)** | Mr. Doyle joined Z-Best Composting Facility in June of 2013. Mr. Doyle has overseen unprecedented growth during his time at Z-Best, as volumes have increased from 337,000 tons per year in 2013 to over 430,000 tpy in 2019. Mr. Doyle has modernized and improved all processing systems at the facility, including a breakthrough process for producing clean, marketable MSW compost quality and a high quality mulch product from compost overs. Organic and Landscape compost sales surpass 190,000 tons per year and over 35,000 cubic yards of quality mulch products are sold annually. *Years of Service* | 7  
*Office Location* | Z-Best Composting Facility, 980 CA-25, Gilroy, CA 95020, 408.722.1999

**Christian Aguilar (Head Foreman)** | Christian Aguilar is Head Foreman of the Z-Best operation responsible for the Organic composting operation as well as overall crew management including equipment operators, mechanics, welders, and laborers. *Years of Service* | 1  
*Office Location* | Z-Best Composting Facility, 980 CA-25, Gilroy, CA 95020, 408.890.9365

**Joaquin Canales (Foreman)** | Joaquin Canales is Foreman of the MSW composting operation including processing, composting and screening to finished product. *Years of Service* | 15  
*Office Location* | Z-Best Composting Facility, 980 CA-25, Gilroy, CA 95020, 831.297.0429

Other key employees include Kelli Lopez (Operations Administrator), Beto Ochoa (Sales and Marketing Manager), George Mendez (Special Project Foreman), and Miguel Rocha (Safety and Environmental Compliance Manager).



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## Technical Proposal

### 2.2.1

#### *Processing Site Information*

Z-Best Composting Facility (Z-Best) is located at 980 State Highway 25 in Gilroy, California. It is owned by Zanker Road Resource Management, Ltd. (Zanker). Z-Best was developed in 1997 to meet the growing demand for organics recycling in the Bay Area.

Z-Best Composting Facility	
Owner & Operator	Zanker Road Resource Management, Ltd.
SWFP No.	43-AA-0015
Capacity	Up to 1,500 tpd
Hours of Operation	6:00 a.m. to 6:00 p.m. Monday – Friday 6:00 a.m. to 10:00 p.m. within processing building
Operations Manager Contact Information	John Doyle   408.846.1575

Z-Best processes yard trimmings, green material, wood waste, pre-consumer and post-consumer food material, agricultural material, and compostable material. Z-Best encompasses 157 acres, is permitted to operate on 105 acres. Z-Best is designed to accept an average of 1,500 tons per day (tpd) of feedstock materials, with a maximum peak tonnage of 2,500 tpd. Post expansion in 2022, Z-Best will be permitted for an average of 2,750 tpd and peak tonnage of 3,500 tpd for up to 20 days per year max.

Z-Best accepts any combination of the following materials from both commercial and residential sectors:

- ✓ Additives and amendments (used for composting) – up to 500 tpd.
- ✓ Mixed solid waste, compostable material, & post-consumer food material (either received in an enclosed processing building or placed directly into in-vessel composting system) – up to 700 tons per day, and increasing to 1575 tons per day in 2022.
- ✓ Green material, yard trimmings, wood waste, pre-consumer food material, & agricultural materials processed in either the elongated windrow system, the in-vessel composting system, or shipped off-site as mulch product – up to 1,300 tpd.

Z-Best is comprised of an operations building, offices, and composting, processing, and storage areas. Equipment utilized includes: conveyors, sorting platforms, bag breaker, debris roll screens,



magnetic head pulley, grinder, scale, wheeled front-end loader, bagging machine, windrow turner, aeration blowers, water truck, excavator glass removal system, and haul trucks.

Z-Best has five (5) distinct operations:

- **Green Material Windrow Composting** | source-separated green materials undergo traditional aerobic composting outdoors to produce organic compost for sale.
- **CTI System Composting** | Compost Technologies Inc. (CTI) designed and manufactured the enclosed in-vessel composting system utilized for food waste/MSW composting. This system will convert to the ECS aerated Pile system in 2022.
- **Processing and Transfer Operations** | a 20,000 square foot MSW processing building contains mechanical conveying and sorting equipment, bunkers for collection of recyclables and residuals, a shredder, and stockpile areas for incoming and outgoing feedstock.
- **Blending** | an area used to create custom blends of compost by mixing in various additives.
- **Mulch Processing** | oversized material from compost screening is transformed into marketable products, and may undergo grinding, screening and/or drying to achieve the desired product.

Recyclable materials recovered from Z-Best operations include scrap metal, glass, and aluminum, and are marketed through local sources.

Z-Best is able to easily handle equipment failures with little interruption in normal activities or ability to continue receiving material. Z-Best can stockpile for up to 48 hours and possesses a sufficient fleet of mobile equipment to enable normal operation in the event of needed repairs. Z-Best prides itself on its superior equipment maintenance, and the vast majority of repairs can be accomplished in a timely manner.

The company that owns Z-Best Composting Facility is the same as the proposing entity.

## 2.2.2

### *Available Processing Capacity*

Z-Best current capacity allows for continued processing and composting of the 16,000 tons per year of source separated residential yard trimmings as described in Table 1 of the RFP. This material will be composted along with other green waste material using open windrow composting methods with no change to this component of the operation. This type of composting consists of open trapezoid shaped windrows, 20' wide x 600' long that are watered and turned regularly for 10-14 weeks meeting all CalRecycle regulatory pathogen reduction and turning requirements. Daily temperature logs are kept along with moisture content monitoring. This feedstock will be composted and processed to produce OMRI Listed Organic compost.

After the composting period, the windrows are harvested and screened using a trommel screen. The fines are finished organic compost, the overs are marketed as organic mulch after further grinding and processing. Acceptable feedstock is as described in table 1 of the RFP for residential yard trimmings and agricultural waste with no more than 1% contaminants by weight, such as

plastic, rubber, glass, textiles, soil, rock, concrete, brick, metals, asphalt, or post-consumer food waste. Z-Best has current capacity to accept and compost this material.

The remaining materials described in Table 1 totaling 54,620 tons per year, (SMART Station MRF fines, compostable food soiled paper, and source separated food scraps) will be composted with other MSW using the proposed Engineered Compost System Aerated Static Pile system currently in the permitting phase. It is expected to be built and operational in early 2022. The ECS ASP system is a state-of-the-art composting system with sophisticated technology to control odors and emissions and produce a high-quality compost.

This ECS system involves a primary and secondary phase. For the primary phase, the feedstock material is loaded directly into a 30'x100' bunker with negative aeration through a built-in mechanical aeration system within the concrete floor. The material is monitored for proper temperature and moisture content by a computer. The material is loaded into the bunker and capped with finished compost or composted overs, to form the covered aerated static pile. This first phase lasts 18 days. The material is then removed from the bunker and brought to a screening area where it is screened to remove the bulk of any trash content. The remaining material is then loaded into the secondary phase elongated aerated static piles for further composting and curing. This second and final phase involves positive aeration through a built-in mechanical aeration system within the concrete floor. This secondary composting phase lasts 18 days. Following both phases, the composted material is brought to the final screening plant and is screened and pulverized to create a finished landscape compost product that meets or exceeds STA requirements and CalRecycle requirements for contaminate thresholds. The capacity to accept and process this 54,620 tons per year of material, as stated previously, is part of the proposed expansion anticipated to be operational in 2022.

The material as described in Table 1 is acceptable with a maximum trash content by weight of 1% for the Residential Yard Trimmings, 20% for the MRF fines, 30% for the paper waste, and 10% for the food scraps. These percentages can be adjusted if appropriate if more detailed waste characterizations become available.

For each of the four streams of organic waste outlined in Table 1 of the RFP, material type and tonnage will be labeled and tracked within our scale house computer software system which is capable of producing reports for easy reference containing material type, date received, material source, material inbound weight as well as the hauling company and truck/driver identification. Z-Best will provide monthly reports detailing all SMaRT tonnages by each individual material stream.

Z-Best can guarantee capacity for the Residential Yard Trimmings throughout the term of the Agreement. Z-Best can guarantee partial capacity for the remaining organic materials on January 1, 2022 and guarantee full capacity for the duration of the contract after the completion of the expansion in early 2022.

Currently, Z-Best Products produces and sells over 190,000 tons per year of Z-Best Organic Compost and Landscape Compost, over 20,000 tons per year of planter mixes and bio soil mixes,

and over 40,000 cubic yards of different mulch products. These finished products are made from MSW containing food waste, yard waste and wood waste material that is composted and recycled. The materials listed in Table 1 will all be processed and composted to continue producing these same products.

### 2.2.3

#### *Limitations*

The Z-Best systems are designed to handle all levels of non-organic contamination in a wide range of organic materials. However, by regulation certain contaminants cannot be accepted. Prohibited contaminants include any Hazardous Waste, Liquid Waste, Sewage Sludge, Treated Wood Waste, Medical Waste or Designated Waste.

Contaminants generally found in organic waste streams consist of plastic, rubber, textiles, coated paper, glass, soil, rock, concrete, brick, metals. Due to the flexibility of our processing systems, there are no sub-limits for any individual contaminant outside of the overall contamination limits for each material.

- After our completed expansion, Z-Best will have sufficient capacity to accommodate all tonnages projected in the RFP and offer the City adequate room for growth. Z-Best can accept the following maximum tonnages:
  - Residential Yard Trimmings: 25,000 tons per year, 125 tons per day.
  - All other materials: 70,000 tons per year, 300 tons per day.

### 2.2.4

#### *Cost*

- Z-Best has submitted Form C, Cost Proposal as a separate sealed item and has provided cost/ton to process material listed in Form A.
- Z-Best has provided a price in Form C for each material type listed in Table 1 that they are planning to propose for.
- Z-Best has provide pricing details (if any) based on degree/percentage of contamination in Form C. (tiered pricing)
- Z-Best has provided pricing adjustment methodology (if any) for seven-year contract term in Form C.

### 2.2.5

#### *Diversion Requirements*

Z-Best prides itself on reaching the highest diversion level possible for every organic stream.

Z-Best has spent the last 2 years experimenting with and refining processing systems in anticipation of the stringent requirements of SB 1383, and feels it is in better position than any other facility to achieve them.

Diversion percentage and diversion guarantees are a function of both the contamination limit and the actual contamination received. For example, in the case of the MRF fines with a contamination limit of 20%, the diversion rate guarantee would likely be 75% to account for hard to compost organics and fiber that may end up in residue. However, it is likely that for the MRF fines the actual contamination would be well below the limit, resulting in better diversion.

Therefore, diversion for each material will be tracked and reported using an allocation system that uses periodic audits to determine expected residue percentages of each material, and assigns residue based on an allocation system that reconciles the expected residue for each material with the actual tonnages of residue disposed.

Z-Best looks forward to a more detailed discussion of residue and diversion requirements and guarantees during contract negotiations.

### 2.2.6

#### *Disposal of Residual Material*

For each material listed in Table 1, it is expected that it will contain residual including but not limited to film plastic, hard plastics, rubber, textiles, rock, concrete, glass, coated paper, and other non-organic substances. All Residual Material will be landfilled.

It is estimated that a maximum of 5% of the yard waste feedstock and up to 25% of the MRF fines may be disposed of as residue. Based on Z-Best's experience handling these materials, we expect the actual diversion to be much higher.

Z-Best does not have access to a waste characterization of the paper waste and food scraps, so at this time we must be conservative with our diversion estimates. Based on the descriptions of the material in the RFP, we estimate up to 40% of the paper waste, and up to 15% of the food scraps will be disposed of as residue.

Residue will be taken to Monterey Peninsula Landfill in Marina CA or as needed to the Billy Wright Landfill in Los Banos CA. It will be tracked and reported using the scale system and the allocation system described above

Current average monthly residue at Z-Best varies by material source and type.

## 2.2.7

### *Permits and Regulatory Compliance*

For all types of material in table 1 of the RFP, and material currently received, the following contact information for regulatory agencies applies.

**Jaji Murage (Senior Registered Environmental Health Specialist)** | Primary local enforcement agent responsible for monitoring the Z-Best facility for regulatory compliance. *Agency* | Santa Clara County Department of Environmental Health Solid Waste Programs, 408-918-3405

**Jordan Haserot (Water Resource Control Engineer)** | Primary local enforcement agent responsible for monitoring the Z-Best facility for compliance with the Compost General Order requirements. *Agency* | Central Coast Regional Water Quality Control Board, 805-542-4781

**Loi Chau (Air Quality Engineer)** | Primary local enforcement agent responsible for monitoring the Z-Best facility Permit To Operate and any modifications, deletions or additions to the permit. *Agency* | Bay Area Air Quality Management District, 415-749-8683

As described in previous sections, Z-Best Products currently has an application submitted and under review by the County of Santa Clara for expansion of the facility. This application involves a Use Permit change to allow for an upgrade in composting methods for all MSW feedstock material from the current CTI system to a more efficient, environmentally friendly, aerated static pile system from Engineered Compost Systems (ECS). The application also involves an increase in tonnage limits on the current Solid Waste Facility Permit from 1500 tons per day to 2750 tons per day. This application is nearing completion of the CEQA process and the EIR is expected to be released for public review and comment within 60 days. Once this EIR process is complete, an application for a building permit will be submitted to the County. Phase I of the project is expected to be complete by the end of 2021. This phase completion will be necessary to achieve capacity to receive some of the subject materials including MRF fines, food soiled paper, and food scraps. Receipt of the yard waste portion of the subject materials is not contingent upon completion of this expansion and is currently received at Z-Best.

Z -Best Products has received 1 violation in the last three years from the Department of Environmental Health, Local Enforcement Agency, specifically in January 2020 for a truck load of MSW feedstock material off loaded from a truck outside the approved area within the processing building. This material was off loaded in the incorrect location by a third-party trucker bringing material into the facility. The situation was quickly remedied by moving the material to the inside of the building processing prior to being bagged for composting.

Z -Best Products, as an ongoing mission, strives to continually seek out and investigate new methods of processing and composting to improve diversion percentages, reduce emissions, and avoid pollution of ground water and other natural resources. Z-Best is in compliance, as required, with the Compost General Order regulatory measure from the Central Coast Regional Water Quality Control Board. This measure protects ground water from contaminants associated with composting reaching the water table by requiring certain measures on site. The Bay Area Air



Quality Management District issues and reviews changes or additions to our Permit to Operate. With above mentioned expansion project we are preparing an application to construct which will include a Health Risk Assessment analysis for review and approval by the Air Board. Z-Best is in full compliance with other regulatory measures as evidenced by monthly inspections and reports completed by the Department of Health Local Enforcement Agency.

CalRecycle has issued requirements that apply to businesses and City entities in order to come into compliance with SB 1383. Efficiently run composting operations such as Z-Best are and will be a critical part of success in meeting SB 1383 requirements. Z-Best's focus has always been to continually improve processing operations to reduce the amount of organics within the residue stream while producing a quality finished product. Investing in improved screening plants that capture increased amounts of organics within the MSW (high trash content feedstock) has been a focus of our operation and will continue to be in the future. Z-Best has spent the last 2 years experimenting with and refining processing systems in anticipation of the stringent requirements of SB 1383, and feels it is in better position than any other facility to achieve them.

### 2.2.8

#### *Compliance with Regulatory Requirements*

Z-Best can maintain compliance with applicable regulations in effect during the term of the Agreement in accordance with the terms set forth in Section 8.5, Article 8, Exhibit A, and Exhibit H of the Agreement.

### 2.2.9

#### *Marketing of Products*

Z-Best has been very successful in developing markets for a range of products. Z-Best Organic Compost provides a high-quality product for organic agricultural customers and we have a growing list of repeat customers. Our Organic compost is nearly sold out every year. This type of compost is made from our yard waste stream of feedstock and is OMRI listed and reviewed for guarantee compliance by the Department of Food and Agriculture.

From this same waste stream, Organic mulch is also produced from the overs coming from the screening process. This material is marketed to materials yards and is also sold out regularly.

Z-Best Landscape Compost is made from the most contaminated feedstock we receive, mixed solid waste (MSW). Z-Best has invested in new processing and screening methods and successfully and consistently produces a high-quality compost that is STA approved and used by landscapers on Caltrans projects and other commercial and residential landscaping projects.

The Z-Best operation has a dedicated marketing and sales professional who has done an exceptional job in developing new markets, expanding the customer base, and driving sales of finished products to meet new heights each year. We are well prepared for increased feedstock to come resulting in additional finished products to sell.

### **2.2.10**

#### *Invoice*

Z-Best can provide monthly invoices during the term of the Agreement in accordance with the terms set forth in Section 7.4 of the Agreement.

### **2.2.11**

#### *Reporting Requirement:*

Z-Best can provide monthly/ semi-annual and annual status reports in effect during the term of the Agreement in accordance with the terms set forth in Section 8.5 and Exhibit A of the Agreement.



## FORM A – COMPOSTING OR AD FACILITY - EXISTING

Company Name: Zanker Road Resource Mgt., LTD. Facility Name: Z-Best Products

Operator: Zanker Rd Resource Management, LTD

**Material accepted- Please check applicable boxes**

- ☒ Source-Separated Residential Yard Trimmings
- ☐ SMaRT Station 2-inch Minus Organic MRF fines
- ☐ Compostable/Food Soiled Paper
- ☐ Source-Separated Residential and Commercial Food Scraps

PROCESSING SITE INFORMATION (Provide One Form Per Facility Site)		
Composting Facility Name	Z-Best Products	
Composting Facility Location and/or street address	980 State Highway 25, Gilroy, CA 95020	
Proposer's role in the Facility	Owner Operator	
Name of owner and operator, contact name and phone number of the site manager	Zanker Rd Resource Management, LTD. John Doyle, 408-846-1575	
Identify if the company that owns or operates the processing site is the same as the proposing entity, an affiliate or other related-party entity or a Sub- Proposer.	Same	
Total Facility Daily Permitted Capacity		
Material Accepted	Type of processing method(s) traditional windrows, CASP, AD etc.; used	
Source-Separated Residential Yard trimmings	Traditional Windrows	
SMaRT Station 2-inch Minus Organic MRF fines	See Form B	
Compostable/food soiled paper products segregated from SMaRT Station 5-inch minus material	See Form B	
Source-Separated Residential and Commercial Food Scraps	See Form B	
AVAILABLE CAPACITY AND LIMITATIONS		
Proposed Daily Organics Acceptance Amount (TPD)	Source-Separated Residential Yard trimmings	125 TPD
	SMaRT Station 2-inch Minus Organic MRF fines	See From B
	Compostable/food soiled paper products segregated from SMaRT Station 5-inch minus material	See Form B

	Source-Separated Residential and Commercial Food Scraps	See Form B
Any restrictions, on the total maximum acceptable tons delivered per day, month, or year.	Max. Acceptable Tons	
	TPD	125 TPD
	TPM	2083
	TPY	25,000 TPY
Describe in detail method of documenting & tracking SMaRT Station tonnage if the facility receives tonnage from other jurisdictions. Also include a calculation example using real data.	Scale computer software tracks tonnages received as to material type, source, time received, date, truck and driver identification. Monthly scale report is reconciled with source scale reports. Site surveillance cameras available for reference.	
<b>Contaminants in accepted material</b>		
List of contaminants and maximum allowable amounts, if any, that may be contained in material delivered. Also, define the allowable threshold for each as a percentage by [weight or volume?] of total delivered material.		
Accepted Material	Accepted Contaminant(s)	% of contaminants
Source-Separated Residential Yard trimmings	See Limitations 2.2.3 response	1%
SMaRT Station 2-inch Minus Organic MRF fines	See Form B	%
Compostable/food soiled paper products segregated at the SMaRT Station	See Form B	%
List of any other quality-based feedstock limitations	See Limitations 2.2.3 Response	
<b>Permits and Regulatory Compliance:</b>		
List all relevant permits.	See Permits and Reg. Compliance 2.2.7 Response	
CalRecycle Permit Type and Number	SWFP 43-AA-0015	
List any issues, such as construction or permitting that may affect timing of the contract agreement start date.	NA	
Number of violations received in the last three years and a description of the violations.	1 Violation, See Permits and Reg. Compliance 2.2.7 Response	
<b>Residue Disposal</b>		
Disposal location/Name of the landfill	Monterey Peninsula Landfill, Billy Wright Landfill	
Disposal method of residual material	Landfilling	
Material disposal tracking and reporting method	Computer Scale Software, see Disposal of Residual Material section 2.2.6 response.	
Current average monthly residue level of the processing site - tons disposed as a % by weight of all materials delivered to the processing site. Information provided could be in the same format used for quarterly reports to Santa Clara County IWM Program or its equivalent in other counties.	See disposal of residual material section 2.2.6 response, residue at Z-Best varies by material source and type.	

Estimated residual amount by material type	Quantity of materials disposed by material type (tpd), based on proposed daily organics acceptance amount	Percentage of residue
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Source-Separated Residential Yard trimmings	1.25 TPD	1%
SMaRT Station 2-inch Minus Organic MRF fines	See Form B	%
Compostable/food soiled paper products segregated at the SMaRT Station	See Form B	%
Source-separated commercial and residential food scraps	See Form B	%
If the use of a transfer station is proposed in conjunction with the proposed organic material processing and/or composting site, facility shall provide permit number and demonstrate compliance with applicable SB1383 regulations and other regulatory requirements	NA	
If an alternative transfer method is proposed, facility shall describe the transfer methodology and any equipment required, regulatory approval needed and other pertinent information.	NA	

#### Marketing of Products

A list of products to be produced from the organic materials (e.g., compost, mulch, etc.).

End Use Markets	Percent of Finished Product
Bulk/Bagged Compost	65%
Mulch/Land Application (non-landfill)	30%
Biomass /Co-generation fuel	NA%
Landfill Application (ADC or erosion control)	5%
Others, from co-digestion, if any	NA%
Total Products Marketed	100%



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## FORM B – ALTERNATIVE COMPOSTING OR AD FACILITY - PROPOSED

Company Name: Zanker Road Resource Mgt, LTD. Facility Name: Z-Best Products  
Operator: Zanker Rd. Resource Management, LTD.

**Material accepted- Please Check applicable boxes**

- ☐ Source-Separated Residential Yard trimmings
- ☒ SMaRT Station 2-inch Minus Organic MRF fines
- ☒ Compostable/Food Soiled Paper
- ☒ Source-Separated Residential and Commercial Food Scraps

PROCESSING SITE INFORMATION (Provide One Form Per Facility Site)			
Alternative Composting facility	Z-Best Products		
Location of the Facility	980 State Highway 25, Gilroy, CA 95020		
Proposer's role in the Facility	Owner Operator		
Name of owner and operator, contact name and phone number of the site manager	Zanker Rd. Resource Management, LTD. Site Manager, John Doyle 408-846-1575		
Identify if the company that owns or operates the processing site is the same as the proposing entity, an affiliate or other related-party entity or a Sub- Proposer.	Same		
Total Facility Daily Permitted Capacity			
Material Accepted	Type of processing method(s) - traditional windrows, CASP etc.; used		
Source-Separated Residential Yard trimmings	See Form A		
SMaRT Station 2-inch Minus Organic MRF fines	CASP by ECS		
Compostable/food soiled paper products segregated at the SMaRT Station	CASP by ECS		
Source - separated commercial and residential food scraps	CASP by ECS		
AVAILABLE CAPACITY AND LIMITATIONS			
Proposed Daily Organics Acceptance Amount (TPD)	Source-Separated Residential Yard trimmings	Residential Yard	See Form A
	SMaRT Station 2-inch Minus Organic MRF fines		300 TPD combined with Food Soiled Paper, Food Scraps
	Compostable/food soiled paper products segregated from SMaRT Station 5-inch minus material		300 TPD combined With MRF Fines, Food Scraps
	Source-Separated Commercial Food Scraps	Residential and	300 TPD combined with MRF Fines, Food Soiled Paper
Any restrictions, on the total maximum acceptable tons delivered per day, month, or year.	Max. Acceptable Tons		
	TPD		300 TPD
	TPM		5834 TPM

	TPY	70,000 TPY
Method of tracking SMaRT Station tonnage if the facility receives tonnage from other jurisdictions	See Available Composting Capacity 2.2.2, See Form A	
Contaminants in accepted material		
List of contaminants and maximum allowable amount that may be contained in material delivered. Also, define the allowable threshold for each as a percentage of total delivered material.		
Accepted Material	Accepted Contaminant(s)	% of contaminant s
Source-Separated Residential Yard trimmings	See Form A	%
SMaRT Station 2-inch Minus Organic MRF fines	See Sect. 2.2.3 Limitations Response	20%
Compostable/food soiled paper products segregated at the SMaRT Station	See Sect. 2.2.3 Limitations Response	30%
Source - separated commercial and residential food scraps	See Sect. 2.2.3 Limitations Resp.	10%
List of any other quality-based feedstock limitations	See Sect. 2.2.3 Limitations Resp.	
Permits and Regulatory Compliance		
List all relevant permits	See Permits and Reg. Compliance 2.2.7 Response	
CalRecycle Permit Type and Number	SWFP 43-AA-0015	
List any issues, such as construction or permitting that may affect timing of the contract agreement start date	Anticipated approval of application for expansion and subsequent construction in early 2022 of ECS System. See Executive Summary and section 2.2.2 Available Processing Capacity Response.	
Number of violations received in the last three years and a description of the violations	1 Violation, See Permits and Reg. Compliance 2.2.7 Response.	
Material Disposal		
Disposal location/Name of the Landfill	Monterey Peninsula Landfill, Billy Wright Landfill	
Disposal method of residual material	Landfilling	
Material disposal tracking and reporting method	Scale Computer Software, See Disp of Residual Mat. Section 2.2.6 response	
Current average monthly residue level of the processing site	See disposal of residual material section 2.2.6 response, residue at Z-Best varies by material source and type.	
Residue Details		
Provide estimated residual amount by material type:	Quantity of materials disposed, by material type (tpd) based on proposed daily organics acceptance amount	Percentage of residue
Source-Separated Residential Yard trimmings	See Form A	
SMaRT Station 2-inch Minus Organic MRF fines	Varies	20%
Compostable/food soiled paper products	Varies	30%

segregated at the SMaRT Station		
Source - separated commercial and residential food scraps	Varies	10%
If the use of a transfer station is proposed in conjunction with the proposed organic material		

processing and/or composting site, facility shall demonstrate compliance with applicable SB1383 requirements	N/A
If an alternative transfer method is proposed, facility shall describe the transfer methodology and any equipment required, regulatory approval needed and other pertinent information.	N/A

### Marketing of Products

A list of products to be produced from the organic materials (e.g., compost, mulch, etc.).	
End Use Markets	Percent of Finished Product
Bulk/Bagged Compost	75 %
Mulch/Land Application (non-landfill)	%
Biomass /Co-generation fuel	%
Landfill Application (ADC or erosion control)	25 %
Others, from co-digestion, if any	%
Others, if any	

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GR



Sunnyvale

CITY OF SUNNYVALE, CALIFORNIA

**ADDENDUM NO. 1**

**ISSUED ON**

**November 17, 2020**

**REQUEST FOR PROPOSALS No. F21-024**

**for**

**Organic Material Processing**

The above-referenced Request for Proposals is modified, as follows:


**A. Answer to Bidders' Question**

	Reference	
Q1.	Form C - Cost Proposal	<p>In the Table which is part of Form C - Cost Proposal, there is a category of material listed as <b>Processed Source-Separated Residential and Commercial Food</b>. It is also noted in the footnote as <b>Source-separated food scraps processed into food mash at the SMaRT Station</b>. Unfortunately, we did not get a visual of this material on Tuesday and would like additional information:</p> <ol style="list-style-type: none"><li>1. What are the general processing steps to go from unprocessed food scraps to food mash?</li><li>2. Do you have an estimate/range of percent contamination (%bw or %bv) in food mash?</li></ol>

		<p>3. Do you have any photo on the material?</p> <p>4. Where this material is diverted/diverted to currently?</p>
<b>A1.</b>		<p><b>1. Refer to Exhibit 1</b></p> <p><b>2. The City has not been made aware of any contaminants in the food mash by the end user.</b></p> <p><b>3. Refer to Exhibit 1</b></p> <p><b>4. Food Mash is currently diverted to Sustainable Organic Solutions, 1080-1090 Walsh Ave, Santa Clara.</b></p>
Q2.	RFP Section 2	Overs/Residuals Disposal, where are food scrap overs currently delivered? If processing is offsite (not at SMaRT Station) is there an obligation for the overs/residuals to be delivered to Kirby Canyon or can this material be hauled to the disposal site of contractor's choice? It is inferred in the RFP that residuals may be disposed, with approval, at a location designated by the proposer.
<b>A2.</b>		<b>Food scrap overs/residuals are currently delivered to Kirby Canyon Landfill for disposal. In general, processing residuals may be disposed, with approval, at a location designated by the proposer.</b>
<b>Q3.</b>	Throughout RFP and Agreement, Attach A	Contamination: While the word contamination is used throughout the RFP and draft Agreement, no definition is given. Will the City please provide this?
<b>A3.</b>		<b>In lieu of "contamination", the agreement uses the terms "Incompatible Materials" or "Incompatibles" as defined in the SB 1383 regulations.</b>
<b>Q4.</b>	RFP Table 1	Tonnage: Information Table 1 estimates annual tonnage for 2022. Will the City please provide actual pre-COVID and current tonnages?
<b>A4.</b>		<b>Tonnage estimates are based on actual pre-COVID annual tonnages.</b>
<b>Q5.</b>	RFP Section 1.2 Agreement, Attach A: Definitions	Beneficial Use: The term Beneficial Use is used in the RFP §1.2, but not defined in the draft Agreement – Definitions. Will the City please provide a definition for Beneficial Use?
<b>A5.</b>		<b>The use of the term Beneficial Use is to mean: Beneficial Reuse Purposes as defined in the Agreement under definitions, line 106 and following. Please note however, the Agreement also defines Organic Materials Recovery; Disposal of Acceptable Materials Prohibited as follows: Except with the express written approval of the City Contract Manager, Contractor shall Process all Organic Materials at a Facility that recovers Source-Separated Organic Materials and in a manner deemed not to constitute Landfill Disposal pursuant to 14 CCR Section 18983.1(a) which states that Landfill Disposal includes final</b>

		<b>deposition of Organic Waste at a Landfill or use of Organic Waste as Alternative Daily Cover (ADC) or Alternative Intermediate Cover (AIC).</b>
<b>Q6.</b>	Agreement, Attach A: Definitions, Line 198	Food Scraps, does the definition given in the draft Agreement for Food Scraps match the definition for the same in the City's collection contract(s)?
<b>A6.</b>		<b>The definitions are substantively very similar. The material stream definitions in the draft agreement were drafted based on the applicable definitions from the collection agreement, and from SB 1383 regulations.</b>
<b>Q7.</b>	Agreement, Attach A: Definitions, Line 207 And Line 201	Food-Soiled Paper v. Paper Waste Contaminated with Putrescibles: The definition of Food Scraps given in the draft Agreement states: "Food Scraps may contain paper waste contaminated with putrescible material...." Does this definition and the definition given for Food-Soiled Paper mean the same thing?
<b>A7.</b>		<b>No, they are not the same. Food scraps collected may not have Food-Soiled Paper as a separate Organic Material and needs to be distinguished as such. However, Paper Waste Contaminated with Putrescibles, also named Compostable Paper is typically derived from Municipal Solid Waste (MSW) by way of the mixed waste processing system.</b>
<b>Q8.</b>	RFP Section 6	Form A, Form B: Form A – Composting or AD Facility – Existing and Form B – Composting or AD Facility – Proposed are not identical with respect information requested. Is this as the City intends or is it an error? If intentional, will the City please detail/clarify its approach?
<b>A8.</b>		<b>The City intends to ask same information for Existing and Alternative site(s) and does not intend to alter the proposal forms. Proposers may add this information as part of their Technical Proposal submittal.</b>
<b>Q9.</b>	RFP Section 6	Form A, Form B, Form C: These forms do not include a way to capture of information relating to transportation methods/costs, delivery/material/equipment specifications/costs, and so forth such that the City can capture parallel information from proposers. Will the City alter the forms to ensure they accurately reflect all service options allowed per the RFP?
<b>A9.</b>		<b>The City does not intend to alter the proposal forms. Proposers may add this information as part of their Technical Proposal submittal.</b>
<b>Q10.</b>	RFP Section 6	Form C – Processed v Unprocessed: Please confirm: Does processed refer to organic material preprocessed at the SMaRT Station, and following onto that then, does unprocessed refer to source separated organic material direct-hauled to a processing site from the route(s)?
<b>A10.</b>		<b>Yes. Refer to definitions in Form C "footnotes" regarding processed and unprocessed material and stated below:</b>

		<p>(1) Source-separated yard-trimmings and compostable paper processed through hammermill to ~minus 5" (nominal)</p> <p>(2) Fines from MSW processed through minus 2" trommel screens</p> <p>(3) Compostable food soiled paper captured through the SMaRT Station mixed waste processing system</p> <p>(4) Based on the tonnage rate per material type in Table 1 above within a range of +/- 25%</p> <p>(5) Source-separated food scraps processed into food mash at the SMaRT Station</p>
Q11.	RFP Section 6	Form C – Table + Footnote (4) The City requests per ton processing rates—supplied in the referenced Table—with a tonnage range to materialize of +/- 50%. With such a significant range, is the City willing to sign a contract with a put or pay clause guaranteeing a floor of the -50%, low-end of the stated range?
A11.		<b>No, it is not City's intent to enter into a contract with a put or pay clause. In recognition of reducing the range of the quantities of materials requested to be processed, the City hereby changes Form C – Table + Footnote (4) as follows: Based on the tonnage rate per material type in Table 1 above within a range of +/- 25%</b>
Q12	Agreement, Attach A: Section 12.8	Compliance Audit This section states: "Contractor shall, in addition to 4902 [sic] compensating the City for lost payments and applicable delinquency penalties, reimburse the City's cost if the audit demonstrates an error rate of equal to or greater than three percent (3%). The City shall pay the cost of an audit that demonstrates an error rate of less than three (3%)." No definition is given for error rate, rendering the stated 3% error rate unknowable/meaningless. Will the City please clarify?
A12.		<p><b>The City is amending Section 12.8.</b> Compliance Audit section states:</p> <p>The City may, at any time during the Term or within three (3) years following the expiration or early termination of this Agreement, perform an audit of Contractor's compliance with the Agreement and performance standards, Tonnage records <b>related to Delivered Tonnages and Residue Disposal</b>, Residue levels, <b>Contractor invoices submitted to the City</b>, and payment of monies due to the City. Contractor shall fully cooperate with the City in any such audit. Contractor shall, in addition to compensating the City for <b>overbillings</b>, lost payments, and applicable delinquency penalties, reimburse the City's cost if the audit demonstrates an error rate of equal to or greater than three percent (3%). The City shall pay the cost of an audit that demonstrates an error rate of less than three (3%)." No definition is given for %) <b>or less. The three percent (3%) error rate, rendering the stated 3% applies to any quantitative measure related to Tonnage and/or cost. For example, the error rate unknowable/meaningless. Will the City please clarify? would be triggered if: 1) reported Tonnage for any time period is more than three percent (3%) in excess of, or more than three percent (3%) below the actual Tonnage; or 2)</b></p>

		the amount the City is billed for any time period is more than three percent (3%) in excess of, or more than three percent (3%) below the actual Compensation due to Contractor.
Q13.	RFP, Section 6 Proposal Forms, Form C Cost Proposal	<p>The RFP states that the MRF Fines are the product of a 2" trommel screen. Per the attached picture, the current MRF fines appear to be a product of at least a 4" trommel.</p>  <p>Is the City planning to change the current processing equipment?</p>
A13.		<b>The source of the material currently generated is from MSW processed through 2" trommel screens; 2D/3D disc screens and a polishing screen, which has mechanical limitations that may have attributed to the condition of the material when this picture was taken. There are no current plans to change the existing sizing.</b>
Q14.	Regarding the clean green material, would it be ground, unground, or is there the option for either?	Regarding the clean green material, would it be ground, unground, or is there the option for either?
A14.		<b>The City is requesting proposals for both processed and unprocessed clean green material.</b>
Q15.	RFP, Section 3.9 Proposal Format, #4 Technical Proposal	<p>RFP states "Provide full response to the items outlined in section 2.3 of the RFP." Question: There is no section 2.3. Is this supposed to say "section 2.2 of the RFP"?</p>
A15.		<b>Yes. Section 3.9 Proposal Format, #4 Technical Proposal should read "Provide full responses to the items outlined in Section 2.2 of the RFP"</b>

		<b>And #5 Cost Proposal Forms should read "Submit completed FORM C as described in Section 2.2"</b>																	
<b>Q16.</b>	Cost Proposal Form	On the Cost Proposal Form under Source Separated Commercial and Residential Food Scraps there is an option to enter a rate for Processed material. This material is listed as Source-separated food scraps processed into food mash at The SMaRT Station. Was the City of Sunnyvale proposing that this material be processed at The SMaRT Station using the current machinery that we observed in the pre-proposal conference?																	
<b>A16.</b>		<b>Yes. Refer to definition 5 in “revised” Form C “footnotes”.</b>																	
<b>Q17.</b>		What are the current processing tip fees and transportation fee, per material stream?																	
<b>A17.</b>		<table><tr><th><b>Organic Material Stream</b></th><th><b>Current Processing Tip Fees</b></th><th><b>Destination</b></th></tr><tr><td>Source-Separated Residential Yard trimmings</td><td>\$40.33</td><td>Z-Best Composting Site, 980 State Highway 25, Gilroy</td></tr><tr><td>SMaRT Station 2-inch Minus Organic MRF fines</td><td>\$86.26</td><td>Z-Best Composting Site, Zero Waste Energy, 685 Los Esteros Road, San Jose</td></tr><tr><td>Compostable/Food Soiled Paper</td><td>Not Applicable</td><td>Future stream</td></tr><tr><td>Source-Separated Residential and Commercial Food Scraps</td><td>\$84.60</td><td>Sunnyvale SMaRT Station®, 301 Carl Road, Sunnyvale</td></tr></table>	<b>Organic Material Stream</b>	<b>Current Processing Tip Fees</b>	<b>Destination</b>	Source-Separated Residential Yard trimmings	\$40.33	Z-Best Composting Site, 980 State Highway 25, Gilroy	SMaRT Station 2-inch Minus Organic MRF fines	\$86.26	Z-Best Composting Site, Zero Waste Energy, 685 Los Esteros Road, San Jose	Compostable/Food Soiled Paper	Not Applicable	Future stream	Source-Separated Residential and Commercial Food Scraps	\$84.60	Sunnyvale SMaRT Station®, 301 Carl Road, Sunnyvale		
<b>Organic Material Stream</b>	<b>Current Processing Tip Fees</b>	<b>Destination</b>																	
Source-Separated Residential Yard trimmings	\$40.33	Z-Best Composting Site, 980 State Highway 25, Gilroy																	
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Compostable/Food Soiled Paper	Not Applicable	Future stream																	
Source-Separated Residential and Commercial Food Scraps	\$84.60	Sunnyvale SMaRT Station®, 301 Carl Road, Sunnyvale																	
<b>Q18.</b>		What are the processing destinations of each material stream?																	
<b>A18.</b>		<b>See A17.</b>																	
<b>Q19.</b>		Can the City provide waste characterizations on any of the streams?																	
<b>A19.</b>		<b>The City does not have current waste characterizations data on any of the streams.</b>																	

<b>Q20.</b>		Table 1 of the RFP notes that the 11,000 tons of source-separated commercial and residential food scraps “are likely to increase,” due to SB 1383. Does the City have an estimate of how much this is likely to increase by?
<b>A20.</b>		<b>The 11,000 tons represents a best estimate for fully-implemented commercial and residential food scraps program collections in 2022. Subsequent changes to that total are anticipated to be proportional to future changes in City population and business activity.</b>
<b>Q21.</b>	Source-separated commercial and residential food scraps:	Is the RFP requesting that the food material be removed from facility AFTER its been processed through the depackager, or before, or is there an option to choose?
<b>A21.</b>		<b>Proposers must submit cost on the attached “Revise” Form C.</b>
<b>Q22.</b>		Regarding the clean green material, would it be ground, unground, or is there the option for either?
<b>A22.</b>		<b>The City is requesting proposals for both processed and unprocessed clean green material.</b>
<b>Q23.</b>	RFP, Section 6 Proposal Forms, Form A Composting or AD Facility Existing	Why is Source Separated Food Waste not listed under Accepted Materials?
<b>A23.</b>		<b>Source Separated Food Waste is listed under Accepted Materials in Form A and Form B</b>

**Attachments:**

1. **“Revised” Form C**
2. **Exhibit 1 – Food Scraps Processing Steps**

**All other specifications, terms and conditions remain unchanged.**



**"REVISED" Form C– Cost Proposal (MUST Provide as separate sealed File)**

Company Name: \_\_\_\_\_ Facility Name: \_\_\_\_\_  
 Operator: \_\_\_\_\_

REVISED : 11/17/2020

**Material accepted – Please Check applicable boxes**

- ☐ Source-Separated Residential Yard trimmings
- ☐ SMaRT Station 2-inch Minus Organic MRF fines
- ☐ Compostable/Food Soiled Paper
- ☐ Source-Separated Residential and Commercial Food Scraps

Material Type	Per ton <sup>(4)</sup> Processing Rates Proposed				Applicable Tiered Pricing based on contamination percentage	Proposed pricing adjustment methodology (if any)
	Processed <sup>(1)</sup>		Unprocessed			
Source-separated residential yard trimmings	Contractor Component	Governmental Component	Contractor Component	Governmental Component		
	Processed <sup>(2)</sup>		Unprocessed			
SMaRT Station 2-inch Minus Organic MRF fines	Contractor Component	Governmental Component	Contractor Component	Governmental Component		
			NA			
	Processed <sup>(3)</sup>		Unprocessed			
Compostable/food soiled paper products received at the SMaRT Station	Contractor Component	Governmental Component	Contractor Component	Governmental Component		
			NA			
	Processed <sup>(5)</sup>		Unprocessed			
Source - separated commercial and residential food scraps	Contractor Component	Governmental Component	Contractor Component	Governmental Component		

\* Please fill in and modify the tables, as needed in section 7.3C of the Draft Agreement to provide contractor and governmental component.

<sup>(1)</sup> Source-separated yard-trimmings and compostable paper processed through hammermill to ~minus 5" (nominal)

<sup>(2)</sup> Fines from MSW processed through minus 2" trommel screens

<sup>(3)</sup> Compostable food soiled paper captured through the SMaRT Station mixed waste processing system

<sup>(4)</sup> Based on the tonnage rate per material type in Table 1 above within a range of +/- 50-25%

<sup>(5)</sup> Source-separated food scraps processed into food mash at the SMaRT Station



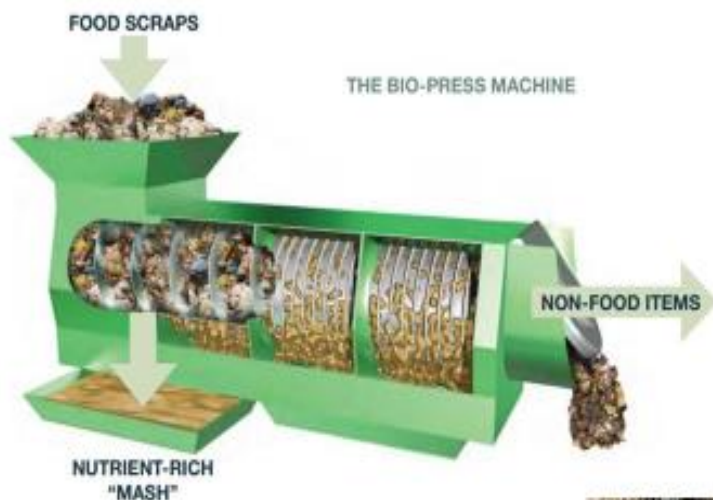
GR

## EXHIBIT 1 – Food Scraps Processing Steps

The Food Scraps then get shredded using big rotating knives. This process helps to separate all the plastic film from the food scraps



GR



The Non-Food items are sent for secondary screening offsite and used in anaerobic digestion to create electricity and compost.

Next the Food Scraps go through a Bio-Press machine where a center expanding auger presses the material against a screen forcing the nutrient-rich mash out of the food.



GR

The "Mash" is then pumped into a fine mesh vibrating screen to remove microscopic contamination




The Clean "Mash" is transported to an FDA approved facility that separates out the F.O.G., dehydrates the mash, removes all pathogens, and pelletizes the material. The pellets have been used as an ingredient in dog food, dog treats, hog food, fish food, and fertilizer. The F.O.G. is sent offsite to create a Biodiesel.

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Attachment C

Secretary's Certification

- 1.
2. The undersigned, being the Secretary of Zanker Road Resource Mgmt., a
3. Company Name
4. California corporation ("the Company"), does hereby certify that the following resolution was adopted by the Board of Directors of the Company and that such resolution has not been amended, modified or rescinded and is in full force and effect as of the date hereof:
- 5.
6. RESOLVED, that Greg Ryan be, and hereby is, authorized to
7. Name of Designated Representative
8. sign the Company's proposal and execute by and on behalf of the Company any and all agreements, instruments, documents or papers, as he/she may deem appropriate or necessary, pertaining to or relating to the **Organic Materials Processing Proposal Request** from the City of Sunnyvale, California, and that any such action taken to date is hereby ratified and approved.
9. 
10. Dated: 11/10/20



In accordance with Section 2.4 of the Agreement, the City has approved the following facilities and Subcontractors, including Affiliates and related party entities, to manage the specified services and otherwise assist Contractor in the performance of the requirements of this Agreement.

Approved Facility	Services
Z-Best Composting Facility	Composting
Zero Waste Energy Development (ZWED)	Anaerobic Digestion
Monterey Peninsula Landfill	Residue Disposal
Billy Wright Landfill	Residue Disposal

The Z-Best Composting Facility will be the primary Approved Processing Facility. Zero Waste Energy Development will be the alternate Approved Processing Facility. Upon reasonable notice to Station Operator and City, Contractor may require Station Operator to deliver any Acceptable Materials to be Processed pursuant to this Agreement to the Zero Waste Energy Development Anaerobic Digestion Facility at 685 Los Esteros Road, San Jose, California, for such period of time, or times, as designated by Contractor. As Zero Waste Energy Development is closer to the Station and therefore reduces the City's transportation costs, the City requests that Contractor allow delivery of Acceptable Materials to Zero Waste Energy Development whenever feasible, as available Processing capacity allows. Contractor compensation shall be the same for materials delivered to either Approved Processing Facility.

The Monterey Peninsula Landfill will be the primary Approved Residue Disposal Facility. The Billy Wright Landfill will be the alternate Approved Residue Disposal Facility.

Approved Subcontractor	Services
MG Trucking	Refuse transfer
king, LLC	Refuse transfer
JDR Trucking, Inc.	Refuse transfer
OS Trucking/ HCA Management	Refuse transfer
Friebel Trucking	Refuse transfer
Ponce Company	Refuse transfer







## 1. PROCESSING STANDARDS

Contractor shall comply with the following Organic Materials Processing requirements.

### A. Approved Processing Facility(ies)

Contractor shall arrange for Organic Materials Processing at an Approved Processing Facility that meets one or more of the following criteria, and such Facility or operation is capable of and permitted to accept and recover the Organic Materials:

1. A “Compostable Material Handling Operation or Facility” (e.g. Z-Best) as defined in 14 CCR Section 17852(a)(12); small composting facilities that are otherwise excluded from that definition; or Community Composting as defined within 14 CCR Section 18982(a)(8). The compostable materials handling operation or Facility shall, pursuant to 14 CCR Section 17867(a)(16), demonstrate that the percentage of Organic Waste in the materials sent to Disposal is:
  - i. On and after January 1, 2022, less than 20 percent (20%); and,
  - ii. On and after January 1, 2024, less than 10 percent (10%).
2. An “In-vessel Digestion Operation or Facility” (e.g. ZWED) as defined in 14 CCR 17896.5. The in-vessel digestion Facility or operation shall, pursuant to 14 CCR Section 17896.44.1, demonstrate that the percentage of Organic Waste in the materials sent to Disposal is:
  - i. On and after January 1, 2022, less than 20 percent (20%); and,
  - ii. On and after January 1, 2024, less than 10 percent (10%).

If Contractor proposes to use an operation, Facility, or activity not expressly identified above for Organic Materials Processing, Contractor shall be responsible for securing the approvals necessary from CalRecycle prior to the City’s final approval of such operation, Facility, or activity, and shall do so in accordance with the procedures specified in 14 CCR Section 18983.2.

### B. Compostable Plastics and Plastic Bags

1. Compostable Plastics. Except as otherwise agreed by the Parties, Contractor shall accept Compostable Plastics at the Approved Processing Facility. As provided in Exhibit A, Contractor’s annual report shall include a written notice to the City from the Approved Processing Facility confirming that the facility will continue to Process and recover Compostable Plastics.
2. Plastic Bags. Except as otherwise agreed by the Parties, Contractor shall accept plastic bags at the Approved Processing Facility. As provided in Exhibit A, Contractor’s annual report shall include a written notice to the City from the Approved Processing Facility confirming the facility will continue to remove plastic bags when Processing Organic Materials.

As required under 14 CCR Section 17867(a)(16) and 17896.44.1, Contractor’s Composting Facility(ies) and In-Vessel Digestion Facility(ies) operator(s) shall determine and report to the State quarterly the

percentage of Organic Materials contained in materials Disposed. In accordance with Exhibit A, Contractor shall submit a copy of such reports to the City Contract Manager within fifteen

**A. “Overs” Management**

The City may require that at no cost to the City, the Contractor conduct and provide City-specific composition data for any Organic Materials Processing Residue that is Disposed and for any “overs” from a screening process that are used for Beneficial Reuse Proposes (as opposed to “overs” used for Mulch.) The composition data shall reflect then- current conditions and use a sampling protocol acceptable to the City, in its reasonable discretion. In the event that the composition of “overs” that are Disposed or used for Beneficial Reuse Purposes includes appreciable quantities (over 20%) of Organic Materials, as determined by Contractor’s composition study or visual assessment by the City, the Contractor shall immediately inform the City Contract Manager and propose a strategy for reducing the level of Organic Materials in the “overs.” At the Contractor’s expense, Contractor shall implement the “overs” management strategy within fifteen (15) Business Days of City approval.

**B. Recordkeeping and Reporting Requirements**

Contractor’s Composting Facility(ies) and In-Vessel Digestion Facility shall maintain records, as required under 14 CCR Sections 17869 and 17896.45. Upon City request, Contractor shall allow City access to all such records.

Contractor’s Composting Facility(ies) shall submit reports to the State, as required under 14 CCR Section 18815.7. Contractor shall provide City a copy of such reports within fifteen (15) days of submittal to the State, and in accordance with Exhibit A, shall include such reports with the Annual Report.

As required under 14 CCR Section 17867(a)(16) and 17896.44.1, Contractor’s Composting Facility(ies) and In-Vessel Digestion Facility(ies) operator(s) shall determine and report to the State quarterly the percentage of Organic Materials contained in materials Disposed. In accordance with Exhibit A, Contractor shall submit a copy of such reports to the City Contract Manager within fifteen (15) days of submittal to the State.

**C. Observance of Study by City and/or CalRecycle**

Contractor acknowledges that, upon request, a representative of the City and/or CalRecycle may oversee its next scheduled quarterly sampling and evaluation of any of the evaluations described in this Exhibit H and conducted at the Approved Processing Facility(ies).

**2. CONTAMINATION MONITORING WASTE EVALUATIONS**

In year one of the contract, Contractor shall conduct two waste evaluations (audits) of each Acceptable Material to determine the Contamination percentage of the inbound Acceptable Material prior to Processing. This determination shall be used to establish that each Acceptable Material is under the Contamination limit established in Table D1. It will further be used to determine the tons of Residue from the Facility that are allocated to the City in the CalRecycle Disposal Reporting System. Contractor

shall obtain approval in advance from City Contact Manager of Contractor's method to allocate Disposed Residue to the City.

Each calendar year thereafter, Contractor shall conduct at least one audit of each Acceptable Material, and that result shall be averaged with the previous two years' audit results to establish a new residue percentage. If a change in processing method at the Station significantly affects the audit result, the first audit after such a processing change may be established as the new baseline residue percentage.

City and its representatives shall have the ability to observe and verify all audits with the cooperation of Contractor. If the City wishes to conduct audits at the Composting Facility outside the scope of this agreement, Z-Best shall provide an area to conduct such audits and personnel to assist City. Contractor shall be entitled to a fee of \$100 per hour for each piece of heavy equipment utilized (with operator), and \$45 per hour for each laborer used. City may provide its own laborers/sorters.





Form C– Cost Proposal - 15-Year Term

Company Name:   Zanker Road Resource Mgmt.   Facility Name: Z-Best Products

Operator:   Zanker Road Resource Magmt.

Proposal Date:   3/10/2021

Material accepted – Please Check applicable boxes

☒ Source-Separated Residential Yard trimmings

☒ SMaRT Station 2-inch Minus Organic MRF fines

☒ Compostable/Food Soiled Paper

☒ Source-Separated Residential and Commercial Food Scraps

PROPOSAL FOR 15-YEAR TERM

Exclusive for Yard Trimmings, MRF Fines, and Compostable / Food Soiled Paper

Non-Exclusive for Source Separated Residential and Commercial Food Scraps

City to provide transportation of materials from SMaRT Station to Contractor's Facility

Material Type	Per ton Processing Rates Proposed						Applicable Tiered Pricing based on contamination percentage	Proposed pricing adjustment methodology (if any)
	Processed <sup>(1)</sup>			Unprocessed				
	Contractor Component	Governmental Component	Total Per-Ton Rate	Contractor Component	Governmental Component	Total Per-Ton Rate		
Source-separated residential yard trimmings	\$38.70	\$0.06	\$38.76	\$57.94	\$0.06	\$58.00	Maximum 1% Contamination	Annual CPI
	Processed <sup>(2)</sup>			Unprocessed				
SMaRT Station 2-inch Minus Organic MRF fines	\$81.00	\$1.19	\$82.19	NA	NA	NA	Maximum 25% Contamination	Annual CPI
	Processed <sup>(3)</sup>			Unprocessed				
Compostable/food soiled paper products	\$84.70	\$0.60	\$85.30	NA	NA	NA	Up to 10% Contamination	Annual CPI
	\$89.60	\$1.19	\$90.79	NA	NA	NA	11% - 20% Contamination	Annual CPI
	\$94.50	\$1.79	\$96.29	NA	NA	NA	21% - 30% Contamination	Annual CPI
	Processed <sup>(4)</sup>			Unprocessed				
Source - separated commercial and residential food scraps - Contingency Pricing, Non-Exclusive	\$84.40	\$0.60	\$85.00	NA	NA	NA	Maximum 10% Contamination	Annual CPI

\* Please fill in and modify the tables, as needed in section 7.3C of the Draft Agreement to provide contractor and governmental component.

<sup>(1)</sup> Source-separated yard-trimmings and compostable paper processed through hammermill to ~minus 5" (nominal)

<sup>(2)</sup> Fines from MSW processed through minus 2" trommel screens

<sup>(3)</sup> Compostable food soiled paper captured through the SMaRT Station mixed waste processing system in the 5" minus fraction

<sup>(4)</sup> Source-separated food scraps processed into food mash at the SMaRT Station